
[IRS Publishes Population Figures for Housing Credit, Private Bonds.](#)

The Internal Revenue Service (IRS) today published [Notice 2017-19](#), which lists its 2017 calendar year resident population figures. These figures are used to determine states' 2017 low-income housing tax credit (LIHTC) ceiling and tax-exempt private activity bond caps. Under [Rev. Proc. 2016-55](#), each state's LIHTC ceiling in 2017 is the greater of \$2.35 multiplied by the state population or \$2.71 million; a state's tax-exempt bond volume cap will be the greater of \$100 multiplied by the state population or \$305,315,000.

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Academic Research Data

To support academic research about the municipal securities market, the MSRB makes municipal securities trade data available to universities and other research institutions in two ways.

First, the MSRB makes trade data available through a partnership with Wharton Research Data Services (WRDS), a service of the Wharton School of the University of Pennsylvania, which provides electronic access to data across finance, marketing and economic disciplines to over 400 institutions globally. [Contact WRDS for more information on accessing academic research data.](#)

Second, the MSRB makes available to academic researchers its Academic Historical Transaction Data Product, which comprises post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System (RTRS). The Academic Historical Transaction Data Product is available to researchers at institutions of higher education for a fee of \$500 per year, plus a one-time set up fee of \$500. One-year data sets can be requested for consecutive 12-month periods. The data product enables researchers to draw conclusions about patterns of trading in the municipal market by distinguishing transactions executed by different dealers through the use of anonymized identifiers. List offering price and takedown transactions (in general, primary market transactions) are excluded from the data. Contact MSRB Support at 202-838-1330 or MSRBsupport@msrb.org for more information.

[Tax Reform and the Forgotten Context of the Municipal Tax Exemption: Clark Hill](#)

The municipal bond community views with concern the potential for federal tax reform, with a well-founded fear that tax reform may create an opening for the elimination of the federal tax exemption for municipal bonds. While many members of Congress have expressed support for continuing the municipal tax exemption, the general view is that any expansive reform of the tax code will involve laying all options on the table, and the dynamics of the legislative process will leave the exemption at risk.

The debate over the municipal tax exemption focuses, by and large, on the cost to the federal treasury of foregone tax revenues, the relative economic efficiency of the federal subsidy entailed by tax exemption as compared to direct federal subsidy payments, the distribution of the tax benefit among investors, the central role of states and localities in building and maintaining our nation's core infrastructure, and general notions of federalism. What receives scant attention, however, is the relationship between the origins of the federal income tax and the municipal tax exemption, and the related balance between the municipal tax exemption and the exemption from state tax for many federal debt securities. While, in an economic sense, there is a cost associated with the municipal tax exemption, such cost can be viewed as an agreed-upon "overhead cost" for maintaining an important component of our federal form of government.

As state and local governments, other municipal market participants and policymakers weigh the role of the municipal tax exemption in a revised federal tax code, they should be mindful that the federal government achieved an understanding with the states on enduring federalist principles of comity and reciprocity through the course of ratifying the 16th Amendment to the US Constitution¹ to lay the foundation for the modern federal income tax system.

Municipal Tax Exemption, the 16th Amendment and the Federal Income Tax

The US Supreme Court's decision in *South Carolina v. Baker*² marked the end of the Court's recognition of a Constitutional basis for the municipal tax exemption, overturning its pre-16th Amendment decision in *Pollock v. Farmers' Loan & Trust Co.*³ *Pollock's* expansive view of the intergovernmental immunity doctrine - that a tax on municipal securities interest "is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution"⁴ - was based on an earlier Supreme Court decision invalidating a city tax on federal debt securities.⁵ *The South Carolina* opinion observed that this expansive view of the intergovernmental immunity doctrine had been "thoroughly repudiated" by the late 1930s, and that *Pollock* had not yet been overturned prior to 1988 due to "the historical fact that Congress has

always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute.”⁶

The incorporation of the municipal tax exemption as one of the original, and enduring, features of the modern federal income tax was no accident of history. Rather, it was one of the core planks of the bargain struck between the states and the federal government as the state legislatures voted to ratify the 16th Amendment. In explicitly granting authority to Congress to impose a tax on income from whatever source derived, the 16th Amendment eliminated any requirement for the apportionment of direct taxes (such as a tax on municipal securities interest, pursuant to the *Pollock* opinion) among the states based on population.⁷ While the belief that there was an inherent Constitutional immunity against taxation of interest on municipal securities still had adherents during the ratification process, there were many in state government and in Congress who felt that the 16th Amendment could serve as a basis for imposing such a tax.

For example, during the Congressional debate on the original 1913 income tax legislation, Congressman Charles Bartlett of Georgia observed, in connection with the ratification of the 16th Amendment two months earlier:

It is a fact that in my State and in a number of other States, when this amendment was up before the legislature for adoption, many people opposed the adoption of the amendment because there was nothing specifically said in the amendment that excepted State, municipal, and other subdivisions of State bonds from taxation under the proposed amendment: but the friends of the amendment felt justified in assuring them that except in great stress, except in time of war, Congress would never think it wise to tax the bonds of the State or the subdivisions thereof.⁸

Thus, a promise to maintain a legislative exemption from taxation for municipal securities served as a critical inducement to the states to ratify a Constitutional amendment that would eliminate state-based apportionment for taxation of investment earnings and permit direct taxation of interest on municipal securities. In fact, the 16th Amendment might never have been ratified without the bargain struck over the municipal tax exemption. True to this promise, the original federal income tax statute included the municipal tax exemption, as one of a very small number of deductions in that landmark tax legislation, and this exemption has existed continuously ever since. That the municipal tax exemption has been revised, restated and made partially conditional through various tax reform efforts over the years - and is now scored as simply another line-item “tax expenditure” like the large number of other exemptions, deductions, credits and preferences that have since been added - should not obscure the fact that the municipal tax exemption continues to stand as one of the original pillars of the federal tax code.

The Municipal-Treasury Trade-Off

The repudiation of the expansive view of the intergovernmental immunity doctrine cuts both ways, so that the more restricted modern intergovernmental immunity doctrine also no longer forbids, as a Constitutional matter, state taxation of income derived from securities issued by the federal government and its instrumentalities. Instead, such exemption currently is based on a series of statutory provisions exempting US Treasury securities and the securities of many other federal instrumentalities (collectively, “Treasury/federal tax-exempted securities”) from most forms of state and local taxation, including income tax.⁹ In effect, just as the federal government can be viewed as “subsidizing” state and local governments through the municipal tax exemption, so to the federal government can be viewed, with equal justification, as imposing on state and local governments an obligation to subsidize the federal government through the state tax exemption of Treasury/federal tax-exempted securities.

In abiding by the bargain struck by the federal and state governments in connection with the adoption of the 16th Amendment and the enactment of the federal income tax, maintenance of the mutual exemption for municipal securities and Treasury/federal tax-exempted securities would clearly serve to undergird this bargain. Were the bargain to be broken by eliminating the municipal tax exemption in the course of tax reform, it could be argued that the statutory exemptions for Treasury/federal tax-exempted securities also should be eliminated – both to reciprocate the change to the treatment for municipal securities and to partially offset the negative economic repercussions of eliminating the tax exemption by permitting state and local governments to tax earnings on Treasury/federal tax-exempted securities. The elimination of the municipal tax exemption without regard to the likely collateral economic and market dislocations would strongly suggest that Congress should also discount any economic or market dislocations that might be caused by similarly eliminating the state tax exemption for Treasury/federal tax-exempted securities.

In truth, the better approach – from the vantage points of economics, federalism and our current critical need to revitalize America’s infrastructure – would be to maintain the current tax-free status of both municipal securities and Treasury/federal tax-exempted securities.

While the ultimate treatment of municipal securities under the federal tax code is a matter for policymakers to decide, that decision should be based on factors important to the American people and their principles rather than merely as one input to be eliminated in a general rebalancing of the federal tax burden. To do otherwise would be to breach the bargain struck by the federal and state governments that characterizes our federalist system of governance.

1 “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.” US Constitution, Amendment XVI.

2 485 U.S. 505 (1988).

3 157 U.S. 429 (1895).

4 157 U.S. at 586.

5 *Weston v. City Council of Charleston*, 27 U.S. (2 Pet.) 449 (1829).

6 485 U.S. at 523, referring to Act of Oct. 3, 1913, ch. 16, 38 Stat. 114.

7 US Constitution, Article I, Section 2, Clause 3.

8 63 Cong. Rec. 507 (1913) (statement of Representative Charles Bartlett).

9 See, e.g., 31 U.S.C. 3124. Securities of certain federal instrumentalities or government-sponsored enterprises do not enjoy state tax exempt treatment and are not Treasury/federal tax-exempted securities.

by Ernesto Lanza | Clark Hill PLC

2/28/2017

[Mission, Money & Markets: Municipal Bonds and the Trend Toward Social Justice.](#)

Editor's note: This is the second in the Mission, Money & Markets article series by the Kresge Social Investment Practice team. See all articles at <http://www.kresge.org/mission-money-markets>.

Back in 1812, the municipal bond market was born when the City of New York issued the first recorded municipal bond for a public purpose canal. Since this first issuance, community impact has been central to this market.

This is the Kresge Foundation's Mission, Money & Markets Social Investment logo
Municipal bonds are debt securities issued by a state, county, city or municipal district to finance capital expenditures – from the canals of the past to the schools, public facilities, mass transit systems and affordable housing developments of today. This market issues more than 13,000 bonds annually to undergird the operations and infrastructure of nearly 44,000 municipalities and other districts. Together, it accounts for \$3.7 trillion in total debt and more than \$400 billion flowing into American communities each year, according to Bond Buyer.

The scale, scope, and public focus of this market has led us to ask: How does the municipal bond market intersect with The Kresge Foundation's mission to create opportunities for low-income people in American's cities? And how might we influence the market to put greater consideration on the long-term impact of socioeconomic characteristics, such as income inequality, on the fiscal outcomes of cities?

[Continue reading.](#)

February 27, 2017 3:00 PM EST

By Kimberlee Cornett and Napoleon Wallace

The Kresge Foundation

[With Pressure and Data, Muni Bond Market Could Drive Racial Justice.](#)

In the days of civil unrest following the fatal shooting of unarmed black teenager Michael Brown by a police officer in Ferguson, Missouri, a few foundations asked Ryan Bowers and his co-founders of [Frontline Solutions](#) consultancy for advice on how to do some rapid response grantmaking in and around the city. As natural conveners, Bowers and his colleagues' first instincts were to arrange a series of site visits with activists and national funders. The experience brought attention to an existing connection between the foundations and the structural violence that served to fuel that same unrest.

"In looking at how to get philanthropic capital on the ground, we started to look up and see how foundations' invested endowment capital was also playing a role in all that," Bowers says.

The U.S. Department of Justice's [report](#) on Ferguson connected the dots, Bowers remembers. It documents how Ferguson's police enforcement focused on revenue generation instead of public safety. It details tactics used to boost fines and fees to become the city's second-largest source of

revenue. The report cited a 2014 [Bloomberg story](#) that put the connection in plain sight: Without those revenues, the article outlined, Ferguson's municipal bond ratings would have dipped, severely limiting the city's ability to finance infrastructure, public building construction and other long-term needs.

Investors, including most typical foundation endowments, hold \$3.8 trillion in municipal bonds issued across the United States, and there are more than \$400 billion in new municipal bonds issued annually. They're an attractive investment, given that the interest earned from them is federal tax exempt. For foundations that generally have to disburse 5 percent of the value of their endowments annually, municipal bonds, or muni bonds as they're known, are a no-brainer asset to hold.

After credit rating company Moody's eventually [downgraded](#) Ferguson's municipal bond rating, things clicked for Bowers and company. Even while the community knew what was happening, with regard to fees and fines, "ratings agencies hadn't yet incorporated that into their methodology," Bowers says.

"We knew there were tons of other Fergusons out there that just hadn't blown up yet to become a national story, just below the surface," he adds. "This was an opportunity to get this on the radar of the ratings agencies, investors and municipalities themselves."

That spark led to the creation of [Activest](#), a platform to drive "financial, structural and community change" through the municipal bond market. Bowers and Activest co-founders want to mobilize people around the idea that racially and socially unjust policies aren't just immoral, they're also terrible fiscal policy, as they sow the seeds of civil unrest and stalled economies.

In the era of President Donald Trump, that notion may be more important than ever. So-called "sanctuary" cities face possible federal penalties if local police don't enforce federal immigration policy. Put that in the context of large-scale funding sources that have been drying up for years: Funding for HUD's community development block grants peaked in 1995, and has fallen nearly every year since.

"Our thinking is that cities are more desperate for money, you're going to see more desperate policies at the local level to raise revenues and that's going to hurt poor families," Bowers says.

Bowers thinks there will be opportunities for municipal bond holders to be more like activist shareholders, reinforcing positive behaviors like sanctuary cities and pushing back against bad behaviors like over-reliance on fees and fines, or maybe even racial segregation in housing and schools. It's a carrot-and-stick approach, with the added benefit of putting at least some large-dollar investors on the same side as movements like Black Lives Matter and the fight against the Dakota Access Pipeline.

"We think we can start to create a municipal justice index, and give cities a score on how their social impact practices compare to each other," Bowers says. "We want cities to take credit for the things they're doing really well but also put pressure on the things they're really bad at."

"Among investors committed to social justice, such as our members, Activest provides a unique opportunity to be more thoughtful about the structural and systemic impacts of municipal finance allocations," says Andrea Armeni, executive director of [Transform Finance Network](#) of investors, which includes foundations as well as high net-worth families, investment asset managers and other like-minded investment groups oriented around social justice.

"Not all municipal finance is created equal," Armeni adds, pointing to the example of Chicago's

municipal bonds [issued](#) to raise funds for payment of legal settlements in police brutality cases.

In its ultimate incarnation, Activest will help ratings agencies and investors incorporate racial and social justice metrics into the predictive models they use to judge financial health of investments, starting with municipal bonds — and they hope that communities can help shape such predictive models at the grassroots level.

The first step in that direction is figuring out what data is already out there or what data communities could produce that would display a correlation, positive or negative, between racial or social justice and long-term fiscal health. Bowers and his colleagues have been looking at dependency on fees and fines for municipal revenue, data on civil forfeiture (the confiscation of cash or sellable assets even without a trial), average bail or bond amounts, or [legal financial obligations](#) — fines and fees in the justice system that gather and sometimes accumulate interest while one is incarcerated.

“And we’re also working with some data scientists to do some predictable statistical modeling to get ahead of the Fergusons before they bubble over,” Bowers says. “We’re also looking for some more nuanced social indicators that are correlated to financial outcomes, including indicators sourced through local partners in place to gather data and funnel it up to us.”

Unfortunately, it’s not entirely certain any of the above will matter at all. Trump has not quite publicly ruled out removing the tax exempt status of municipal bonds as part of anticipated comprehensive tax reform. The municipal bond market has already seen prices dip as a result of the [uncertainty](#).

“If you remove that status, it will dry up this market,” says Bowers.

EQUITY FACTOR

BY OSCAR PERRY ABELLO | MARCH 2, 2017

The Equity Factor is made possible with the support of the Surdna Foundation.

[The Coming Transparency Wave: GASB 77](#)

In 2017, there will be a convergence of factors that will raise the awareness, profile and scrutiny of economic development activities undertaken by state and local governmental entities. Specifically, Governmental Accounting Standards Board (GASB) [Statement 77](#) requires state and local governments to disclose the revenue forgone through tax abatements, a common, but not exclusive, form of business attraction and retention incentive. While Statement 77 is only now being implemented by governments, the Trump Administration’s workforce, tax and trade policies have placed intense focus and widespread publicity on new investments by companies, which often have significant tax abatements approved. The extensive data required to be disclosed by Statement 77, along with national media attention on each new announcement by the White House, will drive greater demand for transparency and accountability from governments on the use of tax abatements and their impact on other programs and priorities.

BACKGROUND OF STATEMENT 77

Statement 77 requires state and local governments to disclose, as a note to the financial statements,

the amount of lost revenue they have incurred as a result of entering into tax abatement agreements. Statement 77 not only requires the approving government to disclose its own lost revenue, but all taxing authorities (school districts, cities, states and counties) impacted by the abatement are required to disclose their lost revenue irrespective of the approving body. Governments are required to disclose the actual lost revenue from all outstanding agreements, aggregated by program. And finally, the disclosure must be calculated based on an accrual basis of accounting for the fiscal year. The calculation of the revenue forgone can be complex alone, but with the accrual basis being applied, the difficulty is magnified.

TIMING AND COMPLEXITIES

The prevalent belief is Statement 77 appears to be straightforward, but governments may experience timing difficulties and unexpected complexities as they start to gather the information needed to calculate the revenue lost from tax abatements. These may include the following:

1. Coordination will be needed among multiple agencies to assemble the myriad information required to be disclosed, including economic development agencies, property assessors, treasury departments, community housing agencies, port authorities, convention authorities, natural resources agencies, etc.
2. Coordination will be needed among all of the governmental units that have been impacted by agreements approved by the reporting government. Conversely, if other governmental units have approved abatements that impact the reporting government's tax revenue, it will be necessary to identify those governments and work with them to gather the requisite information for the reporting government's disclosure.
3. Some agreements have been outstanding for many years. The relevant information may not be readily available for the reporting unit to gather, review and analyze, thus delaying the ability to include the information in the disclosure.
4. Many jurisdictions do not currently calculate the actual lost revenue from their approved abatements. Rather, they project the total lost revenue from estimates made at the time of the original application. Care must be taken to ascertain that the information submitted by various agencies is the actual lost revenue from the current year's activities, based on actual capital expenditures, job creation, etc. Estimates from the original application are not sufficient for this disclosure.
5. The disclosure is required to be made on an accrual basis of accounting. Identification of cash versus accrual adjustments that will be needed could be difficult. For example, an abatement recipient could claim the abatement on a calendar-year basis, the reporting government could have one fiscal year or other impacted governments could have different fiscal year-ends.

Statement 77 forces state and local governments to identify the true impact of approved abatement agreements on tax revenue. Timing can be the biggest challenge, with most governments already in their affected fiscal year for disclosures.

TRANSPARENCY TRENDING IN 2017

Statement 77 had been in process well before President Trump was elected and had been eagerly awaited, primarily by several watchdog groups. Now, with President Trump's mission to encourage businesses to expand operations in the United States a topic of daily news articles, tax abatements have become a frequent discussion item in newspapers across the country. The announcement by then President-Elect Trump of the \$7m incentives package used to entice Carrier to retain part of its manufacturing operations in Indiana received immense media attention and resurrected many discussions and perspectives on the use of incentives. Public officials were scrutinized and forced to justify the deal negotiated.

As businesses are pressured to increase investments and job creation in the United States, the demand for incentives is expected to increase. These projects, including the incentives' packages, will continue to receive extensive press coverage, questioning whether these companies should receive such incentives packages. The expanded press coverage, along with the newly required financial statement disclosures, will increase the pressure on public officials to justify the lost revenue from economic development programs, and may deter or otherwise make economic development efforts difficult. The information disclosed by Statement 77 will be widely disseminated and compared readily.

NOW IS THE TIME TO PREPARE

As mentioned, many government units are in their fiscal year for Statement 77 disclosures. As public attention increases the profile of economic incentives, state and local governments should be prepared to address the scrutiny that will fall on their economic development programs. First, governments and economic development organizations should assess how effective their economic development programs are. For example, are the programs accomplishing their stated purpose? If not, what changes should be made to make the programs more effective? Second, governments and economic development organizations need to substantiate the benefits they receive from the programs; to that end, consider an economic analysis of programs to assess the return on investment. And third, clear, complete and accurate documentation and support should be prepared to be in compliance with Statement 77. All calculations should be readily supported because the numbers will be analyzed, scrutinized and widely reported by the media and watchdogs. An organized and comprehensive approach to complying with disclosures and managing public scrutiny of incentive programs will empower all governments to face the coming media wave head on.

NASACT

by: Daniel P. Domenicucci and Javi Borges

Monday, February 27, 2017

[White House Says It Will Kick Off Infrastructure Planning Thursday.](#)

- Meeting of 15 agencies is initial step in developing proposals
- No decisions have been made on funding or financing options

President Donald Trump's administration will convene a meeting of at least 15 federal agencies Thursday as a first government-wide step toward crafting the president's \$1 trillion infrastructure initiative, a senior White House official said.

Gary Cohn, director of the National Economic Council, will lead the meeting, which will focus on identifying new projects that would boost the economy; finding existing projects, such as the Keystone XL pipeline, that could be expedited; targeting policies, outdated rules and laws that could delay projects; and developing funding and financing options, the official said.

The meeting follows Trump's speech to a joint session of Congress on Tuesday, when he said he wants to leverage public-private partnerships and public capital to upgrade crumbling roads, bridges, ports and other infrastructure. The official, who spoke on condition of anonymity, said that all funding options are currently on the table. Lawmakers and policy experts have floated ideas that include taxing corporate profits that are parked overseas and creating an infrastructure bank.

The official said that a proposal will be developed and presented to Trump, but the timing is uncertain.

Most U.S. infrastructure is owned and controlled by states and municipalities, so the federal government's role is more regulatory. Trump has already issued an executive order to expedite environmental reviews and permitting for high-priority projects.

'Percolate Up'

The National Governors Association provided to the White House a list of 428 priority projects from 49 states and territories on Feb. 8 that it had solicited from the states. How projects will be selected for funding has yet to be determined, the White House official said.

Governors from both political parties, interviewed at their annual winter meeting in Washington last weekend, said they expect to play a key role in those decisions.

"At the end of the day, I think it's going to percolate up from the governors," said Virginia Governor Terry McAuliffe, a Democrat and president of the National Governors Association. "They can't get this done in Congress without us."

Republican Governor Mary Fallin of Oklahoma, a former member of the House Transportation and Infrastructure Committee, echoed McAuliffe's concern. "It's important to have that state input into what is a national priority," she said.

Trump, meanwhile, has been building his team to work on the plan. The White House announced on Tuesday that DJ Gribbin will serve as a special assistant to the president for infrastructure policy, under Cohn. Gribbin, a former chief counsel for the Federal Highway Administration and general counsel for the U.S. Department of Transportation, has worked on public-private partnership deals for Macquarie Capital USA Inc.

'Every State'

During his speech to Congress, Trump called for "a new program of national rebuilding," likening the initiative to President Dwight D. Eisenhower's construction of the interstate highway system across the U.S.

Lawmakers are anxious for details. Representative Peter DeFazio of Oregon, the top Democrat on the House Transportation and Infrastructure Committee, said it's "time to put some flesh" on Trump's proposal. "What's missing is a real plan and the money," DeFazio said after Trump's speech on Tuesday.

Representative Bill Shuster of Pennsylvania, the Republican chairman of the House Transportation and Infrastructure Committee, said he's met with Trump and his policy staff and told them there have to be projects in all states.

"We should look at every state and say what are the projects that are going to bring the states along," Shuster said Wednesday at a meeting of the American Association of State Highway and Transportation Officials in Washington.

Democrats including DeFazio and even some Republicans have argued that trying to rely on the private sector alone won't generate \$1 trillion of investment or allow projects in all parts of the U.S. Deals involving private investment require a revenue stream such as tolls, which aren't popular or even practical in rural or thinly populated areas.

Spurring Investment

Democratic congressional leaders support more spending on infrastructure but say that the proposed mechanisms to spur private investment — such as a tax credit — would only benefit the wealthy. Republican congressional leaders have made it clear they won't support a significant increase in spending that isn't offset by cuts so that it doesn't add to the debt or deficit.

The White House official said it's premature to speculate what the mix of private and public funding and financing might be.

U.S. Transportation Secretary Elaine Chao said her office was exploring new ways to finance infrastructure, including through public-private partnerships, to attract private investment and remove barriers.

"Business as usual is just not an option anymore," Chao said Wednesday at the transportation officials' gathering in Washington. "Everyone can agree that our country can no longer take decades to build a new bridge or a new road, a new highway or airport."

Bloomberg Politics

by Mark Niquette

March 1, 2017, 2:00 PM PST

[**Californians Hit as Bad Debts Lead to Government Pension Cuts.**](#)

- Calpers may slash benefits from defunct agency that didn't pay
- More workers could suffer as retirement costs mount for cities

Maureen Lynch, 66, retired when the California government job-training agency where she worked was shuttered in 2014, assuming she could count on a \$1,705 monthly pension for the rest of her life.

But her former employer, East San Gabriel Valley Human Services Consortium, left a \$406,027 unpaid bill to the California Public Employees' Retirement System, which manages benefits for 3,000 local governments and districts. As Calpers, the nation's largest public pension, deals with a growing gap between what's been promised and what's been set aside, it may slash the checks of Lynch and 190 other workers by 63 percent — the rate by which the agency has fallen short.

"We were always told that it was set in stone. Now to find out that's not true — is the sky blue? Is water wet?" Lynch, who lives in a 1994 motor home, said of her pension. "We've paid 100 percent of our responsibility into it. I just don't understand how they can come along and cut so much out."

The East San Gabriel agency would be the first to see benefits reduced by Calpers since November's action against the tiny city of Loyalton, illustrating what can happen to promises once viewed as sacrosanct when money runs out. Two other small California agencies may also face cutbacks, affecting five people, as Calpers pushes back against derelict governments.

"We end up being the bad person because if the payments aren't coming in, we're left with the obligation to reduce the benefit, as we did in Loyalton," Richard Costigan, chairman of Calpers's finance and administration committee, said in an interview. "Otherwise the rest of the people in the

system who have paid their bills would be paying for that responsibility.”

Across the country, states and local governments have about \$2 trillion less than what they need to cover retirement benefits — the result of investment losses, inadequate contributions and perks granted in boom times. In Puerto Rico, where the retirement system is nearly out of cash, pensioners may take a hit, while employees in cities including Dallas and Chicago are also under pressure to give back some benefits to prevent their plans from collapsing.

Calpers has been paying benefits at a faster pace than it brings money in. In December, the system moved to ensure its long-term sustainability by reducing the assumed return on its investments to 7 percent from 7.5 percent. That will trigger higher annual contributions from governments, since it can't count as much on financial-market gains to cover the obligations.

“Unless something is done to stem the mounting costs or to find ways to fund those mounting costs for employees, then the only recourse, beyond reducing service levels to unsustainable levels, is going to be to cut benefits for retirees,” said Michael Coleman, fiscal policy adviser for the League of California Cities.

Calpers, which holds some \$311 billion of assets, says it's following its fiduciary responsibility. It doesn't set benefits but manages them on behalf of local governments, most of which are fulfilling their obligations. Permitting monthly checks to flow to retirees whose former employers haven't paid their bills undermines a system that has just two-thirds of what it needs to cover liabilities due in the years ahead.

Both the Independent Cities Association, a nonprofit with one retiree, and Niland Sanitary District, which has four workers in the system, may also see benefit reductions. The board of the cities' group, which promotes municipal issues, hopes to resolve the matter, its attorney Arnold Alvarez-Glasman said in an interview. Debbie Salas, a Niland board representative, didn't reply with detail to emails or return phone messages.

The action against Loyaltan was believed to be the first time, at least in recent decades, that Calpers reduced employee benefits.

The case of the former East San Gabriel agency would be felt more broadly. Known locally as LA Works, the service at its height had about 140 employees and an annual budget, funded mainly through government grants, of about \$13 million, said Tom Mauk, a consultant hired to help wind down its books. It went out of business after Los Angeles County severed its relationship, citing overbilling by the agency.

Calpers had asked the cities that formed the entity — Azusa, Covina, Glendora, and West Covina — to pay the debt to the retirement plan because, as staffers said during a February board meeting, of their ethical responsibility.

“What's unacceptable is the fact you have a number of employees who were promised a benefit, nobody is paying to meet that liability and people are walking away from their responsibility,” Costigan said in an interview.

Municipal officials said they have no legal obligation. Any payment could be considered an illegal use of public funds, said Chris Freeland, West Covina City Manager.

“Personally, I think it's a way to deflect from their handling of pensions for the last several years,” said Glendora City Manager Chris Jeffers of Calpers's request.

Retirees feel abandoned. Sandra Meza, who spent nearly three decades at the job-training service and receives about \$3,300 a month, said she plans to attend a March 15 meeting of the agency to appeal for help. The 62-year-old Chino resident views the cities and Calpers as equally responsible.

“When it comes to money and business, sometimes moral and ethics don’t mean anything to those people,” she said.

Bloomberg Markets

by Romy Varghese

March 1, 2017, 2:00 AM PST

[Kansas City Isn't Waiting for Trump's Infrastructure Plan.](#)

- \$800 million in new debt on tap for voter approval April 4
- Would add on to \$1.7 billion existing debt over 20-year period

Kansas City mayor Sly James isn’t waiting for Donald Trump.

While Trump has promised a plan to pump some \$1 trillion into America’s infrastructure, he provided no details in his first speech to Congress this week — and officials in Missouri’s most populous city, like those around the nation, are acting on their own.

Sly James
Photographer: Rich Sugg/The Kansas City Star via AP Photos

On April 4, Kansas City voters will decide whether to authorize \$800 million in borrowing over 20 years to fund repairs to potholed streets, sewers and an animal shelter in such poor condition it may be condemned, among other projects. If approved, the city will join a growing trend of states and local governments selling debt for public works.

“We’ve been waiting for federal help on infrastructure for a long time. It hasn’t shown up,” James said in a telephone interview. “Where’s the plan when that’s going to happen? You and I both know that we can’t count on anything coming out of D.C.”

In November, U.S. municipalities won voter approval to sell at least \$55 billion of bonds, promising to add to the borrowing increase that pushed municipal-debt sales to a record last year.

About two-thirds of Kansas City’s roads are in substandard condition, according to the city’s annual report for the fiscal year that ended April 30, 2016. Its 550 bridges are in better shape, with just about 4 percent in poor condition. During fiscal year 2016 spending to preserve and maintain city roads and bridges was 11 percent and 5 percent of the estimated amount needed, respectively, according to the report.

The general obligation bond package is divided into three separate ballot measures: \$600 million for streets, bridges and sidewalks; \$150 million for flood control projects, which could leverage \$500 million in federal funds; and \$50 million for a new animal shelter and to make public buildings comply with the Americans with Disabilities Act.

If approved by voters, the new obligations will add to Kansas City’s “elevated” \$1.7 billion debt, equal to 5.6 percent of the city’s \$30.3 billion property value, according to Moody’s Investors Service.

City finances are also weighed down by unfunded pension liabilities that have grown to an estimated \$812 million, more than 80 percent of its annual revenue. The gap grew 51 percent in two years as investment returns lagged and officials' failed to make the full annually required contribution from 2010 through 2014, following the Great Recession.

"The fixed cost burden is really out-pacing their revenues," said Kenneth Surgenor, a Moody's analyst. Moody's revised its outlook on the city's general-obligation bonds to negative on Feb. 15, citing growth in pension and debt costs.

The city's Aa2 credit rating, the third-highest, will weaken if the city continues to leverage the tax base or the deficit in its pension fund widens, according to Moody's. The rating company's outlook assumed the bond measure will pass and the city will issue debt at a pace of \$40 million per year.

To support the new \$800 million debt, property taxes for the owner of an average \$140,000 home and a \$15,000 car would increase about \$8 per year over 20 years, officials said. Missouri residents pay a personal property tax on cars.

Kansas City's tax base grew about 5 percent in fiscal 2016 after stagnating for almost half a decade. Residential and commercial builders are constructing condos, hotels and office buildings in downtown's artsy Crossroads neighborhood and the Power and Light entertainment district.

Kansas City's new \$100 million streetcar, which runs through those two quarters, won plaudits from residents and business people for boosting commerce in the downtown area. Residents financed the streetcar, which opened last May, by voting to approve a one percent sales tax and special property assessments downtown.

Bloomberg Markets

by Martin Z Braun

March 2, 2017, 2:00 AM PST

[The Week in Public Finance: Oil State Woes, Why 401\(k\)s Might Not Be For All and More.](#)

A [roundup](#) of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MARCH 3, 2017

[Evidence-Based Programs Risk Losing Funding Under Trump.](#)

A federal fund that supports evidence-based social programs in state and local government may end under President Donald Trump.

The Social Innovation Fund, an Obama-era initiative, has issued nearly \$300 million in government grants since its inception in 2009. The money has gone to projects aimed at housing the chronically

homeless, employing jobless adults and providing health care to the uninsured, among other things. Because the program requires grantees to seek additional matching dollars, it has [generated](#) more than \$1 billion in combined public and private investment.

But late last month, *The New York Times* [reported](#) that a memo from the White House Office of Management and Budget recommended the elimination of nine federal agencies. Among them was the Corporation for National and Community Service, which is best known for running AmeriCorps but also operates the Social Innovation Fund.

The Trump administration has not commented on the report, but the president's budget blueprint calls for roughly \$54 billion in cuts to nondefense programs.

Under the Social Innovation Fund, proposals can't receive funding unless research suggests they would work, and every project must undergo evaluation to see if it gets the intended result. It's a radical change in how federal dollars are spent.

"Success has often been determined by how much money did we spend or how many people did we serve instead of the outcomes that we got," says Jeremy Ayers, vice president of policy for Results for America, a nonprofit that promotes the use of evidence in government.

If Trump's budget does call for the elimination of the Social Innovation Fund, Congress could ignore his recommendation, and there are reasons to think that might happen. Past efforts to discontinue the fund failed, and Republicans, including House Speaker Paul Ryan, have championed the broad idea of evidence-based policy.

Still, the fund's advocates are working to protect it.

"We're rallying the troops to show Congress that there is support for this work and also there is a real impact and consequences if this work does not continue to be funded," says Ayers.

Results for America has sent a [letter](#) in support of the fund — as well as several other evidence-based programs — to the ranking members of the House and Senate appropriations committees. Most of the 187 signatories are nonprofits and academic groups, but the list includes the mayors of Philadelphia and Salt Lake County, several public school districts, the chief of performance improvement for Louisville, Ky.; the cities of Boise, Idaho, and Menlo Park, Calif.; and Cook County, Ill. A number of former federal officials also signed the letter, including former directors of the White House Domestic Policy Council under presidents George W. Bush and Barack Obama.

A long list of state and local governments have benefited from the fund, particularly in getting "pay-for-success" programs up and running. Pay-for-success programs minimize the government's risk by leveraging private funding for evidence-based experiments aimed at solving public problems. If the project works — for example, if prisoner recidivism is reduced — then outside funders get reimbursed for their investment. The arrangements are still new and complex, requiring nonprofits and academic centers with experience in the field to assist government partners.

Not all of the recipients have been for pay-for-success projects though.

The Mayor's Fund to Advance New York City, a nonprofit started by then-New York City Mayor Rudy Giuliani, has been awarded \$34.5 million from the federal fund for a range of antipoverty initiatives.

One such program, Family Rewards, provided cash assistance to low-income families in exchange for fulfilling certain tasks, such as having the children score proficient on standardized tests, attend school regularly and stay up-to-date on health and dental checkups.

[S&P: Illinois' Grand Bargain Negotiations Falter In State Senate.](#)

SAN FRANCISCO (S&P Global Ratings) March 2, 2017—In a recent commentary, “For Illinois, Having A Plan Beats No Plan,” S&P Global Ratings said that Illinois may look back on a failure to pass the so-called grand bargain as a missed opportunity. In our view, legislation providing appropriations for the remainder of fiscal 2017 and tax increases to generate additional revenue would help stabilize the state’s fiscal trajectory. While negotiations in the state senate over the legislative package appear to have broken down, we understand they could be rekindled, though this may require a public endorsement of the bills by the governor.

Throughout the nearly two-year budget impasse, Illinois’ debt service has been paid on a priority basis and without interruption because of continuing appropriations associated with its bonds. These features remain integral to the state’s investment grade ratings (GO rating: BBB/Negative). The prioritization of revenues to fund debt is accomplished by deferring payments to many other stakeholders which we do not view as sustainable. Consequently, we believe it’s important for the state’s credit quality that a budget plan be enacted by the end of the fiscal year. Politically, approval of the bills will become more difficult beginning June 1, when state law will require a three-fifths majority vote of the legislature to approve a budget. U.S. states benefit from a range of inherent advantages starting with constitutionally protected sovereignty over their own fiscal structures. But for a state to enter a third fiscal year without enacting a comprehensive budget could indicate to us an erosion in political will that renders its credit quality and fundamental fiscal conditions as inconsistent with the state’s current rating.

Only a rating committee may determine a rating action and this report does not constitute a rating action.

S&P Global Ratings, part of S&P Global Inc. (NYSE: SPGI), is the world’s leading provider of independent credit risk research. 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 that helps to support the growth of transparent, liquid debt markets worldwide.

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Potential Changes for Churches and Charities Regarding Political Campaigning.

A few weeks ago, President Trump announced that he would advocate for the repeal of the prohibition against certain religious organizations (i.e., those exempt from paying federal income taxes under Section 501(c)(3)) from engaging in political campaigning. His statement was made at the National Prayer Breakfast to a group of religious leaders. However, since the prohibition applies to all Section 501(c)(3) entities (e.g., 501(c)(3) universities and hospitals), it seems likely that any such repeal would also apply to all Section 501(c)(3) entities.

To be clear, the prohibition on political campaigning does not apply to religious organizations or other charities per se. Rather, the ban only applies to those entities that have obtained Section 501(c)(3) status. A 501(c)(3) organization is exempt from federal income tax on what would otherwise be its taxable income (aside from taxable income derived from a trade or business that is unrelated to the organization's tax-exempt purpose), and donors to a 501(c)(3) organization may, subject to certain limits, claim a federal income tax deduction for contributions made to the 501(c)(3) organization. In other words, under current law, a Section 501(c)(3) organization has chosen to give up its right to engage in political campaigning in exchange for generous federal income tax benefits. The practical impact of the ban (also known as the Johnson Amendment) is that Congress has decided for the past 60 years that the federal government will not subsidize political campaigning by 501(c)(3) organizations.

[Continue reading.](#)

The Public Finance Tax Blog

By Cynthia Mog on March 1, 2017

Squire Patton Boggs

TAX - LOUISIANA

Cameron Parish Police Jury v. All Taxpayers

Court of Appeal of Louisiana, Third Circuit - February 21, 2017 - So.3d - 2017 WL 693927 - 2017-55 (La.App. 3 Cir. 2/21/17)

Parish police jury and school board brought action to validate proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement with natural gas liquefaction facility operator.

The District Court entered judgment finding proposed agreement legally invalid. Police jury and school board appealed.

The Court of Appeal held that:

- As a matter of first impression, statutes providing for CEA/PILOT agreements did not authorize police jury to enter into an agreement to reduce or effectively exempt ad valorem taxes for a single taxpayer already operating in the area;
- Proposed agreement violated statutes setting forth procedure for assessing and collecting ad valorem taxes; and
- Proposed agreement violated uniformity provision of constitution.

