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**TAX - CONNECTICUT**

## Chestnut Point Realty, LLC v. Town of East Windsor

**Appellate Court of Connecticut - July 21, 2015 - A.3d - 2015 WL 4221518**

Chestnut Point Realty, LLC is the owner of real property in the Town of East Windsor. The town assessor valued the property at $1,829,330. Chestnut appealed from the assessment to the Board of Assessment Appeals and appeared at a hearing to request a reduction in the assessment. On April 29, 2013, the board denied Chestnut's request. On May 1, 2013, the assessor mailed notice of the board's decision to Chestnut.

On June 28, 2013, Chestnut filed an application in the Superior Court that was titled "Complaint," bore a return date of July 23, 2013, and was accompanied by a citation and recognizance. On July 10, 2013, a marshal served the application, citation, and recognizance on the Town and, on July 17, 2013, filed the return of service in court. On August 14, 2013, the town filed a motion to dismiss the appeal on the ground that the court lacked subject matter jurisdiction because Chestnut had failed to serve the appeal within two months from the date notice of the board's decision was mailed. The parties appeared before the court to argue the Town's motion to dismiss. The court issued a memorandum of decision on April 14, 2014, in which it granted the motion, thus dismissing Chestnut's tax appeal.

The court found that Chestnut had filed a citation and complaint in the Superior Court in the judicial district of Hartford on June 28, 2013, but did not serve the town with the citation and complaint until July 10, 2013, which was beyond the two month period, commencing May 1, 2013, to take an appeal as required by § 12–117a. The issue decided by the court was whether "the act of filing an application and citation with the court effects an appeal from the [board] pursuant to § 12–117a." The court concluded that filing an application and citation in court does not commence a tax appeal.

Chestnut appealed and the Appellate Court affirmed.

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## Social Impact Bonds: A Better Way to Combat Blight.

Like many less affluent cities, Richmond, California, has been dealing with a rash of blighted properties since the real estate meltdown. Although market prices in many areas have returned to their post-crash highs, some homes remain either abandoned or very poorly maintained by owners unable to meet mortgage payments – and thus facing foreclosure. After an unsuccessful attempt to deal with the problem through eminent domain, the city is now turning to social impact bonds to rehabilitate these homes.

In 2013, city leaders proposed an innovative but controversial initiative to attack blight: Investors in private label residential mortgage backed securities (RMBS) would be asked to sell some of their underwater mortgages to the city at a discount to the principal balance. If the investors were unwilling to sell (as they ultimately were), the city would work with a private company, Mortgage Resolution Partners (MRP), to take over the mortgages through the power of eminent domain and then refinance home owners into FHA loans with lower balances.

The plan, called Richmond CARES, met with widespread criticism, as well as litigation from banks and RMBS investors. One issue was the program's poor targeting: Mortgages eligible for Richmond CARES had to be in RMBS pools and had to be either performing or only slightly delinquent. This universe included a lot of high-end properties near San Francisco Bay, but missed many of the most distressed homes in poorer neighborhoods. These highly distressed properties may have had government-backed mortgages or their private mortgages couldn't be refinanced with FHA loans while, at the same time, leaving enough equity to cover the city's costs and pay MRP's $4,500 per-home fee.

Aside from being poorly targeted, the plan also had undesirable side effects, such as undermining the private mortgage market – since lenders would potentially have to price eminent domain risk in addition to default and prepayment risk. Although the City Council has not officially cancelled Richmond CARES, the initiative has not advanced for two years and MRP's website is no longer active.

But now the city – in partnership with the not-for-profit Richmond Community Foundation – is pursuing a more promising strategy. Richmond is planning to issue $3 million of social impact bonds to purchase, rehabilitate and sell blighted properties. During a four-year revolving period, sale proceeds will mostly go to purchasing new properties; during the final year of the bonds' five-year life, proceeds will be devoted to repaying principal and interest.

The purchase and rehabilitation program will be run by the Foundation. Initial targeted properties will include some of the 250 abandoned homes that have been taken over by the city – typically due to failure to pay property taxes. Local contractors will be hired to perform the rehabilitations – keeping the money in the community.

The rehabilitated homes will be offered to graduates of the Richmond SparkPoint Center. SparkPoint, an initiative of the United Way, helps area individuals and families dealing with financial crises. Center advisors help clients get out of debt, increase their income and build savings. Program graduates have a FICO score of 680, making them eligible for FHA mortgages.

Properties will be sold at market rate to avoid depressing nearby property values. But, as Joshua Genser, one of the program's architects, pointed out to me, "market rate" in a poor area of Richmond is very affordable by the standards of the Bay Area. Single-family homes are likely to sell for around $250,000 – a small fraction of what one would expect to pay in nearby communities.

Although the bonds are issued by Richmond, they are not secured by city revenues. The sole source of funds for debt service will be proceeds from the sale of the rehabilitated properties. The bonds are intended for social impact investors less concerned with maximizing risk-adjusted returns than in using their capital for public benefit. The Richmond bonds are most likely to be sold via a private placement to a local bank endeavoring to meet its obligations under the Community Reinvestment Act.

If all goes well, the bonds will be fully repaid with up to 10 percent interest. Any extra proceeds will be retained by the Foundation. Due to the novelty of the program and the fact that it requires effective execution to be profitable, bond investors are taking on a significant risk of principal loss. Although the city has no legal responsibility to make investors whole, a default could affect investor attitudes toward other city debt – a major concern at the moment due to the recent downgrade of Richmond's debt by Moody's. For this reason, it may be better for future social impact bonds to be issued by joint powers authorities or other special purpose entities that do not have similar concerns over reputational risk.

But this is a minor concern over an idea that promises major social benefits. By targeting the most blighted properties, the bond program will improve quality of life and support property values in the neighborhoods that most desperately need this sort of help. The program also promises to improve the city's budget picture by reducing code enforcement costs and eliminating property tax delinquencies.

It is also impressive to see a non-profit partnering with the city as well as private law firms and financial institutions – which have structured the transaction on a pro bono basis – to implement such an innovative concept. The Richmond bond is a great example of a fourth sector initiative, in which private for-profit companies, governments and non-profits team up to tackle stubborn social problems.

BY MARC JOFFE

JULY 13, 2015

*Marc Joffe is principal consultant of Public Sector Credit Solutions, an organization that produces data and analytics relevant to government bonds. Previously, Marc was a senior director at Moody's Analytics.*

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## S&P's Public Finance Podcast: (Median Ratio Reports on Public and Private Universities and Colleges).

In this week's Extra Credit, Associate Director Shivani Singh discusses our median ratio reports on public and private universities and colleges.

Listen to the podcast.

Jul 17, 2015

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## A First Look: EIG's Distressed Communities Index.

The Economic Innovation Group has been taking a look at the economic wellbeing of America's communities and this week released its findings. The research organization broke down the data by zip code and looked at seven metrics:

> **1. Educational Attainment:** Percent of population 25 years and over with a high school degree.
>
> **2. Housing Vacancy Rate:** Percent of habitable housing that is unoccupied.

**3. Unemployment Rate:** Share of the labor force that is unemployed.

**4. Poverty Level:** Percent of population living under the poverty line.

**5. Median Income Ratio:** Ratio of the zip code's median income to the state's median income.

**6. Change In Employment:** Percent change in the number of individuals employed.

**7. Change in Business Establishments:** Percent change in the number of businesses.

The group listed the most distressed zip codes in each state and also ranked the states in terms of what percent of its population lives in a distressed zip code. Nevada easily tops the list with 33 percent of its population living in economic distress. The remaining top ten have between one-fifth and one-quarter of their residents living in economic distress and are located in the South or Southwest. States that have 4 percent or fewer residents living in distress zip codes are generally located in New England, the upper Midwest and Mountain West.

The results somewhat mirror findings last year by the National Association of Counties that most localities have not fully recovered from the recession. EIG also recently found in a survey of likely voters in presidential swing states that a significant portion of Americans still feel like the recovery has left them behind. "The [Distressed Communities Index] demonstrates that they don't just feel it, they live it – over 30 million Americans to be exact – in communities defined by slow job growth, vanishing businesses, and fewer opportunities to move up the economic ladder," EIG said.

States aren't necessarily faring much better, even with their greater taxing power. An analysis by PNC's Tom Kozlik this week concluded that U.S. state tax revenues are close to experiencing a "lost decade" – where overall tax revenue growth has been nonexistent. "This contrasts significantly with the last three recessions and partly helps to explain why: many state budgets are strained, some state credits have deteriorated…and why the public's trust in government remains near an all-time low," Kozlik wrote.

GOVERNING.COM

BY LIZ FARMER | JULY 17, 2015

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## House Approves Short-Term HTF Fix.

DALLAS — The House on Wednesday voted 312 to 119 to approve a bill that would extend federal transportation funding through Dec. 18, with an $8.1 billion transfer from general funds to the Highway Trust Fund.

The measure proposed on Monday by Rep. Paul Ryan, R-Wis., chairman of the House Ways and Means Committee, would maintain the flow of reimbursements to states for highway and transit projects through that date.

"We want to get to a long-term, six-year highway bill," Ryan said during Wednesday's floor debate. "We're not going to get there in the next two or three weeks. It's going to take two or three months."

The Senate is working on a two-year transportation bill, he said.

Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee and co-sponsor of Ryan's HTF fix, said there's not enough time to pass a multiyear bill before the current two-month extension ends July 31.

"I believe we can get there, but we can't get there in the next three weeks," he said. "We are committed to a six-year bill."

Lawmakers rejected a proposal by the Democrats to replace the Ryan bill with President Obama's six-year, $478 billion Grow America Act funded with $240 billion of gasoline and diesel tax revenues and $238 billion from a mandatory 14% tax on overseas corporate earnings. "This bill represents what the House should be taking up today on surface transportation," said Rep. Peter DeFazio, D-Ore., one of the sponsors of the Obama proposal and the ranking Democrat on the House Transportation and Infrastructure Committee.

The $8.1 billion transferred from the general fund will require a similar amount of offsets over the next 10 years. The offset revenue includes $3.1 billion of airline passenger security fees and $5 billion from enhanced tax compliance.

President Obama reluctantly supports the HTF extension only in the hope that it leads to a long-term bill before the end of the year, the Office of Management and Budget said Wednesday morning in a Statement of Administration Policy.

The need to keep federal transportation reimbursements flowing to states during the busy summer construction season is an "unfortunate reality" created by a series of short-term HTF fixes, OMB said.

The Transportation Department notified state officials earlier this week that federal reimbursements for road and bridge projects could come to an end Aug. 1 without congressional action on the HTF.

"The administration expects that Congress will use this five-month extension to pass a multiyear bill with significant increases in investment to address the system's maintenance and repair deficit, enhance safety, and lay the foundations for future growth in critical areas like freight movement," the statement said. "The administration will not support continued failure to make the investments the nation needs."

The Senate is expected to take up a transportation bill on Thursday, but Majority Leader Sen. Mitch McConnell declined to provide specifics after Tuesday's weekly Republican caucus. McConnell said he was "fairly optimistic" about a long-term measure.

"There's a lot of bipartisan enthusiasm for a multiyear highway bill," he told reporters. "We've had some conversations inside our conference about a way to pay for that, and I've also had conversations with prominent Democrats that were involved in this issue," McConnell said. "We're hoping to be able to come together behind some way to get a multiyear highway bill." Senate Minority Leader Harry Reid, D-Nev., was unenthusiastic about Ryan's HTF proposal. "I don't know what the House is going to do," he said. "I'll take a look at it."

The Senate Environment and Public Works Committee in June unanimously approved a six-year, $277 billion highway-only bill that does not deal with the $100 billion revenue shortfall in the HTF over that span.

Sen. Ted Cruz, R-Texas, a candidate for the Republican nomination for president in 2016, said on Wednesday he would filibuster a transportation bill that includes a provision reauthorizing the Export-Import Bank as McConnell has proposed.

"I'm willing to use any and all procedural tools to stop this corporate welfare and this corruption from being propagated," Cruz said.

**The Bond Buyer**

by Jim Watts

JUL 15, 2015 3:21pm ET

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## [Senators Unveil Puerto Rico Bankruptcy Bill.]

WASHINGTON — Sens. Chuck Schumer, D-N.Y., and Richard Blumenthal, D-Conn., unveiled a bill on Wednesday that would allow Puerto Rico municipalities and public corporations to seek protection under Chapter 9 bankruptcy.

The bill, a companion piece of legislation to H.R. 870, a substantially similar bill, has Democratic support but no Republican sponsors. Puerto Rico's non-voting member of Congress, Pedro Pierluisi, introduced H.R. 870 in February and that bill is pending before a subcommittee of the House Judiciary Committee. Rep. Bob Goodlatte, R-Va., the committee chair, said recently that Republicans are not interested in moving that bill.

The push in Congress to consider giving the troubled island entities access to Chapter 9 powers became more urgent after Puerto Rico Gov. Alejandro García Padilla said that the commonwealth will not be able to pay its creditors unless its approximate $72 billion of public debt is restructured. Creditors that hold Puerto Rico debt have lobbied against bankruptcy powers, saying they would prefer the receivership model that would result from a default.

Blumenthal defended the bankruptcy bill, saying Puerto Rico and creditors deserve a "fair, orderly" process.

"The purpose of this bill is to avoid disaster and prevent Puerto Rico from going over a fiscal cliff that is entirely preventable," he said during the press conference. "This disaster would be a self-inflicted wound that can and should be avoided."

Schumer, who said the amount of debt is "staggering," added that he, Blumenthal and the 10 other Democrats sponsoring the bill are committed to helping Puerto Rico fight the "catastrophe head-on and in the right way."

Extending bankruptcy powers to the island has been a generally popular proposal among Democrats, both lawmakers and presidential candidates, but has received little support from Republicans. However, Schumer and Blumenthal said they are hopeful it will become a bipartisan bill. Both said they have had productive talks with their Republican colleagues and Schumer said a number of them "seem to be genuinely interested."

"In the coming weeks, we're going to urge our Republican colleagues to get on board to do what's prudent and fair, to get this bill across the finish line," Schumer said.

Sens. John Cornyn, R-Tex., and Orrin Hatch, R-Utah, have been open to considering granting bankruptcy rights in Puerto Rico. Both senators sit on the Senate Judiciary Committee where the bill is expected to be referred.

Sen. Chuck Grassley, an Iowa Republican and the committee's chair, has previously said he would like to see Puerto Rico's government develop a financial plan before considering granting island entities bankruptcy powers.

García Padilla, who has taken steps to develop a financial plan, has been lobbying members of Congress that have the power to weigh in on both the Senate and House versions of the bill. He reportedly had a one-on-one meeting with Grassley and recently wrapped up a trip to Washington where he met with Republicans on the House Judiciary Committee, including Mimi Walters from California, Ron DeSantis from Florida, Jason Chaffetz of Utah and Ken Buck of Colorado.

"I'm hopeful that the debate in Congress will propel this bill to passage with bipartisan support," García Padilla said in a statement released after Blumenthal and Schumer's press conference. "Chapter 9 is an option that all states have at their disposal for their municipalities and public corporations and there is no reason why Puerto Rico, its creditors and its citizens should not be afforded the same protections."

While Blumenthal did not have an exact timeline for the bill, he said the goal is to operate under the assumption of "the sooner the better."

"Time is not on our side," he said. "The longer uncertainty persists, the more unstable the result."

THE BOND BUYER

BY JACK CASEY

JUL 15, 2015 4:06pm ET

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## University of Kentucky's Housing P3 Continues to Break New Ground.

The University of Kentucky (UK) Board of Trustees has approved the fifth phase of a massive student housing revitalization plan that will raise the number of beds on campus to 6,504. The $74 million University Flats project, a seven-story building that will contain 771 beds in 312 apartments, is scheduled to open in fall 2017, reported Student Housing Business.

Memphis-based campus housing developer Education Realty Trust (EdR), will finance, build, maintain and manage the project in addition to 12 other residence halls it has built or is constructing for UK. The company, which is responsible for $422 million for the overall project, will have a 75-year lease on all of its buildings and will collect rent, paying some of it to the university once agreed-upon profit thresholds have been met, according to the Lexington Herald-Leader. Specifically, after receiving a 9 percent rate of return from rental payments, in addition to a 2 percent fee for managing the buildings, the company will give UK 25 percent of the net income. Because UK owns the buildings, EdR will not have to pay state property taxes.

This partnership, which was negotiated in 2011, represents the largest on-campus housing development at a U.S. public university. Many other schools are using P3s to add to or replace their student housing stock.

NCPPP

By Editor July 16, 2015

## [BlackRock Sees 40% Haircut in Puerto Rico Debt Restructuring.]

Puerto Rico bondholders may receive an average of just 60 cents on the dollar if the commonwealth wins the ability to restructure its $72 billion in obligations, according to BlackRock Inc.'s head of municipal debt.

The Caribbean island and its agencies need to cut their debt to $40 billion, Peter Hayes, who helps oversee about $116 billion of munis at the world's biggest money manager, said in an interview on Bloomberg Television. That would mean an average recovery of about 60 percent on its securities, which include general-obligation bonds, sales-tax debt and those from its electric utility, he said.

"They have all this debt that they can't afford," said Hayes, whose firm held just $28 million of Puerto Rico debt as of May 31, according to Morningstar. "How do you get out of debt? You either grow your way out — they're not growing — or you restructure. So from the point of view of its citizens, it's the best outcome."

Puerto Rico bond prices have tumbled since Governor Alejandro Garcia Padilla last month said the commonwealth can't afford to pay its debts, raising the specter of an unprecedented restructuring in the $3.6 trillion municipal-bond market.

The Government Development Bank, which lends to the commonwealth and its agencies, said last week it may purchase its notes through cash or exchange the securities at less than par. Standard & Poor's said Tuesday that it considers such an exchange as a default.

**Default Risk**

S&P cut the GDB's rating by one step to CC on the view that a default "is virtually certain," Brendan Browne, an S&P analyst in New York, wrote in a report.

Puerto Rico and its localities have a history of borrowing to fix budget deficits, racking up more debt than any U.S. state except California and New York. With an economy that has contracted every year but one since 2006, Puerto Rico officials have been building a case for convincing investors to accept less than they are owed.

Puerto Rico officials met with creditors Monday at Citigroup Inc.'s New York headquarters, the first gathering with investors since Garcia Padilla's comments. Officials said they will evaluate every bond as they work on a recovery plan and haven't given any details about which securities may be affected.

**Recovery Rates**

Recovery rates will differ, Hayes said after his television interview. Holders of general obligations may get at least 60 cents on the dollar, he said. Such debt maturing July 2041 changed hands Tuesday at an average price of 61.3 cents on the dollar, the highest since June 26, according to data compiled by Bloomberg.

Sales-tax bonds, called Cofina, that are second in line for repayment may get restructured at below 60 cents on the dollar if the commonwealth chooses to use that revenue stream for other expenses, he said.
They "are likely to get a fairly low recovery," Hayes said.

Electric Power Authority bonds are trading at levels above what investors may get in a restructuring because the publicly owned electric utility needs to upgrade its plants, Hayes said. Prepa debt maturing July 2028 traded Tuesday at an average 49.1 cents on the dollar, about the same level as the start of the year, Bloomberg data show.

**Bloomberg**

by Michelle Kaske and Erik Schatzker

July 14, 2015 — 9:29 AM PDT Updated on July 14, 2015 — 1:16 PM PDT

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## [Recovery Best Seen in California and Texas as Debt Sales Shrivel.]

Texas and California are so flush with cash they're enjoying a rare boom-times perk: The states don't have to borrow in the $3.6 trillion municipal-debt market to pay bills until tax collections flood in.

Texas is skipping its annual note sale for the first time in three decades because of a surplus left from a surging economy, which grew more than twice as fast as the U.S. last year. California, which was so broke after the recession that it took to issuing IOUs, isn't seeking a short-term loan for the first time since it was held aloft by the 1990s Internet bubble.

The two illustrate the fiscal revival among some states as the economic expansion enters its seventh year. As a result, the sale of notes is poised to fall for a fifth year to less than half the $78 billion peak in 2010, when governments were reeling from the recession, according to data compiled by Bloomberg.

"We're seeing a big decrease in issuance because their fiscal situations have improved significantly," said Doug McGinley, a money manager for Fidelity Investments. "We're seeing less supply because of the improving health of states and their fiscal situations."

While investors have focused on the persistent fiscal strain on borrowers including Puerto Rico, Illinois and New Jersey, finances in most state capitals have been steadily on the mend. A report by the National Association of State Budget Officers last month said revenue collections have stabilized, with growth of 3 percent projected for the current fiscal year.

**Rising Rates**

The dwindling supply of notes, which typically mature in a year or less, is forcing firms such as Fidelity to find other short-term investments for money-market funds, said McGinley. That's helped ease the pressure on the note market, where prices have slipped this year amid speculation that the Federal Reserve will raise interest rates for the first time in 9 years.

State and local government securities maturing in six to 12 months returned 0.16 percent this year, compared with 0.18 percent for the municipal market overall, according to Bank of America Merrill Lynch indexes.

"The supply of short-term paper will be more constrained," said Burt Mulford, who helps manage $34 billion at Eagle Asset Management in St. Petersburg, Florida.

**1980s Phenomena**

This year will be the first since 1985 that Texas hasn't sold notes to pay its bills until the bulk of its tax collections arrive. It borrowed $5.4 billion last year.

While the oil-price slide has exerted a drag on Texas's growth, the government has a surplus after its economy expanded by 5.2 percent last year, faster than any other state but North Dakota.

It has $8.5 billion in its rainy day fund, said Chris Bryan, a spokesman for Texas Comptroller Glenn Hegar. When lawmakers approved their annual budget this year, they left $6 billion of projected revenue unspent, he said.

"We probably have the best balance sheet of any state in the nation," Texas Governor Greg Abbott said during an interview Tuesday in Bloomberg's offices in New York.

California Treasurer John Chiang said the strong economy and steps to eliminate the state's budget deficit are allowing it to avoid short-term borrowing for the first time since the 2001 budget year. That was when California was still enjoying a tax windfall from the soaring stocks of dot-com companies, a good fortune that disappeared when the bubble collapsed.

On July 2, Standard & Poor's raised California's rating one step to AA-, it's highest grade from the company in 14 years.

"It says a lot about the stronger economy in these states," said Peter Hayes, head of munis at New York-based BlackRock Inc., which oversees about $116 billion of the securities. "There is less need to borrow."

**Bloomberg**

by Darrell Preston

July 14, 2015 — 9:01 PM PDT Updated on July 15, 2015 — 6:34 AM PDT

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## Perry Joins Bullish Puerto Rico Camp as BlackRock Sees Losses.

The divide over the outlook for Puerto Rico's bonds is widening as investors and speculators take sides on the commonwealth's debt restructuring proposal.

Richard Perry, head of Perry Capital, said Wednesday the commonwealth is in better shape than most people realize. Jeffrey Gundlach, co-founder of DoubleLine Capital, likes the debt at current prices. BlackRock Inc. warned Tuesday that investor risk receiving an average of just 60 cents on the dollar in a reorganization.

Perry, speaking at the CNBC Institutional Investor Delivering Alpha Conference in New York, said that the population has only fallen marginally, and that government debt is about 70 percent of GDP, lower than in many other countries, including Japan.

"It's often mischaracterized in the U.S. and it's painted like Detroit," said Perry, who's New York-based firm holds Puerto Rico securities, including its Government Development Bank debt.

Puerto Rico and its agencies owe $72 billion after borrowing for years to fix budget deficits. The island's economy has shrunk every year but one since 2006. Governor Alejandro Garcia Padilla last month directed island officials to create a debt-restructuring plan by Aug. 30 that would delay payments. Garcia Padilla says Puerto Rico cannot pay all of its obligations.

**Bearish View**

The commonwealth needs to slash its debt load to $40 billion, Peter Hayes, who helps oversee about $116 billion as head of municipal debt at New York-based BlackRock, the world's biggest money manager, said in an interview Tuesday on Bloomberg Television. That would mean an average recovery of about 60 cents on the dollar on its securities, which include general-obligation bonds, sales-tax debt and those from its electric utility, he said.

"They have all this debt that they can't afford," said Hayes, whose firm held just $28 million of Puerto Rico debt as of May 31, according to Morningstar. "How do you get out of debt? You either grow your way out — they're not growing — or you restructure. So from the point of view of its citizens, it's the best outcome."

Recovery rates will differ, Hayes said after his television interview. Holders of general obligations may get at least 60 cents on the dollar, he said. Subordinate sales-tax bonds that are second in line for repayment may get restructured at below 60 cents on the dollar if the commonwealth chooses to use that revenue stream for other expenses, he said.

**Returns Forecast**

The island's constitution says the commonwealth must repay general obligation bonds before other expenses. Such debt maturing in July 2041 and carrying an 8 percent coupon traded Wednesday at an average price of 72.6 cents on the dollar, the highest since June 26, before the governor called for a debt-restructuring plan.

OppenheimerFunds Inc., the largest U.S. mutual-fund investor of Puerto Rico securities, said last week that sales-tax collections, unemployment and income growth show the economy is strong enough for the government to repay.

Gundlach said he hopes those bonds "might return par," if a presidential candidate were to campaign on helping out Puerto Rico. He spoke on CNBC from the conference.

DoubleLine's $2.24 billion Income Solutions Fund held $45 million of Puerto Rico's 2041 general obligations, as of May 29, data compiled by Bloomberg show. Its $137 million Multi-Asset Growth Fund held $2.5 million of the same securities, as of June 30.

That debt will need to gain in price for investors to consider negotiating changes in debt payments, Perry said.

"The government obligations that are really in the highest part of the pecking order, they are going to have to trade at par if they're going to make this restructuring work," Perry said.

**Bloomberg**

by Michelle Kaske

July 15, 2015 — 1:21 PM PDT

## [Puerto Rico Closer to Default After Missed Funds Transfer.]

Puerto Rico lurched one step closer to default, saying one of its agencies failed to transfer cash to a trustee to cover an Aug. 1 debt payment because the legislature didn't appropriate the funds.

It's unclear whether the Public Finance Corp. will pay $36.3 million of bonds maturing that day. If it doesn't, that would mark the first time Puerto Rico has defaulted on a debt payment and would come as the commonwealth seeks to negotiate with creditors to restructure $72 billion of obligations.

The missed transfer underscores the fiscal squeeze on the U.S. commonwealth, which is pushing for Congress to allow some of its public corporations to file for Chapter 9 bankruptcy protection.

"This payment may not be made and will probably lead to the government trying to exchange this paper," Luis Fortuno, Puerto Rico's governor from 2009 through 2012, said during a telephone interview. "I don't think this, in and by itself, is enough to cause Congress to act on Chapter 9. There is a lot of talks about some strings attached to Chapter 9, although it's not clear exactly what that would be."

The Public Finance Corp. owes about $1 billion of debt repaid through legislative appropriation, according to the Government Development Bank, which works on the island's debt sales.

**Legislative Approval**

"In accordance with the terms of these bonds, the transfer was not made due to the non-appropriation of funds," Melba Acosta, president of the GDB, said Wednesday in an e-mailed statement.

Puerto Rico is in need of cash because investors have effectively closed the island's access to the capital markets by demanding high interest rates

Last month, lawmakers included about $300 million in the current budget to repay GDB debt. The bank may be able to use the money to pay bondholders next month, though it would need legislative approval to do so. The legislature is out of session until mid-August.

"Should resources be required from this fund, the GDB only needs to inform, request, and justify the need for these funds to the legislature," Senator Jose Nadal Power, who chairs the Senate Finance Committee, said in a statement Thursday that was in Spanish.

Debt of the Public Finance Corp., which has borrowed to help pay the government's bills, traded July 1 at an average 68 cents on the dollar, a record low, according to data compiled by Bloomberg.

**Default Expectations**

"Most PFC debt is held on-island, but some is held by U.S. mutual funds and in retail accounts and a further small portion is held by the hedge fund community," Daniel Hanson, an analyst at Height Securities, a Washington-based broker dealer, wrote in a report Thursday. "We expect the technical default event will signal that more defaults are coming and draw further attention to the liquidity issues facing the commonwealth."

The trustee, U.S. Bank, has hired the law firm Hogan Lovells "to advise it in connection with this matter," according to a filing with the Municipal Securities Rulemaking Board.

Puerto Rico is in need of cash because investors have effectively closed the island's access to the capital markets by demanding high interest rates. The development bank, a source of available cash for the commonwealth, had $778 million of net liquidity as of May 31, down from $2 billion in October. To avoid running out of cash by Sept. 30, the bank wants to exchange its notes for longer-maturity debt.

**Next Payment**

Another $140 million of development bank bonds mature Aug. 1, Bloomberg data show. The GDB said last week it may purchase its notes "from time to time" with cash, new securities or a combination. Such purchases are expected to be at prices "that are materially less than par," according to a filing through the Municipal Securities Rulemaking Board.

Governor Alejandro Garcia Padilla last month directed island officials to create a debt-restructuring plan by Aug. 30. The governor says Puerto Rico cannot afford to repay what it owes.

Key Democrats including U.S. Senator Chuck Schumer, who represents New York, are backing legislation that would allow Puerto Rico's public corporations to file for Chapter 9, just as U.S. cities can. A bill to do so has stalled for lack of Republican support.

**Bloomberg**

by Michelle Kaske

July 15, 2015 — 7:39 PM PDT Updated on July 16, 2015 — 2:27 PM PDT

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## Bloomberg Brief Weekly Video - 07/16/15

Bloomberg's Michelle Kaske talks with Joe Mysak about this week's municipal market news.

Watch the video.

1:50 PM PDT
July 16, 2015

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## Pension Funds Burn Cities as $1 Trillion Shortfall Set to Grow.

The cost to American cities for their cash-strapped pension funds is starting to look a lot worse, and it's not because the stock-market rally may be losing steam.

Houston was warned by Moody's Investors Service this month that it may be downgraded because of mounting retirement bills, the latest municipality put on notice as the company ignores bookkeeping gimmicks that let cities mask the size of their debt for years. The approach foreshadows accounting rules for even top-rated issuers that are poised to cause pension shortfalls to swell as new financial reports are released.

"If you're AAA or AA rated and you've got significant and visible unfunded pension obligations, you've only got one direction to go in terms of rating, and that's potentially down," said Jeff Lipton, head of municipal research in New York at Oppenheimer & Co. "It's the presentation on the balance sheet that is now going to drive urgency."

Cities that shortchanged pensions for years are under growing pressure to boost their contributions, even after windfalls from a stock market that's tripled since early 2009. Janney Montgomery Scott has said growing retirement costs are "the largest cloud overhanging" the $3.6 trillion municipal-bond market, where investors are demanding higher yields from borrowers under the greatest strain.

**Chicago Pays**

That was on display this week for Chicago, whose credit rating was cut to junk by Moody's in May because of a $20 billion pension shortfall. The city was forced to pay yields of almost 8 percent on taxable bonds maturing in 2042, about twice what some homeowners can get on a 30-year mortgage.

Estimates of the pension-fund deficits facing states and cities vary, depending on the assumptions used to calculate the cost of bills due over the next several decades. According to Federal Reserve figures, they have $1.4 trillion less than needed to cover promised benefits.

Officials have been able to lower the size of the liability by counting on investment earnings of more than 7 percent a year, even after they expect to run out of cash. New rules from the Governmental Accounting Standards Board require a lower rate to be used after retirement plans go broke. Many reported shortfalls will grow as a result.

**More Coming**

Moody's, which in 2013 began using a lower rate than governments do to calculate future liabilities, has estimated that the 25 largest U.S. public pensions alone have $2 trillion less than they need. Cincinnati and Minneapolis are among cities Moody's has since downgraded.

The credit-rating company said in a report Friday that the shortfall in Dallas's police and firefighters' pension system will more than triple to $4.7 billion because of the accounting-rule shift.

"You'll probably start to see a lot more negative outlooks," said David Ashley, who helps oversee $10 billion of munis at Thornburg Investment Management in Santa Fe, New Mexico. "That's on the horizon."

The new reporting requirements are taking full effect just as stock and bond markets sputter as the Federal Reserve prepares to raise interest rates for the first time in nine years.

The California Public Employees' Retirement System, the largest U.S. pension, this week said it earned just 2.4 percent last fiscal year, one-third of the annual return it projects. The California State Teachers' Retirement System, the second-biggest fund, gained 4.5 percent, compared with its 7.5 percent goal.

**Gains Slow**

The Standard & Poor's 500 Index has climbed 3.2 percent this year, following double-digit gains for each of the last three years.

Pension systems have been a particular strain for local governments, which have less ability than states to raise taxes.

Like other cities, Houston's revenue is limited by property-tax caps. Its three pension plans have combined unfunded liability of about $3.4 billion, according documents for a debt sale last month.

On July 2, Moody's lowered Houston's outlook to negative, citing the "challenges the city faces from growing pension costs and liabilities." The Aa2 rating is the third-highest investment grade.

**Prophecy Fulfilled**

Any downward rating moves could hinder efforts of states and localities that are working their way out of the problem by increasing borrowing costs, further straining budgets, said Vikram Rai, head of muni strategy in New York at Citigroup Inc.

Downgrades "could become a self-fulfilling prophecy and exacerbate the fiscal distress," Rai said. It could also drag down prices in the municipal market, he said in a July 8 report.

On the other hand, the new accounting rules and pressure from credit-rating companies may spur action by officials.

"Any time you have clarity around pension funding versus the provision of essential services versus tax levels, it helps generate good policy," said Shawn O'Leary, senior research analyst at Nuveen Asset Management, which oversees about $100 billion in munis. "The market is really paying attention to these issues. The rating agencies are just catching up."

**Bloomberg**

by Brian Chappatta

July 16, 2015 — 9:01 PM PDT Updated on July 17, 2015 — 11:55 AM PDT

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## Ratings Value Questioned as More Municipal Borrowers Go Without.

Bond investors don't seem to mind Tallahassee, Florida's decision to provide them with one fewer opinion on the state capital's finances.

The city sold $95 million of revenue bonds last month at yields equal to comparable securities even after it decided to get one less credit rating than it has traditionally done for such debt sales. And city officials expect to save $20,000 a year on fees to boot.

Tallahassee isn't alone in questioning the value of the analysis from Standard & Poor's, Moody's Investors Service and Fitch Ratings, which were blamed for contributing to the credit crisis. The percentage of municipal deals with one rating has climbed this year to the highest since the 2008 market collapse, while the number with three ratings is the lowest, according to data compiled by Bloomberg.

"We're not hearing pushback from investors that one rating isn't enough," said Jay Wenger, managing director at Susquehanna Group Advisors Inc., a Harrisburg, Pennsylvania-based financial adviser.

The decline in the use of multiple municipal ratings doesn't appear to be doing much damage now to the bottom line of the three biggest providers, with revenue up among record sales of corporate securities.

**Rising Revenue**

“Moody’s credit ratings and research continue to be widely sought by investors because they have proven to be a trusted and reliable source of information on credit risk,” said David Jacobson, a spokesman for the New York-based firm.

McGraw Hill Financial Inc., of which S&P is part, saw 10 percent annual revenue growth from 2010 to 2014, and Moody’s has notched 13 percent annual increase in the same period, according to reports by Bloomberg Intelligence analyst Joshua Yatskowitz. Bloomberg LP, the parent company of Bloomberg News, competes with McGraw Hill in providing financial information.

“Trends in the municipal market such as the one suggested here could be attributed to a number of factors, given the amount of change in this space over the last 12 months,” April Kabahar, a spokeswoman at S&P, said by e-mail.

Institutional investors have bulked up their research departments after top-rated securities tumbled to below investment grade, or junk, during the financial crisis.

**Credit Work**

“In this day and age, most of the sophisticated investors have to do their own individual credit work, and they will apply their own internal ratings,” said Jaime Durando, head of municipal syndication at RBC Capital Markets in New York.

So far this year, 47 percent of new muni deals have had a single rating, compared with 32 percent in 2008, data compiled by Bloomberg show. The share of triple-rated deals stands at 7 percent, compared with 9 percent in 2008.

“Muni issues larger than $50 million mostly utilize two or three ratings, while those below $50 million typically use just one,” Dan Noonan, a spokesman for Fitch said in an e-mail. “That trend is not new, although the volume of rated deals continues to grow for one, two and three- rated deals.”

Jim Cooke, Tallahassee’s treasurer-clerk, said analysts from S&P, Moody’s and Fitch were calling more frequently on the different securities issued by the municipality, which entailed city employees providing repetitive information. “It just didn’t feel efficient,” he said.

**Rating Fees**

Tallahassee’s energy revenue bonds were rated AA, third-highest, by S&P, and a step lower at Aa3 by Moody’s. The 10-year maturity was priced in June to yield 2.64 percent, in line with AA revenue bonds, data compiled by Bloomberg show.

The city paid $50,000 to Moody’s and $43,000 to S&P for an aggregate fee that represented 26 percent of the cost of issuance, Cooke said. Tallahassee decided against a rating from Fitch.

In the energy system’s last sale in 2010 with all three grades, Moody’s charged $47,000 and S&P and Fitch each charged $31,000, which totaled 28 percent of the deal’s expenses, he said.

In addition to the $20,000 annual savings from cutting a rating, the city expects to save about $45,000 for each new debt issue that’s sized around $95 million, Cooke said.

While municipalities generally had similar grades from three main raters before the credit crisis, shifting methodologies are now driving more cases of "multi-notch differences in opinion," said Chad Farrington, head of muni research in Boston at Columbia Threadneedle Investments that manages about $30 billion in local debt.

Issuers are examining the criteria more closely, given the experience of the raters in the credit crisis and with more transparency of their methods under the Dodd-Frank Act, said David Moore, director of Public Financial Management Inc.'s Southern region financial advisory practice.

"Typically, the end result of that analysis is they can pick two of the three and get the same reception in the market or materially the same," Moore said.

**Bloomberg**

by Romy Varghese

July 19, 2015 — 9:00 PM PDT Updated on July 20, 2015 — 6:46 AM PDT

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## Piper Jaffray Agrees to Acquire BMO Municipal-Bond Business.

Piper Jaffray Cos., the investment bank founded in 1895, agreed to buy Bank of Montreal's GKST Inc. to expand in municipal bond sales, trading and origination.

The deal is expected to be completed in the fourth quarter and is subject to regulatory approval, Minneapolis-based Piper Jaffray said Monday in a statement that didn't disclose terms. Most of the 130 employees working for the GKST unit will move to Piper Jaffray, said Nini Krishnappa, a BMO spokesman.

Piper Jaffray Chief Executive Officer Andrew S. Duff has been boosting capital markets operations. The company last month added a group of dealmakers from Sterne Agee Group, the firm that was acquired by Stifel Financial Corp.

"The fixed-income business has been a longstanding and core focus for Piper Jaffray, and our commitment to sustainable growth led us to GKST," Duff said in the statement.

New bond sales are accelerating in the $3.6 trillion municipal market. States and cities have issued $231 billion of debt this year, up more than 50 percent from the same period in 2014 and the fastest pace since at least 2003, according to data compiled by Bloomberg.

Muni bonds have gained about 0.4 percent in 2015, while Treasuries are little changed and investment-grade corporate securities declined 0.45 percent, according to Bank of America Merrill Lynch data.

**Managers Depart**

BMO's decision to divest GKST follows the departure in May of portfolio managers Duane McAllister, Erik Schleicher and analyst Joseph Czechowicz, who all left for Baird Advisors.

Bank of Montreal bought Griffin, Kubik, Stephens & Thompson in 2008 for about $33 million, more than doubling its municipal-bond business at the time. The broker, founded in 1980, employed about 100 people across offices in Chicago, Milwaukee and Monticello, Illinois.

“We’re confident that the transaction will enable BMO Capital Markets to focus resources on growing our core U.S. businesses, including our institutional fixed-income business, and strengthen relationships with our institutional clients,” Krishnappa said in an e-mail.

Legal advisers on the deal were Mayer Brown LLP for Bank of Montreal and Faegre Baker Daniels for Piper Jaffray. BMO Capital Markets and Berkshire Capital were financial advisers for Toronto-based Bank of Montreal.

**Bloomberg**

by Katherine Chiglinsky and Katia Dmitrieva

July 20, 2015 — 6:37 AM PDT Updated on July 20, 2015 — 7:10 AM PDT

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## MSRB Considers Creating Municipal Market Data Product for Academic Researchers.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is requesting comment on a proposal to support academic research on municipal market trading practices with the creation of a new historical trade data product for higher education institutions.

The MSRB collects trade data from dealers through its Real-Time Transaction Reporting System (RTRS). Certain RTRS data are disseminated to the public through the Electronic Municipal Market Access (EMMA®) website and made available in a real-time feed on a paid subscription basis. In both dissemination methods, identifying information about dealers involved in transactions is exclusively for regulatory purposes.

Academic researchers have requested access to trade data containing dealer identifiers to gain a better understanding of secondary market trading practices in the municipal securities market, including issues related to intermediation costs, dealer participation and liquidity previously explored in the MSRB’s 2014 study on secondary market trading. The MSRB’s proposal for a historical data product for academics includes anonymous dealer identifiers to assist researchers in distinguishing transactions executed by specific parties, while still protecting their actual identity.

The MSRB is requesting input from researchers, dealers and other market participants about appropriate parameters for this new historical trade data product. Comments should be submitted to the MSRB no later than September 14, 2015. The Financial Industry Regulatory Authority (FINRA) is also soliciting comment on a similar proposal that would apply to other areas of the fixed income market.

Read the Regulatory Notice.

Date: July 16, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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## SEC Investor Advocate: MSRB Public Investor Proposal 'Deeply Flawed.'

WASHINGTON -The Municipal Securities Rulemaking Board's proposal to ease the independence standard for its public investor slot is "deeply flawed" and "would undermine the very purpose" of Dodd-Frank Act provisions, according to the Securities and Exchange Commission's Investor Advocate.

The proposal "weakens the standard for material business relationships and allows the board to consider less independent applicants for the public investor representative seat," SEC Investor Advocate Rick Fleming said in an eight-page letter to the MSRB. "In our view, the proposal is based on an overly restrictive view of the existing pool of qualified candidates and focuses far too narrowly on what appears to be one preferred type of candidate," he said.

Several other industry groups echoed the investor advocate's concerns in their letters to the SEC, including the National Association of Municipal Advisors, Americans for Financial Reform, the American Federation of State, County and Municipal Employees, and the Consumer Federation of America.

Four former MSRB board members, along with the Investment Company Institute, the National Federation of Municipal Analysts, Wells Capital Management, Inc., and the Securities Industry and Financial Markets Association, supported the MSRB proposal.

The groups said comment letters to the MSRB in response to amendments to Rule A-3 on board membership it released in June that would allow it to select a public investor representative who has some affiliation with a regulated entity such as a broker-dealer.

The proposal is a narrower version of one the MSRB released in 2013 that would have eased the independence standard for all public board positions. But that proposal was abandoned after being criticized by many of the same groups that oppose the current proposal.

Under its current structure, which was created after Dodd-Frank mandated the board have a public majority, there are 21-members, 11 public and 10 regulated. The public members must be independent from muni brokers, muni advisors, and banks, meaning they have "no material business" with any of those entities.

The MSRB defined having no material business as meaning individuals are not, and have not been, associated with a regulated entity for two years and cannot have a compensatory or other relationship with a regulated entity that would affect their independent decision-making.

At least one of the public members must represent institutional or retail investors, one must represent issuers and one must have knowledge of or experience in the muni industry.

Under the MSRB's proposed changes, an employee or officer of an MA- or dealer-affiliated investment advisory firm could qualify as independent public investor.

The MSRB said in its regulatory notice that it proposed the changes because the current rule is "unduly restrictive, resulting in the disqualification of qualified individuals, who have relevant knowledge and expertise that are key to the MSRB's ability to meet its statutory mandate."

The board is particularly concerned that many mutual fund companies are disqualified because they are affiliated with dealers who market their investments to 529 college savings plans, sources said.

Fleming challenged the idea that many qualified people are excluded from serving as the public investor representative on the board, citing a lack of proof in the MSRB's June proposal.

He said that while Dodd Frank requires board members to be 'knowledgeable of matters related to the municipal securities markets,' the MSRB proposal and economic analysis "does not describe who the MSRB believes would satisfy this requirement, nor does it attempt to quantify the pool of available candidates for the public investor representative position."

Fleming added that MSRB's proposal seems to imply it wants to "convert the public investor representative seat into a de facto buy-side fund adviser seat."

"Although we agree that the board could benefit by having representation from a buy-side portfolio manager, such a narrow view of public member qualification, particularly as applied to the public investor representative, is unnecessary," Fleming said. "It may also contradict the purpose of the Dodd-Frank Act amendments, which seem designed to inject greater independence into the board and avoid the inevitable bias that comes from an insular type of industry group-think." Fleming added that the MSRB should be looking to the "many thousands" of household investors who could qualify to serve as public investor representatives.

That advice clashed with four former MSRB board members who wrote letters in support of the amendments and backed the MSRB's claims that the current process is too restrictive. Mark Muller, a senior vice president of the Loews Corp., said finding candidates for the public investor position while he was on the board was a "significant challenge" because of the restrictions. Bob Lamb, president of Lamont Financial Services Corp., said any person with fiduciary duty to investors should qualify for the position.

Michael Decker, managing director and co-head of municipal securities for SIFMA, agreed the current rules make it "excessively difficult" to recruit members to the position. SIFMA urged the MSRB to clarify what portion of revenues would be enough to disqualify a candidate under the new amendments.

Lisa Good, the executive director of the National Federation of Municipal Analysts, said the proposal would "give voice to a significant segment of the municipal bond market, primarily analysts and portfolio managers employed by mutual funds, who are largely ineligible for membership consideration under existing rules." NFMA also proposed having at least three public investors on the board as an appropriate step for better representation.

But AFSCME, CFA and AFR, opponents of both the prior and current MSRB proposals, challenged the need for mutual fund representatives to sit on the board while also recognizing this narrower version was an improvement from 2013. In a joint letter, the groups argued mutual funds, which make up about 20% of bondholders, are the most informed investors while households, which make up more than 40% of bondholders, would be more sensitive to the need for more transparency.

"[Mutual funds] are clearly not the investors currently most disadvantaged due to lack of transparency in the municipal market, nor do they represent the majority of investor holdings," the groups said. "As a result, we believe implementing this MSRB proposal is both unnecessary to ensure adequate investor representation and would essentially undermine the Dodd-Frank requirement that the board be majority independent."

Terri Heaton, president of the National Association of Municipal Advisors, also said there is a qualified pool of retail investors that would better suit the board position than institutional ones.

She said the proposal, "provides significant potential imbalance on the board to favor the interests of dealers and institutional investors, at the expense of issuers and retail investors" and that this could "affect … a break with the public trust." Heaton also pushed for the MSRB to move to a majority-public 15-member board.

Concerns about retail investors serving on the board have centered on their potential lack of overall industry knowledge. Fleming said that, to ease those concerns, the MSRB could allow a public investor to serve two consecutive three-year terms to gain additional experience.

ICI. Lamb and former board member Benjamin Thompson, chief executive officer of Samson Capital Advisors, pushed for allowing all MSRB members to serve two consecutive three-year terms.

SIFMA called for four-term terms for new MSRB board members, with a lifetime cap of four years.

But NAMA and NFMA were concerned about a lack of turnover that could result from extended terms.

The MSRB's question of whether it should continue to publish the names of candidates applying for board positions, also got a mixed reception. The MSRB asked if publishing board candidates' names could discourage them from applying. ICI and Lamb said yes. But several market groups, including AFSCME, CFA, AFR, transparency would best be served by continuing to publish the names of candidates.

"Permitting anonymous applications is likely to give rise to an impression, or strengthen an impression that may already exist, that the MSRB is dominated by industry insiders and does not welcome a broad range of membership," the groups told the board.

THE BOND BUYER

BY JACK CASEY

JUL 14, 2015 2:14pm ET

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## [Chicago Issues Bonds With 'Stunningly' High Yields.]

The city of Chicago has been battling a financial crisis since mid-May when a state court rejected its fix for its underfunded pension plan and Moody's downgraded its debt to junk status.

As part of the larger solution to the financial chaos that downgrade unleashed, the city is issuing $1.1 billion in bonds, both taxable and tax-free. The cash raised will reduce its reliance on short-term debt to pay its bills.

Those new bonds priced Thursday and Friday at rates that have surprised some municipal bond investors, who find them very attractive.

A taxable issue (the city had to issue taxable bonds since the money isn't technically going towards a public good) that is maturing in 2042 priced Thursday with a yield of 7.98%.

The tax-free issue maturing in 2039 priced Thursday at 5.69%. For an investor in the highest federal tax bracket, that's equivalent to a 9% taxable yield.

“That’s stunningly high,” says Jim Colby, chief municipal strategist at Van Eck Global. ”It’s far and away significantly cheaper and more attractive than anything of a similar credit quality in the muni space.”

One reason these yields strike experts so high is because both Fitch Ratings and Moody’s Investors Service rated the issues BBB-plus, which is investment grade (Moody’s wasn’t hired to rate these issues by the city). ”Chicago is not Detroit,” says Colby. “It is not a city whose credit rating should be below investment grade.”

Colby says he’ll be looking at the tax-free issue for both the investment grade and high-yield exchange-traded funds he manages (both can by triple-B securities). For comparison, the 30-day yield of his Market Vectors High Yield Municipal Index ETF (HYD) is currently 4.61% in comparison, says Colby.

Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management, cautions that the yields are higher because some market participants judge that they are riskier than bonds with the same credit ratings.

“The market really views them as a weaker credit than the rating agencies,” says Heckman. “They are attractive if you have an appetite for what is frankly a weaker credit.”

**Barron’s**

**July 16, 2015, 3:17 P.M. ET**

**By Amey Stone**

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## Is Water a Rising Tide for Investors?

Drought, floods and insatiable thirst for irrigation: the water sector is suddenly simmering.

But, like climate change, the water sector is a long-term play, analysts say. Here’s how to size up potential opportunities in both municipal bonds and equities, based on the reasonable assumption that water is an ever-more-valuable commodity.

At first glance, drought in the western U.S. might seem to compromise municipalities’ abilities to repay bonds based on water income. After all, they can’t charge for water that’s not flowing, right?

Not so fast, says Dick Larkin, director of credit analysis with HJ Sims & Co., an investment banking firm in Boca Raton, Florida.

Municipalities can charge more for water, ensuring cash flow and offsetting the lower volume of water. And it’s standard, he adds, for bonds to have a one-year reserve of payments for precisely these types of situations.

The bigger opportunity is how municipalities and whole regions must start replacing aging water infrastructure, Larkin says. Reservoirs, dams, pipelines and treatment plants that were built in the mid-20th century are starting to spring leaks. With increased public awareness of water conservation and increased expectations of stewardship, water agencies may well reinvent how water is sourced, stored and purified – instead of just plugging leaks.

It’s the discussion about climate change, more than the actual current climate, that is shaping the investing environment, Larkin says. “If the water isn’t coming down, we have to figure out how to reuse the water we’re using today,” he says. “I believe that eventually it will result in a crisis unless leaders start planning for it. There’s a great need for municipal bonds to build [water infrastructure], but we won’t see that for at least 10 years. This crisis needs to season a little bit.”

“It’s a slower moving trend, but it won’t go away,” agrees David Parker, senior utility analyst with Baird, a Milwaukee-based investment management firm. Drought and unusual weather patterns – which may or may not evolve into genuine climate change – are injecting urgency into water agencies’ decisions. “When you have a crisis, that’s when stakeholders and policymakers think, ‘Maybe we should do something and not just hope it will rain tomorrow,'” he says.

Equity analysts agree that the main opportunities in water are in measuring, controlling and purifying it. Technical innovation is slow and steady, mainly because it keeps pace with market demand: Water agencies must merge new technologies with existing infrastructure, and that means a constantly evolving patchwork. “It is a long-term play. There’s no silver bullet technology. There’s no Uber for water industry, no killer app. The rate of adoption of new technology is slow,” says Matthew Dickerson, managing director of Summit Global Management, a San Diego-based investment management firm.

That also translates, they say, to unglamorous but consistently performing companies whose gear are embedded in wells, distribution systems and plants. As pressure rises for better water management, utilities are likely to accelerate their adoption of new technologies, analysts say, especially in developing nations.

Water equities, however, are rarely a pure play because most companies that produce water gauges, meters, pipes and systems do the same for gas, oil and other aspects of infrastructure, says David Brigham, co-portfolio manager of Piper Hill Partners, a research firm in Weston, Vermont.

Badger Meter Inc. (ticker: BMI), in Milwaukee, is one of the few, Brigham says. It is an analyst favorite due to its constant drizzle of innovations. Another up-and-comer is Artesian Resources Corp. (ARTNA), which provides large-scale consulting, engineering and project management. Northwest Pipe Co. (NWPX) has even figured out how to generate electricity as a byproduct of water flowing through its new line of wired pipes. “Water is a mid-cap universe,” Brigham says.

Utilities and agencies are most likely to invest in efficiency and recapture technologies, Dickerson says. Ultraviolet treatment for purifying water has been available for more than two decades and finally might be worth its cost. Smart metering, leak detection, cost-effective desalination and monitoring software are all technologies poised for rapid adoption, he says.

Meanwhile, well-run utilities are starting to anticipate changes in water sourcing, demand and use, and that means demand for innovations that will improve efficiency and lower waste. “The system has assumed that you could use as much as you like, but now it’s starting to be focused on sustainability,” Parker says.

Baird gives positive marks to proactive utilities including American Water Works Co. (AWK), Aqua America Inc. (WTR) and The York Water Co (YORW).

“Water is misunderstood because people take it for granted until they run out of it,” says Marc H. Robert, a partner with Water Asset Management LLC in New York. Utilities and agencies will likely find that they can raise the temperature on prices a bit to support innovations and infrastructure improvement. “Water is relatively inexpensive for what it provides, and is underpriced relative to its full cost of delivery. It’s similar to other infrastructure – but you can’t live without water,” Robert says.

U.S. News & World Report

By Joanne Cleaver

July 16, 2015 | 9:00 a.m. EDT + More

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## Demand and Rates High for Chicago's Bond Sales.

(Reuters) – Chicago’s $1.08 billion of bond sales this week had big investor demand, but still resulted in hefty interest rates due to the city’s festering fiscal woes.

Mayor Rahm Emanuel’s office said Thursday’s sale of $345 million of tax-exempt, general obligation bonds was 10 times oversubscribed with investor orders.

That allowed underwriters led by Morgan Stanley to reprice the bonds, dropping yields 2 to 8 basis points in several maturities, according to a pricing scale.

The top yield was shaved 8 basis points to 5.69 percent for bonds due in 2039 with a 5.50 percent coupon. That resulted in a 252 basis point spread over Municipal Market Data’s benchmark triple-A scale, signaling the fiscally struggling city continues to pay higher borrowing costs than most issuers in the U.S. municipal bond market.

“There’s a significant penalty,” said Dan Solender, lead portfolio manager at Lord Abbett.

Solender said bonds in tougher sectors of the muni market are able to attract lower yields than Chicago, pointing to $361 million of revenue bonds for a nonprofit corporation financing student housing at Texas A&M University. Tax-exempt bonds rated triple-B-minus in that deal were priced this week to yield 4.54 percent in 2035 — 113 basis points lower than the 5.67 yield for higher-rated bonds due the same year in Chicago’s deal.

The city, the third largest in the United States by population, is struggling with a projected $430 million fiscal 2016 budget gap. The deficit is due in part to escalating pension payments that include a looming $550 million contribution increase to its public safety workers’ retirement funds.

Chicago sold the tax-free bonds a day after nearly $743 million of taxable GO bonds were priced. Both deals were part of the city’s plan to restructure its short-term debt into longer-term, fixed-rate bonds.

Moody’s Investors Service, which was not asked to rate this week’s Chicago bond sales, in May dropped the city’s credit rating to junk, triggering $2.2 billion in accelerated debt payments and fees that led the city to undertake the restructuring.

Since then the city converted more than $900 million of variable-rate debt to fixed rate to end interest rate swaps and bank letters of credit. The deals were also popular with investors but resulted in hefty yields.

Bond sales this week will repay all but about $140 million of the city’s short-term borrowing program.

Thu Jul 16, 2015

(Reporting By Karen Pierog; Editing by Andrew Hay)

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## Puerto Rico Urges Creditors to Avoid Lawsuits Over $72 bln Debt.

(Reuters) – Puerto Rico pleaded with creditors on Monday not to engage in lengthy litigation over its $72 billion debt, but provided little information about how a debt restructuring would affect them.

At a packed meeting with bondholders at Citibank's New York offices, a clutch of the island's top officials and advisors again painted a bleak picture for the U.S. territory's economy and said fixing it would require pain to be shared by everyone with a stake in its future.

"We are hopeful we can … avoid adverse consequences that a highly litigated process could result in," said Jim Millstein, founder and chief executive officer of restructuring advisory firm Millstein & Co, which is advising the island.

Millstein warned bondholders that litigation would hurt the commonwealth's economy, reducing the tax dollars that are the lifeblood of bond payments.

Some top bondholders have already taken Puerto Rico to court over a restructuring law passed last summer which would have affected the island's public agencies.