Statutes providing for public-private partnerships in economic development projects, including through cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreements and through tax increment or bond financing, did not authorize police jury to enter into an agreement to reduce or effectively exempt ad valorem taxes for a single taxpayer already operating in the area.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, by which police jury would accept fixed annual payments from taxpayer, an operator of a natural gas liquefaction facility, in lieu of ad valorem taxes based upon the facility's fair market value, violated statutes setting forth procedure for assessing and collecting ad valorem taxes, which required assessment at percentage of fair market or use value and prohibited omission of taxable property from assessment list.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, providing for taxing authorities to obligate themselves not to collect ad valorem taxes from taxpayer, which operated a natural gas liquefaction facility, in excess of specified amount and for parish to certify fair market value of facility only in such amount as specified by agreement, violated uniformity provision of state constitution; uniformity provision granted exclusive authority to assessor to assess the facility, while police jury's authority was limited to one of review.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, providing for taxing authorities to obligate themselves not to collect ad valorem taxes from taxpayer, which operated a natural gas liquefaction facility, in excess of specified amount and for parish to certify fair market value of facility only in such amount as specified by agreement, violated constitutional provision forbidding exemptions from ad valorem taxes except in enumerated exceptions; agreement operated as partial exemption of a manufacturer's taxes.

Trump Wipes Out \$5 Billion of Muni Gains at Top U.S. Insurers.

- Market has many 'what ifs' as Washington mulls tax shifts
- Travelers, AIG among insurers hit by municipal bond slump

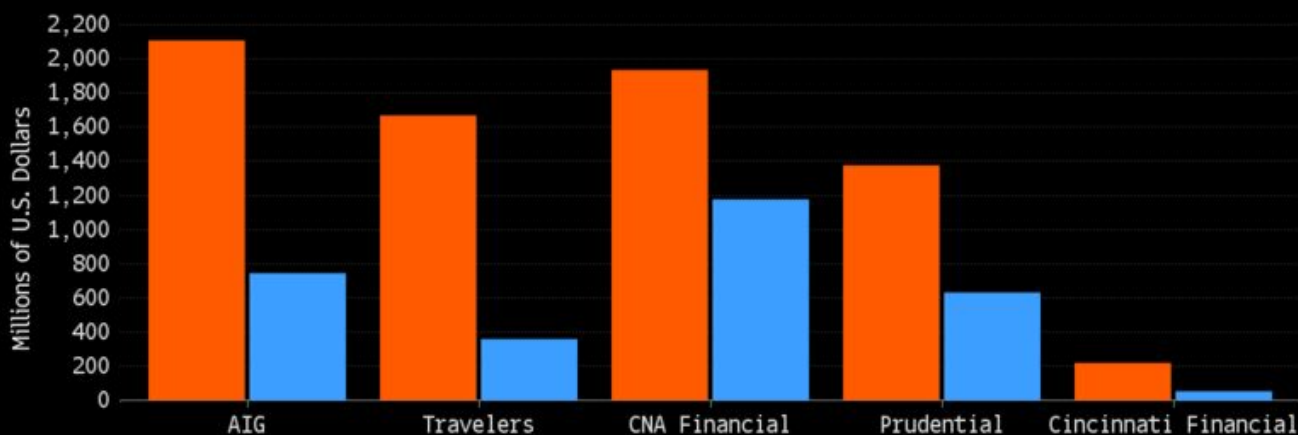
The disruption in the municipal bond market is punishing some of the most loyal buyers of the debt.

The insurance industry has seen more than \$5 billion of gains erased on state and local bonds after Donald Trump's victory in the presidential race, with American International Group Inc. and Travelers Cos. among the hardest-hit companies. While the yield on state and local debt is typically exempt from federal taxes, that advantage would be diminished if Trump follows through on plans to lower the levy on all corporate profits. Beyond that, investors are concerned that an overhaul of federal laws could end the favorable treatment on munis.

Municipal Slump

Insurers' net unrealized gains narrow on the holdings

Sept. 30 Dec. 31



Source: Company filings

Bloomberg

There are “just crazy amounts of ‘What ifs?’ at this time,” said Peter Block, managing director for credit strategy at Ramirez & Co., a New York-based underwriter. Beyond that, he said, the stock rally led to a shift in allocation as some traditional muni investors “saw that equities were just on a tear, and they wanted a part of that.”

Travelers, the only property-casualty insurer in the Dow Jones Industrial Average, had unrealized gains on its \$32 billion municipal portfolio narrow to \$360 million on Dec. 31 from \$1.7 billion just three months earlier, according to regulatory filings. The gain at AIG was just \$747 million at the end of 2017, about a third of the figure from Sept. 30. CNA Financial Corp., Prudential Financial Inc., Cincinnati Financial Corp. and Alleghany Corp. also endured declines in their portfolios.

Many types of bonds lost value after the election, as investors bet on economic growth under Trump. In most cases, insurers welcomed the shift because yields climb when the securities lose value. That could help boost investment income on the trillions of dollars in corporate debt, Treasuries and mortgage-backed securities that the industry holds to back obligations to policyholders.

‘Less Attractive’

On munis, however, where insurers accepted lower yields in exchange for tax benefits, the changing economics could leave more of a sting. If the corporate tax rate is lowered to 25 percent from 35 percent, the benefit of holding municipal debt versus AA-rated corporate debt would diminish substantially, said Matt Caggiano, who helps oversee more than \$9 billion in insurer municipal holdings at Deutsche Bank AG.

“Now you have a Republican president and a Republican House and Senate,” he said. “They all would like to decrease the corporate tax rate. That could really make munis less attractive to insurance companies.”

Municipal debt has trailed a risk-matched basket of U.S. Treasuries by about 16 basis points since Election Day in November, according to the Bank of America Merrill Lynch index data. Still, big insurers pride themselves on being able to hold securities through market fluctuations.

“We do not expect property-and-casualty insurers sell large portions of their municipal portfolio

outright, but rather partially redirect proceeds away from tax-exempts as their municipal holdings mature,” Barclays Plc analyst Mikhail Foux said in a January note to investors.

The declines in unrealized gains don’t count against earnings, but do reduce book value, a measure of financial strength monitored by investors and analysts. P&C insurers account for about 10 percent of the \$3.8 trillion municipal market.

‘Non-Trivial’

Investors are still waiting for clarity from Washington, as the Trump administration and Congressional Republicans have sent mixed signals. If lawmakers reduce rates on corporations and individuals, they could seek to limit tax breaks to help replace the lost revenue.

Trump is unlikely to support the complete elimination of the muni exemption, given that the debt supports infrastructure projects, according to Municipal Markets Analytics. Still, the chance has increased for a “negative adjustment,” according to the research firm.

“Obviously, a lot is going to be determined by the shape of any tax legislation,” Travelers Chief Investment Officer William Heyman said in the New York-based company’s fourth-quarter earnings call when discussing the outlook for as far off as 2019. “At the very extreme, if you needed a revenue-neutral bill, and the municipal exemption itself were affected, that would be non-trivial.”

Shares of Travelers and AIG both declined this year through Monday, even as the S&P 500 Financials Index is up about 5.3 percent since Dec. 31. To be sure, the insurers have been hit by other surprises as well, including higher-than-expected claims costs.

Relative Value

At Chubb Ltd., another insurer with significant muni holdings, said this month that it was too early to say whether the company would reduce its exposure. The company hadn’t released its 10-K filing for 2016 as of Monday night.

“We’re running scenarios at different tax rates to determine the impact of the portfolio,” Chief Financial Officer Phil Bancroft said on a Feb. 1 conference call. “So we’re evaluating it. And we’ll look at it in light of the tax developments that emerge over the next months.”

Bloomberg Politics

by Lisa Du, Romy Varghese, and Sonali Basak

February 28, 2017, 5:01 AM PST

[Fitch: Federal Questions Linger for State and Local Governments Following President Trump's Speech.](#)

Fitch Ratings-New York-01 March 2017: In the president’s speech to Congress last night and in details of a budget plan disclosed on Monday, the administration proposed and affirmed broad policy goals that could significantly affect state and local governments, but essential details remain unknown. The future of the Affordable Care Act, Medicaid financing, an infrastructure plan, and even federal education funding were all topics in the speech or budget proposal – but state and local

governments remain without clear guidance on how possible changes will affect them.

On the Affordable Care Act (ACA) and Medicaid, President Trump's speech listed five principles to guide legislative deliberations. These principles were broad in scope, but generally consistent with the recently released House Republican Obamacare Repeal and Replace Plan from House Speaker Paul Ryan. Other than an explicit statement supporting the use of tax credits, the president's speech added no new clarity on the administration's view for the role of the federal government in healthcare.

The federal Department of Health and Human Services (HHS) estimated that in federal fiscal year 2015, 9.1 million people received insurance coverage under state Medicaid expansions authorized under the ACA. With the ACA's enhanced matching rate (100% in 2015 and phasing down to 90% by 2020), HHS estimates the states received \$58.1 billion in federal funding to provide that coverage in 2015. The Ryan plan phases down that ACA funding significantly over an unspecified transition period. The president's speech was not clear on the administration's view of that decrease.

Medicaid represents approximately one-third of state budgets so changes to the program, such as ending the open-ended federal commitment, could have material effects on state fiscal conditions. The president's healthcare principles included a statement to provide governors "the resources and flexibility they need with Medicaid to make sure no one is left out." Regarding the ACA Medicaid expansion, the speech hinted at some support for continued federal funding for the newly eligible. But the reference to flexibility implies support for a block grant or per capita cap program as envisioned under the Ryan plan, to trade limits on federal spending for unspecified new flexibility for states on implementation. Fitch anticipates states would likely respond with health care spending cuts, cuts to other programs such as education, and revenue measures.

In his speech, President Trump reiterated his support for legislation to support new infrastructure investment of up to \$1 trillion. The president's statement on infrastructure did not include a specific commitment of federal direct funding and instead referenced creating a legislative structure to support a mix of public and private investment. This aligns with President Trump's campaign proposal (co-authored by the incoming Secretary of Commerce and head of the White House's new National Trade Council) to use tax credits, rather than direct federal funding, to encourage private investment. More clarity is still needed on how non-revenue-generating projects will be financed as the opportunities for investment in user-fee-supported infrastructure will be only a limited subset of the overall need.

The president's speech also included an educational legislative priority that could affect state and local governments, urging congress to enact legislation that provides federal funding to support school choice, including for charter and private schools. Fitch notes that expansion of charter schools has generally been neutral to negative for competing public school districts' fiscal conditions. Any proposals to provide new federal aid to charter schools, or redirect existing traditional public school aid, could exacerbate challenges for school districts, such as Philadelphia and Los Angeles Unified, already struggling to adjust to ongoing enrollment shifts. School districts would need to address any reduced federal aid through spending cuts or additional revenue sources. As the current situation in Chicago demonstrates, urban school districts can be challenged to find additional room for cuts and have limited independent revenue raising capacity in many states.

Monday's disclosure of details on the president's upcoming budget proposal also leaves open questions for state and local government. The proposal reportedly includes an additional \$54 billion in defense spending, offset with a commensurate reduction in federal discretionary funding. For state and local governments, 70% (approximately \$400 to \$500 billion) of federal aid comes for mandatory programs (primarily Medicaid), which are reportedly not subject to cuts in this proposal.

The largest single discretionary program potentially subject to the \$54 billion reduction is federal highway aid (\$40 billion). Given the president's repeated statements on infrastructure investment, Fitch views cuts in federal highway aid as unlikely. Absent highway aid cuts, it remains unclear how the president's budget plan would affect state and local governments. The administration has indicated changes to mandatory programs (which include Medicaid) will follow after the administration formally releases the budget plan in mid-March.

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[Puerto Rico Governor Spurns Federal Oversight Board's Deepest Austerity Suggestions.](#)

Puerto Rico's governor unveiled a fiscal plan that calls for paying the U.S. territory's creditors roughly a third of what they are owed for the next decade while rejecting austerity measures prescribed by its federal oversight board.

Gov. Ricardo Rossello's fiscal plan, released Tuesday, outlines a combination of spending cuts and revenue enhancements that he says will fix Puerto Rico's 10-year, \$55 billion funding shortfall while reducing the size of its government and spurring private investment.

The governor will also ask Congress to extend a legal stay that has blocked creditors from suing over bond defaults, according to the plan. A spokesman for investment funds holding general obligation bonds said the request "undercuts its professed commitment to a consensual process and, if granted, would allow [the administration] to delay negotiating with creditors."

The stay expires May 1, and hopes among creditors are dimming that Puerto Rico can lock in consensual debt deals before then.

Mr. Rossello's plan says that much of the burden of balancing the government ledger should fall on creditors holding roughly \$70 billion in municipal bonds. It projects that Puerto Rico can pay \$10.5

billion in principal and interest on its bonds between the 2018 and 2026 fiscal years, approximately a third of the \$30 billion owed under existing debt contracts.

Market reaction to the document was muted as the benchmark general obligation bond changed hands at 74 cents on the dollar Tuesday, in line with recent prices, according to Electronic Municipal Market Access. Sales-tax bonds were also virtually unchanged.

The governor's blueprint breaks with certain recommendations of Puerto Rico's oversight board, which in January recommended sharper reductions in government payroll, pension benefits and health-care spending, as well as deeper reductions in debt payments.

The oversight board, which is supervising the territory's debt restructuring process, has veto power over the fiscal plan under the federal rescue law passed for Puerto Rico last year. The board is currently reviewing the plan, a spokesman said Wednesday.

How much money is available for creditors is highly dependent on whether Congress extends health-care funding mandates for Puerto Rico under the Affordable Care Act that are currently scheduled to lapse in December. The future of the law itself is in doubt as Republican leaders in Washington are drawing up plans for repealing the ACA and confronting internal divisions over how to replace it.

Mr. Rossello's representative on the board, Elias Sanchez, on Wednesday told The Wall Street Journal he was confident GOP lawmakers would allocate more federal health-care dollars to Puerto Rico, freeing up additional funds for creditors beyond the plan's baseline projections. The fiscal plan said that full ACA funding would more than double the moneys available for debt repayment.

The board can approve Mr. Rossello's plan or adopt its own, but an approved plan must be in place before it can initiate a bankruptcy-like process in which creditors could be forced to accept unfavorable restructuring terms. The Puerto Rico Oversight, Management, and Economic Stability Act, or Promesa, provides for a period of voluntary debt negotiations. That window is currently set to end on May 1, although Mr. Sanchez said the governor would ask Congress to extend that deadline.

The fiscal plan calls for Puerto Rico to cut its annual health care spending by roughly \$300 million starting with 2019 fiscal year. The proposed health-care cuts would still leave the territory spending \$700 million more a year than the board previously recommended.

The plan, which the governor discussed Tuesday in a gubernatorial address and released publicly via Twitter, cuts roughly \$60 million in annual pension costs, less than the \$200 million in annual retirement savings sought by the board.

Those austerity measures are based on misguided comparisons to other sovereign borrowers like Panama, Jamaica and Spain that cut government spending in the midst of financial crises, Mr. Sanchez said. Puerto Ricans are already leaving for the U.S. mainland at record rates, and an austerity regime would accelerate the out-migration, he said.

The fiscal plan addresses roughly \$50 billion in debt owed by the territory but doesn't encompass its government water and power utilities, which owe a combined \$13.5 billion and will develop their own plans. Mr. Rossello in January wrested control of negotiations over the only debt restructuring accord Puerto Rico has reached thus far, a \$9 billion deal struck in 2015 covering the electric utility known as Prepa.

His plan also gave no indication about how the available dollars should be divvied up among competing creditor groups, though creditors holding sales-tax bonds are clashing with general obligation holders in court over who should be repaid more. Last month a federal judge refused to

freeze the litigation while negotiations play out, and so far the governor hasn't taken sides with either investor group.

"We'll eventually most likely take a position," Mr. Sanchez said.

THE WALL STREET JOURNAL

By ANDREW SCURRIA

Updated March 1, 2017 5:36 p.m. ET

—Matt Wirz contributed to this article.

Write to Andrew Scurria at Andrew.Scurria@wsj.com

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- [SIFMA Submits Comment to the MSRB on Draft Amendments to Modernize MSRB Rule G-26 on ACATS.](#)
 - [GFOA OKs Best Practices on Refundings, Investing, and Financial Services.](#)
 - [GFOA Approves New Best Practices.](#)
 - [Overview of GFOA's New Best Practices: Webinar](#)
 - [Bipartisan Bill Reintroduced to Ease Tax Curbs on Small Issuer IDBs.](#)
 - [The Countdown to August 18, 2017 - Something You Should Know.](#)
 - [Goldman, Sachs & Co. v. City of Reno](#) - In ARS-related litigation, District Court holds that city's initiation of FINRA arbitration against underwriter constituted a breach of the forum selection clauses in the broker-dealer agreements, but that underwriter could not claim attorneys' fees as damages for that breach.
 - And finally, Great Moments in Fish Wrangling is brought to us this week by [Citizens for Odor Nuisance Abatement v. City of San Diego](#) - a case about seal poop - in which the court gifted us with this immortal statement, "Our decision does not depend on the fact that the Asian carp are advancing upstream of their own volition." Unlike the many other cases that turn upon volitional carp.

NUISANCE - CALIFORNIA

[Citizens for Odor Nuisance Abatement v. City of San Diego](#)

Court of Appeal, Fourth District, Division 1, California - February 9, 2017 - Cal.Rptr.3d - 2017 WL 526503 - 17 Cal. Daily Op. Serv. 1307

Neighbors of ocean cove brought action for declaratory, injunctive, and writ relief challenging city's failure to prevent accumulation of sea lion excrement.

The Superior Court granted summary judgment for city. Neighbors appealed.

The Court of Appeal held that:

- City's conduct in building a fence around an ocean cove was not a substantial factor in causing the alleged accumulation of sea lion excrement;
- To the extent that the city had a duty to address the odor, it complied with that duty; and

- City's memorandum and press release did not establish any obligation enforceable by writ of mandate for the city to abate the odor of sea lion excrement.

City's conduct in building a fence around an ocean cove was not a substantial factor in causing the accumulation of sea lion excrement on the rocks within the fence, and thus neighbors could not establish the causation element of their public nuisance cause of action against city, where the cove's sea lion population increased many years after the construction of the fence, and the sea lion population increase at the cove was consistent with overall population growth up and down the coast.

Assuming that city had a duty to address the odor of sea lion excrement at an ocean cove, the city did not fail to act and thus was not subject to nuisance liability for any such failure, where regulations prevented the city from washing waste off the rocks and into marine waters, the city attempted to treat the waste odors with a microbial solution, and the city continued to seek alternatives to address the odor.

City's issuance of an memorandum and press release stating that the city would abate the odor of excrement from "cormorants, gulls, pigeons and pelicans" at ocean cove did not assume any obligation enforceable by writ of mandate for the city to also abate the odor of sea lion excrement at the cove, where sea lions were nowhere referenced in those documents.

STORMWATER FEES - INDIANA

[Mint Management, LLC v. City of Richmond](#)

Court of Appeals of Indiana - February 15, 2017 - N.E.3d - 2017 WL 606236

Landowners filed claims for declaratory judgment on the issue of whether they were required to pay the city's fee for financing its stormwater system when the stormwater runoff from their parcels did not enter the system. Following consolidation, the Superior Court granted city's motion for summary judgment. Landowners appealed.

The Court of Appeals held that stormwater ordinance required all landowners in city to pay stormwater fee even if a parcel did not drain into stormwater system.

City's stormwater ordinance, which stated that a stormwater fee was to be imposed on every parcel of land within city that directly or indirectly contributed to city's stormwater system, required all landowners in city to pay the fee, even if stormwater runoff from a parcel did not drain into stormwater system. The enabling statute providing for municipal stormwater management authorized city ordinances to assess a fee against all real estate parcels in city without distinctions or exceptions, and all property within city's stormwater district contributed to that district even if its stormwater did not drain into the district's sewer system.

INVERSE CONDEMNATION - IOWA

[Kellogg v. City of Albia](#)

Court of Appeals of Iowa - February 8, 2017 - Slip Copy - 2017 WL 512483

Homeowner brought action against city for nuisance, abatement of nuisance, and negligence as a result of damages to her home caused by the flooding of a storm sewer system.

City moved for summary judgment. The District Court granted the motion. Homeowner appealed.

The Court of Appeals held that:

- Genuine issues of material fact existed as to whether nuisance was created or was being maintained by city's operation of the storm sewer, without regard to design or specifications defects, precluding summary judgment; and
- Two-year statute of limitations on homeowner's claim began to run from the occurrence of each intermittent flood.

UTILITIES - MISSISSIPPI

[Mississippi Rural Water Association, Inc. v. Mississippi Public Service Commission](#)

Supreme Court of Mississippi - February 9, 2017 - So.3d - 2017 WL 533740

Water utility association sought review of decision of the Mississippi Public Service Commission (MPSC), to adopt regulation requiring utilities to waive utility deposits for certified domestic violence victims for a period of 60 days.

The Chancery Court affirmed. Association appealed.

The Supreme Court of Mississippi held that customer deposits are included in the definition of the term "rate" as used in Public Utilities Act, which prohibits the MPSC from making rules that regulate the rates of nonprofit public utility association members, and thus MPSC was without statutory authority to adopt regulation at issue.

FORUM SELECTION - NEVADA

[Goldman, Sachs & Co. v. City of Reno](#)

United States District Court, D. Nevada - January 4, 2017 - Slip Copy - 2017 WL 58579

On February 10, 2012, the City of Reno filed a breach of fiduciary duty claim against Goldman Sachs with the Financial Industry Regulatory Authority (FINRA), alleging wrongdoing with respect to Auction Rate Securities (ARS).

Goldman then sued Reno in District Court, seeking a declaratory judgment that FINRA was an inappropriate forum for Reno's claims based on the mandatory forum selection clauses in the Broker-Dealer Agreements.

The District Court denied Goldman's motion for a preliminary injunction of the FINRA arbitration proceedings. Goldman appealed. The Court of Appeals reversed, holding that the forum selection clauses superseded Reno's right to FINRA arbitration.

On remand, Goldman asserted a counterclaim for contract damages based on Reno's alleged breach of the forum selection clauses in the Broker-Dealer Agreements.

The District Court dismissed Goldman's counterclaim, holding that:

- Reno's initiation of FINRA arbitration was a breach of the Broker-Dealer Agreements' forum

selection clauses; and

- Allowing Goldman to claim attorneys' fees as contract damages would contravene the American Rule.

"Under the general rule, attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or court rule."

"Allowing [a party] to collect attorney's fees as damages simply by characterizing them as damages based on a breach of contract would create an exception that would swallow the American Rule, as it is well-established that a party cannot recover attorney's fees from a contract-breaching opponent, even where the breach makes litigation eminently foreseeable."

REFERENDA - OHIO

[State ex rel. Ebersole v. City Council of Powell](#)

Supreme Court of Ohio - February 14, 2017 - N.E.3d - 2017 WL 710822 - 2017 -Ohio- 509

Referendum proponent filed petition for writ of mandamus seeking to compel city council to place referendum on ballot.

The Supreme Court of Ohio held that proponent's proper course of action was to challenge validity of ordinance by way of suit for declaratory judgment.

After city council approved ordinance that may have been the same as ordinance previously rejected by voters, referendum proponent's proper course of action to challenge validity of ordinance was by way of suit for declaratory judgment rather than by way of petition for writ of mandamus in Supreme Court to compel city council to place referendum on ballot. City charter provided that only way to achieve reenactment of an ordinance after rejection at ballot box was through ballot initiative approved by voters, not through vote of city council followed by referendum.

BOUNDARIES - PENNSYLVANIA

[Adams Township v. Richland Township](#)

Supreme Court of Pennsylvania - February 22, 2017 - A.3d - 2017 WL 694746

Newer township brought action against older township for declaratory judgment, seeking judicial declaration that professional surveyor's proposed line represented the true boundary between the townships.

The Court of Common Pleas entered order establishing tax assessment line as boundary between the townships. Newer township appealed. The Commonwealth Court vacated and remanded. Older township petitioned for allowance of appeal, which was granted.

The Supreme Court of Pennsylvania held that:

- Reviewing court may not disturb a determination by a board of commissioners as to the location of a municipal boundary unless the board committed an error of law or its conclusion was not supported by competent evidence, disapproving of *Robinson Township v. Collier Township*, 9

Pa.Cmwlth. 193, 303 A.2d 575;

- As matter of first impression, the doctrine of acquiescence may be applied to resolve a municipal boundary dispute when the location of the municipal boundary is uncertain; and
- As matter of first impression, doctrine of acquiescence allowed board of commissioners to adopt tax assessment line, which townships and their residents had used as common boundary, as boundary between two townships after board determined that it was unable to ascertain original location of the boundary.

EMINENT DOMAIN - TEXAS

[City of Dallas v. Trinity East Energy, LLC](#)

Court of Appeals of Texas, Dallas - February 7, 2017 - Not Reported in S.W.3d - 2017 WL 491259

Energy company that submitted bid for city project brought action against city for breach of contract and, alternatively, declaratory relief, fraud, fraud by nondisclosure, promissory estoppel, negligent misrepresentation, and inverse condemnation alleging that city leased mineral rights to city-owned property to company but then refused to approve its applications for permits to drill.

The District Court granted city's plea to the jurisdiction in part. City appealed and company cross-appealed.

The Court of Appeals held that:

- City was engaged in proprietary function when it leased mineral rights and, thus, governmental immunity did not apply, and
- Company presented viable regulatory takings claim against city.

City was engaged in proprietary function when it leased mineral rights to energy company that submitted bid for city project and, thus, governmental immunity did not apply in company's action against city for breach of contract and, alternatively, declaratory relief, fraud, fraud by nondisclosure, promissory estoppel, negligent misrepresentation, and inverse condemnation alleging that city, after leasing rights, refused to approve company's applications for permits to drill; purpose of leases was developing city's minerals in safe and efficient manner that protected public safety and promoted maximum revenue for city, which were functions that would benefit residents within city's corporate limits but would not benefit public at large.

Regulatory takings claim alleged by energy company that submitted bid for city project was not moot in company's action against city for inverse condemnation alleging that city leased mineral rights to city-owned property to company but then refused to approve company's applications for permits to drill, despite claim that there were other drill sites for which company did not submit permit applications. There was factual dispute about whether drill site for which company sought permits were only viable drill sights for property subject to leases, and fact that leases expired and company no longer owned minerals, which had since reverted to city, did not foreclose possibility of taking during time in which company owned rights.

Energy company that submitted bid for city project presented viable regulatory takings claim against city in its action for inverse condemnation alleging that city leased mineral rights to city-owned property to company but then refused to approve company's applications for permits to drill. Company presented evidence that it paid city over \$19 million for opportunity to drill on leased property and spent considerable time and money analyzing and preparing property for drilling, that

value of minerals on property was over \$62 million, that, after city's action, property was worthless because city had deprived it of any ability to drill for oil and gas, and that, during process of trying to obtain permits, leases expired and minerals reverted back to city, depriving it of any opportunity to drill.

[S&P: Ratings On California Local Government Entities Unaffected By Lake Oroville Spillway Damage.](#)

While damage from natural disasters has been extremely visible in the public sector, the disasters themselves historically haven't materially impacted the credit quality of associated local government ratings.

[Continue reading.](#)

Feb. 21, 2017

[Second Circuit Court Rules EPA's Water Transfers Rule Allowed Under Chevron.](#)

In a major water rights case that pits the practical needs of drinking water system operators against environmentalists, conservationists, and some state and tribal governments, the Court of Appeals for the Second Circuit decided recently that water transfers for drinking water systems are exempt from the Clean Water Act pollution permitting program.

In upholding the 2008 Water Transfers Rule, the Second Circuit Court of Appeals held that the U.S. Environmental Protection Agency was entitled to exclude water system transfers from the National Pollutant Discharge Elimination System (NPDES) permitting requirements. The plaintiffs argued that such water transfers could move harmful pollutants from one body of water to another. Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA (Catskill III), 14-1823, (2d Cir., 2017).

The dispute bears the hallmark of a case bound for the U.S. Supreme Court, as national environmental organizations, led by Trout Unlimited, Inc., fishermen, sportsmen, Riverkeeper, Inc. and northeastern states, including New York, Connecticut, Delaware, Illinois and Maine, line up against the EPA, western states, and water districts and utilities from San Francisco to New York City and South Florida.

"Because New York City cannot tap the rivers, bays, and ocean that inhabit, surround, or, on occasion, inundate it to slake the thirst of its millions of residents, it must instead draw water primarily from remote areas north of the City, mainly the Catskill Mountain/Delaware River watershed west of the Hudson River, and the Croton Watershed east of the Hudson River and closer to New York City," Judge Sack waxed poetically in a lengthy opinion that even starts out quoting poetry.¹

Water transfers, which drinking water systems have been conducting for decades, connect and convey water supplies between two water bodies before any end user, such as an industrial, commercial or municipal consumer, uses the water. While EPA had never required such water transfers to become subject to the NPDES permitting requirements of the Clean Water Act, it

ultimately enacted the Water Transfer Rule to respond to a growing chorus from environmental and conservation groups that claimed water transfers can move harmful pollutants from one water body to another.

The court analyzed the case using the classic two-step analysis set forth by the U.S. Supreme Court in *Chevron v. Natural Resources Defense Council* (referred to as “Chevron deference”), pursuant to which the Court first determines if the language of the statute at issue clearly proscribes the matter and, if not, whether the agency’s interpretation of the statute is reasonable. After concluding that the Clean Water Act does not expressly address water transfers and, therefore, inferring that Congress must have decided to defer to the EPA the interpretation of the statute to water transfers, the Court examined the reasonableness of EPA’s judgment. “The agency provided a sufficiently reasoned explanation for its interpretation of the Clean Water Act in the Water Transfers Rule,” the Court explained.

Among the justifications for EPA’s reasoning, the Court relied on the longstanding practice of and Congress’s acquiescence to water transfers, practical concerns regarding compliance costs (the defendants’ arguments in the case indicated compliance costs could exceed \$4.2 billion), and the existence of alternative means for regulating pollution resulting from water transfers. New York City argued that it would be required to construct an expensive water treatment plant if an NPDES permit were required for its transfers. Other federal statutes, including the Safe Drinking Water Act, provided an acceptable alternative to regulation, the Court concluded.

Footnote

1. “Water, water, everywhere/Nor any drop to drink,” by Samuel Taylor Coleridge’s *The Rime of the Ancient Mariner* (1798).

Last Updated: February 16 2017

Article by Stephen J. Humes

Holland & Knight

Stephen J. Humes is a Partner in our New York office.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

[375 Key Organizations Sign Letter to Save the Muni-Exemption.](#)

Yesterday, the Municipal Bonds for America (MBFA) Coalition sent a [letter](#) to House and Senate Leaders, including House Ways and Means and Senate Finance Committee leaders, urging them to retain the current law status on municipal bonds as a part of their ongoing debate on comprehensive tax reform. The letter is signed by 375 organizations from across the United States, representing almost all 50 states. This letter brings continued attention to the value that municipal bonds provide as the strongest and most proven method of financing ongoing infrastructure needs for state and local governments and ultimately, the constituents of all Congressional representatives.

Specifically, the letter highlights:

- State and local governments have financed infrastructure and other community related projects using tax-exempt municipal bonds for over a century
- Reducing or eliminating the tax exemption for municipal bonds could raise infrastructure costs by 10 to 12 percent, with these costs being passed directly to taxpayers
- Preserving the current law status of municipal bonds is essential in rebuilding our nations economy and infrastructure

The letter will remain open for signatures at the MBFA website [here](#). As we continue to grow support and receive additional signatures on the letter, we will update the website with new numbers.

Thanks again to all of those that helped in obtaining signatures for this very important effort. If you have any questions please feel free to reach out to Justin Underwood at justin@munibondsforamerica.org.

[MBFA Chair Featured in The Hill: The Case for Tax-Exempt Municipal Bonds for 21st Century America.](#)

Today, Steve Benjamin, Mayor of Columbia, SC and Chair of the Municipal Bonds for America (MBFA) Coalition, contributed an op-ed in The Hill, advocating for why preserving the current law status of municipal bonds is essential in rebuilding our nations economy and infrastructure. You can read the article online [here](#).

Specifically, the article highlights:

- How municipal bonds play a vital economic role in small towns and large cities all across America
- The impact state and local governments may face if the municipal tax-exemption is capped or removed altogether
- How roughly two-thirds of America's core infrastructure is built by state and local governments using tax-exempt municipal bonds

[U.S. Municipal Debt Sales to Total \\$4.48 bln Next Week.](#)

A wave of water debt will hit the U.S. municipal bond market next week as part of \$4.48 billion in bond and note sales by states, cities, schools and other issuers, according to Thomson Reuters estimates on Friday.

The California Infrastructure and Economic Development Bank will issue \$450 million of top-rated clean water state revolving fund revenue bonds.

The debt is structured with serial maturities from 2018 through 2036, according to the preliminary official statement.

Underwriter Morgan Stanley has scheduled a Tuesday retail order period for the so-called green bonds ahead of formal pricing on Wednesday.

New York City's Municipal Water Finance Authority will sell \$375 million of water and sewer second general resolution revenue bonds. Senior underwriter Siebert Cisneros Shank & Co will hold a retail

presale period for the bonds on Monday with formal pricing on Tuesday.

Among competitive offerings, Maryland's Baltimore County will sell \$199.1 million of bonds and \$121 million of bond anticipation notes on Wednesday. Clark County, Nevada, has set a \$317.78 million general obligation bond bank refunding bond sale for Wednesday.

Meanwhile, U.S. municipal bond funds reported a seventh-straight week of net inflows. The week ended Feb. 22 had \$149.3 million of net inflows, down from \$480 million in the previous week, according to Lipper, a unit of Thomson Reuters.

(Reporting by Karen Pierog; Editing by James Dalglish)

Santa Clarita Water Receives GFOA Distinguished Budget Presentation Award.

Santa Clarita Water (SCWD), a division of Castaic Lake Water Agency (CLWA), received the Distinguished Budget Presentation Award presented by the Government Finance Officers Association (GFOA) of the United States and Canada and the California Society of Municipal Finance Officers (CSMFO) Operating Budget Excellence Award for its FY 2016/17 Budget. "Accountability to the public, our ratepayers, starts with a clear annual budget document and related financial reporting. I commend our budget team for their excellent efforts with the FY 2016/17 budget", said Matt Stone, CLWA General Manager.

To receive the GFOA Distinguished Budget Presentation Award, the budget document must be rated "proficient" in all four categories that demonstrate how well the budget serves as a (1) policy document, (2) financial plan, (3) operations guide and (4) communications device. The award reflects the commitment of the governing body and staff to meet the highest principles of governmental budgeting. This is the sixth consecutive year in which SCWD has received this award.

Elizabeth Ooms-Graziano, Retail Administrative Officer for Santa Clarita Water Division, received a Certificate of Recognition for Budget Presentation for being primarily responsible for preparing the award-winning budget.

The FY 2016/17 Budget has been judged by an impartial panel to meet the high standards of the program. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America. The GFOA's Distinguished Budget Presentation Awards Program is the only national awards program in governmental budgeting.

The GFOA is a major professional association servicing the needs of more than 19,000 appointed and elected local, state, and provincial-level government officials and other finance practitioners. It provides top quality publications, training programs, services, and products designed to enhance the skills and performance of those responsible for government finance policy and management. The association is headquartered in Chicago, Illinois and has an office in Washington, D.C.

The CSMFO Budget Awards Program is designed to recognize those agencies that have prepared a budget document that meets standards that include (1) a minimum score of 50 points (out of 80) in the Excellence in Budgeting section and (2) a score of 20 out of 20 for the Meritorious Budget section. SCWD's FY 2016/17 Budget has been judged by impartial review to meet the high standards of the CSMFO program. This is the sixth consecutive year in which SCWD has received this award.

CSMFO is California's premier statewide association for finance professionals, with Chapters located throughout the State. CSMFO seeks to improve the knowledge, skills, and performance of individuals responsible for municipal and other local government fiscal policy and management.

SCWD's Budget and other financial documents can be found right on our webpage at: <http://scwater.org/finance>.

PRESS RELEASE | THURSDAY, FEB 23, 2017

Morgan Stanley Fined Over Excessive Pricing of Munis.

WASHINGTON - Morgan Stanley has agreed to pay \$170,284 over Financial Industry Regulatory Authority findings that the firm sold municipal securities, including some from Puerto Rico, to customers at prices that were not fair or reasonable.

The firm will pay \$115,000 of the \$170,284 as a FINRA fine and the remaining \$55,284 as restitution to its customers. Morgan Stanley was responsible for a total of \$57,159 in restitution but has already paid some to address the violations, FINRA said.

The transactions FINRA found took place from July 1, 2013 through March 31, 2014, according to the settlement document. The findings are the result of reviews that FINRA's fixed income investigations staff carried out.

Morgan Stanley consented to the settlement without admitting or denying the findings. Christine Jockle, a spokesperson for the firm, said the settlement "involves a very small number of municipal bond trades from 2013 and 2014."

"Morgan Stanley is committed to providing fair and reasonable prices to its clients for their municipal bond transactions," she said. "The firm has agreed to improve its prices for these trades, and has enhanced its processes around reviewing bond trade prices for its wealth management clients."

FINRA found that from Oct. 1, 2013 through Dec. 31, 2013, Morgan Stanley purchased munis in 14 pairs of transactions for its own account from a customer or sold munis for its own account to a customer at aggregate prices, including markups or markdowns that were not fair and reasonable. The determination that the aggregate prices were not fair or reasonable took a variety of factors into consideration, including: the best judgment of the dealers as to the fair market value of the securities at the time of the transactions and of any securities exchanged or traded in connection with the transactions; the expenses involved in carrying out the transactions; the fact that the dealers are entitled to a profit; and the total amount of the transactions.

The firm's actions, which led to percentage profits of between 3.03% and 5.89%, violated Municipal Securities Rulemaking Board Rules G-17 on fair dealing and G-30 on prices and commissions, FINRA said.

Morgan Stanley also violated the MSRB rules in six muni transactions from July 1, 2013 through Dec. 31, 2013, and 13 from Jan. 1, 2014 through March 31, 2014, according to the settlement documents. The transactions included bonds issued by the Puerto Rico Sales Tax Financing Corp., the commonwealth of Puerto Rico, and the Puerto Rico Electric Power Authority.

Additionally, FINRA found that Morgan Stanley violated Rules G-17 and G-30 through two muni transactions from Jan. 1, 2014 through March 31, 2014 when the firm purchased or sold munis as agent for a customer for an excessive commission or service charge. The agent activity violated a separate portion of Rule G-30 than the other violations. The two transactions involved bonds from Puerto Rico's Highway and Transportation Authority and the Puerto Rico Aqueduct and Sewer Authority.

This isn't the first time Morgan Stanley has been hit with FINRA fines for unfair prices. In August 2013, the firm was fined \$1 million for charging unfair prices, some of which violated G-30. In October 2011, it was fined \$1 million, of which \$650,000 was related to unfair markups and markdowns.

The Bond Buyer

By Jack Casey

February 22, 2017

[Getting Serious About Government Fraud.](#)

In April, an unprecedented criminal trial will kick off in federal court in New York, with two representatives of the town of Ramapo facing multiple counts of securities fraud.

Prosecutors have frequently indicted public officials for embezzling taxpayer money or taking bribes, but this case marks the first attempt to convict officials for fabricating a town's financial statement to raise money in the bond market — in this instance, to pay for a new minor-league-baseball stadium.

Ramapo Town Supervisor Christopher St. Lawrence and Ramapo Local Development Corp. Executive Director N. Aaron Troodler "kicked truth and transparency to the curb," alleges the indictment, by misleading investors about the town's finances.

The trial will receive intense scrutiny in government circles. Tens of thousands of local government entities issue bonds, and some employ dubious accounting techniques "that obscure their true financial position," according to a 2015 report of the Volcker Alliance, a good-government group led by former Federal Reserve Chairman Paul Volcker.

For decades, officials rarely paid a price for using such suspect fiscal moves, and some have even grown bold in the practice. But since the middle of the last decade, the Securities and Exchange Commission and the Department of Justice have started to crack down on misleading financial reporting by local governments. The potentially groundbreaking outcome of the Ramapo trial could shake up municipal finance across America.

Consecutive acts of Congress, passed in 1933 and 1934, fashioned securities law in the United States and created the Securities and Exchange Commission, which required firms that issued securities to register with the commission and to produce periodic financial reports.

Congress exempted municipalities that issued securities from the same disclosure rules, however. But the SEC did warn state and local officials that anti-fraud statutes made it illegal to mislead investors by making untrue statements in, or omitting significant facts from, financial reports.

Since then, the SEC and some elected officials and investor groups have lobbied to tighten restrictions on municipalities that issue debt, but they've made little progress.

Increased Scrutiny

In a 2007 speech, former SEC Chairman Christopher Cox warned about the inadequacy of investor protections in the increasingly complex municipal bond market. For decades, he noted, the SEC could intervene in cases only after evidence of fraud emerged.

He warned about the "lack of uniformly applied, generally accepted accounting standards" for governments, which he argued threatened "the integrity of the municipal market."

In the aftermath of rising defaults in the municipal market that began in late 2007, the SEC began scrutinizing what governments said in their financial statements and whether it matched their actual practices.

The commission first signaled its intentions in April 2008, when it charged five San Diego officials, including the former city manager and auditor, with fraud in connection with a pension scandal. Investigators accused the officials of certifying financial statements in 2002 and 2003 that they knew were false; they had failed to disclose that the city was purposely underfunding its pension system.

The accused eventually agreed to pay penalties ranging from \$5,000 to \$25,000 — the first such fines levied against officials in a muni-fraud case.

The commission broke new ground in 2010 by establishing a unit to investigate misconduct in municipal finance, with an emphasis on pension funding.

In August of that year, for the first time, it charged a state with fraud, contending that New Jersey had issued documents during bond offerings between 2001 and 2007 that gave the impression that its government-employee pension system was well-funded; in reality, the state couldn't afford to make adequate contributions to the system.

In March 2013, the commission similarly charged Illinois with fraud — again, largely due to misrepresentations about pensions. The SEC again chose not to fine the state, and it singled out no one in government as responsible for the mess. Instead, the commission blamed poor staff training and accepted Illinois' pledge to rectify the situation.

Since then, the SEC has started to more frequently file actions against municipal officials.

From 2008 through 2010, the Chicago suburb of Harvey, Ill., floated several bond offerings to raise money to help investors develop a hotel in town.

When the investors ran into trouble advancing the project, Harvey used some of the money instead to fund the city's payroll and other operating costs, which violated bond covenants. For his role in the affair in May 2016, Harvey Mayor Eric Kellogg agreed to pay a \$10,000 fine and never participate again in a bond offering.

Regulators have taken a particularly tough stand against municipalities with a pattern of wrongdoing. In September, SEC lawyers won an unprecedented trial seeking fines and penalties against Miami and its former budget director over allegations that they misled investors in 2009 bond offerings.

Afterward the SEC warned that "We will continue to hold municipalities and their officers

accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws.”

Ramapo’s Field Of Dreams

In Ramapo, federal prosecutors have turned a municipal securities case into a criminal conspiracy indictment.

The U.S. attorney for the Southern District of Manhattan, Preet Bharara, alleges that former Ramapo supervisor St. Lawrence and Troodler, who ran the town’s local development nonprofit organization, colluded to hide the town’s involvement in a \$58 million minor-league-stadium project, after voters had overwhelmingly rejected a resolution to back bonds to help build the facility. The defendants have pleaded not guilty, claiming that they relied on the advice of professionals for the various moves made.

With a Republican-led SEC under President Trump about to debut, the question is whether investors and, by extension, taxpayers should demand more reforms and greater supervision of local government accounting.

Among potential reforms that might offer better protection would be giving the SEC the right to designate what information municipal governments should include in their financial reports, and how they should present it.

It may also be time to designate an independent body to set proper accounting standards for governments with public debt — something that the Financial Accounting Standards Board does for private firms that issue securities.

A shake-up is overdue.

INVESTOR’S BUSINESS DAILY

STEVEN MALANGA

2/22/2017

[GFOA Approves New Best Practices.](#)

GFOA’s Executive Board recently approved five best practices in the areas of treasury and investment management, retirement and benefits, and municipal debt. GFOA best practices identify specific policies and procedures that contribute to improved government management. They aim to promote and facilitate positive change rather than merely to codify current accepted practice. GFOA has emphasized that these practices be proactive steps that a government should be taking. Best practices are applicable to all governments (both large and small), are approved by the GFOA executive board, and represent the official position of the organization.

New best practices include:

- [Procurement of Financial Services](#), recommends that governments review their financial services contracts every five years and use a competitive process for the procurement of financial services.
- [Investment Program for Public Funds](#), recommends that all governments establish a public funds

investment program by completing several steps: developing an investment leadership team, identifying the funds being invested and their cash flow characteristics, reviewing all applicable laws and regulations, establishing a risk profile, determining the portfolio management team, and creating an investment policy.

- [Defined Contribution Retirement Plan Design](#), clarifies and updates the design elements governments should include if they choose to provide a defined contribution (DC) plan as a primary retirement vehicle. These include analysis to determine the cost of providing the benefit and determining whether employees are eligible for a federal insurance program that provides benefits to retired people (e.g., Social Security).
- [Electronic Payments](#), recommends that governments use electronic payments for all payments.
- [Refunding Municipal Bonds](#) recommends that issuers include guidelines in their debt management policies that address preservation of future refunding flexibility. Issuers should also analyze their refunding objectives, the efficiency of any related escrow, and the unique aspects of executing the refunding transaction.

To help governments understand and implement the best practices, GFOA will be holding an [internet training seminar](#) on April 20, 2017 title New GFOA Best Practices.

Wednesday, February 15, 2017

[Overview of GFOA's New Best Practices: Webinar](#)

Training Type:

Webinar

Course Status:

New Course

Date and Time:

Apr 20 2017 - 2:00pm to 4:00pm EDT

Level:

Basic

Field of Study:

Finance

CPE Credits:

2

Member Price:

\$85.00

Non-Member Price:

\$160.00

Prerequisite:

None

Speakers:

Kenton Tsoodle - Assistant Finance Director, City of Oklahoma City, OK
Barry C. Faison - Chief Financial Officer, Virginia Retirement System

Who Will Benefit:

Financial officers interested in understanding new and revised Best Practices in public financial management.

Program Description:

This course will focus on the GFOA's Executive Board recently approved five best practices in the areas of treasury and investment management, retirement and benefits, and municipal debt. GFOA best practices identify specific policies and procedures that contribute to improved government management. They aim to promote and facilitate positive change rather than merely to codify current accepted practice. GFOA has emphasized that these practices be proactive steps that a government should be taking. Best practices are applicable to all governments (both large and small), are approved by the GFOA executive board, and represent the official position of the organization.

Seminar Objectives:

Those who successfully complete this seminar should be able to:

Apply the best practices described in each best practice including:

- Procurement of Financial Services, recommends that governments review their financial services contracts every five years and use a competitive process for the procurement of financial services.
- Investment Program for Public Funds, recommends that all governments establish a public funds investment program by completing several steps: developing an investment leadership team, identifying the funds being invested and their cash flow characteristics, reviewing all applicable laws and regulations, establishing a risk profile, determining the portfolio management team, and creating an investment policy.
- Defined Contribution Retirement Plan Design, clarifies and updates the design elements governments should include if they choose to provide a defined contribution (DC) plan as a primary retirement vehicle. These include analysis to determine the cost of providing the benefit and determining whether employees are eligible for a federal insurance program that provides benefits to retired people (e.g., Social Security).
- Electronic Payments, recommends that governments use electronic payments for all payments.
- Refunding Municipal Bonds recommends that issuers include guidelines in their debt management policies that address preservation of future refunding flexibility. Issuers should also analyze their refunding objectives, the efficiency of any related escrow, and the unique aspects of executing the refunding transaction.

Recommended Other Reading:

[GFOA Best Practices](#)

Registration Form:

[Download](#)

TAX - PENNSYLVANIA

[In re Wilson](#)

United States District Court, E.D. Pennsylvania - December 28, 2016 - B.R. - 2016 WL

7450468

Confirmation hearing was held on Chapter 13 plan proposed by taxpayer whose real property had been sold at prepetition tax foreclosure sale. The Bankruptcy Court entered order confirming plan, which provided for payment of redemption amount with interest over course of plan, and taxing authority appealed.

The District Court held that:

- City, in its capacity as taxing authority, was not “person aggrieved,” with standing to appeal bankruptcy court order confirming plan that allowed debtor-taxpayer to redeem real property by paying redemption amount in full with interest over the course of plan, and
- City was not “party in interest” with standing to file objection in bankruptcy court to confirmation of proposed plan.

City, in its capacity as taxing authority, was not “person aggrieved,” with standing to appeal bankruptcy court order confirming Chapter 13 plan that allowed debtor-taxpayer to redeem real property that had been sold at prepetition tax foreclosure sale by paying redemption amount in full with interest over the course of his debt adjustment plan, as any injury to city was purely speculative.

City, in its capacity as taxing authority, was not “party in interest” with standing to file objection in bankruptcy court to confirmation of proposed Chapter 13 plan that provided for payment of amount necessary to allow debtor to redeem real property that had been sold at prepetition tax foreclosure sale, with interest, over the course of his debt adjustment plan. Any injury to city was purely speculative and did not qualify as kind of concrete and particularized injury needed to make city a “party in interest.”

[Kroll: Mixing Oil and Water - A Credit Short Story.](#)

Kroll Bond Rating Agency (KBRA) has released a new research report entitled [“Mixing Oil and Water - A Credit Short Story.”](#) This report makes the following key points:

- The large water discharge at the Oroville Dam has highlighted a commodity that is crucial to California’s economic viability and has provided an opportunity for KBRA to shine a light on another globally important commodity—oil—that also is produced on a large scale on a daily basis.
- KBRA believes that investors need to pay close attention to the percentage change in oil prices as it results in exaggerated moves, in terms of spread performance, on the energy securities that they hold.
- There is more corporate credit quality destruction, larger spread widening, and an increase in energy company defaults when oil prices move from \$50 to \$25 because pricing at this level undermines the breakeven level of oil producers lifting costs.

[H.R. 811 Would Treat Stadium Financing as Private Activity Bonds](#)

[H.R. 811, the No Tax Subsidies for Stadiums Act](#), introduced by Rep. Steve Russell, R-Okla., would treat sports stadium financing obligations as private activity bonds if the obligations meet the

private business use test.

GFOA OKs Best Practices on Refundings, Investing, and Financial Services.

WASHINGTON - The Government Finance Officers Association's executive board has approved a series of new and revised best practices that make recommendations to issuers about refundings, investing their public funds, and procuring financial services.

The best practices also touched on issuers' use of electronic payments and designs for defined contribution retirement plans.

Kenton Tsoodle, vice chair of GFOA's debt committee, said the recommendations are the result of the committee's annual reviews to update or add best practices. The one on refundings of munis is a revision that recommends issuers establish guidelines to preserve future flexibility and set formal objectives as well as monitor refunding opportunities. It also urges issuers that do not have a dedicated debt management staff or expertise in analyzing refunding opportunities to engage a municipal advisor.

Tsoodle said the revisions center on urging issuers to consider more than the net present value savings they want to see from refundings. It suggests issuers also consider negative arbitrage efficiency, which takes into account an issuer having to pay back bonds up to the call date after a refunding.

The recommended practice also tells issuers to consider how much interest rates would have to rise by the call date to produce savings matching those that could be realized with an advance refunding as well as how much value there is in a call feature.

Tsoodle said the debt committee felt they should expand on this guidance even though it was previously discussed.

"One of the biggest things was trying to emphasize that net present value savings is not the only metric that issuers should be looking at," Tsoodle said. "The typical 35% savings that a lot of people look at is absolutely something issuers should consider but the best practice is also pointing out that there are some other metrics to look at as well."

He added that the committee recognizes these are "very complex topics."

"We were trying to just mention them in a brief way so that issuers, especially new [issuers] or issuers that are unfamiliar with these topics, could at least get mildly educated enough ... to ask a municipal advisor about them," Tsoodle said.

The best practice also encourages issuers to identify and monitor potential refunding opportunities through a combination of spreadsheet-based debt tracking and analysis of current interest rates. Issuers should additionally analyze their decisions about investing proceeds of advanced refundings and be sure to explain the purpose of a refunding if it is not to produce debt service savings, GFOA said.

When it comes time to move forward with a refunding, GFOA recommends an issuer meet with its bond counsel and MA and, when hiring an outside bond financing team, use a competitive process.

The committee's new best practice on creating an investment program for public funds notes that governments have a fiduciary responsibility in managing their funds. An investment program for public funds will help issuers meet that duty, GFOA said. Issuers should establish such a program by: developing an investment leadership team; identifying the funds being invested and their cash flow characteristics; reviewing all applicable laws and regulations; establishing a risk profile; determining the portfolio management team; and creating an investment policy. The best practice on financial services contracts urges issuers to review them every five years and use a competitive hiring process that includes criteria like quality of servicing staff and regulatory standing.

Governments should also use electronic payments for all payments, in part to prevent fraud.

Issuers should consider a list of design elements GFOA included in a separate best practice if they choose to provide a defined benefit contribution plan, GFOA said.

The Bond Buyer

By Jack Casey

February 16, 2017

[Bipartisan Bill Reintroduced to Ease Tax Curbs on Small Issuer IDBs.](#)

WASHINGTON - House members have reintroduced a bill that would modernize and ease tax law restrictions for small bond issues used to finance manufacturing facilities.

The Modernizing American Manufacturing Bonds Act (H.R. 1115) was introduced on Friday by Reps. Randy Hultgren, R-Ill., Richard Neal, D-Mass., and Jim Renacci, R-Ohio. Neal is the top Democrat on the House Ways and Means Committee and Renacci is also a committee member.

Qualified small issue manufacturing bonds, also called small issue industrial development bonds (IDBs), are private activity bonds used to finance manufacturing facilities and related projects for small and mid -manufacturers. The federal law governing these bonds has not been updated in nearly 30 years.

The bill would expand the number of projects that are eligible for IDB financing. The three congressmen introduced similar legislation in 2015 but it failed to move forward. Hultgren and Neal offered a bill in 2014 as well.

"Illinois' manufacturers are ready for the challenge of increasing engagement in our global and technology-based economy," Hultgren said in a release. "Unfortunately, decades-old policies governing a key tool that manufacturers used to expand operations no longer address today's challenges, needlessly impeding growth and job creation in the Illinois manufacturing sector.

MAMBA is a bipartisan bill that sensibly reforms these outdated rules without raising taxes."

"It's vitally important that Congress does all it can to support the American manufacturing industry," Neal said. MAMBA "is a commonsense, bipartisan proposal that will ensure the struggling manufacturers in New England and across the country have access to the resources and capital they need to invest in their businesses and hire more workers in their local communities."

The bill would expand the definition of manufacturing facilities to include those that produce intangible property, such as software and patents, as well as tangible property. It would also allow IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials or laboratories that test raw materials. These provisions were in effect in 2009 and 2010 under the American Recovery and Reinvestment Act but expired.

The bill would increase the maximum size of an IDB issue to \$30 million from \$10 million. It also would increase IDBs' six year capital expenditure limit to \$40 million from \$20 million.

Currently a manufacturer can only issue IDBs for a project if their capital expenditures, including the bonds proceeds, would not be more than \$20 million during six years - three years before the bonds are issued and three years after that.

The bill has the support of the Council of Development Finance Agencies. "We're thrilled that MAMBA has been reintroduced. It's a vital piece of legislation that will help lower the barriers for small manufacturers to access affordable capital," said CDFA president and CEO Toby Rittner.

"Representatives Hultgren, Neal, and Renacci have been great champions of manufacturing bonds and the development finance industry as a whole, and I'm thankful for their commitment to American manufacturing."

The bill, which also has the support of the Illinois Manufacturers' Association, is pending before the House Ways and Means Committee.

The Bond Buyer

By Lynn Hume

February 21, 2017

[TIF Jurisdiction, Future Projects Among County Officials' Annexation Concerns.](#)

Officials say existing Monroe County, Ind., tax increment financing districts will remain under the jurisdiction of the Monroe County Redevelopment Commission even if the city annexes areas within them.

County attorney Jeff Cockerill said the areas proposed for annexation touch all of the county's tax increment financing more commonly known as TIF districts. If there is existing debt in a TIF district, it would be treated as if annexation did not occur. That is, the county would still accumulate TIF revenue that could be used to make existing bond payments within the district as well as accumulate funds to use toward projects such as building roads.

However, by state law, if a road is annexed into the city, then it becomes a city road, Cockerill said.

If annexation is approved, the city would also collect revenue due to increased assessed value.

In addition, the city could see increased revenue from other sources as well, such as an increase in road mileage, equating to more motor vehicle highway revenue.

The county has existing debts for its Westside and Bloomington Township/Ind. 46 TIF districts.

For the Westside TIF district, where the commission has concentrated a number of its recent infrastructure projects, its last bond expires in 2040. At this time, there are no projects scheduled for the Bloomington Township/Ind. 46 district.

The Fullerton Pike TIF district is the only area that does not have any current debt. Within it, the county is preparing to begin construction on phase I of the Fullerton Pike project, starting just west of where Gordon Pike and Rhorer Road intersect with South Walnut Street and heading east to just beyond where the road intersects with Walnut Street Pike. Cockerill said the county is still investigating what would happen if the commission decides to issue a new bond for that area.

Barry Lessow, a redevelopment commission member, said knowing this, questions that remain include whether the commission wants to continue making investments in areas that they know would later fall into the city's jurisdiction and whether to invest in areas within the TIF districts that are outside of the areas proposed for annexation.

Jim Shelton, a fellow redevelopment commission member, said such questions are why collaboration with the city is important.

"I don't see we do anything necessarily different except we extend an invitation to the city to participate," Shelton said. "As a community, we can't get hung up whether it is in the city or county or not."

Public Works Director Lisa Ridge said a number of the road projects the redevelopment commission is looking to do within the Westside TIF district were suggested to help all area residents, regardless of jurisdiction. She said such projects for instance, extending Profile Parkway are meant to address connectivity issues and relieve traffic congestion in an area changing due to nearby construction of Interstate 69.

But Lessow agrees conversation with the city is essential to ensure clarity about any actions that might influence the districts later.

Redevelopment commission member Richard Martin said the county board knows the area much better than city officials do, which was very evident from the questions city officials had about the areas proposed for annexation.

"They just don't know enough at this point, and we need to educate them," Martin said.

The Bond Buyer

By Ernest Rollins

February 16, 2017

[CDFA Pennsylvania & Michigan Financing Roundtable Webinars.](#)

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[PwC State Financial Position Index and Competitiveness Posture Report.](#)

Overview:

PwC released the State Financial Position Index (SFPI) and competitiveness posture report in 2015 that shed light on the actual and relative financial position and financial posture of states so that stakeholders will have a better understanding of where their state stands as compared to others. We have updated the rankings of the relative financial condition and competitive posture of the 50 states in the United States.

The rankings are based on financial information contained in the audited financial statements for each state for Fiscal 2015 as summarized by the Institute for Truth in Accounting, and a composite ranking of each state's competitive posture in 2016 based on independent assessments by CEO Magazine, CNBC and Forbes. The report also includes disclosure of whether each state had a net positive or negative migration for the period July 1, 2015-June 30, 2016 according to the US Census Bureau.

The overall rankings for the states did not change dramatically from the prior year. Most of the states with better relative financial positions also rank highly in competitiveness and are net inbound states. Conversely, most of the states with a poor relative financial positions rank low in competitiveness and are net outbound states. As a result, the higher ranked states generally are better positioned for the future while the lower ranked states need to engage in a range of

transformational reforms in order to help create a better future. The single largest challenge for most of the lower ranked states is unfunded pension and retiree health care obligations.

[Access the report.](#)

[Bloomberg Brief Weekly Video - 02/23](#)

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week's municipal market news.

[Watch video.](#)

Bloomberg

February 23, 2017

[A Billion-Dollar Showdown in Kansas.](#)

Kansas Gov. Sam Brownback kept his tax reform package — and its \$1 billion budget shortfall — in tact this week by preserving a tax loophole that lets scores of business owners pay no income tax.

At issue is a tax exemption for what are called pass-through businesses. These businesses are not incorporated, and therefore are not subject to the corporate income tax. Instead, income is reported on the business owners' personal tax returns. Pass-through businesses are typically small but also include some major companies like Chrysler and Kaiser Permanente.

Brownback's 2012 tax reform packages exempted the state's more than 330,000 pass-through businesses from any income tax. Experts like the Tax Foundation warned at the time the package would lead to deficits and encourage tax dodging. Still, lawmakers five years ago not only signed off on the idea, they stuck back in some of the credits and deductions that Brownback would have eliminated to help pay for the cuts.

The Takeaway: The Kansas Legislature tried but failed this week after a Brownback veto to eliminate the pass-through exemption in an effort to raise revenues. The events indicate a far different legislature from the one in 2013 that, facing a \$300 million revenue gap, could only stomach cutting spending by \$150 million.

Years of dealing with shortfalls seem to have worn legislators down. "Everything's going to be chaotic for a while," House Minority Leader Jim Ward told the Kansas City Star. "At the end of the day, you're going to see a plan substantially similar to what was rejected by an obstructionist governor and his followers in the Senate."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 24, 2017

Pension Funds Mess With Texas.

The country's largest public pension systems and investors are pressuring Texas officials not to approve a so-called bathroom bill introduced in January. The legislation targets transgender individuals by requiring them to use the public restroom that aligns with the gender on their birth certificate.

Pointing to North Carolina, which lost hundreds of millions in business from canceled sporting events, concerts and conventions after its bathroom bill became law last year, the group warned in a letter that Texas could meet the same fate. Already, the National Football League and the NCAA have said that the siting of future events in Texas would be jeopardized if lawmakers move forward.

The more than 30 signatories on the letter include comptrollers, controllers and treasurers of California, Connecticut, New York, Oregon, Rhode Island and Vermont, as well as major firms such as BlackRock and T. Rowe Price. Collectively, the group represents more than \$11 trillion in assets.

The Takeaway: Threats like these aren't new. Called social divesting, stewards of major pensions have increasingly urged corporate boards in recent years to make policy changes, such as pressuring energy companies to move away from fossil fuels.

But wading into another state's politics is unusual. And we're talking significant amounts of money. California's public employees fund (CalPERS) and its teachers fund (CalSTRS), the two largest pension funds in the country, have billions invested in Texas holdings. Of CalPERS' nearly \$303 billion in assets, just under \$15 billion (about 5 percent) is invested in Texas holdings, according to data from the Controller Betty T. Yee's office. CalSTRS has roughly \$5.6 billion of its nearly \$200 billion portfolio, or 3.5 percent, in Texas holdings.

If the other investors in the letter have similar shares related to Texas and ultimately decide to divest, the total cost to Texas could number in the hundreds of billions.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 24, 2017

BlackRock's Carney Says Tax Reform Won't Hurt Munis.

Sean Carney, head of municipal strategy at BlackRock, and Bob Michele, chief investment officer at JPMorgan Asset Management, discuss how U.S. tax reform may impact the tax advantage of municipal bonds. They speak on "Bloomberg Daybreak: Americas."

[Watch video.](#)

Bloomberg

February 23, 2017

Bank of America to Trump: Taxing Munis Won't Raise Very Much.

- Bank reckons the tax break costs less than official estimate
- Mayors previously said Trump backs keeping munis tax exempt

If President Donald Trump and Congressional Republicans are looking for revenue to offset planned tax cuts, Bank of America Merrill Lynch analysts say taxing investors' interest on state and local debt wouldn't provide as much as it seems.

The tax break for the \$3.8 trillion municipal market — which holds down the expense of financing state and local projects — cost the federal government about \$39 billion in 2016, according to the U.S. Treasury Department's figures.

But Bank of America analysts led by Phil Fischer estimate that the revenue raised by repealing it would be much lower. Because taxing the interest would likely cause individual investors to move money elsewhere, many securities would wind up with buyers who don't pay income tax, such as overseas firms or 401(K) plans. Once that's factored in, taxing municipal bonds may only yield about \$8.9 billion a year, the analysts reckon.

Moreover, the shift would foist about \$7.6 billion of extra costs on state and local governments, assuming yields rise about 0.2 percentage points. That would push up the expense of financing the types of infrastructure projects Trump has vowed to promote.

The bonds have been targeted by previous proposals that stalled in Congress. Former President Barack Obama sought to cap the benefits the wealthiest earners can receive from municipal debt, while a deficit-cutting panel previously suggested eliminating the exemption outright. Lobbyists for state and local-government groups have fiercely opposed any change to the tax treatment of their bonds, given the cost it may impose.

"Hopefully, this helps clarify the point that the attack on the tax-exempt status of municipal bonds from time to time appears to be based more on political calculus than economic analysis," the analysts wrote. "This is becoming more widely recognized and we do not expect that the tax exemption would be targeted in any tax-reform legislation."

The president may agree: A delegation of mayors, after meeting with Trump in December, said he expressed support for keeping the tax break intact.

Bloomberg Markets

by Jordyn Holman

February 27, 2017, 11:30 AM PST February 27, 2017, 1:46 PM PST

Fitch: Port Authority Capital Program; Large in Size and Risk.

Fitch Ratings-New York-23 February 2017: The Port Authority of New York and New Jersey's proposed 2017 - 2026 capital plan calls for \$32.2 billion in total spending to meet its diverse transportation infrastructure needs. The overall size of the program, which is \$4.6 billion larger than the previously adopted 10-year capital program, coupled with the inherent challenge of focusing on core assets and responsibilities while controlling the overall budget of high profile projects within a

limited revenue envelope, will be one of the primary risks facing the agency for years to come, according to Fitch Ratings.

As compared to earlier capital programs, which had significant spending associated with the World Trade Center real estate complex, the new capital program focuses on transportation infrastructure renewal, expansion, and connection projects, as well as partnership (public and private) initiatives. Leading projects include: the Port Authority Bus Terminal Replacement (\$3.5 billion), JFK and Laguardia Airport infrastructure and access improvements (\$2.5 billion), Newark Airport Terminal A redevelopment (\$2.34 billion), George Washington (GW) Bridge Restoration (\$1.44 billion) and Lincoln Tunnel Helix Replacement (\$1.1 billion). Separate partnership programs include: Gateway Tunnel (\$2.7 billion) as well as long-term public-private partnership agreements at Laguardia airport's existing Central and Delta terminal buildings.

The underlying funding mix for the capital program at this budget level have relatively equal sourcing from debt borrowings and pay-go capital, supplemented by other revenue sources and grants. Future consolidated bonds expected to be issued total approximately \$11.3 billion. However, the plan of finance could be challenged by new unplanned developments related to major maintenance needs and increased borrowings, both of which could impair the agency's ability to preserve financial metrics such as coverage and leverage at historical levels.

Some mitigation to cost overrun risks is evident by the contingencies and reserve set-asides within the overall plan as well as ongoing project reassessments during the program life. Still, any material underperformance in net revenue generation in future years could also contribute to more debt in the funding mix if capital spending cannot be reduced. Similarly, given the age of many core agency facilities, the level of deferred maintenance could lead to variability in the plan, especially if asset deterioration accelerates given either the positive user activity trends or other unplanned events.

Several of the projects will likely cost far more than the spending anticipated during the term of this capital program. For example, the bus terminal replacement program in Manhattan assumes \$3.5 billion of costs through 2026; however, the total project cost is an estimate of up to \$10 billion. Without a site identified and many planning and environmental approval stages needed for this project, the true cost may be greater. Similar considerations will likely manifest for all of the major regional redevelopment projects. The Gateway Tunnel Project contribution is already a fixed obligation.

Ongoing pressures to Port Authority finances is an area of concern as additional borrowings are assumed. When comparing the 2014 - 2023 capital program to the recently approved program extending through 2026, the expected level of new debt is largely the same at slightly over \$11 billion over the forward-looking 10-year period. Still, annual debt service obligations for the consolidated bonds alone are expected to rise from \$1.1 billion in 2016 to nearly \$1.4 billion in 2021; a 25% overall increase. Operating revenues are projected to rise by a smaller rate of growth; 3.3% annually through 2021. Coverage metrics are likely to remain unchanged, averaging 2.4x, but as the true cost of some of projects become clearer, more revenues will be needed or some coverage dilution will likely occur.

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[Fitch: Indiana Finance Authority's MOU a Positive Development for I-69.](#)

Fitch Ratings-New York-23 February 2017: [Fitch Ratings views positively the Memorandum of Understanding (MOU) signed on Feb. 13, 2017 by the Indiana Finance Authority (IFA) and I-69 Development Partners (I-69 DP), as it appears to address key issues and unresolved disputes in conjunction with construction delays on the I-69 development project. Fitch will assess the implications for the transaction upon receiving further details from the Technical Advisor (TA). Fitch anticipates taking the appropriate rating action on the IFA private activity bonds (PABs, 'B'/Rating Watch Negative) subsequently.

The MOU extends the project's longstop date (i.e., the date when the project defaults if not completed) and requires additional payment contributions by I-69 DP, the IFA and the construction contractor, Isolux Corsan LLC (Isolux). The MOU revised the substantial completion date of the project to May 31, 2018, with various sections to be completed no later than August 2017 and March 2018. Fitch notes that the longstop date under the concession agreement will be revised to Nov. 30, 2018 from its original date of Oct. 31, 2017, which provides additional cushion for the concessionaire to complete the project. The term of the concession will remain unchanged and in effect until the earliest of: 34 years after the baseline substantial completion date, 34 years after the substantial completion date or termination of the PPA.

The MOU requires I-69 DP and Isolux to contribute \$23.3 million and \$52.0 million to the project, respectively. Of Isolux's \$52.0 million additional payment, \$23.0 million has already been contributed through funds drawn from its letter of credit (LC). Furthermore, the IFA will make an additional \$28.2 million milestone payment to I-69 DP during the remaining construction period and availability payments will be delayed to coincide with the new schedule, commencing in June 2018. A

partial milestone payment will be made by the IFA with the payment equal to the percentage of work completed under milestone 4 at the time of closing. All additional contributions will be made at the time of the closing of the definitive documents, which will reflect the terms and conditions set forth in the MOU. At closing, existing relief claims will be extinguished with current disputes no longer active. Specifically, I-69 DP will forgo any relief events that were previously claimed. Additionally, after the revised project schedule has been agreed upon by all parties, an updated cash flow projection will be made and will reflect the plan for paying for the D&C work and the debt service on the outstanding bonds.

Prior to taking any rating action, Fitch will assess the impact of the MOU on the project and the PABs rating after the TA opines on the reasonableness of I-69 DP and Isolux to achieve the revised completion dates as well as the sufficiency of the additional funds to cover the revised cost to complete. In addition, Fitch will review the updated financial model, the remaining scope, any deviations from the original concession agreement, the achievability of the revised schedule, the remaining critical path items, the flexibility to absorb unexpected future delays, and any potential impact on the operating period. Fitch expects additional information from the TA in the next few weeks.

Fitch previously downgraded the PABs on Oct. 26, 2016 from 'BB'/Rating Watch Negative to 'B'/Rating Watch Negative due to continued construction delays and unresolved disputes between the construction contractor and the IFA, which resulted in a limited margin remaining to complete the project by the prior long-stop date. The disputes culminated in six Notices of Default issued by I-69 DP to the construction contractor and a Notice of Non-Performance issued by the IFA to I-69 DP. In particular, Fitch noted that the fifth default, issued on Sept. 26, 2016, pertained to the failure of the contractor to replenish the LC, which was drawn upon two weeks prior (Sept. 15, 2016), for a total of \$23 million. The subcontractors are now fully paid; however, the construction contractor has not replenished the LC as required.

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[Supreme Court Midterm Review for Local Governments 2017.](#)

The Supreme Court's 2016-2017 Docket is Now Set - And a Number of Cases Will Directly Impact Local Governments.

This article covers cases of interest to local governments which the Court accepted after September 15, 2016 and agreed to hear this term. ([Here](#) is a summary of cases of interest to local governments which the Court agreed to hear before September 15, 2016.) The Court is still down a Justice, but has accepted as many cases as usual (about 75) on its 2016-2017 docket. In theory, all the cases discussed below will be decided by June 30, 2017.

The Supreme Court's decision from this term most likely to receive significant media attention involves a transgender student who wants to use the bathroom consistent with his gender identity. However, [Gloucester County School Board v. G.G.](#) will not directly affect local governments.

Provocation

In [Los Angeles County v. Mendez](#),* the Supreme Court must decide whether to accept or reject the Ninth Circuit's "provocation" rule. Per this rule, "where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation, he may be held liable for his otherwise defensive use of deadly force."

It is undisputed that police officers used reasonable force when they shot Angel Mendez. As officers entered, unannounced, the shack where Mendez was living they saw a silhouette of Mendez pointing what looked like a rifle at them. Yet the Ninth Circuit awarded him and his wife damages because the officers didn't have a warrant to search the shack, thereby "provoking" Mendez.

The Mendezes also argue that, putting the provocation theory aside, the officers are liable in this case because their unconstitutional entry "proximately caused" them to shoot Mendez. Many Americans own guns, so the Court argued it is reasonably foreseeable that, if officers barge into a shack unannounced, the person in the shack may be holding a gun.

Qualified Immunity

United States Border Patrol Agent Jesus Mesa, Jr., shot and killed Sergio Adrian Hernandez Guereca, a fifteen-year-old Mexican national, who was standing on the Mexico side of the U.S.-Mexico border. At the time of the shooting, Agent Mesa didn't know that Hernandez was a Mexican citizen.

One question in [Mesa v. Hernandez](#) is whether qualified immunity may be granted or denied based on facts unknown to the officer at the time of the incident, such as the victim's legal status. The Fifth Circuit granted Agent Mesa qualified immunity based on the fact that Hernandez was a Mexican citizen even though Agent Mesa didn't know that at the time of the shooting.

Given the rapid pace of police work, it is not unusual for officers to learn a variety of information after they have used force, which supports their qualified immunity claim (i.e. the person they shot had a gun, had threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be favorable to officers.

But the question in this case is whether qualified immunity may be granted or denied based on facts discovered later. In some cases, officers may learn after-the-fact information that undermines their claim for qualified immunity (i.e. the person they shot stated he had a weapon but did not, had been

mistakenly perceived to have threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be unfavorable to officers.

Free Speech

During the fall, the Supreme Court accepted three First Amendment free speech cases. This is not good news for local governments, as the Supreme Court routinely and sometimes unanimously votes against states and local governments in First Amendment free speech cases.

[*Packingham v. North Carolina*](#)* is probably the First Amendment case of most interest to local governments as the Supreme Court is likely to discuss whether the statute at issue in the case is content-based or content-neutral.

The issue in this case is whether a North Carolina law prohibiting registered sex offenders from accessing commercial social networking websites, where the registered sex offender knows minors can create or maintain a profile, violates the First Amendment.

Lester Packingham was charged with violating the North Carolina statute because he accessed Facebook. In the posting that got him in trouble, Packingham thanked God for the dismissal of a ticket.

If a statute limits speech based on content, it is subject to strict (nearly always fatal) scrutiny. In *Reed v. Town of Gilbert, Arizona* (2015), the Supreme Court held that the definition of content-based is very broad.

The North Carolina Supreme Court concluded that the statute is a “content-neutral” regulation because it “imposed a ban on accessing certain defined commercial social networking websites without regard to any content or message conveyed on those sites.”

Waters of the U.S.

The Supreme Court has agreed to decide whether federal courts of appeals versus federal district courts have the authority to rule whether the “Waters of the United States” (WOTUS) regulations are lawful in [*National Association of Manufacturers v. Department of Defense*](#).

Per the Clean Water Act, a number of decisions by the Environmental Protection Agency (EPA) Administrator must be heard directly in federal courts of appeals, including agency actions “in issuing or denying any permit.”

A definitional regulation like the WOTUS regulation does not involve the issuing or denying of a permit. Nevertheless, the Sixth Circuit Court of Appeals concluded that it has jurisdiction to decide whether the WOTUS regulations are lawful.

Judge McKeague, writing for the court, relied on a 2009 Sixth Circuit decision *National Cotton Council v. EPA*, holding that this provision encompasses “not only... actions issuing or denying particular permits, but also... regulations governing the issuance of permits.” The definition of WOTUS impacts permitting requirements.

...and more

The work of the Supreme Court never ends. The Court has already accepted one case for next term involving a local government. In [*District of Columbia v. Wesby*](#), the Supreme Court will decide whether, when the owner of a vacant house informs police he has not authorized entry, an officer

assessing probable cause to arrest those inside for trespassing may discredit the suspects' claims of an innocent mental state.

*Indicates a case where the SLLC has filed or will file an amicus brief.

The National League of Cities

by Lisa Soronen

Executive Director, State & Local Legal Center

About the author: Lisa Soronen is the Executive Director of the State and Local Legal Center (SLLC), which files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments. She is a regular contributor to CitiesSpeak.