Two weeks ago, Puerto Rico Governor Alejandro Garcia Padilla called for a wide-ranging restructuring of the island's debt. U.S. fund manager OppenheimerFunds, the largest holder of Puerto Rico debt among U.S. municipal bond funds, warned the island it stands ready to defend the terms of bonds it holds.

The meeting came after Garcia Padilla dropped a bombshell on holders of Puerto Rico's $72 billion debt on June 29, saying he wants to restructure debt and postpone bond payments.

"There is some urgency about the entire situation," former IMF economist Anne Krueger said at Monday's meeting. She co-authored a government-commissioned report released in June which painted a bleak picture for the island.

"A delay has costs. If you want to see what those costs are take a look at Greece now."

The meeting on Park Avenue drew a small protest of about 30 people who yelled "No to the Krueger Plan."

"(The Governor) should make the foreign corporations, the U.S. corporations in the island, pay for the debt, and the rich," said Fatima Santana, a nurse who is Puerto Rican but lives in New York.

Inside the meeting, Millstein and Government Development Bank (GDB) head Melba Acosta took a handful of prepared questions after a presentation given by Acosta and Krueger.

Creditors asked questions to try and clarify what kind of adjustment the government planned for their debt, but Millstein said he was not in a position to talk about particular issuers' debt. He said it would be examined on an "entity to entity" basis.

A fund manager from a prominent mutual fund firm who attended the meeting said he saw no sign investors would heed calls to accept voluntary bond restructuring.

"I am pretty sure that the mood with the creditors is going to be: 'I am going to stick hard with principles on whatever you promised'," the fund manager said.

Joseph Rosenblum, director of municipal credit research at AllianceBernstein, said as he exited Citi's offices that the meeting was "rather general in terms of presentation and the questions they had and answered."

Acosta said implementing a turnaround plan would require "sacrifice from all our stakeholders, including first and foremost the people of Puerto Rico" who endured a decade of stagnation; as well as government employees and local and multinational businesses. A plan also needs to include the federal government which can aid the economy and its financial creditors, Acosta said.

Replying to a question about whether the commonwealth could get by without federal help, Acosta said the island was "not asking the government for a bail-out" but was seeking help with policies that would remove barriers to economic stability.

A consensual plan agreed with creditors is ideal, Acosta said, with a drawn-out contentious plan bad for the island. She added that it would be premature to suggest the amount of debt adjustment required.

Acosta added that the administration would propose a financial control board be created with the tools to ensure compliance with the plan's targets.

Millstein said he hoped Monday's meeting would be the first in a series of constructive discussions between the commonwealth and investors to put Puerto Rico on a trajectory to growth.

Mon Jul 13, 2015

By Megan Davies and Edward Krudy

(Additional reporting by Jessica DiNapoli; Editing by David Gregorio)

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## Municipal Bond Sales Poised to Accelerate as Redemptions Rise.

NEW YORK — Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt rises.

States and localities plan to issue $16.2 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.5 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 State University plans to sell $1.07 billion of bonds, Chicago has scheduled $1.07 billion, Maryland will offer $500 million and North Carolina Eastern Municipal Power Authority will bring $478 million to market.

Municipalities have announced $10.9 billion of redemptions and an additional $16.1 billion of debt matures in the next 30 days, compared with the $24.8 billion total that was scheduled a week ago.

Issuers from New York have the most debt coming due with $3.49 billion, followed by California at $3.02 billion and Massachusetts with $1.35 billion. New York City has the biggest amount of securities maturing, with $1.73 billion.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

Investors removed $861 million from mutual funds that target municipal securities in the week ended July 1, compared with an increase of $105 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $13.6 million last week, boosting the value of the ETFs 0.08 percent to $16.7 billion.

State and local debt maturing in 10 years now yields 95.625 percent of Treasuries, compared with 98.105 percent in the previous session and the 200-day moving average of 100.033 percent, Bloomberg data show.

Bonds of Wisconsin and Tennessee had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Wisconsin's securities narrowed 2 basis points to 2.49 percent while Tennessee's declined 1 basis point to 2.33 percent. Puerto Rico and Illinois handed investors the worst results. The yield gap on Puerto Rico bonds widened 233 to 11.93 percent and Illinois's rose 31 basis points to 4.10 percent.

**By Ken Kohn and Luis Daniel Palacios, Bloomberg News**

**July 13, 2015**

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## Cash-Strapped Chicago Borrows at Rates Approaching 8 Percent.

Mayor Rahm Emanuel's decision to borrow for costs such as debt payments, bank fees and penalty payments on old deals gone bad — the kind of bills cities typically pay with operating funds — will cost Chicago more than $500 million in interest over the next three decades.

Data released Thursday show the city is paying rates that approach 8 percent on the $743 million in taxable debt sold Wednesday. Chicago's borrowing costs have risen dramatically relative to other borrowers as its credit rating has deteriorated.

The high interest costs — calculated by the Tribune using the value of today's dollars — are "punitive," said Richard Ciccarone, president and CEO of Merritt Research Services.

"The weight of the city's problems are clearly reflected in the pricing," he said.

The deal represents the largest taxable bond issue the city has ever sold. Totaling $1.1 billion, it also contains $347 million in tax-exempt debt.

Taxable debt is by nature costly because the federal government discourages borrowing for short-lived expenditures by collecting taxes on the interest investors earn. But Chicago has little room in its operating budget to cover its wide range of bills — many of them racked up before Emanuel took office — and the mayor has so far chosen not to raise property taxes.

Expenditures the city will pay with taxable bonds, which the city detailed for the first time Thursday in connection with the bond sale, include costs related to former Mayor Richard M. Daley's lease of the city's parking meters and his failed Olympic bid, as well as some debt payments coming due on old debt.

Emanuel is adding to the debt burden by borrowing $136 million at taxable rates in order to set aside interest payments for the first two years the bonds are outstanding, a maneuver called capitalized interest. That means the city is borrowing more than $100 million extra so that it doesn't have to pay interest on the bonds until 2017.

Thursday's bond issue was the final step in Emanuel's plan to protect the city against sudden burdensome demands from banks. More than half of the costs the bonds financed were outstanding on the city's line of short-term credit, akin to a city credit card. Some of those credit agreements allowed banks to demand repayment immediately if the city received a junk status rating. Moody's Investors Service rated the city at Ba1 — junk status — in May.

About $140 million remains outstanding on the city's credit card. Officials said those are short-term projects with dedicated revenue sources.

Costs covered by the smaller tax-exempt bond issue included about $150 million to pay back credit used to cash out of variable-rate bonds and interest rate swaps taken on by Daley, liabilities that also exposed the city to possible penalty payments from banks.

Investors settled for slightly lower rates on that debt than they demanded on the city's last tax-exempt bond issue in May, a sign that the city's credit could be improving slightly.

"It's a little bit less lousy," said Matt Fabian, a partner at the municipal bond research firm Municipal Market Analytics. "The city has miles to go and it's only advanced a couple feet."

Indeed, the overall cost the city pays for tax-exempt borrowing — a crucial source of funds for maintaining and improving infrastructure — remains high compared with other major cities and the rates Chicago has paid in the past.

Daniel Berger, an analyst with Thomson Reuters, noted that the interest rates the city is paying for tax-exempt borrowing have increased by a full 2 percentage points since 2010. "That's kind of dramatic," he said.

By Heather Gillers and Hal Dardick

Chicago Tribune

July 17, 2015

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- Ed. Note: We occasionally receive requests to resend past issues of the newsletter. Unfortunately, the newsletter does not exist as a discrete document, and is merely a program that pulls together the HTMLs for each item posted to our website during the previous week. We can resend the latest issue. Otherwise, please access past content by going directly to bondcasebriefs.com where you can select a topic (e.g. Tax) and scroll down through the entries, which are posted in chronologic order. The website also contains a search function that will allow you to access older content. We'd apologize for any inconvenience, but you know us better than that.

- Frequently Asked Questions on FINRA's Eligibility Proceedings for Firms Participating in the MCDC
- Initiative.New Player Seeks to Revive VRDO Market.
- Putting the Public Back in Public Finance.
- CDFA Fundamentals of Economic Development Finance Course.
- *GAI Consultants, Inc. v. Homestead Borough* – Appeals court holds that TIF Agreement is an ongoing contract, and therefore claims for reimbursement of property tax assessment appeal refunds are not subject to the four-year statute of limitations for contract actions.
- *Indian River County v. Rogoff* – District Court holds that counties lacked standing to request a preliminary injunction vacating the U.S. DOT's authorization of PABs to construct a rail line traversing the counties; issuance of the PABs would not redress the counties' alleged environmental injuries, as the developer was prepared to proceed using alternate sources of financing.
- And finally, we do our best to cover each and every inverse condemnation case that comes our way. That being said, should you wish to ensure that your case makes the cut, please be sure that the opinion begins, "In 2011, the City of St. Petersburg demolished Christine Lacy's house after it was damaged in a shoot-out between St. Petersburg police and Lacy's husband. Yeah, we're gonna go ahead and publish that.

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## Compensation Benchmarking Practices in Large U.S. Local Governments: Results of a National Survey.

Read the Survey.

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**BONDS - ALABAMA**

### Allstate Ins. Co. v. Regions Bank

**United States District Court, S.D. Alabama, Southern Division - July 2, 2015 - Slip Copy - 2015 WL 4073184**

In December 2007, Allstate Insurance Company purchased $12.3 million in infrastructure bonds to finance a real estate project called the Town of SaltAire in Mobile County, Alabama. Most of the bond proceeds were initially held in trust pending authorization by Allstate to release the funds. For its part, Allstate was unwilling to provide the green light until Regions Bank had committed the sum of $16 million to the project.

Although Regions Bank never affirmatively said so, Allstate understood that Regions Bank had already invested $14.5 million in SaltAire. Regions Bank knew that Allstate was operating under that (mistaken) premise, yet made no attempt to correct it. In late January 2008, Regions Bank issued a commitment letter for an additional $2 million to the project, in reliance on which Allstate authorized release of the remaining bond proceeds. The loan contemplated by the commitment letter was never funded. Ultimately, the Town of SaltAire project failed and Allstate lost millions of dollars that it had invested in the bonds.

Allstate sued, contending that Regions Bank hatched a fraudulent scheme to induce Allstate to release the bond proceeds because the project was faltering and desperate for an infusion of cash to remain afloat. Specifically, Allstate alleged that the commitment letter was a sham, that the Region Bank officer that signed the letter had no authority to commit such funds, and that Regions never intended to fund the loan. Allstate brought claims of fraudulent/negligent misrepresentation, fraudulent concealment/suppression, and civil conspiracy.

Regions Bank moved for summary judgment.

The District Court held that:

- The tolling period for the five-year statute of limitations was a matter for the jury;
- A reasonable finder of fact could determine by clear and convincing evidence that the commitment letter was a sham, a false representation of a nonexistent deal, made for the sole purpose of deceiving Allstate into opening the cash spigot and releasing millions of dollars in bond proceeds to assuage SaltAire's short-term financial crisis, foreclosing summary judgment;
- Allstate's summary judgment evidence could support a finding of a duty to disclose under either the "actions contributing to misapprehension" or "silence accompanied by deceptive conduct" alternatives of Illinois law;
- A finder of fact applying Illinois law could reasonably find that Allstate was justified in relying on the commitment letter as documenting a legitimate, bona fide agreement (rather than a sham designed to dupe Allstate), and that Allstate was not required to perform any research or investigation antecedent to such reliance;
- Allstate could have discovered the truth regarding the fact that Regions Bank had not previously provided $14.5 million in funding for the project by simply asked the underwriter to obtain copies of Regions Bank's notes and mortgages on the project to confirm its total financial commitment, and thus Regions Bank was entitled to summary judgment on this count;
- Genuine questions of material fact precluded entry of summary judgment on the issue of whether the Moorman doctrine's limitations on negligent misrepresentation claims rooted in purely economic losses applied – i.e.
  whether the commitment letter was merely a "financial product" or whether it was "solely meant to convey false information to Allstate"; and
- The foreclosure of the property was conducted in such a manner that Allstate's Alter Ego's (Holdco) bids did not extinguish the bond debt, rather, the bond debt remained intact and unaffected and thus the process (although likely flawed) had not extinguished the bond debt.

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**EDUCATION - COLORADO**

## [Taxpayers for Public Education v. Douglas County School District]()

**Supreme Court of Colorado - June 29, 2015 - P.3d - 2015 WL 3948220 - 2015 CO 50**

Taxpayers and taxpayer advocacy group filed suit against Colorado Board of Education, Department of Education, county Board of Education, and school district, based on assertion that scholarship program which provided taxpayer-funded scholarships to qualifying elementary, middle, and high school students to attend private schools, including religious schools, violated Public School Funding Act and Colorado Constitution.

The District Court permanently enjoined implementation of program, and defendants appealed. The Court of Appeals reversed and remanded, based on determination that plaintiffs lacked standing to sue under Act, and that program did not violate Constitution. Petition for certiorari review was granted.

The Supreme Court of Colorado held that:

- Plaintiffs lacked standing to sue for violations of Act;

- Taxpayer standing to challenge constitutionality of statute did not apply to suit for violations of Act;
- Scholarship program violated provision of Colorado Constitution prohibiting use of public monies to aid schools controlled by religious or sectarian denomination; and
- Invalidating scholarship program would not violate First Amendment's Establishment Clause regarding government aid to religion.

Public School Finance Act did not confer legally protected interest upon taxpayers, and thus taxpayers and taxpayer advocacy group lacked standing to sue Colorado Board of Education, Department of Education, county board of education, and school district for violations of Act arising out of scholarship program that permitted qualifying elementary, middle, and high school students to use taxpayer-funded scholarships to pay tuition to attend private schools, including religious schools. Act did not create private right of action, nor could private right of action be implied, and implying civil remedy was inconsistent with over-arching purpose of Act to fulfill constitutional mandate to provide free public education to school-age children, the execution of which required both State Board and Department of Education to craft complicated procedures and devise detailed funding formulae, thus, requiring degree of flexibility for Act to function properly.

Scholarship program that permitted qualifying elementary, middle, and high school students to use taxpayer-funded scholarships to pay tuition to attend private schools, including religious schools, violated provision of Colorado Constitution prohibiting state, county, city, school district, or public corporation from ever making any appropriation, or paying from any public fund, for purpose of supporting or sustaining any school controlled by any church or sectarian denomination.

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**ELECTIONS - DISTRICT OF COLUMBIA**

## Wagner v. Federal Election Commission

**United States Court of Appeals, District of Columbia Circuit - July 7, 2015 - F.3d - 2015 WL 4079575**

Federal contractors brought action against Federal Election Commission (FEC), alleging that provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts violated contractor's First Amendment and equal protection rights. The United States District Court for the District of Columbia denied contractors' motion for preliminary injunction granted FEC's motion for summary judgment. On appeal, the Court of Appeals vacated district court's orders and remanded case to district court to make appropriate findings of fact and certify those facts and relevant constitutional questions to Court of Appeals.

After remand, the Court of Appeals held that:

- Provision was closely drawn to government's interests, and
- Provision was not underinclusive to extent that it would violate First Amendment.

Provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts was closely drawn to government's interests in preventing corruption and its appearance, and in protecting against interference with merit-based administration, and thus provision did not violate First Amendment. Provision only applied to government contractors during contracting period, corruption had been historically present in government contracting process, contractors' need for government contracts made them particularly susceptible to coercion from candidates and politicians, and contractors were free to volunteer in campaigns, speak in candidates' favor, and to host fundraisers to solicit contributions from others.

Provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts was not underinclusive to extent that it would violate First Amendment. Political Action Committees (PAC), which were not included in FECA's ban, were distinct entities from corporations that formed them, shareholders of corporate contractors could still contribute, no one had ever used limited liability company (LLC) to circumvent ban, and federal employees, who were not included in FECA's ban, typically had less to gain from making contributions than contractors.

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**INVERSE CONDEMNATION - FLORIDA**

## Lacy v. City of St. Petersburg, Fla.

**United States Court of Appeals, Eleventh Circuit - June 26, 2015 - Fed.Appx. - 2015 WL 3916683 (Mem)**

In 2011, the City of St. Petersburg demolished Christine Lacy's house after it was damaged in a shoot-out between St. Petersburg police and Lacy's husband. Lacy brought a 42 U.S.C. § 1983 lawsuit, alleging that the demolition was an unconstitutional taking and violated her procedural due process rights.

The District Court dismissed the case and Lacy appealed.

The Court of Appeal affirmed, holding that Lacy had not pleaded facts showing that the relevant state procedure for seeking compensation for her property — an inverse condemnation action under Florida law — was inadequate.

Lacy acknowledged both that Florida courts recognize an inverse condemnation action through which she may seek compensation and that her complaint did not allege facts showing that such an action was inadequate. Nonetheless, she argued that pursuing state procedures would cause her "needless delay" and pointed to Supreme Court precedent holding that a plaintiff need not exhaust administrative remedies before filing suit in federal court to vindicate her constitutional rights. The court noted that this argument missed the mark because the issue was not one of exhaustion. Instead, there simply existed no constitutional injury for federal courts to redress unless and until Lacy showed that she could not seek just compensation under Florida procedures.

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**PABs - FLORIDA**

## Indian River County v. Rogoff

**United States District Court, District of Columbia - June 10, 2015 - F.Supp.3d - 2015 WL 3616109**

AAF Holdings, LLC is in the process of constructing and operating an express railway between Orlando and Miami. AAF requested that the United States Department of Transportation exempt from federal taxes $1.75 billion in PABs. The PABs would be issued by the Florida Development Finance Corporation, a Florida development agency, and then sold to investors by AAF, which would be solely responsible for the repayment obligation. The DOT provisionally authorized the requested

$1.75 billion PAB allocation in December 2014.

Indian River and Martin Counties contend that construction and operation of the railway will cause a variety of environmental harms to them and their residents. The Federal Railroad Administration is currently conducting an environmental review of these potential environmental effects. The counties allege that DOT's authorization of the tax exemption prior to the completion of the ongoing environmental review violated the National Environmental Policy Act ("NEPA") and will slant the review towards approval of the railway as currently proposed. They also contend that the project does not qualify for tax-exempt financing under the applicable federal statute. The counties have moved for a preliminary injunction vacating DOT's authorization of the tax exemption.

DOT and AAF, which intervened as a defendant, mounted several defenses to the counties' motion. They first contend that the counties lack standing. They argue that because AAF would proceed with the project with or without the tax-exempt bonds, the counties' alleged injuries are not traceable to DOT's actions and would not be remedied ("redressed" in standing terminology) by the requested injunction. They also contended that the counties' alleged injuries are not irreparable as required for a preliminary injunction.

The District Court concluded that the counties lacked standing, holding that:

- The issuance of the PABs would not redress the counties' alleged environmental injuries, as the developer was prepared to proceed using alternate sources of financing; and
- The counties' concerns about the impact of PAB authorization on FRA's environmental review did not, standing alone, establish a redressable injury that could form the basis of a federal lawsuit.

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**LIABILITY - GEORGIA**

## City of Fitzgerald v. Caruthers

**Court of Appeals of Georgia - July 2, 2015 - S.E.2d - 2015 WL 4069574**

Pedestrian who was injured by falling tree branch brought negligence action against city. The trial court denied city's motion for summary judgment. City petitioned for interlocutory review, which was granted.

The Court of Appeals held that genuine issue of material fact as to whether city had actual or constructive notice of hazard posed by decaying tree precluded summary judgment.

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**MUNICIPAL ORDINANCE - MASSACHUSETTS**

## Showtime Entertainment, LLC v. Town Of Mendon

**Supreme Judicial Court of Massachusetts, Suffolk - July 8, 2015 - N.E.3d - 2015 WL 4094282**

Owner of lot within town's adult entertainment overlay district brought action against town and two members of town's board, alleging that bylaw prohibiting the sale or presence of alcohol at adult entertainment establishments constituted impermissible prior restraint on freedom of speech. The District Court granted summary judgment in favor of town. Owner appealed. The Court of Appeals reversed and certified a question to the Massachusetts Supreme Judicial Court.

The Supreme Judicial Court of Massachusetts held that:

- Town established sufficient countervailing State interest to support ban, but
- Ban was not sufficiently narrowly tailored.

Town established sufficient countervailing State interest to justify ban on alcohol service at adult entertainment businesses, so as to support determination that ban did not constitute unconstitutional prior restraint on freedom of speech under state constitution, where town considered studies showing increased crime was a secondary effect when adult entertainment and alcohol service were in physical proximity.

Town's ban on alcohol service in adult entertainment establishments was not sufficiently narrowly tailored, and therefore constituted an unconstitutional prior restraint on freedom of speech under state constitution. Banning all manner of expression at establishments licensed to serve alcohol on the basis that the expression featured nude dancing was not the logical response to the determination that alcohol service in physical proximity to adult businesses increased the incidence of crime.

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**DEVELOPMENT - NEW JERSEY**

## Pennsgrove Associates, LP v. Carneys Point Township Planning Bd.

**Superior Court of New Jersey, Appellate Division - July 2, 2015 - Not Reported in A.3d - 2014 WL 9988553**

Plaintiffs challenged the grant of site plan approval by the Carneys Point Township Planning Board (Board) to Tri County Real Estate and Maintenance Company, Inc. Tri County's plan proposed construction of sixty affordable housing units in Carneys Point. Plaintiffs claimed that the agreement by Tri County to pay certain legal fees of the Township of Carneys Point and the Township's agreement to accept the payment constituted an unlawful quid pro quo arrangement, and, therefore, the action of the Board was arbitrary, capricious or unreasonable.

The appeals court concluded that the payment of the legal fees was not a quid pro quo for the Board's approval for several reasons. First, the Legal Fees Provision in the Redeveloper's Agreement was permitted by N.J.S.A. 40A:12A–8 of the LRHL. Second, the approval by the Board was not in any way conditioned on the payment of the legal fees. Third, the underlying litigation had been dismissed and payment was part of the settlement of appeal between the Township and Tri County. Most importantly, as opined to the Board by the Township Solicitor, Tri County had a right to the approval since "the project does not require any variances or design waivers."

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**ZONING - NEW JERSEY**

## Casser v. Township of Knowlton

**Superior Court of New Jersey, Appellate Division - July 7, 2015 - A.3d - 2015 WL 4078128**

Landowner brought action to challenge land use approvals issued for proposed subdivision. The Superior Court granted summary judgment and dismissed the complaint, and landowner appealed.

The Superior Court, Appellate Division, held that:

- Purported facial challenge to zoning ordinance was moot;
- Failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; and
- Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs.

Landowner’s purported facial challenge to zoning ordinance which required clustering and open space preservation was moot, as township had amended the farmland preservation chapter of its zoning ordinance such that the ordinance, which no longer required clustering as a condition for minor subdivisions, was not the most current applicable zoning ordinance.

Landowner’s failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; landowner had 45 days in which to file an action in lieu of prerogative writs, but instead waited three years to file lawsuit.

Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs and allow landowner to bring action to challenge land use approval for subdivision. Landowner was not deprived of the right to develop or sell her land, but rather owned about 100 acres of land subject to ten-acre zoning, decision safeguarded her right to subdivide the land and build 10 houses, landowner had sold 25-acre subdivided lot, fact that the variance terms may have prevented her from also selling development rights to the State did not give rise to a takings cause of action, and expert report thoroughly debunked landowner’s theory that many other landowners were treated more favorably than she was.

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**DEDICATION - NEW YORK**

## Glick v. Harvey

**Court of Appeals of New York - June 30, 2015 - N.E.3d - 2015 WL 3948188 - 2015 N.Y. Slip Op. 05593**

Petitioners commenced Article 78 proceeding to challenge city council’s approval of construction project, seeking an injunction of city’s planned transfer of four parcels of municipal land and a declaration that city had unlawfully alienated impliedly dedicated public parkland in violation of the public trust doctrine. Respondents filed cross-motions to dismiss. The Supreme Court, New York County granted petition and issued injunction. Respondents appealed. The Supreme Court, Appellate Division, modified the judgment and affirmed. Petitioners appealed.

The Court of Appeals of New York held that City’s acts were not unequivocal manifestation of intent to dedicate four parcels of municipal land as permanent public parkland, so as to cause parcels to fall under protection of the public trust doctrine.

Permit, memorandum of understanding, and lease/license relating to three of the parcels showed that any management of the parcels by the New York City Department of Parks and Recreation (DPR) was understood to be temporary and provisional, and that though city permitted and encouraged some use of those parcels for recreational and park-like purposes, it had no intention of permanently giving up control of the property, city’s refusal of various requests to have streets de-mapped and re-dedicated as parkland further indicated that it had not unequivocally manifested an intent to dedicate those parcels as parkland, and fourth parcel, a dog run operated not by DPR, but by a non-profit corporation, and available only to paying members, was not used as parkland.

**ZONING - NORTH DAKOTA**

## Dockter v. Burleigh County Bd. of County Com'rs

**Supreme Court of North Dakota - July 2, 2015 - N.W.2d - 2015 WL 4041146 - 2015 ND 183**

Property owners sought judicial review of county board of commissioners' decision to rezone a 311 acre tract of land from agricultural to industrial use. (North Dakota can't spare 311 acres of ag land?) The District Court affirmed. Property owners appealed.

The Supreme Court of North Dakota held that:

- County commissioners' decision did not constitute impermissible spot zoning, and
- Substantial evidence supported commissioners' decision to rezone.

Rezoning of landowner's 311 acre tract of land from agricultural to light industrial use did not constitute impermissible "spot zoning." Although landowner may have individually benefited from the zoning change, there was evidence the county commissioners' decision benefited the county as a whole, as the county needed large blocks of property for affordable industrial development and the size of the parcel and its proximity to the interstate could help satisfy that need and bolster economic development.

Substantial evidence supported county commissioners' decision to rezone landowner's 311 acre tract of land from agricultural to light industrial use, where county commissioners had found that rezoning would be consistent with the comprehensive land use plan because the rezoning application promoted quality growth of manufacturing within the county convenient to transportation facilities.

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**BANKRUPTCY - PUERTO RICO**

## Franklin California Tax-Free Trust v. Puerto Rico

**United States Court of Appeals, First Circuit - July 6, 2015 - F.3d - 2015 WL 4079422**

Investors commenced action against Commonwealth of Puerto Rico, its Governor, its Secretary of Justice, and Government Development Bank to challenge validity of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, Puerto Rico's own municipal bankruptcy law, and enjoin its implementation. The United States District Court permanently enjoined Recovery Act on ground that it was preempted. Defendants appealed.

The Court of Appeals held that:

- Recovery Act was preempted;
- Presumption against preemption was overcome; and
- Conflict preemption principles preempted Recovery Act.

Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, was preempted by provision in Bankruptcy Code stating that state law prescribing a method of composition of indebtedness of a municipality may not bind any creditor that does not consent to such composition. All municipalities seeking reorganization had to do so under federal law.

Presumption against preemption of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, to the extent it applied, was overcome by provision in Bankruptcy Code stating that Puerto Rico was to be treated like a state, except for the power to authorize its municipalities to file under Chapter 9.

Conflict preemption principles preempted Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, since Congress wanted single federal law to be the sole source of authority if municipal bondholders were to have their rights altered without their consent, but Recovery Act frustrated that purpose.

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**TIF - PENNSYLVANIA**

## GAI Consultants, Inc. v. Homestead Borough

**Commonwealth Court of Pennsylvania - July 8, 2015 - A.3d - 2015 WL 4095523**

The Borough of Homestead appealed from the entry of judgment against it by the Court of Common Pleas. The primary basis of the appeal was Homestead's contention that the four-year statute of limitations for contract actions barred claims asserted by Allegheny County, Steel Valley School District, and the Borough of Munhall (collectively, the Taxing Bodies) to require the Redevelopment Authority of Allegheny County (Authority) to reimburse property tax assessment appeal refunds for pre–2010 tax years pursuant to a tax increment financing (TIF) agreement. The trial court concluded that the TIF Agreement was a continuing contract and therefore the statute of limitations would not begin to run until the termination of the contractual relationship in 2018.

On appeal, Homestead argued that the four-year statute of limitations for contract actions prevented the Taxing Bodies from asserting claims for reimbursement of refunds of assessment appeals due before 2010. Homestead asserted that Section 13 of the TIF Agreement did not impose an obligation on the Taxing Bodies to demand reimbursement from the TIF Fund and instead the Authority had the obligation under the contract to pay a refund when "the Bank receives moneys which are required to be refunded to the taxpayer of the Pledged Parcels as the result of an assessment appeal or otherwise." Homestead argued that each failure of the Authority to cause a refund to be paid from the TIF Fund when the right to a refund came due created an immediate injury to the taxpayer, any Taxing Body that paid the refund from its general fund, and the Taxing Bodies collectively based on the resulting skewed accounting of TIF revenues and distributions. Thus, according to Homestead, the statute of limitations began to run on the day a taxpayer became entitled to a property tax refund and any claim for reimbursement by a Taxing Body more than four years after the determination by the Board lowering an assessment was barred.

Homestead argued that the trial court erred in concluding that the TIF Agreement is a continuing contract, and contended that it is in fact a complex contract with multiple, divisible duties, the breach of any one of which would be actionable and cause immediate damages to be suffered. Homestead asserted that the TIF Agreement did not satisfy the "test of continuity" because Section 13 of the TIF Agreement fixed the date of a determination by the Board to reduce an assessment as the specific date when the Authority is obligated to direct the payment of money from the TIF Fund to a taxpayer. Homestead argued that to interpret the TIF Agreement as a continuing contract and to allow a Taxing Body to assert a claim for reimbursement until 2022, four years after the expiration of the contract in 2018, would impermissibly burden the other Taxing Bodies by requiring them to make unforeseen adjustments to their budgeting and planning based upon lower than expected Net TIF Revenue distributions.

Homestead further argued that the Taxing Bodies cannot rely on either the discovery rule or the doctrine of *nullum tempus* to avoid the effect of the statute of limitations to bar their claims for reimbursement on pre–2010 assessment appeal refunds. Homestead argued that the discovery rule is inapplicable because the Taxing Authorities had all of the information necessary to know that the Authority was violating its obligations under the TIF Agreement, including annual accounting of the TIF Fund that showed all reimbursements paid to Taxing Bodies for assessment refunds, at the time the violations occurred. Homestead also argued that the doctrine of *nullum tempus*, which provides that statutes of limitations do not bar actions brought by a state or its agencies, is inapplicable because the doctrine requires that the governmental party be acting pursuant to a mandatory obligation required by law, and the Taxing Bodies here were not constitutionally or statutorily compelled to participate in the TIF Agreement.

The appeals court agreed with the trial court that the TIF Agreement is an ongoing contract and that Section 13 of the TIF Agreement did not impose an obligation on the Authority to immediately pay refunds on tax assessment appeals or set a deadline for the Taxing Bodies to make claims for reimbursement on refunds paid. The TIF Agreement therefore met the test for a continuing contract, and the reimbursement claims were not barred by the statute of limitations.

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## New Player Seeks to Revive VRDO Market.

Clarity Bidrate Alternative Trading System, a division of Arbor Research & Trading, LLC, is signing up investors and lining up potential issuers for an attempt to "revolutionize and rejuvenate" the variable rate demand obligation market.

“Our goals include deepening and broadening the market, a high degree of transparency, centralizing the market and using competitive pricing,” Clarity’s chief executive officer and president, Robert Novembre, said in an interview last month. The trading system “will give us a healthier, more honest market, with increased liquidity, much greater pre-trading/ execution information and transparency.”

VRDOs are long term municipal bonds with floating interest rates that are reset periodically, typically weekly. Along with auction rate securities, the securities were attractive to municipal issuers because they allowed for the sale of long-term obligations using lower short-term interest rates. They offered investors a better return than traditional money market investments.

In 2008, however, the collapse of Lehman Brothers triggered a run on the securities. The average VRDO rate shot up to almost 8% from under 3%, as investors worried about whether banking institutions that provided liquidity facilities to back the securities would be able to meet their obligations, according to a June research report from the Federal Reserve Bank of Atlanta. .

Issuance of VRDOs has fallen to about $11 billion in 2014 from nearly $120 billion in 2008, according to the Municipal Securities Rulemaking Board. The par value of VRDOs outstanding has slipped to $207 billion from $222 billion in March 2014.

“The market has incredibly low yields [and it] doesn’t look like an industry that needs more buyers,” said Matt Fabian, partner at Municipal Market Analytics. “I think it is likely to continue to shrink for the foreseeable future.”

According to Novembre, Clarity is built around the lessons learned from the financial crisis. The system promotes transparency, offering real-time empirical data not available in today’s market, pre-trade/execution information and competitive pricing, he said. The system seeks to level the playing field, promoting a deeper and wider investor base. By providing easy access and a place where investors and issuers can meet directly in an unbiased market not influenced by a middleman, the system should increase the potential for new issuance, Novembre said.

Clarity’s goal is two-pronged: one, to offer better security structures and two, to offer an efficient marketplace, where all parties can benefit with Clarity’s success, Novembre said.

The system is intended to help liquidity providers assess risk and market depth better, and allow issuers to price in a deeper, broader, competitive market and, ultimately, give investors more product to buy.

“This market place has been the same for the last 30 years while everything else in the world has changed, in many ways due to technology,” Novembre said. “The time is now. This market is begging for technological advancement, centralization of the marketplace and from a market perspective, it’s becoming a matter of when, not if short rates go up, making the Clarity model ever more meaningful to issuers and investors.”

“This was a multi-year process, and not an easy one, but we ultimately want to be the go-to place for variable rate debt,” said Novembre. “In our view, we created more efficient structures and much needed and improved marketplace, leveling the playing field and augmenting the depth of investors and issuer base.”

Michael Decker, a senior managing director of research and public policy at SIFMA, said some issuers’ experiences using VRDO products during the crisis made them more wary of the risks.

“However, an even bigger factor is that banks are offering direct loan products or accepting placements as an alternative to public VRDO products," said Decker.

Another problem facing the VRDO market is that it is so compressed, according to Fabian.

"There are only so many buyers and that puts a downward pressure on supply due to the Volker rule and you have incredibly low yields," he said, referencing the SIFMA Municipal Swap Index, which was at .02 for the first fourteen weeks of the year . It reached as high as 0.11 on May 20, but, as of July 8, it was down to 0.04. The Volcker rule places limits on certain speculative investments by banks.

According to the MSRB, the number of interest rate resets on municipal variable-rate demand obligations also hit a new low of 133,896 in the first quarter of 2015, the lowest quarterly number since the MSRB began collecting the information in April 2009, the board said. Previous MSRB reports have noted a decline in the VRDO market since 2009.

Novembre said Clarity isn't hanging its hat on biddable VRDOs, as it also has a platform for biddable tender option bonds, biddable market liquidity variable rate securities, and biddable floating rate notes. The former two require liquidity facilities and the latter two don't.

"We are introducing competitive pricing to all of these markets, with centralization of the market place, which we believe will centralize liquidity," he said. "We designed Clarity to be extremely user friendly, easily accessible and highly transparent. Clarity is designed to be an ATS where issuers and investors meet directly, so there is no middle man that could cloud up the market, using their own balance sheet."

THE BOND BUYER

BY AARON WEITZMAN

JUL 13, 2015 2:43pm ET

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## Signature Bank in N.Y. Forms Municipal Finance Unit.

Signature Bank in New York has formed a subsidiary to specialize in municipal finance and hired three executives for the division.

Signature Public Funding will provide tax-exempt lending and leasing products to government bodies throughout the U.S., including state and local governments, school districts and fire and police departments. The division is located in Towson, Md.

The $28.6 billion-asset Signature Bank sees an opportunity to provide financing equipment purchases for critical services and for infrastructure-enhancing projects, said Signature Chief Executive Joseph DePaolo.

DePaolo in April told American Banker that Signature was eyeballing the muni-finance market. Its plans were in place before General Electric began its selloff of GE Capital, but GE's exit means there's one less competitor in the field, he said.

"Hopefully we'll be able to buy some assets from them, and hopefully we'll be able to hire some quality people," DePaolo said.

Signature has hired Donald Keough to oversee the muni-finance unit's daily operations as senior managing director. Keough previously worked for Womble Carlyle Sandridge & Rice as a public-finance attorney and for SunTrust Equipment Finance & Leasing. Signature also hired Richard Cumbers from BankUnited's Bridge Capital Leasing as senior managing underwriter; and it hired Tonia Lee from Grant Capital Management as senior documentation officer.

AMERICAN BANKER

by JACOB PASSY

JUL 13, 2015 11:41am ET

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## S&P's Public Finance Podcast (Puerto Rico And California's Tax Increment Ratings)

In this week's Extra Credit, Senior Director Dave Hitchcock explains our recent rating action on Puerto Rico and Senior Director Michael Stock discusses tax increment ratings after the California Redevelopment Agency dissolution.

Listen to the Podcast.

Jul 09, 2015

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## CDFA Fundamentals of Economic Development Finance Course.

**St. Louis, MO – August 10, 2015**

**The Fundamentals of Economic Development Finance Course** is the foundation for all of CDFA's educational offerings. This course will help you understand the variety of development finance tools available, from bonds, tax credits and TIF, to federal financing programs, RLFs, and access to capital lending resources.

The Fundamentals Course is based on CDFA's *Practitioner's Guide to Economic Development Finance*, the only comprehensive reference guide dedicated to building and utilizing the development finance toolbox. The Practitioner's Guide provides the insight and practical information needed to critically understand how economic development is financed and the tools, strategies and techniques used to build strong communities.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Start down the road to personal and professional advancement today.

The Fundamentals of Economic Development Finance Course is offered during CDFA Summer School, a week long series of courses presented by the CDFA Training Institute. The schedule for CDFA Summer School is outlined below.

To learn more, and to register, click here.

## Moody's: Fiscal 2014 Medians Show Easing Pressures at Public and Private Universities.

New York, July 06, 2015 — Fiscal year 2014 medians for public and private universities show much of the higher education sector stabilizing into balanced operations, increased liquidity, and slowly strengthening balance sheets, Moody's Investors Service says in two new reports. Nonetheless, approximately 20% of universities continue to confront material revenue growth pressures.

For private colleges and universities, revenue growth outpaced expense growth for the first time in four years, with median revenue growth at 3.4% while expense growth was 2.9%.

"Double-digit investment returns, robust philanthropic support and limited borrowing led to continued strengthening of private university balance sheets. Strongly correlated with investment returns, total gift revenue grew 7.3% in FY 2014, and larger, wealthier institutions continue to benefit the most," Moody's AVP-Analyst Michael Osborn says in "Signs of Moderating Stress in Private University FY 2014 Medians."

Median growth in net tuition revenue, typically a private university's largest revenue source, stabilized in the 3% range for FY 2013 and 2014. This is much lower than the 7% range from 2005-2008 but equivalent to inflation.

For the public college and university sector, a majority of schools have increased liquidity, balanced operations and grown financial resources, although revenue growth remains pressured for some regional universities. Net tuition revenue growth remains low for many, however, forcing continued expense management.

"Weak demographics combined with the national focus on affordability have thwarted previously strong annual net tuition increases. Regional universities suffered the most, with over half having net tuition revenue growth below an inflationary 3%," Moody's AVP — Analyst Erin Ortiz says in "Public University FY 2014 Medians Highlight Sector Differentiation."

Even as net tuition revenue growth has slowed for the public sector, aggregate state funding modestly increased for the first time in over a decade, which modestly narrowed the gap between state appropriations and revenue from tuition and student fees. State appropriations comprised 24.3% of operating revenue in FY 2014 compared to 23.9% in FY 2013.

The private university report is available to Moody's subscribers here.

The public university report is available to Moody's subscribers here.

## Putting Evidence First: Learning From the Rikers Island Social Impact Bond.

Results from the first generation of social impact bonds (also known as pay for success deals) are starting to come in. Last week, the field learned the results of the evaluation of the first social impact bond transaction in the United States.

The investment by Goldman Sachs and Bloomberg Philanthropies in a program to serve young men at the Rikers Island jail—the main processing and housing facility in New York City—did not show a sufficiently positive effect to warrant the continuation of this intervention. The program will terminate at the end of August.

The results seem to be a defeat for this approach. We see them as a partial victory for this disruptive innovation. Here’s why:

> **The social impact bond transaction worked exactly as intended.**
>
> The goal of pay for success deals is to encourage private investors to fund proven social programs by providing upfront support to programs that seek to improve long-term outcomes for those in need. If the programs are successful, governments pay the investors back; if they are not, then the investors absorb the cost, and governments pay nothing.
>
> In this case, the program has been found to have no impact –program participants did not spend fewer days in jail than a comparison group – and so the program will end. This alone represents a significant departure from status quo. Under typical government contracts, the program likely would have continued.
>
> Further, the rigorous process of constructing the social impact bond required a new type of program management and pushed New York City government toward more outcomes-based decisionmaking. The process forced public leaders to have conversations with parties inside and outside of government and likely helped create new capacity and infrastructure that can continue to benefit citizens, even though this particular intervention did not reach its goals.
>
> All of these changes will help policymakers as they start to develop the next important innovation—at no loss to taxpayers.
>
> **The Rikers program shows why monitoring outcomes is essential to understanding the real-world impact of our social investments.**
>
> Though the Rikers program was grounded in Moral Reconation Therapy (MRT), an evidence-based approach with a fairly strong track record of affecting recidivism outcomes for older youth, the program itself hadn’t been tested before. When you innovate to apply evidence-based practices in a new program, sometimes you create something that is effective and efficient. Sometimes it does not work.
>
> It is better to know something is not working; that enables you to make a decision either to change program delivery or end the program altogether. That in turn saves taxpayer dollars for more promising approaches. The only way to make such informed decisions is through rigorous testing of our social program investments.
>
> **Implementation and context matters. A lot.**
>
> Rikers Island is a remarkably disruptive—and potentially damaging—setting to rehabilitate juvenile delinquents. The challenge of serving a youth population in a huge jail setting like Rikers is enormous.
>
> According to the Vera Institute, 87 percent of adolescents who were at Rikers for more than seven days participated in at least one program session. Of those youth, “44 percent reached a programmatic milestone found in prior studies to be associated with positive outcomes.” While Vera did not report the completion rate of adolescents in the program, MRT is typically a three-month intervention at minimum.

> If juveniles at Rikers were not receiving the full "dose" of the intervention or the intervention was not delivered in the right way, of course they would be less likely to achieve intended outcomes. Recent lessons from the burgeoning field of implementation science have taught us that the setting of an implementation, and the extent to which it mirrors best practice, is critical.

In sum, disruptive innovation is inherently combustible. There will be big wins and big losses on the way to making government more evidence based, more creative, and more receptive to new ideas that better align our spending with the outcomes we want for our society.

The close of the Rikers Island transaction may be a first step along a long road toward more effective innovation. At the end of the road is better, more effective government.

**The Urban Institute**

July 6, 2015

Justin Milner, Erika C. Poethig, John Roman, and Kelly Walsh

*As an organization, the Urban Institute does not take positions on issues. Scholars are independent and empowered to share their evidence-based views and recommendations shaped by research.*

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## Puerto Rico Confronts Bondholders as Debt Talks Turn Contentious.

If you thought Greece's negotiations with its creditors were ugly, just wait for the reception Puerto Rico officials will receive after saying they want to restructure their $72 billion debt load.

More than 300 participants ranging from institutional investors to hedge funds to bond insurers are scheduled to attend Monday's presentation in New York explaining why the Caribbean island cannot repay all of its obligations on time. Complicating matters is a push by commonwealth officials to seek federal assistance and even changes in bankruptcy laws.

"It will be a very protracted battle given Puerto Rico lacks a mechanism for restructuring like Chapter 9," Peter Hayes, head of municipal debt at BlackRock Inc., which manages $114 billion of the securities, including Puerto Rico debt, said in an e-mail. "There is likely to be a multitude of lawsuits given the unlikely event creditors are acceptable to terms to be proposed by Puerto Rico."

The New York-based firm plans to attend the meeting, Jessica Greaney, a spokeswoman for BlackRock, said in an e-mail. A link to a live Internet stream of the meeting will be available on the Government Development Bank's website. The bank works on the island's debt sales and lends to the commonwealth and its localities.

**Exchange Proposal**

Governor Alejandro Garcia Padilla said in a June 29 televised speech that he will seek to postpone debt repayment for "a number of years," and directed island officials to craft a restructuring plan by Aug. 30. A report from three former International Monetary Fund economists made public last week suggests that Puerto Rico swap current bonds for new ones with later maturities and lower payments. The report will serve as a focal point during the 3 p.m. meeting at Citigroup Inc.'s offices on Park Ave.

OppenheimerFunds Inc., the largest U.S. mutual-fund investor of Puerto Rico securities disagrees. Sales-tax collections, unemployment and income growth show the economy is strong enough for the government to repay, its money managers said on a conference call last week.

Garcia Padilla's comments leaves the $3.6 trillion municipal-bond market wondering how much of the island's debt will be altered, for how long and which credits with undergo change. The island's constitution stipulates the government must repay general obligations before other expenses and sales-tax bonds are backed by a dedicated revenue stream.

**Competing Agendas**

"It has the potential to get ugly," said Craig Brandon, a portfolio manager at Eaton Vance Management, which oversees about $29 billion of munis, including Puerto Rico. "Everyone has a different agenda and everyone has a different endpoint of where they want to get to."

The Boston-based firm plans to attend the meeting, Robyn Tice, a spokeswoman for Eaton Vance, said in an e-mail.

The island of 3.5 million racked up the highest debt per capita in the U.S. as the commonwealth and its agencies borrowed for years to fix budget deficits as its economy shrank almost every year since 2006. That was the final year of a 10-year phaseout of an incentive that had offered businesses outside Puerto Rico tax-free U.S. income for operations on the island.

**Tax Exemption**

As the unemployment rate grew and residents began to leave the island for jobs on the U.S. mainland, investors were still eager to lend to Puerto Rico, with its securities tax-free nationwide and offering yields higher than comparable investments. The commonwealth faces a cash crunch and lenders have effectively shut the door on more borrowing, leaving it wondering how it will repay all of its obligations.

Puerto Rico securities have been trading at distressed levels for two years on concern the island wouldn't be able to repay its obligations on time and in full. The three largest credit-rating companies slashed the island to junk in February 2014 and deeper downgrades followed.

Commonwealth general obligations maturing July 2035 and initially sold in March 2014 at 93 cents on the dollar — the most actively-traded island debt in the past three months — changed hands Monday at an average 70.3 cents on the dollar, for a yield of about 12 percent, data compiled by Bloomberg show. The debt fell to as low as 66.6 cents on June 30, with a yield of 12.6 percent, the day after the governor's televised speech.

**Shrinking Population**

Investors will have to compromise given the commonwealth's troubles, Anne Krueger, a former IMF official and one of the authors of the report, said July 8 at a conference on Puerto Rico at The Heritage Foundation in Washington. The island's gross national product is projected to contract by 1.2 percent in the fiscal year that began July 1, according to the island's Planning Board, which calculates economic output. The island is expected to lose another 245,000 residents by 2025, according to the Planning Board. Its population has shrunk by 7 percent in the past decade, according to U.S. Census data.

"Without some kind of re-profiling, or whatever you want to call it, they will get back even less over the longer term," Krueger said at the conference about creditor repayment. "There are inter-creditor disagreements there which would also make those tougher.”

A group of 35 hedge funds that hold $4.5 billion of Puerto Rico securities declined to say whether they would attend, said Russ Grote, a spokesman for the firms at Hamilton Place Strategies in Washington. The group is headed by Fir Tree Partners, Brigade Capital Management and Monarch Alternative Capital LP.

**Budget Deficit**

In the near term, the island is running out of cash. The budget gap for the fiscal year that ended June 30 is projected to widen to as much as $740 million, from earlier estimates of $191 million, according to financial documents. The Government Development Bank had $778 million of net liquidity as of May 31, down from $2 billion in October.

The island faces a $93.7 million debt-service payment on Public Finance Corp. bonds due July 15. The GDB Friday said it may purchase the bank’s notes “from time to time” as $300 million of tax- and revenue- anticipation notes matured last week. Another $140 million of GDB bonds mature Aug. 1, according to data compiled by Bloomberg.

Municipal debt sold on the island has lost about 9.7 percent through July 10, the worst performance for the period since at least 2007, according to S&P Dow Jones Indices. The broader muni market has earned 0.04 percent.

**Biggest Holders**

Melba Acosta, Puerto Rico’s top debt chief and president of the Government Development Bank, will lead the meeting, being held at Citigroup’s 350-seat auditorium.

Spokespeople at OppenheimerFunds Inc. and Franklin Templeton Investments, the two biggest holders of Puerto Rico debt among muni mutual-fund firms, declined to say if the companies will attend the meeting in New York. MBIA Inc.’s National Public Finance Guarantee Corp., which insures $4.5 billion of Puerto Rico debt, plans to attend, Kevin Brown, a spokesman for the Purchase, New York-based insurer, said in an e-mail.
Ashweeta Durani, spokeswoman at Hamilton, Bermuda-based Assured Guaranty Ltd, which guarantees $6 billion of commonwealth debt, declined to say if the company will be at the meeting.

Those who are in attendance may have the same experience as those watching online. Any questions must be submitted prior to the meeting, according to the GDB. Wells Capital Management’s Lyle Fitterer said this is just the beginning of a likely protracted process.

“We’re not going to fly someone out to New York just to be at this meeting,” said Fitterer, who helps oversee $38 billion of munis, including Puerto Rico securities, for Wells Capital in Menomonee Falls, Wisconsin.

**Bloomberg**

by Michelle Kaske

July 12, 2015 — 4:00 PM PDT Updated on July 13, 2015 — 6:03 AM PDT

## IRS Rules on Tax-Exempt Bonds Transaction: Tax Analysts

The IRS ruled that interest on tax-exempt bonds issued by a corporation that issues qualified scholarship funding bonds will still be excludable from gross income after the issuer offers scholarships and grants and stops issuing exempt bonds.

Continue reading (subscription required).

Citations: LTR 201528035

Tax Analysts

APRIL 7, 2015

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## Putting the Public Back in Public Finance.

It all came down to the penguins.

Jase Wilson and Patrick Hosty, two self-described urban enthusiasts, were having breakfast in a coffee shop in Kansas City, Mo., one morning in 2012. They were discussing a $500 million general obligation bond issue before voters that would pay for critical improvements in the city's sewer system as well as a host of smaller projects, including a new penguin exhibit at the zoo.

An acquaintance who overheard the conversation declared that she opposed the bond issue. "Why should I pay for penguins?" she demanded.

Mr. Wilson and Mr. Hosty asked if she had ever bought a municipal bond. She hadn't. Nor did she quite know what a bond was. And never mind that just a tiny fraction of the funds was earmarked for the zoo.

"We realized right there that our generation — and in fact most people — do not understand how public finance works, or that it finances projects for the public good," said Mr. Hosty, a bond broker in Kansas City. "Lots of people talk about taxes without understanding how the process works."

For Mr. Wilson, an entrepreneur who had founded Luminopolis, a company that creates open-source software systems for towns and cities, the penguins represented an opportunity to rethink municipal finance. Could you break that $500 million bond offering into smaller, discrete projects that citizens — whether penguin lovers or more pragmatic sewer proponents — might want to back? And could you give them the opportunity to invest directly in the bond, the way they might back a project on the crowdfunding site Kickstarter?

Those musings prompted Mr. Wilson and Mr. Hosty to create Neighborly, a start-up that aims to connect citizens more directly to public finance. The idea is to use some of the practices of crowdfunding, which has begun to streamline financial markets from commercial real estate to student and consumer loans to small-business capitalization. Neighborly is setting its sights on a market that, though hardly sexy, may surpass them all in size and complexity: the $3.7 trillion municipal bond market.

In many ways, municipal bonds — loans that finance public works like schools, roads, water treatment plants and other projects, often paying tax-exempt interest — are ripe for innovation.

Compared with the stock market, the vast market for municipal bonds is opaque and relatively untouched by technological change, leading to higher prices for retail investors.

Although individuals hold 75 percent of municipal bonds, either directly or through mutual funds, they are typically at the end of a long supply chain, starting with bank underwriters that buy securities from municipalities and resell them to brokers and big institutions. A bond may change hands several times before it reaches an end investor. Each time it does, the price may be marked up — in ways that are not always clear. (Unlike stockbrokers, who must disclose fees, bond dealers are not required to reveal their markups.)

A 2012 report by the Government Accountability Office concluded that smaller investors were likely to pay higher prices to buy, and receive lower returns when they sell. The Securities Litigation and Consulting Group, a consulting firm, estimates the cost of excessive markups to small investors at $1 billion a year.

For the 50,000 or so municipalities and agencies that issue roughly $350 billion in bonds annually, the current muni market offers many benefits. Capital costs are typically low for issuers. Because the bonds are usually exempt from federal and state taxes, and sometimes local taxes, investors are willing to accept lower yields than for taxable bonds. And the fees that issuers pay Wall Street bankers have dropped steeply since 2008, when many municipalities took big losses because of ill-advised derivative deals.

Municipal governments in the bond market face challenges, though. Some banks have exited the market, put off by the thin margins that come with originating muni bonds. Structural and regulatory changes have also made the bonds less attractive to banks.

Yet as America's infrastructure ages, the need for state and local spending on road, bridge and building repairs is mounting. As a result, some states and cities have begun experimenting with new ways of pulling in capital, including green bonds for environmental projects; mini-bonds in lower denominations that ordinary investors can more easily afford; and more direct sales to individual investors.

"We want to create a more intimate link between issuers and investors — not just the large investor," said Steven Grossman, former state treasurer of Massachusetts, which sold the country's first green bonds and started an online ordering system that gives individual investors direct access to new bonds.

Muni bonds are historically a safe asset class, but some are looking more risky lately as many cities struggle with underfunded pension obligations.

"You want to make sure that people understand the risks that they are getting into," said Tom Kozlik, a municipal credit analyst at Janney Montgomery Scott. "There's a lot of stuff you need to be paying attention to, especially in this market."

Mr. Kozlik does not see a big need for crowdfunding in municipal finance. For one thing, he said, the market is pretty efficient as it is. He also worries that municipal bonds could be difficult for unsophisticated investors to assess. In addition to underfunded city pension obligations, he points to high-yielding bonds for charter schools as an area of risk.

Mr. Wilson remains undaunted. "Part of the challenge and opportunity is to turn one of the least understood investment classes in the world into what could and should be one of the easiest and most accessible," he said.

For a glimpse of one possible municipal finance future, look at Denver. Last August, the city made waves when it crowdfunded $12 million worth of mini-bonds. The bond offering, the last phase of a $550 million voter-approved bond program to upgrade roads and civic buildings, was available only to Colorado residents. The bonds were priced in affordable denominations of $500, versus the typical $5,000 minimum for municipal bonds. Orders were limited to $20,000 per person. Had the bonds been offered in the usual way through Wall Street, the average purchase would most likely have been in the $500,000 to $1 million range, said Cary Kennedy, deputy mayor of Denver.

Denver had offered mini-bonds for five years, but this was the first time it did so online. They went on sale at 8 a.m. on a Monday, and orders swamped the city's website. By 8:16 the bonds were gone; officials had to make refunds to 375 people who placed orders after the bonds sold out.

The bonds were unusual. Investors could buy either a nine- or 14-year zero-coupon bond — which does not pay interest until maturity — with a yield from 4.38 percent to 4.89 percent, higher than that for many municipal bonds at the time. The interest was exempt from city, state and federal taxes. But there was a catch: The Denver bonds could not be easily resold. And while Denver has a triple-A bond rating, these bonds were not rated.

"This was an opportunity for the people of Colorado to invest back into their hometown, in a very safe way," Ms. Kennedy said.

Denver worked with a local bank, Vectra Bank, to handle the online sales, and did not use a bank underwriter. "We had to start from scratch," Ms. Kennedy said.

That is where a service like Neighborly's could come in. Though the company has yet to help any municipality issue a bond, Mr. Wilson said it aspired to be "Denver in a box for all cities."

Neighborly is testing an online marketplace that offers conventionally issued and rated municipal bonds. Mr. Wilson said it could one day replace some fee-collecting middlemen with an automated system that tracked prices and transactions more efficiently. He also hopes to give municipalities a way to directly issue bonds that would still be rated by outside agencies. Neighborly is exploring block chain technology — a kind of distributed ledger system used by the virtual currency Bitcoin — as a way to accomplish some of that.

It is still settling on a revenue model, and is considering taking a small cut of transactions or licensing its technology to issuers.

It hasn't been a straight path for the three-year-old company. After their penguin epiphany in 2012, Mr. Wilson and Mr. Hosty began by starting an online platform that made it easier to donate money to civic projects like community gardens, dog parks and bike lanes.

In its first two years, Neighborly helped raise $3 million for around 60 projects. Over that period, Mr. Wilson was accepted into three programs aimed at accelerating the start-up process: Points of Light, in Washington; Tumml, in San Francisco; and 500 Startups, in Silicon Valley. (Mr. Hosty has participated in Neighborly while continuing with his job at a bond firm.)