[SIFMA Submits Comment to the MSRB on Draft Amendments to Modernize MSRB Rule G-26 on ACATS.](#)

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on draft amendments to MSRB Rule G-26, on customer account transfers. SIFMA and its members support the stated purpose of the draft amendments, but do not agree that the draft amendments are the optimal way to achieve that goal.

[Read the comment letter.](#)

February 17, 2017

[CUSIP: Fiduciary Rule Drives Surge in New Equity Instrument Creation.](#)

“At least for the immediate future, all signs appear to be pointing to a slowdown in corporate and municipal debt issuance,” said Richard Peterson, Senior Director, S&P Global Market Intelligence. “While that sentiment is reflected in current investor behaviour, it will be instructive to watch the CUSIP issuance dataset for any signs of a potential change in the coming weeks and months.”

[Read the press release.](#)

[The Countdown to August 18, 2017 - Something You Should Know.](#)

The IRS has over the past three years issued significant guidance on the safe harbors from private business use for management contracts, and we've been dutifully reporting on this guidance ([here](#), [here](#), [here](#), and [here](#)). This guidance has generally been well received, but some issues remain. In addition to questions raised by Bob Eidnier in his post a few weeks ago (link above), the recent spate of IRS guidance raises a concern that is the subject of this post. By correlating the permitted length of management contracts with the economic lives of the managed property, some management contracts that are materially modified after August 18, 2017 might not fit within the New Safe

Harbors (defined below) even if the term of the modified contract is unchanged from the prior iteration!! (Tax lawyers use exclamation points to try and keep people awake).

[Continue reading.](#)

The Public Finance Tax Blog

By Joel Swearingen on February 25, 2017

Squire Patton Boggs

[MAMBA Introduced in House as HR 1115.](#)

[Read the CDFA press release.](#)

[How Cities Should Take Care of Their Housing Problems.](#)

While President Trump talks repeatedly about fixing America's inner cities, it's a good bet that in the coming years, New York and other large metropolitan areas will need to be more self-reliant in solving pressing problems, especially low-income housing.

After all, many big cities face a triple threat: Mr. Trump wants to cut funding to sanctuary cities; his nominee to run the Department of Housing and Urban Development, Ben Carson, is unlikely to be a strong and creative leader; and the Republican Congress is eager to chip away at federal housing programs. In response, cities need local financing initiatives that make up for the coming reduction in federal assistance.

Fortunately, there's an already tested alternative: an annual luxury housing tax, levied on new high-end condos and rentals, which would feed a self-sustaining fund dedicated to develop truly affordable units.

While no city has such a plan in place, this strategy has been tried right here in New York. The city has already channeled approximately \$1 billion from luxury development for affordable housing into communities like Harlem and the South Bronx.

The history of this financing dates back three decades, when the Battery Park City development in Lower Manhattan was in its nascent stages. Planners intended to include low-income housing with the offices and luxury apartments and condos.

But when Sandy Frucher, the head of the Battery Park City Authority, asked leaders of poor and minority communities if they would prefer a few apartments in this new neighborhood or money to fix up far more housing in their own, he says they chose the latter.

As part of this strategy, the authority dropped most of its affordable housing plans, which helped jump-start high-end development in this once isolated part of the city. It then took a slice of the "excess profits" the authority generated from expanding ground rents and real estate taxes it collected from new buildings and directed them to finance low-income projects in distressed areas.

These recurrent flows backed a \$150 million bond, issued in 1987. Use of debt expedited renovation. Improved units, which were designated rent stabilized, remain affordable to this day.

This highly rated, triple-tax-free issuance enabled reasonable interest costs. The same thing could happen today with similarly structured bonds, likely paying less than 1 percent.

Gov. Mario M. Cuomo, who approved the deal, felt it gave Battery Park City a soul. Today, a similar plan would also give the city a hand up in dealing with Washington.

Levying a luxury-housing tax citywide is straightforward; the trick is justly defining what price makes a rental or condo “luxury,” then determining an appropriate annual tax rate.

Targeting properties for improvement is another challenge. Back when the Battery Park City program started, the city regularly took ownership of rundown buildings for failure to pay property taxes, then used the program’s money to fix them up.

Abandoned buildings have largely disappeared in a booming real estate market, but there’s still tax-delinquent and bank-foreclosed inventory available on the cheap. Slum landlords in litigation could be forced to turn over their properties. These properties could be handed to nonprofit groups that would undertake renovations, ensuring adequate maintenance and responsible tenancy.

According to Carol Lamberg, who was executive director of one such organization, the Settlement Housing Fund, from 1983 to 2014, there are dozens of well-run nonprofit housing and community development operations in the city that could manage the entire process, from site identification and redevelopment to tenant selection and property management.

The money could finance new construction over municipal parking lots and abandoned industrial areas and along coastlines in the Bronx, in Brooklyn and on Staten Island.

But this luxury housing tax diverges from Mayor Bill de Blasio’s “inclusive” strategy of mixing struggling tenants in with affluent occupants, for which developers get a tax credit. But that approach has problems: Low-income residents often can’t afford daily living expenses in affluent neighborhoods; it drains municipal finances; and a substantial number of affordable units revert to market price within 30 years.

An affordable-housing tax, in contrast, would exploit development forces without dampening them or draining public budgets and borrowing capacity. It would fund improvement where it’s not happening and aid households the market has left behind.

Providing safe, clean homes for those who can’t afford them is key to helping needy citizens become more productive and independent citizens — a concept lost on President Trump.

This approach is applicable countrywide, where there are strong luxury housing markets and low-income working residents who can’t afford permanent shelter.

We need to start responding to President Trump’s new reality. One way to do this is to restart this proven form of local revenue sharing.

THE NEW YORK TIMES

By ERIC UHLFELDER

FEB. 21, 2017

Detroit Mayor Proposes Trust Fund to Cover Future Pension Payments.

(Reuters) - Detroit Mayor Mike Duggan on Thursday proposed setting aside money in a special trust fund to cover higher-than-expected pension payments expected to begin in fiscal 2024.

Under the plan, fund deposits and interest earnings would total \$377 million by the end of fiscal 2023, according to John Naglick, the city's finance director.

Detroit, which exited the biggest-ever municipal bankruptcy in December 2014, has already set aside \$70 million for the higher pension payments.

The court-approved bankruptcy exit plan had projected city pension payments to spike to \$111 million beginning in fiscal 2024 after years of minimal or no payments by the city. But a subsequent actuarial analysis pegged the payment spike at \$200 million or more.

In his annual budget presentation to the city council on Thursday, Duggan also proposed a \$1.074 billion general fund budget for the fiscal year beginning on July 1 that is slightly smaller than the current spending plan.

The city's credit rating remains deeply in the junk category in the wake of the bankruptcy, which allowed Detroit to shed about \$7 billion of its \$18 billion of debt and obligations.

Naglick said Detroit is eyeing the sale of about \$100 million of bonds backed by state of Michigan transportation funds due the city. The bonds would be issued through the Michigan Finance Authority and would have investment grade ratings, he said.

By REUTERS

FEB. 23, 2017, 6:39 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

U.S. Governors Prepare Wish Lists for Trump Infrastructure Promise.

WASHINGTON — President Donald Trump's campaign promise for a \$1 trillion infrastructure program will be in focus when U.S. governors gather on Friday in Washington, D.C., with some states making wish lists of projects ranging from a bullet train to statewide broadband internet service.

The winter meeting of the National Governors Association running through Monday is expected to showcase rare bipartisan agreement on the need for more federal help in upgrading roads, bridges and airports, said Scott Pattison, the group's executive director.

"There's just this pent-up demand to deal with, whether it's a crack in a dam, a bridge, whatever it is," Pattison said in a telephone interview.

Although there is little movement on Capitol Hill to make Trump's infrastructure vow a reality, governors have sent the White House a list of 428 projects they say are ready to go with some extra federal spending.

The National Governors Association has not released the list but checks with some states hinted at the projects.

Democratic California Governor Jerry Brown has asked for \$120 billion, saying that since the state made up 12 percent of the U.S. economy it deserves 12 percent of Trump's \$1 trillion package.

"We're not talking about a few million, we're talking about tens of billions," Brown said of the infrastructure proposal this month as he sought federal aid to deal with a leaking dam and flooding.

Among California's big-ticket items is construction of a high-speed rail system linking San Francisco and Los Angeles.

Colorado and Minnesota want help building statewide broadband systems, with Minnesota Governor Mark Dayton, a Democrat, saying his state needs \$150 million for its broadband grid.

Republican Kansas Governor Sam Brownback's top priority is \$122 million for interstate highway repairs. South Carolina and Virginia want federal aid to deepen ports, among other projects.

In a letter to Trump, Republican Governor Henry McMaster said South Carolina also needed help replacing roads and bridges. "An appropriation of \$5 billion from your infrastructure plan will help us bridge this economic gap," he wrote.

Pattison said governors wanted a "toolbox" of financing options, including municipal bonds, cash, public-private partnerships and federal matching funds.

The governors are scheduled to meet with Trump on Sunday evening and again on Monday morning.

One of the speakers at the governors' conference, Leo Hindery, a managing partner at New York's InterMedia Partners, will tell state executives that creating a federal infrastructure bank is the only way to fund the hundreds of billions of dollars needed for public works.

The United States has long been criticized for its lagging public works spending. The American Society of Civil Engineers has graded U.S. infrastructure at D+ and estimated the country needs to invest \$3.6 trillion by 2020.

During his campaign, Trump said he wanted action on infrastructure in his first 100 days as president. That now seems unlikely. He also talked about creating a tax credit to encourage private sector investment.

Trump's plans to create an infrastructure council have yet to get started. Republican lawmakers have said they expect to get White House infrastructure proposals but have given no details or timing.

By REUTERS

FEB. 24, 2017, 6:12 A.M. E.S.T.

(Editing by Kevin Drawbaugh and James Dalglish)

- [MSRB Proposes New Ad Rule for MAs, Revised One for Dealers.](#)
- [MSRB Requests Comment on Updating Dealer Advertising Requirements and Applying Similar Standards to Municipal Advisors: Webinar](#)
- [Tax Guidance to Slow Under Trump. Even More Emphasis on Letter Rulings in Bond Transactions?](#)
- [Issuers Giving Themselves More Time to Disclose Financials.](#)
- Interesting items regarding common carrier eminent domain power in Texas [here](#) and [here](#).
- [Town of Sterlington v. East Ouachita Recreation District No. 1](#) - Court of Appeal denies action brought against parish recreational district challenging proposed expenditure of ad valorem tax proceeds to secure limited tax bonds for constructing and improving sports facilities, holding that district acted within the purpose of the tax dedication by expending tax proceeds for sports tourism.
- And finally, Your Fifth Amendment Guide to Self-Incrimination is brought to us this week by [Colorado County v. Staff](#), in which Officer Marc Staff met with the DA in order to encourage the prosecution of a motorist he had previously arrested. Officer Staff came bearing gifts: the dash-cam footage of the arrest. After viewing the footage, the gobsmacked DA felt obligated to notify Sheriff R.H. "Curly" Wied that Staff's behavior toward the motorist was "demeaning" and involved "screaming," "taunting," and "apparent rage" that "escalated" the incident and "resulted in an arrest for an accident in which ... no damage to any vehicle" had occurred. Can there possibly be anything more humiliating than being fired by a man called, "Curly?" Let's hope not.

ENVIRONMENTAL - ALASKA

[Central Recycling Services, Inc. v. Municipality of Anchorage](#)

Supreme Court of Alaska - February 10, 2017 - P.3d - 2017 WL 542467

Recycling company filed suit against municipality, seeking declaratory judgment that municipal ordinance providing for reduction in fees for disposal of solid waste residue at municipal landfill for businesses engaged in recycling of paper, plastic, glass, steel, aluminum, copper, and brass, which fees were refunded to business in form of quarterly rebate, applied to solid waste residue from recycling of concrete, asphalt, tires, and lumber.

The Superior Court entered summary judgment for municipality, and company appealed.

The Supreme Court of Alaska held that rebate program did not apply to company's solid waste residue from recycling of concrete, asphalt, tires, and lumber.

Municipal ordinance providing for reduction in fees for disposal of solid waste residue at municipal landfill for businesses engaged in recycling of paper, plastic, glass, steel, aluminum, copper, and brass, which fees were refunded to business in form of quarterly rebate, did not apply to company's recycling of concrete, asphalt, tires, and lumber, despite ambiguity in language that could be interpreted to mean that it applied to company that also engaged in recycling of enumerated materials, and defined "recycling operation" as "operation that recovers post-consumer solid waste materials for use in new consumer products" without referencing listed materials, where ordinance was amended to add enumerated items in order to limit eligibility for rebate program to residue from listed materials, and omission of other materials from express list established inference that residue from unlisted materials was ineligible for rebate program.

EMINENT DOMAIN - FLORIDA

[City of Sunny Isles Beach v. Cavalry Corp.](#)

District Court of Appeal of Florida, Third District - January 25, 2017 - So.3d - 2017 WL 361945

An eminent domain proceeding was brought concerning a portion of landowner's undeveloped man-made finger canal that city took to build a bridge for use as an emergency evacuation route to the mainland from the barrier island on which city was situated.

After a jury trial, the Circuit Court, awarded compensation to landowner in the amount sought. City appealed.

The District Court of Appeal held that conceptual plans for canal were admissible to show the highest and best use of canal as a private docking facility.

Landowner's conceptual plans to establish the highest and best use of her man-made finger canal as a private docking facility were admissible to illustrate and support her expert appraiser's testimony as part of the development approach to determine just compensation for city's taking of part of canal to build a bridge for use as an emergency evacuation route to the mainland. The testimony was based upon the actual value of the property at the time of the taking if sold for development as a private docking facility, its highest and best use, and landowner did not seek compensation based upon what could or might be done to make the property more valuable.

BOND VALIDATION - LOUISIANA

[Town of Sterlington v. East Ouachita Recreation District No. 1](#)

Court of Appeal of Louisiana, Second Circuit - January 27, 2017 - So.3d - 2017 WL 382877 - 51, 480 (La.App. 2 Cir. 1/27/17)

Town and parish residents filed action against parish recreational district, challenging proposed expenditure of ad valorem tax proceeds to secure bonds for constructing and improving facilities.

The Fourth Judicial District Court denied challenge. Plaintiffs appealed.

The Court of Appeal held that:

- District acted within purpose of tax by expending tax proceeds for sports tourism, and
- Tax did not limit use of district's facilities to only members of district.

Parish recreational district acted within purpose of tax dedicated for constructing, improving, maintaining, operating, and equipping district's recreational facilities by expending tax proceeds for sports tourism, including youth travel baseball and softball events. Improvements to facilities would benefit district's residents, and natural progression of expanding and improving facilities would be increased activity and number of people those events brought.

Tax dedicated for constructing, improving, maintaining, operating, and equipping parish recreational district's recreational facilities did not limit use of district's facilities to only members of district. To prevent use of facilities by general public, inside and outside of district, would have been inconsistent with already-sanctioned use of facilities, violate public use nature of facilities, and inject

into tax dedication a limitation that was not included within designation.

MUNICIPAL ORDINANCE - MISSISSIPPI

[Pemberton Properties, Ltd v. Mayor and Board of Aldermen of the City of Pearl](#)

Supreme Court of Mississippi - February 9, 2017 - So.3d - 2017 WL 533968

Owners of rental property filed action against city, alleging they had filed a notice of appeal and intent to file bill of exceptions, and a bill of exceptions, to appeal the city's decision to adopt a rental-housing ordinance. The complaint also sought a writ of mandamus ordering the city to transmit the bill of exceptions to the circuit clerk.

City moved to dismiss the complaint as untimely. The Circuit Court granted the motion. Owners appealed.

The Supreme Court of Mississippi held that:

- Ten-day period for appealing city's rental-housing ordinance began to run from the day of the ordinance's adoption, rather than from its effective date; and
- Circuit judge was allowed to dismiss complaint for writ of mandamus to order a city's action on a bill of exceptions, where the bill was presented to the city outside the time for taking an appeal.

CONTRACTS - MONTANA

[Hill County High School District No. A v. Dick Anderson Construction, Inc.](#)

Supreme Court of Montana - February 7, 2017 - P.3d - 2017 WL 491783 - 2017 MT 20

School district brought action against designer and builder of high school's roof, which partially collapsed after heavy snowstorm, asserting claims for negligence, breach of express and implied warranty, breach of contract, negligent misrepresentation, deceit, and fraud.

The District Court granted summary judgment in favor of designer and builder. School district appealed.

The Supreme Court of Montana held that:

- Designer and builder of high school's roof "completed" the roof when the school was in full use, and thus, school district's claims were barred by statute of repose applicable to improvements to real property;
- Period of repose applicable to improvements to real property could not be tolled, and thus was absolute bar to school district's claims; and
- Action related to provisions of roof design contract, and thus, designer, as prevailing party, was entitled to attorney fees under roof design contract.

SCHOOL FINANCE - PENNSYLVANIA

Pocono Mountain School District v. Pennsylvania Department of Education

Supreme Court of Pennsylvania - December 28, 2016 - A.3d - 2016 WL 7449250

School district sought review of decision of the Pennsylvania Department of Education, No. EDU-2014-SLAP-000176, deducting \$87,700.32 from district's basic education salary due to charter school/s failure to make mandatory payments to Public School Employees' Retirement System (PSERS).

The Commonwealth Court affirmed. District sought discretionary appeal, which was granted.

The Supreme Court of Pennsylvania held that school district that originally approved creation of charter school was not financially responsible, after revocation of charter, for school's prior failure to make payments to its employees' retirement fund.

Unpaid retirement contributions constituted "outstanding obligation of a closed charter school," and therefore school district that originally approved the creation of a charter school was not financially responsible, after the revocation of the charter, for the charter school's prior failure to make payments to its employees' retirement fund. Charter school was statutorily required to make payments to Public School Employees' Retirement System (PSERS).

EMINENT DOMAIN - TEXAS

Denbury Green Pipeline-Texas, LLC v. Texas Rice Land Partners, Ltd.

Supreme Court of Texas - January 6, 2017 - S.W.3d - 2017 WL 65470 - 60 Tex. Sup. Ct. J. 201

Pipeline company petitioned for a temporary restraining order and temporary and permanent injunction to prevent property owner and its tenant from interfering with company's alleged right to enter the property as a common carrier for construction of carbon dioxide (CO₂) pipeline.

After granting the request for a temporary injunction, the District Court entered summary judgment permanently restraining owner and tenant from interfering with company's survey rights. Owner and tenant appealed. The Court of Appeals affirmed. Petition for review by owner and tenant was granted. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment to company. Owner appealed. The Court of Appeals reversed and remanded. Company's petition for review was granted.

The Supreme Court of Texas held that:

- Court of Appeals improperly focused on company's intent at the time of its plan to construct the pipeline;
- Company's post-construction contracts for transporting other company's CO₂ were relevant;
- Company was "common carrier" with right to eminent domain; and
- Reasonably probable future use of pipeline did not need to serve a substantial public interest.

Prefatory phrase "for a person intending to build" demonstrated who had to prove common carrier status in test stating requirements for a person intending to build carbon dioxide (CO₂) pipeline to qualify as a common carrier with power of eminent domain, and the phrase thus did not make central inquiry company's intent at the time of its plan to construct the pipeline.

Pipeline company's post-construction contracts for transporting other company's carbon dioxide

(CO2) were relevant to analysis of whether company was common carrier with right to eminent domain and were properly considered by trial court granting summary judgment in favor of company.

Reasonable probability existed that, at some point after construction of pipeline for carbon dioxide (CO2), it would serve the public by transporting CO2 for one or more customers who would either retain ownership of their gas or sell it to parties other than the carrier, and, thus, company was "common carrier" with right to eminent domain. Company built pipeline along Gulf Coast in close proximity to potential customers and entered post-construction contract to transport CO2 for another company.

Reasonably probable future use of carbon dioxide (CO2) pipeline did not need to serve a substantial public interest in order for pipeline company to qualify as common carrier with right of eminent domain.

Establishing a reasonable probability that the pipeline will, at some point after construction, serve even one customer unaffiliated with the pipeline owner is substantial enough to satisfy public use necessary to qualify owner as common carrier with right to eminent domain.

PUBLIC EMPLOYMENT - TEXAS

[Colorado County v. Staff](#)

Supreme Court of Texas - February 3, 2017 - S.W.3d - 2017 WL 461363

Terminated deputy sheriff brought action against sheriff and county, alleging that the county sheriff's department violated statutes by terminating his employment without obtaining and giving him a copy of signed complaint and without allowing him an opportunity to respond to the allegations before he was disciplined.

The District Court entered summary judgment in favor of sheriff. Former deputy sheriff appealed. The Houston Court of Appeals reversed. Sheriff filed petition for review, which the Supreme Court granted.

The Supreme Court of Texas held that:

- Statutes, requiring complaints against peace officers to be in writing, signed by the person making the complaint, and submitted to the officer, were applicable to sheriff's termination of deputy sheriff if termination was based on complaint of misconduct, even though deputy's employment was terminable at will;
- As matter of first impression, phrase "person making the complaint" under statute, requiring complaint against peace officer to be signed by person making the complaint, was not limited to the victim of the alleged misconduct, abrogating *Guthery v. Taylor*, 112 S.W.3d 715; and
- Even if deputy sheriff's termination for cause was based on complaint, disciplinary process culminating in deputy sheriff's removal from his position for county sheriff's office complied with statutory procedural requirements for disciplining peace officers based on complaint.

PUBLIC EMPLOYMENT - INDIANA

[City of Lawrence Utilities Service Board v. Curry](#)

Supreme Court of Indiana - February 8, 2017 - N.E.3d - 2017 WL 526540

Former city utility superintendent brought action against city, mayor, and city utilities services board, asserting claims for wrongful termination and intentional interference with employment relationship, and seeking to recover under Wage Payment Statute.

The Superior Court granted summary judgment in favor of superintendent on wrongful discharge claim, granted summary judgment in favor of city on claim under Wage Payment Statute, and denied summary judgment on intentional interference claim. Superintendent and city appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions. Superintendent sought transfer to the Supreme Court, which was granted.

The Supreme Court held that:

- Statutory provision granting mayor the authority to suspend or remove from office any officers, deputies, or other employees of the city appointed by the executive or a prior executive did not give mayor authority to terminate superintendent's employment;
- Pursuant to municipal utility superintendent statute, superintendent could only be removed by city's utility service board, and only after receiving notice and a hearing;
- Superintendent could not recover, pursuant to Wage Payment Statute, wages and liquidated damages from city for each day that he was unpaid since his termination; and
- Fact issues precluded summary judgment on superintendent's claim for tortious interference with employment contract.

ANNEXATION - WEST VIRGINIA

[Coffman v. Nicholas County Commission](#)

Supreme Court of Appeals of West Virginia - February 9, 2017 - S.E.2d - 2017 WL 562827

Objectors filed action against county commission, individual commission members, and property owner, seeking declaration that commission's grant of city's petition for annexation of property by minor boundary adjustment was void, that operation of automotive junkyard on property was in violation of city and county ordinances, and that owner was required to cease operation of junkyard and restore property.

The Circuit Court granted summary judgment in favor of commission. Objectors appealed.

The Supreme Court of Appeals held that:

- Property was "contiguous" with municipal boundary of city, so as to support annexation;
- Statute governing annexation by minor boundary adjustment was not limited to property involving certain types of streets or highways;
- City's petition for annexation met threshold requirements to initiate annexation; and
- Commission properly considered all relevant statutory factors and made determination that granting of annexation was in best interest of county.

Property was "contiguous" with municipal boundary of city, within meaning of statute requiring territory annexed by minor boundary adjustment to be contiguous to corporate limits of city by directly abutting municipal property or being separated from boundary by certain types of property, including unincorporated streets, though objectors to annexation asserted that property was only

technically linked to city by private easement and did not share common boundary line with residential or commercial property within city's corporate limits. Property directly abutted the municipal boundary of the city, as it directly abutted road that had previously been annexed by minor boundary adjustment, and statute did not direct that property to be annexed abut residential or commercial municipal property.

Statute governing annexation by minor boundary adjustment, which stated "In addition to other annexation configuration" a municipality could incorporate territory consisting of two configurations including streets or highways, was not limited to properties involving streets or highways; had legislature intended to limit minor boundary adjustment to two configurations of territory with streets or highways it would have so stated or simply omitted the "In addition to" language.

City's petition for annexation of property, on which owner sought to operate salvage yard, met statutory threshold requirements for petitions to initiate annexation by minor boundary adjustment, and thus county commission was required to proceed to notice, publication, and hearing on petition, though objectors to annexation asserted that petition failed to contain accurate map and that it inaccurately stated that no business was operating on property. Petition identified property to be annexed by metes and bounds and attaching plat, petition included other necessary statements, including plan for fire and other services, and any inaccuracy about business operation could be tested during public hearing process.

In granting annexation by minor boundary adjustment, county commission properly considered relevant statutory factors and made determination that proposed annexation of property, on which owner sought to operate salvage yard, was in best interest of county, and thus reversal was not warranted, though objectors to annexation asserted commission failed to account for evidence regarding environmental impact and devaluing of property in surrounding homes and businesses and commission's order did not go into great detail or lengthy analysis. Commission serially addressed each and every statutory factor that it was mandated to consider in making its decision, and commission's order on boundary adjustment met minimum requirements of statutory scheme.

[NLC 2017 Congressional City Conference.](#)

Every week leading up to the 2017 Congressional City Conference we'll feature a "Meet Your City Advocate" spotlight as part of a series introducing you to NLC's Federal Advocacy team. This week, I sat down with Brett Bolton, principal associate for finance & intergovernmental relations at National League of Cities.

Name: Brett Bolton

Area of expertise: Finance and Intergovernmental Relations

Hometown: Pensacola, Florida

Hey Brett, thanks for taking the time to do this interview with me. Why don't you share a little bit about your background and why you are passionate about cities?

I was born and raised in Pensacola, Florida - the Navy originally brought my mom's family down that way. I went to college in Birmingham, Alabama, and grad school in Tallahassee, Florida, before eventually making my way up to Washington. After school, I interned for Congressman Steve Southerland in his D.C. office. He represented Florida's second district - basically the area along the panhandle between Panama City and Tallahassee. I wound up getting a staff position as a legislative

correspondent and stayed there for two years. After my time on the Hill, I lobbied for the state of Florida. Most of my work there focused on securing funding for the Everglades and building partnerships between the state and FEMA. And then I came to NLC.

Why am I interested in cities? Well, there are a couple of reasons. Hurricane Ivan hit Pensacola in 2005 and pretty much wiped out whole neighborhoods in the city. The storm and ensuing devastation were horrible, but it did bring together a lot of actors in the same room to discuss rebuilding. Local leaders helped play a role in creating a renaissance in the city, and today the downtown is booming and businesses are thriving. It made me proud to watch my hometown get back up on its feet after the worst had happened. More importantly, the whole experience sparked an interest in local politics for me.

Secondly, I happened to be finishing up a degree in public administration at Samford University in Alabama right as the surrounding Jefferson County entered into bankruptcy. At that time, it was the largest municipal bankruptcy filing, and I began following how local finance.

Right, so Birmingham's restructuring process really guided you into the world of municipal finance?

Yeah, it played a role for sure. It was an interesting process to watch as an MPA candidate. Honestly, working on Everglade issues also opened my eyes to how much a project's execution could be improved simply by infusing more local control and directing more money to local governments. When cities are given the directive and the resources, projects just get done faster, more efficiently and with better end results. I also realized that states and the federal government can be partners to cities, but cities often have to rely on their own financing capacity bridge the gap between what they need to do on a daily basis and what they have been provided.

Interesting. Along those lines, what do you think 2017 has in store for municipal finance?

Well, that's the million-dollar question right there. There's some uncertainty for sure, but I don't think we should expect any immediate or sudden changes in this lane. As you probably know, Speaker Ryan released a plan for tax reform in June, President Trump campaigned hard for corporate and personal tax reform, and Congressman Brady, the House chair of the Ways and Means Committee, says there will be a tax reform proposal. At the end of the day there are a lot of promises, but the fact of the matter remains that we haven't seen many details as of yet.

Nonetheless, this all leads me to believe some sort of tax policy proposals will happen, just maybe not this instant. That's what resolves us to keep pushing so hard to make sure city interests and voices are well heard at the table. We're out there, and we are pushing to make sure the tax-exempt status of municipal bonds is protected, that state and local tax deductions remain, and we're still working to get Chairman Goodlatte, from the House Judiciary Committee, to address marketplace fairness.

Sounds like a busy 2017. So what is your spirit city?

This is the hard one! Is it cheesy if I go with my hometown?

No, not at all!

You know what? I have to say Chicago here. I am a food fanatic and the city of broad shoulders has the best food in my opinion. Best steak, best pizza, best everything. It's a beautiful city with great people.

You ever go to the food festival?

No, never. I need to go, though!

[Join us at the 2017 Congressional City Conference](#) and meet Brett and the rest of your City Advocates.

About the author: Brian Egan is the Public Affairs Associate for NLC. Follow him on Twitter @BeegleME.

Fitch: Recent Actions Highlight Consistent Approach to Default Risk.

Fitch Ratings-New York-17 February 2017: Fitch Ratings' recent ratings on the Port of Seattle and Santa Clara Valley Water District (SCVWD) demonstrate the uniquely rigorous approach towards assessing the legal basis for rating securities distinct from the Issuer Default Rating (IDR) under the new Tax-Supported Rating Criteria, according to a new Fitch report.

"Using the same methodology that resulted in several California school district security ratings distinct from the IDR, the Port of Seattle and SCVWD's ratings underscore Fitch's holistic, consistent approach to rating across the portfolio," said Amy Laskey, Managing Director.

Fitch assigned an IDR of 'AA-' to the Port of Seattle using our Global Infrastructure Airport and Seaport Rating Criteria with a variation to consider the strength and value of the tax revenues that could be made available to support operations. Similarly, Fitch assigned an IDR of 'AA+' to SCVWD using our Water and Sewer Revenue Bond Rating Criteria with a variation to consider tax revenue support.

Fitch upgraded the Port of Seattle's intermediate and subordinate lien revenue bond ratings from 'A+' to be on par with the new IDR of 'AA-', while the rating on outstanding LTGO bonds was downgraded to the level of the IDR from 'AAA'. Similarly, for SCVWD, the district's water revenue bonds and revenue certificates of participation were upgraded to the new 'AA+' IDR from 'AA', while the district's flood control system COPs were downgraded one notch to the level of the IDR.

Security ratings are capped at the IDR unless Fitch believes there is a strong legal basis for concluding that bondholders are protected from operating risk. Fitch's high bar for rating tax-supported bonds distinct from the IDR applies to enterprises, general governments, school districts, and other special districts.

For more information, a special report titled 'Special Revenues, Bankruptcy and Default Risk' is available on the Fitch Ratings web site at www.fitchratings.com.

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[From \\$37 to \\$339,000: Why the Price of Public Records Requests Varies So Much.](#)

The laws about public records differ from one government to the next and are further complicated by some technologies, like police body cameras.

In 2015, the editor of a newspaper in Florida filed a public records request with the Broward County Sheriff's Office asking for the email of every employee during a five-month period to be searched for specific gay slurs.

In response, the *South Florida Gay News* received a \$339,000 bill.

The office said fulfilling the request would take four years and require hiring a dedicated staffer. The exorbitant charge set off a year-long legal battle that attracted the Associated Press and its lofty resources. To show how arbitrary the number was, the AP and *South Florida Gay News* filed a similar request to the sheriff's office in other Florida counties. They were quoted fees ranging from as little as \$37 to more than \$44,000.

Why then is there such a big range of costs for similar information?

Local and state laws regarding what constitutes the public's domain are about as uniform as a patchwork quilt. And technology — or a lack thereof — further contributes to the increasing cost variance between jurisdictions.

New IT software, for the governments that can afford it, has certainly sped up the time it takes to fulfill requests and thus lowered the price of information. But in some cases, technology can complicate matters. This issue is particularly heightened when privacy concerns require time-consuming redaction work.

Take the emerging issue of police body cameras. People caught on video in homes or hospitals have a reasonable expectation of privacy, so faces need to be blurred or redacted — a process that some say requires a painstaking number of manhours. The New York City Police Department made news last year for charging a local TV station \$36,000 for access to 190 hours of body camera footage.

Partially in an attempt to avoid the labor, some governments have limited the public's access to police videos. So far, jurisdictions in 21 states have passed laws regarding body camera footage — most of them restricting it. The state of South Carolina has exempted the footage from public records requests altogether.

After receiving an imposing public records request for footage, the Seattle Police Department decided to hold a hackathon. The winner created software that automated some of the redaction

process and now the police department uploads redacted body camera clips to YouTube for anyone to see.

Meanwhile, watchdog groups and media organizations that push for more transparency argue that redaction technology has evolved in recent years. Companies like MotionDSP are retooling their software to work faster, while companies like PRI Management will redact videos for agencies either for a per-video or annual fee.

Body cameras are a new technology, so inconsistency is understandable. Emails, on the other hand, aren't so new and yet the cost of fulfilling a records request for them still varies greatly.

According to Frederic Smalkin Jr., a Baltimore City Law Department attorney, new software has easily cut down on the e-discovery process in his agency by half. Meanwhile, Andy Wilson, CEO of the data management company Logikcull, said he regularly speaks with governments that are still printing out emails and redacting by hand.

As new types of electronic records pop up — like text messages and Snapchats — governments will have to consider whether they apply to the public domain. The landscape will likely continue to be inconsistent from one jurisdiction to the next. But in the meantime, Adam Marshall of the Reporters Committee for Freedom of the Press, thinks governments could be doing better.

“The tools already exist for these types of records requests to be complied with,” he said. “The agencies need to be thinking about ensuring compliance with existing law when they adopt new technology.”

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 14, 2017

[County Recoveries Coincide With Political Shifts.](#)

The nation's economic recovery accelerated in 2016, with more than 1 in 4 counties reporting a full recovery to pre-recession levels on four key economic indicators. That portion is a huge jump from last year when 1 in 10 reported fully recovering counties, according to the National Association of Counties (NACo).

The four indicators are: job totals, unemployment rates, economic output (GDP) and median home prices. Two-thirds of the nation's more than 3,000 counties have recovered on at least three of the economic indicators.

Most of the counties that have fully recovered are in Kentucky, Iowa, Minnesota, Missouri, Nebraska, South Dakota, Texas and Wisconsin. In addition, the mid-Atlantic, the Northeast and the West Coast have many nearly-to-fully recovered counties. Large counties (more than 500,000 residents) had the highest rate of full recovery at 41 percent. In contrast, more than three-quarters of small counties (fewer than 50,000 residents) still had not reached their pre-recession peaks in any of the indicators by the close of 2016.

The Takeaway: Both the acceleration of the economic recovery and the fact that it's mostly happening in very populated areas is widening the gap between the municipal haves and have nots. It also partly explains shifting political allegiances in some mid-sized counties in 2016.

Many of the approximately 200 mostly Midwestern mid-sized counties that voted for President Obama in 2008 and 2012, voted for President Trump in 2016. According to NACo's analysis, these swing counties have experienced weaker job recoveries compared to the national average with more than half of them still below their pre-recession job peaks.

"While there's a national storyline on the economy, it often plays out differently at the local level," says lead report author Emilia Istrate, managing director of NACo Counties Futures Lab. "The wide variation in local conditions underlines the need for a strong federal-state-local partnership on providing economic opportunity for residents of communities of all stripes."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 17, 2017

[More Pressure on Sanctuary Cities.](#)

A [debate in Texas](#) could prove a greater threat to sanctuary city funding than [Trump's executive order](#) denying federal funding to such cities. The Texas House of Representatives is taking up a bill already passed by the state Senate that aims to ban sanctuary cities. In Austin, for example, newly elected Travis County Sheriff Sally Hernandez has been in a standoff with Gov. Greg Abbott over her decision not to detain any unauthorized immigrants.

The bill, which is largely expected to pass, would fine jurisdictions and college campuses that don't comply with federal immigration law, allow for criminal charges on elected or appointed officials who knowingly violate these rules, and deny state grant funds (except for grants involving money for body armor) to the jurisdiction.

The Takeaway: While [state aid to cities is declining](#), many jurisdictions are vulnerable to significant changes. And, whereas there are many questions over the legality of a federal intervention into sanctuary cities, there are none in states. They can preempt local actions. So a defunding threat on the state level could make cities more inclined to buckle.

A lot depends on how reliant cities are financially on their states. Municipal analyst Matt Fabian notes that local aid levels are generally low in Texas, so the impact may be minimal. Austin, for instance, reported to the Senate that it has received \$9.8 million in state grants in 2017 — a small portion of the city's \$1 billion general fund budget. Still, Fabian writes, "the net effect of state bans like these are likely to worsen state-local relations. In the context of near-certain federal aid cutbacks to the states over the next 10 years, a higher level of antipathy now only implies deeper pain to locals when cuts arrive."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 17, 2017

[A Tried and Trusted Way to Finance America's Infrastructure Projects.](#)

Infrastructure may be the only area where bipartisan action by this Congress predictably can create

large numbers of solid jobs, enhance growth and income opportunities for American investors, and help invigorate our economy. Our country needs it.

Yet with proposals starting at \$150 billion and climbing quickly above \$1 trillion (and then some), the government is burdened at all levels across the country with massive debt and unfunded liabilities may be unable to finance large projects without private money. Moreover, projects must be productive, locally-needed winners. No one wants more bridges to nowhere.

Fortunately, infrastructure is also popular outside Washington, both with voters and investors. Many investors are looking for long term, low risk, high quality investments. As a result, demand for infrastructure is pent up. A national initiative to repair and replace our crumbling highways, bridges, tunnels, ports, and railways (possibly adding schools, utilities, water and Internet, among others) will create top-shelf investment opportunities. This will benefit financial companies, but promises to help Main Street a great deal more.

Much is made of attracting new private funding, and with Congress sure to enforce geographic and other balancing factors to spread the wealth around, the primary financing option is likely to be tried and true municipal bonds. Many are low risk, offer attractive returns, and carry tax advantages. Municipal bonds paid for most of the iconic infrastructure that made America great.

The first option floated, the private-financing “Ross-Navarro plan” laid out by the Trump administration is unlikely to succeed. With Wilbur Ross and Peter Navarro joining President Trump’s economic and trade teams, the plan will get air time, but the idea of offering tax credits to attract private investors is unnecessary. Depending on how the plan is executed, it could prove inefficient or even unproductive.

The money is already there. Private equity firms have raised large amounts of capital for infrastructure, with some funds raising as much as \$16 billion. Much of it sits idle, waiting for attractive projects. When good investment opportunities are presented, that money will move fast, with more behind. Investors will gladly accept tax credits but they do not need these subsidies. What they want are projects that make sense.

Congress and the executive branch can do something that would cost the U.S. Treasury nothing but would dramatically increase the odds of success: formulate a predictable, streamlined, regulatory permitting process. President Trump has vowed to kill “burdensome regulations,” and there are few areas where they have run more amok than infrastructure.

Take the New NY Bridge Project to replace the Tappan Zee Bridge across the Hudson River. It was proposed in 1999, but thanks to multiple agencies and jurisdictions throwing up a byzantine gauntlet of conflicting rules and regulation, it only became shovel-ready more than a decade later in 2013. Thus, the new bridge will cost many billions of dollars more than it would have in 1999.

Protecting the public good requires that federal, state, and local governments all be involved. That’s the American way. But it would be beneficial for projects to have coordinators, someone with the power to enforce an agreed-upon framework across the parties in the public and private sectors. The challenge will be to imbue the role with authority enough to keep projects on budget and on track.

Of course, with private money comes a desire for private proprietorship, which is accepted in Australia and Europe but relatively new to the United States. There is resistance here to selling ownership of what the American people believe should be assets in trust for the public benefit.

Chicago learned that the hard way when it privatized its parking meters. Meter prices doubled

overnight. Thanks to a transaction poorly negotiated by the city fathers, private owners were rewarded handsomely while returning dubious long-term value to the city. Earning an attractive return is critical to attracting private money, but local authorities must ensure that each deal also serves the public good.

True top-dollar return projects will never lack for money—and that’s a good thing. We want to encourage as much private investment in public works as possible, but the solution will not be “new.”

Municipal bonds will continue to lead the financing effort. With them, we can build exciting projects, but equally important, the mundane, necessary projects that raise the quality of life for so many Americans. Tried and trusted remains the best choice.

THE HILL

BY ROBERT AMODEO, OPINION CONTRIBUTOR - 02/14/17 04:00 PM EST

Robert Amodeo, CFA, is head of municipal investments and portfolio manager at Western Asset Management, a California-based subsidiary of Legg Mason that manages more than \$400 billion in assets.

[House Votes to Block Labor Department Rules on State Retirement Programs for Private Sector.](#)

Resolutions to block Department of Labor rules allowing states and large political subdivisions to set up private-sector retirement savings programs were passed by the U.S. House of Representatives Wednesday.

The resolution on state programs was approved by a vote of 231-193 and the political subdivision vote was 234-191. The Senate has not scheduled action.

The rules finalized in August for states and December for cities and other large political subdivisions, provide a safe harbor to allay concern that state and local programs would be preempted by federal regulators.

So far, 30 states and municipalities are implementing or considering state-facilitated, private-sector retirement programs, and eight of those states have passed legislation to set up programs. On Tuesday, 15 Treasury officials from Democratic and Republican states wrote to leaders of the House and Senate urging them to oppose the legislation. The rules, they said, provide “important flexibility to states and large municipalities as they seek to address the growing retirement crisis facing this country. We insist that states be allowed to maintain their constitutional rights to implement such legislation.” Their counterparts in New York City, Philadelphia and Seattle wrote a similar letter to House Speaker Paul Ryan, R-Wis.

Employer groups are worried about how each program will regulate employers that already offer retirement plans. “While well intentioned, the rules could hurt retirement savings and participants by discouraging plan sponsorship and limiting protections for workers,” Lynn Dudley, American Benefits Council senior vice president for global retirement and compensation policy, said in a letter to House leaders.

“If Republicans succeed in rolling back DOL regulations, they will destroy the best chance 63 million American workers have of getting access to a retirement plan,” said Teresa Ghilarducci, director of the Retirement Equity Lab at The New School in New York.

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD | FEBRUARY 15, 2017 5:37 PM

— Contact Hazel Bradford at hbradford@pionline.com | [@Bradford_PI](https://twitter.com/Bradford_PI)

[Caucus Asks to Work With Trump on Infrastructure, Tax Reform Legislation.](#)

DALLAS – A bipartisan group of lawmakers is asking President Trump for a meeting to discuss how they can work together to build consensus on infrastructure investment and tax reform legislation.

“With a new president and Congress, Washington has the opportunity to show the American people that we understand their frustration and are committed to addressing their concerns,” the 35-member Problem Solvers Coalition said. “We are Democrats and Republicans who are eager to accomplish this task.”

The letter was sent just before an analysis of federal highway data by the American Road & Transportation Builders Association found that cars, trucks, and school buses cross almost 56,000 structurally compromised bridges some 185 million times each day.

The ARTBA review of data provided to the Federal Highway Administration by state transportation departments show that 28% of U.S. highway bridges are at least 50 years old and have never had any major reconstruction work.

The report showed Iowa has the largest number of structurally deficient bridges, at 4,968 –20.5% of its total inventory of bridges. Rhode Island’s 192 structurally deficient bridges had the highest percentage, 24.9%, of a state’s total bridges. California’s problem bridges were the most traveled, with Interstate 110 in Los Angeles logging 273,760 daily crossings.

“America’s highway network is woefully underperforming,” said Alison Premo Black, ARTBA’s chief economist who conducted the analysis. “It is outdated, overused, underfunded and in desperate need of modernization.”

ARTBA’s analysis came as President Trump discussed tax reform and infrastructure on Wednesday with executives from eight major retailers, including Target, Walgreens, J.C. Penney, and Best Buy.

The Problem Solvers Caucus, led by Rep. Tom Reed, R-NY, and Josh Gottheimer, D-N.J., wrote in their letter, “We are willing to work with you to find the issues ripe for bipartisan agreement and to turn them into law History shows that the most consequential and long-lasting reforms are usually bipartisan.” The group was founded just before the midterm elections in November 2014.

Addressing infrastructure investments and tax reform on a broad bipartisan basis “could give a significant boost to our economy and provide Americans with confidence that government can work for them,” they wrote.

The \$1 trillion, 10-year infrastructure plan proposed by Trump before the election would provide no

new federal funding. Instead, it calls for \$137 billion of federal tax credits designed to spur private investments in roads, bridges, and other infrastructure with a revenue stream.

The linking of tax reform with infrastructure investments could be an “immediate win for our country,” the caucus said earlier in a Jan. 8 letter to Trump before the inauguration.

“America’s aging surface, water, and energy infrastructure combining with our complex and non-competitive tax code are huge barriers to investment and to hiring,” the pre-inauguration letter said.

“The logic of combining tax and infrastructure reform in one package is compelling,” the caucus said. “Common sense and comprehensive tax reform could free up significant capital for infrastructure.”

The recent collapse of the spillway at California’s Oroville Dam that forced the evacuation of almost 200,000 residents was cited on Tuesday by Trump press secretary Sean Spicer as an example of the nation’s infrastructure problem.

“The situation is a textbook example of why we need to pursue a major infrastructure package in Congress,” Spicer said at the daily press briefing.

“Dams, bridges, roads and all ports around the country have fallen into disrepair,” he said. “In order to prevent the next disaster, we will pursue the president’s vision for overhaul of our nation’s crumbling infrastructure.”

An “infrastructure czar” is needed to coordinate Trump’s proposed public works program, according to attorney Barry LePatner.

“We lack the political will and the political leadership to address this problem in a comprehensive way,” LePatner said during an interview Tuesday on the CNBC cable channel. “Somebody has to take responsibility at the political level and provide the leadership and the willpower.”

The Bond Buyer

By Jim Watts

February 15, 2017

[House Votes to Kill DOL's State, City Auto-IRA Rules.](#)

Some observers believe halting the rules wouldn't stop states from moving forward with auto-IRAs on the books, but would likely halt progress on proposed bills.

The House on Wednesday voted in favor of two resolutions to overturn Labor Department rules issued last year that promote creation of auto-IRA programs by cities and states.

The resolutions to kill the Obama-era rules were introduced last week, on Feb. 8.

One, sponsored by Rep. Tim Walberg, R-Mich., pertains to rules governing state retirement programs; the other, sponsored by Rep. Francis Rooney, R-Fla., pertains to municipalities such as cities and counties.

The House voted 231-193 in favor of the state resolution, and 234-191 in favor of the one governing cities, with both contests largely along party lines.

[The DOL regulations](#) encourage states and municipalities to create automatic-enrollment, payroll-deduction IRA programs for private-sector workers by exempting such programs from federal retirement law, the Employee Retirement Income Security Act of 1974, thereby limiting their liability.

Killing the rules would be an attempt to stymie creation of auto-IRA programs, which [five states](#) have been developing.

The programs seek to close the retirement-plan coverage gap and boost savings by mandating employers offer a plan to their workers. The auto-IRA would serve as an alternative retirement plan for employers that didn't want to offer a private-sector option such as a 401(k).

The programs have drawn criticism from some groups such as the Financial Services Institute Inc., the Investment Company Institute and the Chamber of Commerce, which say they will create a patchwork of different retirement plans across the country and expose investors to fewer protections.

The resolutions wouldn't be subject to a filibuster in the Senate. Observers say, though, that Senate action on the resolutions is unlikely to be as swift as in the House due to more pressing proceedings in the Senate such as nomination hearings.

Congress has a limited time frame, up until roughly mid-May or mid-June, within which it can pass a resolution overturning the DOL rules governing the state and city rules. The Department of Labor put the rules on the books in August and December last year, respectively.

Observers believe there'd still be a legal basis for states to move forward with their programs even if the rules were killed, but states that haven't yet passed bills to create such programs may adopt a wait-and-see attitude.

Investment News

Feb 15, 2017 @ 5:00 pm

By Greg Iacurci

[Senators Call for Tax Relief for Water Conservation Rebates.](#)

Washington—Senators Dianne Feinstein (D-Calif.), Patty Murray (D-Wash.) and Michael Bennet (D-Colo.) today called on Treasury Secretary Jack Lew to confirm tax relief for individuals who receive water conservation and storm water management rebates that also result in energy conservation. These rebates have been treated as income but should qualify under an existing exemption in the tax code for energy conservation measures.

The senators wrote: **“There are many challenges impacting our nation’s water supplies, and it is imperative to maintain the effectiveness of incentives for residents to participate in water efficiency and storm water management programs. We would like to request that you clarify that in cases where a public utility can attest to energy savings from water**

conservation and storm water management measures, such rebates issued by a public utility can be excluded from gross income under Section 136. This is in line with the process many utilities already follow for energy conservation measures.”

The full text of the letter follows:

December 20, 2016

The Honorable Secretary Jacob J. Lew
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Lew:

We are writing to follow up on our May 26, 2016, correspondence to request that the Department of the Treasury consider additional information in determining whether water conservation rebates and storm water management rebates, including the installation of green infrastructure, could be excluded from residents' taxable income. Since our initial correspondence to you, we have received additional information showing significant, measurable energy savings that result from water conservation. Given the compelling data we have received, we now have reason to believe that water conservation rebates should be considered exempt from inclusion in gross income under 26 U.S.C. § 136 (Section 136), which provides such an exemption for energy conservation measures.

We have attached a letter from the Director of the Center for Water-Energy Efficiency at the University of California, Davis, which details the Center's findings that water conservation in California in Summer 2015 resulted in energy savings equivalent to those of energy efficiency programs. Notably, their research found that water conservation-related greenhouse gas savings over the Summer of 2015 were equivalent to taking about 50,000 cars off the road for a year. Additionally, The Los Angeles Department of Water and Power has estimated total energy savings of approximately 24,400 MWh for fiscal year 2015/16 from the residential and commercial indoor and outdoor water conservation rebates that it provides. These figures are even higher after including energy savings from hot water heating and other customer end uses. In Colorado, water utilities have also been working to implement conservation programs that have the benefit of saving water and electricity or natural gas, including residential shower head exchange programs. Similar conservation measures are underway at urban utilities throughout the country, including in Arizona, Nevada, and Washington.

Section 136 was added in 1992, when there was a clear line between energy and water conservation. Today, that distinction is largely gone and the nexus between saving water and saving energy has been established. Commissioner Lopez of the Bureau of Reclamation has stated, “[W]ater and energy efficiency are intrinsically linked. When we conserve water, we conserve the energy it takes to move it.” Water conservation also results in other energy savings, including reductions in energy use for heating and for treatment. We believe the federal agencies involved in energy and water conservation and the Department of the Treasury currently have the authority to interpret Section 136 more broadly.

It appears that many, if not all, water conservation rebates result in per capita energy savings. The same is true of rebates designed to collect, treat, and use storm water or reduce storm water inflows into combined sewers. There are many challenges impacting our nation's water supplies, and it is imperative to maintain the effectiveness of incentives for residents to participate in water efficiency and storm water management programs. We would like to request that you clarify that in cases

where a public utility can attest to energy savings from water conservation and storm water management measures, such rebates issued by a public utility can be excluded from gross income under Section 136. This is in line with the process many utilities already follow for energy conservation measures.

We look forward to working with you to ensure the success of water conservation and water quality efforts in our states.

Sincerely,

Dianne Feinstein
U.S. Senator

Patty Murray
U.S. Senator

Michael Bennet
U.S. Senator

[President Trump Issues Executive Order To Expedite Approval Process For Certain Pipelines, Other High Priority Infrastructure Projects.](#)

On January 24, 2017, President Donald Trump issued an Executive Order and two Presidential Memoranda directing relevant federal agencies to take expedited review and approval action on various infrastructure projects, including the Keystone XL and Dakota Access pipeline projects. Additionally, President Trump issued a Presidential Memorandum directing relevant federal agencies to develop a plan under which all new U.S. pipeline projects will use domestically sourced materials and equipment.

In the Executive Order, President Trump stated that “infrastructure projects in the United States have been routinely and excessively delayed by agency processes and procedures.” To expedite agency review, President Trump directed the Chairman of the White House Council on Environmental Quality (“CEQ”), upon request or on his or her own initiative, to identify “high priority” infrastructure projects that require federal review and approval. For those infrastructure projects identified as high priority, President Trump directed the Chairman of the CEQ to coordinate with the relevant government agencies to establish expedited review procedures and approval deadlines.

In two related Presidential Memoranda, President Trump directed the relevant government agencies to expedite review of the Keystone XL and Dakota Access pipelines. As to Keystone XL, President Trump invited the pipeline to resubmit its application for a Presidential Permit to the United States Department of State. President Trump also directed the Secretary of State to reach a permitting decision within 60 days of the application being resubmitted. Additionally, President Trump directed the Secretary of the Army to expedite review of requests for approvals related to Keystone XL, including requests under Nationwide Permit 12 to cross bodies of water owned by the U.S. As to Dakota Access, President Trump directed the Secretary of the Army and other relevant department heads to expedite the review of all requests for permits and easements necessary to construct the project.

In a third Presidential Memorandum, President Trump required the Secretary of Commerce to

coordinate with other relevant federal agencies to submit a plan within 180 days that ensures that all new pipelines, as well as pipelines that will be expanded, repaired, or retrofitted in the U.S., use domestically sourced materials. More specifically, the Presidential Memorandum states that the plan should require that the manufacturing process for iron and steel products used to construct the pipelines occur in the U.S.

The Executive Order is available [here](#). The Presidential Memoranda are available [here](#).

Last Updated: February 9 2017

Article by Christopher M. Nalls and Daniel Archuleta

Troutman Sanders 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.

[Texas Pipeline Companies Seeking Common-Carrier Status Now Have Additional Guidelines, But Issues Regarding "Public Use" Remain.](#)

In its blockbuster 2012 opinion *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC (Texas Rice I)*, the Texas Supreme Court upended the way pipeline operators establish common-carrier status to exercise the power of eminent domain. On January 6, 2017, the Court issued a second major decision in the same case, dubbed *Texas Rice II*, finding certain evidence of public use sufficient to establish common-carrier status. While *Texas Rice II* provides some guidance to pipeline operators planning projects post-*Texas Rice I*, it is unlikely to prevent future litigation regarding the level of public use required to support pipeline companies' claims of eminent domain authority.

Texas Rice I: Holding Oneself Out As a Common Carrier Is Not Sufficient for Exercise of Eminent Domain

Under Section 111.019 of the Texas Natural Resources Code, "Common carriers have the right and power of eminent domain." As noted in *Texas Rice II*, before 2012 "a pipeline owner needed to do little more than 'check[] a certain box on a one-page government form' to obtain common-carrier status." In *Texas Rice I*, however, the Court made clear that the Takings Clause of the Texas Constitution requires that to be a common carrier, a pipeline must "serve the public" and not "be built only for the builder's exclusive use." The record before the Court in *Texas Rice I* only included evidence that pipeline-builder Denbury was negotiating with third parties to transport CO₂. Absent was evidence that the transported CO₂ would remain the property of a third party or would be transported to a third party. The Court thus decided that Denbury did not establish common-carrier status because it only showed the possibility of public use rather than a reasonable probability that public use would result. The Court made clear that post-*Texas Rice I*, "[m]erely holding oneself out [as a common-carrier would be] insufficient under Texas law to thwart judicial review."

In remanding the case for further proceedings, the Court concluded that pipeline companies seeking to condemn property interests for their projects must "present reasonable proof of a future customer, thus demonstrating that the pipeline will indeed transport 'to or for the public for hire' and is not 'limited in [its] use to the wells, stations, plants, and refineries of the owner.'" While the Court made clear that mere "holding out" would not establish common-carrier status, the Court left

open the question of what evidence would suffice.

Texas Rice II: Public Use May Be Established By Transport Contracts with Non-Affiliates

In *Texas Rice II*, the Court emphasized that because an essential condition of a lawful exercise of the power of eminent domain “is that the professed use be a public one in truth, . . . mere assertions of the possibility of public use” are not enough to establish common-carrier status. The Court added that, at a minimum, there must be a reasonable probability, meaning “more likely than not,” that the pipeline will at some point after construction “serve the public by transporting gas for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier.”

On the evidence adduced on remand, the *Texas Rice II* Court decided that the test set forth in *Texas Rice I* had been met. That evidence included a showing of proximity of the pipeline to potential customers, a transportation contract with a non-affiliate that provides for its retention of title to its CO₂, and a contract with a non-affiliate for the purchase and transport of CO₂. In conclusion, the Court held that the test was met because the evidence established that the pipeline would serve the public “by transporting CO₂ for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier.”

In Conclusion: Questions Remain

Before *Texas Rice I*, a company wanting to condemn easements for a common-carrier pipeline needed only to fill out a form to obtain a permit from the Texas Railroad Commission reflecting its status as a common carrier. *Texas Rice I* changed that standard but gave rise to uncertainty regarding how pipeline transactions, planning, and construction must be carried out for pipelines to attain common-carrier status. *Texas Rice II* provides some answers but also suggests that pipeline projects will be scrutinized by courts seeking to strike a balance between “the property rights of Texas landowners [and] our state’s robust public policy interest in pipeline developments.”

Additional questions remain to be answered. In particular, it remains unclear whether transport or eventual sale of carried materials to indirect affiliates, affiliated joint ventures, or certain categories of customers will constitute “public use.” Further litigation regarding these and other issues is likely.

Last Updated: February 9 2017

Article by Andrews Kurth LLP

Andrews Kurth 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.

[Issuers Giving Themselves More Time to Disclose Financials.](#)

WASHINGTON - Municipal market analysts are concerned that Municipal Securities Rulemaking Board data shows more issuers are giving themselves 270 days after the end of their fiscal years to file annual financial information.

Meanwhile, fewer issuers are taking 180 days to disclose their continuing disclosure information

(CDAs) the board said. Issuers with CDAs agreeing to file financials within 180 days of the end of their fiscal years were still the most common in 2016 at roughly 34% of all CDAs. But that is a drop from the roughly 37% of CDAs that had 180-day deadlines in 2012, according to data. CDAs with 270-day commitments climbed to about 27% of all CDAs in 2015 from about 23% in 2011. The percentage dropped slightly in 2016 to 25% from 2015.

The data comes from an MSRB report on the timing of annual financial disclosures by issuers in the municipal market released on Tuesday. The report, which uses submissions to the MSRB's EMMA system and calculates its numbers based on the date of receipt and end of the fiscal year, is an update on similar reports the self-regulator has done in the past.

Julie Egan, chair of the National Federation of Municipal Analysts, said she is "disappointed but not really surprised that the CDA timeframes have lengthened." Richard Ciccarone, president and chief executive officer of Merritt Research Services, also said a longer time before disclosure is disappointing.

"Having current disclosure information is vital to the secondary market and liquidity," Egan said. "The absence of timely information is an impediment for bond purchasers. It can result in bond buyers either looking elsewhere or seeking higher yields to compensate for the lack of information."

Egan, who is a senior vice president and portfolio manager with Community Capital Management, said many issuers are making "prompt and thorough disclosures and are doing a great job," but some are not. NFMA, which has made prompt disclosure a key focus for years, also encourages issuers to post more frequent financial updates on their websites.

"In my opinion, the issuer or their advisors should help look for solutions to provide prompt and full disclosure, not lengthen the reporting requirements to improve compliance with their continuing disclosure agreements," Egan said.

The report also found that it took issuers an average of 311 days to submit their audited financial statements, the least amount of time since 2011 when the average was 307 days. The average number of days to submit audited financial statements spiked in 2014 when the number rose to 447. The MSRB attributes that spike to the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, under which issuers and underwriters self-reported lapses in issuers' disclosure compliance. Many issuers made efforts to amend their previous disclosures after the MCDC announcement.

Michael Decker, managing director and co-head of munis for the Securities Industry and Financial Markets Association, said the MSRB's analysis provides a "useful and interesting snapshot of issuer disclosure filing activity" and added that a possible area for further research could be the frequency and severity of delinquent filings among issuers both before and after the MCDC initiative.

Jessica Giroux, general counsel and managing director of Bond Dealers of America said BDA supports the MSRB's continued efforts at enhancing the understanding of issuers of their responsibilities under the federal securities laws.

The MSRB found it took issuers an average of 260 days to file their annual financial information in 2016, which includes information outside of audited statements, such as quarterly data. The 260-day period is far below the 373 days it took issuers on average in 2014.

The MSRB also reported averages for a category of submissions it said excluded "catch-up" submissions, which are made more than a year after the end of a fiscal year to fill in earlier gaps in

disclosures. Those submissions were prevalent after MDCD when issuers realized they needed to fix their disclosures. The MSRB said the catch-up submissions can at times skew the data.

The self-regulator found that it took issuers that reported within a year an average of 199 days after the end of the fiscal year to file their audited financial statements in 2016, just under the recent average of 200 days. It took 189 days for issuers that reported within a year to file their annual financial information.

The Bond Buyer

By Jack Casey

February 14, 2017

[FINRA Says UBS Must Pay \\$9M to Puerto Rican Muni Investor.](#)

The case comes just one month after an \$18 million ruling, with more regulatory decisions expected

In the ongoing resolution of multiple claims brought against UBS for sales of Puerto Rican bonds, a regulatory panel has awarded some \$9 million to an investor.

On Friday, the Financial Industry Regulatory Authority panel awarded Luiz Romero close to \$8 million in compensatory damage plus interest, as well as \$1 million in punitive damages plus interest.

“Respondent UBS exercised extreme recklessness and indifference to the consequences of loan recycling by failing to utilize a supervisory system which would have alerted upper management that claimant Romero had taken \$8 million from his non-purpose loan account one day and redeposited the exact same amount less than two weeks later to buy securities,” the regulatory panel explained in [its decision](#).

According to the panel, it opted to fine the wirehouse over its “intentional and willful provision of a ‘non-purpose’ loan, which was either knowingly encouraged to be ‘recycled in violation of Regulation U or provided with a reckless indifference to the consequences of the loan recycling.”

The loan, the regulatory group says, led to “additional excessive leverage, so that when there was a downturn in the market, claimants lost more money than they would have had they been suitably invested with less leverage.”

Romero bought municipal bonds and closed-end bond funds from UBS. He filed his complaint against UBS in November 2013. Several pre-hearing sessions were held in 2015, followed by 24 hearings in 2016 and 2017.

The \$70 billion market for these investments collapsed in 2013 and has resulted in more than \$1.5 billion in customer claims.

“Although the arbitrators awarded significantly less than the full damages claimants requested, UBS is disappointed and disagrees with the decision to award any damages,” the firm said in a statement. “Mr. Lopez was an experienced investor who made a fully informed decision to leverage his

investments and concentrate his portfolio in Puerto Rico bonds and UBS Puerto Rico closed-end funds because of their long history of providing excellent.”

Prior Cases

In January, just one month after a regulatory panel awarded over \$18 million to two clients of UBS over sales of Puerto Rican municipal bonds and closed-end funds tied to these securities, a separate panel issued a similar award to three other clients — including \$4 million in punitive damages.

UBS has challenged the December award in a U.S. district court with claims that arbitrators failed to disclose key material facts before the case began.

In January, UBS accepted the FINRA panel, which included three arbitrators, says attorney Lloyd R. Schwed of Schwed Kahle & Kress in Palm Beach Gardens, Florida, and raised no objections to it.

The panel issued a \$18.2 million decision, ruling that the Gomez family — well known on the island for their car businesses and charitable activities — should receive \$9.63 million in compensatory damages, \$4 million in punitive damages, nearly \$4.5 million in attorneys’ fees, and \$86,550 in other costs.

The three members of the Gomez family (parents Victor and Socorro, along with daughter Madeline), argued that they had been subjected to securities fraud, elder abuse and other violations of the law.

According to their attorneys, this arbitration decision appeared to be the first entailing the imposition of punitive damages on UBS in connection with its sales of Puerto Rico municipal bonds and closed-end bond funds.

In the December decision, an attorney for a claimant — Timothy J. Dennin of Northport, New York — said there may be as many as a thousand similar claims pending in Puerto Rico.

ThinkAdvisor

FEBRUARY 17, 2017

[Delaware Bond Deal Tops Light U.S. Muni Sales Next Week.](#)

The state of Delaware will sell \$225 million of general obligation bonds on Feb. 23, the largest offer in a trading week shortened by the Presidents Day holiday on Monday.

Issuers are expected to sell just \$3.8 billion of bonds and notes in the U.S. municipal market next week, according to Thomson Reuters estimates.

The subdued level of supply is in line with the low-volume trend that began at the outset of the month, according to Alan Schankel, managing director and municipal strategist at Janney Montgomery Scott.

“February is on track to be among the lightest volume months,” he said in a note on Friday. “Our estimate for a sub-\$20 billion total places this month as the slowest February since 2014.”

Total issuance for January was \$33.6 billion, 37.6 percent higher than the same month last year by

par amount, with increases in both refundings and new money, according to Thomson Reuters data.

Other notable offers next week include \$177 million of transit system sales surtax revenue refunding bonds from Miami-Dade County and \$129 million of limited tax general obligation bonds for the Port of Seattle.

Anticipation of tax reform measures, which are expected to come from congressional Republicans in the coming weeks, has fueled speculation in the market about whether the proposals will seek to do away with the tax-exempt status of muni bonds.

“While a reduction in the tax rates threatens to reduce the value of the municipal tax-exemption, its elimination remains highly unlikely, in our view,” Peter Hayes, head of the municipal bond group at BlackRock, said in a monthly research note on Friday.

Public power utilities, which rely on the muni market to finance projects and which have warned lawmakers against eliminating the tax exemption on muni bonds, are not overly concerned about a major overhaul either.

“We’ve not found anyone rushing to market,” John Godfrey, senior government relations director with the American Public Power Association, said on Friday.

“There is some sense that the markets are already pricing tax reform risk into rates,” he said.

Reuters

Fri Feb 17, 2017 | 5:14pm EST

By Rory Carroll

(Reporting by Rory Carroll; Editing by James Dalglish)

[A Trump-Era Strategy for Municipal Bonds.](#)

The Trump administration’s plans to radically overhaul the tax code could weigh on munis—but it could create buying opportunities.

Municipal-bond investors have a lot of reasons to wring their hands in 2017. The Federal Reserve seems intent on hiking rates as many as three times this year, and President Donald Trump is threatening to radically rewrite tax policy, potentially even limiting the tax-exempt status of munis.

Even so, munis have a lot going for them. They provide a low-risk way to diversify when the biggest risk to your portfolio might be from overpriced stocks. Most munis are high-quality, and the asset class has historically had a negative correlation to equities, according to Standard & Poor’s.

Even better, munis are a lot cheaper than they were a year ago, which means they yield more. (Bond yields move inversely to prices.) After a fourth quarter of rising interest rates, the average yield on a 10-year triple-A-rated muni bond rose to 2.4%, equivalent to a 4% taxable yield for individuals in a high tax bracket. That compares to 1.9% a year ago, says James Grabovac, investment strategist at McDonnell Investment Management.

Another sign of value, he notes: The 10-year muni-bond yield is nearly the same as the 10-year

Treasury yield, up from just 85% a year ago.

“The psychology of the market is much improved” since late last year, says John Miller, co-head of fixed income at Nuveen Asset Management. “Prices haven’t moved that much, but they are stable with a slight upward bias.” Plus, inflows have been positive for the past five weeks after 10 weeks of sharp postelection outflows.

Though changes to the individual tax code appear to be on the back burner, as the Trump administration attempts to deal with corporate tax reform first, there are two main concerns.

The first—reducing or eliminating munis’ tax-exempt status—will likely be floated, but is unlikely to succeed. “It has come up before, and it always dies,” says James Kochan, chief fixed-income strategist at Wells Fargo Funds. “Sometimes a fairly quick death.” Infrastructure spending, a goal of this administration, is usually funded by states and cities issuing munis, so it seems unlikely Trump would want to disrupt the market, notes Grabovac.

Cutting marginal tax rates could also make munis less attractive, though it has happened before and the asset class held up just fine. BlackRock looked at what would happen if there was a cut in the highest tax rate to 33%, and found it would lead to just a 0.15 to 0.5 percentage-point rise in yields, depending on maturity. That’s not such a big penalty.

SUCH TAX PROPOSALS could stoke volatility, which would create buying opportunities for nimble investors prepared to take advantage of a selloff. Sean Carney, who heads municipal strategy at BlackRock, says more investors are already using muni exchange-traded funds, such as his firm’s iShares National Muni Bond (ticker: MUB), to buy on weakness and sell on strength. He thinks the approach makes sense now.

Closed-end funds, many of which have been volatile as they have reduced their payouts, are another option. Eaton Vance Municipal Income (EVN), for one, is already selling at a discount, when it usually commands a premium. It yields 5.53%.

Volatility may also come from a surge in new muni-bond supply in March, a typical seasonal pattern, or more credit downgrades in states grappling with budget shortfalls and pension-related costs.

An actively managed fund makes sense for investors who prefer not to trade. The top-performing fund in the past year, up 3.3%, is Nuveen Inflation Protected Municipal Bond (NITAX), which hedges against interest-rate risk. Nuveen All-American Municipal Bond (FLAAX)—the firm’s traditional muni offering—has a 4.9% average annual return for the past 10 years, putting it in the top 2% of all national long-term muni funds.

BARRON’S

By AMEY STONE

Updated Feb. 18, 2017 1:26 a.m. ET

[Private vs. Public Infrastructure Funding Debate Continues.](#)

Speculation continued this week in Washington, D.C. on infrastructure funding plans, with municipal bonds being discussed during a panel at the National Association of State Treasurers 2017

Legislative Conference, according to The Bond Buyer. While, it will likely take tax reform for bonds to remain a viable resource, the expectation is that there will not be any changes to municipal bond rules until next year.

In the meantime, a local agency's ability to borrow funds for public capital improvements is the most cost-efficient way to finance public infrastructure. Tax-exempt rates remain at historic lows and will always beat the rates provided by public-private partnerships and private equity investment.

However, there is uncertainty whether the current administration and Congress will keep tax-exemption of municipal debt at its current level. Previous administrations have proposed placing limits on the benefits of tax-exemption for those individuals who pay taxes at the highest rates. Additionally, Congress provided rebates to issuers under the Build America Bonds program in 2010, under which rebates were reduced significantly as a result of the federal government's budget crisis in 2011.

Among the many questions being asked in regard to what a federal infrastructure funding plan will look like is whether public-private partnerships or private equity investments will benefit rural areas. The current administration has many members that are pro-public-private partnerships. Last week, at the Senate Environment and Public Works Committee, discussion focused on the need for federal funding when there is no enticement for private involvement. "Funding solutions that involve public-private partnerships, as have been discussed by administration officials, may be innovative solutions for crumbling inner cities, but do not work for rural areas," said Sen. John Barrasso, (R-Wyoming), who chairs the Committee, according to the Albuquerque Journal. Private partners are interested in potential for generating returns, and rural areas often lack the revenue-generating project capacity to be truly enticing to a private partner.

We have no indication at this time whether there will be renewed attempts to reduce the benefits of tax-exemption. Nevertheless, tax-exempt bonds, if left unchanged, will allow local agencies to control their costs of borrowing and they will not have the interference of private parties on the use and operations of the financed facilities.

by Kimberly Byrens | Best Best & Krieger LLP

2/16/2017

[Morgan Stanley Pays FINRA Fine Over Municipal Bond Trades.](#)

Law360, New York (February 16, 2017, 5:05 PM EST) — Morgan Stanley's brokerage arm settled the Financial Industry Regulatory Authority's allegations that it bought or sold municipal bonds for its own accounts at prices that were not fair and reasonable, according to a deal filed Wednesday.

Morgan Stanley Smith Barney LLC agreed to pay a \$115,000 fine, plus more than \$55,000 in investor restitution, to end FINRA's claims that some of its municipal bond transactions from July 2013 to March 2014 violated rules from the Municipal Securities Rulemaking Board by being priced unfairly or reasonably.

The company neither admitted nor denied the allegations.

During the specified time period, the brokerage firm violated MSRB rules 33 times when purchasing municipal securities from customers for its own account, or when selling these securities from its

own account to customers, according to the deal.

FINRA alleged that the aggregate prices of these transactions, including any markups or markdowns, were not reasonable when taking into account judgment of fair market value, the transactions' expenses, Morgan Stanley's profits on the deals and the total amount of the transactions.

Additionally, Morgan Stanley Smith Barney twice charged customers excessive fees for purchasing or selling municipal securities as the clients' agent, FINRA said.

A representative for the firm said the settlement involves a "very small number of municipal bond trades" and that it is committed to providing fair and reasonable prices to clients.

"The firm has agreed to improve its prices for these trades and has enhanced its processes around reviewing bond trade prices for its wealth management clients," the representative said.

The settlement listed the brokerage company's relevant history with FINRA, including its agreement in 2011 to pay \$1 million for allegedly charging unfair markups and markdowns for fixed income transactions and its deal in 2013 to pay another \$1 million penalty to settle similar allegations.

The company agreed in October to pay a \$2.2 million fine to settle another FINRA action, which alleged it submitted tens of millions of inaccurate or incomplete reports on its large options positions to the Options Clearing Corp. On the same day, the bank also reached a separate settlement in which it paid \$102,500 for allegedly failing to report numerous securities transactions to FINRA.

FINRA does not comment on pending litigation.

Counsel information for Morgan Stanley Smith Barney was not immediately available on Thursday.

FINRA is represented by Robert A. Marchman.

The case is Re: Morgan Stanley Smith Barney LLC, case number 149777, in the Financial Industry Regulatory Authority.

By Cara Mannion

[Municipal Bonds May Get Taxed If Border Tax Plan Fails.](#)

Odds that interest on municipal bonds will continue to be exempt from federal taxes decrease if Congress doesn't approve a plan to alter the way imports and exports are taxed.

That's a concern for municipal-bond investors, as well as the state and local governments trying to get investors to buy their debt notes to pay for roads, bridges and other large public projects.

The Republican-controlled Congress is attempting to draft a revenue-neutral tax package to send to President Donald Trump this year, and a question remains as to whether border adjustments, which tax imports and exempt exports, will be included.

A revenue-neutral tax plan enables GOP lawmakers to pass a tax plan by a simple majority vote, without need of support from any Democratic members.

"If the border-adjustability piece, which raises close to a trillion dollars, is not completed, and we've heard mixed views on that, then everything is on the table," including the exemption for municipal-bond interest, Jim Febeo, senior vice president of government relations at Fidelity Investments, said at a Feb. 13 meeting of the National Association of State Treasurers (NAST) in Washington.

Retailers are lobbying against border adjustments, as is Koch Industries Inc., a financial supporter of conservative causes and candidates.

Some senators, including John Cornyn (R-Texas), Mike Lee (R-Utah) and Finance Committee Chairman Orrin G. Hatch (R-Utah), have said they have questions about the proposal, the details of which haven't been fleshed out.

Money for Change

House Speaker Paul D. Ryan (R-Wis.), who put forth the idea, has said the \$1 trillion or so raised by border adjustments would allow for sweeping changes to federal taxes.

Without the money, "the municipal-bond exemption will be looked at," Susan Hirschmann, chief executive officer of Williams & Jensen, a Washington-based lobbying firm, said during the NAST event.

"There is a lack of clarity right now as to whether the Senate supports border adjustments, and there is a lack of clarity on whether President Trump supports it," Hirschmann said.

States Will Fight Back

State and local governments, which depend on bonds, will fight for the tax exemption, Charles S. Henck, a Ballard Spahr LLP partner who practices in public finance and tax law, told Bloomberg BNA.

"State and local governments will want to preserve the existing rule for tax exemption of municipal bond interest because to eliminate it would increase the cost of borrowing," Henck said.

Arizona Treasurer Jeff DeWit, who spoke at the NAST meeting, said states shouldn't worry because the exemption is too popular and the potential backlash against congressional members is too great.

"I don't think the municipal exemption will be on the table," he said. "Everyone is against doing that. If they really start to play with it, I don't think that will truly be on the table. Maybe for leverage."

'Everything' on Table

As House and Senate Republicans work on a package that appeals to Trump, elements of a 2014 tax plan offered by then-Rep. Dave Camp (R-Mich.) may give hints to "where we may be headed," Febeo said. Camp's plan proposed a 10 percent surtax on municipal-bond interest.

"I wish I had a crystal ball, but everything seems to be on the table right now," he said.

According to a delegation from the U.S. Conference of Mayors, Trump expressed support for maintaining the tax exemption in the weeks before his inauguration. Others close to him, however, don't support it.

Trump's nominee for Commerce secretary, private equity investor Wilbur Ross, has said municipal bonds aren't an efficient way to pay for public projects. One reason is that a percentage of the

money goes to the bondholder. He has suggested private-public partnerships and tax credits to investors and construction companies to finance bridges, roads and other public projects.

Bloomberg BNA Tax Management

By Che Odom

February 17, 2016

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[CA Bond Watchdogs Don't Have Much Bite, Says New Report.](#)

Since 2000, local bond measures that pay for school construction require only 55 percent local voter approval, instead of two-thirds. With that change came a new requirement that a citizen watchdog group monitor bond expenses to ensure projects promised were built.