In the fall of 2014, Mr. Wilson began to tackle the municipal bond market. By this fall he expects to deploy a system that enables municipalities to market bonds directly to investors. The company has lined up seed funding from Structure Capital; the actor and investor Ashton Kutcher; and the venture capital firm Formation 8, which has invested in other civic innovation start-ups, including OpenGov.com.

Eliminating some of the layers in the municipal bond process would "put more money into the project rather than the hands of middlemen," said Adam Blowers, the comptroller for Geneva, N.Y.

Patrick Sabol, a senior researcher with the Brookings Institution's Metropolitan Policy Program, said the civic implications of the idea appealed to him. "The interest behind this is less about accessing low-cost capital and more about community involvement and engagement," he said. "That has kind of been lost in the U.S. in many ways."

In the building that serves as Neighborly's San Francisco headquarters hangs a framed municipal bond certificate from the 1930s. The Golden Gate Bridge and Highway District issued it to finance the bridge. For Mr. Wilson, the certificate is a reminder of the vital role municipal finance should play, especially in smaller cities and towns, where many projects were once funded without the need for Wall Street banks.

For decades, though, municipal finance has grown increasingly complex. Under the guidance of Wall Street underwriters, bond deals grew larger and more intricate, combining many projects into single megabonds. A typical muni bond today bundles together all sorts of public financing needs. Sewage plant improvements are combined with zoo projects, making it difficult for ordinary people to comprehend funding that flows both to penguins and vital infrastructure. It has become hard for people to track how money is being spent.

"Muni bonds fell out of favor with people because they became decoupled from people's civic lives," Mr. Wilson said. Today, munis are often esoteric instruments bought mostly by high-net-worth investors looking to reduce their tax bills.

Is it possible, or even wise, to rewind municipal finance back to a simpler time?

Some industry professionals argue that the American municipal finance market works extremely well, and in fact is the envy of the world.

And while interesting in theory, crowdfunding may be ill-equipped for the challenges of municipal finance. "Crowdfunding is terrific at raising money," said Sean W. McCarthy, chief executive of Build America Mutual, a municipal bond insurer, "but making a market around it is more difficult." That includes tracking the performance of thousands of municipal issuers over time and providing a ready market when investors need to sell. In that sense, he added, "the market is served well now by established players" like national and regional underwriting banks.

The federal government effectively subsidizes municipal bonds by granting them an exemption from taxes, which allows municipalities to offer lower yields and also adds a layer of regulatory oversight. An army of advisers, specialists and bankers are typically required for a bond sale as a result, making it costly to sell bonds in small denominations. "There are 10 different participants to facilitate your $5,000 loan," said Thomas G. Doe, president of Municipal Market Analytics, an independent research firm based in Concord, Mass.

Abolishing this tax-exempt status is a perennial discussion in Washington, but for now that status makes the bonds most suitable to people in high tax brackets, said Tom Lockard, a former muni bond banker and now a vice president at the real estate crowdfunding site Fundrise. "It's a bit of a slippery slope," he said, to promote such bonds to people for whom the tax break is less important.

Fundrise used its crowdfunding platform in January to offer $5,000 chunks of $100,000 bonds with 5 percent tax-free yields issued by the New York Liberty Development Corporation to finance 3 World Trade Center. The catch was that investors had to be wealthy or, technically, "accredited." "We know the difficulties" of offering muni bonds on a broader scale, Mr. Lockard said. "We continue to study it."

Mr. Doe of Municipal Market Analytics said crowdfunding offered a direct connection between issuers and their constituents. "Is there a better way to attract capital to public projects in this new era of social media?"

It's possible, he said, that crowdfunded bonds could play an important role, but they would need to meet large infrastructure needs while surmounting the regulatory hurdles that come with tax-exempt municipal finance. Important details need to be worked out, he said, but this much is certain: "We need new ways of doing this."

THE NEW YORK TIMES

By AMY CORTESE

JULY 10, 2015

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## NABL: Senate Finance Working Groups Release Tax Reform Reports.

The Senate Finance Committee's tax reform working groups have released reports providing policy options and recommendations from committee members on comprehensive tax reform. A report from the Community Development and Infrastructure Group, which has jurisdiction over bonds, does not recommend any changes to the tax treatment of municipal bonds, focusing instead on providing funds to the Highway Trust Fund. The muni bond exclusion did not make it in the top ten on a list of the most expensive individual income tax expenditures; however, the exclusion of bond interest for corporations, listed in the Business Income Tax Working Group's report, was the 3rd most expensive corporate tax expenditure.

The reports can be seen here.

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## New York Charity Joins in Record Bond Binge for Charter Schools.

A New York City charity for poor children is selling municipal bonds for the first time in its 162-year history, joining a record borrowing spree for charter schools across the U.S.

The Children's Aid Society is selling $36.6 million of debt Thursday for a new a six-story building to house its school in the South Bronx, one of the nation's poorest communities. The non-profit is using its own money to guarantee the bonds will be paid, providing added security to investors.

"The best and most reliable path out of poverty for children is educational achievement," Dan Lehman, Children's Aid's chief financial officer, said in an interview.

Bond sales by U.S. charter schools are on pace to break the $1.9 billion record set last year as turmoil in Greece helps hold interest-rates near a five-decade low. The borrowing reflects the swelling enrollment in the taxpayer-funded schools, which are independently run and provide an alternative for parents of children in poorly performing districts.

Charter schools have issued $1.14 billion of municipal bonds in 2015, up from $1.09 billion in the same period a year earlier, according to data compiled by Bloomberg.

Sales have more than doubled over the last four years, setting records every year since 2012, according to a survey to be released next week by Local Initiatives Support Corporation, a New York non-profit.

### Yield Appetite

The issuance has benefited from demand for high-yielding bonds, the decision by some states to guarantee the debt, and the successful track records of established schools.

“Schools five or 10 years ago couldn’t get to the market because they were too new,” said Wendy Berry, a financial adviser to charter schools and former Moody’s Investors Service analyst who wrote the Local Initiatives survey.

Charter schools receive public funding based on how many students enroll. The debt is among the riskiest in the $3.6 trillion municipal-bond market because the schools can close if enrollment drops or they lose their charter.

Of 818 charter deals since 1998, 41 have defaulted, a rate of 5 percent, according to the survey.

### Waiting List

Susan Courtney, who helps oversee $15 billion of municipal bonds at Prudential Investment Management in Newark, New Jersey, said she favors larger charter schools with an proven record.

“You want to see steady enrollment trends — you want to see a decent waiting list,” said Courtney, who isn’t planning on buying the Children’s Aid bonds. “Obviously we’re also focused on the management and the board.”

Children’s Aid was founded in 1853 by social reformer Charles Loring Brace, who wanted to provide services for poor and homeless children in a setting other than poorhouses and orphanages.

It opened its school in 2012, part of an expanding movement in New York. Enrollment in city charter schools has increased ten-fold in the past decade to more than 80,000 students, according to the New York City Charter School Center, an advocacy group. Almost 50,000 children are on waiting lists.

Children’s Aid currently teaches about 280 students, in kindergarten through third grade. It will use the proceeds of the bond sale for a new building that will allow it to expand.

### New Building

The group has already bought and demolished an abandoned theater, with plans to replace it with a 73,300-square-foot school set to open next year. The building will accommodate about 420 students as the school plans to expand to the fifth grade, said Lehman, the chief financial officer.

Unlike most charters that rely on revenue from enrollment to repay bondholders, Children’s Aid has promised to fund the debt regardless of the school’s performance.

That led Standard & Poor’s to rate the bonds A+, based on the non-profit’s “niche status,” long record of successful operations and favorable fundraising trends. Similarly rated 30-year municipal debt yields about 4 percent, according to data compiled by Bloomberg.

Children's Aid receives grants from more than 150 corporations and foundations and has over 140 government contracts that brought in about $75 million of revenue in fiscal 2014, according to a pre-sale presentation for the bonds. The contracts include administering health and foster-care programs.

**$300 Million**

The charity had about $300 million in cash and investments at the end of April.
It isn't the first to guarantee a charter-school bond to convince investors to accept lower yields.
In April 2014, Texas for the first time backed such a deal with the state-run pool that insures school debt. Utah and Colorado also have programs that support charter-school bonds with their obligation to pay the debt, said Berry, the financial adviser.

As a first-time issuer, putting Children's Aid Society's credit on the line shows the organization's commitment to paying the 30-year debt, Lehman, the chief financial officer, said. Children's Aid will pay principal and interest 90 days in advance of the due date. It also promised to keep unrestricted investments on hand that are sufficient to pay off the debt.

"This was something that we have proposed and put out there, so that everyone would recognize, 'Hey, we're serious about this and we're going to make good on our money,'" Lehman said.

**Bloomberg**

by Martin Z Braun

July 8, 2015

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## Municipal Issuer Brief: July Historically Pro-Issuer.

Read the Brief.

Municipal Market Analytics | Jul. 6

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## Virginia Recovers $149 Million from Failed P3.

DALLAS — Virginia will recoup more than half the money it has spent on a cancelled toll road from the design-build group contracted to construct the failed public-private partnership project in southeastern Virginia.

Gov. Terry McAuliffe announced the settlement with Route 460 Mobility Partners late last week at a ceremonial signing of the Virginia's new P3 legislation passed in April by the General Assembly. The enacted House Bill 1886 amends Virginia's Public-Private Transportation Act of 1995 to provide more public overview of P3 proposals from beginning to end.

McAuliffe said at the July 2 bill signing that U.S. 460 Mobility Partners has agreed to return $46 million of expended funds back to the state and cancel an additional $103 million claim the company had filed under the contract.

McAuliffe terminated the contracts for the proposed $1.4 billion toll road in April after Virginia spent almost $300 million on the project that never received its required environmental clearance.

The total $149 million concession is the result of months of negotiations between the administration and the company, McAuliffe said.

"This settlement will bring millions in taxpayer dollars that were wasted on the U.S. Route 460 project back to taxpayers and prevent the Commonwealth from having to pay millions more," he said.

The new procedures in the state's P3 law should prevent similar fiascoes in the future, McAuliffe said.

"The fact remains that Virginians have already spent hundreds of millions of dollars on a project that will never be built because state officials negotiated a contract that left the Commonwealth holding the bag when the environmental risks were too great to move forward," McAuliffe said. "I regret that that contract did not allow for greater steps to mitigate the impact of this failed project."

The state paid a total of $240 million to US 460 Mobility Partners in monthly payments that were cut off in 2014 and Virginia Department of Transportation spent approximately $43 million on the project before the project was suspended, said Virginia Transportation Secretary Audrey Layne.

The state had hoped to build the 55-mile Commonwealth Connector toll road as a public-private partnership and fund it mostly with toll revenue bonds, but instead created the Route 460 Funding Corp. as a non-profit to collect the tolls, issue bonds, and operate the highway. The new P3 rules require that proposed transportation projects be certified early in the process by a steering committee as being in the public interest before the state could sign a P3 procurement agreement.

The new law establishes a steering committee that will determine if a proposed project could be financed as a P3 or by the state. The committee will include the staff directors of the House Committee on Appropriations and the Senate Finance Committee, two members of the Commonwealth Transportation Board, a deputy sectary from Virginia Department of Transportation, the chief financial officer from either Virginia DOT or the Department of Rail and Public Transportation, and a non-agency financial expert selected by the transportation secretary.

The transportation secretary will have to certify that sufficient risk had been transferred to the private investors before a final P3 agreement could be signed.

The new procedures will protect taxpayers from undue risk while allowing the use of the P3 process to deliver projects efficiently, Layne said.

"There will be no way to duck responsibility for transportation decisions," he said.

The Route 460 Funding Corp. of Virginia said after the project's termination in April that it would use extraordinary redemption provisions to call $293.3 million of revenue bonds it had issued for the project.

The Bond Buyer

by Jim Watts

JUL 6, 2015 2:22pm ET

## A Tale of Two States: Comparing PPPs in North Carolina and Ohio.

As states struggle to build and renew their infrastructure assets, they are increasingly turning to the private sector for solutions. States like Virginia have used these so-called public-private partnerships (PPPs) for decades to collaborate with private firms to design, build, finance, operate, and maintain certain public infrastructure facilities.

This procurement model was recently taken up for the first time by Ohio and North Carolina, with differing degrees of success.

Charlotte has outpaced the nation in job creation and is one of the top 20 metros for post-recession economic growth. Concurrently, traffic along I-77, a key regional arterial, increased by 20 percent over the last five years. To alleviate traffic along this corridor, the state requested proposals to add a new high-occupancy toll lane (HOT lane) that will give drivers the option to pay to use a congestion-free route.

Cintra, a multinational transportation company, agreed to design, build, finance, operate, and maintain the HOT lane for 20 years, in exchange for the right to collect tolls. While the state has to compensate the company if revenue falls below a certain threshold, Cintra is covering 85 percent of the projected $650 million in construction costs and is assuming most of the risks associated with the construction and operation of the road—including maintenance on the non-tolled lanes.

The story in Ohio, unfortunately, has fewer potential upsides for the state. The Southern Ohio Veterans Memorial Highway project will create a 16-mile bypass across a primarily rural corridor that has seen decreasing population and declining vehicle miles traveled for years. The most optimistic projections indicate that using the bypass to skirt the city of Portsmouth will save drivers 16 minutes. According to the state, the primary benefits of the PPP are an accelerated construction timeline and economic growth, but the projections are vague and, according to critics, the improvements to regional connectivity will be limited

Beyond the weak rationale for adding new highway capacity, perhaps most disturbing is that the deal puts most of the risks on the state. While the concessionaire, Portsmouth Gateway Group, bears the financial and construction risk at the outset of the project, the state is required to cover all operation and maintenance costs over the 35-year contract term. In total, the road will cost the state $1.2 billion—much more than the originally published $429 million that included only construction costs. Finally, the deal is structured as an “availability payment,” which means that the concessionaire gets paid regardless of how many drivers use the road.

A well-executed PPP aligns the interests of the public and private sector to deliver projects on time with better value for taxpayers. Examples like the Long Beach Courthouse in California, the I-495 express lanes in Northern Virginia, and the PortMiami Tunnel in Florida demonstrate the potential of this procurement model.

By balancing the risks between the public and private sectors, North Carolina’s I-77 HOT lanes have a good chance of becoming one of these success stories. While it is too early to tell if Ohio’s Veterans Memorial Highway will deliver on its vague promise of economic stimulus, it is clear that the structure of the PPP fails to shield taxpayers from many of the potential downsides of a project that delivers limited transportation benefits to the region.

**Brookings**

**Patrick Sabol and Robert Puentes | June 30, 2015 12:30pm**

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## Sen. Hoeven Wants to Help States with Infrastructure Needs.

WASHINGTON — John Hoeven, a Republican senator and former governor of North Dakota, is keeping states' needs in mind with his bill to create Move America Bonds.

"States have real infrastructure needs, so we're trying to actually find ways to help them," said Hoeven, who recently spoke to The Bond Buyer as part of a series of profiles of members of Congress who are focused on municipal bonds.

He said he wants to help states not only with funding from the federal government "but also by enabling them to borrow at a lower cost … and to bring the private sector into the mix in terms of building the infrastructure they need."

Hoeven, 58, was first elected to the Senate in 2010. Prior to that, he was North Dakota's governor for 10 years and held executive positions at banks in North Dakota for many years.

In May, Hoeven and Sen. Ron Wyden, D-Ore., introduced the Move America Act of 2015. The bill would create Move America Bonds, tax-exempt, private-activity bonds that could finance projects that are privately owned and would not be subject to the alternative minimum tax. They would be subject to new, separate state volume caps that would be equal to 50% of the state volume caps for PABs and could be converted to allocations for a new type of tax credit called Move America Credits.

This is not the first time Wyden and Hoeven have worked together on an infrastructure bond bill. When Congress worked on a multiyear surface transportation bill several years ago, the senators co-sponsored a bill that would have created taxable, tax-credit bonds for infrastructure called Transportation and Regional Infrastructure Project (TRIP) bonds. The senators were unable to get those bonds in the transportation law, Moving Ahead for Progress in the 21st Century Act, enacted in 2012. They introduced a similar bill in 2013, but that failed to gain traction.

Now, as Congress wants to pass a six-year highway bill and states continue to have a lot of infrastructure needs, "we decided to give it another swing," Hoeven said.

Unlike TRIP bonds, Move America Bonds would be tax exempt. Hoeven said they chose to propose tax-exempt bonds this time because they thought that approach would increase the chance the legislation would pass and "be of more benefit to the states."

Hoeven said the best legislative vehicle for the concepts in the Move America Act would be a long-term highway bill. He said he would make sure the proposal would be paid for if it is included in the highway bill so that it doesn't add to the federal deficit.

Hoeven thinks the odds of passage are good since Wyden is the top Democrat on the Senate Finance Committee, which will handle the financing component of the transportation bill. Also, he said he thinks there's a good shot Move America Act provisions will pass because "there are just so many things that we need in terms of infrastructure. It's not just highways. It's everything from bridges to ports to any kind of infrastructure you can think of."

The bill "gives states some flexibility to really put some dollars where they need it, and different states have unique needs," he said. Move America Bonds could be used to finance airports, docks and wharves, mass commuting facilities, railroads, highways and freight transfer facilities, flood diversion projects and inland waterway improvements.

Mike Nicholas, chief executive officer of the Bond Dealers of America, praised Hoeven for making infrastructure one of his priorities.

“Senator Hoeven has consistently demonstrated an interest in rebuilding our country’s transportation infrastructure,” Nicholas said. “His experience as Governor of North Dakota provides a unique perspective to this debate and a keen understanding of the importance of maintaining local governments’ low-cost access to capital, which we believe should include the use of tax-exempt bonds.”

**Highway Trust Fund**

The current short-term transportation authorization law expires July 31. In addition to possibly including bonds, a long-term highway bill will have to include funding for the Highway Trust Fund, which is nearing insolvency. The HTF reimburses states for surface transportation projects and is primarily stocked with revenues from motor fuel taxes. But those revenues haven’t been sufficient enough in recent years for the HTF to meet all of its obligations.

Hoeven would like to get a six-year highway bill passed by the end of July, but acknowledges that there could be another short-term measure if a funding agreement can’t be reached before then.

The Senator does not support raising the federal gas tax to add revenues to the HTF. He is not opposed to using tax revenue from the repatriation of foreign earnings, but thinks it is unlikely Congress could enact such a proposal by July 31, if it is tied to tax reform. “I think there’s an opportunity to use repatriation as part of funding a highway bill, but if you also tie that up into tax reform, then I’m concerned that could slow it down,” Hoeven said.

A challenge with tax reform is that President Obama wants it to raise revenue and congressional Republicans want it to be revenue neutral.

“That’s a real sticking point,” Hoeven said.

Also, it’s challenging to figure out exactly what changes are going to be made to the tax code as part of a reform, he said.

Some members of Congress have suggested that tax reform that’s just limited to the international taxation could be done along with a highway bill. Hoeven suggested that could be a possibility. At the end of the day, he wants to pass a long-term highway bill promptly.

“What I’d like to do is see it get going. I’m a little worried that people keep kind of dragging their heels. So I’m pushing to get something done,” he said.

**A Former Governor**

Hoeven, who served as North Dakota’s governor from 2000 to 2010, said that decade has influenced him in Congress.

“I think it’s really good background to understand what the states’ needs are, and that the country was set up where the states are the laboratories of democracy and that the federal government shouldn’t be trying to do everything,” Hoeven said. “There are certain things the federal government has to do, like defense of the nation for example, but we really need to do whatever we can to give people in the states more control in trying to reduce some of the size and scope and cost to the federal government."

Infrastructure was important to Hoeven while he was governor, said Shane Goettle, commissioner of North Dakota's commerce department from 2005 to 2010. The governor-turned-Senator understands the importance of infrastructure for job creation, Goettle said.

One of the promises Hoeven made during his first gubernatorial campaign was to widen a highway from Minot to Williston, taking that section of the road in the western part of the state from a two-lane to four-lane highway. He delivered on that promise in 2008. "That is now a key artery for the oil and gas industry in North Dakota," Goettle said.

Hoeven put a lot of emphasis on jobs as governor and worked to keep those raised in North Dakota living there as adults by fostering an environment that would attract business.

"He understands finance and he's always been about jobs and economic development," Goettle said.

While Hoeven was governor of North Dakota, the state's credit rating from Standard and Poor's went from AA-minus to AA-plus, and its rating from Moody's Investors Service went from Aa3 to Aa1 (with the upgrade from Aa2 to Aa1 due to a recalibration). In 2013, S&P gave the state a triple-A rating.

North Dakota has had no general obligation bonds outstanding since fiscal 1998, though some of its authorities have outstanding debt, according to the state's comprehensive annual financial report for fiscal 2014. The state has a low debt burden and tends to fund capital projects on a pay-as-you-go basis, S&P said in reports this year.

Hoeven touted the North Dakota's vast reserves. In 2010, voters approved the creation of a state permanent reserve fund called the Legacy Fund, which receives 30% of oil and gas tax revenue. The fund's principal and earnings can't be spent until after June 30, 2017, with expenditures of principal after that time requiring a two-thirds vote in each house of the state legislature.

Hoeven said the Legacy Fund is helping to put the state in a strong financial position.

"We're bringing a lot of oil revenue and it was to make sure the state was financially strong for generations to come," he said.

Before serving as governor, Hoeven worked in banking. He was executive vice president of First Western Bank in Minot from 1986 to 1993 and then served as president and chief executive officer of the Bank of North Dakota from 1993 to 2000.

The Bank of North Dakota is the only state-owned bank in the United States. State tax collections flow into the bank, and the bank also participates in economic development activities. BND works with private banks to provide financing for economic development in the state and generally makes loans in partnership with private financial institutions. The bank also provides student loans.

Eric Hardmeyer, the bank's current president and CEO, said Hoeven took BND in some new directions that continue to be followed.

When Hoeven was president of the bank, he had it join the Federal Home Loan Bank system. BND buys mortgages from private banks in the state, holds them, and then funds the mortgages by borrowing from the Federal Home Loan Bank at lower interest rates.

“It’s nice to have someone in Congress who understands the banking world,” Hardmeyer said.

Hoeven said that the principles he picked up while working in banking and finance carry through with him now that he’s a senator.

“My background’s finance and accounting, and I think that’s very important because we have to make sure government is financially responsible and financially sound,” he said.

THE BOND BUYER

BY NAOMI JAGODA

JUL 7, 2015 1:18pm ET

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## A Better Way to Set Public Pay.

Too few local governments are taking advantage of a valuable tool: benchmarking compensation among their public- and private-sector peers.

Fair pay is paramount for public agencies. Pay too little and good employees go elsewhere. Pay too much and budgets and taxpayers suffer, impacting the provision of effective and efficient government services.

Most importantly, the level of salaries paid to public employees also can impact public perception and trust. Whether government employees are compensated more or less generously than their private-sector counterparts with similar responsibilities increasingly is on the minds of the media and citizens alike.

One practice that can have value in navigating fair wages and benefits is benchmarking — collecting data on compensation for comparable jobs in other organizations (public and private) to establish a reasonable market rate. This means paying high-enough salaries so organizations can easily recruit and retain quality staff while not paying more than necessary.

So how are local governments approaching pay and benefits among their competitive peers? Not, unfortunately, through extensive and comprehensive benchmarking.

In a national survey of human-services professionals for large cities and counties, Michael Thom of the University of Southern California’s Price School of Public Policy and I found that only slightly more than half the respondents had conducted a benchmarking study within the past decade.

Among those who did conduct a study, less than half report including both the public and private sectors in their evaluations. Instead, the majority evaluated only local governments. Less than 10 percent used their benchmarking results either before or during collective bargaining with their employees. And relatively few examined benefits, focusing only on wages.

In fairness, it can be difficult to obtain comparability data across individuals and jobs, especially when the comparison is with the private sector. Many public-sector jobs have no private-sector equivalent, particularly when it comes to public -safety positions. Further, it can be difficult to compare benefits. Health-insurance costs, for example, vary geographically, and pension plans differ by occupation, jurisdiction and even hire date.

But these limitations are not good reasons not to benchmark. If local governments choose not to benchmark what others are paying for similar occupations, how can they establish proper levels of compensation and monitor competiveness? Relying simply on existing salary and benefit structures leads to compensation "drift," resulting in governments under- or overpaying some employees or broader classifications of workers relative to their competitive peers. And in collective bargaining, failure to seek information on comparable wages and benefits may also place one or both parties at a disadvantage if one party has done its own benchmarking study while the other has not.

So what's the best approach to benchmarking? While annual studies are not necessary, once every 10 years is not frequent enough. The most advisable frequency is two to five years or whatever period coincides with the jurisdiction's collective-bargaining cycle.

Local governments must establish how benchmarking will be integrated into collective bargaining and how they will respond when it is determined that individuals or groups or either under- or overpaid.

Further, benchmarking studies must incorporate all aspects of public-sector compensation: salaries, retirement benefits, paid and sick leave, and other forms of pay and deferred compensation.

Finally, results from benchmarking studies should be publically disclosed and discussed during public meetings. This is essential for transparency and accountability and establishes the practice as a fair and reasonable approach to compensation.

GOVERNING.COM

BY THOM REILLY | JUNE 29, 2015

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## Can California Find a Way Out of Its Pension Calamity?

The longer you wait to solve a problem, the more painful the fix becomes. Californians are being reminded of that simple truth as their leaders attempt to grapple with the state's snowballing public-pension woes.

As of late last year, California's 130 public-pension systems had a combined unfunded liability of an estimated $198 billion. In 2003, the figure was $6.3 billion. That's an increase of more than 3,100 percent in just over a decade.

In the latest effort to turn those shocking numbers around, a bipartisan group of California pension-reform advocates is trying to get an initiative called the Voter Empowerment Act onto the ballot. It would amend the state constitution to require voter approval for defined-benefit pensions for new public employees, any enhancements to current employees' pensions, and establishment of any pensions in which government subsidizes more than half of a public employee's retirement benefit.

Its sponsors include the mayors of San Bernardino and Vallejo, two cities that have declared bankruptcy due in part to overwhelming pension obligations. If supporters can gather enough signatures, the measure would go on the 2016 statewide ballot. If passed, it would take effect in 2019.

The new initiative effort comes after courts have struck down recent attempts to address the pension problem. Last year, voters in Ventura County collected thousands of signatures for a measure that would have allowed the county to opt out of the current defined-benefit system and replace it with a 401(k)-type system, but a county judge ruled that residents couldn't vote to leave a pension system created by the state.

In 2012, San Jose voters overwhelmingly approved a measure that would have given city employees a choice between a less-generous pension or staying in the current system but contributing a larger portion of their salaries toward paying down the pension debt. A Santa Clara County Superior Court Judge overturned that measure for violating the "vested rights" of public employees.

By applying mostly to new employees, the Voter Empowerment Act is designed to get around the so-called "California rule," which grew out of court cases dating back to 1955 and is followed by a handful of other states. The California rule provides not only that public employees have the right to the amount of the pensions that they have already earned but that they also have the right to continue earning pensions based on rules that are at least as generous. The only provision of the Voter Empowerment Act that would impact current workers is the requirement that voters approve any pension enhancements.

While there is nothing in the ballot proposal that addresses California's current unfunded pension liability, it would go a long way toward preventing that number from continuing to grow.

That's clearly preferable to the status quo. But there's a reason why the Founding Fathers decided the United States should be a representative rather than direct democracy. Any pension referenda would likely result in fed-up taxpayers venting their frustrations at the ballot box rather than any thoughtful decisions about public pensions.

The best result would be if the Voter Empowerment Act pushes the state's leaders to do what they should have done years ago: Craft a political solution to California's pension problems that stops the bleeding, begins to pay down liabilities and sets the pension systems on a path to sustainability.

That won't be easy, both because of the prohibition against impacting the pensions of current employees and the fact that it would require elected officials to take the heat for tough decisions they make now when the benefits of those decisions wouldn't be felt for many years. None of the alternatives is appealing, but it's becoming increasingly clear that they're all better than continuing along the current unsustainable path.

GOVERNING.COM

BY CHARLES CHIEPPO | JULY 8, 2015

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## How Public Pensions Are Getting Smart About Infrastructure.

While American politicians talk about changing public policy to increase investment in U.S. infrastructure, America's public pension funds are investing their money in infrastructure overseas.

The largest U.S. public pension fund, the California Public Employees' Retirement System (CalPERS), recently announced a $1 billion deal with Queensland Investment Corp. (QIC), an Australian pension fund, to invest in Australian and Asian Pacific infrastructure.

At first glance, this would seem to be bad news, especially when you consider that 11 other U.S. public pension funds have deployed an additional $5 billion to overseas infrastructure investments over the past five years while collectively investing less than $800 million in domestic infrastructure.

It is bad news that other countries have figured out how to make infrastructure investing attractive to pension funds while, clearly, the United States has not. But looking closer, CalPERS may be leading a new way to finance American infrastructure while earning a rate of return consistent with other competing investments.

What's remarkable about the CalPERS deal is that instead of hiring expensive middlemen to make infrastructure investments with its money — as was done with the previously deployed $5 billion and is done regularly with the bulk of the $5.3 trillion of U.S. public pension capital — CalPERS is acquiring the capacity make such investments on its own. That reflects a trend among cost-conscious pension plans around the world that have eschewed the intermediary approach.

Pension funds in Australia and Canada did so long ago. Today, they are forceful market players instead of captive customers. Once they bypassed the intermediaries to harness the influence of the large pools of capital they control, they leveraged that power to form pension-owned infrastructure investment platforms such as Australia's Industry Funds Management and Canada's Borealis. These platforms have collectively deployed more than $50 billion of pension capital into infrastructure investments around the world, and they have realized returns above the 7 percent that U.S. pension funds need to fund future liabilities.

The United Kingdom and Switzerland have now followed their lead. The British government launched policy initiatives in 2011 that led to eight U.K. pension funds pooling their capital for the purpose of making direct in-country infrastructure investments. To date, they have deployed a half-billion dollars of capital. And nine Swiss pension funds came together last May, also for the purpose of making direct investments in local infrastructure. They now are structuring their third such investment.

CalPERS' deal with QIC will enable the California fund to tap into the Australian pension fund's experience in developing internal skill to manage assets as owners. This capacity was best demonstrated last year when QIC made a profit of several billion dollars on the sale of the Queensland Motorways, a broken-down highway, bridge and tunnel network that the Queensland state government conveyed to QIC in 2011 to satisfy pension liabilities.

And CalPERS isn't the only U.S. public pension fund — or even the only one in California — tapping into overseas expertise relating to infrastructure financing. This spring, the California State Teachers Retirement System (CalSTRS) announced an investment partnership with a Dutch pension fund, Stichting Pensioenfonds ABP, that will allow CalSTRS to benefit from ABP's skill in negotiating with government project sponsors. This was evident in the 2012 N33 transportation project, which the Dutch government structured expressly to secure equity and debt financing from ABP and Holland's largest pension fund, PGGM.

It's great news that our two largest public pension funds have begun to take steps to acquire the capacity to invest their own money and to end an impoverishing reliance on intermediaries. What's more, they're doing this by forming partnerships with international peers who know how to make money in infrastructure.

Even the most sophisticated pension-fund investors, however, have not figured out how to make money in U.S. infrastructure, given the competition from low-cost capital through the municipal-bond market. It just doesn't seem to make sense for infrastructure-project sponsors to pay pension funds (or any other institutional investors) more for capital than they pay the muni-bond market, currently about 4 percent.

But while capital at 4 percent appears cheap, borrowing costs are only the starting point in public infrastructure projects. Other costs, such as for operations and maintenance, ought to be considered — and too frequently aren't — when taking on projects that might stretch out over 30 years. Governments and taxpayers would get far more value from investors willing and able to finance total lifecycle costs than they do from a simple bond issuance.

As the level of new municipal financings continues to decline, the U.S. will increasingly need investors, such as public pension funds, that can add value beyond what is currently available from the capital markets. Infrastructure project sponsors could realize additional value for taxpayers by raising the kind of patient public pension equity capital that is more interested in long-term dividends than up-front fees for advisory and/or construction services.

By working directly with state and local governments to structure pension-right, public-right infrastructure projects, U.S. public pensions could open the most coveted infrastructure market in the world to the global community of institutional investors. This would result in a win for public pension funds, state and local governments and, most importantly, taxpayers and retirees.

GOVERNING.COM

BY JILL EICHER | JULY 10, 2015

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## Bloomberg Brief Weekly Video - 07/09/15

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

Watch the video.

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## Puerto Rico's Development Bank Says It May Purchase Notes.

Puerto Rico's Government Development Bank said it may purchase the bank's notes "from time to time" as the commonwealth pushes to restructure its $72 billion of debt.

The GDB handles the island's debt sales and lends to the junk-rated commonwealth and its localities. The bank expects to sell $300 million of tax- and revenue-anticipation notes this month to pay off securities due Friday, according to financial documents posted on the bank's website. It has another $140 million of debt maturing Aug. 1, according to data compiled by Bloomberg.

Governor Alejandro Garcia Padilla is set to meet with federal officials in Washington Friday about the commonwealth's fiscal situation, according to a statement from his office.

Puerto Rico officials also plan to meet Monday with creditors in New York to discuss the island's high debt and unstable finances. Citigroup Inc. is hosting the meeting, and may also help the GDB with the note purchases, according to a filing Friday through the Municipal Securities Rulemaking Board.

"Other alternative lenders, such as Citi, have made the decision to potentially provide liquidity in the absence of sufficient liquidity at the government level," said Robert Donahue, managing director at

Municipal Market Analytics Inc., a Concord, Massachusetts-based research firm.

The GDB had $787 million of net liquidity as of May 31, down from $2 billion in October. It may run out of cash by Sept. 30 unless Puerto Rico issues $2.9 billion of oil-tax bonds or the bank can delay maturities by exchanging its debt.

Purchases of the notes could be made for cash, new securities or a combination, according to the filing. Any purchases are expected to be at prices "that are materially less than par," according to the filing.

The GDB notes maturing Aug. 1 traded Friday for an average 76.5 cents on the dollar, down from 91.3 cents in January, Bloomberg data show.

**Bloomberg**

by Michelle Kaske

July 10, 2015 — 7:36 AM PDT Updated on July 10, 2015 — 10:05 AM PDT

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## Citigroup to Host Monday Meeting with Puerto Rico Bondholders.

Citigroup Inc. intends to host a meeting of Puerto Rico bondholders on Monday in New York that will include a presentation by former International Monetary Fund official Anne Krueger, according to a person familiar with the situation.

A recent report by Ms. Krueger, former first deputy managing director of the IMF, recommended reducing the commonwealth's debt payments by offering to exchange some debt for new bonds with longer maturities. Citi has handled such exchanges in the past, including a deal to buy back and refinance water and sewer bonds that helped Detroit save money during its bankruptcy.

Puerto Rico has about $72 billion in debt outstanding and is struggling with a weak economy and declining population. Gov. Alejandro Garcia Padilla said last week the commonwealth can't pay its debts and called for negotiations with bondholders. Analysts have said the commonwealth's government could run out of cash in coming months, which could lead to a government shutdown, employee furloughs and other emergency measures.

Some Puerto Rico bonds sold last year traded Wednesday at about 70 cents on the dollar, after touching all-time lows of around 64 cents last week, according to the Electronic Municipal Market Access website.

Ms. Krueger's presentation is scheduled for 3 p.m. and will be streamed live on the Internet, according to the person familiar with the plans. Citigroup is working as a broker-dealer for the island, handling assignments such as bond tenders and debt exchanges, the person said.

Other Puerto Rico consultants—including restructuring adviser Millstein & Co. and municipal-bond adviser PFM Group, as well as government officials—may also speak Monday.

The meeting comes after the Puerto Rico Electric Power Authority paid all principal and interest due to bondholders last week, buying the publicly owned utility time as it works to reach a deal with creditors. The authority, known as Prepa, said it had agreed with creditors, which include bondholders, banks and bond insurers, to extend restructuring talks to September.

A bondholders' group said in a news release that they would continue to work with Prepa to reach a long-term plan. In addition to negotiations about Prepa's $9 billion in debt, the talks involve plans to modernize the utility's operations.

Investors and analysts had feared a default by Prepa could be the first of many from the commonwealth. Now, there's hope among some investors that the utility will work out an agreement that could be a model for restructuring other Puerto Rico agencies.

THE BOND BUYER

By AARON KURILOFF

Updated July 8, 2015 6:24 p.m. ET

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

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## S&P Cuts Chicago Debt One Notch.

Chicago is now three notches above junk

Standard & Poor's Ratings Services has downgraded Chicago one notch to triple-B plus from A-minus, predicting that a "structural imbalance" will lead to "corrective budget measures over several years."

S&P said "in our opinion, the city has not yet fully identified a credible plan" to address the imbalance.

S&P removed the rating, which is now three notches above junk, from CreditWatch. The rating firm has a negative outlook.

In May, Moody's Investors Service cut its rating on Chicago's debt by two notches to junk, citing expected increases in unfunded pension burdens after a ruling by the Illinois Supreme Court that overturned state pension changes.

Shortly after the downgrade, Moody's missed out on a lucrative assignment for Chicago when the city instead hired rivals S&P, Fitch Ratings and Kroll Bond Rating Agency Inc. to provide grades for a refinancing of general-obligation bonds.

S&P cut Chicago's rating by two rungs in May.

S&P said Wednesday that the city "has successfully addressed its most immediate liquidity pressures," but said Chicago needs to address police and fire pension costs.

Moody's changed its methodology for calculating pension liabilities in 2013, a move that has been linked to stricter municipal-debt ratings than those from S&P and Fitch.

Moody's said in a 2013 statement that it believed pension liabilities were "underreported from a balance sheet perspective."

THE WALL STREET JOURNAL

By JOSH BECKERMAN

Updated July 8, 2015 6:56 p.m. ET

Write to Josh Beckerman at josh.beckerman@wsj.com

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## Disney Seeks Continued Tax Exemption From Anaheim, California.

LOS ANGELES — The "happiest place on Earth" will keep a special tax exemption in Anaheim, California, for 30 more years if the City Council approves the Walt Disney Co's plan for a $1 billion-plus expansion of its theme park complex in the city.

The five-member council is expected to vote on Tuesday on the company's proposal to go ahead with its Disneyland Resort makeover in exchange for a continued waiver of any future admission tax the city might impose on entertainment venues.

The resort's current exemption was granted by the city in 1996 and is due to expire on June 30, 2016.

No entertainment gate tax has ever been levied by the city of Anaheim, but an extension of Disney's special waiver would reimburse the company for any such taxes imposed during the next three decades, municipal spokeswoman Ruth Ruiz said.

Disney and its supporters say the exemption is merited because of the huge economic benefit Anaheim derives from the resort, which is the largest employer in the city and Orange County as a whole, accounting for 28,000 local jobs.

"Anaheim has been an economic success story thanks to its policies and initiatives that allow businesses to invest and thrive," Disneyland Resort President Michael Colglazier said in a statement.

But Mayor Tom Tait, a City Council member who backed the original tax exemption, has gone on record opposing the plan to renew it, citing an estimated $500 million in unfunded pension obligations now faced by the city.

"Chaining the hands of future residents on their ability to impose taxes will jeopardize the city's financial health," he was quoted as saying in the Orange County Register.

Two other council members support an extension, while two others have said they are undecided.

Disney's plan calls for breaking ground by the end of 2017 and finishing construction by 2024. A study commissioned by Disney projected the project would support an average of 2,600 local jobs a year, and lead to creation of 2,100 permanent jobs.

The company has not specified whether Disneyland itself or the adjacent Disney California Adventure park, or both, would be enlarged, or what new attractions might be added. But the project is to include a new 5,000-space parking structure.

Disneyland's original theme park opened to the public in 1955. No admission tax is currently collected at any Disney park in the world, company spokeswoman Suzi Brown said.

By REUTERS

JULY 6, 2015, 7:40 P.M. E.D.T.

(Reporting by Steve Gorman; Editing by Peter Cooney)

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## U.S. Court Upholds Ruling Against Puerto Rico Bankruptcy Law.

(Reuters) – A U.S. appeals court affirmed a lower court decision to strike down Puerto Rican legislation aimed at granting local municipalities the right to enter bankruptcy, but one judge in a concurring opinion said excluding the U.S. territory's public entities from federal bankruptcy law was unconstitutional.

Puerto Rico passed the so-called Recovery Act last year to give certain public corporations, with around $20 billion in debt, the ability to restructure financially in an orderly process. Puerto Rico is currently struggling with a total debt load of around $72 billion, which it says it is unable to pay.

"Besides being irrational and arbitrary, the exclusion of Puerto Rico's power to authorize its municipalities to request federal bankruptcy relief should be re-examined in light of more recent rational-basis review case law," Judge Juan Torruella said in a concurring opinion attached to the ruling. The Recovery Act was struck down by a federal court in Puerto Rico in February after bondholders in the island's power authority, including Franklin Advisers, OppenheimerFunds and Blue Mountain Capital, argued in a law suit that the legislation contravened the U.S. bankruptcy code, which expressly excludes Puerto Rico. While the 49-page ruling ostensibly vindicates the bondholders' position, the one judge's concurring opinion also makes a forceful case that Puerto Rico should be given access to Chapter 9 of the U.S. bankruptcy code, which deals with municipal bankruptcies. Bondholders have consistently opposed this view.

The in-depth opinion, steeped in legislative history, may strengthen the case for Congress to act on a bill, currently before a House committee, that seeks to change Chapter 9 to treat Puerto Rico like any other state for the purposes of bankruptcy.

(This July 6 story corrects headline to remove "slams exclusion"; corrects paragraph 1 to show comments on Chapter 9 were from one judge in a concurring opinion, not full three-judge panel; corrects paragraphs 3, 5 attribution of quote to one judge; corrects paragraph 5 to show ruling was 49 pages, not 75.)

By REUTERS

JULY 7, 2015, 10:49 A.M. E.D.T.

(Reporting by Edward Krudy; Editing by Nick Macfie)

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**TAX - KANSAS**

## Heartland Apartment Ass'n, Inc. v. City of Mission

**Court of Appeals of Kansas - July 2, 2015 - P.3d - 2015 WL 4033516**

Landowner associations brought action against city for declaratory judgment, injunction, recovery of amounts paid, and due process and equal protection violations, claiming that the city's transportation utility fee was a prohibited excise tax. The District Court granted city summary judgment, finding the fee was a tax, but the fee was not a prohibited excise tax. Associations appealed, and city cross-appealed.

The Court of Appeals held that:

- Transportation utility fee was a tax, rather than a fee, and
- Transportation utility fee was an excise tax prohibited by law.

City's transportation utility fee imposed on owners of developed property within the city was a "tax" and not a "fee." Even though city labeled the expense a "fee," owners of improved real estate across the city were forced to pay annual fee and could not opt out, owners that were exempt from ad valorem property taxes were exempt from paying fee, purpose of fee was to raise revenue to help pay for street maintenance rather than a special service or benefit to any specific landowner, and money was to be used for the common good of providing a way to get around the city, which was one of the core governmental services provided by a city.

City's transportation utility fee, which was a tax calculated by estimating the average number of vehicle trips a developed property generated, was an "excise tax" prohibited by statute. "excise tax" had come to mean and include practically any tax which was not an ad valorem tax imposed on the value of the article or thing taxed, transportation utility fee was not based on the value of the developed property but on the number of vehicle trips, and transportation utility fee did not fit within any of statutory exceptions to ban on excise taxes.

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## Illinois Governor Proposes Sweeping Pension Legislation.

CHICAGO — Illinois Governor Bruce Rauner on Wednesday unveiled pension legislation that calls for sweeping changes, including the ability to file for municipal bankruptcy, to save billions of dollars for the state and local governments.

Illinois and its biggest city Chicago are sinking under huge public pension obligations that are draining money away from core government services. The problem was exacerbated in May when the Illinois Supreme Court ruled that public sector workers have iron-clad protection in the state constitution preventing their pension benefits from being reduced.

Rauner, a Republican, said the bill, crafted with input from Chicago Mayor Rahm Emanuel and Democratic Senate President John Cullerton, would ease contributions to local police and firefighter pensions for Chicago and other cities. The measure also includes Cullerton's proposal to give state and local workers choices between cost-of-living increases in retirement and having future wage hikes count toward pensions.

The bill would also give Illinois' local governments a route to Chapter 9 municipal bankruptcy following an evaluation by a third party or the declaration of a fiscal emergency. Rauner has suggested both Chicago and its public school district could be candidates for bankruptcy due to their huge pension funding problems.

A spokeswoman for Emanuel said the mayor had not yet reviewed the proposal.

"The governor's recognition of the Cullerton model is encouraging, but we will have to review the details of the governor's new proposal," said Rikeesha Phelon, Cullerton's spokeswoman.

Chicago Teachers Union Vice President Jesse Sharkey called the bill an "unconstitutional mishmash of proposals which diminish and impair pensions."

A coalition of labor unions that successfully challenged a 2013 reform law for state retirement systems said the governor's proposal "completely disregards" the state Supreme Court's recent ruling.

Rauner said the pension bill will not be tied to a new state budget for the fiscal year that began July 1. The Democrat-controlled House may vote Thursday on a one-month emergency budget passed by the Senate last week that Rauner said he will not sign. Last month, Rauner vetoed a $36 billion budget full-year budget passed by Democrats, saying it had a $4 billion deficit.

The governor said the legislature must adopt his turnaround reform agenda before he will entertain new revenue for the budget. He said he will present bills for legislative term limits, redistricting changes, a local property tax freeze, workers' compensation and liability lawsuits. And he singled out powerful Democratic House Speaker Michael Madigan, for obstructing his reforms.

"Speaker Madigan needs to make a decision – support reform or support a tax hike," Rauner said, noting that Madigan has enough Democratic members in the House to pass a tax increase.

Madigan's spokesman Steve Brown said the House has already taken up and in some cases rejected some of Rauner's reforms.

"It's really a lot of name calling by the governor," Brown said.

Rauner last month launched a state-wide television campaign mainly targeting Madigan for Illinois' fiscal woes.

By REUTERS

JULY 8, 2015, 3:58 P.M. E.D.T.

(Reporting by Karen Pierog; Editing by Richard Chang and Lisa Shumaker)

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## Illinois House Passes One-Month State Budget.

CHICAGO — The Illinois House of Representatives on Thursday passed a bill to fund "essential services" and state worker paychecks for a month, as the chamber controlled by Democrats remained at an impasse with the Republican governor over a full-year fiscal 2016 budget.

The measure, which passed with a veto-proof 71 votes, now heads back to the Senate. That body, also controlled by Democrats, passed a $2.26 billion temporary spending bill last week. However, that bill did not include a provision for worker paychecks.

House Majority Leader Barbara Flynn Currie said the one-month budget would allow Illinois to fund critical services for the disabled, elderly and others, while making sure state workers get paid. But House Republican Leader Jim Durkin said the bill was a futile exercise.

"It won't be signed into law and we'll be back at square one," he said, after blaming Democrats for the state's fiscal mess.

A spokesman for the state's biggest union, American Federation of State, County and Municipal Employees Council 31, said a St. Clair County judge on Thursday ordered the state to pay its workers.

That contradicted a Tuesday ruling by a Cook County judge who said state workers cannot be paid in full and on time without an enacted budget. The first paychecks for fiscal 2016, which began July 1, are due out on Wednesday, July 15.

The House vote came after a lengthy debate in which Republicans pointed fingers at Democrats over Illinois' huge fiscal woes. There was also name-calling. One lawmaker even sang a made-up song about the state budget with lyrics that included "Budget, budget we need a budget now." Illinois has the worst-funded pensions and lowest credit ratings among the 50 U.S. states.

Currie said Republican Governor Bruce Rauner will be able to use his veto to alter the bill.

Lance Trover, Rauner's spokesman, blasted Democratic House Speaker Michael Madigan and his members, saying they "irresponsibly voted for yet another unbalanced budget plan."

On Wednesday, Rauner dared Madigan to push a tax hike. He also made it clear he would not consider new revenue until the legislature adopts his agenda that includes a local property tax freeze and legislative term limits.

At a press conference following the House session, Madigan made it clear his members cannot accept most of the governor's agenda. He also held out the possibility Rauner may reverse course as he did on other matters and sign the one-month budget.

"If you follow the governor's action day by day, there's a lot of u-turns in the road," Madigan said.

The governor last month vetoed a $36 billion full-year budget passed by Democrats because it had a $4 billion deficit. The Senate is scheduled to be back in session on Tuesday. In the meantime, Illinois Treasurer Michael Frerichs announced on Thursday a deal with credit unions to offer state workers interest-free loans until payroll resumes.

By REUTERS

JULY 9, 2015, 6:55 P.M. E.D.T.

(Reporting By Karen Pierog; Editing by Richard Chang and David Gregorio)

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## [Frequently Asked Questions on FINRA's Eligibility Proceedings for Firms Participating in the MCDC Initiative.]

To guide firms participating in the SEC's Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative), FINRA is issuing the following questions and answers regarding the statutory disqualification process. The questions and answers address topics that firms participating in the MCDC Initiative have recently raised with FINRA. As a result, information contained in this guidance applies only to firms that become statutorily disqualified based on an SEC order issued under the MCDC Initiative. For general information relating to FINRA's statutory disqualification process, please review FINRA's Statutory Disqualification page. More information regarding the SEC's MCDC Initiative is available on the SEC's website.

**1. What causes a broker-dealer that participates in the MCDC Initiative to be subject to a statutory disqualification?**

Based on discussions with SEC staff as well as publicly available information, FINRA understands that a broker-dealer participating in the SEC's MCDC Initiative (a "Participating Firm") may be subject to findings by the SEC that it willfully violated the federal securities laws. A willful violation of the federal securities laws results in a statutory disqualification, as described in Section 15(b)(4)(D) of the Securities Exchange Act of 1934 ("Exchange Act"), incorporated by reference in 3(a)(39)(F) of the Exchange Act.

**2. At what point in the process does a Participating Firm become statutorily disqualified?**

A Participating Firm will become statutorily disqualified only if the Participating Firm is subject to a Commission order under the MCDC Initiative. A Participating Firm does not become statutorily disqualified merely upon submitting an offer of settlement to the SEC.

**3. What happens when a Participating Firm becomes subject to a Commission order and, therefore, is subject to a statutory disqualification?**

Article III, Section 3(a) of FINRA's By-Laws states that no firm can continue in membership with FINRA if it is subject to a statutory disqualification. Article III, Section 3(d) of the By-Laws, however, allows a disqualified firm to file an application to seek FINRA's approval to continue its membership notwithstanding a statutory disqualification.

Accordingly, after the SEC accepts an offer of settlement and issues an order, FINRA's Registration & Disclosure Department ("RAD") will send a letter, known as the SD Notification Letter, to the Participating Firm. The letter will notify the Participating Firm that it is subject to a statutory disqualification and that it must file a Membership Continuance Application (Form MC-400A) within ten business days after receipt of the SD Notification Letter if it wishes to continue in FINRA membership. The filing of a Form MC-400A application begins a process known as FINRA's Eligibility Proceedings. The SD Notification Letter will provide specific instructions regarding how to initiate an Eligibility Proceeding.

In order for a Participating Firm to continue in membership, it must submit a timely Form MC-400A application to FINRA to initiate the Eligibility Proceeding. As part of the Eligibility Proceeding, a Participating Firm will be required to provide FINRA with specified information, and importantly, a Participating Firm should expect that FINRA will require it to consent to a plan of heightened supervision.

**4. What information and/or documents are required to initiate an Eligibility Proceeding?**

In general, a Participating Firm will be required to answer designated questions on the Form MC-400A application and to provide a copy of the SEC's order as well as a statement explaining why it should be permitted to continue in membership notwithstanding a statutory disqualification. In addition, the Participating Firm should expect that it will be required to submit a plan of heightened supervision with its application. The Participating Firm will need to immediately implement the plan of heightened supervision should its application be approved.

**5. What conditions should Participating Firms expect FINRA to require in a plan of heightened supervision?**

A definitive answer to this question will depend on any conditions that are contained within the SEC's order involving the Participating Firm. FINRA anticipates, however, that at a minimum the conditions of the plan will align with any undertakings that the SEC imposes on the Participating Firm. FINRA also anticipates that the plan will include an obligation on the part of the Participating Firm to notify FINRA, in addition to the SEC, when the firm has completed its obligations pursuant to the SEC order and to forward confirming documents to FINRA.

**6. What parts of the Form MC-400A application must a Participating Firm complete?**

Participating Firms will receive instructions in the SD Notification Letter on how to complete the Form MC-400A application. That letter will detail the questions that must be completed on the application and those that can be omitted. FINRA has the right to request the omitted information or other information as needed during its review process.

**7. Where can I obtain a copy of the Form MC-400A application?**

FINRA encourages Participating Firms to review the application in advance. An electronic copy is available on FINRA's website at the following link: Form MC-400-A. The application cannot be submitted until the Participating Firm receives the SD Notification Letter from FINRA that will provide specific instructions for the completion of the application.

**8. What is the cost of the Eligibility Proceeding?**

There is no fee associated with the Form MC-400A application or the Eligibility Proceeding for a Participating Firm.

**9. What happens once a Participating Firm submits the Form MC-400A application?**

FINRA is required by rule to evaluate a Participating Firm's application and determine whether such firm should be approved to continue in FINRA membership notwithstanding a statutory disqualification. If FINRA determines that approval of the application is warranted, FINRA is required by Exchange Act Rule 19h-1 to provide the SEC with notice of the approval of the firm's application for continued membership. Should FINRA deny the application, FINRA is required by Exchange Act Rule 19d-1 to file a notice with the SEC of such denial.

**10. Will FINRA preclude a Participating Firm from conducting a securities business during the pendency of the Eligibility Proceeding?**

No. A Participating Firm will be permitted to continue business operations as normal during the pendency of the Eligibility Proceeding. However, it is critical that any statutorily disqualified firm timely file a Form MC-400A application with FINRA. Failure to timely file an application could result in cancellation of a firm's membership with FINRA.

**11. Can a Participating Firm's Form MC-400A application be denied by FINRA?**

Approval of a Participating Firm's Form MC-400A application is not automatic. FINRA's Eligibility Proceedings are designed to ensure that the continued membership of a statutorily disqualified member is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors.

**12. What happens after FINRA files a notice with the SEC approving the Participating Firm's continued membership?**

The SEC will conduct a review of the notice and issue a written communication to FINRA regarding the continued membership of the Participating Firm. Upon receipt of the SEC's communication, FINRA will forward a copy to the Participating Firm.

FINRA cannot speak to the time it will take the SEC to conduct its review or to the SEC's processes for considering FINRA's notice filing; however, a Participating Firm's business operations may continue without interruption during this time.

**13. What happens after the SEC issues its written communication to FINRA?**

The Participating Firm must implement any plan of heightened supervision as agreed upon during the Eligibility Proceeding and will be required to comply with the provisions of the plan for the time period it is in place.

**14. Does a Participating Firm have to disclose that it participated in the SEC's MCDC Initiative in response to any of the disclosure questions on the Form BD?**

Yes. A Participating Firm must disclose on Form BD the settlement with, and findings made by, the SEC in connection with the MCDC Initiative (see Question 11C of the Form BD).

**15. Does a Participating Firm have to disclose that it is undergoing FINRA's Eligibility Proceeding in response to any of the disclosure questions on the Form BD?**

No. A Participating Firm is not required to disclose on the Form BD that it is subject to FINRA's Eligibility Proceedings.

**16. Is the reporting requirement provided for in FINRA Rule 4530(a)(1)(H) triggered as a result of a Participating Firm's settlement with the SEC?**

A Participating Firm will need to report to FINRA that it is subject to statutory disqualification pursuant to FINRA Rule 4530(a)(1)(H). In addition, the rule requires, among other things, that a member report to FINRA whenever it is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities ("financial dealings") with any person that it knows or should have known is statutorily disqualified.

However, a recent amendment to FINRA Rule 4530(a)(1)(H) provides that a firm will not need to report financial dealings with another firm that is subject to statutory disqualification, if the statutorily disqualified firm has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member. Subject to some exceptions, FINRA's current practice permits a FINRA member firm that becomes statutorily disqualified to continue in membership without interruption to its business activities, provided that a timely Form MC-400A application is filed in accordance with FINRA Rule 9522(a)(2). Based on this practice, for the purpose of any statutory disqualification that arises from the MCDC Initiative, FINRA will not require a firm, including a Participating Firm, to report to it that it engaged in any financial dealings with a Participating Firm during the period that the application is pending, provided that the Participating Firm that is the subject of reporting has filed a timely application with FINRA pursuant to Rule 9522(a)(2). This deferment period is only available if the reporting firm knows or should have known that the Participating Firm that is the subject of reporting has filed a timely application pursuant to Rule 9522(a)(2). If FINRA approves the Participating Firm's application, the reporting firm has no reporting obligation under FINRA Rule 4530(a)(1)(H). If FINRA denies the application, the reporting firm has an obligation to retroactively report financial dealings that occurred with the Participating Firm during the deferment period as well as any future financial dealings with such

Participating Firm.

FINRA intends to work with Participating Firms to obtain their consent to publish the fact that they have filed an MC-400A Application as a result of the MCDC Initiative. FINRA will publish to its website a list of Participating Firms that have given FINRA their consent to this publication.

**17. Does the scope of the MCDC Initiative include registered representatives?**

According to the SEC's website, the "…MCDC Initiative covers only eligible issuers and underwriters."

**18. Will FINRA contact other self-regulatory organizations ("SROs") of which a Participating Firm is a member regarding the Form MC-400A application?**

In the notice that FINRA is required to file with the SEC pursuant to Exchange Act Rule 19h-1, it must identify any other SRO of which the Participating Firm is a member and whether such SRO is in agreement with the terms and conditions of the proposed continuance. FINRA will, therefore, contact any applicable SRO so that it can identify in its filing with the SEC, whether such SRO agrees that the Participating Firm should be permitted to continue in membership.

**19. If I have questions regarding the Eligibility Proceedings or a Participating Firm's Form MC-400A application, whom should I contact?**

All questions regarding FINRA's Statutory Disqualification Program may be directed to Lorraine Lee-Stepney, Manager, at (202) 728-8442 or by email at Lorraine.Lee@finra.org.

For questions relating to FINRA Rule 4530 reporting, please contact Dave Troutner at (240) 386-6404 or dave.troutner@finra.org.

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## Puerto Rico Not Too Broke to Pay Debt, OppenheimerFunds Says.

Puerto Rico's governor says the island's $72 billion debt load is too big to pay. OppenheimerFunds Inc., the largest mutual-fund holder of the bonds, disagrees.

As Alejandro Garcia Padilla begins to make the case for delaying debt payments, the New York-based company is building the opposite argument. On a conference call this week, its money managers said data on sales-tax collections, unemployment and income growth indicate the economy is strong enough for the government to keep paying what it owes.

"The governor's new rhetoric, which we see as political cover after signing a budget that required unpopular spending cuts, is disappointing," OppenheimerFunds wrote in a summary of the July 6 conference call. "The ability to pay remains intact."

OppenheimerFunds has emerged as one of the earliest — and most vocal — opponents on Wall Street of Puerto Rico's unprecedented push to restructure its municipal bonds. The firm's comments provide a window into how others may seek to protect their investments in the cash-strapped island, which has amassed more debt than any state except California and New York.

Puerto Rico can't use bankruptcy to wipe out the debts of its publicly owned corporations, such as its teetering power provider, and its general-obligation bonds are protected by the commonwealth's constitution. That’s forcing the government to negotiate, a process that’s set to begin next week in New York.

**Bonds Tumble**

Puerto Rico bonds tumbled after Garcia Padilla last week said the commonwealth’s debts are unpayable. A report by former International Monetary Fund economists released by Puerto Rico said the situation is dire, with high debt, unstable finances and a stagnant economy.

With speculation building about the island’s solvency, Puerto Rico bonds have lost 9.5 percent in 2015, according to S&P Dow Jones Indices data.

No firm has felt the impact as much as OppenheimerFunds. It had about $4.4 billion worth of uninsured obligations from the island as of July 9, according to data compiled by Bloomberg.

Puerto Rico obligations make up 13.8 percent of OppenheimerFunds’s total holdings, excluding tobacco bonds, insured debt and pre-refunded securities, the money manager said in its statement.

OppenheimerFunds’s state funds hold securities from Puerto Rico, which are tax-exempt nationwide. Its Virginia, Arizona, New Jersey, Maryland and North Carolina funds have the biggest losses among open-end, single-state muni funds this year, Bloomberg data show.

**Fortune’s Reversal**

OppenheimerFunds predicts that the commonwealth’s securities will rebound from record lows reached in the past two weeks.

“We believe Puerto Rico bonds will contribute to very strong total returns going forward and that, at current prices, there is far more upside than downside,” according to the summary of the conference call. The speakers were fund managers Dan Loughran, Scott Cottier and Troy Willis, along with Digby Clements, the product director of OppenheimerFunds.

Ray Pellecchia, a spokesman for OppenheimerFunds, said the managers declined to comment further. He declined to comment on whether the money manager would be represented at a planned July 13 creditor meeting in New York.

That meeting, with Government Development Bank President Melba Acosta, will start at 3 p.m. in Citigroup Inc.’s New York headquarters, said Todd Hagerman, head of investor relations in San Juan for the development bank, which handles the island’s debt transactions. It will focus on the IMF report.

**Little Help**

OppenheimerFunds disputes that the island’s fiscal health would improve if some of its agencies were allowed to file for bankruptcy. Legislation to do so has yet to advance in the Republican-controlled U.S. Congress, even though key Democrats support it.

For one, the commonwealth’s aqueduct and sewer authority probably couldn’t prove it is insolvent, the money manager said, nor could Puerto Rico convince a court to reduce its sales-tax-backed bonds, known as Cofinas. Proving insolvency is a first step to seek court protection.

Additionally, the Puerto Rico Electric Power Authority, the cash-strapped agency for which legalizing Chapter 9 could be useful, is already working to renegotiate its $9 billion of debt out of court, the company said.

"The financial and reputational costs associated with a Chapter 9 filing are such that most issuers see bankruptcy as the course of last resort," OppenheimerFunds said. "The administration needs to execute on the balanced budget, recognize its capacity to raise taxes, and continue to reduce the size of its underground economy, all of which should help the economy grow."

**Bloomberg**

by Brian Chappatta

July 9, 2015 — 10:08 AM PDT Updated on July 9, 2015 — 12:06 PM PDT

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## Public-Private Partnerships Offer Alternative Model for Water Infrastructure Projects.

In February 2012, the Commonwealth of Massachusetts completed a study of the state's drinking, wastewater, and stormwater infrastructure needs that identified a funding gap of at least $39 billion over the next 20 years. The Water Infrastructure Finance Commission, which prepared the report, concluded that funding from traditional government sources is likely to decline over the same period. This scenario of rising infrastructure needs coupled with declining government resources is playing out in cities and towns across the country. As part of the solution to this funding gap, states and municipalities have been looking to public-private partnerships, or P3s, as an alternative to traditional methods of financing and delivering public infrastructure projects, including projects in the water sector.

In Massachusetts, cities and towns enjoy express authority to use alternative project delivery methods, although this authority is limited. Chapter 149A of the General Laws expressly gives municipal entities authority to procure public building and public works projects using "construction management-at-risk" and "design-build" methods, respectively, in lieu of the traditional design-bi--build procurement method. In order to qualify for Chapter 149A, the project must have an estimated construction cost of $5 million or greater, and the municipality must receive approval from the Inspector General. To date, numerous school building projects have been approved and constructed using this express authority, but only one municipal public works project has used design-build procurement under Chapter 149A. For many cities and towns, the project cost threshold is a barrier to using Chapter 149A for water and wastewater projects, and Chapter 149A does not permit the use of private equity or debt financing to fund such projects. As such, Massachusetts municipalities must seek legislative approval to use alternative delivery methods that include a greater role for private partners and involve long-term contract operations, such as design-build, design-build-operate, and design-build-operate-finance delivery structures.

The Massachusetts Legislature has routinely granted authority for the use of such project structures in cities and towns, particularly for water and wastewater treatment works. This authorization has been granted by special acts to more than a dozen cities and towns, including Lawrence, Lee, Provincetown and Springfield. These special acts typically include authority to enter into a contract "for the lease, operation and maintenance, repair or replacement, financing, design, construction and installation of new facilities or systems and modifications to existing facilities, necessary to ensure adequate services." These special session laws authorize key elements of P3 deal structures and exempt the project from otherwise applicable public bidding and procurement laws (such as

M.G.L. Ch. 7C, Secs. 44-57; Ch. 149, Secs. 44A-J; Ch. 149A; and Ch. 30, Sec. 39) and prescribe the selection process and certain contract conditions. This special act process, the only viable solution for most municipal awarding authorities, requires the submission of a Home Rule petition and a vote by the Legislature, thereby introducing uncertainty and possible delays into the public procurement process.

## CONSIDERATIONS FOR STRUCTURING P3 AGREEMENTS

A broad spectrum of projects and deal structures may be classified as public-private partnerships, so there is no single, generally accepted definition. In general, the P3 concept involves a transaction based on contractual agreements between a public agency (typically a state or local entity) and a private sector partner that enables the particular skills and assets of each participant (public and private) to be shared in delivering a service or facility for the use of the general public, while also appropriately allocating risks and rewards. In all cases, P3 project structures allow for greater private sector participation in the financing and delivery of projects and typically offer incentives for efficiency and innovation in project finance and delivery.

What are the considerations for municipal stakeholders in public-private partnerships? There are policy concerns stemming from the impacts of P3s on labor and the public's hesitancy to privatize aspects of infrastructure that have traditionally been owned and operated by public entities. These complex issues require strong leadership to overcome. P3s that involve the use of public funds and relate to public assets clearly must be undertaken pursuant to a broad array of federal, state and local laws and regulations. Public-private partnerships require a legal and regulatory framework that protects the private partner's financial investment and property rights while enabling commercial contracts to be legally enforced. Clarity regarding the types of P3s that are authorized, the types of projects that may be delivered using the P3 model, the method of selecting private partners, the scope of ancillary state laws and regulations that will apply (e.g., public bidding requirements, prevailing wages laws, bonding requirements, etc.) is critical to a successful process, as are the audit and oversight requirements that will be applicable to the private partner.

Legal challenges to the public-private partnership model can also be a significant risk to any project and should be thoroughly evaluated early in the project development process. Legal challenges have the potential to delay a project, impose mitigation requirements, or alter other fundamental aspects of a project. Such outcomes become more significant in a public-private partnership context because of their impact on project financing arrangements with multiple debt and equity parties. Legal challenges to P3 projects may include challenges based on public interest grounds, challenges to the procurement of the project and its compliance with the jurisdiction's P3 enabling statute, or challenges relating to the environmental impacts of the project.

A significant headwind to the deployment of P3s is the complexity of the transactions, in particular the financial and legal agreements. The unique and custom nature of these transactions—no two are exactly the same with respect to the facility to be constructed, the financing schemes or the allocated risks—makes it challenging for project sponsors to realize economies of scale that are achieved with projects using traditional delivery methods that have standardized the full spectrum of project activities.

Consideration must be given to seven broad categories of risk common to P3 projects:

- Design/development risk
- Construction risk
- Revenue risk
- Financial risk

- Unexpected event risk (including political/ regulatory risk)
- Performance risk
- Environmental risk

A well-drafted set of legal documents that details the allocation of these risks and other contractual obligations among the parties in a clear and precise fashion is critical for the success of a public-private partnership. A P3 agreement must govern a relationship that may last over a period of decades and must contemplate numerous variables and details, so the partnership agreement must have clear provisions that establish a framework for dealing with a full spectrum of risks and disputes in a cost-efficient and equitable manner.

On the private side, P3s are costly and time consuming endeavors that require careful project development and market positioning efforts. Developers must also contend with each state's unique P3 enabling acts and regulatory frameworks that govern public-private partnerships as well as other laws and regulations that apply to construction, labor, real estate, and corporate matters, just to name a few. Because of these considerations, the P3 delivery model becomes more viable if used for a pipeline of projects, or smaller projects bundled into a single P3 transaction, so that the impact of transaction costs is minimized to the extent practicable.

Last Updated: July 3 2015

Article by Anatoly M. Darov, P.E. and Matthew G. Feher

Burns & Levinson LLP

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

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## Taking on the Ratings Triopoly.

Jules Kroll sensed opportunity. In the wake of the 2008 financial collapse, the reputations of the Big Three credit-rating companies lay in tatters. Standard & Poor's, Moody's Investors Service, and Fitch Ratings had all blessed various mortgage-backed securities with their highest ratings, despite the often shaky subprime loans underlying the securities. Kroll, who made his mark as a financial crimes private investigator, with offices in more than 15 countries, reckoned he could come up with a better way.

"There was enormous disappointment in the country about the way the rating agencies had behaved," Kroll says. "They really let the country down."

This story appears in the July/August special Rivalry Issue of Bloomberg Markets magazine.

A man with a nose for ferreting out corruption, Kroll, 74, pocketed more than $100 million when he sold his corporate detective firm, Kroll Associates, to Marsh & McLennan for $1.9 billion in 2004. He'd hunted down billions of dollars of assets concealed by Saddam Hussein, Ferdinand Marcos, Jean-Claude Duvalier, and other dictators. With the ratings business, Kroll thought he recognized a lucrative Act 2. He launched Kroll Bond Rating Agency in 2010.

What he didn't bank on was the entrenched power of the Big Three and the unwillingness of investors, even burned investors, to embrace something new.

Bond raters accredited by the U.S. Securities and Exchange Commission bring in more than $5 billion a year. They had been doing business in more or less the same way since the early 1970s, charging corporations and municipalities billions of dollars a year to have their creditworthiness assessed.

Those companies and governments, in turn, held out the hope of receiving ratings as high as AAA. Payment to the rating companies on some subprime debt deals ran as high as $850,000.

Then came the housing-market collapse and the bond-rating scandal that soon followed. The Big Three came under intense criticism for their role as "key enablers," as a government commission would later report, of the financial meltdown.

Kroll teamed up with Jerome Fons, who had quit his job as managing director of credit policy at Moody's in August 2007, just as the financial system—and Moody's reputation—was teetering on the brink of collapse. A year later, Fons testified to a congressional hearing about what he thought was wrong with the ratings industry. "A large part of the blame can be placed on the inherent conflicts of interest found in the issuer-pays model," he said.

Fons, now Kroll's executive vice president, helped design a rating agency with a completely different model.

Rather than have the issuers pay for a rating, Kroll and Fons figured they could charge the bond buyers, since those folks should be willing to pay for information critical to making a wise investment. The strategy flopped even before it began. Investors made it clear they wouldn't pony up for a service they had long received for free. The service was never launched.

"We all wanted to avoid the conflicts that are inherent in the issuer-paid model," says Fons. "The economics just don't work. Investors don't want to pay." The issuer-paid model is still in place across the industry.

Kroll was only starting to find out what it would take to compete. In 2010, he joined the exclusive rating-agency club by purchasing a tiny company called Lace Financial and picking up its credential. The Big Three received theirs from the SEC back in 1975, when they were designated Nationally Recognized Statistical Rating Organizations. There are now a total of 10 NRSRO firms, including Kroll. The Big Three accounted for 94.5 percent of the industry's $5.4 billion in revenue in 2013, according to the SEC. Kroll now ranks No. 5, behind Toronto-based DBRS, in ratings issued.

The path forward is steep. Many institutions still require their money managers to recognize ratings from only the Big Three, despite their well-publicized failures. Earlier this year, S&P agreed to pay $125 million to the California Public Employees' Retirement System, or Calpers, the largest public pension fund in the U.S., after Calpers alleged the firm had improperly rated three packages of mortgage-backed securities that collapsed in 2007 and 2008. Calpers was one of those institutions whose rating guidelines recognized only the Big Three. It still is one.

"Rating-agency credit assessments are just one input into our investment process," says Calpers spokesman Joe DeAnda, who declined to address why Calpers doesn't recognize ratings by other firms.

After the investor-paid plan didn't pan out, Kroll and Fons figured they'd compete by offering more in-depth analysis, helping investors who do their own independent research. Jim Nadler, president of

Kroll Bond Rating, says investors are getting what they need, noting that 25 percent of Kroll's ratings have been issued for securities not rated by any other firm.

Still, it's just a toehold in an immensely lucrative business. Moody's, the only free-standing public company among the Big Three, had a pretax profit margin last year of 43.8 percent, higher than Google or Apple.

"The margins are extraordinary, unlike any industry I've ever been in before," says Kroll, who ran a family printing business before building his global corporate gumshoe practice. Kroll Bond Rating, as a privately held company, doesn't disclose its financial results.

In July 2011, Kroll issued its first rating, for a commercial mortgage-backed security. It was the right place to start. Later that month, Standard & Poor's CMBS business took a huge hit. Investors complained S&P's AAA rating on a portion of an offering was inflated. S&P stunned the CMBS market by abruptly pulling its ratings on a $1.5 billion offering by Goldman Sachs and Citigroup, saying it had discovered flaws in its methodology. Morgan Stanley issued a research note to clients blasting the world's largest rating company.

"The manner in which S&P took its action has severely eroded investor and issuer confidence in its ratings," Morgan Stanley said. S&P's CMBS rating business was thrown into a tailspin from which it hasn't recovered.

S&P's loss was Kroll's gain. In 2011, Standard & Poor's ranked third in the number of CMBS ratings, as compiled by Commercial Mortgage Alert, and Kroll ranked a distant sixth. By 2014, S&P had fallen to the fifth spot while Kroll had ascended to No. 2, rating 65 CMBS deals that raised $53.8 billion from investors last year. Moody's remained No. 1.

Kroll has continued to chip away, and not just in the niche area of CMBSs. One way it has made inroads is with rock-bottom pricing. In March 2012, Connecticut became the first state in the U.S. to hire Kroll to grade and provide analysis for its general obligation bonds. To win the state's business, Kroll offered a discount: an annual introductory rate for three years of just $50,000. That was 91 percent less than Moody's price of $542,525 for fiscal 2014.

Previously, Connecticut did business exclusively with the Big Three. State Treasurer Denise L. Nappier says Kroll was added as a fourth rating company "in the interest of fostering competition." Kroll is banking on other states and corporations following suit.

"It's not a bad business strategy to get people comfortable with your ratings," says Andra Ghent, a professor at Arizona State University who studies the rating business. "It's almost like a loss leader."

More business, of course, brings more scrutiny—no less so when you got your start decrying the model you're now using. On March 17, Kroll reeled in the city of Chicago as a client for its general obligation bonds, assigning a rating of A- and a stable outlook. Less than two months later, Moody's slashed Chicago's rating two notches to junk level (Ba1) after the Illinois Supreme Court rejected a plan to overhaul the state's pension system.

Fitch and Standard & Poor's cut their ratings within three days, and each member of the Big Three set the future outlook as negative. Only Kroll had left its rating untouched, at A- and stable, as of July 2.

Kroll declined to comment on its Chicago decision.

Are those higher ratings justified? "Kroll will say, 'We're better,'" says Lawrence White, a professor at New York University's Leonard N. Stern School of Business. "That may be so, or they may be giving in to make the issuer happy. We won't know until five years from now."

**Bloomberg**

by David Evans

July 6, 2015 — 9:01 PM PDT

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## Muni Yields Driven Lower by Greece as Puerto Rico Woes Ignored.

Who would have guessed that the turmoil in Greece would matter more to municipal-bond investors than Puerto Rico's flirtation with insolvency?

Yields on U.S. tax-exempt debt are the lowest since May, joining a broad fixed-income rally amid Greece's standoff with creditors even after Puerto Rico declared its $72 billion of debt unpayable.

Ten-year yields fell to 2.28 percent Wednesday, the least since May 13, data compiled by Bloomberg show. At the same time, outflows from municipal mutual funds swelled to $1.2 billion in the week through July 1, the most in 18 months, according to Lipper US Fund Flow data.

"It's a very interesting dynamic: you've seen successive weeks of outflows," and yet yields have dropped, said Jeff Lipton, head of municipal research in New York at Oppenheimer & Co. "We've seen a flight to quality, and a lot of that has to do with Greece."

Puerto Rico Governor Alejandro Garcia Padilla's abrupt announcement last week that he wants to restructure the junk-rated commonwealth's debt coincided with an escalating crisis in Greece. The euro-zone tension sent investors into safer assets, with 10-year U.S. Treasury yields plunging 0.15 percentage point on June 29, the most in three months. The highest-quality state and local debt also rallied.

About 40 percent of the fund outflows last week were from high-yield funds, which are the most likely to hold Puerto Rico's bonds. Commonwealth securities have plunged 7.2 percent since June 26, the last trading day before Garcia Padilla's announcement, S&P Dow Jones Indices data show.

The ratio of 10-year muni interest rates to those of Treasuries, a measure of relative value, is about 102 percent, up from 97 percent on June 26. A higher figure signals tax-free bonds have weakened relative to their federal counterparts.

**Bloomberg**

by Brian Chappatta

July 8, 2015 — 10:43 AM PDT

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## BAML Stays on Top of Underwriter Rankings; PFM Leads FAs.

Bank of America Merrill Lynch maintained its position atop the ranks of municipal underwriters in the first half, as rivals closed the gap in an increasingly competitive market.

**Quarterly League Tables**

According to data from Thomson Reuters, all of the top 11 firms underwrote more in the first half of this year than in the same period of 2014. The 11 firms earned a total of $214.44 billion in 6,816 versus $143.31 billion in 4,913 deals amid a surge in issuance as issuers took advantage of near-record low interest and refunded debt.

BAML finished the half with a par amount of $27.53 billion in 255 deals, good for 12.8% of the market. The bank's par amount rose from $19.42 billion and 182 deals increase, but its market share decreased from 13.6% in 2014.

Citi underwrote $25.60 billion in 273 deals, to garner a 11.9% market share, improving from $14.95 billion in 172 deals and 10.4% of the market in the first half of 2014. Citi moved up one spot from last year, claiming second place this year.

JPMorgan, which finished third with $24.77 billion in 242 deals for and 11.6% market share, after placing second in the first half of last year with $16.01 billion in 151 deals, for 11.2% of the market.

"Compared to the first half of last year, the market is up almost 50% in total volume. When you look at the first two quarters of 2015, they were pretty similar," said Jamison Feheley, managing director and head of public finance banking for JPMorgan. "Strong issuance volume in the first quarter continued into the second, largely driven by refundings."

Feheley also said that the firm has had no change in its business strategy, as it continued to focus on our clients and execute solutions that provide optimal results in the current market environment.

"We expect a solid pipeline of business to continue through the summer and through the third quarter," he said. "Visibility into the fourth quarter is more challenging and it remains to be seen what impact any potential rate increases by the Fed this year will have on refunding volume and overall new issuance."

Morgan Stanley ranked fourth with $18.03 billion in 251 issues and the same market share as a year earlier, 8.4%. Morgan Stanley did improve from $12.08 billion in volume and 141 deals in the same period of time last year.

RBC Capital Markets jumped from seventh place last year to fifth place, Its $13.13 billion in 421 issues or 6.1% of market share, compared with $8.09 billion in 272 issues or 5.7% of market a year ago.

"With a year-over-year rankings uptick of two notches, we are appreciative to our clients for their confidence in our banking expertise and capital markets execution," said Chris Hamel, managing director and head of the municipal finance group at RBC Capital Markets. "An increase in market share in a high volume year demonstrates that our plans for deepening RBC's involvement in the municipal sector are being realized."

The biggest move inside of the top 11 was Stifel Nicolaus and Co., which improved by three spots to No. 7, with $10.65 billion in 486 transactions or 5% of market share. Last year when Stifel finished tenth, it had $5.122 billion in 283 transactions or 3.6% of the market. Stifel again worked on the most deals.

**PFM Increases Market Share**

Public Financial Management Inc., increased its market share to 19.9% with a par amount of $35.21 billion in 542 transactions. That compares with 17.5% of market share in the first half of last year, with $20.86 billion in 367 issues.

"PFM has great clients and we work in close cooperation with them in preparing to access the debt markets when their funding needs require and when the markets provide good opportunities to refund or restructure prior obligations," said John Bonow, managing director and chief executive officer of the PFM Group. "We have many strategic locations around the country that help us serve our clients well with both local resources and sector specialists who are supported by a dedicated capital markets pricing group – this combination helps us understand each unique governmental and non-profit credit and their appropriate cost of capital for a given debt structure."

Bonow said the companies in the PFM Group have experts across all areas of governmental and non-profit finance, beyond debt advisory work, including budgeting and strategic forecasting, workforce, post-employment obligations, structured products, post-issuance compliance and investment management. This breadth of services provides the context required to offer appropriate advice in both cooperative and challenging economic environments, he said.

"As our clients' needs develop and markets evolve, we add the resources necessary to continue to be the trusted advisor with comprehensive services and subject matter expertise that our clients have come to expect," Bonow said.

Bonow expects that refunding volume will continue to be strong, even if the Fed takes rate action in the third quarter.

"We also think there is pent-up need to address deferred infrastructure renewal and replacement needs, and assuming economic conditions remain stable, new money bond volume should continue to increase," he said. "Moreover, the uncertainty at the federal level means that sectors such as transportation will continue to look for expanded and innovative local funding alternatives to tackle the substantial amount of capital funding needed for our nation to remain competitive and for local jurisdictions to pursue greater economic growth. Finally, underfunded pension and OPEB obligations will continue to get even more well-deserved attention, as the challenges of such funding responsibilities increasingly strain many governmental and non-profit budgets and impact credit ratings."

FirstSouthwest finished with $17.98 billion in 440 deals or 10.1% of the market, up from $12.53 billion in 321 deals last year.

"We have been building a national FA presence over the past 15 years starting to come into place," said Jack Addams, vice chairman and head of public finance for FirstSouthwest. "We have great bankers all across the county, good people and a good market, it all came together. The firm is proud of our policy, which is that the client comes first and we are there to do what the client needs to get done. The clients realize the quality of the service that they get with us. It's a team effort and it reflects the quality of the team we have here."

Public Resources Advisory Group finished a close third with $15.83 billion, up from the $12.14 billion in par amount from the same period last year. Piper Jaffray came in fourth place and RBC rounds out the top five. Piper moved up from seventh last year, while RBC leaped up from 13th place. The biggest mover on the list however was Kaufman Hall & Associates Inc., which went from 27th place last year to seventh place this year as they saw their par amount balloon to $3.73 billion from $974 million.

**Negotiated Underwriting**

JPMorgan claimed the top spot for underwriting negotiated deals, after finishing in third place in this category a year ago. The firm finished the first half of 2015 with a par amount in negotiated deals of $19.52 billion, up from the $10.08 billion during the same period of last year. Citi stayed in the number two spot with $19.37 billion, up from $10.40 billion the year prior. BAML dropped to the third spot with $17.46 billion, after finishing first this time last year with $12.11 billion. Morgan Stanley finished fourth with $12.89 billion and RBC came in fifth with $12.42 billion.

**Competitive Underwriting**

BAML finished the first half of 2015 as the top competitive underwriter, just as it did during the first half last year. The par amount in competitive deals rose to $10.07 billion from $7.32 billion. Citi and JP Morgan flip-flopped positions year over year, as Citi finished in second with $6.23 billion and JP Morgan third with $5.25 billion. Morgan Stanley remained in the fourth spot with $5.14 billion and Robert W Baird moved up one spot from last year, coming in fifth with $3.95 billion.

The biggest mover was Barclays, which rocketed to the ninth spot this year from the 26th spot in the first half of 2014. Barclays' par amount increased to $1.24 billion from $122 million.

**Top Issuers**

Three of the top six issuers so far this year hail from the Empire State, including two from the city that never sleeps. Topping the list is the New York State Dormitory Authority with a par amount of $4.67 billion in 24 issues. Last year at this time DASNY ranked fifth with $2.36 billion. The Regents of the University of California finished second with $3.35 billion, the New York City Transitional Finance Authority is third with $3.33 billion, the state of California is fourth with $3.04 billion, the Texas Transportation Commission is fifth with $2.39 billion and New York City is sixth with $2.32 billion.

THE BOND BUYER

BY AARON WEITZMAN

JUL 6, 2015 3:58pm ET

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## Bad Math and a Coming Public Pension Crisis.

When Jim Palermo was serving as a trustee of the village of La Grange, Ill., he noticed something peculiar about the local police officers and firefighters. They were not going to live as long as might be expected, at least according to pension tables.

After Mr. Palermo dug into the numbers, he found that the actuary — the person who advises pension plan trustees about how much money to set aside — was using a mortality table from 1971 that showed La Grange's roughly 100 police officers and firefighters were expected to die, on average, before reaching 75, compared with 79 under a more recent table.

The four years are significant beyond any interest in macabre statistics. When actuaries calculate the numbers for a pension plan, mortality rates are a powerful hidden factor. If an actuary predicts the workers will live to an old age, it means they will be drawing their pensions for more years. That, in turn, means the employer should set aside more money up front, to keep from running out later.

Assuming shorter life spans reduces annual contributions and frees up money for other things, like bigger current paychecks. And if the plan bases pensions on pay, as those in most American cities do, shortening the workers' life spans on paper could lead to both fatter paychecks now and bigger pensions in the future. In La Grange's case, those four years meant tens or hundreds of thousands of dollars to each retiree.

But if more workers are retiring and not dying on schedule, it can be a recipe for financial disaster.

The recommendations made by pension actuaries, like which mortality table to use, are largely hidden from public view, but each decision ripples across decades and can have an outsize effect. More and more actuaries are now worried that their profession will be blamed for its role in steering states and cities into what is looking like a trillion-dollar quagmire.

On Thursday, a panel of senior actuaries will consider whether to update, or elaborate on, the existing actuarial standards for public pensions. The dueling mortality tables will be among the evidence, and Mr. Palermo is among the parties who have submitted written testimony.

It is only the second time in recent memory that the Actuarial Standards Board has held a public hearing, an indication of the gravity of the nation's pension woes. State and local governments have promised several trillion dollars' worth of benefits to retirees — the exact amount is in dispute. Now, with large numbers of public workers retiring, the money set aside is turning out to be at least a trillion dollars short.

Retirees are counting on the money promised to them. Taxpayers are in no mood to bail out troubled pension funds. Some are looking for scapegoats.

"Actuaries make a juicy target," said Mary Pat Campbell, an actuary who responded to the board's call for comments.

She expressed concern that elected officials were using actuaries to lend respectability to "questionable behavior" like funding pensions with borrowed money, picking risky investments and "enacting benefit improvements based on lowballed costs."

Other commentators have focused on the opacity of actuaries' calculations and reports to the boards of trustees that govern public pension plans.

Trustees need clear and honest projections and do not receive them, a former pension trustee from Kentucky, Christopher Tobe, wrote.

He recalled seeing an assumption for future investment returns jump to 7.75 percent from 4.5 percent, with no explanation. The change lowered the state's pension obligations by more than a billion dollars, which in turn meant smaller contributions.

Another commentator, Mark Glennon, told the board that actuaries were churning out reports that no one but other actuaries could understand, providing cover for elected officials who were letting problems spin out of control.

"Chicago represents the most glaring example," wrote Mr. Glennon, the founder of an online news service, WirePoints, which covers the fiscal morass in Illinois. "An actuary could have looked only briefly at some of its pension reports from years ago and seen the calamity to come. Reporters, political leadership and most pension trustees could not. Those who could understand were able to remain silent."

In La Grange, Mr. Palermo, who was elected in 2007, thought the pension funds were being shortchanged. More and more police officers and firefighters were retiring, and they were not dying according to the mortality table used by the actuary. Between them, the two pension funds had less than half the money they should. If this continued, he said, the money would eventually run short, and people would get hurt.

And not just in La Grange. The actuary, Timothy W. Sharpe, had the biggest market share of police and fire pension business in Illinois.

"I think it's a moral hazard," Mr. Palermo said.

Mr. Palermo, who works in financial services, determined Mr. Sharpe was using a table from 1971, which tracked a group of people born from 1914 to 1918, who retired from 1964 to 1968. It is seldom used these days. A table from 2000 is considered more accurate, and in 2014 the Society of Actuaries issued an even newer one.

Mr. Palermo researched mortality rates in the American work force and found no evidence that police and firefighters die younger than other public workers. Finally, he sent a confidential complaint to the Actuarial Board for Counseling and Discipline, which deals with actuaries who stray from the profession's standards of practice.

A few months later, his complaint was written up in a village manager's report and distributed at a public meeting. Mr. Palermo had accused Mr. Sharpe of making statements that were "frequently erroneous and incomplete," it said. He had accused Mr. Sharpe of misleading the village board and persuading it to incorporate the wrong mortality assumptions into the local tax levy.

The news media pounced.

The village manager's report strongly suggested that Mr. Palermo was a troublemaker with few allies in the local government. It said he had acted on his own and that most of the village board was on Mr. Sharpe's side.

It also said that Mr. Sharpe had refused to supply any numbers until the complaint was resolved, so the village had no numbers on which to base the coming year's tax levy. It was about to miss a state deadline.

Mr. Sharpe sent a letter to The Doings, La Grange's newspaper, saying that he had the unanimous support of the police and fire trustees. "I will not be intimidated," he wrote.

In a phone interview, Mr. Sharpe said that he had been instructed to use the 1971 mortality table by the Illinois Insurance Department. Even though it was old, he said, he considered it more realistic because it projected death rates out to age 110. The table from 2000 uses a different population sample and projects death rates out to age 120.

If La Grange projected life spans the way Mr. Palermo wanted, he added, it would "be collecting taxes to pay for pensions to people assumed to live to age 120," a needless expense.

Mr. Sharpe said those additional 10 years were particularly troubling.

"In Illinois, our pensions start very early, at age 50 for police and fire," he said. "There's a 3 percent compounded cost-of-living increase that goes on for life. So the pensions at the later ages of life —

I'm talking about after 100, for instance — get very, very large. The person who gets a $50,000 pension at age 50 would get a $250,000 pension by age 100."

He provided data on public workers' death rates from the Illinois Insurance Department, which showed that no one in the state ever lived that long. That is why he said the more recent mortality table could lead to needless tax increases.

In a separate interview, Mr. Palermo said he could not discuss his complaint, which has been resolved, but said that by focusing on the oldest years of the mortality tables, Mr. Sharpe was diverting attention from the much more relevant middle years, where the probability of death was much greater in the 1971 table. For 50-year-olds, for example, the risk of death was seen as more than double in 1971 than what is expected in the later table.

Neither man disclosed how the complaint was resolved. But their battle appears to have no clear-cut victor. Mr. Sharpe, who now uses the newer mortality table, no longer consults for La Grange's police and fire pension trustees. Mr. Palermo did not seek re-election and stepped down in May.

As for the pension system, Mr. Sharpe's successor changed the mortality projections, and La Grange's required minimum pension contribution increased by 20 percent. More increases are coming, but the city has tax caps and cannot catch up quickly without cutting other services.

Mr. Palermo fears it's too late. "It's probably beyond repair," he said. "We're at the point where we're just managing the decline.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JULY 8, 2015

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- Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements.
- MSRB Extends 529 Plan Disclosure Date as Groups Push for More Clarification.
- GASB Issues Proposed Guidance on External Investment Pools and Component Units.
- GASB Simplifies GAAP Hierarchy for State and Local Governments.
- GASB Publishes New Standards for Reporting Health Insurance and Other Retiree Benefits.
- IRS Request for Comments: Voluntary Closing Agreement Program for Tax-Exempt Bonds.
- NABL Teleconference: "New Proposed Issue Price Regulations: A First Look"
- *Savage v. State* – Supreme Court of Georgia upholds validity of intergovernmental agreement between county and development authority, under which authority agreed to issue bonds for construction of professional baseball stadium and county agreed to pay principal and interest on the bonds.
- *Town of Fortville v. Certain Fortville Annexation Territory Landowners* – Court of Appeals holds that a municipality need not demonstrate immediate plans to build on annexed land in order to show that it needs, and can use, the land for its development in the reasonably near future.
- And finally, You Can Take My Stapler When You Pry It From My Cold Dead Fingers is brought to you this week by *Jones v. Boone*, in which a city attorney went to war with his Town Council – ultimately taking the case to the Georgia Supreme Court – to prevent the premature termination of his career. He was, presumably, concerned that a mere 35 years at his previous position might

indicate to future employers that he posed a flight risk.

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**MUNICIPAL ORDINANCE - ARIZONA**

## City of Scottsdale v. State

**Court of Appeals of Arizona, Division 1 - June 30, 2015 - P.3d - 2015 WL 3982743**

The superior court ruled that a state statute preempted a City of Scottsdale ordinance imposing sanctions for sign walkers who conducted business on public thoroughfares, including sidewalks. City appealed.

The Court of Appeals affirmed, holding that the state statute regulated a matter of statewide interest and preempted the municipal ordinance notwithstanding the City's right — as a charter city under Article 13, Section 2, of the Arizona Constitution — to regulate matters of local concern.

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**ANNEXATION - INDIANA**

## Town of Fortville v. Certain Fortville Annexation Territory Landowners

**Court of Appeals of Indiana - July 2, 2015 - N.E.3d - 2015 WL 4040822**

On March 28, 2013, the Town of Fortville adopted Resolution 2013–3A, which proposed to annex 5,944 acres of land adjacent to Fortville. On July 14, 2014, following notice and a public hearing on the matter, Fortville adopted Ordinance 2013–3A, which proposed to annex a reduced area of 644 acres of land (the Annexation). The Annexation was surrounded on three sides by Fortville's boundaries. In addition, Fortville adopted a fiscal plan and policy for the Annexation.

On October 11, 2013, the Remonstrators — who consisted of ninety-three percent of the owners of the parcels in the Annexation — filed their petition remonstrating against the proposed annexation. On October 30, 2013, Fortville filed an answer and affirmative defenses to the petition remonstrating against the proposed annexation.

The trial court denied the annexation, ruling in favor of the Remonstrators, and the Town appealed.

On appeal, Fortville argued that the trial court erred when it failed to apply substantial deference to Fortville's adoption of an annexation ordinance — a legislative function delegated to the Fortville Town Council by the Indiana General Assembly. Fortville also contended that the trial court erred when it found that Fortville had not presented evidence that the area to be annexed was needed and could be used for Fortville's development in the near future.

The Court of Appeals reversed, finding that the trial court erred by applying the wrong evidentiary standard when analyzing Fortville's need to annex the area and plans for the areas development. The Court concluded that a municipality need not demonstrate immediate plans to build on the annexed land in order to show that it needs and can use the land for its development in the reasonably near future.

"To allow the trial court's order to stand would be to hold that a city — if it does not have impending plans to build on land that it seeks to annex — must sit and watch the land be used and developed in ways that might harm or impede its future plans for urban management of the land, until the "long-term inevitability" of annexation takes place. This result would be bad policy and likely harm both the area to be annexed and the municipality that seeks to annex it. Thus, we determine that the trial court should not have limited its analysis to evidence of physical construction or development in determining whether Fortville fulfilled the requirements of Indiana Code section 36–4–3–13(c)(2).”

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**BONDS - GEORGIA**

## [Savage v. State]()

**Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937118**

Development authority sought validation of revenue bonds to be used to construct professional baseball stadium. Objecting county residents were permitted to intervene. Following revenue bond validation hearing, the Superior Court confirmed and validated bonds. Residents appealed.

The Supreme Court of Georgia held that:

- Intergovernmental agreement did not violate Intergovernmental Contracts Clause of state constitution;
- Authority’s issuance of bonds did not violate Debt Limitation Clause of state constitution;
- County’s promise to pay for bonds was not regulated by Debt Limitation Clause;
- Intergovernmental agreement did not violate Gratuities Clause of state constitution;
- Intergovernmental agreement did not violate Lending Clause of state constitution;
- Notices of validation hearing were sufficient; and
- Trial court acted within its discretion in refusing to admit evidence regarding negotiations.

Intergovernmental agreement between county and development authority, under which authority agreed to issue bonds for construction of professional baseball stadium and county agreed to pay principal and interest on bonds, did not violate Intergovernmental Contracts Clause of state constitution. Contract was between political subdivisions, its term did not exceed period of 50 years, contract was for provision of services by county and authority, including that authority agreed to issue bonds and county agreed to oversee design and construction of stadium, contract dealt with activities that county and authority were authorized by law to undertake, and stadium project was for public benefit, even though it also conferred private benefits on professional baseball organization.

Issuance of revenue bonds by development authority for construction of professional baseball stadium did not violate Debt Limitation Clause of state constitution, requiring that debt incurred by a political subdivision never exceed 10% of the assessed value of all taxable property, where, in accordance with revenue bond laws, the bond financing documents provided that stadium project bonds were limited obligations and were payable only from the pledged security, that, if authority defaulted on bonds, bond holders’ only recourse was to step into the shoes of authority as to stadium project, and that only project property and revenues from intergovernmental agreement with county and professional baseball organization’s licensing fees were pledged as security for the bonds.

County’s promise to pay for revenue bonds issued by development authority for project to construct professional baseball stadium was not debt regulated by Debt Limitation Clause of state constitution, requiring that debt incurred by a political subdivision never exceed 10% of the assessed value of all taxable property and that vote be held before county acquired new debt, as county was incurring debt under constitutionally valid intergovernmental contract between county and development authority.

Intergovernmental agreement between county and development authority, under which the authority agreed to issue bonds for professional baseball stadium construction project and city agreed to pay amount sufficient to cover principal and interest on bonds in addition to other costs incurred by authority, did not violate Gratuities Clause of the state constitution, where services that authority would provide constituted contractual consideration to the county.

Intergovernmental agreement between county and development authority, under which authority agreed to issue revenue bonds for professional baseball stadium construction project and city agreed to pay amount sufficient to cover principal and interest on bonds and other costs incurred by authority, did not violate Lending Clause of state constitution prohibiting lending to any nonpublic corporation or association, since county was not paying, with appropriated funds or credit, for anything to be owned by professional baseball organization, but rather the stadium and site would be owned by the authority, with the professional baseball organization paying license fees to authority for at least 30 years, at the end of which the bonds that county was helping to pay would be fully redeemed.

Development authority was authorized to issue revenue bonds for construction of professional baseball stadium under constitutional provision allowing for issuance of bonds as provided for by general law and statutes governing revenue bonds, where revenue bond law authorized authority to issue revenue bonds to finance construction of any undertaking, including stadiums.

Proposed revenue bonds to finance construction of professional baseball stadium met statutory and constitutional requirement that they be funded solely from revenues derived from the project. License fees paid by professional baseball organization to use stadium would cover part of bond payments, remainder would come from payments made by county under intergovernmental agreement with development authority, and although county promised to levy ad valorem taxes if necessary to satisfy its commitments under the intergovernmental agreement, county's liability was under contract, not bond, and county could pledge its full faith and credit to meet such contractual obligations.

Notices of validation hearing for proposed revenue bonds for construction of professional baseball stadium were sufficient under statute governing such notices; notices were published in local newspaper the proceeding two weeks, shortly after first notice was published, and although second notice contained change in presiding judge and courtroom, any potential confusion about location of hearing caused by change in presiding judge was sufficiently addressed by signs mounted throughout courthouse complex, including on original judge's courtroom door, directing people to the correct courtroom, and objecting county residents had made it to the right courtroom at the right time.

Failure of development authority, which sought validation of revenue bonds to finance construction of professional baseball stadium, to oppose issuance of bonds under statute assigning role of showing why bonds should not be validated to same entity that proposed to issue them, did not render validation proceedings improper. Although statutory scheme was unusual, more significant and realistic protection against improper validation was provided by statutory right of objecting residents to intervene and then appeal validation decision, authority asserted it did not present any reasons why bonds should not be issued because it did not have any good reasons, and objecting resident made no colorable claim that that decision was result of improper professional conduct by government's attorneys.

Trial court, in validation proceedings regarding proposed revenue bonds for construction of professional baseball stadium, acted within its discretion in refusing to admit documents and testimony offered by objecting residents regarding negotiations between professional baseball organization, the county, and the development authority, where objecting residents failed to show how negotiations would be relevant to whether proposal to issue bonds was sound, feasible, and reasonable, given that unambiguous financing documents that parties entered into were controlling, not the discussions that led up to them.

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**ZONING - GEORGIA**

## Elbert County v. Sweet City Landfill, LLC

**Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937396**

Company, after applying to county for a special use permit to construct a solid waste facility, brought action against county seeking declaratory and injunctive relief, including a ruling that county's solid waste ordinance was unconstitutional under dormant commerce clause and allowing company to proceed to build facility. The Superior Court granted company's motion for summary judgment and issued declaratory judgment to the effect that the ordinance was unconstitutional and that company had a vested right to develop the property. County filed application for discretionary appeal.

The Supreme Court of Georgia held that:

- County's decision that did not relate to the special use permit application did not trigger 30-day limitations period for appeal;
- Futility exception to exhaustion of administrative remedies requirement did not apply; and
- The Superior Court was required to apply balancing test to address constitutionality of ordinance.

Decision of county board of commissioners to terminate a tolling agreement and to not enter into a host agreement with company, which was seeking a special use permit to construct solid waste facility, was not a final decision that could trigger 30-day limitations period for company's appeal of county's land use decision to superior court. No proposed host agreement had been prepared, board was addressing a framework for how a host agreement would later be prepared with general statements as to what it might contain, and the framework did not refer to a special use permit.

Futility exception to exhaustion of administrative remedies requirement did not apply to company's pursuit of a special use permit to construct a solid waste facility and company's claim to a vested right in a letter of zoning and development compliance, after county board of commissioners decided to terminate a tolling agreement and to not enter into a host agreement with company. Even though company claimed board's decision on special use permit application could have been predicted, board did not render a decision on company's special use permit, company was still required to seek the appropriate relief from county before appeal, and courts could not address whether company's vested rights had been violated until board denied it the alleged rights.

Trial court was required to apply balancing test to company's dormant-commerce-clause challenge of county's facially neutral ordinance containing criteria for placement of solid waste facilities, which no location within county could meet, despite contention that county's true intent behind ordinance was to ban all municipal solid waste facilities in county, making balancing test unnecessary. The effect of ordinance on interstate commerce if all other counties in state enacted similar ordinances was speculative, and applying the balancing test allowed for evaluation of the degree of burden depending on the nature of the local interest involved and on whether it could have been promoted with a lesser impact on state activities.

**EMPLOYMENT - GEORGIA**

## Jones v. Boone

**Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937411**

Former city attorney petitioned for writ of quo warranto challenging the validity of his termination and interim city attorney's appointment. The trial court granted a writ of quo warranto, and interim city attorney appealed.

The Supreme Court of Georgia held that:

- Former city attorney had standing to seek writ of quo warranto;
- Order granting former city attorney leave to file a petition for quo warranto to challenge city council's termination of his services as city attorney, and their appointment of an interim city attorney, was not improper on the basis it was signed by the clerk of court, or that a different judge presided over the hearing to determine whether or not the petition should be granted;
- The sole authority to appoint a city attorney remained in the city council, and mayor's appointment of an interim city attorney was invalid; and
- Trial court was not required to conduct a jury trial in quo warranto proceeding.

City mayor was without authority to treat abstention by city council member as a negative vote, and thus, because there was no tie vote on the motion to delegate to mayor the power to appoint a city attorney, mayor was not authorized to cast a vote in its favor, the sole authority to appoint a city attorney remained in the city council, and mayor's appointment of an interim city attorney was invalid. City charter, which set forth the sole power conferred by the city upon the mayor with regard to her right to vote on council matters, was silent as to how to treat an abstention, and therefore, council member's abstention from voting on the motion was in fact, no vote at all.

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**IMMUNITY - IOWA**

## Sanon v. City of Pella

**Supreme Court of Iowa - June 26, 2015 - N.W.2d - 2015 WL 3930087**

Parents brought action against city following drowning of children in municipal swimming pool, alleging negligence, conduct constituting a criminal offense, and premises liability. The District Court granted partial summary judgment to city. Parents appealed, and city cross-appealed.

The Supreme Court of Iowa held that:

- Fact issue as to whether city violated administrative rule promulgated by Department of Public Health governing municipal swimming pools, so as to amount to crime for which city would not be immune from liability, precluded summary judgment;
- Fact issue as to whether acts and omissions of city employee or officer constituted involuntary manslaughter, so as to amount to crime for which city would not be immune from liability, precluded summary judgment; and
- To avoid city's immunity defense with respect to claim of conduct by a city employee or officer constituting a criminal offense, parents were required to prove only by preponderance of the evidence, rather than beyond a reasonable doubt, that city employee or officer committed criminal act causing injury.

**ZONING - LOUISIANA**

## Davenport v. City of Alexandria

**Supreme Court of Louisiana - June 30, 2015 - So.3d - 2015 WL 3994850 - 2015-0454 (La. 6/30/15)**

City sought mandatory injunction requiring removal of property owners' carport, which had been constructed in violation of city code of ordinances. The District Court granted injunction but allowed owners 84 days to comply with city code requirements. The Court of Appeal affirmed. Owners filed petition for writ of certiorari.

The Supreme Court of Louisiana held that judgment allowing property owners time to remedy city code violations that occurred when they rebuilt their carport was entitled to suspensive effect after owners perfected suspensive appeal from judgment. Time allowed for compliance was provided in judgment as an alternative to full demolition.

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**INVERSE CONDEMNATION - NEVADA**

## State v. Eighth Jud. Dist. Ct.

**Supreme Court of Nevada - June 25, 2015 - P.3d - 2015 WL 3915819 - 131 Nev. Adv. Op. 41**

Department of Transportation (DOT) filed petition for writ of mandamus or prohibition challenging district court's grant of partial summary judgment to property owner in inverse condemnation proceeding.

The Supreme Court of Nevada held that:

- Supreme Court would consider DOT's petition for writ of mandamus;
- City's amendment to its general master plan to allow for certain road widening did not constitute a regulatory taking of property;
- DOT did not take property within meaning of Fifth Amendment takings clause; and
- DOT did not take property within meaning of state takings clause.

Supreme Court would consider Department of Transportation's petition for writ of mandamus challenging district court's partial summary judgment for property owner in inverse condemnation action, where petition raised an important issue regarding state takings law, petition presented an important question of policy about an agency's ability to engage in efficient, long-term planning dependent on federal funding, and given highway project's magnitude as a 20 to 25 year, six-phase freeway improvement project requiring multiple acquisitions of private property and inevitability of other similar long-term projects in the future, addressing issues raised in petition would serve judicial economy.

City's amendment to its general master plan to allow for certain road widening did not constitute a regulatory taking of property; road-widening amendment had no demonstrated nexus to the property at issue so any impact on the property would be negligible, and given need to widen specific streets to ensure adequate access to private property and construction areas during a freeway project, character of government action was more akin to adjusting benefits and burdens of economic life to promote the common good than to a physical invasion.

Department of Transportation (DOT) did not take property within meaning of Fifth Amendment takings clause; environmental assessment only indicated that the owner's property would likely be needed 18 years in the future, loss of tenants was theoretically influenced by owner's highlighting DOT's anticipated need of property, and owner provided no evidence of fair market values or rental charges for similarly situated properties with which to determine any real decrease in fair market value or economic use of the property.

Department of Transportation (DOT) did not take property within meaning of state takings clause when it prepared an environmental assessment which indicated that it might need the property 18 years in the future as part of a 20 to 25 year freeway improvement project.

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**MUNICIPAL ORDINANCE - NEW YORK**

## Eric M. Berman, P.C. v. City of New York

**Court of Appeals of New York - June 30, 2015 - N.E.3d - 2015 WL 3948182 - 2015 N.Y. Slip Op. 05594**

Law firms involved in debt collection brought action in federal district court against city, city council, and others, alleging that amendments to city debt collection ordinance were contrary to New York state law, violated the Commerce and Contract Clauses of the United States Constitution, and rendered the ordinance unconstitutionally vague. On the parties' cross-motions for summary judgment District Court granted plaintiffs' motion in part, ruling that ordinance was invalid to the extent it purported to regulate the conduct of attorneys. Defendants appealed. The Court of Appeals certified questions of whether amended ordinance was preempted by state's statutory authority to regulate the conduct of attorneys and, if not, whether it violated city charter.

The Court of Appeals of New York held that the ordinance pertaining to debt-collection activities, insofar as it regulated attorney conduct, did not constitute an unlawful encroachment on the state's authority to regulate attorneys, nor was there a conflict between the ordinance and the state's authority to regulate attorneys, such that ordinance was not preempted.

Ordinance, by its terms, governed conduct of debt-collection agencies and did not purport to regulate attorneys as such even though attorneys who were acting in debt-collecting capacity might fall within its penumbra, ordinance expressly did not pertain to attorneys engaged in practice of law on behalf of particular client, no express conflict existed between courts' broad authority to regulate attorneys under Judiciary Law and licensing of individuals as attorneys engaged in debt-collection activity, and courts' authority to regulate attorney conduct did not evince intent to preempt field of regulating nonlegal services rendered by attorneys.

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**ANNEXATION - TEXAS**

## JNC Land Company, Inc. v. City of El Paso

**Court of Appeals of Texas, El Paso - June 26, 2015 - S.W.3d - 2015 WL 3952680**

On December 9, 1999, the City of El Paso and JNC Land Company entered into an agreement to annex property to El Paso (the Annexation Agreement). Under the Annexation Agreement, JNC agreed to develop the property in accordance with the rules and regulations of the City of El Paso. The Annexation Agreement required JNC to apply for and secure approval of a subdivision in accordance with the procedures of the El Paso Municipal Code prior to issuing any building permits or certificates of occupancy. Further, JNC agreed to dedicate and improve as part of any subdivision applications covering the property the necessary right-of-way for extensions of any arterial streets shown within the City's official "Major Thoroughfare Plan."

JNC alleged that it subsequently improved the property and made street improvements on arterial streets. This included the construction of two streets designated on the City's official Major Thoroughfare Plan in excess of the width determined by the Traffic Impact Study. JNC incurred costs of more than $300,000 to construct these two streets and it sought reimbursement for the excess-width paving, but the City refused to pay.

JNC filed suit against the City for breach of contract. The City filed a plea to the jurisdiction asserting its immunity had not been waived. The City argued that the Annexation Agreement is not a contract for which immunity is waived by Section 271.152 because it is not an agreement to provide goods or services to the City. The trial court granted the plea and dismissed the suit. JNC appealed.

The Court of Appeals reversed, finding that the services provided by JNC under the Annexation Agreement provided a direct and unattenuated benefit to the City and thus the City's immunity was waived.

"The City is correct that JNC's development of the property was voluntary and it could not demand that JNC develop the subdivision, but once JNC proceeded with that development, the City had a right under the Annexation Agreement and the pertinent municipal ordinances to compel JNC to develop the property in accordance with the rules and regulations of the City. Consequently, the instant case is distinguishable from Church & Akin. The Annexation Agreement and the pertinent municipal ordinances required JNC to (1) improve certain right-of-way extensions and dedicate them to the City; (2) dedicate and improve neighborhood and public community parkland; and (3) set aside real property for future acquisition by the City. These services provide a direct and unattenuated benefit to the City."

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**TAX - TEXAS**

## AETC II Privatized Housing, LLC v. Tom Green County Appraisal District

**Court of Appeals of Texas, Austin - June 24, 2015 - Not Reported in S.W.3d - 2015 WL 3918619**

AETC II Privatized Housing, LLC (AETC) provides multi-family housing for United States Military personnel and their families under the Military Housing Privatization Initiative (MHPI), which is aimed at attracting private capital and expertise to build much needed military family housing in a quick and cost effective manner. AETC is a public-private venture in which the U.S. owns 49% as an investor member.

In 2007, the parties entered into a ground lease whereby, for a nominal amount, the Air Force leased to AETC for fifty years a tract of land adjacent to Goodfellow Air Force Base located in Tom Green County, Texas (Tract G). The U.S. acquired Tract G by warranty deed from the city of San Angelo, and jurisdiction over the tract has not been ceded to the U.S. by the state. The Air Force conveyed title to the improvements on Tract G to AETC by quitclaim deed. The agreements called for AETC to renovate existing housing units, construct additional units, and operate and manage the units as rental property for Goodfellow personnel and their families. Beginning in 2010, the Tom Green County Appraisal District issued an appraised value for the improvements on Tract G. AETC filed a protest with the Tom Green County Appraisal Review Board challenging the valuation and seeking an exemption for the improvements as property owned by the U.S. The Review Board and the district court upheld the appraisals. AETC appealed.

The District Court noted that the issue of whether the improvements on Tract G are taxable depends on whether they are privately or publicly owned.

The Appraisal District asserted that the U.S.'s participation in AETC did not convey government ownership because under the law applicable to limited liability companies, members have no ownership in property owned by the LLC. AETC did not produce summary judgment evidence to raise a fact issue as to governmental ownership. Therefore, the District Court concluded that the trial court did not err in granting the Appraisal District's motion for summary judgment.

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## NABL Teleconference: "New Proposed Issue Price Regulations: A First Look"

Don't miss the latest free NABL teleconference, "New Proposed Issue Price Regulations: A First Look" on July 14 at 1 p.m. ET, covering the newly released proposed issue price regulations. This will be an excellent preview for the Tax Hot Topics panel session at the Bond Attorneys' Workshop this September.

During the call, the panelists will:

- Compare current law and the newly proposed regulations,
- Discuss issues raised by the newly proposed regulations, including back-up information that may be needed from underwriters and due diligence required by issuers and bond counsel, and
- Weigh the pros and cons of opting in to the proposed regulations now.

**Moderator:**

Kimberly Betterton, Ballard Spahr LLP

**Panelists:**

Perry Israel, Law Office of Perry Israel

Richard Chirls, Orrick, Herrington & Sutcliffe LLP

Aurthur Miller, Goldman, Sachs & Co

**Registration:**

Free, NABL regular members only. CLE is not available.

**Questions?**

Registrants can email questions in advance of the call to bdaly@nabl.org. The panelists will review the questions and attempt to address them throughout the call.

**Registration will close at 5:00 pm ET, Friday, July 10.**

Registrants will receive teleconference materials and dial-in instructions via email on Monday, July 13.

Register online or download the registration form.

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## GASB Issues Proposed Guidance on External Investment Pools and Component Units.