Other governments also turn to citizen groups to police voter-approved bonds that pay for things like roads and transit.

In 2016 alone, Californians approved local school bond measures totaling \$28 billion, plus another \$7.2 billion in local government debt for other public projects, according to a [report](#) released Tuesday by the Little Hoover Commission, a state entity that provides independent government oversight. The commission suggests Gov. Jerry Brown and the Legislature “should update and overhaul” the state law that created the bond oversight groups to clarify their authority.

The oversight groups, “By and large ... have proven ineffective and some committee members have told the Commission that is at least in part, by design,” wrote the Little Hoover Commission. “Most of the concerns revolved around bond oversight committee members who lack training, have conflicts of interest, either real or perceived, and the difficulty committee members have receiving required documents from the districts.”

Those same issues have surfaced in San Diego County, where some appointees represent workers building bond projects and others get paid to lobby the very government officials they oversee.

Among other things, the Little Hoover panel proposed county treasurers review and comment on bond sales before they occur to help prevent poor debt financing decisions by local government agencies.

The commission also recommended changing the oversight committee appointment process, currently handled by district officials the group oversees. The report also recommends committee members play a larger role in selecting bond auditors, and that audits measure effectiveness and results, as well as compliance.

The commission also believes oversight groups should receive a minimal budget to hire independent counsel when needed. Such requests by the oversight committee watching San Diego Unified's \$4.9 billion bond program have been denied.

In addition, the commission called on the state Treasurer's office to provide online trainings about bond sales to elected officials, and suggested state leaders allocate one-time funding for the state's school business advisory group, known as the Fiscal Crisis & Management Assistance Team, to put together online training for bond oversight committee members.

Former San Diego Unified school board member Scott Barnett was appointed to the 13-person Little Hoover Commission last year by then-Assemblywoman Toni Atkins. Nick Marinovich, chair of Sweetwater Union High School District's bond oversight committee, recently testified before the commission about improved oversight following the criminal convictions of district leaders accused of pay-to-play contracting.

Voice of San Diego has examined several issues and potential conflicts facing local bond oversight committees in recent years.

Contractors can't legally serve on bond committees, but public agencies are interpreting the word "contractor" as they see fit and have repeatedly appointed contracted union chiefs and contractor lobbyists to the group.

Union leaders contracted with San Diego Unified to supply workers through a project labor agreement have served on the district's independent bond oversight committee for years. Similar decisions were made at Southwestern College and Los Angeles Unified School District:

Mike Magallanes, business representative of the Southwest Regional Council of Carpenters, signed San Diego Unified's project labor agreement on behalf of the union group in 2009. He was appointed to the oversight committee in 2012 and his term doesn't expire until 2017.

Matt Kriz, trustee of the San Diego Building & Construction Trades Council - another major party to the PLA - joined the oversight committee in 2013. His oversight term also doesn't expire until 2017, according to the district's website.

San Diego Unified's bond oversight group was also chaired for years by Andy Berg, chief executive of the San Diego chapter of the National Electrical Contractors Association. Here's how we described that conflict:

Berg lobbies public and private agencies for electrician jobs by day, and by night he chairs the bond oversight committee, a group tasked with ensuring the district's \$4.9 billion in bond dollars are spent as promised to voters without waste.

Berg has held these dual roles - advocating for contractors and taxpayers alike - for years, and not just at San Diego Unified. He's also served on school bond oversight committees at Poway Unified, the Sweetwater Union High School District and the San Diego Community College District over the last decade.

Regional planning agency SANDAG has also appointed contractor lobbyists to its committee overseeing TransNet, a 40-year sales tax bond that's supposed to pay for \$14 billion in transportation and infrastructure projects countywide, we reported last year:

Brad Barnum heads the TransNet Independent Taxpayer Oversight Committee, a role that involves receiving staff reports, hiring and overseeing an auditor, advising public officials periodically – and, as needed – about the program’s efficiency and project costs, schedule and bond debt.

He’s also a registered lobbyist with the city and county in his role as government relations director for the San Diego chapter of the Associated General Contractors of America.

Barnum lobbies for 1,100 contractors, who he says perform 85 percent of the region’s commercial, industrial, general engineering and heavy highway construction.

A decent chunk of that work comes from SANDAG, and millions from the TransNet bond measure specifically, public records show.

AGC San Diego contributed \$500,000 to help pass TransNet in 2004, and Barnum recently met with officials to discuss campaign strategy for a new tax hike and bond measure that may go on the ballot as early as this year.

That same committee recently expressed no concern when Voice of San Diego revealed TransNet’s revenues are expected to come up billions of dollars short, which could result in fewer projects being built. In fact, the chair said monitoring revenues is not the oversight group’s job:

The chair of the committee, Stewart Halpern, says the group’s responsibilities don’t include monitoring the growing disparity between the projected revenue and the actual revenue it’s brought in so far.

He said he was not aware of the discrepancy between the revenue SANDAG anticipated and the revenue it’s actually collected.

“To put it succinctly, the concept of comparing current revenues to the revenues that were forecast in 2004, that actually isn’t really our mandate,” said Halpern, whose expertise is in municipal finance.

He said the group is primarily focused on making sure the money collected is spent expeditiously and responsibly and on the projects promised to voters.

What exactly bond oversight committees are supposed to monitor and where the job stops is interpreted differently from group to group, resulting in varying levels of oversight.

The Little Hoover Commission is calling on state officials to provide training and legislative fixes to clear up these issues left ambiguous in state law.

Voice of San Diego

By Ashly McGlone | February 15, 2017

Tax Guidance to Slow Under Trump. Even More Emphasis on Letter Rulings in Bond Transactions?

As the Trump Administration attempts to substantially reduce the amount of federal regulations, both the Deputy Tax Legislative Counsel of the Treasury Department and an Associate Chief Counsel at the Internal Revenue Service indicated this week that we are likely to see a virtual halt to formal tax law “guidance” for the foreseeable future. Such guidance includes regulations, revenue rulings, and revenue procedures, the principal means by which Treasury and IRS provide interpretations of tax statutes. However, both officials stated that the IRS will continue to provide taxpayer-specific private letter rulings (PLRs).

In addition to more PLRs being requested to resolve ambiguities in connection with particular transactions, the freezing of the formal guidance process could result in PLRs being given more weight than ever in the analysis of other transactions. Not only will bond attorneys have more incentive to read and rely upon the only available tea leaves as to the IRS’s position, but IRS attorneys may write more substantive letter rulings with the expectation that they will guide practice beyond the particular transactions being ruled upon. While officially non-precedential, PLRs have long been of particular importance in the tax-exempt bond practice, where formal guidance is slow and case law is almost nonexistent.

The National Law Review

Wednesday, February 15, 2017

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Will President Trump's Regulation Cuts Reduce Ongoing Disclosure for Bond-Financed Projects?

HIGHLIGHTS:

- President Donald Trump’s recent executive order entitled “Core Principles for Regulating the United States Financial System” directed the Treasury Secretary to consult with financial regulators, including the U.S. Securities and Exchange Commission (SEC), as to whether or not existing regulations “promote the core principles” outlined in the order, including, among others, the directive to “make regulation efficient, effective, and appropriately tailored.”
- Participants in the municipal bond industry are hoping that the push for more “efficient” and “appropriate” regulations might lessen the regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act of issuing municipal bonds.
- A significant part of the cost of issuance involves the elaborate disclosure that must be provided to investors, often on a quarterly basis and often for as long as a single bond of a particular issuance remains outstanding.

President Donald Trump on Feb. 3, 2017, signed an executive order entitled [“Core Principles for Regulating the United States Financial System.”](#) which directed the Treasury Secretary to consult with financial regulators, including the U.S. Securities and Exchange Commission (SEC), as to whether or not existing regulations “promote the core principles” outlined in the order. Those principles include, among others, the directive to “make regulation efficient, effective, and appropriately tailored.”

One of the targets of this order is the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted in 2010 in the wake of the 2008 recession. Among its many impacts, Dodd-Frank resulted in more abundant and elaborate disclosure regulations imposed by the Municipal Securities Rulemaking Board (MSRB) and the SEC on municipalities and their conduit borrowers – i.e., developers and nonprofit charitable organizations. Participants in the municipal bond industry are hoping that President Trump’s push for more “efficient” and “appropriate” regulations might lessen the regulatory burden, and therefore the cost, of issuing municipal bonds. A significant part of the cost of issuance involves the elaborate disclosure that must be provided to investors, often on a quarterly basis and often for as long as a single bond of a particular issuance remains outstanding.

A Brief History of Continuing Disclosure for Muni Bonds

Municipal securities generally are exempt from the regulatory and reporting requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. In the late 1980s, following significant turmoil in the municipal bond industry that included the default of \$2.45 billion in tax-exempt revenue bonds issued by the Washington Public Power Supply System, the SEC adopted Rule 15c2-12 under the 1934 Act.

Rule 15c2-12 generally obligates bond underwriters to obtain from an issuer, and to review and distribute to investors, a preliminary official statement (POS) describing the securities being offered. The issuer must deem the POS final as of its date, except for certain information that may be added upon the consummation of the bond sale, such as the aggregate principal amount and interest rates. The underwriter is also obligated to provide a complete, final official statement to all investors within seven business days following the bond closing.

Since its Jan. 1, 1990, effective date, Rule 15c2-12 has been amended several times. For instance, in 1994, in response to growing concerns among investors about the adequacy of secondary market disclosure, the SEC amended Rule 15c2-12 to prohibit underwriters from purchasing municipal securities unless the issuer signed a written agreement to provide ongoing disclosure, including financial information and notices of material events. This obligation extends to “obligated persons” (i.e., persons or entities responsible for paying any of the underlying revenues securing the bonds). For obligated persons, however, the obligation generally may be terminated when the entity’s financial responsibility falls below a certain threshold. For instance, in California, developer-landowners who borrow proceeds from an issuance of Mello-Roos bonds – i.e., bonds secured by special taxes levied within a community facilities district – generally may terminate their continuing disclosure obligation once their special tax obligation falls below 20 percent of the total tax levy for a given fiscal year.

How Did Dodd-Frank Impact Continuing Disclosure?

Dodd-Frank imposed additional fiduciary duties on municipal securities issuers and underwriters, and it extended the regulatory umbrella to cover financial advisors. It also augmented the regulatory authority of the MSRB and the SEC. Several new municipal securities regulations and enforcement initiatives were implemented as a result of Dodd-Frank, including the Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative).

The MCDC Initiative, implemented in 2014, represented the SEC’s first step in a plan to tighten its regulatory reigns on municipal securities in compliance with Dodd-Frank. The MCDC Initiative provided issuers and underwriters the opportunity to self-report any instances of material omissions or misstatements in prior offering documents. In return for this self-reporting, the SEC agreed to mitigate penalties for such disclosure violations. Under the MCDC Initiative, the SEC charged 71 issuers for selling municipal securities with deficient disclosure relating to compliance with ongoing

disclosure requirements under Rule 15c2-12. The SEC settled those actions without requiring admissions of guilt but requiring that the parties agree to cease future violations as well as establish policies and procedures that will ensure such violations do not occur in the future.

What Will a Dodd-Frank Overhaul Mean to Continuing Disclosure?

At this point, it is impossible to predict how President Trump's efforts to streamline financial regulation will impact continuing disclosure obligations for municipal securities. Now that issuers, developers and nonprofits have instituted procedures for disseminating information to the bond market, and investors have become accustomed to receiving such information, an effort to reduce that data flow may potentially be met with resistance. Moreover, disclosure of salient information to the marketplace is equally as appropriate for municipal issuers as it is for corporate issuers. Nevertheless, it remains to be seen if President Trump, who seems to favor a more laissez-faire approach to regulating private businesses, will establish an environment in which private companies - the so-called "obligated persons" - might be relieved of some of their current continuing disclosure burden.

by Robert Haight Jr., Douglas Praw | Holland & Knight LLP

2/14/2017

[Fitch: 'Fair' US Interstate Tolling Can Curb Highway Deficits.](#)

A widening chasm for the US economy - highway, road and bridge funding deficits - can be curbed by establishing interstate US tolling. It's a rather lofty task, however, that would need to be approached fairly and pragmatically.

[Continue reading.](#)

[Moody's Project Finance Masterclass.](#)

General Information

The substantial growth of public private partnerships and large, capital intensive projects continue to drive the need for effective analysis of project and infrastructure investments. This course will help delegates assess project feasibility, conduct financial analyses, structure investments using various sources of funds, and review key provisions of the documentation. The course has an international focus and will identify the critical components of projects and associated risks.

About this seminar

Learn to assess project feasibility, conduct financial analyses, structure investments using various sources of funds, and review key provisions of documentation.

[Click here](#) to learn more.

Support for Munis Seen on Capitol Hill; Tax Reform May Be Next Year.

WASHINGTON - Two corporate executives and lobbyists told treasurers meeting here on Monday that they are hearing positive things about municipal bonds from legislative staffers, but a senior tax staffer from the Senate Finance Committee said tax reform may slip into 2018.

Larry Chadwick, vice president of federal government relations for TIAA, said he has found support for munis on Capitol Hill. "We think municipal bonds are a critical funding mechanism for infrastructure," he said during a tax reform panel at the National Association of State Treasurers 2017 Legislative Conference.

Chadwick and other panelists, including a senior staffer for the Senate Finance Committee, said the key issue for the Trump administration and the Republican-led Congress is economic growth and infrastructure is viewed as the path for job creation and economic growth.

"I don't think we'll see tax reform without a serious infrastructure piece," the tax staffer said.

Chadwick said he would like to see Congress eliminate or ease the proration provision of the federal tax code so life insurance companies could buy more municipal bonds used for infrastructure.

Pierce Scranton, executive director for global relations & public policy at JPMorgan Chase, said, "The municipal bond [interest] exclusion seems to be in pretty good shape."

But Scranton cautioned, as did the other panelists, that with tax reform, "We're in an environment where everything is on the table."

Though a number of House Republicans talk about having tax reform legislation in August, the senior tax staffer said there are a number of obstacles to that and it may be pushed into 2018.

Nothing will happen with tax reform until the Republicans in Congress and the administration follow through with plans to repeal and replace the Affordable Care Act, the senior tax staffer said at the National Association of State Treasurers 2017 Legislative Conference here.

The lawmakers have to resolve the ACA issue, even if they do something less than repeal and replace or decide they can't do anything and leave it alone, he said.

Legislatively things are already moving slowly, as lawmakers found they could not get support for repeal without some sort of replacement, the tax staffer said. Trump's cabinet officials are not in place, though Congress confirmed Steve Mnuchin as Treasury Secretary Monday night, with only one Democrat, Sen. Joe Manchin, D-W.Va., voting for him. Given the Democrats' opposition to Trump's nominees, including Mnuchin, there may be battles over assistant secretary positions, he said. Treasury's assistant for policy typically quarterbacks tax reform, he said.

Republican lawmakers hope to repeal and replace the ACA, as well as comprehensively reform the federal tax code, through the budget reconciliation process to expedite the legislation and get it through the Senate with only 51 instead of 60 votes. Normal legislation needs 60 votes to limit debate, avoid a filibuster and move forward. But reconciliation is only for legislation that changes spending, revenues and the federal debt limit. And provisions in a reconciliation bill cannot increase the deficit during a second 10-year window - two challenges to using that legislative vehicle.

The budget resolution for fiscal 2017 includes the ACA, but not tax reform. If Congress wants to do

comprehensive tax reform through the reconciliation process, it will have to be for fiscal 2018. But it cannot start the process for fiscal 2018 until it finishes reconciliation for fiscal 2017.

Congress must also deal with other potentially controversial issues during the next few months. It will need to increase the federal debt limit on March 15. Also the latest continuing resolution keeping federal spending going in the absence of appropriations bills will expire on April 28, the tax staffer noted.

A “wild card” for any congressional action is April 30 expiration of legislation that temporarily shored up health care and pension benefits for retired miners. Manchin stopped work on the last CR until lawmakers provided the short-term fix. “Keep your eye on that,” the tax staffer said.

Key financial issues will also affect how tax reform plays out, the staffer said. If the border adjustment tax envisioned in the Republican blueprint for tax reform doesn’t pan out, then the \$1 trillion in revenues it was to bring in will have to be found elsewhere. “If it fails, we’ll need a whole lot of money from a lot of sources,” the tax staffer said.

Medicaid is another issue to watch, he said, adding how it is dealt with in ACA action will also affect revenues for tax reform.

“But don’t underestimate the president, the tax staffer said. If Trump decides to throw his weight behind tax reform, he can do a lot to push it forward, he said. The president has promised a phenomenal announcement on tax soon.

The Bond Buyer

By Lynn Hume

February 14, 2017

[MSRB Proposes New Ad Rule for MAs, Revised One for Dealers.](#)

WASHINGTON — The Municipal Securities Rulemaking Board is proposing an advertising rule for municipal advisors as well as revisions to its existing dealer advertising rule so that it is in line with other regulators’ rules.

The MSRB released the proposals late Thursday, asking for public comments on them to be submitted by March 24.

The MSRB’s proposed new Rule G-40 on MA advertising is part of the self-regulator’s efforts to create a regulatory regime for MAs and follows efforts to reach out to some MAs for information about MA advertising.

The board’s proposed amendments to Rule G-21 on dealer advertising are the result of market participants urging the self-regulator to harmonize the rule with the Financial Industry Regulatory Authority’s Rule 2210 on communication with the public.

“The changes we are proposing today would standardize advertising requirements for dealers and municipal advisors, and reinforce protections for the investors and municipal securities issuers that rely on their products and professional services,” said MSRB executive director Lynnette Kelly. “We

think the changes we are seeking comment on would improve consistency of advertising standards across the financial services sector and would be appropriately tailored to the business needs of municipal finance professionals.”

The amendments to Rule G-21 would make explicit and enhance many of the MSRB’s fair dealing obligations by mandating six requirements be met, including that an advertisement be fair and balanced as well as provide a sound basis for evaluating the municipal security. They also would require that an advertisement provide a balanced treatment of the benefits and risks associated with a municipal security.

The enhanced fair dealing provisions harmonize the rule with FINRA Rule 2210’s content standards for advertisements, according to the MSRB.

The amendments would also prohibit dealers from using testimonials in their advertisements to avoid misleading investors. The revisions would also expand on guidance the MSRB gives in its registration rule explaining that a dealer can only state it is MSRB registered if it is in compliance with MSRB rules and does not indicate that the MSRB endorses the dealer’s practices.

Additionally, the revisions would harmonize language explaining general standards in the current rule as well as the definition of a form letter with language in FINRA’s Rule 2210. A form letter would be defined as a written letter or electronic mail message distributed to more than 25 persons.

Rule G-40 would be substantially similar to the amended Rule G-21 but would have specific language altered to align with MA practices and would not address product advertisements, new issue product advertisements, and municipal fund security product advertisements because the MSRB said it does not think MAs prepare those.

The proposed rule, which would apply to advertisements by non-solicitor and solicitor MAs, would define an advertisement as any promotional literature distributed or made generally available to a municipal advisory client by a municipal advisor. Like the amended Rule G-21, Rule G-40 would exclude certain documents from the definition of advertisement such as preliminary official statements, official statements, preliminary prospectuses, summary prospectuses, and registration statements.

The definition of form letter in Rule G-40 would be the same as it is in the amended version of Rule G-21. The MSRB said in its notice that an MA responding to a request for proposals or qualifications from an issuer for services in connection with a municipal finance product would most likely not be making an advertisement because the response would likely be made to no more than 25 people.

Rule G-40 would also set forth similar content standards to those in the revisions to Rule G-21. That would ensure consistent regulation between regulated entities in the muni market as well as level the playing field between dealer MAs and non-dealer MAs, the MSRB said. The rule would also prohibit MAs from using testimonials in advertisements for similar reasons as the ones given to dealers. Additionally, G-40 would define the term professional advertisement in part as an advertisement concerning the services of the MA. It would also require that each advertisement that is subject to the rule be approved in writing by a municipal advisor professional before its first use. The MA would have to keep a record of all such advertisements.

The Bond Buyer

By Jack Casey

February 16, 2017

Public-Private Partnership Eyed For Regional High Speed Rail.

Governor Jay Inslee in his 2017-19 biennial budget has [proposed \\$1 million](#) to fund a feasibility study on an ultra-high speed rail line between Portland and Vancouver, B.C, which business leaders say could strengthen regional economic development. Proponents argued February 1 at a Senate Transportation Committee meeting that the proposed public-private partnership could cut travel times between Vancouver, B.C. and Seattle down to one hour and reduce traffic congestion on the interstate highways.

However, top ranking panel members say money for the study may be hard to come by this session. One lawmaker suggests a less costly update to a [1992 state study](#) that concluded a high speed rail line was viable. Inslee's proposal is similar to that study in that it would assess many of the same Washington cities as potential rail stations, including Bellingham, Everett, Seattle, SeaTac, Tacoma, Olympia, and Vancouver.

Private Sector Push For High Speed Rail

The governor's proposal comes on the heels of a September Cascadia Conference hosted by Microsoft in Vancouver, B.C., where tech industry leaders emphasized their desire for a bullet train to promote stronger regional ties between Seattle and Vancouver, B.C. Proponents include the Association of Washington Business, Washington Roundtable, and all 11 members of the Microsoft Board of Directors.

"There is time, there is energy, and maybe even dollars that they're (employers) willing to put forward on this," Inslee's Transportation Executive Policy Advisor Charles Knutson said.

In agreement was Microsoft lobbyist Michael Groesch, who told the committee "there's a lot of things that could work together to help both economies grow faster and stronger."

Strengthening Weak Regional Economic Ties

A [2016 study](#) by Boston Consulting Group found ties unusually weak between the two metro areas. It noted that "although only 120 miles separate the two cities...their level of connectedness is more akin to cities that are 2,000 miles apart. Of the handful of companies that operate in both cities, most have a large presence in one and only a satellite footprint in the other."

Based on LinkedIn data, the study also determined that Seattle had stronger connections to Atlanta than Vancouver, B.C.

A bullet train could change that, says Knutson.

"In a word, this is economic development," he said. "We've known really since the days of the Wild West that when the train comes through the town it provides an opportunity for economic activity and for growth."

Study: Bullet Trains Bring Prosperity

Knutson's remarks match the findings of a [2009 study](#) conducted by the London School of Economics and Political Science and the University of Hamburg. It examined the economic impact a German high speed train line between Cologne and Frankfurt on two cities, where service was available, compared to the other 3,000 nearby cities that did not have access. The authors found that those

two cities' gross domestic product (GDP) increased by 2.7 percent over a four-year period after the train was built, which was directly attributable to the new metro access provided by that rail service.

Washington's Amtrak Cascades trains currently offer trips between Portland and Vancouver, B.C. However, the trains can only go 79 miles per hour (mph), one third the speed of a 250 mph bullet train. Also, Amtrak offers only two daily trips between Seattle and Vancouver, B.C., four between Seattle and Portland.

"A trip up there (to Vancouver, B.C. from Seattle) in a day is currently almost impossible," Groesch said. "High speed rail is an option for that."

He added that "these two lines, both Amtrak and ultra high speed rail, can coexist and complement one another, because they provide a different type of service."

Knutson: Compelling Case For High Speed Rail

A private [Texas-based company](#) is currently developing a privately-funded, 240-mile ultra high speed rail line from Houston to Dallas. The line will offer rides every 30 minutes, reducing travel times between those cities from roughly four hours in a car to less than 90 minutes.

Knutson said that travel times between Seattle and Vancouver, B.C. could be reduced by rail from two and half hours currently in a car to just one.

That time savings could be crucial for commuters as the Central Puget Sound region grows. That region's population has increased from three million to nearly four million in less than twenty years, and the Puget Sound Regional Council expects another million more residents by 2040. Home purchasers are already seeking more affordable homes in areas farther north and south, driven in part by a lack of available land and restrictive land use regulations.

"We (Washington state) are now bigger than the country of Norway," Knutson said. "We're bigger than Finland. Bigger than Denmark. We're bigger than Ireland. And in a growing state, it's important that we are providing our people with the best means to move as quickly and safely as possible."

However, whether the idea is an easy sell to legislators may depend on the project's final price tag and the amount taxpayers must cover. Committee Assistant Ranking Minority Member Sen. Marko Liias (D-21) told Knutson "the number one question from the Transportation Budget Committee is 'How much does it cost?'"

He also asked whether the private companies interested in the study would be willing to chip in, something Groesch said was possible.

Liias' emphasis on minimizing state costs is shared by Transportation Vice Chair Sen. Tim Sheldon (D-35), a member of the Senate Majority Coalition Caucus. He told Lens appropriating \$1 million for the study could prove "tough this year." A less costly alternative is updating the 1992 high speed rail study, he added.

"It might be good to dust off what we have on the shelf and take a look at it before we start investing that much money in a proposal that we've studied several times before," he said.

However, Groesch stressed to panel members at the February 1 meeting the need to thoroughly examine the concept in order to make the best decision moving forward. "If we don't ask those questions (through a study), we'll never get the answers."

Membership Substitution Transactions - Why Are They So Misunderstood?

Membership substitution transactions are the most common form of business combination transaction in the nonprofit hospital industry. They are also widely misunderstood and the source of many mistakes. Many large 501(c)(3)s have become more acquisitive as a result of economic pressures of the ACA. Nonprofit health systems have been getting much better at participating in and winning competitive sale processes, resulting in an increased use of this business combination form.

In April 2013, St. Luke's Episcopal Health System announced its sale, via membership substitution, to Catholic Health Initiatives. In responding to a suit from physician owners (a minority faction) of a St. Luke's subsidiary, St. Luke's Sugar Land Hospital, St. Luke's attorney asserted: "the ownership of St. Luke's Sugar Land Hospital is totally unchanged by the Transaction." We have no opinion on this legal debate, but it points out something that repeatedly arises in these transactions - most participants don't really understand them to any depth.

Given the forecasted level of nonprofit hospital M&A activity in the coming years, as well as the increased use of the membership substitution specifically, it is important that these new and often inexperienced participants consider the implications of the structure. This article will explore the membership substitution structure - its history, use, pros, cons, and potential future applications. Issues such the impact on one's credit stature, bond covenants, and the legal handling of consolidating Master Trust Indentures are reviewed.

Description

Fundamentally, there are two means to acquire ownership and control of a company. One can either buy the assets of the business or its stock. Membership substitutions are analogous to a stock sale in corporate finance. A majority of public company mergers are completed via the acquisition of equity. Classic examples include Proctor and Gamble's acquisition of Gillette and Berkshire Hathaway's purchase of Heinz. In these arrangements, the legal entity of the target (Gillette and Heinz) remains intact with a new parent "stepping into Seller's shoes" as sole owner. This transaction structure has several advantages:

- It creates *successorship* for contractual agreements - employment, collective bargaining, management teams and similar operational matters are preserved.
- Business operations are uninterrupted - licensures, working capital, and leases are unchanged.
- The acquisition process is streamlined - timing and due diligence are simplified, regulatory scrutiny can be eased, and often there is no need for wind down corporation.
- Pensions, swaps, and other liabilities continue as a going concern - no need to terminate with the PBGC or unwind costly derivative instruments.
- Debt issues - avoid pre-payment penalties and defeasance costs associated with today's low interest rate environment.
- No need for tail insurance - beneficial if confronted with Stark or compliance issues that cause such coverage to be unattainable or unduly expensive.

It is easy to see that selling the stock of a business has certain advantages to sellers related to

simplifying the transaction and costs. Conversely, buyers commonly prefer to acquire assets as it limits real and theoretical future legal obligations.

Asset purchase transactions certainly have merit as well. In industries with significant intellectual property, e.g., technology, this more focused structure can isolate certain attractive assets and exclude other components of the business. For the same reason, divestitures of a subsidiary division within a conglomerate are generally acquired via a purchase of assets.

Governance

In a membership substitution model, typically the buyer will become the sole equity holder (or “membership interest” in nonprofit language) of the seller. As a result, the buyer will achieve full ownership and control of the seller. Think of this relationship much like that of a parent company and subsidiary, where the parent ultimately retains senior controls of the subsidiary. In connection with a member substitution transaction, the bylaws of each of the buyer and seller will be amended and restated in order to reflect the new governance structure and to provide for reserve powers that rest with the buyer. Oftentimes, the seller may negotiate with the Buyer to have a limited minority number of board seats on the buyer’s board.

Forms of Consideration

In either a membership substitution or asset sale, there are generally three forms of economic consideration that the buyer provides to the seller of a hospital: (1) a purchase price, (2) assumption of liabilities, and (3) a commitment to spend capital in the future. Together, the sum of these must equate to “fair market value.” The mixture of these forms varies based on the capital structure of the target and objectives of the parties. In a nonprofit to nonprofit membership substitution, a purchase price is rarely paid, instead the Seller is relieved of its financial liabilities and secures a commitment to invest capital in the future. In many cases, nonprofit Buyers are now the highest bidders in sale processes due to: (1) the high use of financial leverage, and (2) the strategic importance of growth. So while for-profit conversations were popular a decade ago to extract a purchase price and create a community foundation with the proceeds, today the total economic consideration of a membership substitution transaction is often equal or greater. Evidence of the achievement of “fair market value” is critical to defend the transaction to any critics, notably the state attorney general.

Financial Features

- All assets are conveyed to the buyer.
- All liabilities should be assumed or guaranteed by the buyer.
- Capital expenditures are committed by the buyer for routine and strategic needs in the future.
- Rarely are charitable foundations created, if so it is most always restricted to supporting the hospital.

Liabilities of the new subsidiary either remain in place by being assumed or guaranteed by the new parent company (as part of the obligated group), or are retired via refinancing. Issues associated with assuming the debt can include intercompany loans (potentially with interest), a support or guarantee arrangement, or inclusion or exclusion within the system’s obligated group.

Similarly, the handling of balance sheet assets is also customized for each setting. Can the cash be swept to corporate treasury? Who controls the foundation, where is it housed, who gets to select grant donations? Will the capital commitment be infused into the local subsidiary or simply be funded through retained free cash flow?

As a result of the change in the organizational structure, it is important for each party to review its Master Trust Indenture, as well as any and all material documents ancillary to or apart from the Master Trust Indenture between a bondholder and any member of the obligated group. With the assistance of investment bankers and legal counsel, the parties will want to determine whether each Master Trust Indenture may remain in place, and if so, whether this is the desired approach. Alternatively, the parties may determine that it is in the best interests of the combined organization and permitted pursuant to the terms of the Master Trust Indentures to consolidate the debt under one Master Trust Indenture. If consolidation is permitted and desired, then the parties will want to determine under which Master Trust Indenture they wish to proceed post-closing. For example, it may be advantageous to the parties to consolidate the debt under one of the Master Trust Indentures in order to take advantage of less restrictive and less burdensome covenants. In addition, there may be significant savings by capitalizing upon a more favorable cost-of-capital under one Master Trust Indenture over another.

The parties should also have an understanding of how the consolidation may affect the rating of the bonds as a result of the combination, which will require a review of the rating agencies on analysis of pro-forma ratios. As part of the review of the documents, the parties also will want to identify any consents that may be required of the bondholders and develop a timeline for reaching out to and obtaining such consents of the bondholders. Regardless of whether consent is required, there may be other covenants required by the Master Trust Indenture or ancillary documents, such as the delivery of legal opinions, officer's certificates and posting of additional collateral of which the parties should be aware. Finally, the parties will want to understand the terms of any other debt outside the Master Trust Indentures (including any swaps) that may be outstanding to determine if the combination will be in violation of any covenants, and consider whether it is best to obtain consent or alternatively, redeem or pay off such debt.

As a result of the modified structure via a membership substitution, the parties will need to review the contracts to determine whether the change of control will trigger any consent requirements of third parties, any terminations or defaults under any agreements or rights of first refusals. The parties will want to ensure that they abide by the terms of their agreements with third parties. In addition, in the event that the parties are members or partners in a joint venture, there may be transfer and consent requirements that are triggered as a result of the change of controls. Further, the parties will want to carefully review their contracts for non-competition restrictions, non-solicit restrictions and confidentiality provisions to fully understand the implications of the change of control.

Misnomers

Most of the confusion surrounding this structure in the nonprofit world centers on whether the parties acknowledge that a sale is occurring. Often there are incentives to obfuscate reality, namely easing the public relations messaging locally.

Part of the uniqueness of the membership substitution is the nonprofit nature of the partners entering the transaction. While for profit enterprises can access a variety of equity, debt, and synthetic markets to raise capital to finance strategic growth, nonprofit hospital companies are typically limited to the tax-exempt municipal bond market. Buyers of institutional debt are heavily reliant on credit rating (rather than growth prospects in the equity markets) in determination of the cost of capital or required yield. As a result, hospitals, and nonprofits generally tend to be more conservative with capital and have an affinity toward creative relationships to increase market share, revenue, and ultimately profits while not diluting one's rating and thus ability to raise capital.

Sellers are becoming more sophisticated, however, and are questioning what they're getting in

return for selling their hospital. The give-away transactions of yesteryear are not likely to be repeated in the era of more commercially oriented partners.

Conclusion

From our standpoint, it seems as though M&A techniques in the nonprofit hospital industry are given too much credit for their uniqueness. Much of this stems from a heartfelt belief that M&A transactions in the nonprofit world are completed on more friendly terms. As the stakes get higher in the increasingly capital intensive, regulated, and complicated hospital industry, however, this is changing. Transactions now seem more adherent to corporate norms - following SEC conventions and Delaware Law. Negotiations surrounding the accounting treatment of financial statements and technical topics such as representations and warranties, escrows, and breakup fees are becoming more common. Overall, it seems like the cottage hospital M&A business is maturing and taking on characteristics of public company transactions.

The Bond Buyer

By Ken Marlow and Rex Burgdorfer and Alex Voss

February 14, 2017

Ken Marlow is a partner and chair of the healthcare department at Waller Lansden Dortch & Davis in Nashville, Tenn. Rex Burgdorfer and Alex Voss are with Juniper Advisory in Chicago, a specialized investment banking firm focused exclusively on hospital M&A. Sources for this research include Waller Lansden and Juniper Advisory's M&A experience, as well as information compiled by The Harvard Business Review, The American Bar Associate, and Latham & Watkins studies.

[New Proposed Legislation: PABs for Social Infrastructure and a Ban on Stadium Bonds.](#)

The new Congressional session is heating up, and we'll cover two new pieces of proposed legislation below. For the first time in several years, we can avoid giving the usual disclaimer that any new piece of legislation is "likely going nowhere." Tax reform appears to be a real possibility for the first time in many years, and it will probably involve expansions of some areas of the tax-exempt bond world and contractions of others. The two bills discussed below are an example of each.

The first bill would allow tax-exempt private activity bond financing for public buildings that have too much private involvement. The second bill goes in the other direction, and would forbid governmental bond financing for stadiums, which, as we'll see, would have the effect of preventing tax-exempt financing of any kind for stadiums.

[We are continuing to work with our industry-leading public policy group](#) to study the many new legislative developments that are sure to arise, and we will use the blog to provide resources and reactions to them.

[Continue reading.](#)

The Public Finance Tax Blog

By Johnny Hutchinson on February 17, 2017

[Social Finance Launches First-in-the-Nation Outcomes Rate Card Development Competition.](#)

Last week we announced the Outcomes Rate Card Development Competition, which will position governments and nonprofit organizations at the forefront of innovation in outcomes-based policymaking. Outcomes rate cards scale solutions to society's most pressing challenges by standardizing the Pay for Success contracting approach. With one outcomes rate card, governments can launch multiple Pay for Success projects, directing resources towards effective social programs at greater scale.

The Competition is supported by the Social Innovation Fund, a program of the Corporation for National and Community Service. "The Social Innovation Fund is committed to bringing innovative solutions to communities across the country through Pay for Success," said Lois Nembhard, Acting Director of the Social Innovation Fund. "This competition is a great opportunity for more governments and nonprofits to engage in Pay for Success through outcomes rate cards."

To learn more join our webinars on Tuesday, February 21st at 3:00 pm EST and on Wednesday, March 15, 2017 at 3:00 pm EST. Webinar log-in is available on the competition webpage.

[Read more.](#)

Social Finance

[Trump's Infrastructure Vow Reverses Mutual Fund and ETF Outflows.](#)

- Money poured in since October after months of outflows
- Could take years for funds to profit from new projects

It's not just U.S. President Donald Trump who's bullish on infrastructure investing.

Mutual and exchange-traded funds dedicated to building and upgrading roads, bridges, airports and other projects attracted more than \$450 million from November through January, the biggest three-month period in almost two years, according to Morningstar Inc. The inflows reversed redemptions during 15 of the 16 months prior to last year's fourth quarter.

Interest in the funds has increased with Trump proposing \$1 trillion in spending during the next decade on crumbling and outdated infrastructure. While investments have historically been concentrated privately, some mutual fund providers are offering access to the industry through bundles of shares concentrated on businesses that run everything from airports to cell phone towers. And the number of offerings is likely to rise, according to Morningstar's Tayfun Icten.

"The new product introduction will be pretty healthy in this particular area going forward," Icten, an analyst who focuses on infrastructure mutual funds, said in a telephone interview.

The Lazard Global Listed Infrastructure Portfolio is the largest mutual fund in Morningstar's infrastructure category and the top performer for the last three- and five-year periods. Inflows from

November through January to the \$3.6 billion fund exceeded \$230 million.

Tollways, Airports

The Lazard fund focuses on stocks in regulated sectors with monopoly-like franchises, such as ports and airports, while avoiding interest rate and commodity-sensitive firms, Icten said. Its biggest holdings include freight-transportation operator CSX Corp., Atlantia SpA, a Rome-based international manager of toll networks and airports; and Vinci SA, a France-based construction and infrastructure concession operator. Lazard portfolio manager John Mulquiney declined to comment.

Investors poured a net \$320 million in November and December into BlackRock Inc.'s iShares Global Infrastructure ETF, the largest exchange-traded fund in the category. It tracks the S&P Global Infrastructure Index and has climbed about 19 percent in the past 12 months yet investors pulled almost \$100 million in January, according to Morningstar estimates.

Net inflows into the fund category overall slowed in January, after some of the funds trailed the broader market's fourth-quarter gains and hopes dimmed for a quick U.S. stimulus boost under the new administration, Icten said.

Until about a decade ago, U.S. infrastructure investing opportunities were largely limited to private equity funds that were neither liquid nor available to small players. The other alternative was municipal bond funds, which usually offered low returns in exchange for tax benefits.

Rent-Like Revenue

Then money managers took a cue from the real estate industry, assembling retail funds of companies with rent-like revenue streams such as rails, pipelines, utilities or cellphone towers, according to Manoj Patel, co-manager of the \$3.5 billion Deutsche Global Infrastructure Fund. The focus on long-term cash flow distinguishes infrastructure from the construction sector, which may benefit more directly from government stimulus spending, but for shorter periods, he said.