**Norwalk, CT, June 30, 2015** — The Governmental Accounting Standards Board (GASB) today issued two Exposure Drafts proposing accounting and financial reporting guidance related to external investment pools and how certain component units should be presented in a governmental reporting entity's financial statements.

The Exposure Draft, *Accounting and Financial Reporting for Certain External Investment Pools*, would permit qualifying external investment pools to measure pool investments at amortized cost for financial reporting purposes. Reporting under the amortized cost basis reflects investment cost and adjustments made for premiums or discounts associated with the purchase price of the underlying investments in the pool.

The Exposure Draft, *Blending Requirements for Certain Component Units*, would enhance existing guidance regarding the presentation of the financial reporting entity in governmental financial statements. The proposed Statement would establish an additional blending criterion for financial statement presentation of component units of state and local governments.

"These two proposals come in response to requests by stakeholders to resolve important practice issues," said GASB Chairman David Vaudt. "The Exposure Draft on external investment pools should help avoid confusion ahead of forthcoming regulatory rule changes. The Exposure Draft on blending requirements will clarify reporting entity presentation of certain component units incorporated as not-for-profit corporations."

***External Investment Pools***

For governments, external investment pools function much like money market mutual funds do in the private sector. Government investment funds pool the resources of participating governments and invest in various securities permitted under state law. By pooling their cash together, governments can benefit in a variety of ways, including from economies of scale and professional fund management.

Existing standards provide that external investment pools may measure their investments at amortized cost for financial reporting purposes if they follow substantially all of the provisions of the U.S. Securities and Exchange Commission's Rule 2a7 for money market funds. Likewise, participants in those pools are able to report their position in the pool at amortized cost per share.

The proposal would replace the reference in GASB literature to Rule 2a7 with the GASB's own set of criteria. This is being done in response to major changes to Rule 2a7 that take effect in 2016. Under the rule changes, many government pools would expect to no longer qualify for amortized cost reporting. This would represent a significant change from current practice for both the pools and their participants.

The proposed Statement also would establish additional note disclosure requirements for external investment pools that measure all of their investments at amortized cost for financial reporting purposes and for governments that participate in those pools. These disclosures would include information about limitations or restrictions on participant withdrawals.

***Blending Requirements***

This Exposure Draft addresses diversity in practice regarding the presentation of not-for-profit corporations in which the primary government is the sole corporate member. The GASB has proposed treating these component units as if they were activities of a primary government through a financial presentation method referred to as blending. The Board believes the proposed approach would enhance consistency of application among governments reporting these types of component units—which would result in increased comparability across governments.

The Exposure Drafts are available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments on the Exposure Draft, Accounting and Financial Reporting for Certain External Investment Pools, by August 31, 2015. Stakeholders are encouraged to review and provide comments on the Exposure Draft, Blending Requirements for Certain Component Units, by October 2, 2015.

**About the Governmental Accounting Standards Board**

Established in 1984, the GASB is the independent, private-sector organization based in Norwalk, Connecticut, that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). These standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs (AICPA). The GASB develops and issues accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the GASB. For more information, visit www.gasb.org.

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## GASB Simplifies GAAP Hierarchy for State and Local Governments.

**Norwalk, CT, June 29, 2015** — The Governmental Accounting Standards Board (GASB) today issued a final Statement that simplifies the structure of the hierarchy of Generally Accepted Accounting Principles (GAAP)—or "GAAP hierarchy." The GAAP hierarchy identifies the sources of guidance that state and local governments follow when preparing financial statements in conformity with GAAP and lists the order of priority for pronouncements to which a government should look for guidance.

GASB Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*, reduces the GAAP hierarchy to two categories of authoritative GAAP from the four categories under GASB Statement No. 55, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments.* The first category of authoritative GAAP consists of GASB Statements of Governmental Accounting Standards. The second category comprises GASB Technical Bulletins and Implementation Guides, as well as guidance from the American Institute of Certified Public Accountants that is cleared by the GASB.

The Statement also addresses the use of authoritative and nonauthoritative literature in the event that the accounting treatment for a transaction or other event is not specified within a source of authoritative GAAP.

These changes are intended to improve financial reporting for governments by establishing a framework for the evaluation of accounting guidance that will result in governments applying that guidance with less variation. That will improve the usefulness of financial statement information for making decisions and assessing accountability and enhance the comparability of financial statement information among governments. The Statement also improves implementation guidance by elevating its authoritative status to a level that requires it be exposed for a period of broad public comment prior to issuance, as is done for other GASB pronouncements.

"Applying accounting standards can sometimes be complex, but identifying the right standards to apply should be straightforward," said GASB Chairman David A. Vaudt. "Statement 76 goes a long way toward making that a reality."

In connection with Statement 76, the GASB also recently cleared Implementation Guide No. 2015-1, which incorporates changes resulting from feedback received during the public exposure of all of implementation guidance previously issued.

The requirements of the new pronouncements are effective for reporting periods beginning after June 15, 2015.

Statement 76 is available and the new Implementation Guide soon will be available free of charge on the GASB website. Printed copies of the Statement will be available for purchase in the coming weeks.

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## GASB Publishes New Standards for Reporting Health Insurance and Other Retiree Benefits.

**Norwalk, CT, June 29, 2015** — The Governmental Accounting Standards Board (GASB) today published two Statements that intend to improve the accounting and financial reporting by state and local governments for postemployment benefits other than pensions (OPEB), primarily retiree health insurance. The GASB also issued a third Statement establishing accounting and financial reporting requirements for pensions and pension plans that were outside the scope of the pension standards the GASB released in 2012.

To help familiarize stakeholders with the Statements, the GASB is offering the following resources on its website:

- A "GASB in Focus" fact sheet answering frequently-asked questions
- A Video discussing key principles of the OPEB Statements
- The full text of the Statements.

### The OPEB Statements

GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, addresses reporting by OPEB plans that administer benefits on behalf of governments. GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, addresses reporting by governments that provide OPEB to their employees and for governments that finance OPEB for employees of other governments.

The new OPEB standards parallel the pension standards issued in 2012—GASB Statement No. 67, *Financial Reporting for Pension Plans*, and GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*.

“These newly published OPEB standards will give financial statement users a much more complete picture of how much state and local governments have promised in retiree benefits—and how much those promises actually cost,” said GASB Chairman David A. Vaudt. “Together with the Board’s recent pension standards, these standards will provide consistent and comprehensive guidance for the full suite of postemployment benefits that governments provide to their employees.”

### Statement 75

Statement 75 replaces the requirements of GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*. Statement 75 requires governments to report a liability on the face of the financial statements for the OPEB that they provide.

- Governments that are responsible only for OPEB liabilities related to their own employees and that provide OPEB through a defined benefit OPEB plan administered through a trust that meets specified criteria will report a net OPEB liability—the difference between the total OPEB liability and assets accumulated in the trust and restricted to making benefit payments.
- Governments that participate in a cost-sharing OPEB plan that is administered through a trust that meets the specified criteria will report a liability equal to their proportionate share of the collective OPEB liability for all entities participating in the cost-sharing plan.
- Governments that do not provide OPEB through a trust that meets specified criteria will report the total OPEB liability related to their employees.

Statement 75 carries forward from Statement 45 the option to use a specified alternative measurement method in place of an actuarial valuation for purposes of determining the total OPEB liability for benefits provided through OPEB plans in which there are fewer than 100 plan members (active and inactive). This option was retained in order to reduce costs for smaller governments.

Statement 75 requires governments in all types of OPEB plans to present more extensive note disclosures and required supplementary information (RSI) about their OPEB liabilities. Among the new note disclosures is a description of the effect on the reported OPEB liability of using a discount rate and a healthcare cost trend rate that are one percentage point higher and one percentage point lower than assumed by the government. The new RSI includes a schedule showing the causes of increases and decreases in the OPEB liability and a schedule comparing a government’s actual OPEB contributions to its contribution requirements.

Some governments are legally responsible to make contributions directly to an OPEB plan or make benefit payments directly as OPEB comes due for employees of other governments. In certain circumstances—called special funding situations—Statement 75 requires these governments to recognize in their financial statements a share of the other government’s net OPEB liability.

**Statement 74**

Statement 74 replaces GASB Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*. Statement 74 addresses the financial reports of defined benefit OPEB plans that are administered through trusts that meet specified criteria. The Statement follows the framework for financial reporting of defined benefit OPEB plans in Statement 45 by requiring a statement of fiduciary net position and a statement of changes in fiduciary net position. The Statement requires more extensive note disclosures and RSI related to the measurement of the OPEB liabilities for which assets have been accumulated, including information about the annual money-weighted rates of return on plan investments. Statement 74 also sets forth note disclosure requirements for defined contribution OPEB plans.

**The Pension Statement**

GASB Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*, completes the suite of pension standards. Statement 73 establishes requirements for those pensions and pension plans that are not administered through a trust meeting specified criteria (in other words, those not covered by Statements 67 and 68). The requirements in Statement 73 for reporting pensions generally are the same as in Statement 68. However, the lack of a pension plan that is administered through a trust that meets specified criteria is reflected in the measurements.

**Effective Dates and Availability of Statements**

The provisions in Statement 73 are effective for fiscal years beginning after June 15, 2015—except those provisions that address employers and governmental nonemployer contributing entities for pensions that are not within the scope of Statement 68, which are effective for fiscal years beginning after June 15, 2016. The provisions in Statement 74 are effective for fiscal years beginning after June 15, 2016. The provisions in Statement 75 are effective for fiscal years beginning after June 15, 2017. Earlier application is encouraged. Printed copies of the Statements will be available for purchase in the coming weeks.

**About the Governmental Accounting Standards Board**

Established in 1984, the GASB is the independent, private-sector organization based in Norwalk, Connecticut, that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). These standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs (AICPA). The GASB develops and issues accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the GASB. For more information, visit www.gasb.org.

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## Modernizing American Manufacturing Bonds Act Reintroduced.

Congressman Randy Hultgren (R-IL) and Congressman Richard Neal (D-MA) have reintroduced the Modernizing American Manufacturing Bonds Act of 2015, H.R. 2890.

Read the Press Release.

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**TAX - NEW YORK**

## Greater Jamaica Development Corporation v. New York City Tax Com'n

**Court of Appeals of New York - July 1, 2015 - N.E.3d - 2015 WL 3965743 - 2015 N.Y. Slip Op. 05620**

Taxpayers brought article 78 proceeding challenging city's revocation of charitable tax exemption for public parking facilities that they owned and operated. The Supreme Court, Queens County, dismissed the petition. Taxpayers appealed. The Supreme Court, Appellate Division, reversed. City was granted leave to appeal.

The Court of Appeals of New York held that:

- A taxpayer's federal charitable tax exemption does not create a presumption that the entity is entitled to a charitable tax exemption from New York real property taxes, abrogating *Oorah, Inc. v. Town of Jefferson,* 119 A.D.3d 1179, 990 N.Y.S.2d 669; *Matter of Plattsburgh Airbase Redevelopment Corp.*, 101 A.D.3d 21, 953 N.Y.S.2d 174, and
- Taxpayer's utilization of parking garages to provide below-market, reasonably priced parking did not constitute a charitable use of the parking garages.

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

The National Federation of Municipal Analysts has released a paper entitled, Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements.

Read the Paper.

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## IRS Request for Comments: Voluntary Closing Agreement Program for Tax-Exempt Bonds.

The IRS has issued a Request for Comments on its Voluntary Closing Agreement Program for Tax-exempt Bonds (Rev. Proc. 97-15).

Comments are due by August 28, 2015.

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## Puerto Rico Insured Debt at 76 Cents Lures Muni Buyers to Island.

After Puerto Rico bonds tumbled by the most in at least 17 years, Wells Capital Management, MacKay Shields and Belle Haven Investments sifted through the wreckage and decided it was time to buy.

They’re not expecting an end to the fiscal crisis gripping the junk-rated Caribbean island. They’re betting insurers can stand by promises to cover principal and interest bills if Puerto Rico reneges on its debt.

Governor Alejandro Garcia Padilla’s announcement last week that the island can’t afford to repay what it owes sparked a rout that caused some insured Puerto Rico securities to trade for as little as 76 cents on the dollar. Prices rebounded as investors snapped up the debt, speculating that a widespread default won’t wipe out the biggest guarantors.

“It’s one of these classic muni headline issues: A lot of people want to be the first out of the door and sell theirs first,” said John Loffredo, who helps oversee $13 billion of munis at MacKay in Princeton, New Jersey. “We’ve been actively participating in AA rated insured muni bonds that are triple tax-exempt that we believe are mispriced.”

The escalation of Puerto Rico’s debt crisis last week rattled mutual and hedge funds that have parked money in the island’s debt because it’s tax-exempt nationwide and offered yields higher than other investments.

**$72 Billion**

The commonwealth and its agencies owe $72 billion after years of borrowing to paper over budget shortfalls. Garcia Padilla said he wants to negotiate with investors to delay payments that are draining the government’s coffers.

Prices on some general obligations backed by a unit of Assured Guaranty Ltd. slid 7 cents on June 30 to an average of 85 cents on the dollar, pushing the yield to 6.4 percent. The same day, sales-tax debt backed by the company plunged 14 cents to 80 cents, after trading for as little as 76 cents. The securities pared losses by July 2, with the general obligations trading for 88 cents and the sales-tax bonds for 87 cents.

Uninsured general obligations due in 2041, by contrast, trade at about 59 cents on the dollar.

Assured Guaranty is rated AA, the third-highest investment grade, by Standard & Poor’s, which affirmed the grade last week. Comparably rated 30-year municipal bonds yield about 4 percent.

Bond insurers pledge to pay interest and principal on time if a borrower defaults. That means that even if Puerto Rico officials are able to postpone debt payments, holders of insured securities won’t be affected as long as the companies have sufficient funds.

**Insurers Stumble**

Shares of Assured Guaranty and rivals MBIA Inc. and Ambac Financial Group Inc. fell last week amid speculation about the fallout from Puerto Rico. CreditSights Inc. issued a report Wednesday questioning Ambac’s claim that it had $4.8 billion available to cover Puerto Rico losses. The company said its figures are accurate.

Belle Haven and Wells Capital purchased shorter-dated insured bonds because there’s greater certainty that the guarantors will have enough cash to weather a default.

Bonds due in less than three years were “down way too much,” said Lyle Fitterer, who oversees $38 billion of munis at Wells Capital in Menomonee Falls, Wisconsin. “We have confidence in the claims-paying ability of the monolines in that type of time horizon."

**Cash Reserves**

Assured Guaranty and MBIA's National Public Finance Guarantee Corp. are each on the hook for about $10 billion of Puerto Rico principal and interest payments, though that would be spread over the next three decades. Ambac has backed $2.4 billion of commonwealth debt.

Investors "can rely on our $12 billion in claims-paying resources and unconditional and irrevocable guaranty of the scheduled payment of principal and interest when due," Robert Tucker, head of investor relations for the Hamilton, Bermuda-based Assured Guaranty, said in a statement.

Kevin Brown, a spokesman for Purchase, New York-based MBIA, said its National unit "will ensure that its policyholders will continue to receive all of their scheduled interest and principal payments on time and in full."

Ambac Interim Chief Executive Officer Nader Tavakoli said in a statement that "if it were to become necessary, we are confident in our ability to pay timely principal and interest."

**Pimco Waits**

The price declines still weren't enough to attract some investors. Pacific Investment Management Co. is steering clear of Puerto Rico debt until there's a restructuring plan in place and a strategy to grow the island's economy, said Joe Deane, New York-based head of munis for Pimco, which manages $40 billion of state and local debt.

"Show me a solution and I'll show you the money," Deane said. "But until I can clearly see a path forward that would make that debt at whatever price viable, there's absolutely no number in my mind where I would necessarily buy."

Last week's rout echoed one from a year ago, after Garcia Padilla signed a law that would have let some public agencies restructure debt. The Assured-backed Puerto Rico general obligations that slid this week dropped to as low as 80 cents on the dollar in July 2014, only to rebound to 100 cents in less than two months. The law was struck down in court this year.

"I would expect over the coming weeks and months that the insured paper will stabilize," said Brian Steeves, who helps manage about $3 billion of municipal debt at White Plains, New York-based Belle Haven Investments, which has been adding different Puerto Rico credits guaranteed by Assured.

**Bloomberg**

by Brian Chappatta and Michelle Kaske

July 5, 2015 — 9:01 PM PDT Updated on July 6, 2015 — 6:19 AM PDT

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## Illinois Rating Unchanged for Now, Amid Budget Impasse Between State Executive and Legislative Branches.

NEW YORK (Standard & Poor's) July 6, 2015—Illinois begins fiscal 2016 without an adopted budget as the stalemate between the executive and legislative branches intensifies. On June 25, Gov. Bruce

Rauner vetoed 19 of the 20 budget bills that encompass the fiscal 2016 spending proposal sent to him by the Illinois legislature, identifying a $4 billion budgetary gap. As Standard & Poor's Ratings Services noted in its report, "Late State Budgets: Summer Cliffhangers No One Wants To See," (published June 4, 2015, on RatingsDirect) it expects Illinois' budget negotiations to drag out through the summer. Actions both sides have taken so far suggest that they are digging in for a protracted budget negotiation. The governor's signed education bill, which will ensure that schools open, asked agencies to stock up on critical supplies before the end of fiscal 2015, and the governor is making efforts to ensure state employees continue to get paid in the absence of an adopted fiscal 2016 budget. Likewise, the legislature attempted to pass a one-month budget that would keep government spending in place and provide more time for negotiations.

From a credit standpoint, the absence of a budget does not have an immediate impact on the state's ability to pay debt. General obligation (GO) debt service in Illinois benefits from a continuing appropriation and the state has made provisions to ensure payment of its moral obligation debt coming due through August. Pension payments and spending tied to federal consent decrees also benefit from continuing appropriations and can still be paid. Because the state has a backlog of payments (estimated at $4.25 billion as of May), it is paying its vendors several months in arrears. Illinois' ability to continue making payments owed from fiscal 2015 will delay the cash flow impact on vendors, at least while these vendors continue to collect back payments from fiscal 2015. However, to the extent that budget adoption is delayed, the state will continue to build on its payables as payments that require appropriations cannot be made. Furthermore, protracted budget negotiations could have a detrimental effect on the state's economy due to reduced and delayed spending and investment. Illinois already ranks 48th in year-over-year change in personal income in first-quarter 2015, 49th in year-over-year population change as of July 1, 2014, and 38th in year-over-year employment change as of May 2015.

In our view, the absence of a budget, while not affecting debt service, reflects a failure in the fiscal policymaking process. The legislature is looking for the governor to propose tax increases to close the budgetary gap. Gov. Rauner has indicated his willingness to increase income taxes and expand the sales tax base to tax services, but only in exchange for several reforms he is proposing and which haven't garnered significant support from the legislature. These measures include worker's compensation and tort reform, and a property tax freeze tied to limits on prevailing wage requirements and collective bargaining. We have yet to see either side exhibit flexibility on their core policy objectives. And while an extended legislative session can sometimes result in an improved structural alignment or adoption of substantive policy reforms, it can also lead states to resort to budgetary gimmicks. On May 8 we placed our Illinois ratings, including our 'A-' GO rating on the state, on CreditWatch with negative implications. In our view, the outcome of the fiscal 2016 budget deliberations will be pivotal to the state's credit trajectory given the magnitude of structural imbalance, pension spending burden, and overall liquidity. As we indicated in our CreditWatch, we could take a rating action within the next two months, even in the absence of an adopted budget if, in our view, there is limited progress in budget deliberations or if credit fundamentals weaken.

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 26 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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## [California GO Debt Rating Raised To 'AA-' And Removed From CreditWatch Upon Budget Enactment.]

SAN FRANCISCO (Standard & Poor's) July 2, 2015–Standard & Poor's Ratings Services removed from CreditWatch and raised its rating on California's general obligation (GO) debt to 'AA-' from 'A+'. Standard & Poor's has also raised its rating on the state's general fund annual appropriation-secured debt to 'A+' from 'A'. The outlook on both ratings is stable.

"The rating action follows enactment of California's 2015-2016 budget, which, in our view, marks another step forward in the state's journey toward improved fiscal sustainability," said Standard & Poor's credit analyst Gabriel Petek. Seeing the potential for this, in May we placed our 'A+' GO rating on the state on CreditWatch with positive implications, pending the outcome of budget negotiations that were underway at the time. In June, lawmakers reached agreement on a budget package that is just $61 million (0.05%) above what the governor had proposed. The spending plan is built upon the Department of Finance's (DOF) revenue forecast and leaves the state with budget reserves totaling $4.6 billion, or 4% of expenditures, which we consider good. In addition, the budget pays down $1.85 billion in various general fund debt-like obligations, most of which had been incurred during prior years to finance budget deficits.

"Lawmakers' adoption of the DOF revenue forecast as part of the final budget agreement was significant, in our view," added Mr. Petek. "Had the legislature adopted the higher Legislative Analyst's Office's revenue forecast, lawmakers could have, in effect, generated capacity for new discretionary spending commitments while projecting that operating balance would be maintained. However, by diverging from — and surpassing — the DOF's forecast, primarily by projecting higher capital gains-related tax revenue, the Legislative Analyst's Office's forecast rests on more favorable performance of a volatile revenue stream."

In the end and as they have in recent years, lawmakers agreed on a restrained approach to setting fiscal policy instead of budgeting to a more aggressive set of assumptions. The result is favorable to credit quality, not least because it enables the DOF to project that general fund operations will generate modest surpluses for at least three years. But the projected operating surpluses are narrow and largely spoken for by transfers to the rainy day fund.

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## [S&P's Public Finance Podcast (The Quarterly Ratings Roundup And Allen Park, MI)]

In this edition of Extra Credit, Senior Director Larry Witte discusses the key takeaways from our quarterly ratings roundup, and Director Caroline West explains what's behind our ratings on Allen Park, MI., including how a distressed exchange could affect the entity.

Listen to the podcast.

Jul 02, 2015

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## Municipal Issuer Brief: Issuers Using One Rating with More Frequency.

Read the Brief.

Municipal Market Analytics | Jun. 29

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## Georgia Supreme Court Upholds SunTrust Park Bond Financing.

The Georgia Supreme Court Monday upheld a lower court ruling authorizing up to $397 million in bond financing for the Atlanta Braves' new SunTrust Park.

Three Cobb County residents challenged the county commission's decision last year to help finance the 41,500-seat stadium at interstates 75 and 285 through a public-private partnership with an estimated cost of $622 million.

The plaintiffs argued the authorization of the bonds required a public vote, that the intergovernmental agreement to issue the bonds was a violation of the debt and gratuity clauses of the Georgia Constitution and that the project is an improper use of public money for a private facility.

But in Monday's unanimous ruling, Justice David Nahmias upheld the bond financing as legally valid. "It is evident that the lawyers and officials for Cobb County, the Cobb-Marietta Coliseum and Exhibit Hall Authority and the Braves parties relied on prior decisions of this court … when structuring the financing for the new Braves stadium project," Nahmias wrote.

While the court took note of the plaintiffs' concerns about the wisdom of the project's reliance on public financing for a private project, the justices argued those were issues of public policy best left up to Cobb elected officials.

Construction on SunTrust Park is well underway, with the stadium set to open in April 2017.

Jun 29, 2015, 10:36am EDT

Dave Williams

Atlanta Business Chronicle

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## [No Success Like Failure: N.Y. Sees Social Impact Bond Pluses.]

A New York City program aimed at cutting recidivism rates among Rikers Island adolescent prison inmates failed to meet its desired goal.

As a result, the city paid nothing for it.

That made the nation's first social impact bond a success, according to city officials and others involved with the program. Under the pay-for-performance vehicle – bond is a misnomer in the traditional muni bond sense, though supporters find the buzzword catchy – the city is not on the hook.

The program, which began in 2012, was originally pegged for four years but reduced after a predetermined three-year checkpoint. Its structure enabled city officials to experiment without risk to taxpayers, according to First Deputy Mayor Tony Shorris.

"This social impact bond allowed the city to test a notion that did not prove successful within the climate we inherited on Rikers," he said. "We will continue to use innovative tools, both on Rikers and elsewhere."

Vera Institute of Justice, a nonprofit, was the independent evaluator of the program, called Adolescent Behavioral Learning Experience, or ABLE. The benchmark was whether the program reduced recidivism among 16-to-18 year-olds who entered Rikers in 2013 by 10% or more. Intervention focused on social skills, personal responsibility and decision-making.

"The program did not reduce recidivism and therefore did not meet the pre-defined threshold of success," Vera said in a statement.

The program will end on Aug. 31.

Goldman Sachs provided a $7.2 million loan to nonprofit MDRC, which oversaw the project. Bloomberg Philanthropies, the personal charity of former Mayor Michael Bloomberg, provided a $6 million loan guarantee. Goldman thus loses $1.2 million. Had the program gone the full four years, Goldman's investment would have been $9.6 million, with Bloomberg Philanthropies' backstop at $7.2 million.

Though modeled after a prison program in Peterborough, U.K., New York's is the first anywhere involving a major financial institution.

"This can unlock new pieces of funding, private capital especially," said Jim Anderson, who leads the government innovation program at Bloomberg Philanthropies. "It also brings a laser-like focus to measurable data. Everyone has an incentive. We're not doing this to feel good. We want positive results.

"Even though we didn't get the result with the program that we all wanted and hoped for, we now know that definitively, thanks to the social impact bond structure that we put in place."

Goldman is involved with three other such programs under its impact investing umbrella. Two involve early childhood education in Salt Lake City and Chicago, with kindergarten preparedness the yardsticks, while the other is criminal justice-oriented in Chelsea, Mass., outside Boston, for which Massachusetts earmarked up to $27 million.

"We're proud to have been part of this public-private partnership that used a new financing model to tackle a difficult issue in a time of government budget constraints," said Andrea Phillips, vice president in Goldman's urban investment group.

"Social impact bonds can fill a gap and are designed to align government, service providers and investors around outcomes at no cost to taxpayers if targets are not met. While we certainly hoped for greater impact in this case, we learned a great deal along the way and remain committed to investing in projects that support important public initiatives."

Working with New York City Mayor Bill de Blasio's office and the city Department of Correction, social justice organization MDRC contracted with the Osborne Association, which ran the program in conjunction with Friends of Island Academy.

"The social impact bond let us test the program without taxpayer expense," said Kristin Misner-Gutierrez, director of social services for the city's deputy mayor for health and human services and former chief of staff in that office under Mayor Michael Bloomberg's administration.

City officials say the program, while missing its benchmarks, generated significant buy-in from Rikers management, uniformed and nonuniformed staff and school personnel, and that the experience of implementing it may plant a seed for further innovation in criminal-justice related programs.

"This administration is committed to a number of reforms at Rikers Island," said Misner-Gutierrez.

The social bond concept is gathering momentum against a backdrop of tight government spending.

Many states are adapting or considering pilot programs. For instance, in Pennsylvania, where a battle between Gov. Tom Wolf and the legislature over the proposed $30 billion budget has extended past the fiscal-year deadline, Wolf's administration issued a request for information related to a pay-for-success proposal.

"It's a trending activity," said Anderson. "How do we help local governments better influence decision-making.? One way is to shift more to a pay-for-success performance bond."

THE BOND BUYER

BY PAUL BURTON

JUL 2, 2015 9:00am ET

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## No Easy Pass for North Carolina's First Privately Run Toll Lanes.

North Carolina signed contracts and sold $100 million of municipal bonds, workers are surveying the land, and the state's first private toll lanes are set to open on Interstate 77 in 2018.

Not if Kurt Naas has anything to say about it. Naas and a group of fellow Charlotte-area residents have filed suit to stop the $648 million plan for the state's first highway project with a private operator, a subsidiary of Madrid-based Ferrovial SA. The residents have spurred a chorus of opposition that includes local business leaders and the government of Mecklenburg County, where the stretch of highway is located.

"We're siphoning money out of our local economy and we're sending it to a foreign company," said

Naas, 53, an engineer and resident of Cornelius. "Giving the public right of way and using public dollars to build private lanes is bad public policy."

The push for such public-private partnerships — or P3s — is expanding across the nation, from North Carolina to Colorado and Texas, as localities face dwindling federal dollars to fix crumbling roads through the almost-broke Highway Trust Fund.

**Critical Infrastructure**

"The Highway Trust Fund is just going from deadline to deadline, without long-term certainty regarding funds," said Dan Close, a money manager in Chicago at Nuveen Asset Management, which oversees about $100 billion of munis, including the North Carolina securities. "When you need critical infrastructure completed, P3 projects are offering a little bit more certainty."

Private financing of public works is common in Europe and Canada, with companies handling the work on the assets while governments retain ownership. It's less so in the U.S., where the Highway Trust Fund was established in 1956 to support the new Interstate Highway System.

But the fund is almost out of money, supported by a federal gasoline tax that hasn't been raised since 1993 and with lawmakers bickering over how to fill the gap.

So, governments are turning to other sources of financing.

In North Carolina, a venture called I-77 Mobility Partners LLC, led by Ferrovial subsidiary Cintra Infraestructuras and Aberdeen Global Infrastructure II LLP, will design, build, operate and maintain the I-77 project for 50 years.

**Above Junk**

The company, which is investing $248 million, will collect revenue from the new toll lanes on a 26-mile (42-kilometer) stretch of the highway north from Charlotte.

The state Department of Transportation sold the municipal bonds in May. The sale included securities maturing in June 2026 yielding 3.72 percent, or about 1.4 percentage points over benchmark munis, according to data compiled by Bloomberg. An index of 10-year BBB revenue-backed munis yielded 3.27 percent that day, Bloomberg data show.

Fitch Ratings graded the bonds BBB-, one step above junk, citing the project's vulnerability to less traffic during economic downturns and the area's "limited familiarity with tolling." DBRS Ltd. graded the securities BBB, one step higher.

Levies will change based on demand, and travelers can either use those lanes and pay, or drive on the free lanes. Vehicles with more than three occupants can ride on the new lanes without charge. The state is paying about $95 million toward the cost, and a federal loan to the company provides $189 million.

**'Economic Vitality'**

The project will create "8,000 direct, indirect and induced jobs" with as many as 100 local companies expected in the construction, said Jean Leier, a spokeswoman for I-77 Mobility Partners.

"This long-term traffic solution will generate economic development and continued economic vitality to this important corridor," she said in an e-mail.

Partnering with a private operator speeds up a project needed to cope with the congestion in a fast-growing area, said Mike Charbonneau, a spokesman for the state Department of Transportation in Raleigh.

Charlotte, the state's most-populous city, is home to Bank of America Corp. and Duke Energy Corp., the biggest U.S. electric utility. Surrounding Mecklenburg and Iredell counties make up 16 percent of the state's employment, according to Fitch.

"While P3s are new to our state, they are an important strategy moving forward to help meet growing demands and to stay ahead of rapid growth," Charbonneau said by e-mail.

**'Wild Card'**

Representatives of local businesses see the project as worsening traffic and are traveling to Raleigh on June 30 to meet with legislators to persuade them to cancel the transaction, said organizer John McAlpine. He said drivers would eschew tolls, while operators of trucks with more than three axles — which can't use the paid lanes — would throng the free ones.

Mecklenburg County also wants to curb the project. Its board of commissioners voted 7-2 on June 16 on a resolution asking state leaders to cancel it and come up with an alternative without tolls.

The transportation department filed a motion this month in Mecklenburg County Superior Court asking that the suit by Naas's group be dismissed.

With no solution in sight for long-term federal funding of roads, more localities are considering P3 projects, testing American acceptance of tolls, said Jonathan Gifford, director of the Center for Transportation Public-Private Partnership Policy at George Mason University in Arlington, Virginia.

"That's a bit of a wild card," Gifford said. "There's a widening appreciation for the fact that the public acceptance of using tolls to finance the projects is pretty variable."

Bloomberg

by Romy Varghese

June 28, 2015 — 9:00 PM PDT Updated on June 29, 2015 — 6:14 AM PDT

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## [Puerto Rico at Precipice Piles on Muni Market Hampered by Crises.]

Illinois and New Jersey have dragged down the municipal-bond market this year as the states wrestled with growing pension-fund bills. Puerto Rico is depressing it even more.

Even before Puerto Rico Governor Alejandro Garcia Padilla said this week that the junk-rated island can't afford to pay its debts, municipal bonds had returned about nothing in 2015 as investors dumped securities of the cash-strapped states and the Federal Reserve moved toward raising interest rates for the first time in nine years.

The pressure on the $3.6 trillion market is building as Puerto Rico seeks to restructure its $72 billion debt load, raising the specter of a record-setting default. With about half of municipal mutual funds holding Puerto Rico bonds, that may fuel selling by investors who've been pulling money from the market for the past two months.

“There seems to be a confluence of events,” said Vikram Rai, head of muni strategy in New York at Citigroup Inc.

“Puerto Rico is a one-off case, but it’s a debt restructuring which is coming at the wrong time,” he said. “That’s what worries me — that it could end up impacting everything.”

**Pulling Funds**

The municipal market is dominated by individual investors, who moved money elsewhere after the recession amid speculation that defaults would rise and in 2013, when Detroit filed for bankruptcy. Another exodus has been building: They had already taken $1.9 billion from muni mutual funds for the past eight straight weeks, the longest stretch in 18 months, Lipper US Fund Flows data show.

The price of Puerto Rico’s most frequently traded securities tumbled this week, hitting record lows, after Garcia Padilla said the teetering island can’t afford to make good on all of its debts. He said officials want to negotiate with investors to postpone debt payments and will propose a restructuring plan by the end of August.

Commonwealth securities pared their losses Wednesday after the Puerto Rico Electric Power Authority avoided defaulting on a $415 million bond payment and reached an agreement to continue negotiations with creditors out of court.

**Greek Buffer**

There was no immediate fallout in the broader municipal market from Puerto Rico’s push to restructure its debts, with yields little changed this week as investors snapped up the safest assets amid Greece’s escalating debt crisis.

“We have this other macro factor that’s out there called Greece,” said Chris Alwine, head of munis at Vanguard Group Inc., which oversees $145 billion of the debt. “Most of the municipal market is high quality, and it’s rallying based on the Greek news that’s out there.”

Puerto Rico had already exerted a drag on the muni market, with its securities losing 2.3 percent before Garcia Padilla’s announcement, S&P Dow Jones data show. The index ended the first half down 9.4 percent.
Struggling states also contributed to the market’s non-existent returns. During the first half of the year, Illinois debt dropped 0.9 percent, while New Jersey obligations plunged 1.1 percent, the steepest losses of the 27 states tracked by S&P.

Both have been unable to keep up with escalating retirement bills. In New Jersey, Governor Chris Christie rolled back a promised pension payment to close a budget shortfall, which may increase the cost in later years. The Illinois Supreme Court struck down lawmakers’ solution for a $111 billion pension deficit in May, dealing a setback to the state’s plan to steady its finances.

**Pension Contagion**

That ruling also caused Moody’s Investors Service to cut Chicago to junk in May, saying the city has fewer options for shoring up its own underfunded retirement system.

Matt Posner, a managing director at Concord, Massachusetts-based Municipal Market Analytics, said the downgrade led investors to demand higher yields on debt from other borrowers with pension-fund deficits. On May 14, two days after Chicago lost its investment-grade rating, some New Jersey bonds traded for yields of 1.7 percentage points more than benchmark munis, the most since at least 2013 and up from a 2015 average of 1.2 percentage points until then.

"I've never seen the contagion or knock-on effect on seemingly unrelated credits like I did directly as a result of the Chicago downgrade," Posner said. "Investors are penalizing other credits when there's the perception of a pension issue."

The weakness in the municipal market will probably persist because of Puerto Rico's actions, Michael Zezas, chief municipal strategist at Morgan Stanley, wrote in a report Tuesday.
The worst-case would be if a debt restructuring by the commonwealth coincides with rising interest rates and deteriorating credit quality among large borrowers like Illinois and Chicago, Zezas wrote.

Like Puerto Rico, shortchanging pensions has been "a slow-moving train wreck," Vanguard's Alwine said. "A problem that was always more intermediate-term has become near-term."

Bloomberg

by Brian Chappatta

June 30, 2015 — 9:01 PM PDT Updated on July 1, 2015 — 8:47 AM PDT

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## Puerto Rico Utility Averts Default After Deal With Creditors.

Puerto Rico's junk-rated power utility said it made a full $415 million bond payment due Wednesday and reached an agreement to continue negotiations with creditors to restructure its $9 billion of debt. Its bonds rallied.

The Puerto Rico Electric Power Authority, called Prepa, made the principal and interest payment by selling $128 million of short-term debt to the companies that insure its bonds, including Assured Guaranty Ltd. It also tapped reserves and used $153 million from its general fund, the agency said in a statement.

The utility's ability to avoid a default marks a break in Puerto Rico's escalating fiscal crisis as the commonwealth and its agencies teeter under $72 billion of debt. The talks with creditors may advance the utility's effort to pare its debt load, which would free up money to modernize a company whose high electricity costs have left it saddled with unpaid bills.

"They seem to be making progress toward a more comprehensive type of agreement," said Joseph Rosenblum, director of municipal credit in New York at AllianceBernstein Holding LP, which manages $32 billion of municipal bonds. He said the agreement may help resolve Prepa's debt issues and "probably moves them further along" toward overhauling its power plants.

**Talks Continue**

The utility extended a forbearance pact with creditors until Sept. 15, which will keep discussions out of court. It must negotiate a plan to overhaul its debts by Sept. 1 to keep the deal in place, according to Stephen Spencer, a managing director at Houlihan Lokey Inc., the financial adviser to Prepa bondholders.
The utility's bonds rallied Wednesday. The price of uninsured securities maturing in 2042 jumped to an average of 43 cents on the dollar, up 11 percent from Tuesday, data compiled by Bloomberg show.

The payment also eased the immediate risk to companies that insure Puerto Rico bonds against default, whose shares slid this week after Governor Alejandro Garcia Padilla said the commonwealth can't make good on all its debts.

Assured Guaranty bought $72.6 million of Prepa's new bonds, reinsuring some against the risk of default, the company said in a statement. MBIA Inc.'s National Public Finance Guarantee Corp. said it bought $45 million. Together the two companies insure about $2.4 billion of Prepa debt, according to disclosures on their websites.

**Buying Time**

Assured Guaranty Chief Executive Officer Dominic Frederico said the arrangement will give "all parties time to negotiate a permanent, consensual restructuring."

Prepa said it will repay the short-term securities in December.

The power company's deal follows Garcia Padilla's announcement this week that his administration will seek to persuade investors to delay payments on some of the commonwealth's $72 billion of debt. That rattled financial markets by raising the risk of losses on Puerto Rico's direct debt, instead of just securities from agencies such as Prepa.

The island's crisis has resulted from years of borrowing to pay its bills as the economy struggled to grow. Its power company relies mainly on petroleum to produce electricity, instead of lower-cost fuel such as natural gas. That's left many residents unable to pay electricity bills because rates are twice as high as those on the U.S. mainland.

"We are pleased we were able to reach an agreement that allowed us to make the payment to our bondholders today and avoid a default," Lisa Donahue, Prepa's chief restructuring officer, said in a statement. "Today's outcome would not have been possible without the support of the insurers and other creditors."

While investors believe there's opportunity to reach a plan for paring Prepa's debt burden by Sept. 1, the agreement may be scuttled if Puerto Rico treats bondholders "unnecessarily unfairly during this process," Spencer, the adviser to bondholders, said in a statement.

Bloomberg

by Michelle Kaske

July 1, 2015 — 7:00 AM PDT Updated on July 1, 2015 — 12:29 PM PDT

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## Bloomberg Brief Weekly Video - 7/01/15

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

Watch the video.

10:47 AM PDT
July 1, 2015

## Fitch: EPA Ruling Relieves Pressure on US Public Power.

Fitch Ratings-New York-01 July 2015: The U.S. Supreme Court's decision requiring the U.S. Environmental Protection Agency (EPA) to take industry costs into account before it resumes its Mercury and Air Toxic Standards (MATS) is positive for a few public power entities but will not affect most, Fitch Ratings says. Utilities with high concentrations of coal-fired capacity that have struggled with the decision to install expensive pollution control equipment will now likely face a longer time frame for compliance and could benefit further if the compliance thresholds are lowered.

However, most public power and cooperative issuers have already transitioned to lower emitting resources by taking advantage of the improved economics of natural gas-fired generation and certain renewable resources. Moreover, the sector's exposure to generation at risk for retirement has proven favorable. Of the 45.8 gigawatts (GW) of coal-fired capacity closed since 2010 or earmarked for closure by 2017, only 1.0 GW, or 2%, of the capacity is owned by public power entities other than the Tennessee Valley Authority.

The Supreme Court decision leaves the next steps to a lower court. However, the EPA could issue new rules, rendering moot the lower court's decision. Although the fundamental framework of MATS is not expected to change, the EPA is likely to focus more closely on the cost for industry compliance as it reconsider the mercury rules and drafts future environmental initiatives. The agency is expected to be under pressure to revise the rules before President Barack Obama's second term ends.

Ironically, any lowering of the emission requirements outlined in MATS could frustrate compliance efforts related to the EPA's proposed the Clean Power Plan (CPP). In 2014, the EPA proposed the CPP, to reduce carbon emissions from existing plants by establishing mandatory carbon dioxide reduction targets for each state. Fitch believes these proposed rules are unlikely to have any near-term effect on public power and cooperative utilities given their reduced reliance on coal-fired generation, in part, as a result of MATS. Over the long term, CPP compliance could be more challenging and costly in states that continue to rely heavily on coal-fired generation.

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## Chicago Cuts 1,400 Jobs as Pension Fight Drags On.

CHICAGO—Mayor Rahm Emanuel on Wednesday said the nation's third-biggest school district is cutting 1,400 jobs and boosting borrowing in response to the growing fiscal crisis facing Illinois and its largest city.

The job cuts at the Chicago Public Schools, which largely shield teachers and include positions that are vacant, are part of a plan to cut annual spending by $200 million, or roughly 3.5%.

That followed a decision by city officials to make a $634 million payment due to the teachers' retirement system before a Tuesday night deadline.

"These payments do not come without a cost," Mr. Emanuel said. "There is a series of political compromises and patchwork over the years that can no longer continue."

State and city pensions systems have long been underfunded, leaving the funds well short of the assets needed to pay promised benefits. Chicago schools have sought help from state lawmakers, who have considerable control over education spending and the pension systems. However, they so far have taken no steps to assist the city school system.

"Your stalemate is having consequences," Mr. Emanuel said.

In the short term to ensure schools open on time and keep class sizes from rising, the district drew down on two credit lines to make the pension system payment due this week and is asking to put off for a year $500 million in pension payments due in the new fiscal year.

Mr. Emanuel has proposed that teachers' pension contributions and local property taxes would be increased if the state would make increased payments into Chicago's teacher retirement system.

Parts of such a proposal are being discussed at the Illinois capitol. But the Illinois government remains mired in a battle over the next state budget, which had yet to be approved as a new fiscal year began Wednesday, an impasse that threatens to force a partial state government shutdown.

The Democratic-controlled legislature and Republican Gov. Bruce Rauner, who took over in January promising to overhaul state government, remain divided over spending and tax policies. They face an estimated shortfall of more than $6 billion for fiscal 2016 that must be closed.

Mr. Rauner has pushed for deep cuts and changes he says will promote business growth, including curbs on unions and overhauling the medical malpractice system. Democrats oppose many of Mr. Rauner's proposals and are looking to blunt the cuts, but haven't provided details on how they would pay to preserve services. "We got a mess. It is going to take a little while to fix," Mr. Rauner said this week.

Nationally, Illinois and Chicago remain outliers among state and municipal governments. Illinois has the lowest credit rating among U.S. states, while Moody's Investors Service has lowered the debt rating of Chicago and its school district to below investment grade in recent months.

The budget impasse will likely immediately hurt private, nonprofit agencies that rely in some cases exclusively on state funds, like health-care clinics, mental health treatment centers and housing for victims of domestic violence.

State workers aren't likely to be affected initially, since paychecks for the last two weeks of June are typically paid by July 15. But if the impasse carries on, they could end up in court to ensure pay continues without a budget in place. On Wednesday, a one-month stopgap budget that would continue funding state services passed in the Senate, but failed in the House.

The job cuts in Chicago have reignited a strained relationship between the district and the Chicago Teachers Union, which are in the midst of negotiating a contract that ended this week. Teachers here went on strike in 2012, and while the relationship between the mayor and the union have shown signs of improving, labor leaders described the latest round of reductions as deceptive and retaliatory.

THE WALL STREET JOURNAL

By MARK PETERS and MICHELLE HACKMAN

Updated July 1, 2015 7:12 p.m. ET

Write to Mark Peters at mark.peters@wsj.com

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## Michigan Sets Formal Fiscal Review of Detroit's County.

(Reuters) – Wayne County, home to Detroit, was under “probable financial stress,” the state of Michigan said on Wednesday and announced plans to start a formal fiscal review.

The state’s Local Emergency Financial Assistance Loan Board said Governor Rick Snyder will appoint a review team that includes Michigan’s treasurer and budget director to see if a financial emergency exists.

“While county officials have taken some important steps in an effort to remedy the current crisis, the county continues to face significant financial difficulties that must be addressed now,” State Treasurer Nick Khouri, who chairs the Emergency Loan Board, said in a statement.

A preliminary review of the county pointed to chronic budget deficits projected to hit $171.4 million by fiscal 2019 and big pension pressures. Since fiscal 2004, the county’s pension funding ratio has fallen to 45 percent from nearly 95 percent and the unfunded pension liability has climbed to $910.5 million from just $49.6 million, according to the review.

Detroit went through a similar process that led to the filing of the biggest U.S. municipal bankruptcy, which the city exited last December after shedding about $7 billion of its $8 billion of debt and obligations.

Wayne County Executive Warren Evans requested the review last month, asking the state for a fiscal emergency declaration and a consent agreement to fix the problem.

Last week, the county sold nearly $188 million of taxable notes due on Dec. 1, 2017 with a hefty 6 percent yield and 5.75 percent coupon.

By REUTERS

JULY 1, 2015, 5:01 P.M. E.D.T.

(Reporting By Karen Pierog; Editing by Grant McCool)

## [Puerto Rico's Deepening Crisis Threatens High-Yield U.S. Funds.]

(Reuters) – Puerto Rico's deepening financial crisis could speed up an exodus of money from U.S. municipal bond funds that have placed big bets on the cash-strapped Caribbean island.

Investors, for example, pulled $634 million from muni bond funds run by OppenheimerFunds during the first five months of 2015, according to Lipper Inc, a unit of Thomson Reuters.

And that was before Puerto Rico Governor Alejandro Garcia Padilla admitted Monday that the country's budget gap was bigger than thought and it could not repay more than $70 billion in debt.

Over the past year, funds run by Goldman Sachs Group Inc have increased their exposure to Puerto Rico to attract yield-hungry investors, U.S. regulatory filings show.

Before this week's bad news, veteran Eaton Vance bond fund manager Tom Metzold said Puerto Rico's problems could trigger a domino effect, partly from portfolio managers selling assets to meet investor redemption demands.

"I'm worried about that contagion effect," said Metzold, who's leaving his post July 31 to join muni bond insurer National Public Finance Guarantee Corp., a unit of MBIA Inc.

U.S. municipal bond funds are the largest owners of Puerto Rico debt, in a strategy that seeks high yield amid rock-bottom interest rates. The bonds are typically exempt from local, state and federal income taxes, widening their appeal to single-state funds that use Puerto Rico debt to diversify their portfolios while boosting income for investors.

To be sure, investing in Puerto Rico could be a winning strategy for those able to stomach the many recent episodes of tumult.

The $6 billion Oppenheimer Rochester Fund Municipals has generated a 1-year return of 4.81 percent, beating 91 percent of peers, using a mix of New York muni bonds (about 77 percent of assets), with much of the rest invested in Puerto Rico, according to Morningstar Inc.

The fund lost nearly 11 percent in 2013 as Puerto Rico's fiscal woes triggered an industry-wide sell off.

Nuveen Asset Management's exposure to Puerto Rico is about $330 million out of $100 billion in overall municipal bond assets. Nuveen says 100 percent of Puerto Rico debt is either insured, escrowed by U.S. treasuries or tobacco bonds.

By contrast, OppenheimerFunds, a unit of MassMutual Financial Group, mostly owns uninsured Puerto Rico debt. Its stable of Rochester muni bonds funds owns about $5 billion in Puerto Rico debt. That's the largest amount in the U.S. fund industry, making up 21 percent of the muni bond group's $26 billion in assets.

OppenheimerFunds declined to comment for this story. During the 12-month period that ended May 31, investors withdrew $2.73 billion from the muni fund group, according to Lipper.

Meanwhile, Puerto Rico's budget gap is estimated to surge to $7 billion by 2018, from about $3.7 billion in 2016, according to a report by former International Monetary Fund economists.

"Perhaps of greatest concern to investors is (the report's) inclusion of general obligation debt in debt relief," said Robert Donahue, a research analyst at research firm Municipal Market Analytics Inc.

Restructuring general obligation debt carries a heavy implication because most investors see those bonds as the safest among fixed-income securities.

By REUTERS

JUNE 29, 2015, 8:04 P.M. E.D.T.

(Editing by Bernadette Baum)

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## Hedge Funds Fight to Save Puerto Rico Investments.

Hedge funds like Appaloosa Management, Paulson & Company and Blue Mountain Capital gathered in a conference room at the Barclays offices in Midtown Manhattan last September to talk about what was then the hottest trade: Puerto Rico.

An hour into the conversation, however, it became clear that if things started going bad, not everyone in the room was going to get along. Some had wagered on real estate, while others had bought up the debts of the central government and its troubled electric utility.

Those divisions intensify an increasingly contentious battle the hedge funds are beginning to wage to salvage an investment that, less than a year ago, looked like a sure thing.

This week's announcement by Gov. Alejandro García Padilla of Puerto Rico that the commonwealth may seek to delay debt payments has thrown the hedge funds' investment strategies into turmoil.

Even debts that appeared to be secure now seem in jeopardy, sending hedge funds and other investors scrambling to re-examine their legal rights and potential remedies should the government push for a restructuring.

A vast restructuring of the commonwealth's bonds could scare away more risk-averse investors from buying them for many years to come, causing major problems for the hedge funds.

"Those investors are not coming back," said Robert Donahue, a managing director at Municipal Market Analytics. "The hedge funds miscalculated and they are feeling the pain."

While some hedge fund managers say they were caught off guard by Governor García Padilla's call for a debt restructuring, they are not panicking, even as the price of some of their bond holdings has fallen 17 percent in the last two days.

They see the governor's announcement as more of an opening salvo in a negotiation rather than an indication of imminent and widespread defaults, particularly on debts that Puerto Rico's Constitution says must be repaid.

Some analysts say the governor's announcement may have been intended in part to drive down the value of the hedge funds' bonds so that the firms would be more willing to agree to concessions in order to minimize their losses.

"The Puerto Rico government has engaged in the creation of a crisis where there isn't one," said

Hector Negroni, a principal at Fundamental Advisors, which owns Puerto Rico debt. "But I don't think they will ultimately flout the rule of law. At the end of the day, they need to borrow money again. And no one will lend them money if they break the Constitution."

Lending more money to Puerto Rico had been a major part of some hedge funds' strategy. They planned to allow the commonwealth to help fund its operations with borrowed money so it could take steps to jump-start the economy.

When Puerto Rico issued $3.5 billion in general obligation bonds last March, a long list of hedge funds participated, including Paulson & Company and Och-Ziff Capital Management.

Paulson & Company immediately sold its approximately $120 million holding, according to a person familiar with the firm's trading, and it was unclear whether the other hedge fund managers later sold their similarly sized positions.

The bonds were sold last March at about 93 cents on the dollar. On Tuesday, the bonds were trading as low as 64 cents, according to Municipal Market Analytics.

Many of the same hedge funds have been offering to lend the government as much as $2.9 billion in a bond supported by a fuel tax. But the government has refused to negotiate a deal in recent months, hedge funds managers say.

Aides to Governor García Padilla said in an interview last week that they had not ruled out borrowing more money from hedge funds, but that they first needed to examine all their options, including a vast restructuring of current debts. The aides added that the initial deal terms were too onerous.

Some hedge funds had invested in Puerto Rico debt, expecting a restructuring all along. Firms like Blue Mountain Capital have bought up bonds owed by the Puerto Rico Electric Power Authority at steep discount. On Tuesday, the utility was close to a deal that would avert a default and possibly allow some of its creditors to eventually profit from their investments in its $9 billion in debt.

Until this week, a restructuring of general obligation bonds, which carry a constitutional guarantee to repay, seemed like an impossibility, making the hedge funds' investment look bulletproof.

For the hedge funds, the idea was to lend the money at high interest rates, then flip the bonds to traditional municipal bond investors, like mutual funds, once the fiscal crisis on the island had passed. As part of that strategy, some of the hedge funds circulated research last summer arguing that Puerto Rico's problems were overstated.

But Governor García Padilla is now contending exactly the opposite, releasing a report by former officials at the International Monetary Fund and the World Bank that says that Puerto Rico's deficit is worse than it appears and that the commonwealth cannot solve its problems without restructuring its debts, possibly even its general obligation bonds.

Still, Puerto Rico's relationship with the hedge fund industry is complicated. At the same time the government is gearing up for a series of restructurings with hedge funds and other creditors, officials are courting investments in the broader economy.

Hedge funds have been among the few investors willing to take a chance that Puerto Rico can turn things around.

Puerto Rico's biggest hedge fund cheerleader in New York has been the billionaire John A. Paulson.

Mr. Paulson told investors at an investment conference in San Juan last year that Puerto Rico's economy was turning a corner. He went as far as to predict it would be the Singapore of the Caribbean, referring to the Southeast Asian city-state that is considered the region's biggest economic success story.

Mr. Paulson bought up some of the island's most exclusive luxury hotels, including the St. Regis Bahia Beach Resort, the Condado Vanderbilt Hotel and the La Concha Renaissance hotel and tower.

And he has acted as a de facto liaison between the commonwealth and Wall Street.

Mr. Paulson recently suggested that Puerto Rico officials attend the hedge fund industry's biggest event of the year — the SkyBridge Alternatives Conference in Las Vegas, according to Alberto Bacó Bagué, Puerto Rico's secretary of economic development.

Mr. Paulson met with Mr. Bagué on the sidelines of the conference and helped arrange a meeting with James J. Murren, the chief executive of MGM Resorts, Mr. Bagué said.

"He is building a home, and he is validating our economic model with all his colleagues and friends and the investments that he has," Mr. Bagué said.

THE NEW YORK TIMES

By MICHAEL CORKERY and ALEXANDRA STEVENSON

JUNE 30, 2015

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## Puerto Rico Signals Chapter 9 Push With Ex-Detroit Judge on Board.

NEW YORK — When Puerto Rico hired former Detroit judge Steven Rhodes it sent a signal to creditors that one possible solution it sees is the one thing it cannot do now: declare bankruptcy.

Gaining access to the U.S. Chapter 9 bankruptcy laws for the commonwealth would give a framework for creditors and debtors of public corporations to work out their differences. Allowing the Commonwealth itself to follow the same path as the city of Detroit, which emerged from bankruptcy last year, would be a further step.

"The parallels between Detroit and Puerto Rico are strong enough that I think any of the public corporations or the commonwealth itself could take advantage of the same kind of process that we used in Detroit," Rhodes told Reuters.

A more concerted push for a bankruptcy framework concerns some creditors, who fear it will weaken their negotiating position and reduce their chances of recovering their money.

"Every time Chapter 9 is used, bondholders get destroyed," said one creditor source.

In testimony ahead of a February congressional hearing on a proposal to allow Puerto Rico to apply the code to its municipalities, Thomas Mayer, a partner at Kramer Levin law firm representing PREPA utility's bondholders, cited recoveries in Detroit, Stockton, Vallejo and Jefferson County and concluded that the code hurt bondholders.

Puerto Rico's Governor Alejandro Garcia Padilla dropped a bombshell on holders of its $73 billion debt on Monday by saying that he wants to restructure debt and postpone bond payments. He also called on Washington to make changes to U.S. bankruptcy laws to include Puerto Rico.

Padilla's office had hired Rhodes, who is retired, on June 1, to use his experience from presiding over Detroit – the biggest U.S. municipal bankruptcy. Rhodes will be devoting 25 percent of his time to the island, he said.

"(Rhodes) has made a very public statement about wanting Chapter 9 applied to the Commonwealth," said David Tawil, president of New York-based hedge fund Maglan Capital, which sold its Puerto Rico exposure about a year ago. "It's a big deal."

The creditor source said Rhode's appointment gave them the impression that Puerto Rico was "hiring him to help push for Chapter 9," because of his experience.

Chapter 9 is the bankruptcy statute governing municipal filings. Puerto Rico's entities now cannot use the statute because it only covers political subdivisions or public agencies of a state.

The island's congressional delegate, Democrat Pedro Pierluisi, has already proposed legislation to allow Puerto Rico's public corporations such access.

Rhodes said that creditors "need to accept that the island, the commonwealth and its public corporations are simply not able to pay their obligations as they come due."