Investors who buy mutual funds and ETFs to bet on a surge in U.S. infrastructure spending will probably have to wait to see the benefits of a boom. Any Trump-era projects could take years to construct before revenue flows to popular fund holdings such as CSX or power company NextEra Energy Inc.

"This is a long-term, focused strategy on companies with structurally more stable and predictable cash flows," Patel said in a telephone interview. The largest holdings in his fund, which averaged annual returns of almost 7 percent as of Feb. 10 since its June 2008 inception, include Kinder Morgan Inc., American Tower Corp. and Sempra Energy.

Though growing, the infrastructure category is small at \$14.6 billion compared to the broad array of U.S. mutual funds and ETFs with almost \$15 trillion in assets combined, according to Morningstar, which tracks 31 open-end infrastructure mutual funds and ETFs.

The market capitalization of the Guggenheim S&P High Income Infrastructure ETF has jumped more than 350 percent since Trump's election to almost \$29 billion as of Feb. 13 as more investors noticed its performance, according to William Belden, head of Guggenheim's ETFs development. Stocks in the ETF, which are heavily energy and pipeline weighted, did well in 2016 and its returns topped 50 percent over the last year.

The \$289 million DoubleLine Infrastructure Income Fund, launched in April, is one of the few in the category that holds fixed-income debt such as asset-backed securities for aircraft and rail cars. It's

returned about 2.2 percent since inception as of Feb. 10. Since the election on Nov. 8 it's lost about 1.3 percent, as with other intermediate-term bond funds that suffered as interest rates rose. DoubleLine analyst Loren Fleckenstein declined to comment.

Investors betting on the funds should be wary of exposure to interest rate, energy or currency risks that can add volatility, according to Icten. Most publicly-traded infrastructure funds also invest globally, which could limit the potential impact of U.S. stimulus policies to gains.

"It's a tricky place," he said.

Bloomberg

by John Gittelsohn

February 14, 2017, 2:00 AM PST

[Miami's Mayor Climbs Aboard the Trump Train.](#)

The county may need billions in federal funds for a transit system.

He's the immigrant mayor of Miami-Dade County—where most people speak a foreign language at home and half the population was born abroad—and he voted for Hillary Clinton. Yet Mayor Carlos Gimenez is falling in line with President Trump's demands on immigration, and many of his constituents are furious.

After Trump threatened to curtail federal funds to so-called sanctuary cities that protect illegal immigrants from federal immigration laws, Gimenez quickly eliminated the policy that had landed Miami-Dade on a list of sanctuary jurisdictions. But even amid growing uproar in the community, the mayor is clear about his motive: It's all about the money.

The second-term Republican needs federal funds to make good on one of his signature campaign promises—to build an expansive mass transit system to connect downtown to Miami Beach and several suburbs. When Trump put out his order on Jan. 25, threatening to withhold funds from disobedient mayors, Gimenez got on board. "I said, 'You know what? I think this gentleman is serious,'" he told a local ABC affiliate. "Money is in jeopardy, because there is a law that says if you don't comply with federal law, you can lose." Gimenez says Miami-Dade relies on \$350 million in federal funds every year and will try to get hundreds of millions—"if not billions of dollars"—for the transit system.

Sean Foreman, a political science professor at Barry University in Miami Shores, Fla., sees parallels between the mayor's decision and moves by companies such as Ford and United Technologies, which made deferential gestures after Trump blasted offshore manufacturing. "It's political expediency," he says. "If you want to get anything done for your business or for your municipality, you have to fall in line."

That rationale hasn't appeased the scores of protesters who have shown up at county hall. The county commission is holding a special meeting on Feb. 17 to consider the mayor's memorandum rolling back the city's sanctuary status. At issue is whether jails should keep people beyond normal periods because federal immigration authorities want to question them. Since 2013, Miami-Dade had refused to do so unless it was reimbursed by the federal government, a policy that typically led to

most people being let go.

Gimenez insists the move represents a minor shift in policy. Still, the change wasn't lost on Trump, who tweeted, "Miami-Dade mayor dropped sanctuary policy. Right decision. Strong!" In the first two weeks under the new policy, the mayor's office noted that Miami-Dade got 34 detainer requests from the federal government. That compares with 174 for all of 2016.

Even if Gimenez gets the federal funds, questions remain as to how he'll obtain the land for the transit project, which would cut across hundreds of acres of private property. "So yes, if we end up solving transportation issues in this community, the mayor will come out very popular," Foreman says. "But there's a low likelihood of success."

The bottom line: Miami-Dade's mayor is avoiding a clash with Trump over immigration because he needs federal money for mass transit.

Bloomberg BusinessWeek

by Jonathan Levin

February 16, 2017, 8:00 AM PST

—With Paul Murphy

[BlackRock's Hayes Says Trump Unlikely to End Muni-Bond Tax Break.](#)

- Trump's plans to cut taxes could curb demand for local debt
- Elimination of tax-exemption 'highly unlikely,' Hayes says

Peter Hayes, who oversees municipal-bond investments for BlackRock Inc., the world's largest money manager, doesn't think President Donald Trump and the Republican-led Congress will do away with the tax break given to buyers of state and local government debt.

"The tax exemption of municipal bond interest is a key draw for issuers. And while it may be deemed alterable, we don't see it as dispensable," Hayes said in a blog post on the company's website. "We see the elimination of muni tax exemption as highly unlikely."

Speculation that Washington will move to tax the interest investors receive in the \$3.8 trillion municipal market has increased since Trump's election, given that the revenue could help cover the cost of cutting corporate and individual income taxes. Former President Barack Obama proposed capping the benefits the wealthiest earners can receive from municipal bonds, though the plan stalled in Congress, and a deficit-cutting panel once proposed eliminating the tax exemption outright.

Such change would lead investors to demand higher yields on municipal bonds than they do now, an outcome that may be at odds with Trump's other goal of increasing spending on infrastructure projects.

That doesn't mean the municipal market will be spared the effects of any tax changes: Cutting income-tax rates would also lessen the appeal of the securities. But such reductions may not come this year, as lawmakers focus first on overhauling corporate taxes, according to BlackRock's Hayes.

"The individual tax code is very complicated and politically difficult to amend, even under one-party

control,” he wrote. “Change may well come, but not likely in 2017 as Washington focuses on the comparatively easier task of corporate tax reform.”

Bloomberg

by Jordyn Holman

February 14, 2017, 10:48 AM PST

[Meet the Gold Rush Towns at Risk of Flooding From California Dam.](#)

- Evacuation warnings in effect for Butte, Sutter, Yuba counties
- Communities have \$1.6 billion in municipal debt outstanding

The damage to the spillway of the Oroville Dam puts a spotlight on the northern California communities that once boomed during the Gold Rush and are now at risk of severe flooding.

Evacuation warnings remain in effect for Butte, Sutter and Yuba counties, meaning that residents who were allowed to return Tuesday after being ordered to leave on Sunday must be prepared to flee again if necessary.

Damage to an emergency spillway of the nation’s tallest dam after weeks of rain had raised the risk of disastrous floods downstream, and repair crews are still working around the clock. Adding to the concern are new storms forecast for next week that could strain the reservoir behind the spillway.

The communities, which the state’s current economic boom has largely passed by, have \$1.6 billion in outstanding municipal debt, data compiled by Bloomberg show. Some of their debt has already been repriced to higher yields, according to Bloomberg BVAL.

If the municipalities flood, President Donald Trump would likely sign an emergency declaration, authorizing the Federal Emergency Management Agency to act, said Eric Hoffmann, an analyst at Moody’s Investors Service.

“The FEMA aid would supplement state and local expenses, alleviating immediate financial challenges and minimizing fiscal and credit pressures,” Hoffmann said.

The following are details about each county:

Butte County:

Population: 225,411

Poverty rate: 21.4 percent

Total outstanding debt by all issuers in county: \$338 million

Biggest issuers: Chico Redevelopment Agency, \$73 million; Chico Unified School District, \$68 million

Sutter County:

Population: 96,463

Poverty rate: 17.5 percent

Total outstanding debt by all issuers in county: \$533 million

Biggest issuers: Yuba Levee Financing Authority, \$151 million; Sutter Union High School District, \$93 million

Yuba County:

Population: 74,492

Poverty rate: 21.6 percent

Total outstanding debt by all issuers in county: \$731 million

Biggest issuers: Yuba Community College District, \$373 million; Marysville Joint Unified School District, \$164 million

Bloomberg

by Romy Varghese

February 17, 2017, 2:00 AM PST

Muni-Bond Buyers Shouldn't Expect Financial Reports Anytime Soon.

- Audited statements arrive an average of 199 days after year
- That's more than three times longer than big corporations

For municipal-bond investors looking for yearly financial updates from the cities and states in their portfolios, the wait times aren't getting any shorter.

It took the debt issuers an average of 199 days last year to file their annual reports with the Municipal Securities Rulemaking Board, according to a report released by the regulator. That's three days longer than it was in 2015 and little changed from the 200-day average during the last seven years. The figures exclude those that were filed after more than a year.

The lag has been a perennial source of complaint to investors in the \$3.8 trillion municipal market, where regulations are more relaxed than those imposed on private corporations.

When raising money in the bond market, state and local issuers agree to make annual disclosures, though the timing of those commitments can vary. While about one-third agree to post audited financial statements within 180 days, about one-quarter have nine months to do so, according to the rulemaking board. By comparison, the U.S. Securities and Exchange Commission gives big companies a deadline of two months.

The SEC, which regulates municipal disclosure only indirectly through its power over underwriters, has stepped up enforcement in an effort to improve it. In 2014, it extended an offer of leniency to banks and governments that voluntarily reported misleading investors about their compliance with the disclosure obligations, resulting in settlements with dozens of issuers and underwriters.

That seems to have had an impact on some scofflaws: The MSRB said the SEC initiative led to a spike of disclosures for previous fiscal years. If such catch up submissions are included, the figures look even worse, with financial reports coming an average of 311 days after the close the year in 2016.

Bloomberg

by Jordyn Holman

February 15, 2017, 9:29 AM PST

[Bloomberg Brief Weekly Video - 02/17](#)

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

[Watch the video.](#)

Bloomberg

February 17, 2017

[Sanctuary Cities May Not See Borrowing Hit From Trump Order.](#)

The municipal-bond market has an early read on President Donald Trump's executive order threatening sanctuary cities: more bark than bite.

The Jan. 25 order's threat to cut federal funds to cities and counties that decline to cooperate with federal authorities enforcing policies on illegal immigrants is unlikely to hurt the municipalities' credit, at least in the short term, according to credit-ratings firms, analysts and investors.

Two such cities—New York and Philadelphia—are out selling more than \$1 billion of bonds but only made brief references to the order in marketing documents.

Officials from cities like Philadelphia and Los Angeles are still trying to figure out how much of their budgets could be on the line. The order directs the Office of Management and Budget to provide details on the federal grant money cities receive, but the White House hasn't yet identified the funds it can shut off.

Matt Szabo, deputy mayor of budget and innovation in Los Angeles, called the presidential order "sufficiently vague," but said he is operating under the assumption the city's roughly \$500 million in federal grant money could be at risk. Excluding the city's utility department, airport and seaport, which control their own operating budgets, the city's current budget is about \$8.7 billion.

"Any reduction in funding would result in a real cut in service," he said, noting that federal grants help pay for things like housing and economic-development programs administered by hundreds of city workers.

Most federal dollars that go to cities are based on statutory grants that follow a formula and can only be stopped if the funds aren't being spent on the intended purpose, said Linda Bilmes, a senior lecturer in public policy at Harvard University's Kennedy School of government. For example, ignoring federal immigration policy wouldn't justify halting a Head Start grant for early childhood education, said Ms. Bilmes, who has held senior roles in the U.S. Department of Commerce under President Bill Clinton.

Ratings firms said they don't see a major threat in the near future to municipal borrowers' ability to repay their debts.

According to Standard & Poor's, the executive order most likely will jeopardize grants from the Department of Homeland Security and Justice Department that account for less than 1% of

municipal budgets that S&P had analyzed.

Grants from all federal agencies and departments comprise 10% of the average municipal budgets in sanctuary jurisdictions, but reach as high as 41%, said the ratings firm, which didn't name the specific cities. S&P said the executive branch has limited power to withhold or defer funds appropriated by Congress.

"The muni market's view on this is it's not good, but it's not necessarily a credit risk," said Guy Davidson, director of municipal investments at AllianceBernstein Holding LP. Lower credit ratings could lead to higher borrowing costs.

Some credit analysts raised concerns the White House order will open gaps in city and county budgets.

Howard Cure, director of municipal-bond research at Evercore Wealth Management, said cutting off federal money flowing to New York City programs such as housing or health care, for example, could pressure finances. "The city would either have to back down on this or find other money, and if they don't, it would put a real strain on their budget," he said.

On Jan. 26, Miami-Dade County Mayor Carlos Gimenez directed jails to comply with federal requests to detain immigrants. The county estimated it will receive \$355 million in federal funding in the current fiscal year, including support for affordable housing, transit and battling beach erosion. Some immigration advocacy groups, including the American Civil Liberties Union of Florida, disagreed with the county's analysis of the order and don't believe its prior jail policy put the county at risk.

A Miami-Dade spokesman said, "Faced with the possibility of losing hundreds of millions of dollars in federal funding, much of which is discretionary, the mayor made the responsible decision to protect county government."

Philadelphia City Council President Darrell Clarke said the city should take Mr. Trump's threat seriously, even though he said he believes the order is unconstitutional.

"If there is still room for reasonable compromise with the federal government that preserves our ability to protect residents, including undocumented immigrants, and preserves critical funding for local policing and programs that help low-income people, then that to me is worth exploring," Mr. Clarke said this month.

In its recent bond offering, New York City indicated it sees modest risks saying it believes reductions to federal funding are legally limited and that such grants "comprise a small percentage of the city's total budget."

The city also said it believes most or all of those federal grants would qualify for the exemption in the executive order that said funds "deemed necessary for law enforcement purposes" wouldn't be cut. The city added that there is no guarantee the order won't cause a "significant reduction or delay" in receiving the grant funds, but said it would mount "a vigorous legal challenge" if that happened.

Los Angeles also will head to court if necessary, and the city is "confident that the Constitution and courts will be on our side," a spokesman said.

At least four jurisdictions, including San Francisco, have filed lawsuits alleging the order is unconstitutional. Legal experts say prior Supreme Court rulings could limit the executive order's

reach.

THE WALL STREET JOURNAL

By JON KAMP, SCOTT CALVERT and AARON KURILOFF

Feb. 15, 2017 8:00 a.m. ET

Write to Jon Kamp at jon.kamp@wsj.com, Scott Calvert at scott.calvert@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

[MSRB Requests Comment on Updating Dealer Advertising Requirements and Applying Similar Standards to Municipal Advisors: Webinar](#)

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a plan to update and harmonize certain provisions of its municipal securities dealer advertising rule with those of other financial regulators, and to create similar advertising standards for municipal advisors.

“The changes we are proposing today would standardize advertising requirements for dealers and municipal advisors, and reinforce protections for the investors and municipal securities issuers that rely on their products and professional services,” said Executive Director Lynnette Kelly. “We think the changes we are seeking comment on would improve consistency of advertising standards across the financial services sector and would be appropriately tailored to the business needs of municipal finance professionals.”

[MSRB Rule G-21](#), which defines advertising and establishes standards for advertising by dealers, has been in place since 1978 and is a key investor protection rule. The draft amendments published today would harmonize Rule G-21 with certain provisions of an advertising rule of the Financial Industry Regulatory Authority (FINRA), Rule 2210. Market participants have frequently suggested that the MSRB harmonize Rule G-21 with FINRA Rule 2210. Further, the draft amendments to Rule G-21 update advertising requirements for municipal fund security products, such as 529 college savings plans, to conform with recent amendments made by the Securities and Exchange Commission to its parallel investor protection rules.

Because the purpose of advertising standards is similar for different market participants, the MSRB has incorporated the substance of the draft amendments to Rule G-21 into a new draft municipal advisor advertising rule, MSRB Rule G-40. Rule G-40 defines advertising and establishes standards for advertising by municipal advisors, but contains terms relevant to municipal advisors. At this juncture, draft rule G-40 omits certain provisions of the dealer rule concerning product advertisements.

[Read the request for comment.](#) Comments should be submitted no later than March 24, 2017. The MSRB will host a webinar on Thursday, March 9, 2017 at 3:00 p.m. to 4:00 p.m. to discuss today’s request for comment. [Register for the webinar.](#)

Date: February 16, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500 jgalloway@msrb.org

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- [How a Corporate `War' Over Covenants May Affect Munis.](#)
 - [What Makes a Bond "Green"?](#)
 - [MSRB: Continuing Disclosure Timing Remains Stable.](#)
 - [Why Some Bargain Municipal Bonds Aren't Tax Free.](#)
 - [MSRB Enhances EMMA Alerts Tool.](#)
 - [Moody's Seminars: Financial Analysis of Local Governments.](#)
 - [SIFMA Releases 2017 U.S. Municipal Issuance Survey: Long-Term Issuance Likely to Taper.](#)
 - [SIFMA U.S. Municipal Credit Report, Fourth Quarter and Full Year 2016](#)
 - [Acciona Windpower North America, LLC v. City of West Branch, Iowa](#) - Court of Appeals holds that TIF development agreement required city to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year and did not impermissibly limit city's ability to decline to pay rebates.
 - And finally, Charles Darwin, County Road Commissioner is brought to us this week by [Patterson v. Cowley County](#), in which the kinfolk of two inebriated decedents sued the county for neglecting to mention that a local road abruptly dead-ended at a river. Although initially appearing to be a matter of simple negligence, could it be possible that this was in fact a genius plan to funnel the residents of the shallow end of the gene pool into, well, a literal pool? The perfect marriage of evolution and intelligent design.

WATER DISTRICTS - CALIFORNIA

[Central San Joaquin Water Conservation District v. Stockton East Water District](#)

**Court of Appeal, Third District, California - December 27, 2016 - Cal.Rptr.3d - 7
Cal.App.5th 1041 - 2016 WL 7985787**

Water conservation district that used another district's conveyance system brought action against the district that owned the conveyance system for declaratory judgment as to the proper calculation of the wheeling charges.

The Superior Court issued a preliminary injunction requiring the system owner to offer the prior wheeling rate.

System owner appealed, and the Court of Appeal affirmed. System owner filed a cross-complaint for declaratory relief and quantum meruit. The Superior Court concluded that two annual wheeling rates set by the system owner were not reasonable since they failed to consider incremental costs and other factors. System owner appealed.

The Court of Appeal held that Wheeling Statutes did not permit wheeling rates to include pro rata allocation of fixed costs in all cases.

Under the Wheeling Statutes, a water conservation district that owned a conveyance system was required to consider a share of capital, overhead, maintenance, and other fixed or ongoing costs in calculating a wheeling rate for another district's use of the conveyance system, but the district that owned the system could not simply total its costs and force a pro rata allocation in all cases, where the district that used the system was not a member of the district that owned the system.

Water conservation district could not complain on appeal that the trial court's determination that

district's wheeling rates were "demonstrably unreasonable inasmuch as they run counter to any 'real-world' analysis of competitive pricing," in granting declaratory judgment that the rates were not reasonable, constituted a factual matter that was never tried, where the district had the opportunity throughout the litigation to present evidence in support of its rates.

IMMUNITY - CONNECTICUT

[Ventura v. Town of East Haven](#)

Appellate Court of Connecticut - January 31, 2017 - A.3d - 170 Conn.App. 388 - 2017 WL 380547

Pedestrian, who was struck by truck driven by motorist, brought personal-injury action against town, alleging that town police department's rules regarding towing of vehicles imposed clear ministerial duty on police officer to, after investigating an unrelated domestic-violence incident involving motorist, tow motorist's truck, because truck had invalid registration and improper plates.

Following jury trial, the Superior Court entered judgment in favor of pedestrian. Town appealed.

The Appellate Court held that:

- Question whether rules imposed ministerial duty on officer, and thus whether town enjoyed governmental immunity, should have been decided by trial court, and
- Rules did not impose clear ministerial duty on officer to tow motorist's truck, and pedestrian thus failed to show that town did not enjoy governmental immunity from pedestrian's claim.

Question whether town police department's rules regarding towing of vehicles imposed ministerial duty on police officer to tow motorist's truck following officer's investigation into unrelated domestic-violence incident involving motorist, and thus whether town enjoyed governmental immunity from pedestrian's claim that injuries he sustained when motorist subsequently struck him with truck resulted from violation of such duty, should have been decided by trial court, not jury, since it turned on interpretation of municipal ordinance or policy.

Town police department's rules regarding towing of vehicles did not impose clear ministerial duty on police officer to tow motorist's truck following officer's investigation into unrelated domestic-violence incident involving motorist, and pedestrian thus failed to show that town did not enjoy governmental immunity from pedestrian's claim that injuries he sustained when motorist resumed driving truck, and subsequently struck pedestrian with truck, resulted from violation of such duty, even though truck had invalid registration and improper plates, since, when read together, rules made sense only with understanding that the rules regulated tow truck operators, not police officers.

MUNICIPAL CORPORATIONS - FLORIDA

[Town of Gulf Stream v. Palm Beach County](#)

District Court of Appeal of Florida, Fourth District - December 21, 2016 - 206 So.3d 721

Municipalities that were subject to office of inspector general program as established by referendum and implemented by county ordinance, and that were required by the ordinance to contribute to the funding of this program, brought action for declaratory relief against county, seeking a judgment declaring that the municipalities were not required to pay the expenses of the program and that all

expenses of the program would be paid for solely by county.

The Circuit Court entered final judgment in favor of county and denied municipalities' motion for rehearing. Municipalities appealed.

The District Court of Appeal held that:

- Sovereign immunity barred county from requiring municipalities to fund officer of inspector general program;
- Referendum establishing the program was a local law, not a general law, and thus did not waive the municipalities' sovereign immunity; and
- Referendum establishing the program did not give rise to a contract for funding between municipalities and county and, thus, did not waive the municipalities' sovereign immunity.

DRAINAGE DISTRICTS - IOWA

[Board of Water Works Trustees of City of Des Moines v. Sac County Board of Supervisors](#)

Supreme Court of Iowa - January 27, 2017 - N.W.2d - 2017 WL 382402

City board of water works trustees brought several claims in federal court against drainage districts, alleging that districts had allowed excessive levels of nitrates in river.

The United States District Court for the Northern District of Iowa certified questions.

The Supreme Court of Iowa held that:

- There exists no remedy against drainage districts other than mandamus;
- The broad immunity in favor of drainage districts does not violate equal protection;
- Districts did not unconstitutionally take board's property; and
- Board could not assert claims against districts under inalienable rights clause.

Even if city board of water works trustees were regarded as a private entity, drainage districts did not unconstitutionally take board's property by permitting nitrate concentrations in river to exceed standards for drinking water; board did not own water flowing in river, nor was it denied access to that water.

City board of water works trustees, which was a public entity, could not assert takings claim against drainage district, which was another political subdivision of state, based on excessive nitrate concentrations in river.

City board of water works trustees could not assert claims against drainage districts under inalienable rights clause based on excessive levels of nitrate concentrations in river; clause did not provide basis for one public entity to sue another over use of state-owned assets.

IMMUNITY - KANSAS

[Patterson v. Cowley County](#)

Court of Appeals of Kansas - January 27, 2017 - P.3d - 2017 WL 384023

Wife and mother of motorists filed wrongful death action against county, township, and Department of Wildlife, alleging their negligence caused motorists to drive vehicle off dead-end road and drown.

Defendants filed motions for summary judgment. The District Court granted summary judgment in part to the county, and in full to the township and Department. Wife and county filed application for interlocutory appeal, which was accepted.

The Court of Appeals held that:

- County was entitled to discretionary function immunity against claims of negligence for failing to place warning signs on its portion of county road;
- County was not entitled to recreational-use immunity against motorist's claims of negligence for failing to place warning signs on its portion of county road that dead-ended at banks of river in wildlife area; and
- Township did not have a duty to place warning signs on the road, as it lacked authority to place traffic control devices on its roads.

County was entitled to discretionary function immunity against motorist's claims of negligence for failing to place an advisory speed plaque, a dead end sign, and a no outlet sign on its portion of county road. There was no standard within the Manual on Uniform Traffic Control Devices (MUTCD) that required county to follow any specific course of action related to the placement of such signs and plaques, and county's decision to place, or not place, the warning signs at issue was consistent with, and the kind of function susceptible to, public policy analysis.

County was not entitled to recreational-use immunity against motorist's claims of negligence for failing to place warning signs on its portion of county road that dead-ended at banks of river in wildlife area. Road was not essential to the use of wildlife area as a recreational area, as road apparently existed for over 100 years before wildlife area was created, and road was not the only road from which area was accessible.

MUNICIPAL GOVERNANCE - MISSISSIPPI

[McAdams v. Perkins](#)

Supreme Court of Mississippi - December 8, 2016 - 204 So.3d 1257

Unsuccessful candidate in city's mayoral election filed bill of exceptions challenging city council's resolution to employ counsel, which was the same law firm employed by the city's mayor, to represent the city's interest in upholding the validity of the election.

The Circuit Court reversed, finding that the resolution was beyond council's scope or power and in violation of the Mississippi Constitution. Mayor appealed.

The Supreme Court of Mississippi held that:

- Mayor was not estopped from raising issues on appeal by virtue of her certification of bill of exceptions;
- Resolution was permitted under statute allowing municipalities to employ legal counsel for defense of "any claim, demand, or action";
- Resolution was permitted under "home rule" statute;
- Resolution did not authorize an unconstitutional donation of public funds to a private individual; and

- Mayor had authority to pursue appeal without specific authorization from council.

ZONING & LAND USE - NEW YORK

[Expressview Development, Inc. v. Town of Gates Zoning Bd. of Appeals](#)

Supreme Court, Appellate Division, Fourth Department, New York - February 3, 2017 - N.Y.S.3d - 2017 WL 460597 - 2017 N.Y. Slip Op. 00874

Owner of landlocked, undeveloped parcels of land and potential purchaser of parcels brought hybrid proceeding challenging, under article 78, denial by town zoning board of appeals of application for use and area variances to construct on parcels billboards that would be visible from highway, and seeking declaration that town code section prohibiting commercial signs not located on site of business for which they advertised was unconstitutional.

The Supreme Court, Monroe County, dismissed action. Owner and potential purchaser appealed.

The Supreme Court, Appellate Division, held that:

- Denial of application was not arbitrary and capricious for alleged failure to adhere to board precedent;
- Board's determination that owner and potential purchaser failed to establish factors constituting unnecessary hardship required for issuance of use variances was not arbitrary and capricious;
- Substantial evidence supported board's determination that billboards would have negative and adverse effect on character of neighborhood; and
- Owner and potential purchaser failed to state claim that board's denial violated their equal protection rights.

PENSIONS - TENNESSEE

[Dodd v. City of Chattanooga, Tennessee](#)

United States Court of Appeals, Sixth Circuit - January 18, 2017 - 846 F.3d 180

Police officer brought action against city, which amended its ordinance governing fire and police pension fund to eliminate default death benefit, alleging that this change violated his rights under the Contract Clause, Due Process Clause, and Takings Clause.

The United States District Court granted city's motion for summary judgment. Officer appealed.

The Court of Appeals held that:

- Officer did not have a contract right to default death benefit, and thus was not entitled to relief under the Contract Clause;
- Officer did not have a protected property interest in default death benefit, and thus was not entitled to relief under the Due Process Clause or the Takings Clause; and
- City validly amended its charter to permit ordinances to be passed after two readings, and thus, amendment of pension ordinance after only two readings was valid.

PUBLIC RECORDS - WASHINGTON

[Fortgang v. Woodland Park Zoo](#)

Supreme Court of Washington - January 12, 2017 - 387 P.3d 690

Requester brought action against private nonprofit organization that operated city zoo, alleging it violated the Public Records Act (PRA) by failing to disclose documents related to zoo's elephants.

The Superior Court granted summary judgment in favor of organization. Requester appealed. The Court of Appeals affirmed. Requester sought review, which was granted.

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

- Government function factor weighed against finding that organization was functional equivalent of government agency and, thus, subject to PRA disclosure requirements;
- Government funding factor was inconclusive as to whether organization was equivalent of government agency;
- Government control factor weighed against finding that organization was equivalent of government agency;
- Entity's origin factor weighed against finding that organization was equivalent of government agency; and
- Organization was not functional equivalent of government agency, and thus was not subject to disclosure requirements under PRA.

EMINENT DOMAIN - WYOMING

[Bush Land Development Company v. Crook County Weed & Pest Control District](#)

Supreme Court of Wyoming - February 3, 2017 - P.3d - 2017 WL 474103 - 2017 WY 12

Landowner brought action against weed and pest control district for inverse condemnation under the Eminent Domain Act, alleging that it was entitled to just compensation for the loss of trees on its property as a result of the district's improper application of herbicides.

The District Court dismissed action. Landowner appealed.

The Supreme Court of Wyoming held that landowner did not pursue statutory administrative remedy available to a landowner whose property was damaged as a result of a weed and pest district carrying out its requirements, and thus action was required to be dismissed for failure to exhaust administrative remedies.

[SIFMA U.S. Municipal Credit Report, Fourth Quarter and Full Year 2016](#)

According to Thomson Reuters, long-term public municipal issuance volume totaled \$100.3 billion in the fourth quarter of 2016, a decline of 7.5 percent from the prior quarter (\$108.5 billion) but an increase of 31.1 percent year-over-year (y-o-y) (\$76.5 billion). Including private placements (\$4.5 billion), long-term municipal issuance for 4Q'16 was \$104.9 billion. Despite the fourth quarter decline, full year issuance was \$423.8 billion, an increase of 12.2 percent from 2015 well above the 10-year average of \$372.0 billion. Including private placements, full year issuance was \$445.8 billion.

Tax-exempt issuance totaled \$91.2 billion in 4Q'16, a decline of 7.3 percent q-o-q but an increase of 35.2 percent y-o-y. For the full year, tax-exempt issuance was \$383.1 billion, an increase of 13.2 percent from the prior year. Taxable issuance totaled \$7.3 billion in 4Q'16, a decline of 7.3 percent q-o-q but an increase of 40.0 percent y o y. For the full year, taxa-ble issuance was \$28.5 billion, an increase of 2.2 percent from 2015. AMT issuance was \$1.9 billion in 4Q'16, a decline of 18.4 percent q-o-q and 52.1 percent y-o-y. For the full year, AMT issuance was \$12.2 billion, 8.1 percent above 2015 volumes.

By use of proceeds, general purpose led issuance totals in 4Q'16 (\$22.7 billion), followed by primary & secondary education (\$19.0 billion), and water & sewer (\$10.7 billion). For the full year, general purpose led issuance totals (\$103.7 billion), followed by primary & secondary education (\$81.9 billion), and water & sewer (\$44.1 billion).

Refunding volumes comprised 46.6 percent of issuance in 4Q'16, declining slightly from the prior quarter (52.3 percent) but was an increase year-over-year (43.5 percent). For the full year, refunding volumes comprised 50.7 percent of all issuance, down slightly from 2015 (51.8 percent).

[View the full report.](#)

[SIFMA Releases 2017 U.S. Municipal Issuance Survey: Long-Term Issuance Likely to Taper.](#)

Although total municipal bond issuance is expected to increase this year, a drop in refundings is likely to contribute to a decrease in long-term muni issuance from \$423.8 billion in 2016 to \$417.5 billion in 2017, based on SIFMA's survey released Wednesday. "Many bonds are issued with ten-year par calls so one of the driving factors for refunding volume is ... the new money issuance volume ten years ago," says Michael Decker, managing director and co-head of munis.

[View SIFMA Survey.](#)

[MSRB: Continuing Disclosure Timing Remains Stable.](#)

Washington, DC — Audited financial statements of municipal bond issuers reach investors an approximate average of 200 days after the end of the issuer's fiscal year, based on an updated report from the Municipal Securities Rulemaking Board (MSRB). In the six years since the MSRB began analyzing data on the timeliness with which municipal securities issuers and other obligated persons make their audited financials available to the public, the typical timing has remained stable, averaging between 196 and 202 days after the end of the issuer's fiscal year.

The [Timing of Annual Financial Disclosures by Issuers of Municipal Securities](#) report analyzes submissions of annual financial information and audited financial statements made by issuers and obligated persons to the MSRB's Electronic Municipal Market Access (EMMA®) website between January 2010 and December 2016. Consistent with previous years, the timing of audited financial statement disclosures made in 2016 averaged approximately 199 calendar days after the end of the applicable fiscal year. Annual financial information submissions averaged 189 calendar days after the end of the applicable fiscal year. These averages do not include what the MSRB's methodology assumes to be "catch-up" submissions made by issuers to correct a prior year's failure to make a

timely submission.

When comparing timing by the bonds' source of repayment in 2016, revenue bond disclosures were typically filed the soonest, averaging 179 days after the end of the fiscal year for audited financial statements, compared to 201 days for general obligation bonds and 213 days for double barrel bonds. Similarly, revenue bonds offered the most timely disclosure of annual financial information compared to general obligation and double barrel bonds.

Issuers in the health and housing sectors typically filed their audited financial statements the most timely in 2016, averaging 138 and 146 days, respectively. That same year, issuers of improvement, tax revenue and various purpose bonds exceeded an average of 200 days before the audited financial statement was filed. The health and housing sectors also led with timeliness of their annual financial information submissions.

Issuers establish the deadline by which they commit to make their filings in a contract known as a continuing disclosure agreement. The MSRB's report finds that the majority of issuers had a commitment date of 180 days or 270 days from the end of the issuer's fiscal year. Over the last several years, the number of commitments of 180 days has generally decreased while there has been an upward trend in commitments of 270 days.

The MSRB does not regulate issuers of municipal securities or other obligated persons and therefore does not establish requirements or set recommended timeframes for the content or timing of disclosures. It does, however, operate the EMMA website as the official repository for municipal market disclosures, including issuers' annual financial information. As part of its mission to protect investors and enhance market transparency, the MSRB provides a [set of guiding principles for timely and complete disclosure](#), as well as educational resources and free tools such as a financial disclosure email reminder service to assist submitters in making on-time disclosures.

The MSRB's market data publications like today's updated report ensure municipal market stakeholders have access to objective, factual information about disclosure practices, trade activity and other aspects of the market.

Date: February 14, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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[Moody's Seminars: Financial Analysis of Local Governments.](#)

This seminar provides an in-depth workshop on the financial statements seen in U.S. public finance. With real-world case studies, delegates will learn where to find information in an audit, what the line items mean, and key ratios and trend analysis used by Moody's analysts. [Download Brochure.](#)

The \$2.7 trillion public finance market has undergone unusual stress in the past year, as the weakened economy has impacted revenue streams securing public finance debt, the credit crisis has limited market access for some issuers, and the strength of most mono-line insurers has been diluted. As a result, investors have more reason than ever to keep abreast of their portfolios and analyze their holdings. This seminar is designed to provide attendees with the tools to analyze local government financial statements, with a focus on the unique accounting methods and credit

concerns seen in public finance. The course makes use of real-world case studies and exercises to provide practical hands-on training.

Location	Date	Price
New York	Mar 17, 2017	USD 1,395
Chicago	Jun 27, 2017	USD 1,395
San Francisco	Jul 13, 2017	USD 1,395
New York	Aug 4, 2017	USD 1,395
Charlotte	Oct 26, 2017	USD 1,395
New York	Nov 1, 2017	USD 1,395

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TAX - IOWA

[Acciona Windpower North America, LLC v. City of West Branch, Iowa](#)

United States Court of Appeals, Eighth Circuit - February 7, 2017 - F.3d - 2017 WL 490412

Wind turbine manufacturer brought action against city, alleging breach of tax increment financing (TIF) development agreement for urban renewal project.

After entry of partial summary judgment in manufacturer's favor, bench trial was held. The United States District Court entered judgment in manufacturer's favor, and city appealed.

The Court of Appeals held that:

- City was obligated by TIF development agreement to pay tax rebate to manufacturer once it paid its taxes for given fiscal year;
- Manufacturer did not make judicial admission that rebates were never appropriated;
- TIF agreement did not impermissibly limit city's ability to decline to pay rebates; and
- District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions.

Under Iowa law, city was obligated by tax increment financing (TIF) development agreement to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year, even though agreement provided that all rebate payments were "subject to annual appropriation of the City Council," where agreement specified that city was required to annually certify "amount obligated for appropriation for rebate," and that, if city decided to obligate rebate for appropriation, "rebate shall be paid to [manufacturer] within thirty days of receipt by the City of the incremental taxes paid."

In manufacturer's action against city for breach of tax increment financing (TIF) development agreement, manufacturer's statement in its summary judgment papers that it was undisputed that "City did not appropriate the \$265,140 rebate" to be paid to it for fiscal year was best read as poorly worded effort to admit that it is undisputed that rebates were never paid, rather than as judicial admission that rebates were never appropriated, where manufacturer had always argued that rebate was appropriated, just not paid.

Under Iowa law, tax increment financing (TIF) development agreement that required city to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year did not impermissibly limit city's ability to decline to pay rebates. TIF agreements were clearly authorized by state law and were to be liberally construed.

District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions in its action against city for breach of tax increment financing (TIF) development agreement, despite city's contention that manufacturer revealed too late that it would seek damages for two fiscal years, where manufacturer sought compensatory damages for multiple fiscal years from beginning of its lawsuit, its pretrial clarification that it would seek compensatory damages for both fiscal years was entirely consistent with theory of damages it articulated at outset of case, and damages calculation used by manufacturer appeared to have been based on information in parties' agreement and documents originally in city's control.

Why Some Bargain Municipal Bonds Aren't Tax Free.

When individuals invest in municipal bonds they expect 100% tax-free income. Right? Well, many may unknowingly be setting themselves up for a tax bill from the IRS. How can this be? After all, we're talking munis.

It's been many years since the municipal bond De Minimis rule was relevant. Here's how it works in plain English: Say you purchase a low coupon municipal bond for a 2%, 2.25%, 2.50%, or even 3% coupon at a discount from the face value in the secondary market. If that discount breaches the IRS De Minimis threshold, then a portion of that discount can be taxed as ordinary income.

It all depends on how deeply the bond price is discounted. The simple formula to compute the De Minimis threshold is:

De Minimis threshold = Lower of par or original issue discount - (.25% X the years to maturity)

The formula basically stipulates that if you purchase a bond at a discount and the discount is equal to or greater than a quarter of a point per year until maturity, then your gain at redemption is taxed at your ordinary income tax rate rather than the more favorable capital gains rate, which are as low as 15%.