"What bondholders need to understand is that the filing of a bankruptcy by itself doesn't create any harm to any creditors," Rhodes said. "What creates the harm to creditors is the inability of public corporations to pay their debt."

CHAPTER 9 STRETCH

Allowing Puerto Rico to use Chapter 9 as it is currently proposed would not apply to general obligation debt issued by its government because the statute excludes states from restructuring their own debt, said Daniel Hanson, analyst at Height Securities.

"To give them a special ability to restructure their obligations on a state level would be different to what the rest of the states have," said Hanson. "It seems extraordinarily unlikely to pick up any kind of political traction."

One large Puerto Rico bondholder said that anything that opened the door to a restructuring of the island's general obligation bonds would be negative for the bonds, but played down such a possibility.

"They will have a hard time defending why bondholders should be getting less than they are currently getting."

Puerto Rico would have to amend the bankruptcy laws to have it considered a state for the purpose of Chapter 9; and then get a provision to allow it to file its state debt.

Pierluisi himself sees no appetite in Congress for giving Puerto Rico more favorable treatment than the states have, his spokeswoman said.

But Rhodes said there could be less resistance to allowing such an option for the territory than it would have been with a state.

"Territories are not sovereign entities in our constitutional structure the same way states are," Rhodes said. "So while from a constitutional perspective, Congress probably could even authorize a state to file bankruptcy, the political, legal and constitutional sensitivities are very much stronger when you are dealing with a state compared to a territory."

The push for Chapter 9 took on more importance when a U.S. federal judge in February voided a restructuring law Puerto Rico had introduced to make some of its agencies eligible for court-supervised debt restructuring.

But Chapter 9 also looks like a long shot and some negotiations go on despite the lack of a legal framework. Puerto Rico's utility PREPA continues to negotiate a restructuring of its $9 billion debt and on Wednesday struck a deal to avoid default. Puerto Rico could also consider setting up a financial control board, such as that used by the then nearly-bankrupt District of Columbia in 1995.

Rhodes said some form of a settlement was still the best option, but that could be facilitated if Chapter 9 were available, even if it were not used.

"All parties would much rather have an out of court solution," said Rhodes, who is not expecting to play any role in negotiations with creditors. "Bankruptcy is always the last resort."

By REUTERS

JULY 3, 2015, 11:28 A.M. E.D.T.

(Additional reporting by Edward Krudy and a contributor in San Juan; Editing by Tomasz Janowski)

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## SIFMA U.S. Municipal VRDO Update, June 2015.

A brief historical stat sheet to the municipal ARS, FRN, and VRDO market ending June 2015. In excel format only.

View the Update.

July 1, 2015

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## General Obligation – The Mayhem In Municipal Bonds.

Karen Shaw Petrou memorandum to Federal Financial Analytics Clients on the mayhem in municipal bonds.

TO: Federal Financial Analytics Clients

FROM: Karen Shaw Petrou

DATE: July 2, 2015

Transfixed as we are by the Greek tragedy, it's easy to miss another deadly drama in the financial arena. The other looming systemic risk is right here at home: municipal bonds. Let me quickly say that the hazard here isn't the solvency one doomsayers wrongly prophesized a few years ago. With a few, large exceptions, muni issuers are good for it. Rather, what alarms me—a lot—is the potential for a repeat cliff-effect scenario sparked by rating downgrades. Much here is an eerie repeat of the 2008 crisis that almost took down muni-bond insurers and, with them, everyone else. Ironically, changes since the crisis have made the muni market even more vulnerable to a systemic spiral; so much for all our "we learned our lesson" talk.

A very short bit of background: municipal bonds in the U.S. come in two flavors-general-obligation (GO) ones backed by the full-faith-and-credit of the issuing locality, and state and revenue bonds, backed by the proceeds of stadiums, water projects, and the like. The total muni market is $3.2 trillion and defaults across it—$9 billion last year—are miniscule. In most cases, GO bonds are backed not only by the strong word of an issuer, but also by constitutional or other commitments that force repayment, a solvency promise further strengthened by the clear understanding that any locality that doesn't honor its commitments faces years of financial starvation at great cost to its citizenry.

The problem in the muni market thus isn't traditional credit risk, especially for GOs. Rather, it's opacity. By definition, most muni issuers—especially in the revenue-bond category—are small in terms of the global capital market. Their finances are also often ill-stated, if not even flat-out misstated. Here's where the systemic-risk sparkplug comes in: municipal-bond insurance.

Muni-bond insurers slap their own guarantee atop many issuances so that investors—many of whom are retail ones either on their own or through mutual funds—need not worry their little heads. If a GO or revenue bond is AAA, it's not necessarily that the issuer is gilt-edged—far from it in most cases. Rather, it's that the insurer's guarantee got the rating agency's gold star.

This structure makes ratings critical not only to insurers, but also to the marketplace, and here's where the potential repeat of 2008 gets scary. In 2008, most bond insurers were AAA-rated even as almost all of them played faster than fast and looser than loose with their risk profiles. Muni-bond insurance is, as I said, very low risk. It's also, thus, low-margin. In the heady days leading to the crisis, bond-insurance management wanted to fly like the big boys so they doubled down and put their imprimatur also on a wide array of wild structured-financial instruments with strongly correlated risk across their balance sheets. Oops.

The first thing that happens when a rating agency wakes up is that it cuts ratings. Blithely ignorant of everything beneath the surface at the bond insurers when the crisis broke, each of the agencies sharply downgraded the companies often just days before bankruptcy or restructuring. As ratings went down, a cliff-effect scenario unwound.

The name explains the scenario: something suddenly changes market expectations and investors fall off a cliff. When this happens, investors required to hold only high-rated paper (mutual and pension funds, for example) try to unload their munis even as potential buyers-banks, for example-either can't pick them up due to their own woes or won't because they fear another cliff effect. In the end, there were huge jumps in unrealized losses as muni-bond prices plummeted because of the rating downgrades.

Fast forward to right now. The muni market is still an island of solvency strength, pension woes in Illinois and New Jersey notwithstanding. Puerto Rico is, of course, a huge dark cloud on this horizon, but this isn't so much because its $70 billion in outstanding debt is all that much compared to the total muni market, but rather because of what's happened since 2008 to bond-insurance companies.

Several of them didn't make it out the other end of the financial crisis, leaving a far smaller and considerably more concentrated industry. One company-Assured Guaranty-now holds 57 percent of the business all on its own. Combine that number with another bond-insurer holding a lot of Puerto Rico's direct and indirect debt, NPFG, and one comes up to a very concentrated industry dependent on two companies that could well lose their AA ratings in short order. Since these insurers are keeping one large Puerto Rico issuer afloat by not just insuring, but also buying, its debt, think not just exposure, but also correlation risk and be afraid.

If these companies are downgraded, the cliff-effect scenario could well start all over again in a financial system already on edge due to Greece. It also happens at a time when fixed-income market liquidity is very scarce and the ability of custody banks to husband liquidity reserves for investment companies-e.g. retail-bond mutual funds-is unduly constrained. In short, it's a perfect storm.

Maybe these clouds will pass-I surely hope so. They are, though, a critical and urgent reminder that it's not good to regulate the biggest banks within an inch of their lives. The fundamental mechanics of the 2008 crisis remain largely untouched outside the central-bank circumference-big banks and a couple of very large non-banking companies that drew unflattering attention the last time around. Outside this select sphere, though, there are massive pockets of potential market risk and illiquidity, some reverberating of course now through the sovereign-bond market but others to come in our own little muni-bond market here at home.

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## Puerto Rico Crisis Leaves Few Market Ripples as Yields Fall.

The $3.6 trillion municipal-bond market's first reaction to Puerto Rico saying it can't pay its $72 billion of debt? A collective yawn, as far as prices went.

While the commonwealth's securities tumbled after Governor Alejandro Garcia Padilla said his administration will seek to restructure its debt, the fallout has so far been contained: Yields on top-rated 10-year municipal bonds declined 0.02 percentage point, or 2 basis points, this week, as prices rose, according to data compiled by Bloomberg. Top-rated 30-year bond yields were little changed, even as investors pulled money from municipal-bond funds for a ninth straight week.

Puerto Rico securities have traded at speculative levels for more than a year, which has given investors time to pare holdings of the junk-rated island. The long-building strains on the U.S. commonwealth, which has more debt per resident than any state, are also unique.

"Problems with Puerto Rico aren't news," said Phil Fischer, head of municipal research at Bank of America Merrill Lynch in New York. "Puerto Rico paper has been treated as speculative for a long time now."

Garcia Padilla said this week that his administration will seek to put off some debt payments for a "number of years." The specter of such a restructuring caused Puerto Rico's newest general-obligation bonds to trade at an average of 69.8 cents on the dollar Thursday, down from 77.3 cents last week.

**Risk Appetite**

Fischer said individual investors have reduced their holdings of Puerto Rico bonds, many of which are now owned by hedge funds and other buyers with more appetite for risk. About half of U.S. mutual funds that focus on municipal debt hold the securities, down from 77 percent in October 2013, according to Morningstar Inc.

The island’s debt crisis could force fund managers to sell other bonds if losses lead investors to withdraw their money. Investors have pulled cash from municipal-bond funds for the past two months, and some analysts say a Puerto Rico restructuring could weigh on a market already bracing for higher interest rates.

Investors withdrew $1.2 billion from municipal bond funds in the week ended Wednesday, the most since Jan. 2014, Lipper US Fund Flows data released Thursday show. About 40 percent of that total was from high-yield funds.

**High Yield**

If Puerto Rico defaults, some high yield funds, which have higher concentrations of the commonwealth’s bonds, may be the hardest hit. Municipal debt backed by a 1998 national settlement with tobacco companies and those issued by lower-rated hospitals may be vulnerable, said Mikhail Foux, municipal debt strategist at Barclays Plc.

Still, Bank of America’s Fischer said Puerto Rico’s struggles don’t reflect any broader financial pressure on state and local governments.

“The risk with regard to Puerto Rice is not in some sense a contamination of other municipal credits,” he said. “There’s almost no economic dependency of other muni issuers on Puerto Rico.”

Bloomberg

by Martin Z Braun

July 2, 2015 — 12:19 PM PDT Updated on July 2, 2015 — 3:16 PM PDT

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## IRS Webinar: 501(c)(7) Social Clubs: How to Get and Keep Tax-Exempt Status.

**2 p.m. to 3 p.m., Thursday, July 16**

**Topics include:**

- Requirements a 501(c)(7) organization must meet
- Types of social club organizations
- How to obtain and maintain tax-exempt status
- Unique aspects that make 501(c)(7) organizations different from other tax-exempt organizations

Remember, if you hear something during the presentation that prompts a question, simply click on the “Ask a Question” link on your screen. Your questions will help us determine future topics as well as making sure we have updated information on IRS.gov.

Register for this presentation.

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## MSRB Extends 529 Plan Disclosure Date as Groups Push for More

## Clarification.

WASHINGTON — The Municipal Securities Rulemaking Board is giving 529 college savings plan underwriters a 60-day extension on the first date data submissions are due under a recently adopted rule.

The rule, MSRB Rule G-45, requires underwriters for 529 plans to submit information semi-annually using an online form called Form G-45. The form asks for specific data like plan descriptive information, assets, contributions, withdrawals, and fee and cost structure. Dealers are also required to provide performance data submissions annually. The information can either be submitted manually through MSRB's Electronic Municipal Market Access system or through a computer-t--computer interface, which was launched for beta testing in February.

Rule G-45 gives underwriters 60 days past each filing date to get their information to the MSRB. The first submissions under the rule would have been due 60 days after a semiannual period that ended Tuesday. The extension changes the end of the first reporting period to Oct. 28, meaning dealers now have 60 days past Oct. 28 to submit.

The MSRB formed and got feedback from a group of representatives from 12 different industry organizations that handle 529 plans soon after the Securities and Exchange Commission first approved the rule.

Lynnette Kelly, the MSRB's executive director, said feedback from the industry user group "has been essential" in developing the submission process. She added the extension announced Tuesday was done "to help ease the initial burden on industry participants" and to make sure the agency receives "complete and accurate information."

David Cohen, managing director and associate general counsel for the Securities Industry and Financial Markets Association, said the extension is "welcomed relief" and validates concerns that SIFMA has been raising for more than a year. The organization's main concerns center on the technical aspect of submitting with Form G-45 and the remaining interpretive questions SIFMA and others are working through with the MSRB.

"This 60-day delay gives dealers more time to conduct testing and gives the MSRB more time to answer implementation questions and finalize the Form G-45 manual," Cohen said, adding the manual is not currently "one-stop shopping" for technical and compliance issues. "Dealers need to piece together information from the rule, the MSRB submission to the SEC, the MSRB response to comment letters sent to the SEC, the manual, and webinar slides. All of this information should be in one place, the manual."

Rachel McTague, the director of media relations for the Investment Company Institute, said the institute is "pleased" with the extension.

"We've long advocated taking the necessary time to implement the rule, with a focus on the quality of the information the MSRB receives from underwriters of 529 college savings plans rather than on speed," the spokesperson said. "Among other things, this extension was needed to allow the MSRB time to address several issues relating to the filing process."

The MSRB said in an accompanying regulatory notice that it believes the extension will provide underwriters with sufficient time to submit complete and accurate filings.

THE BOND BUYER

BY JACK CASEY

JUN 30, 2015 4:02pm ET

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## MSRB Extends Deadline for First Submissions of 529 College Savings Plan Data.

The Municipal Securities Rulemaking Board (MSRB) announced today that it is extending by 60 days the date the first submissions of information about 529 college savings plans are due to the MSRB under its Rule G-45. Recently adopted Rule G-45 requires underwriters of 529 college savings plans to provide the MSRB with information regarding their plans' assets, contributions, withdrawals, fees and cost structure. The first submissions are now due October 28, 2015.

The rule amendment was filed with the Securities and Exchange Commission for immediate effectiveness.

Read the regulatory notice.

View the full press release.

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## Franklin Templeton Sees Costly Legal Fight Over Puerto Rico Bonds.

Municipal bond researchers at Franklin Templeton, whose funds are among the largest owners of Puerto Rico debt, on Wednesday predicted a "long and costly" legal battle as the Caribbean nation tries to restructure more than $70 billion in obligations.

"At the very least, in our assessment, Puerto Rico can expect creditors to seek legal affirmation and protection of contractual rights," said Rafael and Sheila Amoroso, co-directors of the municipal bond department at Franklin Templeton. Their report was published on the company's website.

"Unfortunately, we think it will likely be a long and costly battle regardless of the outcome," they said.

However, the co-directors said they didn't see Puerto Rico's problems affecting the rest of the $3.7 trillion U.S. municipal bond market in a negative way.

**Reuters**

Wed Jul 1, 2015 12:39pm

(Reporting By Tim McLaughlin)

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## Best Credit Data Partners with Exchange Data International to Distribute Municipal Bond Pricing Data.

***Best Credit Data (BCD), a provider of end of day bond pricing data, is partnering with Exchange Data International (EDI), to distribute BCD Municipal Bond End-of-Day Pricing data to EDI clients around the world.***

BCD Municipal Bond Pricing provides end of day pricing for over 1.25 million US municipal bonds every day and roughly 8 years of daily history. The partnership gives EDI's customers the opportunity to subscribe to BCD municipal bond pricing data. Customers will be able to access data fields including: price, yield, spread, multiple duration calculations, convexity, and OAS.

"We are excited to partner with EDI," says Pierre Robert, CEO of Best Credit Data Inc. "Its global presence and its extensive experience with data-feeds makes it an ideal partner."

"We are excited to bring BCD on as a new partner to help us fill the need for customers in regards to municipal bond pricing," says EDI CEO, Jonathan Bloch, "It is the perfect partner to help bring transparency to a market sorely in need of high quality information due to severe illiquidity."

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## Puerto Rico Worries Put Focus On Municipal Bond Insurers.

Calls by Puerto Rico Gov. Alejandro Garcia Padilla to restructure the island's $72 billion debt load is putting renewed focus on whether insurers who back billions of dollars' worth of Puerto Rico bonds can absorb the losses in the event of a default.

The situation threatens to derail what has been a modest comeback for municipal-bond insurers, who suffered losses during the 2008 financial crisis after guaranteeing risky mortgage-backed securities. Nearly 60% of new municipal bonds sold in 2005 carried bond insurance, according to Thomson Reuters data, a figure that plunged to 3.6% in 2012 before recovering to 6.6% so far this year.

Investors are growing increasingly concerned. The stock prices of two of the biggest insurers, Assured Guaranty Ltd. and MBIA Inc., have fallen 12% and 28%, respectively, since Friday's close as analysts fret over whether the insurers can make good on their promises.

Bond insurers agree to make scheduled principal and interest payments if the municipality that sold the bond fails to pay. Investors expected Puerto Rico to have trouble paying bonds from some of its most stressed public authorities, a situation that analysts said appeared manageable for the insurers. But Mr. Padilla in a speech Monday said a more comprehensive restructuring plan is needed that could impact more of Puerto Rico's bonds.

As of March 31, Assured Guaranty backed roughly $10 billion in Puerto Rico principal and interest payments, and MBIA's National Public Finance Guarantee Corp. unit backed another $10 billion, according to financial documents from the insurers. Assured says it has $12 billion in claims-paying resources and National has about $4.9 billion, according to financial documents, though investors are likely to recover some value from Puerto Rico even if there is a restructuring.

The insurers also would have years to make the payments, given that some of Puerto Rico's bonds don't mature for decades. Still, significant losses could lead to fresh downgrades of the insurers' credit ratings, which would make it more difficult for them to write insurance policies on newly issued bonds.

In a research note last week, before Mr. Padilla's most recent comments, analysts at Barclays said that present-value losses of $750 million would "materially damage" MBIA and "potentially cause rating downgrades and diminished ability to write new business." Across two of Assured's subsidiaries, the analysts put the combined figure at $1.75 billion.

Mikhail Foux, head of municipal strategy at Barclays, said potential losses are now "more likely" to hit those numbers given the recent shift in Puerto Rico's stance.

Earlier in June, Moody's Investors Service said a "widespread, systemic default" could have a "significant adverse impact on the credit profiles and ratings" of some insurers.

Previously, "the governor was stressing the importance of maintaining access to the capital markets and paying debts when they come due," said James Eck, vice president and senior credit officer at Moody's. "It appears that maybe that desire is no longer feasible."

Despite the concerns about Puerto Rico, Standard & Poor's Ratings Services on Monday left unchanged the double-A ratings on Assured's subsidiaries and the double-A-minus rating on National. Insurers including Assured and National are also making payments in full on bonds tied to Detroit's bankruptcy, according to a report earlier this year from Kroll Bond Rating Agency.

Bond investors are still putting some faith in insurance, as Puerto Rico bonds that are backed by Assured and National are trading at higher prices than those on similar uninsured debt. Clark Wagner, director of fixed income at First Investors Management Co., said Tuesday that his firm sold a Puerto Rico bond insured by National and got nearly 100 cents on the dollar.

Puerto Rico bond prices have fallen broadly this week, with some bonds down roughly 11%.

Mr. Wagner said his firm sold the bond because he doesn't "want to go through this whole [restructuring] process," even though he expects investors that own the bond will ultimately get repaid in full.

THE WALL STREET JOURNAL

By MIKE CHERNEY

June 30, 2015 5:52 p.m. ET

Write to Mike Cherney at mike.cherney@wsj.com

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## MBIA Plummets After Downgrade.

The firm BTIG came out on Monday and downgraded Assured Guaranty Ltd. (NYSE: AGO) and MBIA Inc. (NYSE: MBI). BTIG said that this risks makes the two insurers not buyable and that investors should not get involved in the names. Assured Guaranty and MBIA are municipal bond insurers, and their ratings were each downgraded to Neutral from Buy.

Puerto Rico has warned that it is effectively near default after Puerto Rico's governor said that its $72 billion in debt is unpayable. The governor had previously said that Puerto Rico would effectively do whatever was necessary to pay its debt.

Puerto Rico faces crunch time this week with a June 30 deadline to restructure some of its debt or bump the deadline.

It is estimated that Puerto Rico stands to have an overall deficit of $2.5 billion per year, over the next five years.

MBIA Inc. (NYSE: MBI). shares fell 23.50 % by days end to $6.36 per, down $1.95 per share with more than 20 million shares trading hands. The average daily volume is 3 million shares. That marks the lowest level for the issue since mid-November 2012 when it bottomed at $6.78.

**About MBIA**

MBIA Inc. (NYSE:MBI) provides financial guarantee insurance, as well as related reinsurance, advisory and portfolio services, for the public and structured finance markets, and asset management advisory services. MBIA conducts its United States public finance only financial guarantee business through its subsidiary National Public Finance Guarantee Corporation (National), and its global structured finance and non-United States public finance financial guarantee insurance business through its subsidiary MBIA Insurance Corporation and its subsidiaries (MBIA Corp.). Related advisory and portfolio services are provided by the Company's subsidiary Optinuity Alliance Resources Corporation (Optinuity), which provides support services, such as surveillance, risk management, legal, accounting, treasury and information technology.

**Ira Market Report**

June 30, 2015

By Don Miller

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## U.S. Muni Bond Issuance Jumps 49 pct in 1st-Half 2015.

U.S. municipal bond issuance rose to $213 billion in the first half of 2015, nearly 49 percent higher than the same period last year, according to preliminary Thomson Reuters data on Tuesday.

Refundings comprised $139.6 billion, or 66 percent, of the total for the period.

**Reuters**

Jun 30, 2015 3:26pm EDT

(Reporting by Hilary Russ in New York)

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## Puerto Rico's Crisis Deals a Blow to Municipal-Bond Funds.

Puerto Rico's debt headache isn't confined to the island. Some of the largest mutual funds have placed sizable wagers on the U.S. commonwealth's municipal bonds.

One fund, in fact, had nearly half its assets in Puerto Rican debt.

Now, investors are bracing for losses after the island's governor said Puerto Rico can't pay its debts. Already, some of the Puerto Rico holdings in the mutual funds are touching record lows.

In a low-interest rate world, Puerto Rico's bonds have offered investors juicy yields over the past several years. Puerto Rico's $3.5 billion in general-obligation bonds issued in 2014 initially had a yield of 8.7%. The yield on 10-year U.S. Treasury notes, by contrast, hovered between 2% and 3% last year.

But now investors are getting a fast lesson on the risk that comes with those sorts of high yields. More than half of all U.S. municipal-bond funds, or 298 of 565, have invested in Puerto Rico's debt, according to the most recent fund holdings compiled by Morningstar.

Municipal-bond mutual funds run by OppenheimerFunds and Franklin Resources BEN -0.24%' Franklin Templeton Investments have the highest exposure to Puerto Rico's debt, Morningstar says. OppenheimerFunds and Franklin Templeton respectively hold roughly $4.5 billion and $2.3 billion of Puerto Rico's $73 billion in municipal debt, according to the most recent Morningstar data.

The mutual fund with the biggest exposure, a roughly $230 million fund called the Franklin Double Tax-Free Income Fund trading under the ticker "FPRTX", had about 47% of its assets in Puerto Rico debt at the end of the first quarter, the highest on Morningstar's list. OppenheimerFunds' Oppenheimer Rochester line of funds have between 2% and 37% of their assets in Puerto Rico's debt.

Of Wells Fargo's 14 municipal-bond funds, ten have wagered on Puerto Rico's debt, and 20 of Eaton Vance's 27 muni funds have invested in Puerto Rico's bonds, according to Morningstar.

Puerto Rico bonds pay interest that is exempt from federal taxation and have the ability to issue bonds exempt from federal and state taxes in every state. By contrast, most muni-bond interest is exempt from both federal and state income taxes only if the investor lives in the state where the bonds were issued.

A spokesperson for OppenheimerFunds said that its among creditors that have offered Puerto Rico's governor "numerous creative and viable solutions to the current fiscal situation," and said the firm is "disheartened" by the governor's recent comments. He added: "We expect Puerto Rico to act within the tenets of the law, including the Commonwealth's Constitution, and are ready to defend the previously agreed to terms in each and every bond indenture."

A spokesperson for Franklin Templeton said in an email that they "are currently analyzing the report, and we are waiting to hear more from the governor on next steps."

THE WALL STREET JOURNAL

By MAUREEN FARRELL

Jun 30, 2015

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- NABL Issue Price Teleconference.
- MCDC: What Comes Next For Muni Underwriters?
- SEC Makes Point with MCDC Settlements.
- The Phone Call That Could Help Governments' Credit Ratings.
- Proposed Bonds to Encourage Public Private Partnerships and Improve Infrastructure: Butler Snow.

- Treasury and IRS Re-Propose Issue Price Rules.
- NABL Presses Treasury to Ease Public Approval Requirement for PABs.
- *Town of Groton v. Commissioner of Revenue Services* – Supreme Court of Connecticut holds that refuse removal fees that municipality charged to commercial, industrial, and income producing end users on a revenue-neutral basis did not constitute a sale for "consideration" subject to state sales tax.
- And finally, we cannot conceive of a better way to open an opinion than, "[Police officer] heard some loud music and determined that it was coming from a motorcycle parked at 251 E. 72nd. A large man, Jessie Scott, was dancing in the yard and working on his truck." Honestly, what's not to love? Thank you, Jessie, you were not tased in vain.

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**EMINENT DOMAIN - FLORIDA**

## Homestead Land Group, LLC v. City of Homestead

**District Court of Appeal of Florida, Third District - June 3, 2015 - So.3d - 40 Fla. L. Weekly D1325**

Purchaser of land, a portion of which had been acquired by city via eminent domain proceedings just prior to purchase, filed an objection to a proposed entry of final judgment in the eminent domain proceedings and filed an answer to city's eminent domain petition requesting a jury trial on valuation. The Circuit Court denied relief to purchaser. Purchaser appealed.

The District Court of Appeal held that purchaser had no legal interest in the land at the time city acquired a portion of it.

Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the eminent domain proceedings. At time of the taking, vendor only had rights to the property via a reversionary clause, pursuant to which title reverted to vendor if owner could not obtain zoning for new church, but neither purchaser nor vendor were able to show that owner had not secured zoning or that it could not have done so in the future, and vendor never attempted to exercise its right to the property, so that the reversionary interest never matured.

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**LIABILITY - LOUISIANA**

## Scott v. City of Shreveport

**Court of Appeal of Louisiana, Second Circuit - June 24, 2015 - So.3d - 2015 WL 3877121 - 49, 944 (La.App. 2 Cir. 6/24/15)**

Individual who suffered heart attack after city police officer used stun gun on him brought negligence action against city. The District Court granted summary judgment for city. Individual appealed.

The Court of Appeal held that officer's use of stun gun did not cause individual's heart attack.

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**UTILITIES - MARYLAND**

## Washington Suburban Sanitary Com'n v. Lafarge North America, Inc.

**Court of Appeals of Maryland - June 18, 2015 - A.3d - 2015 WL 3777597**

Operator of concrete plant petitioned for judicial review of failure by Washington Suburban Sanitary Commission (WSSC) to timely act on operator's request for refund of allegedly erroneous charges for water and sewer service. The Circuit Court remanded the matter to WSSC with directions to determine and issue an appropriate refund. WSSC appealed. The Court of Special Appeals affirmed. WSSC petitioned for certiorari.

The Court of Appeals held that:

- Court of Special Appeals had jurisdiction over WSSC's appeal, and
- Remand for calculation of amount of refund was appropriate.

Court of Special Appeals had appellate jurisdiction, under section of Administrative Procedure Act (APA) authorizing appeals in contested cases, over appeal by Washington Suburban Sanitary Commission (WSSC) from order of circuit court, requiring WSSC to determine and issue a refund to operator of concrete plant for allegedly erroneous charges for water and sewer service. Even though statute governing judicial review by a circuit court of final action on a refund claim by the WSSC was silent regarding appellate review of that circuit court's judgment by the Court of Special Appeals, WSSC was a state agency subject to the requirements of the APA, and WSSC refund claims were contested cases.

Appropriate remedy for failure of Washington Suburban Sanitary Commission (WSSC) to timely act on concrete plant operator's request for refund of allegedly erroneous charges for water and sewer service, resulting in request being deemed denied, was a remand to the WSSC for calculation of the amount of the refund due, not a remand for WSSC to determine whether to issue refund, since denial of the refund was not supported by substantial evidence. WSSC's governing statute required WSSC to investigate the merits of the claim within 180 days, and the only administrative record existing with regard to the refund claim were letters from operator requesting refund and subsequently requesting a hearing.

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**EMERGENCY MANAGERS - MICHIGAN**

## Kincaid v. City of Flint

**Court of Appeals of Michigan - June 11, 2015 - N.W.2d - 2015 WL 3631825**

On August 15, 2011, the City of Flint's finance director, Michael Townsend, sent a notice of a proposed 3.5% water and sewerage rate increase to be effective September 16, 2011, to the city council and mayor. The increase was proposed to meet a projected fiscal year deficit in the water fund of $14,789,666 as well as a sewer fund deficit of $8,078,917. Council adopted the proposal and the mayor signed it.

Shortly thereafter Flint was declared to be in a state of financial emergency. On November 28, 2011, Michael Brown was appointed as the Emergency Manager (EM) of defendant under the Emergency Manager Law. On May 5, 2012, after being informed by newly appointed finance director Gerald Ambrose of the financial disarray of the City's water and sewer funds, EM Brown created Emergency Order No. 31. Order No. 31 ratified and confirmed the water and sewer rates implemented under Townsend on September 16, 2011, and additionally raised water and sewer rates, 12.5% and 45%, respectively.

Plaintiffs sued, alleging two claims of error: that water and sewer rate increases that occurred under Townsend in September 2011 were not authorized by Flint Ordinances and that EM Brown did not have the authority to ratify Townsend's unauthorized increases and then further increase water and sewer rates in violation of the same ordinances.

The Court of Appeals held that:

- Both the rate increases of September 2011 and those imposed by the EM failed to meet the notice and effective date requirements of the relevant ordinances; and
- As a matter of first impression, the Legislature did not delegate to an EM the power to ratify the unauthorized acts of another public official.

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**IMMUNITY - NEBRASKA**

## Kimminau v. City of Hastings

**Supreme Court of Nebraska - June 19, 2015 - N.W.2d - 291 Neb. 133**

Motorist filed suit against driver of truck that spilled corn mash onto county boulevard, driver's employer, city, fire district, and county, arising out of injuries received when her vehicle came in contact with corn mash that remained on boulevard after clean-up on previous day, which caused her to lose control of vehicle and crash. The District Court entered summary judgment for all defendants, and motorist appealed. Petition to bypass was granted.

The Supreme Court of Nebraska held that:

- Spilled corn mash presented single "spot or localized defect" on boulevard, for purposes of determining whether defendants had actual notice of defect, as required to waive immunity from suit under Political Subdivisions Tort Claims Act (PSTCA);
- Government defendants waived immunity from suit;
- "Discretionary function" exception to waiver of immunity did not apply; and
- Truck driver and driver's employer owed no duty to motorist to ensure clean-up after government defendants assumed responsibility for same.

Spilled corn mash on boulevard that remained after fire district undertook remediation efforts to clean boulevard, and after county highway superintendent and district volunteer captain observed that surface was clear of corn mash debris, presented single "spot or localized defect" on boulevard, for purposes of determining whether city, fire district, and county had actual notice of defect, as required to waive immunity from liability under Political Subdivisions Tort Claims Act (PSTCA) for motorist's injuries after her vehicle came into contact with spilled corn mash, which caused motorist to lose control of vehicle.

City, fire district, and county had actual notice of corn mash that had spilled from truck onto boulevard and remained after fire district undertook efforts to remediate spill and swept it off paved portion of boulevard onto unpaved shoulder and ditch, and thus, defendants waived immunity from suit, under Political Subdivisions Tort Claims Act (PSTCA), for injuries sustained by motorist on day after spill when her vehicle came into contact with corn mash, which caused her to lose control of vehicle.

"Discretionary function" exception to waiver of immunity did not apply to motorist's suit against city, fire district, and county for injuries sustained when her vehicle came into contact with corn mash that had been spilled onto county boulevard on previous day that remained after fire district undertook efforts to remediate spill, which contact caused motorist to lose control of vehicle. County's obligation to remediate spot or localized defect on boulevard presented by spilled corn mash was ministerial act, not discretionary one.

Driver of truck from which corn mash spilled onto county boulevard, and driver's employer, did not owe duty to motorist to ensure that all spilled corn mash was cleaned off boulevard, and thus, were not liable for motorist's injuries sustained on day after spill when vehicle came into contact with corn mash, which caused motorist to lose control of vehicle, after fire district, which responded to state trooper's report of spill, assumed responsibility to clean spill, trooper closed boulevard to traffic during clean-up, and then later declared boulevard safe for vehicular travel and reopened it to traffic.

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**ECONOMIC DEVELOPMENT ZONES - NEW JERSEY**

## Hillsborough Properties, L.L.C. v. Township of Hillsborough

**Superior Court of New Jersey, Appellate Division - June 23, 2015 - Not Reported in A.3d - 2015 WL 3843409**

Trial court issued an order invalidating the Township of Hillsborough's twenty-five-acre minimum lot size for Economic Development Zones, finding that such a minimum lot size was arbitrary, capricious, and unreasonable. The court ordered the Township to amend its zoning ordinance to establish a minimum lot size of five acres. Township appealed.

The appeals court agreed that the trial court correctly determined that the twenty-five-acre minimum lot size was not reasonable when considered in light of the purposes of the zone and the lot sizes established for similar uses in the Township's other zoning districts.

However, the appeals court agreed with the Township that the trial court erred by ordering it to adopt a five-acre minimum lot size for the ED Zone. The appeals court remanded to the Township's Planning Board to review the lot sizes for the other non-residential districts and determine, in the first instance, the minimum lot size less than twenty-five acres that would reasonably achieve the purpose and goals of the zone.

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**TAXIS - NEW YORK**

## Greater New York Taxi Ass'n v. New York City Taxi and Limousine Com'n

**Court of Appeals of New York - June 25, 2015 - N.E.3d - 2015 WL 3885462 - 2015 N.Y. Slip Op. 05514**

Association of taxicab owners commenced proceeding against New York City Taxi and Limousine Commission, seeking to invalidate rule that established a particular make and model of vehicle as city's official taxicab. The Supreme Court, New York County, entered order declaring rule invalid, and the Supreme Court, Appellate Division, reversed and granted association leave to appeal.

The Court of Appeals held that Commission did not exceed its authority under city charter or intrude on city council's domain in violation of the separation of powers doctrine by enacting rule that established a particular make and model of vehicle as city's official taxicab.

City charter authorized the Commission to establish an overall public transportation policy governing taxi services, the choice of the best possible vehicle for use as a taxi fit within the broad authority granted in the charter, and city council generally refrained from intervening in the Commission's broad regulation of the taxi industry, including the question at issue, for over four decades.

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**ZONING - NEW YORK**

## Acquest Wehrle, LLC v. Town of Amherst

**Supreme Court, Appellate Division, Fourth Department, New York - June 19, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 05346**

Owner of property located partially in designated wetland brought action against town board and its members, alleging violation of its due process rights and equal protection rights, after board passed a resolution rescinding its request to the Environmental Protection Agency (EPA) to allow owner to tap into federally-subsidized sewer and terminated owner's office park project. The Supreme Court, Erie County, granted in part, and denied in part, motions for summary judgment, and entered judgment, following trial, in favor of owner, and awarded damages and attorney fees. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Owner had cognizable property interest in board's request to EPA to allow owner to tap into federally-subsidized sewer;
- Fact issues barred summary judgment, in substantive due process claim;
- Defendants did not violate owner's equal protection rights; and
- Evidence of conduct after termination of project was not relevant.

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**ATTORNEYS' FEES - RHODE ISLAND**

## Shine v. Moreau

**Supreme Court of Rhode Island - June 18, 2015 - A.3d - 2015 WL 3799503**

Mayor and city council of financially distressed city brought action against receiver for city, appointed by state Department of Revenue, challenging constitutionality of Financial Stability Act. The Superior Court held the act was constitutional. Mayor and council appealed. The Supreme Court of Rhode Island affirmed. On remand, the Superior Court ruled on remaining issues relating to reimbursement, indemnification and advance attorney fees. Mayor and council appealed.

The Supreme Court of Rhode Island held that:

- Receiver was not entitled to recover attorney fees incurred;
- Mayor was entitled to indemnification for legal costs incurred in obtaining a definitive ruling as to constitutionality of Act; and
- Independent counsel hired by city counsel was entitled to award of attorney fees in litigation challenging constitutionality of Act.

Provision of Financial Stability Act stating that an official would be personally liable for any funds "expended in excess of an appropriation" does not allow appointed receiver to recover for attorney fees incurred.

Mayor of financially distressed city was entitled to indemnification for legal costs incurred in litigation challenging the constitutionality of the Financial Stability Act and defending himself in declaratory action filed by appointed receiver. Although the actions of the mayor were in conflict with the clear mandates of the Act, such actions were taken to obtain a definitive ruling as to the constitutionality of a new statute that removed a significant amount of the power held by city's elected officials and vested that broad power in a receiver, lawsuits were undertaken on behalf of city, mayor had standing and arguably a duty to challenge constitutionality of Act in his official capacity, and it would be unjust and inequitable to leave mayor personally responsible for such lawsuits.

Independent counsel hired by city council of financially distressed city was entitled to recover attorney fees relating to actions challenging the constitutionality of the Financial Stability Act and defending council in declaratory action filed by appointed receiver, even though the resolutions of the council to hire independent counsel were rescinded by receiver pursuant to the Act. The hiring was authorized by city ordinance, council acted to obtain a definitive ruling as to the constitutionality of a new statute that removed a significant amount of the power held by city's elected officials and vested that broad power in a receiver, lawsuits were undertaken on behalf of city, council had standing and arguably a duty to challenge constitutionality of Act in its official capacity, and it would be fundamentally unfair to hold that attorney fees incurred in the city council's official capacity must be paid out of the personal funds of individual city council members.

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**EMPLOYMENT - TENNESSEE**

## State ex rel Byrge v. Yeager

**Court of Appeals of Tennessee, at Knoxville - June 25, 2015 - Slip Copy - 2015 WL 3902052**

Petitioners filed an action seeking to remove the respondent from the position of county law director of Anderson County pursuant to Tennessee's ouster law, found at Tennessee Code Annotated section 8–47–101. The respondent filed a motion to dismiss, which the trial court granted after concluding that the position of county law director is not a public office subject to the ouster law.

On appeal, the petitioners argued that the trial court erred in concluding that the position of county law director is not a public office. Because the county law director is subject to oversight by an advisory committee that may remove him or her at any time with the subsequent approval of the county legislature, the Court of Appeal affirmed the ruling of the trial court.

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**IMMUNITY - TEXAS**

## Suarez v. City of Texas

**Supreme Court of Texas - June 19, 2015 - S.W.3d - 2015 WL 3802865**

Suit was brought against city under Texas Tort Claims Act (TTCA) and under Wrongful Death Act, by mother of children who drowned in water off man-made beach, and as surviving spouse of children's father who drowned while attempting to save them. The District Court denied city's plea to jurisdiction and motion for summary judgment on grounds of immunity, and city appealed.

The Supreme Court of Texas held that:

- City's failure to replace warning signs along beach after hurricane did not constitute gross

negligence, as required for waiver of immunity from suit under TTCA based on limitation under recreational use statute;
- City's failure to re-designate swim area after hurricane was not gross negligence;
- Evidence of prior drownings did not show that city's failure to warn visitors about dangers rose to level of gross negligence; and
- Mayor's deposition testimony did not show that city's failure to warn visitors of risk rose to level of gross negligence.

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## Unlocking the Private Sector: State Innovations in Financing Transportation Infrastructure.

David Narefsky of Mayer Brown provided testimony in a Senate Finance Committee hearing on private investment in road infrastructure on June 25, 2015.

Download the Testimony.

Mr. David Narefsky, Partner, Co-Leader, Infrastructure Practice Group, Mayer Brown, Chicago, IL

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## MSRB and the Municipal Forum of New York to Host Education and Outreach Seminar in New York.

The Municipal Securities Rulemaking Board (MSRB) and the Municipal Forum of New York will host an education and outreach seminar on the evolution and emerging trends of the municipal market for industry professionals and others in New York City, New York on July 28, 2015. Kevyn D. Orr, former emergency manager for the city of Detroit, will deliver the keynote address.

View the seminar agenda.

Click here to register.

View the full press release.

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## MCDC: What Comes Next For Muni Underwriters?

**Complimentary Web Seminar**

**July 21, 2015**

**12 pm ET/9 am PT**

Click Here to Register.

Hear a diverse panel discuss what has transpired since the start of the SEC's MCDC initiative in 2014 and what is still to come.

Our panel includes senior level experts including:

- Independent Consultant
- Leading Counsel
- Technology Platform Co-founders

We will cover specific areas of concern for the municipal bond market overall and Underwriters in particular.

Listen to an engaging panel discussion and ask our experts questions about:

- Where the SEC is with Orders and Disqualifications.
- How Independent Consultants will be playing a key role.
- How Underwriting procedures and deal-making have been affected by MCDC.
- Resources for Post-MCDC Compliance.

Register Now!

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## 12 New Ways to Close Infrastructure Funding Gaps Highlighted by CA Fwd and Economic Summit Partners.

It's a problem state government can't solve with existing resources, the private sector won't take on without public partners, and nonprofits can't address alone.

California lacks funding for every type of infrastructure—from moving goods to moving information—but the scope of this challenge (a $300 billion shortfall over the next 10 years just for maintaining the state's transportation system) has proven too much for traditional public investment. The state and federal government simply haven't been able to close these gaps.

Continue reading.

JUNE 25, 2015 BY JUSTIN EWERS

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## The National Conference for Public-Private Partnerships.

Boston, MA   July 20-22, 2015

P3 Connect 2015 — the National Conference for Public-Private Partnerships — quickly has become the premier event for public-sector officials and private-sector innovators focused on advancing P3s nationwide. Last year, P3 Connect attracted more than 250 attendees, representing more than 100 public and private sector organizations. P3 Connect 2015 promises to be bigger and better.

P3 Connect 2015 continues NCPPP's 30-year tradition of serving as the foremost educational organization on P3s and the convening point for moving P3s forward.

NEW FOR 2015: INTRODUCTION TO P3 BOOTCAMP

Introduction to P3 Bootcamp is an introductory-level workshop for public and private sector representatives who are interested in P3s but may be unfamiliar with how they work. Workshop faculty will cover: how P3s differ from traditional privatization and procurement; alternative P3 structures; use of P3s for financing projects; identification and allocation of risks; understanding what P3s can and cannot help communities accomplish; and how to develop and maintain a productive partnership.

Introduction to P3 Bootcamp will take place on Monday, July 20th from 9:00AM – 12:00PM.

If you are interested in participating in the Introduction to P3 Bootcamp, at no additional charge, be sure to select the Bootcamp checkbox on the second page of the online registration form.

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## Treasury and IRS Re-Propose Issue Price Rules.

WASHINGTON – The Treasury Department and Internal Revenue Service released new proposed rules on the definition of issue price that market participants consider to be a significant improvement over rules proposed on the topic in 2013.

The re-proposed rules, which were released Tuesday and are scheduled to appear in Wednesday's edition of the Federal Register, would allow issuers to rely on the initial offering price under certain circumstances and provide a narrower definition of an underwriter. The document that contains the re-proposed rules also withdraws issue price rules proposed in September 2013.

"[The new proposal] provides more flexibility than the 2013 proposal," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

"Based on an initial reading, the new proposal is a vast improvement over the 2013 issue price amendments," said Mike Nicholas, chief executive officer of the Bond Dealers of America. "Retaining the current regulatory framework for establishing issue price based on a substantial amount of an issuance being sold and providing a mechanism to permit reliance on the initial offering prices are especially positive developments for the municipal market."

National Association of Bond Lawyers president Tony Martini said there's "a lot to be encouraged by" in the new proposal.

The re-proposed rules apply to bonds that are sold at least 90 days after the rules are adopted in final form, but issuers can rely on them for bonds sold on or after Wednesday, the regulators said. A public hearing on the proposal is scheduled for Oct. 28.

Issue price is used to determine the yield on bonds for purposes of arbitrage investment restrictions.

Existing rules generally provide that the issue price of a maturity is the first price at which a substantial amount of the bonds is sold to the public, with substantial defined as 10%. But for bonds that are publicly offered, the issue price is the first price at which 10% of the bonds are reasonably expected to be sold to the public. When there is a bona fide public offering, the issue price is determined as of the sale date – the date when the underwriter signs the agreement to buy the bonds from the issuer and when the terms of the bonds are set — based on reasonable expectations of the initial offering price.

The rules proposed in 2013 eliminated the "reasonable expectations" standard and the definition of substantial as 10%. Instead, they provided a safe harbor that would allow the issuer to treat as the issue price of a maturity the first price at which at least 25% of the bonds is sold to the "public," with that term referring to anyone other than an "underwriter."

Those rules defined underwriter as "any person that purchases bonds from the issuer for the purpose of effecting the original distribution of the bonds, or otherwise participates directly or indirectly in the original distribution."

Market participants raised a number of concerns about the issue price rules proposed in 2013 and wanted them to be withdrawn or re-proposed. The new proposed rules aim to address market participants' concerns about the 2013 proposed rules.

Kim Betterton, a partner at Ballard Spahr in Baltimore who took the lead on NABL's comments on the 2013 proposal, said it looks like Treasury and the IRS accepted most of NABL's suggestions.

Under the re-proposed regulations, as in the existing regulations, the general rule would remain that the issue price is the first price at which 10% is sold to the public. But issuers could use an alternative method to determine issue price if 10% of a maturity hasn't been sold by the sale date. In those cases, an issuer could use the initial offering price to the public as of the sale date as the issue price if certain requirements are met. Those requirements include that the underwriters fill all orders from the public on or before the sale date at the initial offering price, and that the lead or sole underwriter provide a certification that no underwriter will fill an order from the public after the sale date and before the issue date at a higher price than the initial offering price unless the market moves after the sale date.

Underwriters could document the initial offering price with a copy of the pricing wire. They should document an order that's higher than the initial offering price after the sale date by including both pricing information and information regarding the corresponding market change, such as proof that there were changes to the values of a muni interest rate index, Treasury and the IRS said.

"The issuer must not know or have reason to know, after exercising due diligence, that the certifications are false," the agencies said.

Market participants had some questions about the alternative method.

Decker said he thought the regulators' proposal could suggest that if the market moves, the price of bonds may have to keep the same spread compared to the index. However, that approach doesn't take into account market reasons why the spread could change.

Since the certification would be a new requirement for underwriters, it's unclear how easy it would be for the underwriters to comply with it, Decker said.

Betterton said she wants to make sure that underwriters can comply with the certification requirements and wants to get more information about the documents needed to demonstrate market changes.

She and Matthias Edrich, a lawyer at Kutak Rock, both said that there could be clarifications about what type of due diligence issuers would need to do to determine the veracity of the underwriters' certifications.

The re-proposed rules define underwriter to include anyone who "contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form an underwriting syndicate" and anyone who directly or indirectly enters into a contract or other arrangement to sell the bonds with any of the syndicate members.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, said he particularly appreciates "the recognition that a dealer without a contract before the sale date is considered part of the 'public.'"

**The Bond Buyer**

**by Naomi Jagoda**

**JUN 23, 2015 9:36am ET**

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## [NABL Presses Treasury to Ease Public Approval Requirement for PABs.]

WASHINGTON – The National Association of Bond Lawyers submitted recommendations to the Treasury Department and Internal Revenue Service on ways to ease and clarify the public approval requirement for private-activity bonds.

NABL sent the recommendations on Friday to James Polfer, chief of the tax-exempt bond branch of the IRS chief counsel's office, and John Cross, Treasury associate tax legislative counsel. The group started working on the document after conversations with Treasury and the IRS about temporary and proposed regulations on public approval, said Clifford Gerber, a partner at Sidley Austin and one of the drafters of the latest comments.

Under federal tax law, PABs cannot be tax exempt unless they are approved by the governmental unit that issued the bonds or on whose behalf the bonds were issued. PAB issues are treated as being approved by governmental units if they were approved by voter referendum or "by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice."

The public approval requirement was added to tax law by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). In 1983, temporary regulations concerning the requirement were published, and in 2008, Treasury and the IRS released proposed regulations that have not yet been finalized. The temporary and proposed regulations, among other things, describe what information needs to be included in the public notice.

"The TEFRA public approval requirement is arguably one of the more burdensome requirements for tax exemption," NABL said. "NABL believes that ways in which the requirement may be made less burdensome to issuers and conduit borrowers, while still achieving the underlying objectives of the requirement, should continually be reassessed, with deference given to how state and local governments carry out their day-to-day operations and with recognition of technological advances as tools for implementation."

NABL submitted comments on the TEFRA requirement in 2007 and 2008. In its new paper, NABL affirmed those comments and applauded features of the 2008 proposed regulations that would streamline and modernize the rules.

The purpose of NABL's paper is to provide additional comments for Treasury and the IRS to consider before they release the next set of public approval regulations, whether those are proposed, temporary or final rules.

“Our comments weren’t intended to cover the landscape. Rather, we wanted to address several important aspects of the TEFRA approval requirement that were not addressed in our previous comments or that we thought were in need of further explanation,” Gerber said. “We hope that these comments will be helpful to the IRS and Treasury in issuing the next set of TEFRA regulations.”

NABL recommended that regulations broaden the allowance for PAB proceeds to be used for working capital without the public notice specifically mentioning that proceeds would be used for that purpose. NABL said it doesn’t think issuers need to include reference to working capital in their notices because there are already restrictions on working capital for PABs and because working capital expenditures don’t give rise to facilities, “which were the original basis for giving notice to the public, and have long been recognized as such.”

Another recommendation was for the next set of regulations to clarify what constitutes “integrated operation.” The temporary regulations can be interpreted as requiring public notices to state the maximum dollar amount for bonds for each facility being financed by the issue. Separate tracts of land can be treated as one facility if they are used in an integrated operation, but that term is not defined in the temporary regulations or the proposed regulations. NABL is recommending that new regulations allow properties to be considered part of an integrated operation to the extent that the bond-financed improvements made at multiple locations are owned and operated by the same or related entities, under common management, or are part of a controlled group.

The temporary regulations and the proposed regulations don’t explain how the public approval requirements should be applied to PAB-financed property that is movable or intangible, such as mobile libraries or medical vans. NABL is proposing that the next set of regulations include a safe harbor under which the location listed in a TEFRA notice for movable or intangible property is: the location where the property must be licensed, titled, registered or insured; where the property returns after assignments; where the property is assigned to under applicable law; or where transmission of output associated with the property originate.

The rules proposed in 2008 allow supplemental, post-issuance public approval for projects that substantially deviate from what was described in pre-issuance TEFRA notices, so long as the deviation meets certain conditions. First the issuer has to have reasonably expected when the bonds were issued that the actual facts wouldn’t substantially deviate from the information on the public notice. The second condition is that either the cost of the facility being financed was less than expected, or the issuer or borrower has to prove that originally expected use of the proceeds “is no longer feasible or viable.”

NABL would like Treasury and the IRS to eliminate the second condition in the next set of regulations because it is “unnecessarily limiting,” the group said.

NABL also made a recommendation relating to the cancellation of public hearings. Under the proposed regulations, if a government provides reasonable notice for a public hearing and receives no timely requests to participate, the government can cancel the hearing and treat the hearing requirement as met. NABL suggested that in the next set of regulations, the issuer should be allowed to provide notice of the cancellation of a public hearing on its website in the same manner that it posts other public notices.

Additionally, NABL suggested that if the next set of rules is still in proposed form, that issuers and borrowers be able to rely on them before they are adopted. “Because many provisions of the proposed regulations are intended to reduce the burden on issuers and borrowers and are ameliorative, it is important that the new TEFRA regulations provide for the ability of issuers and borrowers to apply the regulations prior to their adoption in final form," the group said.

THE BOND BUYER

by Naomi Jagoda

JUN 22, 2015 3:38pm ET

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## SEC Makes Point with MCDC Settlements

WASHINGTON – The Securities and Exchange Commission, in announcing the first penalties under its disclosure violations self-reporting program last week, tried to refute criticism while providing hints about what kinds of violations are important to investors, lawyers said Monday.

The SEC announced charges against 36 underwriters for selling bonds with offering documents that contained false or misleading statements about the issuers' compliance with continuing disclosure obligations. The firms, which settled for a total of $9.3 million, were taking advantage of the municipalities continuing disclosure cooperation, which offered lenient terms for both underwriters and issuers who self-reported any time in the last five years in which they sold or underwrote bonds with deficient offering documents.

Bond lawyers had been awaiting the settlements to see what they could learn about the SEC staff's thinking on what sorts of continuing disclosure violations were significant enough to be considered "material" and therefore require mention in a bond's official statement. There had also been criticism from some dealers and attorneys that the program targeted a problem that was already fixed when the SEC sent out a risk alert in 2012 that made clear it was paying attention to violations of its Rule 15c2-12, which requires that underwriters make sure that issuers have contracted to provide annual financial data as well as material event notices. Materiality has been defined by the Supreme Court to mean something a reasonable investor would want to know before making an investment decision.

"There were arguments by the industry that the SEC sent its message when it did the risk alert in 2012," said Elaine Greenberg, a partner at Orrick, Herrington & Sutcliffe in Washington.

In the settlements released June 18, the SEC cited examples back to 2010 but included transactions that occurred in 2013 and 2014. A securities lawyer who declined to be named said that the SEC may have chosen these examples to make the point that there are still problems in the market since the alert.

"It's almost a refutation," the lawyer said. "It's a rebuttal to those who said 'much ado about nothing.'"

Greenberg noted that the SEC's orders cite examples of financial documents filed as little as 14 days late as well as some in which the filings were never done. That means that the commission staff considers a filing late by two weeks as potentially material, she said, but it is unclear if the SEC would have pursued action if the firm had underwritten for an issuer whose only violation was a filing late 14 days.

The orders don't make reference to material events such as rating changes, but Greenberg said the market cannot take that to mean that the commission will never consider those to be material.

Robert Feyer, a partner at Orrick's San Francisco office, said that it is difficult to determine glean too much information about the SEC's views on materiality based on these settlements.

"The message continues to be that the best thing to do is comply," Feyer said.

John McNally, a partner at the law firm of Hawkins Delafield & Wood in Washington said ongoing concerns about materiality are "misplaced."

"Although we all would have appreciated further guidance as our clients considered whether to self-report under the MCDC Initiative, now that the self-reporting process has been completed, and issuers and underwriters made their determinations whether to self-report … if there were to be a new failure to comply with a continuing disclosure agreement, the prudent course would be simply to disclose such failure without regard to where it may lie on the materiality spectrum," McNally said.

McNally also discussed previous concerns over underwriters "willfully" violating securities laws that triggered the possibility for disqualifications and detrimental effects to underwriter firms' business dealings. However, the SEC granted waivers to the firms, allowing disqualification to fade away as an issue. Feyer said it is hard to know how widespread the violations were, because some of the violations noted in the settlements could have stemmed from the poor disclosure by the same issuer.

Teri Guarnaccia, a partner at Ballard Spahr in Baltimore, noted a relative lack of competitive offerings cited in the settlements: only four firms were charged with doing sloppy due diligence in competitive deals. The SEC has taken the position in past enforcement cases that underwriters have a reduced due diligence responsibility in competitive sales because they have less time to review the documents, though it has never taken the position that the obligation isn't there. Guarnaccia said she didn't see a clear message about materiality in the settlements.

The SEC has said that more settlements with underwriters could be forthcoming, and that issuer settlements will also be coming in the future.

THE BOND BUYER

BY KYLE GLAZIER and JACK CASEY

JUN 22, 2015 3:59pm ET

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## GFOA's 2015 Awards for Excellence in Government Finance.

The Government Finance Officers Association of the United States and Canada announced the winners of its 2015 Awards for Excellence in Government Finance at the GFOA's annual conference in Philadelphia on June 2.

This year's Awards for Excellence-winning entries include innovations in areas of e-government and technology and pensions and benefits:

**Montgomery County, Maryland**

*Financial Information: Transformation, Transparency, and Easy Access*

Category: eGovernment and Technology

The county recently completed a new financial transparency suite (including the Online Open Budget Initiative, spendingMontgomery, and budgetMontgomery) to address the limited public use of the legally required online posting of budget data. Based on a survey of residents, the county addressed residents' four key critiques of using the current on-line data, including complicated data, lack of detail, lack of a "big picture," and overall accessibility. The new initiative provides data to the public in a more intuitive and interactive format and also allows the county to improve interaction with its residents and show residents how the county does business. Data are organized in a format that is more readily understood by the lay person. The county made this format available to other governments, making cross governmental comparisons possible. (Portions of the project have also been used by the City of Davenport, Iowa, and the City of Boston, Massachusetts.)

Contact: Joseph F. Beach, Director of Finance, 101 Monroe St., 15th floor, Rockville, MD 20850 (240-777-8870, joseph.beach@montgomerycountymd.gov)

**Orange County (California) Employees Retirement System**

*OCERS Pension Portfolio Investment Fee Transparency and Management Initiative*

Category: Pensions and Benefits

The Orange County Employees Retirement System adopted a comprehensive fee policy for heightened transparency to stakeholders and to guide the organization in investment management practices – which included publishing an annual fee report in 2014. The policy arose from the need to show fees for investment managers more accurately, particularly those that are not invoiced but deducted from portfolio holdings. In addition, collaborative and bundled investment management for private equity funds management reduced costs for services in this area by 65%. This strategy, implemented after securing a legal opinion from a qualified expert external counsel, was executed in collaboration with three other California counties.

Contact: Girard Miller, Chief Investment Officer, 2223 E. Wellington Ave., Santa Ana, CA 92701 (714-558-6223, gmiller@ocers.org)

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## NABL: IRS Issues Notice Clarifying Requirements Related to Hospital Facility Financial Assistance Policies.

Notice 2015-46 clarifies how a charitable hospital organization may comply with the requirement in the final regulations under section 501(r) published on December 31, 2014, that a hospital facility include a list of providers in its financial assistance policy (FAP). This notice affects charitable hospital organizations. Section 501(r) was added by the Affordable Care Act and added requirements that hospitals must meet to remain 501(c)(3) organizations.

In August 2014, NABL published The 501(c)(3) Opinion In Qualified 501(c)(3) Bond Transactions: Background, Opinion Formulations and Due Diligence, which, among other topics, discusses the requirements of section 501(r).

Notice 2015-46 will appear in IRB 2015-28 dated July 13, 2015.

## NABL Issue Price Teleconference - July 14, 2015

Save the date to join moderator Kimberly Betterton, Ballard Spahr LLP, and panelists Perry Israel, Law Office of Perry Israel, Richard Chirls, Orrick, Herrington & Sutcliffe LLP, and Arthur Miller, Goldman, Sachs & Co, as they discuss the newly released proposed issue price regulations.

The free teleconference, on Tuesday, July 14, 1-2:30 pm eastern, is open to regular NABL members only. No CLE will be offered. Additional information and online registration will be available early next week.

## Advisory Committee on Tax Exempt and Government Entities (ACT) Releases Public Report.

The 14th report of recommendations of the Advisory Committee on Tax Exempt and Government Entities (ACT) addresses five issues:

**Employee Plans:** Analysis and Recommendations Regarding 403 (b) Plans
**Exempt Organizations:** The Redesigned Form 990 – Recommendations for Improving its Effectiveness as a Reporting Tool and Source of Data for the Exempt Organization Community
**Federal, State and Local Governments:** FSLG Education and Outreach – Review and Recommendations
**Indian Tribal Governments:** Report on Recommendations for Outreach and Training – A Revision to the Indian Tax Desk Guide
**Tax Exempt Bonds:** Doing More With Less – Balancing Resources and Needs.

The 20 members of the ACT presented their report to the IRS in a public meeting in Washington, DC on June 17, 2015.

## U.S. Muni Bonds Lifted by Greek Credit Woes.

Prices on benchmark U.S. municipal bonds rose on Monday, driving down yields as much as 6 basis points on Municipal Market Data's preliminary scale read.

The lift came after a weekend of financial turmoil in Greece left investors pulling money out of stock markets and pouring into safe haven securities including bonds, according to MMD analyst Gregory Saulnier. MMD is a unit of Thomson Reuters.

Reuters

(Reporting by Hilary Russ)

Mon Jun 29, 2015 10:14am EDT

**TAX - CONNECTICUT**

## Town of Groton v. Commissioner of Revenue Services

**Supreme Court of Connecticut - June 30, 2015 - A.3d - 2015 WL 3853561**

Municipality sought judicial review of sales tax assessment issued by commissioner of revenue services on fees that municipality charged for refuse removal services. The Superior Court concluded that municipality had failed to establish that the assessment was incorrect and dismissed the appeal. Municipality appealed and case was transferred.

The Supreme Court of Connecticut held that fees that municipality charged to commercial, industrial, and income producing end users on a revenue-neutral basis did not constitute a sale for "consideration" subject to sales tax.

Refuse removal fees that municipality charged to commercial, industrial, and income producing end users on a revenue-neutral basis did not constitute a sale for "consideration" subject to sales tax, where the fees were a mere pass-through arrangement on which the municipality did not turn a profit in carrying out the statutorily authorized, governmental function of garbage collection via a municipal or regional authority, as distinguished from acting in a proprietary capacity for purposes of corporate benefit or profit for the municipality.

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## S&P: Supreme Court's ACA Ruling Has No Impact on Health Care Sector.

DALLAS (Standard & Poor's) June 25, 2015–Today's decision by the Supreme Court affirmed health care coverage for millions of Americans by its ruling which validated the legality of federal subsidies under the Affordable Care Act (ACA) in states where the state did not set up its own insurance exchange, but rather relied on the federal exchange. The subsidies have given lower-income Americans a chance to purchase insurance on the public exchange, the loss of which would have jeopardized as many as 6.4 million individuals in 34 states who purchase private health insurance through the federally run exchanges, according to the Centers for Medicare and Medicaid Services.

Standard & Poor's Ratings Services believes that this ruling will not have any impact on rated U.S. not-for-profit and for-profit providers, as it is a continuation of the current operating environment. (Watch the related CreditMatters TV segment titled, "The Supreme Court's Ruling Won't Affect U.S. Health Care Companies' Credit Quality," dated June 25, 2015.)

However, the subsidized exchange business is proving to be a benefit to U.S. health care providers, and that benefit will likely continue, although the benefit is proportional to each participant's share of the marketplace. While some of the conditions that gave rise to the ACA in the first place–medical costs that are too expensive; dwindling levels of employer sponsored care; huge number of underinsured/uninsured with limited access points–still burden the health care delivery system and remain potent concerns for the United States, the ACA and the insurance exchanges are helping to alleviate some of these concerns.

In addition, as the ruling represents an affirmation of the status quo, we don't expect it to have any credit implications for the state sector. It's possible that had the court ruled in favor of the plaintiffs, some states would have been motivated to attempt to establish their own state run health insurance exchanges. Alternatively, policy advocates in the states without state-run exchanges may have urged the legislatures in those states to backfill the withdrawal of federal subsidies. The court's ruling frees these states from having to consider undertaking these administratively complex and costly policy initiatives.

It is quite likely that political wrangling will still occur over the ACA and its assorted components, so the story is probably going to continue to unfold at least through the upcoming elections. But today's ruling maintains the ACA in its current form. The ACA is here to stay, including its goals of greater health care access for millions of Americans; higher quality care for all; and lower costs.

HEALTH INSURANCE

Today's ruling is a positive for the U.S. health insurance industry, especially for insurers that have invested heavily to compete on the insurance exchanges. This will help resolve an uncertainty that has been a pain point not just for insurers, but for the ACA as a whole. This ruling confirms that business as currently structured and forecast through the ACA continues for insurers and insureds, and supports the broader directions of national health care reform.

However, if the results had been different (i.e., the ruling had banned the use of subsidies for individuals gaining access to coverage via a federally facilitated exchange) there would likely have been a precipitous drop in the membership and premium base for insurers that are heavily concentrated in the individual insured marketplace reliant upon a federally facilitated exchange for distribution. Additionally, this ruling avoids the very real possibility of increased adverse selection impacting the insurers. The lack of subsidies would have resulted in higher net premiums for the affected individuals, and a rapid rise in premiums, which could in turn have increased the possibility of higher acuity individuals being the only ones willing to pay the higher premiums thereby increasing insurance risk.

Uncertainly is generally bad for credit, and makes it harder for insurers to price appropriately. The resolution of this issue does somewhat reduce the previously elevated industry risk and also puts the ACA on a stronger footing. However, it is important to note that 2014 was a fairly volatile year for many insurers due to underwriting losses in their individual lines of business. Higher-than-expected medical services utilization and cost trends negatively impact many insurers. Somewhat offsetting the earnings volatility and also supporting our stable view on the health insurance sector is the generally strong capitalization level in the health insurance industry.

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 26 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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## Live Webcast and Q&A: U.S. Public & Private Higher Education 2014 Median Ratios.

**Wednesday, July 8, 2015, at 1:00 PM EDT**

Please join Standard & Poor's Ratings Services on Wednesday, July 8, 2015, at 1:00 p.m. Eastern Time for a live Webcast and Q&A on the U.S. public and private higher education median ratios reports.

Register for the complimentary webcast.

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## Advice for Preparing an Effective RFP.

Requests for proposals (RFPs) are designed, not only to attract suitable private partners, but to help the issuer to weed out unqualified bidders. Incomplete, vague or poorly written RFPs can have unfavorable consequences ranging from time wasted reviewing unsuitable bid submissions to charges of favoritism in the selection process.

"As more American municipalities embrace the P3 model, it is important for them to understand the risks and rewards of using the model," explains Regina Sharrow, partner at Faegre Baker Daniels. "Risks include the potential for a losing bidder to claim that the winner was not selected fairly, which could result in a loss of credibility for the municipality and the selected bidder. In some industries, unsuccessful bidders' challenges to the P3 selection process are becoming the norm rather than the exception. However, a carefully crafted RFP, including objective evaluation criteria, along with a disciplined evaluation process and an independent selection committee, can help the municipality gain public support for the project, maintain its credibility and avoid valid claims of foul play from unsuccessful bidders."

Sharrow will be one of the featured speakers at the "Approaches for Preparing Effective Requests for Proposals" at P3 Connect 2015. She will be joined by John Finke, senior program manager and team leader of HEDC Public-Private Partnerships at the National Development Council and Bret Carlstad, director of the Pierce County (Wash.) Public Works & Utilities. They will address the critical components of an RFP, including creating objective evaluation criteria and a solid scoring matrix, and running a process that supports the client's ultimate decision and deflects complaints from losing bidders.

This is one of five introductory-level sessions planned for P3 Connect, NCPPP's annual conference, which are designed for attendees who are unfamiliar with P3s and wish to learn more about them. This session track kicks off with our first-ever Introduction to P3 Bootcamp, a comprehensive overview of many different aspects of the P3 process. This three-hour session will provide valuable insights into how to develop and maintain an effective partnership.

P3 Connect 2015 will be held July 20-22 in Boston. For more information about P3 Connect registration, sessions and speakers, please visit the conference website.

By Editor June 26, 2015

## P3s Can Solve States' Infrastructure Woes.

Mitch Daniels, one-time director of the Office of Management and Budget and now president of Purdue University, has worked on many financing policies and initiatives at the local, state and national levels. These include public-private partnerships, of which he is a strong proponent. Purdue is currently participating in a P3 with the city of West Lafayette Indiana.

In recent testimony before a U.S. Senate panel, Daniels, who, before assuming his current post, served as governor of Indiana, shared his thoughts on how public-private partnerships can be a major component of strategies to solve national infrastructure problems.

While testifying before the U.S. Senate Finance Committee on his state's effective use of P3s to build infrastructure projects, Daniels offered several pieces of advice on how ensure their efficacy. He urged Congress to encourage states' use of P3s to finance upgrades to existing assets, not just to fund new construction, and as a way of generating revenue. He also urged Congress to allow states to continue to carry debt on tax exempt bonds that were issued to fund new construction when entering into a P3 to expand or improve that project. Currently, states must pay off the debt or finance it as taxable bonds at a potentially higher interest rate, he pointed out.

Daniels called on states to invest revenues from P3 infrastructure projects in similar projects rather than spending it on current government operations. He also encouraged the federal government to change and expand programs that permit states to charge tolls on new, expanded or reconstructed interstate facilities in order to pay for infrastructure projects and attract partners that would be willing to bear most or all of the financial risk.

As governor, Daniels used the $3.8 billion sale of a 75-year lease for the Indiana Toll Road to fund a 10-year initiative, now in its ninth year, to build more than 100 new infrastructure projects and more than 1,000 bridges. "We became the only state in the union to have a fully-funded, 10-year infrastructure plan that required no new taxes and no new debt," said Daniels.

The state also put $500 million into a permanent trust fund to finance future projects. Under the toll road sale — which, in the state's hands, was valued at no more than $1.92 billion because of the cost to the state to collect the tolls — the private partner agreed to upgrade, maintain and operate the road and be paid through the tolls it collected. The partner also agreed to expand lanes, add electric tolling and make other improvements valued at an additional $450 million. To prevent taxpayers from bearing a burden, the tolls were to remain at 1985 rates for passenger cars for 10 years and rate increases were limited to inflation, GDP growth or 2 percent.

The poor economy reduced the road's anticipated use and the private operator of the toll road, which had to absorb the loss, declared bankruptcy last year; another firm stepped in to purchase the lease.

Daniels described two other successful P3 infrastructure projects that the state negotiated during his tenure as governor. The Ohio River Bridges project started out as a joint Indiana-Kentucky venture to be paid for with state and federal funds. When both legislatures decided to permit P3s as a financing option, Indiana negotiated an availability payment P3 for one of the bridges through which a private partner would finance, build and maintain the bridge for 35 years. The states would set and collect the tolls, using the revenue to compensate the private partners. The cost of building the bridge, which is scheduled for completion next year, will be $225 million less — a 23 percent savings — than the original estimate, reported Daniels. "Most importantly, over the next 50 years, the project is expected to generate an average of 15,000 jobs a year and a total of $30 billion in personal income and $87 billion in economic output for the region."

Another project was the Cline Avenue Bridge, which had been condemned due to structural weaknesses in 2009. The state negotiated a P3 that called for the private partner to fully finance the construction of a replacement bridge, with no risk to the government, invest $3 million in improvements to a state road leading to it and return a share of all toll revenue to the local community. Carefully devised P3 agreements like this can protect taxpayers from incurring the risks inherent in big infrastructure projects funded and conducted by the state, Daniels said.

NCPPP

By Editor June 26, 2015

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## Toll Roads: A Problem or a Solution?

Toll roads represent an old idea made new. Turnpikes, a term taken from a barrier used to block access to a road until a toll was paid, were used in colonial America to improve surface transportation between cities when traveling overland was a difficult alternative to more efficient and comfortable water routes.

As federal funding for highways became widely available, the Federal Aid Highway Act of 1921 imposed a ban on tolls for roads constructed with federal funding. A 1938 study by the U.S. Bureau of Public Roads, "Toll Roads and Free Roads," considered the possibility of financing a national highway system with tolls, deciding it was not feasible at the time. The Interstate Highway System, created by the Federal Aid Highway Act of 1956, offered toll-free roads financed by a federal tax on gasoline, credited to the newly established Highway Trust Fund.

About a quarter century ago, a new generation of toll roads began as the interstate system was built out, federal gas tax revenues stagnated, and private investment, especially from international funds, became available for such projects. Blockbuster projects included the Indiana Toll Road, built by the public in the 1950s and leased to a partnership of Spanish construction firm Cintra and Australian toll road operator Macquarie in 2006 for $3.8 billion, and the Chicago Skyway, leased to the same firms in 2004 for $1.8 billion.

The U.S. experience has been mirrored elsewhere. During the 1990s, according to the World Bank, developing countries increasingly turned to the private sector for construction, management, and maintenance of toll roads. Between 1990 and 1999, $61 billion in private investment was committed to 279 projects in 26 developing countries, comprising 21,355 miles (34,368 km) of toll highways, bridges, and tunnels, the World Bank reports.

But recently significant problems have arisen for some high-profile toll roads: some members of the public are having growing concerns about allowing private interests to profit from tolls on ordinary citizens, as well as expressing fear that state transportation bureaucrats might be bamboozled by Wall Street sharks. These concerns are being borne out in the following cases:

- California's San Joaquin Hills toll road—which has consistently fallen below its ridership and revenue projections, threatening its ability to keep up with debt payments—is restructuring at least

half the $2.2 billion in bonds sold to build the highway.
- The ITR Commission, the partnership of Cintra and Macquarie that paid $3.8 billion in 2006 to operate the Indiana Toll Road for 75 years, filed for Chapter 11 bankruptcy protection in September 2014, reigniting debate about the merits of privatizing roads.

Amid growing backlash against toll roads, Texas voters approved a constitutional amendment in November 2014 by a landslide 4–1 margin to give the Texas Department of Transportation (DOT) about $1.7 billion a year in additional funding—with the caveat that the new money not be used on toll projects.

Toll roads are a niche product in the United States: revenue from tolls accounts for only about 5 percent of spending on major highways. This is a stark contrast with nations such as France, where the majority of motorways now carry tolls. A few state departments of transportation, however, are already demonstrating that tolls are acceptable to the public—if the tolled roads add significantly to road capacity. In the 14 states with major toll road expansion programs, tolls are already funding more than 10 percent of urban expressway miles; in the large and fast-growing states that have a great need for new road capacity, such as Texas and Florida, tolls are funding more than 25 percent of new capacity.

In addition, the private sector's role in investment and development is increasing. More than 10 percent of the toll roads developed since 1992 have involved private investment; this is particularly the case with greenfield projects. Wisconsin, which has no toll roads now but is facing enormous shortfalls in transportation funding, is planning a study of possible tolls—something former Democratic Governor Jim Doyle once said would happen "over my dead body." Incumbent Governor Scott Walker, who says he is not a fan of tolls, has allowed this study to go forward. A November 18, 2014, article in the Milwaukee Journal Sentinel says a planned toll study would gather odometer readings when people register their vehicles each year, a possible move toward a fee based on how many miles people drive—a tax on vehicle-miles traveled is widely admired by transportation professionals as broader and more equitable than tolls because it would apply to all roads.

Tolling the Interstate Highway System is the holy grail of financing options for transportation officials because it would open up potentially thousands of new miles to tolling with little political effort on their part. A 2014 Congressional Research Service study, "Tolling U.S. Highways," estimated that tolling the untolled urban interstates at rates that approximate the current averages for tolled interstate facilities might produce $37 billion in annual revenue, nearly as much as the Highway Trust Fund now receives from motor fuel taxes.

This, in turn, has the potential to leverage considerably greater investment, allowing states to spend these additional revenues to improve other key interregional highways, and possibly transit as well.

In the Dallas region, an area where toll road development is pervasive, the Wall Street Journal in October 2014 noted a backlash to conversion of part of U.S. Highway 75, a major north–south artery, to tolls. It also reported opposition to development of a new toll road northeast of Dallas by a private company, which would make it the only road in the United States fully built, owned, and operated by a private company. That private company, the Texas Turnpike Corporation, even has the power of eminent domain to seize land.

Inspired by the reaction, the state Republican Party amended its platform last year to add language hostile to toll roads. "A large segment of our party believes in having free access to transportation," Steve Munisteri, chairman of the Republican Party of Texas, told the Wall Street Journal.

A New York Times blog by Vikas Bajaj last October raised another perspective—that tolls would not be necessary if Texas had raised the gasoline tax from its 1991 levels. Another perspective comes from Tea Party activists, for whom toll roads represent a government power grab.

What is the public's view? A survey last year of 1,503 Americans by the Mineta Transportation Institute in San Jose, California, showed that a majority of people would support higher taxes for transportation if the use of the revenue were properly explained.

A gasoline tax increase of 10 cents per gallon was supported by 69 percent of respondents, while a mileage tax, similar to a trip-specific toll, was supported by 43 percent, on the condition that the toll would vary according to the vehicle's level of pollution.

And support for a mileage tax varying by the vehicle's pollution level has grown over succeeding years of the survey, from 33 percent in 2009 to 43 percent in 2014.

Toll roads typically are a one-time fix in most regions. However, places where tolls are central to development and growth plans—such as central Florida and Dallas—take a different approach.

Central Florida, a multicounty area around Orlando, has an extensive highway network extending 108 miles (174 km) that includes five toll roads, with a sixth planned. The Florida Department of Transportation's District 5 in central Florida accounts for more than 40 percent of all toll roads in the state, and nearly two-thirds of highway travel in Orange County, the central county of the region, and neighboring Osceola County is on toll roads.

For one of the most tolled regions in the United States, the effect of toll roads on travel and residential development so far seems minimal. The average amount of driving per capita is more than 30 miles (48 km) per day, second only to Houston among large regions. The average cash toll rate for the multicounty system is 15.3 cents per mile, and the average electronic toll rate is 13.4 cents per mile, comparable to rates on other toll roads in the United States.

A study on the elasticity of demand in the 2013 General Traffic and Earnings Consultant's Annual Report of the Orlando–Orange County Expressway Authority found that the 14 percent toll increase in October 2012 resulted in only very small reductions in driving among Orlando motorists. Along the two roads that had no other changes to complicate the comparison, state routes 408 and 417, the analysts found that each 10 percent increase in toll rates had a negligible effect on traffic, reducing traffic by only 1.4 percent. In fact, two toll roads serving growth corridors, state routes 429 and 414, were excluded from the elasticity calculation because they experienced increases in traffic over the period—a modest gain of 0.7 percent on S.R. 429 and a robust 13.7 percent on S.R. 414—despite the toll increase, reflecting underlying traffic growth due to new development.

**Effects on Sprawl**

With limited funds available in Florida for construction and maintenance, it is expected that more roads will be financed through user fees or tolls. However, planners worry that toll roads could lead to perpetuation of the sprawling patterns that most citizens dislike.

Research on toll roads in Tampa by Sisinnio Concas, a professor at the University of South Florida's Center for Urban Transportation Research, found that the improved access delivered by new toll roads to neighborhoods in the suburbs of Tampa and Miami increased land and property prices in both areas by about 5 percent. So the increased cost of driving was more than compensated for by the additional access to the affected neighborhoods.

The Orlando region metropolitan planning organization MetroPlan has been working with a leadership group called myregion.com, which undertook a regional growth visioning project called

"How Shall We Grow?" that involved a large number of residents, officials, and civic and business leaders. The project resulted in a call for the redirection of the current pattern of land use and automobile dependence, which they thought was unsustainable for the future of central Florida.

Instead, they preferred a sustainable land use forecast for 2040 developed by MetroPlan that they said will demonstrate an environment with less driving, reduced suburban sprawl, and greater use of the new regional rail system. The forecast, incorporated into the regional transportation plan by MetroPlan, emphasizes compact development along corridors, infill development and redevelopment, mixed land uses, an improved jobs-to-housing balance within compact radiuses for urban travel, and development patterns that support multimodal transportation. Planned road expansion, accomplished primarily with toll roads, makes such roads part of the region's sustainability vision.

In Texas, the North Texas Tollway Authority operates 111 miles (179 km) of toll roads, covering four roads, two bridges, and one tunnel. In 2013, the last full year of reporting, annual traffic on these roads totaled 610 million vehicles and revenues were $525 million, generated by an average toll of 83 cents per trip.

Reliance on toll roads has been increasing for decades as the gasoline tax was stuck at 1991 levels—in terms of cents per gallon, not percentage—in Texas and nationally, thanks to Congress having kept the federal gas tax unchanged. In 2010, the North Central Texas Council of Governments projected that the combined state and federal fuel tax and vehicle registration fee collected in Texas would decline from 2.4 cents per vehicle-mile traveled in 2009 to 1.4 cents in 2030, with the net revenue to the Texas DOT declining from 1.6 cents to 0.7 cents per mile.

Toll roads bring market demand to the process of selecting worthwhile road projects, as well as badly needed funds. States and localities need improvements to serve existing and planned travel needs. Where these two needs intersect—needed projects matched by tolls to finance them—is the sweet spot for public agencies and private investors. It is important that planners first determine the critical needs, then shop for toll funding to support them, either through private ventures or possibly through public toll agencies. That ensures that the selected facilities will serve broader goals for growth and economic development. A clear expression of priority needs may also help expand support for public funding for transportation facilities and ensure that the money is put to the best uses.

The link to development plans seems central to the smart expansion of toll roads. With federal transportation planning requirements calling for fiscal constraint, planners need to live within the revenues expected rather than the revenues they desire.

Planners at the North Central Texas Council of Governments (NCTCG) recognized this fact in 1998. They noted in a long-term plan that year that "toll roads play a critical role in the transportation plan, both as a source of funding and added system capacity."

Today, NCTCG planners recognize that the funding available is substantially short of what might be considered needed investment. In its Mobility 2035 plan, the region's long-range transportation plan, and updates made in 2013, the NCTCG noted that in addition to expanding the network to accommodate growth trends, a major emphasis will be to "promote growth management strategies that strike a greater balance between land use and transportation. Programs and projects aimed at eliminating or reducing vehicle trips, shortening trips that would still occur, and utilizing the capacity of our system to its fullest are major recommendations."

Urban Land Magazine

By Robert Dunphy

May 28, 2015

Robert T. Dunphy is a consultant and teaches in the Georgetown University Master of Professional Studies in Real Estate program. He is an emeritus fellow of ULI and the Transportation Research Board.

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## S&P's Public Finance Podcast (Rulings On State Pension Plans).

In this week's Extra Credit, Senior Director John Sugden provides our take on recent court rulings regarding states' pension plans, including New Jersey.

Listen to the Podcast.

Jun 26, 2015

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## S&P: U.S. Public Finance Upgrades Outpace Downgrades for the 10th Straight Quarter.

In first-quarter 2015, U.S. public finance upgrades outnumbered downgrades for the 10th consecutive quarter. In this CreditMatters TV segment, Standard & Poor's Senior Director Larry Witte discusses the rating actions across the various subsectors.

Watch.

Jun 26, 2015

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## The Phone Call That Could Help Governments' Credit Ratings.

Economic data, revenue reports and debt burdens may be built on cold, hard numbers, but there's a soft, squishy middle when it comes to how credit ratings agencies look at municipalities: the human touch.

All ratings agencies place value upon who's running the show (although there are varying degrees of value from agency to agency). As such, they encourage local officials to keep an open line of communication with them.

"We don't take things just at face value," said Richard Raphael, managing director at Fitch Ratings. "It's always a good idea when there's good news or bad news to give us a ring. Give us a sense from your perspective what's going on."

Raphael's comments came during a webinar hosted last week by the Council of Development Finance Agencies on risk in the municipal market. Because of Chicago's recent downgrade to junk status by Moody's Investor's Service, many are wondering if the city's struggles indicate weaknesses in the market as a whole. The response from the three major agency representatives on the call was that the market continues to be strong with a few pockets of concern.

In Chicago's case, Moody's is worried that its outstanding pension liabilities will place an insurmountable burden on its tax base. Chicago's pension liability works out to about $26,000 per resident, according to Rachel Cortez, a vice president at the agency. New York City is the next-highest at $18,000 per capita. Just before it filed for bankruptcy, Detroit's was nearly $14,000 per resident. Moody's downgraded Chicago's credit rating last month, after the Illinois Supreme Court overturned the state's proposed pension reforms. The agency said Chicago's hopes to fix its budget by enacting similar changes have now "narrowed considerably." Fitch and Standard & Poor's agencies also downgraded Chicago, but Moody's was the only one to drop it below investment grade.

Chicago isn't the only city where action on the state level had an adverse effect on the city's rating. After yet another budget deficit in New Jersey earned it a downgrade from Moody's in April, the agency also downgraded two public universities. Both New Jersey City University and William Paterson University (which each rely on the state for approximately a third of their operating budgets) were docked by Moody's this month because of expected declines in state funding.

Still, said Raphael, most governments are managing the new slow-growth economy. While some are still preoccupied with increasing pension costs, most are trying to address more discretionary expenses like restoring services, overdue raises for public workers and infrastructure investment.

"We still expect municipal bankruptcies to be rare," he said. "The core fundamentals of local governments remain strong."

GOVERNING.COM

BY LIZ FARMER | JUNE 22, 2015

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## Municipal Issuer Brief: Water Issues Impact Public Finance Industry.

Read the Brief.

Municipal Market Analytics | Jun. 22

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## Fitch: Long-Term Cost Assessments Difficult to Gauge in Availability-Payment P3s.

Availability-payment-based P3 projects, which tend to be conducted over decades and have little financial flexibility, are more likely to generate higher than expected operating costs over time than other types of P3s, according to a new report from Fitch Ratings, "Analyzing Costs in PPP Projects". These types of projects, which are common in Europe and Canada and are being negotiated more routinely of late in the United States, typically involve established, reliable types of civil and social construction. But the risk of cost-overruns during the life of these projects can vary based on their size and complexity, reported Fitch Senior Director Scott Zuchorski.

"Projects with a more predictable cost profile, like most social and civil assets with small footprints or limited exposure to volatile commodities, are more predictable," said Zuchorski. But those that have uncertain operating and life cycle costs or are subject to unexpected changes in design, construction, maintenance, materials, scheduling, regulations and other factors will "need greater financial margins to achieve similar credit quality."

Fitch considers several factors in assessing a project's potential for long-term cost overruns that could affect its credit quality: the extent to which the scope of a project could change unexpectedly, whether project costs can be predicted accurately and the presence or lack of contract provisions that protect the private partner from bearing the entire burden of unpredictable and unavoidable cost increases. Of these factors, changes in a project's scope is the most common reason for its operations and maintenance or life cycle costs to increase unexpectedly, said Zuchorski.

NCPPP

By Editor June 25, 2015

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## Will Maine Create a $500 Municipal Broadband Fund?

The state of Maine is firmly committed to municipal broadband — it just doesn't want to pay for it.

If Maine Gov. Paul LePage signs LD1185, the state will create a new fund that would endeavor to provide residents with a wider array of high-speed broadband providers in the coming years. The fund would offer grants to research how municipalities might build open-access gigabit broadband networks, expanding competition in a rural state dominated by Time Warner Cable and Fairpoint Communications.

When the bill was introduced, the fund was $12 million, then reduced to $6 million; now the fund is a $500 placeholder that Congress will revisit next year.

Originally municipalities would have been eligible to apply for up to $200,000 in funding to research the development of an open-access gigabit network. The old version of the bill required that a minimum of 50 such grants be made available, at least half of which would be granted to low-income areas. If signed, the new fund will exist in spirit, but with no funds to distribute.

The organization that would distribute the funds should they become available would be the ConnectME Broadband Authority, the state's broadband advocacy and engagement arm. Lisa Leahy, associate executive director of ConnectME, said the bill is an excellent idea that has had a lot of support from all directions.

"It establishes that there can be a fund and now the work will continue in regard to 'OK, how do we fund it?'" Leahy explained. "At this time, I think there's been such a concern around budget that any bill that has a fiscal note attached to it is being looked at very closely."

When or how the fund would contain more than $500 is unknown, but it's something the state Legislature will look at next year, Leahy said.

Chris Mitchell of the Institute for Local Self-Reliance said that what the state is doing is smart, though the lack of funding is disappointing.

"The thing that I found really exciting is it's only for municipalities or nonprofit types of approaches and it's requiring open access, and I think that's a real smart thing for states to do," Mitchell said. "Because I think local governments can be trusted to maintain that sort of open-access approach for a very long time, where I think the private sector might decide to go back to a monopoly model."

In an open-access model, a network's physical infrastructure is available for rent to any company that wants to sell services to the public, allowing for more competition than if each provider is required to build their own network to compete.

"I like that it's open access because in most of Maine, if you don't build competition into your system, there won't be competition," Mitchell said. "Either one of the existing incumbents will stick around or the city will build a system, but people aren't going to have a real robust choice unless you build a network that allows multiple providers to do it, and there's one company already operating in Maine called GWI that does a really good job."

In Maine today, several municipalities are investing in municipal fiber, like the town of Rockport, which is working with GWI to develop an open-access municipally run fiber network. Broadband development often goes slowly — projects often take years rather than months — but if this bill is signed into law, consumers might find in the next few years that both the speed of Internet access and the number of providers available will have increased dramatically.

It's frustrating to see such a promising piece of legislation relegated into uncertainty, Mitchell said.

"It still sets an interesting precedent in terms of targeting municipal open-access approaches, which I think is valuable, although clearly much less so if they're not going to put any money into it," he said. "Just about every elected official wants to vote and tell their constituents that they supported better broadband, but they really don't want to upset the Fairpoint and Time Warner Cable lobbyists, so they've kind of done both. The lobbyists are happy because there's no real funding, but a lot of people will go home and say, 'Well, I voted for better broadband for the state.'"

The bill's potential passage into law could have some positive effects. If federal funding becomes available, Maine would be well positioned with such a fund in place to apply for it. Such funding from the federal government, however, doesn't appear to be forthcoming, Mitchell said, nor would Maine be guaranteed a slice of the pie anyway.

There is at least one precedent of an unfunded state broadband fund that might indicate the future of Maine's legislation, which can be found in the Virginia Resource Authority — a state agency that funds infrastructure projects. In 2007, the state of Virginia decided to add broadband to its repertoire, but as with Maine's recent legislation, it provided no funding to support such projects. In the department's 2014 annual fiscal report, there is just one mention of broadband: The department maintains authority to fund such projects. Any evidence of actual funding for such projects is absent.

Editor's Note: This story was updated on June 26, 2015 to reflect the fact that Rockport is a town, not a city.

Governing.com

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## Getting Better About Funding Pensions.

U.S. pension plans got healthier over the past year as governments got better about putting in the payments to keep the plans financially healthy. The average percentage of required contribution paid by governments in 2014 was 88 percent, according to a new report released this week by the Boston College Center for Retirement Research. It's not perfect, of course, but it's a big jump from the roughly 82 percent average of the past few years. The required contribution amounts are determined by pension fund actuaries and reflect what governments should be paying in each year to keep the plan 100 percent funded. While some governments are very good about putting in the full amount or close to it every year, many pay in varying amounts each year and some recently put in little-to-none of what's recommended.

About three-quarters of the governments surveyed paid between 60 percent and 99 percent of the required contribution last year. A few — 6 percent — paid their full contribution while the remaining fifth paid about half their payment or less. "Hopefully, this trend will continue as the economy improves," the CRR analysis said, "mirroring the pattern of decline and recovery evident in the wake of the bursting of the dot.com bubble at the turn of the century."

These funding habits play a major role in the overall health of a pension plan, even more than swings in the stock market and investment returns, as Governing reported in an analysis late last year. Pension plans' overall funded status is also improving and inched up from 72 percent to 74 percent of the money needed to pay out promised pensions to retirees and current employees.

GOVERNING.COM

BY LIZ FARMER | JUNE 26, 2015

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## Phoenix's Quest to Turn Trash Into Cash.

As City Manager Ed Zuercher tells it, trash "is in Phoenix's DNA." From two guys throwing cans of garbage into the back of a truck to automated side-loading trucks to single-stream recycling, Phoenix, says Zuercher, has always been innovative in solid waste. Now the desert city has plans to take its long-running relationship with waste innovation a step further: It wants to turn trash into a resource.

That's the tagline for the city's new sustainability initiative, which calls for reducing the amount of trash sent to city landfills by 40 percent over the next five years. It's an ambitious goal. While Phoenix was one of the first cities in the country to introduce single-stream recycling, it only has a 16 percent diversion rate — well below the national average of 34 percent.

In order to meet the ambitious target, Phoenix needs an ambitious plan. That's where its Resource Innovation Campus comes in. As its name suggests, the campus will be a hub for waste innovation. The focus will be on what city leaders call the "5 R's": reduce, reuse, recycle, reconsider and reimagine. This might mean, for instance, turning a beer bottle into new glassware or compost into natural gas.

Construction on the hub is scheduled to start next year on 50 acres of vacant land in the southern portion of the city. Adjacent to a closed landfill, a transfer station and a recycling facility, the land will become home to an Arizona State University (ASU) research center and waste-to-products companies. With access to the city's solid waste stream, these businesses will work with the university to create new uses for garbage. "We're giving local researchers the tools they need to turn trash into cash," says Mayor Greg Stanton.

In addition to the research and development campus, Phoenix is building a compost facility on the site, which will be completed and in operation by next summer.

Part of the incentive for creating the hub is growth. Like many cities, Phoenix is expecting to see rapid expansion in the next few decades. "With our population projected to double by 2050, it's just not sustainable for us to keep burying trash," says John Trujillo, director of the city's public works department. "With this program, we are trying to create a circular economy. We want to create a system where the material gets used over and over again here in Phoenix."

While still in the preliminary stages, the Resource Innovation Campus has already garnered a lot of interest. When Phoenix put out a "call for innovators" this spring, it received 117 proposals from 70 different companies across the U.S., Canada and abroad, including Sweden, Switzerland and the U.K. Perhaps the most important attention it has earned so far came in the form of funding. The Closed Loop Fund, which is composed of Fortune 100 consumer goods companies and retailers such as Coca-Cola, Procter & Gamble and Walmart, will offer below-market interest rate loans (some as low as zero percent) to the businesses selected to be part of the campus. The group, according to Trujillo, is also interested in providing funding to help build the site.

Specialized hubs like Phoenix's Resource Innovation Campus are becoming more and more common. Milwaukee started transforming an old industrial area in the southeast part of the city into a center for water research and technology a few years ago. Charlotte, N.C., is working to be a clean energy hub. These hubs are largely modeled after university business parks. In the 1980s, North Carolina State University's Centennial Campus brought academics, nonprofits and businesses together to facilitate the interaction required to bring research breakthroughs to market.

For Phoenix, bringing everyone together in one place "creates an entrepreneurial spirit around garbage," says Trujillo. As he sees it, trash can become a valuable resource that encourages entrepreneurship, creates jobs, brings environmental benefits to the community, elevates the quality of life and creates alternative forms of energy. "Who," he says, "would have thought trash would be so exciting?"

**Governing.com**

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## Bloomberg Brief Weekly Video - 6/25/15

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

Watch the video.

8:53 AM PDT

June 25, 2015

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## Texas Sets $8 Billion Bond Deluge for Water Works After Drought.

The worst Texas drought in half a century has ended, with storms flooding downtowns and once-parched prairies. A deluge of $8 billion of bond sales for water works in the Lone Star state is just getting under way.

The Texas Water Development Board is planning to sell $800 million of municipal debt this year, beginning a decade-long borrowing spree for projects like reservoirs, pipelines and plants that make saltwater fit to drink.

No state is growing as much as Texas, whose infrastructure is being taxed by a population that's swelling by more than 1,000 a day. The water supply is no exception: It's projected to decline over the next 50 years, while global warming is raising the risk of droughts like the one still gripping the far West. So Texas is borrowing to lend cities money for needed work, using $2 billion of its reserves to subsidize the cost.

"It's very hard to capture the funds needed to ensure large supplies," said Randall Gerardes, vice president for municipal research at Wells Fargo Securities LLC in New York. "This could be a model for how states work with smaller jurisdictions."

The Texas economy expanded at the second-fastest pace in the U.S. last year, even as a slide in the price of oil began rippling through the energy industry. With an influx of residents, the state is pouring billions into construction to keep up. Texas and its localities have sold $23 billion of debt this year, 47 percent more than the same period a year earlier, according to data compiled by Bloomberg.

**Drought Racked**

In November 2013, voters approved tapping the state's reserves for the water program, following the onset of a drought that devastated its farms. Texas forecasts that the amount of available water will decline by about 10 percent by 2060, while its population will grow by some 20 million.

Under the program, top-rated Texas will sell bonds and lend the proceeds to local governments. Those loans will be cheaper than issuing debt on their own: Texas will charge as much as 36 percent less than what it pays to borrow.

The state expects to sell $8 billion of bonds over the next 10 years, with the first coming in September or October, said Amanda Lavin, assistant deputy executive administrator with Texas's water board. Over the next five decades, the program may finance as much as $27 billion of work.

The agency has received applications for about 25 projects that will cost a total of $3.9 billion, said Merry Klonower, its spokeswoman. It will decide by the end of July which to fund with the first round of bond money.

**Dallas Saves**

Dallas is among those looking to borrow. It's working on a $2 billion pipeline with the neighboring Tarrant Regional Water District, which supplies more than 1.7 million people. Terry Lowery, assistant director of business operations for Dallas's water utility, said the subsidies would cut costs by about $1 million a year.

"It helps us, but it also helps utilities that don't have a lot of funding," Lowery said.

Texas already enjoys low borrowing costs because it's one of just nine states with the highest general-obligation bond rating from both Standard & Poor's and Moody's Investors Service. Its 30-year bonds yield 3.57 percent, or 0.16 percentage point above benchmark municipal debt, according to data compiled by Bloomberg.

Unlike other water programs funded with Texas general-obligation bonds, the new securities will be backed by the revenue it receives when the loans are repaid.

Brandon Ratzlaff, a financial adviser with Carter Financial Management in Dallas, said he expects yields to be around 3 percent, based on estimates from its affiliate, Raymond James Financial Inc. That's equivalent to about 5 percent for an investor in the top federal tax bracket.

"It's not going to come with a coupon that will get everyone excited," said Ratzlaff, whose firm manages $850 million. "But the social impact appeals to some of our investors because they want to make a difference."

**Bloomberg**

**by Darrell Preston**

**June 21, 2015 — 9:01 PM PDT Updated on June 22, 2015 — 4:29 AM PDT**

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## Chicago Fire's Arena Losses Have Village Taking on More Debt.

Bridgeview, Illinois, is saddling taxpayers with more debt as the arena it built almost a decade ago to host Major League Soccer's Chicago Fire fails to hit the economic goal promised by its proponents.

The village 15 miles (24 kilometers) southwest of Chicago is selling $16 million in general-obligation debt this week to refinance existing securities, most of which are tied to the site that opened in June 2006. The venue, called Toyota Park, generates an annual loss of $3 million to $4 million for Bridgeview, said Daniel Denys, owner of Austin Meade Financial Ltd., the government's financial adviser.

Standard & Poor's this month cut the municipality's grade one step to BBB, two levels above junk, and said it could reduce it again because of its high debt burden. After the sale, the village would have about $250 million in debt, mostly tied to the stadium and the area around it slated for redevelopment, Denys said.

Bridgeview's experience demonstrates the challenges faced by small communities building facilities for sports teams, said Jim Colby, who manages about $1.6 billion of high-yield munis at Van Eck Global in New York.

"It's very hard to stomach the long-term risks that occur with some of these stadium financings," Colby said. For Bridgeview, "it has to be a pretty significant fiscal drag on their budget because they are the ultimate payer relying on a soccer team."

Colby said he would consider buying its new bonds since the rating fits the criteria for his purchases. Denys said the sale may be Wednesday.

**'Economic Anchor'**

The cost of hosting professional sports has strained municipal finances, from hockey and baseball spring-training facilities in Glendale, Arizona, to the NFL stadium in Indianapolis. States and cities have sold more than $9 billion of debt for professional sports sites since the 1980s, seeking to keep teams or revitalize local economies.

A 2004 Bridgeview newsletter to residents said the soccer stadium would be "an economic anchor" that would pay for itself and spur development around it. A much-publicized water park never materialized. A gas station that opened this year is the only business on the site around the stadium that was expected to be redeveloped, said Denys, who's based in Naperville, Illinois. Bridgeview officials are closing on deals with developers for more growth, he said.

"We're optimistic that the economic development will help reduce or eliminate the need for future debt restructuring," Denys said. "If not, there's still a solid tax base there that could sustain our worst-case plan. Either way, we're fine."

**Debt Burden**

The village sold $134.6 million of bonds in 2005 for the project, and its debt burden has nearly doubled from subsequent refinancing deals. If restaurants and other revenue-generating ventures don't work out, Bridgeview could push its debt back to 2056 with another restructuring and tax increases, Denys said.

Residents have paid higher taxes for the past five years due to stadium losses, Denys said. The levies more than doubled between 2009 and 2013, according to the S&P report this month.

Each resident's share of the village's total debt burden is about $18,000, deal documents show. The home of the Fire, which is in last place in its conference this season after finishing second-to-last in 2014, is "not yet self-sustaining," according to the documents.

S&P said there's "at least one-in-three chance" it could lower the community's rating again in a year, depending on its financial position, costs and ability to win more revenue.

A Bridgeview general-obligation due in December 2043 traded on June 19 at an average yield premium of 4.48 percentage points, compared with the 3.12 percentage point average this year, data compiled by Bloomberg show.

Residents like having the stadium in their hometown, said Denys, who said he was speaking about the issue for Mayor Steven Landek, who had pushed for the venue.

"There is high enthusiasm in the community," Denys said. "There's a lot of pride."

**Bloomberg**

**by Romy Varghese**

**June 23, 2015 — 2:00 AM PDT Updated on June 23, 2015 — 5:30 AM PDT**

## U.S. States Reduce Debt for First Time in 28 Years, Moody's Says.

The debt load of U.S. states declined in 2014 for the first time in almost three decades and probably won't rebound this year, showing lawmakers are still reluctant to borrow even six years after the recession.

Total net tax-supported debt among states fell 1.2 percent to $509.6 billion last year, according to a Moody's Investors Service report released Wednesday. It marked the first annual drop in the 28 years the company has compiled the data.

States and cities have rejected raising fresh cash at the lowest interest rates since the 1960s, instead opting to tap the $3.6 trillion municipal market mostly to refinance. The scars from the financial crisis and tepid economic growth have left lawmakers struggling to balance budgets and wary of embarking on capital projects.

"States continue to be reluctant to take on new debt with tight operating budgets, a slow economic recovery, and uncertainty over federal fiscal policy," analysts at New York-based Moody's said in the report. "We expect debt levels to remain stable or even decline again in 2015."

**Credit Barometer**

The debt medians can serve as a barometer of a state's creditworthiness. New York and California were two of the three states that paid down the most debt last year, according to the report. They both won rating increases in June 2014.

In contrast, Moody's two lowest-rated states, Illinois and New Jersey, had the largest increases in 2014 as they borrowed for transportation and other projects.

About two-thirds of the $206 billion of munis sold this year through June 18 were for refunding, rather than new projects, according to Bank of America. That would be the biggest portion since 1993. Most refinancing deals don't add to municipalities' debt load because the higher-cost bonds are replaced with obligations carrying lower interest rates.

California, Massachusetts, Pennsylvania and Washington are among issuers with the biggest refunding deals of 2015, data compiled by Bloomberg show.

**Debt Aversion**

"Most states will continue to avoid major new debt service commitments in the face of moderate revenue growth and continuing pressure for increased education and health care spending," Moody's said. "Few states have announced large new borrowing initiatives."

An index of state obligations has lost 0.2 percent this year, compared with a 0.1 percent decline for all munis, Bank of America Merrill Lynch data show. The governments' securities have still outpaced Treasuries and investment-grade company debt, which have fallen 0.6 percent and 0.9 percent, respectively.

Adjusted for inflation, tax revenue is still lower than at the start of the recession in 21 states, according to a report Tuesday from the Nelson A. Rockefeller Institute of Government in Albany, New York.
Connecticut, where officials are confronting limits in how much revenue they can squeeze out of

their tax base, has the most debt per capita among states, at $5,491.

Massachusetts, Hawaii, New Jersey and New York round out the top five, each with more than $3,000 of obligations per person.

Puerto Rico, the junk-rated U.S. commonwealth, had $55.5 billion of net tax-supported debt last year, more than all states except California and New York. That comes out to $15,637 per person.

**Bloomberg**

**by Brian Chappatta**

**June 23, 2015 — 9:01 PM PDT Updated on June 24, 2015 — 6:42 AM PDT**

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## Municipal Bond Sales Poised to Accelerate as Redemptions Fall.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $12.9 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.

Los Angeles plans to sell $1.386 billion of bonds, Massachusetts has scheduled $938 million, Miami-Dade County School Board will offer $461 million and Maryland Health and Higher Education Facilities Authority will bring $263 million to market.

Municipalities have announced $12.8 billion of redemptions and an additional $32.2 billion of debt matures in the next 30 days, compared with the $49.9 billion total that was scheduled a week ago. Issuers from California have the most debt coming due with $8.51 billion, followed by New Jersey at $3.66 billion and New York with $3.38 billion. California has the biggest amount of securities maturing, with $2.82 billion.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

**Fund Flows**

Investors removed $653 million from mutual funds that target municipal securities in the week ended June 10, compared with a reduction of $1 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $87.72 million last week, boosting the value of the ETFs 0.53 percent to $16.761 billion.

State and local debt maturing in 10 years now yields 102.783 percent of Treasuries, compared with 100.086 percent in the previous session and the 200-day moving average of 99.236 percent, Bloomberg data show.

Bonds of Puerto Rico and Tennessee had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Puerto Rico’s securities narrowed 24 basis points to 9.33 percent while Tennessee’s declined five basis points to 2.36 percent. Illinois and New Jersey handed investors the worst results. The yield gap on Illinois bonds widened 38 to 4.2 percent and New Jersey’s rose 25 basis points to 3.18 percent.

**Bloomberg**

**by Luis Daniel Palacios and Kenneth Kohn**

**June 22, 2015 — 4:12 AM PDT**

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## Moody's: Annual State Debt Medians Experience First Decline in Nearly Three Decades.

New York, June 24, 2015 — For first time in 28 years, the 50 states’ median net tax-supported debt (NTSD) declined in 2014, Moody’s Investors Service says in its annual state debt medians report.

In 2014, the states’ median net tax-supported debt declined by $6.2 billion to $509.6 billion. While $5.3 billion of this change was attributable to Moody’s reclassification of the Texas’ general mobility fund debt to self-supporting, debt levels still declined by $900 million.

“The 2014 decline follows three years of minimal growth in NTSD as states continue to be reluctant to begin new debt service commitments in the face of tight operating budgets and a slow and uneven economic recovery,” author of the report and Moody’s Senior Vice President Kenneth Kurtz says. “Uncertainty over federal fiscal policy and health care funding have also contributed to states’ caution.”

The state median for NTSD per capita fell to $1,012 in 2014, for the third straight year. Thirty-three states saw a decline in this metric. The top five states in NTSD per capita are Connecticut, Massachusetts, Hawaii, New Jersey, and New York.

The median for net tax-supported debt as a percent of personal income declined to 2.5% for the second consecutive time as personal income grew.

The medians report also shows the use of general obligation (GO) bonds varies widely across states. The 50 states’ median value for GO debt as a percent of net tax-supported debt is 48%. Nationwide, GO debt accounts for 52% of total net tax-supported debt followed by appropriation debt at 21%.

Despite attention paid to pension obligation bonds (POBs) and public private partnerships (P3s), Moody’s found states made limited use of these types of financings in 2014.

Moody’s expects state debt levels will stay flat in 2015, but over the long term debt levels will rise again as states seek to address deferred infrastructure needs in the context of stagnant federal transportation funding.

Moody’s 2015 state debt medians are based on the rating agency’s analysis of calendar year 2014 debt issuance and fiscal year 2014 debt service. Net tax-supported debt is defined as debt secured by state taxes or other operating resources which could otherwise be used for state operations, net of obligations that are self-supporting from pledged sources other than state taxes or operating resources. It does not include the debt of the local governments in the state.

The report is available to Moody's subscribers here.

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## Moody's: Mergers and Acquisitions Will Grow as Distressed Not-for-Profit Hospitals Seek Fiscal Solutions.

New York, June 22, 2015 — Merger and acquisition activity will remain elevated for the next two years as fiscally distressed not-for-profit hospitals increasingly seek consolidation with larger, for-profit entities, Moody's Investors Service says in a new report.

NFP hospitals with revenues less than $500 million are the most likely to consider consolidating with a larger provider to avoid a payment default, a bankruptcy filing, or to fund unaffordable but necessary capital needs.

"Many independent hospitals face increasing pressure to consolidate with larger ones due to regulatory and financial changes in the industry. Declining reimbursement, shifting patient volumes and emerging critical projects like IT upgrades are increasing financial pressures on smaller entities," Lisa Goldstein, Moody's Associate Managing Director says in "Under Threat of Default, Distressed Hospitals Turn to Mergers and Acquisitions."

Notable examples of smaller hospitals that sought a capital partner include St. Joseph Health Services of Rhode Island (rating withdrawn), Citrus Memorial Hospital (rating withdrawn) in Florida, and Somerset Hospital (Ba2 stable before consolidating) in New Jersey. Before they were acquired, both St. Joseph and Citrus Memorial were rated well below investment grade.

All were burdened with either low liquidity or fiscal deterioration, had weakening financial metrics, and were possibly headed toward default or bankruptcy prior to their M&A strategies.

Moody's notes that while the smaller, distressed non-profit hospitals are commonly rated below investment grade and the for-profits are often highly leveraged, the latter possess a sizable revenue base and access to capital.

Additionally, larger hospitals have greater size and resources to absorb these same pressures as the smaller ones, and they are usually better able to navigate challenges facing the health care sector.

While a merger or acquisition is credit positive for the bondholders of the smaller providers, the transactions are complicated and not all make it to fruition. For the NFP, the inability to execute a M&A strategy could increase the probability of a payment default or bankruptcy filing as well as intensify the search for a new capital partner.

The report is available to Moody's subscribers here.

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## Report of the Advisory Committee on Tax Exempt and Government Entities (ACT).

The fourteenth report of recommendations of the Advisory Committee on Tax Exempt and

Government Entities (ACT) on five issues:

- Employee Plans: Analysis and Recommendations Regarding 403 (b) Plans;
- Exempt Organizations: The Redesigned Form 990 – Recommendations for Improving its Effectiveness as a Reporting Tool and Source of Data for the Exempt Organization Community;
- Federal, State and Local Governments: FSLG Education and Outreach – Review and Recommendations;
- Indian Tribal Governments: Report on Recommendations for Outreach and Training – A Revision to the Indian Tax Desk Guide; and
- Tax Exempt Bonds: Doing More With Less – Balancing Resources and Needs.

The 20 members of the ACT presented their report to the IRS in a public meeting in Washington, DC on June 17, 2015.

Read the Report.

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## GFOA Accepting 2015 Standing Committee Membership Applications.

Applications to become a GFOA standing committee member are being accepted through July 24. Serving on a standing committee is an excellent opportunity for GFOA members to contribute their experience and knowledge to the entire membership. GFOA's seven standing committees meet twice each year and develop best practices, advisories, and policy statements for the approval of the Executive Board and membership. GFOA associate members from the private sector may also apply to be advisors to one of the committees.

The GFOA's seven standing committees are: Accounting, Auditing and Financial Reporting; Canadian Issues; Economic Development and Capital Planning; Governmental Budgeting and Fiscal Policy; Governmental Debt Management; Retirement and Benefits Administration; and Treasury and Investment Management.

Submit your application today.

Wednesday, June 17, 2015

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## Muni Buyers Bedazzled by Junk-Bond Yields Let Protections Slip.

A hospital in Hagerstown, Maryland, sold more than $260 million of tax-exempt bonds on Wednesday without a debt service reserve fund, a standard backup for such offerings.

Two weeks earlier, HealthEast Care System in St. Paul, Minnesota, issued $142.5 million of bonds and placed $147 million more with commercial banks that can ask for immediate repayment if the company misses financial metrics. That would leave the other investors vulnerable should the system's finances deteriorate.

Municipal issuers including hospitals, charter schools and retirement communities are selling bonds without some protections typically demanded as investors seek returns over safety with interest rates close to the lowest levels since the 1960s. High-yield bonds have outperformed the broad municipal market since the start of 2014 luring a net $10.5 billion of cash to tax-exempt funds that buy the debt.

“Issuers don’t need to provide protections to bondholders, because the funds need to put the money to work,” said Carol Flynn, a money manager who helps oversee $25 billion at Deutsche Bank AG’s wealth management-unit. “It’s supply and demand, really.”

**Weak Covenants**

Flynn said she’s avoiding lower-rated muni bonds with limited protections, instead favoring A and AA rated issues that provide more relative value.

High-yield munis have gained 0.83 percent this year, beating the broad market’s 0.06 percent decline, Bank of America Merrill Lynch data show. Last year, lower-rated debt returned 12.8 percent, compared with a 9.8 percent gain.

The inflow into high-yield municipal bond funds since the start of last year, represented about 18 percent of total assets on Wednesday, according to data compiled by Bloomberg. The funds can include some lower-rated investment-grade securities.

Even as $1.2 billion was withdrawn from the funds in May and June while the market braces for Federal Reserve to raise interest rates, covenants aren’t being strengthened.

Meritus Medical Center, which runs a 251-bed acute-care hospital in Hagerstown, about 65 miles northwest of Baltimore, priced $263.3 million of debt Wednesday. Bonds maturing in 30 years yielded 4.38 percent, or 1 percentage point more than top-rated municipal bonds with similar maturities. The bonds were offered without a debt service reserve.

**Not Bothered**

Thomas Chan, chief financial officer at Meritus didn’t respond to a request for comment. Douglas Davenport, CFO at HealthEast said investors placed 11 times as many orders as were bonds available in longer maturities and weren’t put off by commercial banks’ ability to require immediate debt repayment if financial covenants were breached. “It didn’t seem to bother them at all,” Davenport said.

Low- and non-rated borrowers have been jettisoning standard security provisions like mortgage liens, which give bondholders the right to foreclose on property in the event of default, and reserves the issuers can tap if they don’t have enough cash to service debt.

“The only way to force those protections back in would be if the deals couldn’t get sold,” said Josh Gonze, who helps oversee $10 billion in munis at Santa Fe, New Mexico-based Thornburg Investment Management.

**Rare Defaults**

Defaults in the $3.6 trillion municipal market are rare. About 0.2 percent of hospital bonds are in default, compared with 0.005 percent of general obligations, according to Concord, Massachusetts-based Municipal Market Analytics. The rates for retirement projects and charter schools are higher, at 5.4 percent and 1.83 percent, respectively.

The $9.3 billion investors plowed into U.S. high-yield muni funds in 2014 was the second-highest ever, according to Lipper.

It’s unclear how many borrowers in the municipal market — whose high-yield issuers include Indian tribes, toll roads and some private companies — have weakened investor protections.

Last month, fund managers clamored to get a piece of Albert Einstein Healthcare Network’s $453.5 million bond deal even though the system had 99.5 days of cash and also didn’t include a reserve as security. Money managers placed more than three times as many orders as bonds available, allowing the Philadelphia-area health-care provider to cut yields, said Chief Financial Officer David Ertel.

**Less Cash**

The cash Albert Einstein had available on March 31 was lower than the median for hospitals in the BBB rating category, according to a May 8 report from Fitch Ratings. The company is rated Baa2 by Moody’s Investors Service.

“We had 53 separate institutional investors, so very widely distributed, very widely accepted in terms of both the pricing and in terms of the security covenant package,” said Ertel.

Investing a debt service reserve in lower-yielding government securities would be a “financial drag,” Ertel said.

A portion of the bonds from Albert Einstein’s May sale that matures in 30 years yielded 4.72 percent at issue and has since declined to 4.57 percent in secondary trading.

Einstein paid a spread of about 1.3 percentage points more than benchmark municipal bonds to issue the debt, less than the 1.32 points charged to the similarly rated Boston Medical Center, which had a reserve fund for a bond issue in April.

In January, Peninsula Regional Medical Center, a hospital on Maryland’s eastern shore, sold about $127 million of debt with a provision allowing the issuer to pledge accounts receivable for other loans, subordinating the rights of bondholders.

**Pledging Receivables**

That practice is “highly objectionable,” said Jim Murphy, who oversees, T. Rowe Price Group Inc.’s $3.4 billion Tax-Free High Yield Fund. “They’re saying they reserve the right to effectively prime you and give that collateral to another lender,” Murphy said. “We’re seeing it more and more.”

The importance of receivables as a security pledge was highlighted in the 2007 bankruptcy of Pascack Valley Hospital in northern New Jersey, Murphy said. When Pascack filed, it had about $19 million in accounts receivables and about $79 million of debt, he said. The security helped boost bondholder payouts to 60 cents on the dollar, he said.

Murphy passed on Peninsula’s bonds, which also weren’t secured by a mortgage.

**‘Kicking Themselves’**

Other hospitals in Maryland include provisions in their bond documents allowing them to pledge accounts receivable to new loans, said Bruce Ritchie, chief financial officer at Peninsula. Debt secured by receivables can’t exceed 25 percent of total claims for payment.

The deal was five to six times oversubscribed, Ritchie said. “There was appetite for our bond issue in the market with the covenants written the way they were written.”

In Boca Raton, Florida, a startup retirement community borrowed $190 million in unrated bonds last year without having final building permits from the county.

Construction on the Sinai Residence, a 237-unit continuing care retirement community that will feature rooftop gardens and a spa, is about 65 percent complete, said Mel Lowell, chief operating officer of the Jewish Federation of South Palm Beach County. The units are sold out and there's a waiting list.

The project had a letter from officials giving conditional approval for the permits if minor items were addressed, Lowell said. Thirty-five-year bonds that were sold at 98.5 cents on the dollar traded at an average of 112 cents on Wednesday.

Investors who balked at the bonds are "kicking themselves in the tuchas now," said Lowell, using the Yiddish word for rear end.

**Bloomberg**

**by Martin Z Braun**

**June 24, 2015 — 9:00 PM PDT**

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## New MSRB Rule Will Increase Available Information Regarding Trades of Municipal Securities: Butler Snow

Last month, the Securities and Exchange Commission (the "SEC") approved amendments by the Municipal Securities Rulemaking Board (the "MSRB") to MSRB Rule G-14 regarding the reporting of trades of municipal securities. These changes will provide issuers, investors and the general public with more information regarding the ongoing market for municipal bonds and similar securities. Presently, bond dealers are required to report most executed transactions of municipal securities to the MSRB via its Real-Time Transaction Reporting System ("RTRS") within 15 minutes of the trade. The MSRB sells this data to vendors and financial institutions, and also makes some of the data available to the public at no charge. The public may access this information by visiting the MSRB's Electronic Municipal Market Access system ("EMMA") and searching for an issue. Once on the page of an individual issue, a member of the public may find this information by clicking on the tab labeled "Trade Activity." Under the new rule, new information will be available on this system including: (1) List Offering Price and Takedown Transaction indicators for additional transactions; (2) a new indicator showing whether the transaction includes a dealer compensation component such as a mark-up, mark-down or commission; and (3) a new indicator to indicate trades that have occurred using alternative trading systems ("ATSs"). In addition, the rule changes remove the requirement that dealers report the yield of a security for each trade, as the MSRB has indicated that it will perform these calculations itself and publish the results. In announcing the approved changes, MSRB Executive Director Lynette Kelly said "The MSRB's EMMA website provides an unrivaled window into the trading of municipal securities for investors and other market participants. With the addition of useful new data points, the market – regulators included – will gain a better understanding of the ever-evolving practice of trading municipal securities, particularly the growing use of ATSs." The new reporting requirements take effect on May 23, 2016, giving dealers time to establish the appropriate reporting systems. The MSRB expects to release additional technical guidance to assist firms with this process. For further reading, please read the full-text of the MSRB amended rule and the SEC's approval order.

**Last Updated: June 23 2015**

**Article by Matthew O. Gray and Elizabeth Lambert Clark**

**Butler Snow LLP**



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## IRS Revamps Proposed Issue Price Definition For Municipal Bonds: Mintz Levin

Treasury and IRS today announced a decision to withdraw the much-criticized portion of the notice of proposed rulemaking published in the Federal Register on September 16, 2013 (the "2013 Proposed Regulations") related to the definition of issue price for tax-advantaged obligations and to propose a revised definition of issue price in its place. A determination by the IRS that the "issue price" has been erroneously calculated can have ramifications, including for the calculation of arbitrage yield, that could ultimately cause loss of tax-exempt status in the case of tax-exempt bonds and loss of federal subsidy in the case of Build America Bonds (BABs), hence the importance to the tax-exempt bond community of a clear and predictable definition.

The new proposed regulations (the "2015 Proposed Regulations") are scheduled to be published in the Federal Register on June 24, 2015 and can be found here. A 90-day comment period will be followed by a hearing on October 28, 2015.

The 2015 Proposed Regulations eliminate most of the troublesome features of the 2013 Proposed Regulations, including maintaining a 10% standard rather than the 2013 Proposed Regulations 25% standard for what constitutes a "substantial amount" of obligations sold to the public. However, the 2015 Proposed Regulations do not maintain the long-established "reasonable expectations" standard for establishing issue price. Instead, the 2015 Proposed Regulations look to actual facts as the general rule.

In recognition of the need in the tax-advantaged debt world for certainty as of the sale date (particularly in the case of advance refundings), the 2015 Proposed Regulations helpfully provide an alternative method in the event a substantial amount of bonds have not been sold to the public as of the sale date. The alternative method allows reliance on the initial offering price if certain conditions are satisfied.

Procedures for satisfying the conditions for use of this alternative method will have to be developed, and underwriters may conclude that compliance will be difficult. In particular, a preclusion of sales at prices above the initial offering price unless it can be demonstrated that the differential is based on market changes could be problematic.

The 2015 Proposed Regulations will be effective for obligations that are sold on or after 90 days after final regulations are published in the Federal Register. However, issuers may rely upon the 2015 Proposed Regulations with respect to obligations that are sold on or after June 24, 2015, the date the 2015 Proposed Regulations will be published in the Federal Register.

**Last Updated: June 24 2015**

**Article by Maxwell D. Solet and Christie L. Martin**

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**



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## Treasury and IRS Re-Propose Issue Price Rules.

WASHINGTON – The Treasury Department and Internal Revenue Service released new proposed rules on the definition of issue price that market participants consider to be a significant improvement over rules proposed on the topic in 2013.

The re-proposed rules, which were released Tuesday and are scheduled to appear in Wednesday's edition of the Federal Register, would allow issuers to rely on the initial offering price under certain circumstances and provide a narrower definition of an underwriter. The document that contains the re-proposed rules also withdraws issue price rules proposed in September 2013.

"[The new proposal] provides more flexibility than the 2013 proposal," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

"Based on an initial reading, the new proposal is a vast improvement over the 2013 issue price amendments," said Mike Nicholas, chief executive officer of the Bond Dealers of America. "Retaining the current regulatory framework for establishing issue price based on a substantial amount of an issuance being sold and providing a mechanism to permit reliance on the initial offering prices are especially positive developments for the municipal market."

National Association of Bond Lawyers president Tony Martini said there's "a lot to be encouraged by" in the new proposal.

The re-proposed rules apply to bonds that are sold at least 90 days after the rules are adopted in final form, but issuers can rely on them for bonds sold on or after Wednesday, the regulators said. A public hearing on the proposal is scheduled for Oct. 28.

Issue price is used to determine the yield on bonds for purposes of arbitrage investment restrictions.

Existing rules generally provide that the issue price of a maturity is the first price at which a substantial amount of the bonds is sold to the public, with substantial defined as 10%. But for bonds that are publicly offered, the issue price is the first price at which 10% of the bonds are reasonably expected to be sold to the public. When there is a bona fide public offering, the issue price is determined as of the sale date – the date when the underwriter signs the agreement to buy the bonds from the issuer and when the terms of the bonds are set — based on reasonable expectations of the initial offering price.

The rules proposed in 2013 eliminated the "reasonable expectations" standard and the definition of substantial as 10%. Instead, they provided a safe harbor that would allow the issuer to treat as the issue price of a maturity the first price at which at least 25% of the bonds is sold to the "public," with that term referring to anyone other than an "underwriter."

Those rules defined underwriter as “any person that purchases bonds from the issuer for the purpose of effecting the original distribution of the bonds, or otherwise participates directly or indirectly in the original distribution.”

Market participants raised a number of concerns about the issue price rules proposed in 2013 and wanted them to be withdrawn or re-proposed. The new proposed rules aim to address market participants’ concerns about the 2013 proposed rules.

Kim Betterton, a partner at Ballard Spahr in Baltimore who took the lead on NABL’s comments on the 2013 proposal, said it looks like Treasury and the IRS accepted most of NABL’s suggestions.

Under the re-proposed regulations, as in the existing regulations, the general rule would remain that the issue price is the first price at which 10% is sold to the public. But issuers could use an alternative method to determine issue price if 10% of a maturity hasn’t been sold by the sale date. In those cases, an issuer could use the initial offering price to the public as of the sale date as the issue price if certain requirements are met. Those requirements include that the underwriters fill all orders from the public on or before the sale date at the initial offering price, and that the lead or sole underwriter provide a certification that no underwriter will fill an order from the public after the sale date and before the issue date at a higher price than the initial offering price unless the market moves after the sale date.

Underwriters could document the initial offering price with a copy of the pricing wire. They should document an order that’s higher than the initial offering price after the sale date by including both pricing information and information regarding the corresponding market change, such as proof that there were changes to the values of a muni interest rate index, Treasury and the IRS said.

“The issuer must not know or have reason to know, after exercising due diligence, that the certifications are false,” the agencies said.

Market participants had some questions about the alternative method.

Decker said he thought the regulators’ proposal could suggest that if the market moves, the price of bonds may have to keep the same spread compared to the index. However, that approach doesn’t take into account market reasons why the spread could change.

Since the certification would be a new requirement for underwriters, it’s unclear how easy it would be for the underwriters to comply with it, Decker said.

Betterton said she wants to make sure that underwriters can comply with the certification requirements and wants to get more information about the documents needed to demonstrate market changes.

She and Matthias Edrich, a lawyer at Kutak Rock, both said that there could be clarifications about what type of due diligence issuers would need to do to determine the veracity of the underwriters’ certifications.

The re-proposed rules define underwriter to include anyone who “contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form an underwriting syndicate” and anyone who directly or indirectly enters into a contract or other arrangement to sell the bonds with any of the syndicate members.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, said he particularly appreciates “the recognition that a dealer without a contract before the sale date is considered part of the ‘public.'”

THE BOND BUYER

BY NAOMI JAGODA

JUN 23, 2015 9:36am ET

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## Proposed Bonds to Encourage Public Private Partnerships and Improve Infrastructure: Butler Snow.

The nation’s infrastructure is in need of dire repair. On February 2, 2015, to encourage private investments in infrastructure through public-private partnerships (“P3s”) and as part of his 2016 proposed budget, President Barack Obama presented the concept of qualified private infrastructure bonds (“QPIBs”).1 On May 4, 2015, also in an effort to encourage private investments in infrastructure through P3s, United States Senators Ron Wyden and John Hoeven proposed Move America Bonds (“MABs”) as part of the Move America Act of 2015 (the “Act”)2. Neither QPIBs nor MABs have been authorized by Congress, and both are still pending. These are only two alternatives to address infrastructure, but more legislation may be proposed in the future.

In addition to their similar purpose of encouraging private investments in infrastructure through P3s, QPIBs and MABs have a few other similarities. They are both tax exempt bond financing. Unlike Build America Bonds, they do not have a direct pay feature. The interest on both QPIBs and MABs are not subject to the alternative minimum tax.

However, there are some differences between QPIBs and MABs including the types of projects that each will finance. QPIBs will be used to finance seven types of facilities including (i) airports, (ii) docks and wharfs, (iii) mass commuting facilities, (iv) facilities furnishing water, (v) sewage facilities, (vi) solid waste disposal facilities, and (vii) qualified highway or surface freight transfer facilities.3 MABs will be used to finance nine types of facilities including (i) airports, (ii) docks and wharfs, (iii) mass commuting facilities, (iv) railroads, (v) surface transportation projects, (vi) projects for international bridges and tunnels, (vii) facilities for transfer freight from trucking-to-rail or rail-t--trucking, (viii) flood diversions, or (ix) inland waterways. Thus, MABs will finance more types of facilities than the QPIBs, including facilities, such as railroad, that cannot currently be financed as tax exempt facility bonds under Section 142 of the Internal Revenue Code of 1986, as amended.

Governmental ownership will be required for airports, docks and wharves and mass commuting facilities financed with QPIBs, but the safe harbor rules regarding ownership will be expanded in instances where the facilities are leased or subject to concession or management contracts. However, governmental ownership of the facilities will not be required for facilities financed with MABs, but the facilities must be available for general public use.

There will not be a volume cap for QPIBs, but MABs will have a separate volume cap, which will be 50% of the state’s current private activity bond volume cap. MABs volume caps can be carried forward for a period of three years. After the three year carryforward, the unused volume cap can be reallocated to states that have fully used their MABs volume cap. MABs will increase the amount of the bond proceeds to be spent on land acquisition from 25% to 50% and the time to complete the construction of a rehabilitation from two years to five years. The Act also includes enlargements as qualified rehabilitations and allows states to exchange a portion of a state's MABs volume cap for the Move America tax credit ("Tax Credit").4

**Footnotes**

1. QPIBs are part of the President's budget, which includes only general concepts as to how the QPIBs will work. It is believed that QPIBs will operate in the existing tax exempt bond framework.

2. The Act is Senate Bill No. 1186. As of June 10, 2015, the Act has been referred to the Senate Finance Committee. If the Act is enacted, it will be codified as Section 142A of the Internal Revenue Code of 1986, as amended. The Act also provides for the Move America tax credits, which are discussed below in footnote 5 below.

3. All facilities that will be finance with QPIBs can currently be financed as tax exempt facility bonds under Section 142 of Internal Revenue Code of 1986, as amended, but they are subject to the private activity bond volume cap and the interest on these bonds are subject to the alternative minimum tax.

4. The state may exchange 25% of their MABs allocation for the Tax Credits. The value of the Tax Credit shall not exceed 20% of the estimated project costs or 50% of the total private investments in the qualified projects. The Tax Credit can finance the same type of projects as the MABs. The credit amount is 10% of the value of the MABs certificate per year over a period of ten years

**Last Updated: June 23 2015**

**Article by Ashley N. Wicks**

**Butler Snow LLP**

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

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## The Bond Buyer's Healthcare & Higher Education Finance Conference.

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## Mayors' Resolution Defends Tax-Exempt Bonds.

WASHINGTON – The U.S. Conference of Mayors adopted a resolution against limiting tax-exempt bonds this weekend.

The tax-exempt bond resolution adopted at the mayors' annual meeting in San Francisco supports the idea that state and local entities would suffer under proposals from Congress and the Obama administration to cap, limit or eliminate tax-exempt municipal bonds.

Obama proposed capping the value of muni exemption at 28% in his fiscal 2016 budget. Opponents of the limitation, which has been an ongoing debate for several years, say the move would drive up borrowing costs to the issuers and deflate infrastructure and job development.

The mayors' resolution says tax-exempt bonds keep local taxation levels down and allow small issuers to participate in the bond market. It also argues that the ability to issue tax-exempt bonds frees state and local governments from exclusively relying on federal money, which the resolution says has been "stagnant at best and in many cases declined precipitously" over the past decade.

"In an era of increasing federal mandates and federal budget austerity, capping, limiting or eliminating tax-exempt bonds would essentially signal a divestment in infrastructure," the resolution says.

Michael Decker, managing director and co-head of the Securities Industry and Financial Markets Association's muni division, expressed support for the resolution, saying a congressional move toward tax reform could be a "serious threat."

"We, like the U.S. Conference of Mayors believe it is a vital component of financing infrastructure in the country and we agree wholeheartedly with their view that we should work against any movement to curtail or eliminate the tax-exemption," Decker said.

Bond Dealers of America CEO Mike Nicholas also said he supports the resolution, which "recognizes that tax-exempt bonds have been vital to local communities in financing critical infrastructure and community investment projects while keeping financing costs low for taxpayers."

The mayors did not adopt another resolution that would have addressed "excessive cost impacts on municipalities" from municipal financial service providers.

That resolution's text enumerated concerns that some municipalities fall prey to poor advice from service professionals and suffer from fee-based models that can create a situation where the providers profit as municipalities suffer from certain types of deals.

"This model creates perverse incentives in certain cases for financial service providers to aggressively work against the best interests of municipalities and taxpayers," the resolution said.

It proposed remedying the issues by having municipalities network to establish an industry standard for financial service providers and maintain communication to make sure the providers "comply with said guidelines and consent to be rigorously monitored for compliance."

Decker said the resolution was not very constructive. He added that if the Conference of Mayors wanted to take a more formal position, SIFMA would like to work with it.

THE BOND BUYER

BY JACK CASEY

JUN 23, 2015 1:56pm ET

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- 36 Underwriters to Pay $9.3M to Settle Under SEC MCDC Program.
- Voluntary Reporting of Bank Loans – Best Practice or Sword of Damocles?
- New Resource Available for Municipal Advisors Developing Supervisory and Compliance Systems.
- GFOA Seeks MA Conduct Rule Changes to Reduce Issuer Costs, Burdens.
- The Dirty Business of Paying for Ratings.
- Behind Chicago's Rift With Moody's: Rater's Tough New Stance.
- New Issue Price Regs Proposed.
- NABL Submits Comments to IRS on TEFRA Regulations.
- *Dacus v. Parker* – Supreme Court of Texas holds that failure of ballot proposition – for a proposed city charter amendment – to mention drainage charges to be imposed on most real property owners across the city rendered drainage systems and streets funding measure invalid.
- And finally, Don't Quit Your Day Job is brought to you this week by Justice David E. Nahmias of the Georgia Supreme Court, whose opinion in a sexually oriented business ordinance case begins with this zinger, "The [strip club] asserts that when its employees dance nude and serve alcohol, they are *clothed* with constitutional free speech protection, which the City of Doraville's Code of Ordinances attempts to *strip* away. Ouch. And yes, we are fully aware of the rank hypocrisy inherent in this criticism, which is why this entry could just as well have been entitled, "Mr. Pot, meet Mr. Kettle."

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**PENSIONS - ALABAMA**

## Ex parte Retirement Systems of Alabama

**Supreme Court of Alabama - June 12, 2015 - So.3d - 2015 WL 3648522**

Public educators and their spouses brought action against teachers' retirement system, public education employees' health insurance plan, and their boards and officers, alleging that implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two, violated various provisions of state and federal constitution. The Circuit Court denied motion to dismiss based on sovereign immunity. Defendants petitioned for writ of mandamus.

The Supreme Court of Alabama held that:

- State-law claims against board members and secretary-treasurer were barred by state constitutional sovereign immunity, and
- Federal-law claims against board members and secretary-treasurer were barred by federal constitutional sovereign immunity.

State constitutional sovereign immunity barred public educators' state-law claims against members of the board of the public education employees' health insurance plan and the secretary-treasurer of the plan, stemming from implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two. There was no law, regulation, or internal rule cited that created legal duty for plan to allow participants access to employer contributions paid on their behalf to spend on insurance, there was no allegedly unconstitutional law identified being enforced by board members or secretary-treasurer, request for declaratory relief related to board members' conduct under policy, not to board's performance under any particular statute educators sought to have construed or applied in given situation, and restitution requested was more in nature of refund of amounts overpaid than request for liquidated or certain damages owed under contract.

Federal constitutional sovereign immunity barred public educators' federal-law claims for restitution against members of the board of the public education employees' health insurance plan and the secretary-treasurer of the plan stemming from implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two, where relief requested would have resulted in recovery of money from the State.

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**UTILITIES - CALIFORNIA**

## Pacific Gas and Electric Company v. Public Utilities Commission

**Court of Appeal, First District, Division 2, California - June 16, 2015 - Cal.Rptr.3d - 2015 WL 3745792**

After Public Utilities Commission (PUC) imposed civil penalties on underground gas pipeline operator for failing to promptly correct material misstatement of fact in pleading filed with PUC concerning internal pressure at which certain pipelines could be safely operated and for mischaracterizing correction when filed as routine and non-substantive correction, operator filed petition for writ review, which was granted.

The Court of Appeal held that:

- Mental state to mislead was not required for PUC to find that operator violated rule prohibiting person from misleading PUC;
- Proof of continuing misconduct was not required to impose penalties for continuing violation of rule;
- Operator received constitutionally adequate notice of potential fines PUC would impose for violating rule; and
- Penalties imposed on operator for violating rule were not constitutionally excessive.

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**ZONING - CALIFORNIA**

## California Bldg. Industry Ass'n v. City of San Jose

**Supreme Court of California - June 15, 2015 - P.3d - 2015 WL 3650184**

Building industry association brought action for declaratory and injunctive relief against city, city council, and mayor to invalidate city's "inclusionary housing" ordinance on its face. Affordable housing organizations intervened. The Superior Court granted declaratory and injunctive relief. Defendants and intervenors appealed, and the Court of Appeal reversed and remanded. The

Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Requirement that a the developer sell 15 percent of its on-site for-sale units at an affordable housing price was not an unconstitutional exaction in violation of the takings clause, and
- Validity of an inclusionary housing ordinance does not depend upon a showing that the restrictions are reasonably related to the impact of a particular development to which the ordinance applies, disapproving *Building Industry Assn. of Central California v. City of Patterson*, 171 Cal.App.4th 886, 90 Cal.Rptr.3d 63.

City inclusionary housing ordinance requirement that a developer sell 15 percent of its on-site for-sale units at an affordable housing price was not an unconstitutional "exaction" in violation of the takings clause. Condition did not require dedication of property or money to the public, city had broad discretion to regulate the use of real property to serve the public interests, and price control was not confiscatory.

When a municipality enacts a broad inclusionary housing ordinance to increase the amount of affordable housing in the community and to disperse new affordable housing in economically diverse projects throughout the community, the validity of the ordinance does not depend upon a showing that the restrictions are reasonably related to the impact of a particular development to which the ordinance applies. Rather, the restrictions must be reasonably related to the broad general welfare purposes for which the ordinance was enacted.

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**EMPLOYMENT - GEORGIA**

## Kautz v. Powell

**Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3658804**

Mayor brought declaratory judgment action, seeking a declaration that she had sole authority to terminate the employment of the city attorney. The Superior Court entered judgment finding that authority to terminate city attorney was vested in the city council. Mayor appealed. The Court of Appeals affirmed. Mayor petitioned for a writ of certiorari.

The Supreme Court of Georgia held that mayor retained the power to remove city attorney after appointing him or her for an otherwise indefinite period of time.

Mayor retained the power to remove city attorney after appointing him or her for an otherwise indefinite period of time, regardless of city charter provision that vested city council with all powers of government of city. While city charter provided city council with powers not expressly granted to mayor, it was not specific enough to counter the universally accepted rule that is provided by law giving mayor the power to remove city attorney as incident to her power to appoint.

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**GOVERNANCE - GEORGIA**

## Lue v. Eady

**Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3655127**

City council members and other citizens filed complaint against city mayor in her official capacity, seeking her removal from office for violations of the Open Meetings Act and other alleged wrongdoing. Following entry of temporary restraining order removing mayor from office, the Superior Court denied recusal motion and motions to dismiss, and entered interlocutory injunction order reinstating mayor with conditions. Mayor appealed.

The Supreme Court of Georgia held that:

- Trial judge was not disqualified from presiding over action;
- Meeting of three city council members plus mayor was not subject to Open Meetings Act;
- City council members and citizens were not entitled to interlocutory injunction requiring compliance with Open
- Meetings Act for meetings not involving quorum of city council members;
- Interlocutory injunction order regarding right of mayor to vote was consistent with charter;
- City council members and citizens failed to demonstrate need for interlocutory injunction preventing termination of city employees;
- City council members and citizens were not entitled to civil penalties against mayor in her official capacity for violation of Act; and
- City council members and citizens were not entitled to injunctive relief to nullify city council decisions.

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**MUNICIPAL ORDINANCE - GEORGIA**

## Oasis Goodtime Emporium I, Inc. v. City of Doraville

**Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3658847**

Strip club brought action against city, its mayor, city council, and city clerk, challenging city's sexually oriented businesses ordinances. The trial court entered judgment on the pleadings in favor of city. Strip club appealed.

The Supreme Court of Georgia held that:

- Club lacked standing to challenge validity of notice to city of bill to amend city charter;
- Ordinances were content-neutral, and, thus, subject to intermediate judicial scrutiny;
- Ordinances furthered the important government interest of preventing negative secondary effects of such businesses;
- Ordinances passed intermediate judicial scrutiny;
- Provision of ordinances prohibiting full nudity struck a constitutionally permissible fit between reducing undesirable secondary effects and protecting free speech; and
- Strip club lacked standing to challenge provision that prohibited the sale of alcohol in establishments that featured nudity.

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**ANNEXATION - INDIANA**

## Town of Zionsville v. Town of Whitestown

**Court of Appeals of Indiana - June 2, 2015 - N.E.3d - 2015 WL 3478326**

First town filed suit against second town, challenging validity of reorganization plan with township and seeking a declaratory judgment invalidating the plan. Second town counterclaimed, contending that first town lacked authority to pursue its annexation plans for portions of the township. Towns cross-moved for summary judgment. The Superior Court granted summary judgment for first town. Second town appealed.

The Court of Appeals held that:

- Second town's appeal was not moot; as matters of first impression,
- Second town was authorized under Government Modernization Act to exercise powers of a township when it adopted its plan;
- Adjacency requirement of the Act was met; and
- Reorganization plan was first in time over annexation efforts.

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**ZONING - NEW HAMPSHIRE**

## Forster v. Town of Henniker

**Supreme Court of New Hampshire - June 12, 2015 - A.3d - 2015 WL 3638597**

Christmas tree farm owner appealed town zoning board of adjustment determination that weddings were not an accessory use of his farm and not permitted in zoning district. The Superior Court affirmed, and farm owner appealed.

The Supreme Court held that:

- Statutory definition of "agriculture" did not include "agritourism," and thus did not permit farm to host weddings;
- Statutory definition of "agritourism" did not impliedly preempt town ordinance which prohibited farm owner from hosting weddings on his property; and
- Use of Christmas tree farm to host weddings and wedding receptions was not permitted as an "accessory use" of the farm.

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**ZONING - NEW JERSEY**

## Grabowsky v. Township of Montclair

**Supreme Court of New Jersey - June 15, 2015 - A.3d - 2015 WL 3649579**

Property owner filed complaint in lieu of prerogative writs against township and township officials, challenging township zoning ordinance permitting construction of assisted living facility, and alleging that the township mayor and a councilmember had conflicts of interest preventing them from voting on the ordinance. The Superior Court granted summary disposition in favor of defendants, and owner appealed. The Superior Court, Appellate Division, affirmed. Owner petitioned for certification.

The Supreme Court of New Jersey held that:

- Alleged comment of mayor that he might seek to admit his mother in facility did not give rise to disqualifying personal interest, but
- Mayor and councilmember had disqualifying personal interests to the extent they held leadership positions in church adjacent to proposed facility.

**EMINENT DOMAIN - NORTH CAROLINA**

## Town of Midland v. Wayne

**Supreme Court of North Carolina - June 11, 2015 - S.E.2d - 2015 WL 3747169**

Town brought two actions to condemn portions of two adjacent tracts of land owned by defendant landowner and a limited liability company (LLC) for purposes of an easement in which to construct a natural gas pipeline and a fiber optic line, and landowner counterclaimed for inverse condemnation. The Superior Court concluded that an inverse condemnation had occurred outside the easement, and that no unity of ownership existed between landowner's tract and the other tract. Town appealed, and landowner cross-appealed.

The Supreme Court of North Carolina held that:

- Town's condemnation action interfered with landowner's vested right to develop future phases of subdivision under development plan, and
- Adjacent tracts could be treated as a "unified tract."

Trial court's findings of fact sufficiently supported its conclusion that town's condemnation action interfered with landowner's vested right to develop future phases of subdivision under residential development plan previously approved by zoning commission. Landowner in good faith reliance had made substantial expenditures of money, time, and labor based on the development plan, thus supporting his common law vested right to develop the subdivision in accordance with the plan.

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**ZONING - OHIO**

## Apple Group, Ltd. v. Granger Twp. Bd. of Zoning Appeals

**Supreme Court of Ohio - June 17, 2015 - N.E.3d - 2015 -Ohio- 2343**

Developer appealed denial by township's board for zoning appeals of its application for 176 variances. The Court of Common Pleas affirmed. Developer appealed. The Court of Appeals affirmed. Developer sought review.

The Supreme Court of Ohio held that:

- A township's comprehensive plan may be included within its zoning resolution and need not be a separate and distinct document, and
- Township's zoning regulation was intended to be a comprehensive plan.

A township's comprehensive plan may be included within its zoning resolution and need not be a separate and distinct document. Statute requires that zoning regulations be adopted pursuant to a plan that is comprehensive, or all-encompassing, in the sense that the plan addresses the specific goals and objectives for the entire township.

Township's zoning regulation was intended to be a comprehensive plan under statute that allowed township to regulate land use in accordance with a comprehensive plan, where its zoning resolution was an exhaustive document, which consisted of more than 100 pages and incorporated an attached zoning districts map, and the resolution's stated purpose was to promote and protect the health, safety, morals, and welfare of the residents of the unincorporated area of the township, conserve and protect property and property values, provide for the maintenance of its rural character, and to manage orderly growth and development.

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**INVERSE CONDEMNATION - TEXAS**

## Harris County Flood Control District v. Kerr

**Supreme Court of Texas - June 12, 2015 - S.W.3d - 2015 WL 3641517**

Landowners and former landowners whose properties were damaged by flooding brought action against flood control district and county for inverse condemnation and nuisance. The County Court at Law denied district and county's plea to the jurisdiction. District and county appealed.

The Supreme Court of Texas held that:

- Fact issue existed as to intent element of landowners' inverse condemnation claims;
- Fact issue existed as to causation element of landowners' inverse condemnation claims; and
- Fact issue existed as to "public use" element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district and county were substantially certain their alleged actions in approving development of homes without appropriately mitigating the development would cause flood damage to homes in the flood plain, thus precluding summary judgment for district and county as to the intent element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district's and county's alleged actions in approving development of homes without appropriately mitigating the development resulted in flood damage to homes in flood plain, thus precluding summary judgment for district and county as to the causation element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district and county acted for a public use in allegedly approving new development and drainage plans causing flood damage to homes in flood plain, thus precluding summary judgment for district and county as to the "public use" element of landowners' inverse condemnation claims.

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**BALLOT INITIATIVE - TEXAS**

## Dacus v. Parker

**Supreme Court of Texas - June 12, 2015 - S.W.3d - 2015 WL 3653295**

Voters filed election contest against City, seeking declaration that a drainage systems and streets funding measure was invalid due to use of a misleading proposition on the ballot. The District Court entered summary judgment in favor of City. The Houston Court of Appeals affirmed. Voters' petition for review was granted.

The Supreme Court of Texas held that:

- Supreme Court had jurisdiction to review decision of Court of Appeals with respect to election contest in order to resolve conflict among courts of appeal, and
- Ballot proposition's failure to mention drainage charges to be imposed on most real property owners rendered funding measure invalid.

Failure of ballot proposition for a proposed city charter amendment to mention drainage charges to be imposed on most real property owners across the city rendered drainage systems and streets funding measure invalid. By omitting the drainage charges, the proposition failed to substantially submit the measure with such definiteness and certainty that voters would not be misled.

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**TIF - SOUTH CAROLINA**

## Donohue v. City of North Augusta

**Supreme Court of South Carolina - June 17, 2015 - S.E.2d - 2015 WL 3757108**

Resident brought action challenging validity of ordinance which amended an ordinance which created a tax increment financing district. The Circuit Court upheld ordinance. Resident appealed.

The Supreme Court of South Carolina held that:

- Amending ordinance was valid, and
- Mayor's and city council's announcement of an executive session to discuss negotiations incident to a proposed contractual matter did not satisfy Freedom of Information Act's (FOIA) requirement that specific purpose of executive session be announced in open session.

Statutory subsection providing that a municipality could by ordinance make changes to a redevelopment plan in accordance with procedures for initial approval referred only to the procedural requirements, such as public notices and hearings, and not to substantive requirements, and since there was no claim that mayor and city council did not meet those requirements for ordinance amending tax increment financing district ordinance, amending ordinance was valid.

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## 36 Underwriters to Pay $9.3M to Settle Under SEC MCDC Program.

WASHINGTON – Thirty-six municipal underwriters agreed to pay a total of $9.3 million and take remedial actions to settle Securities and Exchange Commission charges that they sold bonds with offering documents that contained false or misleading statements about the issuers' compliance with continuing disclosure obligations.

The underwriters allegedly failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers as required by the SEC's rule 15c2-12, the commission said in the settlements, which were reached under the Municipalities Continuing Disclosure Cooperation initiative. The violations cited in the settlement orders took place between 2010 and 2014. The MCDC, announced last March, encouraged issuers and underwriters to voluntarily report to the SEC any time in the last five years in which they sold or underwrote bonds with offering documents that might not pass legal muster. The reporting period expired on Sept. 10 last year for underwriters and on Dec. 1 for issuers.

"The MCDC initiative has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers' disclosure obligations and enhanced disclosure policies and procedures," said SEC chair Mary Jo White. "This ongoing enforcement initiative will continue to bring lasting changes to the municipal securities markets for the benefit of investors."

The 36 firms, which did not admit or deny the SEC's findings, agreed to cease and desist from future violations. They agreed to pay civil penalties based on the number and size of the fraudulent offerings, up to a cap based on the size of the firm. The maximum penalty, imposed on 10 underwriters, was $500,000. The smallest one announced was $40,000. The $500,000 cap was for firms who reported more than $100 million of revenue in fiscal year 2013. All the participating underwriters agreed to retain independent consultants to review their policies and procedures on due diligence and make recommendations for improvements.

“The MCDC initiative highlights the importance of continuing disclosure in the municipal bond market and due diligence in the underwriting process,” said Andrew Ceresney, director of the SEC’s enforcement division. LeeAnn Gaunt, chief of the enforcement division’s municipal securities and public pensions unit, said the actions will help investors.

“The settlements announced today reflect these underwriters’ cooperation in self-reporting their own misconduct and agreeing to improve their procedures going forward,” Gaunt said. “Because these 36 firms underwrite a substantial portion of the country’s municipal bonds each year, we expect a large number of bondholders will benefit from the resulting improvements in due diligence and disclosure.”

Ceresney said during a press call that the 36 firms represent about 70% of muni underwriting volume by dollar amount for the past four fiscal years. Some large firms were not among those named. Wells Fargo & Co., which was a top five underwriter that accounted for nearly 7% of the dollar volume of underwritings in 2014, was not named. Nor was Barclays, a top 10 underwriter accounting for nearly 5%. Ceresney told The Bond Buyer that more settlements with underwriters who participated in the MCDC initiative could be coming.

The conduct cited in the settlements included instances in which official statements failed to disclose that the issuer had done almost no continuing disclosure at all. The settlement against Citigroup, for example, said that in five negotiated sales between 2011 and 2013 the issuer did not disclose that it had failed to file four annual financial reports since 2009. The settlement with The Baker Group cited competitive offerings, including an instance of a 2014 issuance in which the official statement did not disclose that the issuer had been between 145 and 374 days late in filing annual financial information in four prior bond offerings.

The SEC granted waivers to the firms to prevent them from being disqualified from certain exemptions or safe harbors in SEC rules. Without such waivers, firms charged under the MCDC might be unable to do certain types of non-muni transactions. Firms will still need to go through a process to reinstate their memberships with the Financial Industry Regulatory Authority, Ceresney said.

The SEC had previously charged one issuer under the MCDC, but Kings Canyon Joint Unified School District in California was already under investigation when it chose to take advantage of the standardized settlement terms of the initiative.

Jessica Giroux, general counsel and managing director of federal regulatory policy at Bond Dealers of America, said BDA supports improving disclosure but found the MCDC disrupted service to issuer clients.

“This has been a long and burdensome process for our dealers who have spent countless hours and a massive amount of resources working to comply with this enforcement initiative,” she said.

Giroux said BDA was also disappointed that the SEC did not pursue the MCDC initiative under only Section 8A of the Securities Act of 1933 instead of Section 15(b) of the Securities Exchange Act of

1934 because that modification could have avoided triggering statutory disqualifications of all the firms.

Michael Diver, the head of Katten Muchin Rosenman’s litigation and enforcement group in Chicago, questioned whether the SEC could have gotten a judge to agree that the disclosures were material to investors and that selling the bonds violated the antifraud provisions of the law. Diver, who represented four underwriting firms, including BMO Capital Markets GKST Inc., Oppenheimer & Co., and Loop Capital Markets, said the SEC developed an effective initiative with the MCDC.

“The SEC developed a fairly effective ‘carrot and stick’ approach to drive participation in the initiative and I think broker-dealers that are active in the municipal securities marketplace were wise to participate,” he said.

Diver added that assessing issuer compliance can be difficult and that he saw his broker-dealer clients respond “in good faith” to the SEC’s March 2012 risk alert on 15c2-12 compliance, well before the MCDC initiative.

A Securities Industry and Financial Markets Association spokesperson said that SIFMA wants disclosure to improve, but that issuer disclosure failures “could have been handled by the SEC in an alternative manner with far less expense and collateral consequences to market participants, especially considering the absence of harm to investors.”

The SEC is expected to release future “waves” of settlements with issuers and with individuals whom the commission decides to charge separately.

Underwriters Fined Under MCDC Settlements include:

• The Baker Group, LP – $250,000

• B.C. Ziegler and Company – $250,000

• Benchmark Securities, LLC – $100,000

• Bernardi Securities, Inc. – $100,000

• BMO Capital Markets GKST Inc. – $250,000

• BNY Mellon Capital Markets, LLC – $120,000

• BOSC, Inc. – $250,000

• Central States Capital Markets, LLC – $60,000

• Citigroup Global Markets Inc. – $500,000

• City Securities Corporation – $250,000

• Davenport & Company LLC – $80,000

• Dougherty & Co. LLC – $250,000

• First National Capital Markets, Inc. – $100,000

• George K. Baum & Company – $250,000

- Goldman, Sachs & Co. – $500,000
- Hutchinson, Shockey, Erley & Co. – $220,000
- J.P. Morgan Securities LLC – $500,000
- L.J. Hart and Company – $100,000
- Loop Capital Markets, LLC – $60,000
- Martin Nelson & Co., Inc. – $100,000
- Merchant Capital, L.L.C. – $100,000
- Merrill Lynch, Pierce, Fenner & Smith Incorporated – $500,000
- Morgan Stanley & Co. LLC – $500,000
- The Northern Trust Company – $60,000
- Oppenheimer & Co. Inc. – $400,000
- Piper Jaffray & Co. – $500,000
- Raymond James & Associates, Inc. – $500,000
- RBC Capital Markets, LLC – $500,000
- Robert W. Baird & Co. Incorporated – $500,000
- Siebert Brandford Shank & Co., LLC – $240,000
- Smith Hayes Financial Services Corporation – $40,000
- Stephens Inc. – $400,000
- Sterne, Agee & Leach, Inc. – $80,000
- Stifel, Nicolaus & Company, Inc. – $500,000
- Wells Nelson & Associates, LLC – $100,000
- William Blair & Co., L.L.C. – $80,000

THE BOND BUYER

BY KYLE GLAZIER and JACK CASEY

JUN 18, 2015 12:48pm ET

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## NABL Submits Comments to IRS on TEFRA Regulations.

NABL has submitted comments to the Internal Revenue Service and Department of the Treasury regarding the temporary regulations governing the TEFRA public approval requirement under Section 147(f) of the Internal Revenue Code of 1986 contained in Section 5f. 103-2 of the income tax regulations and (ii) the proposed regulations governing the TEFRA public approval requirement published on September 9, 2008, and corrected on October 8, 2008.

The comments can be seen here.

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## GFOA Seeks MA Conduct Rule Changes to Reduce Issuer Costs, Burdens.

WASHINGTON — The Government Finance Officers Association is calling for changes in the Municipal Securities Rulemaking Board's core conduct rule for municipal advisors to reduce the costs and burdens for issuers.

The GFOA made the request in a recent two-page letter to the Securities and Exchange Commission, which has been seeking comments on Rule G-42. The letter was signed by Dustin McDonald, director of GFOA's federal liaison center.

Some of the concerns the GFOA raised echoed those made by dealer groups in May.

The GFOA said, for example, that it is worried about language that would prohibit MAs or their affiliates such as brokers, from selling securities to issuers if they have given advice to the issuers related to the brokerage activities.

"The GFOA is concerned with this subsection because it would bar brokers from making investment recommendations and then selling the investment to an issuer," McDonald said. "This prohibition could force small governments to open a more expensive fee-based arrangement with an investment advisor in order to receive this very limited type of advice on investments that are not risky."

The GFOA said that while the principal ban makes sense for traditional financial advisors, "it is unclear what abuse the proposed rule is trying to solve for in the case of brokerage of bond proceeds investments."

The Securities Industry and Financial Markets Association also told the SEC the ban was too broad.

The GFOA warned that the requirement to document the MA relationship in writing and specify where the issuer can access the advisor's MA and MA-I forms seems "unnecessarily burdensome." The group said the proposed rule should be amended to require MAs to provide copies of the forms and to notify issuers of any material changes to them.

The GFOA said that while it generally supports the proposed rule's duty of care provisions, it is worried some of the provisions could lead to cost increases for issuers. "Since finance officials have a duty to their government, and most of the financial information about the government is public, adding an additional requirement on advisors to investigate the information provided to them by the client may be excessive," the group said. "We ask that regulators be cognizant that excessive and unnecessary regulations may result in cost increases to these professions, which may be transferred to issuers."

The group also asked for clarification of a provision of the proposed rule that would require MAs to give clients the basis for believing a recommended transaction or product was or was not suitable for the client. This provision "seems contrary to the proposed rule's duty of care and loyalty requirements," the GFOA said.

THE BOND BUYER

BY JACK CASEY

JUN 19, 2015 1:55pm ET

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## Municipal Bond Sales Poised to Accelerate as Redemptions Fall.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $12.9 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.

Los Angeles plans to sell $1.386 billion of bonds, Massachusetts has scheduled $938 million, Miami-Dade County School Board will offer $461 million and Maryland Health and Higher Education Facilities Authority will bring $263 million to market.

Municipalities have announced $12.8 billion of redemptions and an additional $32.2 billion of debt matures in the next 30 days, compared with the $49.9 billion total that was scheduled a week ago.

Issuers from California have the most debt coming due with $8.51 billion, followed by New Jersey at $3.66 billion and New York with $3.38 billion. California has the biggest amount of securities maturing, with $2.82 billion.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

**Fund Flows**

Investors removed $653 million from mutual funds that target municipal securities in the week ended June 10, compared with a reduction of $1 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $87.72 million last week, boosting the value of the ETFs 0.53 percent to $16.761 billion.

State and local debt maturing in 10 years now yields 102.783 percent of Treasuries, compared with 100.086 percent in the previous session and the 200-day moving average of 99.236 percent, Bloomberg data show.

Bonds of Puerto Rico and Tennessee had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Puerto Rico's securities narrowed 24 basis points to 9.33 percent while Tennessee's declined five basis points to 2.36 percent. Illinois and New Jersey handed investors the worst results. The yield gap on Illinois bonds widened 38 to 4.2 percent and New Jersey's rose 25 basis points to 3.18 percent.

**Bloomberg**

by Luis Daniel Palacios & Kenneth Kohn

June 22, 2015 — 4:12 AM PDT

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## [S&P: Pension Shortfalls Pressure Private and Public Sectors.]

As life expectancy in the U.S. reaches new highs, with Americans born this year forecast to live to almost 79–five years longer than those born in 1980–the severe underfunding of pensions in the private and public sectors is taking on ever-greater importance.

Simply put, many older Americans will be hard-pressed to afford their golden years, in light of this underfunding and the budgetary pressures on Medicare and Social Security. With real median household income on the decline since 1999, Baby Boomers are right to be concerned that their retirement savings will be eroded by inflation, depleted by poor investment performance, or not last as long as they do.

At the same time, about half of American households age 55 and older have no retirement savings, according to a report in May from the U.S. Government Accountability Office (GAO). And many households without retirement savings have few other resources, such as defined-benefit (DB) plans or other savings to tap into for retirement, the GAO's analysis of the 2013 Survey of Consumer Finances showed.

Meanwhile, the average U.S. life expectancy has risen to 79 years (76 for men and 82 for women). Still, the official age of "full retirement" for Social Security has been raised only to 67, from 65, depending on when beneficiaries were born. So, post-employment medical costs have skyrocketed, along with the costs of prescription drugs and elder care.

Pension funding across all sectors benefited from sharp gains in stocks and a strengthening of the U.S. economic recovery in 2013, with underfunding among companies in the S&P 500 Index dropping by $224 billion. However, despite continued–albeit moderated–gains in stocks, strong corporate earnings, and companies holding record amounts of cash, corporate pensions and other post-employment benefits (OPEBs) remain severely short. At the end of last year, corporate pension underfunding had ballooned to $389 billion, almost 10% more than in 2011 and the second-highest level ever, below the 2012 record of $452 billion (see "Pension Funding Ratios Continue To Weigh On U.S. Corporate Credit Metrics," published June 9, 2015, on RatingsDirect).

### Growing Obligations

Even as companies last year increased the assets they set aside for pensions and OPEBs, obligations grew faster. Combined, S&P 500 companies set aside assets amounting to $1.75 trillion, a 3.5% increase from year-end 2013. But obligations grew 11.3%, to a record $2.34 trillion, pushing combined underfunding to $584.7 billion, from $405.7 billion a year earlier.

The problem is not limited to the U.S.: In Europe, there has been a deterioration in the funding of corporate defined-benefit pension plans, especially for those companies that were already materially underfunded with DB plan deficits of more than 10%-15%. As the European Central Bank (ECB) tries to stimulate economic growth in the region with asset purchases of €60 billion per month, DB plan deficits could weigh on borrowers' credit quality in the next two years unless companies take extra care regarding risk management (see “Quantitative Easing Benefits Few European Corporate Defined-Benefit Pension Plans,” Feb. 26, 2015).

All told, the funding position of the top 50 European companies we rate that are the most-exposed–with DB pension plan deficits greater than 10% of adjusted debt and with outstanding adjusted debt greater than €1 billion–had pension fund liabilities totaling €527 billion at the end of 2013. With plan assets of €356 billion, this means that, on average, they had a funding deficit of just over 30%.

Nonetheless, the private sector remains in better shape to meet pension obligations than the public sector does, mostly because of stricter funding regulations and the massive shifts over the past 20 years from traditional defined-benefit plans to enhanced 401(k)-type saving accounts.

The federal government projects that the Social Security Trust Fund will be able to pay full retirement and disability benefits only through 2033, and Congress has considered various measures to strengthen the system, especially, perhaps, because older Americans represent a significant voting bloc. Meanwhile, most states have pursued strategies to reform and strengthen their employee pension systems, although the effects of these initiatives will likely be gradual.

At any rate, there is little doubt that GDP growth of, say, 5% annually for the next generation would go a long way toward easing any worries about pension funding. But it is increasingly unlikely that we will see economic expansion of even 3% this year, still well short of the five-year average annual growth rate following past U.S. recessions (going back 50 years) of 4.6%. Even if, as we expect, the economy makes a comeback in the second half, in our May report we forecast 2015 GDP growth of just 2.4%–the same as in 2014 and down from our 2.8% forecast in April.

This below-trend growth–combined with inflation running below the Federal Reserve’s 2% target–will likely keep the U.S. central bank’s normalization of monetary policy on a slow track. We expect the Fed to raise rates in September, for the first time in nearly a decade, but minutes from the last Federal Open Market Committee meeting noted that a number of members are worried that weakness might persist.

**States Suffer**

Against this backdrop, a majority of states face budget gaps in either fiscal 2015 or fiscal 2016, or both. However, while we view the majority of these gaps as manageable and no immediate threat to a state’s credit quality, they could test states’ pension funding commitments (see “U.S. State Pension Roundup: Recent Court Rulings And Reform Slowdowns Make Active Management Essential,” June 18, 2015). Still, given states’ generally strong credit profiles, and the long-term nature of pension obligations, we do not see these liabilities as immediately jeopardizing state governments’ capacity to pay their debts, but believe they can weaken a state’s relative credit profile if left unmanaged.

Among states, levels of pension funding vary widely, playing a significant role in relative creditworthiness. Funded levels now average 71.16%, according to our annual survey for 2015 (based on 2013 valuations), essentially the same as in 2012. And more states (26) either maintained or increased their funded ratio. However, there remains a sizable and growing gap between well- and less-funded plans, and the fact that 24 states’ funding ratios declined is notable.

For the most part, states have demonstrated a commitment to manage their long-term liabilities, including pensions. And there has seemingly been an increased focus and vigilance among policymakers, employees, taxpayers, and the media about the need to continue to do so. Testament to this is the unprecedented level of pension reform in the past few years. Since 2009, all 50 states and the Commonwealth of Puerto Rico have enacted some type of pension reform, according to the National Conference of State Legislatures. Whereas pensions for public workers were once considered sacrosanct, governments and employees alike may be softening this stance, as lawmakers face the dilemma of maintaining current benefits for both those retired and in the active workforce and restoring much needed services–or tax relief–to taxpayers. Either way, state reform efforts have slowed, and may continue to wane, in part because of recent court rulings against such efforts and perhaps due to reform fatigue.

In the end, many Americans are being, or soon will be, forced to make some difficult choices about the cost and timing of their retirement. And, as a society, we need to look at the extent to which employers and the government should be responsible for retirees' incomes and health care.

19-Jun-2015

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## Asset Manager Wants SEC to Probe Providence Pensions.

Controversy, Intrigue, Investigations Surrounding 38 Studios Investigations are Far from Over
A Rhode Island asset manager has asked the U.S. Securities and Exchange Commission to investigate the pension fund of capital city Providence after an accounting firm acknowledged a $62 million spike in its unfunded liability.

"I did file an official complaint," said Michael Riley, co-founder of investment firm Coastal Management Group LLC in Narragansett, R.I. "My feeling is that this has been going back a long time. I think it's huge."

Riley, who ran for Congress in 2012, said he noticed what he considered irregularities while participating in a Stanford Graduate School of Business class. He questions how the city's handling of municipal bond documents and financial disclosure statements, and also said the shortage could run up to $200 million.

City and state officials say the problem reflects timing and cash flow, not mismanagement or chicanery.

"All would agree that the timing of the city's contributions to its pension plan is not the norm or desirable," state Auditor General Dennis Hoyle wrote Riley. "However, my perspective is that the city has appropriately accounted for these events consistent with generally accepted accounting principles.

"I don't believe it is fair or appropriate to characterize the city's accounting for this matter as a 'scam and fraud.' My point is not to endorse the city's practice of making its pension contribution subsequent to year-end. However, I believe it is important not to mischaracterize the situation unfairly."

Hoyle said he would continue to work with city officials to explore options of making contributions "on a more normal and frequent basis" during the fiscal year.

A $62 million payment to the pension fund is due June 30. Providence traditionally has been making such payments in October.

Two months ago, accounting firm Segal Group Inc. told the City Council's finance committee that an actuarial asset method change and to a lesser degree a change in rate-of-return assumptions increased the unfunded liability of the Employee Retirement System of the City of Providence by $62.2 million. Segal officials at the time said the system's unfunded liability stood at $894.3 million as of July 1, 2014.

Segal officials advised the city to begin making its payments in June.

"We will not be able to do this immediately, but we will make sure it happens. We're working with our actuary," said Evan England, press secretary to Mayor Jorge Elorza. "We've done everything to be open, transparent and proactive on this."

According to England, Elorza's administration is working to bring the city's long-standing pension payment practices into compliance with new reporting standards, notably the Governmental Accounting Standard Board's rules 67 and 68. In consultation with Segal, said England, the administration is developing a three-year plan that phases in periodic pension contributions so the city can complete its actuarially required contribution, or ARC, payment by June 30.

England called the late payments "a not-a-best-practice decision made a decade ago."

Elorza succeeded Angel Taveras in January, after Taveras vacated his seat in an unsuccessful run for governor.

Segal replaced Buck Consulting Inc. after the city fired Buck and sued it early in 2013, accusing the firm of miscalculating $700,000 in savings. Segal told council members in April that the plan's funded ratio has dropped to 29% on a market-value basis and 27.4% on an actuarial basis.

Last year Segal said Providence shouldn't count future pension contributions as part of current assets. "We recommend that future valuations exclude discounted contributions from reported assets," the firm said in mid-2004. "This does not affect the determination of the contribution requirement, which is based on projected liabilities and assets."

City officials at the time – and shortly after criticism from Riley — rewrote bond documents to include Segal's concerns.

In May, Local 799 of the International Association of Firefighters said it would sue the city, alleging misreported pension funds and seeking immediate replenishment of the $62 million.

"Our concern is that this practice dates back farther than we originally understood when the issue came to light, and that our members may suffer – or may have already suffered – a loss because of this unorthodox and potentially illegal practice," union president Paul Doughty said at the time.

As of Friday, though, no evidence existed of such a lawsuit filed. A message seeking comment was left with Doughty.

Separately, the union this week asked Rhode Island Superior Court to block Elorza's plan to restructure the department until both sides can agree on payment to firefighters for working 14 extra hours each week.

Providence in 2012 crafted a series of pension and health care benefit reductions after Taveras likened the situation to a "Category 5 hurricane" and said the city was headed to bankruptcy.

The new package reduced the city's costs by suspending cost-of-living adjustments for retired pensioners for 10 years and transferred retirees to Medicare. City officials at the time estimated nearly $15 million of annual savings in pension contributions.

THE BOND BUYER

BY PAUL BURTON

JUN 22, 2015 9:30am ET

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## New Issue Price Regs Proposed.

The Treasury Department and the IRS have decided to withdraw §1.148-1(f) of the 2013 Proposed Regulations relating to issue price and to propose new regulations. The new proposed regulations have been filed with the Federal Register and are scheduled to be published in the Federal Register tomorrow, June 24. There will be a 90-day comment period and a hearing is scheduled for October 28, 2015.

The new proposed regulations are available here.

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## The Dirty Business of Paying for Ratings.

An analysis by Municipal Market Analytics this week noted that the number of government issuers seeking two or three ratings on their bond offerings is slipping. Several factors are at play, wrote analysis Matt Fabian, but a big one appears to the fact that issuers pay for ratings and they don't enjoy paying for a lower rating. The result is that whichever ratings agency is trending higher, issuers tend to opt just for a rating from that agency. For example, Fabian said Moody's saw a small bump in its market share in 2011 following its rating recalibration in 2010 which resulted in a number of upgrades. But since then, S&P has had the advantage. "Moody's more cautious view of credit and S&P's criteria change that raised a significant number of local government ratings has resulted in S&P gaining market share as Moody's has waned," Fabian's report said.

Another factor is the still relatively young Kroll Ratings agency, which is offering its services at a cheaper price. According to Fabian, Miami International Airport recently chose to obtain a Kroll rating (which was higher) and drop its Moody's rating, which was lower and cost about 30-to-40 percent more. "As increasingly cost-conscious issuers consider issuing debt the immediate and future costs of obtaining and maintaining ratings," Fabian warned, "the benefit of multiple ratings or high cost opinions will reasonably come under scrutiny."

GOVERNING.COM

BY LIZ FARMER | JUNE 19, 2015

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