If this sounds like IRS gobbledygook, you are right. The law was created to prevent taxpayers from converting ordinary income into capital gains. Remember the only IRS rule you should commit to memory is: Whatever is best for the government and worst for the taxpayer is the correct rule interpretation .

Here's an example: Assume you purchased 50 XYZ Unified School District municipals, 2.00% coupon maturing September 1, 2028 originally issued at par, 100. If you purchased the bonds in the secondary market today at 90.288 for a 3.00% yield-to-maturity because rates rose since issuance, you will owe \$2,107.50 in tax on \$50,000 face value of the bonds.

The market discount cutoff price was \$97.25. Okay—paying \$2,107.50 in tax on 50 munis isn't the end of the world. Still, it could blindside you if your weren't aware of the De Minimis rule. Your rule of thumb for purchasing municipal bonds should now be: If you want all your return to be tax free then invest in higher coupon bonds at par or a slight premium.

Stay away from market discounted munis. If you're doing business with a retail broker ask them to run the analytics on Bloomberg. That will quickly compute your tax liability if purchasing at a discounted price.

One caution: If interest rates rise significantly, high coupon premium bonds can decline and breach the De Minimis threshold too.

The De Minimis rule also has a significant impact on your bond price. Should you decide to sell a bond subject to the De Minimis rule your sale of the bond will be at an even deeper discount. The buyer will demand compensation for that portion of their [now] taxable return.

The reason we have not been plagued until recently with the De Minimis rule is that issuers weren't issuing many 2%, 2.25%, 2.50%, or 3% municipal bonds until 2016 when yields touched such low levels. Then post-election muni yields rose and prices declined.

If you buy munis online and your platform does not supply a De Minimis calculator better get out your pencil and paper for hand computations. There are numerous articles online written by Piper Jaffray, Pimco, Schwab, RBC and others explaining the formulas and with grids showing allowable market discounts before treatment as ordinary income kicks in.

Let this column be a red flag warning: The De Minimis rule can bite the incautious. Oh...and if you think no one will notice the discounted price you paid, the 1099s issued by the brokerage industry are extremely accurate in their reporting to the IRS.

FORBES

by MARILYN COHEN

FEB 7, 2017 @ 11:48 AM

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

[Bigger New York City bond Sale Finds Eager Buyers.](#)

The possibility New York City could lose some federal funding as a result of its status as a haven for undocumented immigrants did not deter investors who snapped up \$900 million of the city's bonds on Tuesday.

Underwriters led by Citigroup repriced the AA-rated general obligation bonds, shaving yields by a basis point in a handful of maturities. Yields topped out at 3 percent for bonds due in 2029.

The city's so-called credit spread over Municipal Market Data's benchmark triple-A yield scale widened slightly to 22 basis points for five year bonds and 36 basis points for 10 year bonds from pre-sale secondary market trading levels. MMD attributed the spread widening to the size of the deal, which was increased from \$800 million.

"It's too early to know how the market will treat the sanctuary cities," said Daniel Berger, a MMD analyst.

Jack Sterne, a spokesman for the New York City Comptroller's Office, said the deal was increased to \$900 million after more than \$600 million of bonds were sold to individual investors during a presale period.

"We're pleased investors continue to recognize the city's financial strength and invest in our bonds,"

he said in a statement.

Ahead of the sale, New York tried to assure potential bond buyers that its status as a so-called “sanctuary city” that shields illegal immigrants should not result in a substantial loss in federal funding due to President Donald Trump’s recent executive order.

The Republican president signed an order on Jan. 25 directing the U.S. attorney general and Homeland Security secretary to withhold federal money from cities where local law enforcement refuses to report undocumented immigrants they encounter to federal authorities. Trump’s Homeland Security chief told a congressional panel on Tuesday that funding to cities that refuse to cooperate with immigration agents would only be cut on a case-by-case basis.

In the bond deal’s preliminary official statement, New York said federal grants related directly to immigration enforcement comprise a small portion of its budget and that grants supporting law enforcement in general would be exempted from the order. The city also vowed to “mount a vigorous legal challenge” against a reduction in federal aid.

In addition to New York, other major cities offering some form of protection to illegal immigrants include Los Angeles, Chicago, Philadelphia, Boston, Denver, Washington, and Seattle. Another sanctuary city, San Francisco, filed a legal challenge to the order last week.

Reuters

Tue Feb 7, 2017 | 4:13pm EST

(Reporting By Karen Pierog; Editing by Tom Brown)

[Reports Of Municipal Bonds' Demise Have Been Greatly Exaggerated.](#)

Top earners have traditionally been attracted to municipal bonds for their tax-exempt status at the federal and often state and local levels. In the wake of President Donald Trump’s stunning upset victory, however, muni investors were forced to readjust their expectations of fiscal policy going forward. Because Trump had campaigned on deep cuts to corporate and personal income taxes, equities soared while munis sold off, ending a near-record 54 weeks of net inflows. This appears to have been premature, for a couple of reasons.

Tax Reform Unlikely To Happen Anytime Soon

Trump and congressional Republicans are currently butting heads on how best to handle tax reform, with many lawmakers saying it’s unlikely they’ll get around to it during the new president’s first 100 days, and possibly his first 200 days.

According to House Speaker Paul Ryan, Congress will focus instead on replacing the Affordable Care Act (ACA) and funding Trump’s \$1 trillion infrastructure spending package before it worries about taxes. With an estimated 30 million Americans enrolled on Obamacare exchanges, finding a suitable replacement is of high importance and might take some time. The same goes with negotiating a costly infrastructure deal, which several fiscally conservative lawmakers are hesitant to support.

Besides, we all know how fast Congress operates, even on a good day. Former President Barack Obama took office in January 2009, and even with a Democratic majority in the House and Senate,

his signature health care law didn't reach his desk until March the following year.

All of this is to say that it might be premature to start dumping your munis, or withhold an investment in munis, purely on the notion that income taxes are about to get a haircut. We're probably looking at many more months of Obama-era tax rates, including the 3.8 percent Obamacare surcharge on investment income. Other investors have realized this as well, which is why we're seeing positive net inflows back into muni bond funds.

If enacted as conceived, Trump's tax reform plan would indeed be the most significant in decades, simplifying the number of tax brackets from seven to three, lowering the top rate from 39.6 percent to 33 percent and eliminating personal exemptions and filing status options.

One of the unintended consequences of this is that income taxes could actually go up for certain middle-income filers. According to an analysis of Trump's proposal by the independent Tax Policy Center, as many as 8 million American families, including a majority of single-parent households and large families, could end up paying more than they do now (emphasis mine):

Increasing the standard deduction would significantly reduce the number of filers who itemize. We estimate that 27 million (60 percent) of the 45 million filers who would otherwise itemize in 2017 would opt for the standard deduction. **Repealing personal exemptions and the head of household filing status, however, would cause many large families and single parents to face tax increases.**

But What About Rising Interest Rates?

In December, the Federal Reserve lifted interest rates for only the second time in nearly a decade, and many expect to see up to three additional increases this year. It's important to be aware that when rates rise, bond prices fall because if newly issued bonds carry a higher yield, the value of existing bonds with lower rates declines. This is why I believe investors should take advantage of short- and intermediate-term munis, which are less sensitive to rate increases than longer-term bonds, whose maturities are further out.

Forbes

Frank Holmes, Contributor

FEB 8, 2017 @ 01:26 PM

[In Day of Action, More Than 35 State Municipal League Executive Directors and Officers Join NLC to Advocate for City Priorities on Capitol Hill.](#)

WASHINGTON, Feb. 8, 2017 /PRNewswire-USNewswire/ — In a day of action on Capitol Hill, more than 35 executive directors and local leaders from more than 20 state municipal leagues have come to Capitol Hill to advocate for critical city priorities. In 42 meetings today with federal officials, city representatives will work to build local-federal partnerships and tell Congress why city priorities - including infrastructure and protecting municipal bonds - will help to move America forward. The fly in was coordinated by the National League of Cities (NLC), the nation's largest and most representative organization for cities and their leaders.

“With so many new faces on Capitol Hill, it’s important that city leaders build relationships with federal officials and tell them why city priorities are critical to the success of our nation,” said NLC President Matt Zone, a councilmember from Cleveland. “We’re proud that our state league partners have come to Washington with a unified voice and a simple message: that the federal government needs to partner with cities to keep our economy growing and to build a national infrastructure that is the envy of the world.”

The day of action included a briefing on Capitol Hill for senators, Members of Congress and their staffs. Rep. Drew Ferguson (GA-3), a former mayor of West Point, Georgia, spoke at the briefing about the need for stronger federal-local partnerships.

“This day of action shows our federal partners that cities need a seat at the table when debating policies that affect cities and our communities,” added NLC CEO and Executive Director Clarence E. Anthony. “We’re excited to build on this momentum leading up to the Congressional City Conference in March, when city officials will meet with more than 250 Senators and Members of Congress to build crucial federal partnerships and make them champions for cities.”

In partnership with the 49 state municipal leagues, NLC represents more than 19,000 cities across America. More than 2,000 city leaders are coming to Washington March 11-15 for NLC’s annual legislative conference, the Congressional City Conference.

The following state league leaders are in Washington today for the fly-in:

Arkansas

Mayor Harry Brown, Stephens, Ark., and president, Arkansas Municipal League
Ken Wasson, director of operations, Arkansas Municipal League

Colorado

Sam Mamet, executive director, Colorado Municipal League

Delaware

Mayor Jermaine Hatton, Dover, Del., and president, Delaware League of Local Governments
Carl Luft, executive director, Delaware League of Local Governments

Florida

Jeannie Garner, deputy executive director, Florida League of Cities
Commissioner Gil Ziffer, Tallahassee, Fla., and first vice president, Florida League of Cities

Georgia

Mayor Boyd Austin, Dallas, Ga., and president, Georgia Municipal Association
Lamar Norton, executive director, Georgia Municipal Association
Becky Taylor, director, Federal Relations & Research, Georgia Municipal Association

Illinois

Brad Cole, executive director, Illinois Municipal League

Iowa

Councilmember Kris Gulick, Cedar Rapids, Iowa, and past president, Iowa League of Cities

Maryland

Mayor Tracy Gant, Edmonston, Md., and president, Maryland Municipal League
Scott Hancock, executive director, Maryland Municipal League

Massachusetts

Geoff Beckwith, executive director & CEO, Massachusetts Municipal Association
Town Administrator Mel Kleckner, Brookline, Mass., and president, Massachusetts Municipal Association

Minnesota

Kevin Frazell, director of Member Services, League of Minnesota Cities
Mayor Rhonda Pownell, Northfield, Minn., and president, League of Minnesota Cities

Mississippi

Mayor Jimmy Clyde, Magee, Miss., and president, Mississippi Municipal League
Shari Veazey, executive director, Mississippi Municipal League

New Hampshire

Selectman Brent Lemire, Litchfield, N.H., and chair, New Hampshire Municipal Association

New York

Peter Baynes, executive director, New York State Conference of Mayors and Municipal Officials
Mayor Tom Roach, White Plains, N.Y., and president, New York State Conference of Mayors and Municipal Officials

North Carolina

Mayor Bob Matheny, Zebulon, N.C., and president, North Carolina League of Municipalities
Paul Meyer, executive director, North Carolina League of Municipalities

Oregon

Mayor Denny Doyle, Beaverton, Ore., and president, League of Oregon Cities

Pennsylvania

Mayor C. Kim Bracey, York, Pa., and first vice president, Pennsylvania Municipal League
Rick Schuettler, executive director, Pennsylvania Municipal League

Tennessee

Margaret Mahery, executive director, Tennessee Municipal League
Charles "Bones" Seivers, president & CEO, Tennessee Municipal League Bond Fund

Virginia

Mayor Robert Coiner, Gordonsville, Va., and president, Virginia Municipal League
Kimberly Winn, executive director, Virginia Municipal League

Washington

Peter King, CEO, Association of Washington Cities

Wisconsin

Jerry Deschane, executive director, League of Wisconsin Municipalities
Village Board President George Peterson, Rothschild, Wis., and president, League of Wisconsin Municipalities

About the National League of Cities

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans. www.nlc.org

[City of Riverside Recognized For Excellence in Budgeting by Peers Statewide.](#)

RIVERSIDE, Calif. – For the first time, the City of Riverside has received the Excellence in Budgeting Award from the California Society of Municipal Finance Officers, a statewide organization devoted to promoting best practices among California municipal finance professionals.

The award recognizes the work of the City in preparing the 2016-2018 biennial budget, which was approved by the City Council in June. That budget document covers the next two fiscal years and guides the City's financial decisions.

"Riverside is fortunate to have highly-qualified professionals providing detailed information to drive good decision-making," Mayor Rusty Bailey said. "Our decisions as elected officials are only as good as the data that informs them, so precise budgeting is crucial to our City's financial health."

The 2016-18 budget that was recognized for excellence was the first in recent years to plan the City's financial future for the next two years, instead of just one year, which is most common in local government. Riverside's two-year budget, combined with a five-year financial plan, transformed the way the City of Riverside handles its financial planning.

"Our budgeting process has evolved in a very dramatic way during the past year," Mayor Pro Tem Mike Gardner said. "We now have a much broader scope when looking at our options for utilizing the city's funds in the most responsible way, and our budget is a big part of that."

The California Society of Municipal Finance Officers (CSMFO) promotes excellence in financial management through innovation, continuing education and the professional development of its members. The Excellence in Budgeting Award is the first such recognition the City has received from CSMFO.

"This is a significant accomplishment for the City," said Assistant City Manager Marianna Marysheva, who supervises the Finance Department. "Our staff showed great focus and determination in preparing a budget document that serves as an excellent planning, financial management and public education tool."

Riverside previously has received 13 budgeting awards from another organization, the Government Finance Officers Association (GFOA). The most recent award from the GFOA can be found [here](#).

The Biennial Budget that was recently recognized by CSMFO also was submitted for the GFOA Award, the results of which are pending.

The budget document that was submitted for the award can be found [here](#).

A list of recognitions received by the City's Finance Department can be found [here](#).

inlandempire.us

By Staff - February 9, 2017

[Toll Bridge Deals Lead U.S. Municipal Supply Next Week.](#)

A pair of toll bridge deals will lead a U.S. municipal bond calendar next week that features around \$5.85 billion in total sales.

California's Bay Area Toll Authority will issue the week's biggest deal, pricing on Tuesday \$552 million in negotiated refinancing bonds to reduce borrowing costs.

The Delaware River Joint Toll Bridge Commission, a bi-state agency that operates seven toll bridges in Pennsylvania and New Jersey, will price a \$438 million negotiated bond, to fund the bulk of a \$512 million reconstruction of the Scudder Falls Bridge.

Both deals are scheduled to price on Tuesday and will be underwritten by Bank of America Merrill Lynch.

The Scudder Falls Bridge, which crosses the Delaware River along Interstate-95 and supports some 60,000 cars a day, will be demolished to address safety concerns, and rebuilt by the Trumbull Corporation, which was awarded the construction contract, according to a road show presentation from the toll bridge commission.

Tree cutting and installation of noise walls are underway, with full construction slated to begin in April and run through August 2021, according to the presentation.

Next week's total muni supply will include \$5.575 billion of negotiated and competitive bonds, and another \$271 million of notes.

The Long Beach, California, Unified School District will provide the biggest competitive bond deals, issuing \$450 million in general obligation bonds, while Rochester, New York, will lead the way in notes, with \$72 million in a pair of bond anticipation offerings.

Ongoing political and economic uncertainty could make it difficult for the U.S. Federal Reserve to raise interest rates in the near term, and "lower Treasury rates will certainly help munis," Barclays analysts said in a weekly note on Friday.

Barclays, which projects net negative issuance for February, said "healthy dealer inventories and positive fund flows should also support the market in the coming weeks."

Barclays noted that tax policies of President Donald Trump could also move markets.

Trump on Thursday hinted at an upcoming announcement he said would be “phenomenal in terms of tax,” but offered no detail.

Reuters

By Nick Brown

Fri Feb 10, 2017 | 2:31pm EST

(Reporting by Nick Brown; Editing by Bernard Orr)

Policy Uncertainty Is Killing Muni Volume.

After a rough post-election period, municipal bonds are holding up just fine this year. But while index returns are up slightly, volume is way down.

That decline reflects caution among investors about where tax policy is headed. If tax cuts are put in place, munis could become less appealing.

Morgan Stanley muni strategist Michael Zetas writes Monday:

The tale of the tape, in our view, shows an investor base lacking conviction. Consider, for example, the ratio of bid-wanted relative to trade volume. While they have recently eased, levels since the beginning of the year are elevated on a combination of lower trade volume and larger bid lists. This suggests an investor base that is testing liquidity and playing it safe.

Zetas says that negative sentiment would normally be a sign to add munis to a portfolio. But in this case he thinks it is appropriate for investors to be cautious.

We sympathize with the implied caution being expressed for two reasons: 1) policy risks, including existential tax risks, still loom large in the muni market; 2) valuations aren't obviously reflecting that risk.

The benchmark-tracking **iShares National Muni Bond ETF** (MUB) is up 0.1% year to date at \$108.34, but is down 3.2% in the past year.

Barron's

By Amey Stone

February 13, 2017, 1:45 P.M. ET

[NABL: SLGS Window Likely to Close.](#)

In a little over 4 weeks the federal debt ceiling will return and with it, almost certainly, the SLGS window will close. NABL members who have closings around March 15 should plan for an alternative to purchasing SLGS.

In November of 2015, then-Speaker John Boehner reached an agreement with President Obama that suspended the debt limit through March 15, 2017. This was one of Speaker Boehner's final acts before his resignation.

Absent action by the current Congress and President to increase or further suspend the debt limit before March 15, the Treasury Department can be expected to begin implementation of its "extraordinary measures" to delay the date on which the United States would begin to default on its obligations - not only payments on Treasury bonds but also the federal payroll, payments to contractors, and Social Security benefits, among other things. Generally the first of the extraordinary measures that is implemented is closing the SLGS window.

[Continue reading.](#)

[What Makes a Bond "Green"?](#)

Most people agree that a "bond" is a financial instrument pursuant to which a creditor (holder of the bond) lends money to a borrower (the issuer of the bond) over a specified period of time in exchange for a periodic interest payment. However, although I occasionally see headlines about green bonds being issued, it was not clear to me what made a bond "green". Since I like to drink clean water and breathe clean air, I thought it would be worth looking into.

[Continue reading.](#)

The Public Finance Tax Blog

By Cynthia Mog

February 10, 2017

Squire Patton Boggs

[Cincinnati's Streetcar and a Downtown Revival.](#)

By the time the first passengers boarded Cincinnati's streetcar in September, its advocates had already been on a wild 15-year ride that included surviving two ballot initiatives to derail the project.

With political battles now largely in its rearview mirror, the streetcar has arrived at a key time in Cincinnati, where a revival of the city center is already well underway. The streetcar logged its first 250,000 rides in just over two months, helped by curiosity over the streetcar and an ongoing real estate development boom in the neighborhoods along the 3.6-mile (5.8 km) route: the Banks,

downtown, and Over-the-Rhine.

“They had the paddles out on the operating table,” longtime streetcar advocate John Schneider says of its several near-death experiences. “It’s been a long effort to bring rail here. The politics were ugly, but once the politics got out of it, the result was really good.”

The Cincinnati Bell Connector—the streetcar’s formal name, thanks to that company’s ten-year, \$3.4 million naming-rights deal signed in August—began clanging through Cincinnati’s streets at a time when construction continues ramping up in the city center. There has already been about \$1.5 billion in public and private investment along the figure-eight streetcar route in the past five years, says Harry Black, city manager.

“All of these things working together have propelled us to a point of critical mass,” Black says of efforts to enliven the city center. “I believe we’re just at the beginning of that critical mass. The streetcar is one of those major elements, but it’s not the only element.”

The \$1.5 billion figure includes the \$148 million streetcar project, about \$45 million of which was funded by federal grants. Long before the city-owned streetcar was a sure thing, other efforts were underway to spruce up the city’s core, starting with major investments in the Banks, an area along the Ohio River near the Cincinnati Reds’ ballpark and the Bengals’ football stadium. That area is on the southern tip of the streetcar line.

Perhaps most dramatic has been the gentrification of Over-the-Rhine, a one-time German enclave that in more recent years had become notorious as one of the nation’s most dangerous neighborhoods. It is at the northern end of the streetcar route.

Cincinnati Center City Development Corp., a nonprofit real estate development and finance organization known to locals as 3CDC, has completed \$1.1 billion in real estate projects in the past decade in Over-the-Rhine and downtown, says executive vice president Adam Gelter, who oversees all of 3CDC’s real estate development. That includes the purchase and rehabilitation of more than 250 dilapidated buildings, many of them with Italianate architecture, as well as larger projects such as a \$48 million overhaul of Washington Park.

Over-the-Rhine is now known for breweries, boutiques, Findlay Market, bars, and restaurants. 3CDC and others are focused on attracting a broader range of retail to the area, as well as rehabbing broad areas of Over-the-Rhine still in disrepair.

“The streetcar is a strong complement to efforts we’ve already been making to build up the retail in Over-the-Rhine,” Gelter says. “Being able to get more people here is ultimately what’s going to attract retailers.”

Cincinnati had been without a streetcar since 1951, and in the decades since many residents moved to areas outside the city’s core or to suburbs. Cincinnati became more and more driving-centric.

Schneider, known to many in Ohio’s third-largest city as “Mr. Streetcar,” has lived downtown for 40 years. He began pushing municipal officials to pursue a streetcar in 2001, and by 2007 the city began formal planning.

Streetcar proponents fought back votes to kill off the idea in 2009 and 2011 and overcame several other obstacles—including Ohio Governor John Kasich pulling \$52 million in state funding over doubts about the project’s potential economic impact in 2011.

In the early going, the Cincinnati Bell Connector has encountered glitches including difficult-to-use

ticket machines, and the initial ridership numbers have declined, particularly on weekdays and as the weather has gotten colder. Because traffic lights are timed for an east-west flow and the streetcar travels north and south, the streetcar also often becomes bogged down in traffic.

While solutions to those issues are examined, longer-term challenges also loom. Cost estimates and potential funding sources for potential expansions of the route have yet to be determined. Expansion likely would be targeted for uphill to the University of Cincinnati or across the river to Newport, Kentucky.

Despite early hiccups, the streetcar's usage rate has been a pleasant surprise, says Derek Bauman, southwest Ohio director and vice chair for statewide transportation advocacy group All Aboard Ohio.

"We've blown projections out of the water, especially on the weekends," says Bauman, who lives in Over-the-Rhine. "It's part of the revival of the city center. There's just a buzz, and people are out on the streets. There are families with strollers, which wasn't the case four or five years ago."

Anecdotally, streetcar riders are a diverse mix that includes young professionals, families, empty-nesters, and out-of-towners staying in nearby hotels, Schneider says.

"It's not all millennials," he says. "A friend told me he's seeing more hip replacements than hipsters on the streetcar."

It is too early to assess the long-term economic impact along the streetcar, but property values already appear to be on the rise, according to commercial real estate brokerage CBRE. In 2012, developers were paying an average of \$17 per square foot (\$183 per sq m) for adaptive-use buildings in Over-the-Rhine, says retail broker Chris Hodge, a CBRE senior vice president. By late 2015 and early 2016, the average had risen to \$78 per square foot (\$839 per sq m), he says.

"I think the biggest impact the streetcar has had is in Over-the-Rhine," Hodge says. "The development really started on the east side of Over-the-Rhine, and now it's moving west and north."

Rhinegeist Brewery, which opened in a former Christian Moerlein Brewing bottling plant on Elm Street in 2013, is one business likely cashing in on the streetcar. President and cofounder Bob Bonder says that revenue from visits to the brewery is up more than 30 percent in 2016 from last year.

"I couldn't tell you how much of that increase is due to the streetcar and how much is us being a new, fresh brand three years into existence," Bonder says. "But all you have to do is stand there and watch the streetcar to see that, wow, this is working. It seems like every time the streetcar stops by, it drops off 20 people and picks up ten."

The Urban Land Institute

By Ryan Ori

January 9, 2017

Ryan Ori covers commercial real estate for Crain's Chicago Business.

[Heller, Nelson, Kelly and Blumenauer Re-Introduce Bipartisan Public-Private Partnership Bill.](#)

(Washington, DC) – Today, U.S. Senators Dean Heller (R-NV), Bill Nelson (D-FL), Congressman Mike Kelly (R-PA), and Earl Blumenauer (D-OR) released the following statements after re-introducing the *“Public Buildings Renewal Act.”* The bill enables communities to establish public-private partnerships (P3s) for needed public infrastructure improvements, such as in schools or public universities, by creating \$5 billion in new private activity bonds for public buildings.

“In the past, P3 investment has produced enormous benefits across the nation in the form of transportation and infrastructure improvements. I want to see the same results right here in the Silver State, especially for Nevada’s schools. Now is the time to use the success of P3s in the infrastructure industry as a financing model for Nevada’s public buildings to repair cornerstones in our communities like public schools and libraries. This commonsense idea helps our public schools and universities do even more. By empowering the private sector to address these issues, innovation ensures these projects are completed in a more cost efficient manner,” said Senator Dean Heller.

“This bill will help local governments build schools, libraries, fire stations and other public buildings that serve as the foundation of our communities,” said Senator Bill Nelson.

“Our country’s public buildings are in a historic state of disrepair and in need of a bold solution. That’s where the Public Buildings Renewal Act can come to the rescue. This legislation became more urgent than ever for me after I visited several of our district’s schools last year and saw the unacceptable damage up close. When public places like schools, hospitals, and court houses are allowed to crumble, the people they serve suffer, especially students. Our bill will channel a new stream of P3 financing into local communities for the ultimate goal of restoring public infrastructure from coast to cast. It will take advantage of private sector efficiency to create jobs and save taxpayer money by streamlining the delivery, design, and construction of these projects. I thank my colleagues in both chambers for supporting this commonsense solution and look forward to helping them advance it swiftly,” said Congressman Mike Kelly

“Congress has failed to display the political courage necessary to adequately invest in infrastructure—from roads and light rail to schools and courthouses. Our nation is literally falling apart and falling behind. We need an ‘all of the above’ approach to infrastructure funding, and simple fixes to lower investment barriers are steps in the right direction,” said Congressman Earl Blumenauer (OR-03)

Background:

These newly created private activity bonds mentioned above would provide much-needed financing to cash-strapped states to construct government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses. Currently, the use of P3s to deliver public buildings is extremely limited because unlike the transportation sector, public buildings are not eligible for private activity bonds. This inhibits public building P3s from combining tax exempt financing with private financing, resulting in an increased cost of financing. Nearly every U.S. transportation P3 project that has moved forward has utilized federal financing, 75% of which have accessed Private Activity Bonds. Over \$36 billion in transportation P3 projects have been undertaken since 2010 with a cost savings of nearly 20 percent for each project.

This bill will catalyze the use of P3s in public buildings just as PABs have for transportation. By empowering the private sector to tackle these projects, the bill would make these projects more cost effective, stretching every public dollar further. Additionally, the bill is a fiscally conservative

solution to overhauling these public projects with an estimated cost from JCT of less than \$50 million over ten years.

The House companion bill is [HR 960](#).

Senator Heller was recently named Chairman of the Senate Committee on Finance's Subcommittee on Energy, Natural Resources, and Infrastructure. This role will give him the ability to promote infrastructure projects in Nevada like Interstate 11.

[Bills Would Allow States, Localities to Issue up to \\$5B of PABs for Public Buildings.](#)

WASHINGTON - House and Senate members have reintroduced companion bills that would allow state and local governments to issue up to \$5 billion of private activity bonds to finance the repair or construction of schools and other public buildings under public-private partnership arrangements.

The "Public Buildings Renewal Act" was introduced in the House on Feb. 7 as H.R. 960 by Rep. Mike Kelly, R-Pa., and eight cosponsors, including six members of the House Ways and Means Committee such as Rep. Earl Blumenauer, D-Ore.

The measure in the Senate, which has not been assigned a number yet, is being introduced by Sens. Dean Heller, R-Nev., and Bill Nelson, D-Fla., both of whom sit on the Senate Finance Committee.

The bills they introduced last session were H.R. 5361 and S. 3177.

The legislation would create a new category of tax-exempt PABs that would allow states and localities to construct or renovate government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses with private parties.

These kinds of projects cannot currently be financed with tax-exempt P3s because there is not a specific qualified PAB category for bonds for public buildings.

"Our country's public buildings are in a historic state of disrepair and in need of a bold solution," Kelly said. "That's where the Public Buildings Renewal Act can come to the rescue."

"Congress has failed to display the political courage to adequately invest in infrastructure - from roads to light rail to schools and courthouses," said Blumenauer. "Our nation is literally falling apart and falling behind. We need an 'all of the above' approach to infrastructure funding and simple fixes to lower investment barriers are steps in the right direction."

The Bond Buyer

By Lynn Hume

February 8, 2017

[HFS Committee to Review Muni Regulators, Others.](#)

WASHINGTON - The House Financial Services Committee intends to review municipal bond regulators and other aspects of the capital markets with an eye toward rolling back certain programs, according to an oversight plan from the committee.

The plan, which broadly lays out parameters for the session, "contains oversight initiatives that will be undertaken for the purpose of identifying cuts to or the elimination of programs that are inefficient, duplicative, outdated, or more appropriately administered by state and local government," the committee said.

It specifically mentions the Securities and Exchange Commission the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority among other agencies and programs.

The committee said the SEC received \$1.605 billion in fiscal year 2016 appropriations even though its authorization lapsed in fiscal 2015. The SEC's Office of Inspector General's authorization lapsed after fiscal year 2011, though it was appropriated \$11.3 million in fiscal 2016. The committee said it will perform the necessary oversight to support activities related to reauthorizing the SEC.

It also plans to "monitor all aspects of the [SEC's] operations, activities, and initiatives to ensure that it fulfills its congressional mandate to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," according to the committee document. The Municipal Securities Rulemaking Board will get similar treatment as the committee intends to review the self-regulator's operations, initiatives, and activities.

Dealers and others have complained about the rising cost of compliance the muni market is now facing as a result of a slew of new rulemaking from the SEC and MSRB to implement the Dodd-Frank Act in recent years. Muni market groups have asked the regulators to better assess how their rules are impacting costs and burdens for market participants, especially smaller dealers and municipal advisor firms.

The Financial Services Committee plan includes a section that broadly outlines the reduction of regulatory burdens as a goal for the congressional session.

The committee has promised to explore financial regulators' implementation of the Volcker Rule and how it has affected the strength and international competitiveness of U.S. capital markets. Muni groups, along with the MSRB, had raised concerns the rule would bifurcate the market by only exempting certain issuers' bonds.

The committee's oversight plan also includes an exploration of bank regulator standards developed in conjunction with the international Basel Committee on Banking Supervision. Muni market participants have complained about bank regulators' liquidity rule, which mandates that banks hold enough high quality liquid assets (HQLA) to deal with periods of financial stress. Except for the Federal Reserve Board, the bank regulators' definition of HQLA does not include any municipal bonds. Legislators introduced two bills last session to try to remedy the exclusion of munis but they never became law.

The committee's oversight plan was released after recent executive orders from President Trump encouraged the SEC, among other agencies, to review the cost of Dodd-Frank mandated and other regulations.

Financial Services Committee chair Rep. Jeb Hensarling, R-Texas, applauded the president's order on Dodd-Frank last week, saying he was "very pleased" that Trump was following through on his

promise to dismantle the legislation. Hensarling is reportedly planning to reintroduce his alternative to Dodd-Frank within the next few weeks. The legislation, called the Financial CHOICE Act, would address many of the areas of concern outlined in the Financial Services Committee's oversight plan.

The Bond Buyer

By Jack Casey

February 8, 2017

[Senate Panel Told P3s Won't Work for Rural Areas, Tax-Exempts Are Key.](#)

WASHINGTON - Municipal bonds are a "crucial component" of any infrastructure plan and their tax-exempt status must be preserved, a county official from Oklahoma representing the National Association of Counties told members of a Senate committee on Wednesday.

Transportation officials from rural states said during the hearing held by the Senate Environment and Public Works Committee that public-private partnerships won't work for them. The hearing was on "Modernizing our Nation's Infrastructure."

The comments were not exactly an endorsement of President Trump's \$1 trillion infrastructure plan to bring in private investment to help finance the repair and development the nation's roads, bridges, and other infrastructure projects.

Cindy Bobbitt, a commissioner of Grant County, Okla., who was representing NACo, told committee members that, "Between 2003 and 2012, counties, states and other localities invested \$3.2 trillion in infrastructure through long-term, tax-exempt municipal bonds, 2.5 times more than the federal investment."

Bobbitt, who noted that munis have low default rates and are often approved by both legislatures and the voters, said, "Simply stated, the tax exemption of municipal bond interest from the federal income tax represents one of the best examples of the federal-state-local partnership."

She pointed out that two thirds of the nation's 3,069 counties are considered rural with a combined population of 60 million and face challenges such as declining populations and a limited ability to raise revenue for capital projects.

Among her recommendations were that Congress should make federal highway dollars available for locally owned infrastructure. Local governments own 78% of the nation's road miles, including 43% of federal-aid highways and 50% of the National Bridge Inventory, she said.

Committee chairman Sen. John Barrasso, R-Wyo., asked Bill Panos, the director and CEO of the Wyoming Department of Transportation who also testified, whether rural or smaller states could use Build America Bonds for infrastructure, though they would have to be reauthorized.

"Wyoming has never borrowed for transportation" because its "high cost per capita ... discourages borrowing," Panos said. But he later said the state has issued grant anticipation revenue vehicles, or Garvees.

Barrasso said data from the U.S. Treasury Department shows rural states issued a lot of BABs in

2009 and 2010 when they were authorized by the American Recovery and Reinvestment Act. BABs are taxable bonds for which Treasury makes subsidy payments to issuers equal to roughly 35% of their interest costs.

Panos, who was also speaking on behalf of the transportation departments in Idaho, Montana, North Dakota, and South Dakota, some of which issued BABs, told committee members that P3s and other approaches to infrastructure investment that depend on positive revenue streams from projects “are not a surface transportation infrastructure solution for rural states.”

P3s would be unlikely to attract investors even with tax credits, he said. Part of the problem is that roads in rural states tend to have relatively low traffic volumes, he said.

Panos said Congress must strengthen the Highway Trust Fund, which will no longer be able to support surface transportation programs after 2020, when funding from the Fixing America’s Surface Transportation Act (FAST) ends.

He also said certainty is important for transportation planners. He applauded the FAST Act’s providing several years of transportation funding, but said Congress’ track record of passing continuing resolutions, restricting funds to the previous years’ levels, instead of annual appropriations bills, creates uncertainty.

Sen. Deb Fischer, R-Neb., a committee member, said she’s proposed legislation (S. 271) to shore up the Highway Trust Fund and to provide states with more flexibility in how federal funding is spent on infrastructure projects. “I think it’s really important to look at a federal revenue source without raising taxes,” she said during the hearing. Her bill would transfer revenues from U.S. Customs and Border Protection to the HTF.

“If we have certainty we can make better plans” and that will lead to lower costs, said Shailen Bhatt, executive director of the Colorado Department of Transportation, who also testified.

Most of the witnesses agreed with the current funding formulas that divide federal funds between highway and transit programs and urged that they be continued.

While the committee paid particular attention to the needs of rural areas, Bobbitt pointed out that farms and businesses in agricultural-based rural areas need roads and bridges to deliver products to urban areas. “It’s not rural vs. urban,” she said, adding, “We’re all in this together.”

The Bond Buyer

By Lynn Hume

February 8, 2017

[Outlook Dims for Trump Pledge on Infrastructure Funding.](#)

DALLAS – President Trump’s pledge of getting Congress to pass a major infrastructure program in his first 100 days is slipping away as lawmakers focus on health care as their top priority, leaving experts to wonder if the initiative will move forward at all this year.

Infrastructure has become tied to tax reform because of the revenues that would be needed to fund

it. House Speaker Paul Ryan, R-Wis., said Thursday that Congress will not take up tax reform until it deals with the repeal and replacement of the Affordable Care Act.

Tax reform, ranging from a comprehensive overhaul of the tax code to attempts to repatriate trillions of dollars in overseas corporate profits, has been the preferred main source of additional infrastructure funding for many lawmakers. Trump's promise of a \$1 trillion boost to infrastructure spending has buoyed the stock market since his inauguration.

"It's just the way the budget works that we won't be able to get the ability to write our tax reform bill until our spring budget passes, and then we write that through the summer," Ryan said during an interview on Fox News.

"We feel the need to rescue this system here and that's why we're going with health care first," Ryan said. "And then in the spring we're doing the second budget. That's where tax reform comes."

Trump favors a reduction in the corporate tax rate to 15% from the current 35%, while Ryan's proposal would lower the rate to 20%.

Ryan and Rep. Kevin Brady, R-Texas, chairman of the House Ways and Means Committee, have said that revenue resulting from corporate tax reform should be used for overall tax reforms rather than being dedicated solely to infrastructure.

Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee, said last week that Trump's infrastructure program would likely be funded through an overhaul of the federal tax code that Democrats could support.

Infrastructure funding will probably be linked to tax reform, said Sen. John Thune, R-S.D., chairman of the Senate Commerce Committee and third-ranking Republican in the Senate.

"My guess is if that gets done, it probably hitches a ride on tax reform," Thune said last week at the Republican legislative retreat in Philadelphia.

"We've got a very focused agenda, things that we want to get done in the next 200 days," Thune said. "How infrastructure plays into that, we're not sure yet."

Delaying action on infrastructure funding to take care of other issues could mean farewell to hopes for an infrastructure program this year or next, said Norman Anderson, president of consulting firm CG/LA Infrastructure.

"President Trump's main promise during the campaign for action on infrastructure in his first 100 days is in danger of not being fulfilled," Anderson said. "It's a big mistake and a very, very bad idea, because if infrastructure is the second or third priority in Washington instead of the first, then nothing will get done."

History has shown that infrastructure programs are passed early in a new administration or not at all, Anderson said.

"It has to be done in the very beginning," he said. "Nobody's been able to do it after the first 200 days."

A bipartisan trio of lawmakers has proposed incentives for corporations to bring an estimated \$2 trillion in overseas earnings into the U.S. to spur private sector reinvestment and growth.

Rep. John Delaney, D-Md., one of the sponsors of the Infrastructure 2.0 Act, proposed similar measures in 2014 and again in 2015 with significant bipartisan support, but neither gained traction in Congress.

A Senate bill filed Tuesday by Sen. Deb. Fischer, R-Neb., would provide five years of supplemental federal highway funding, not through tax reform but by diverting Customs and Border Patrol revenues.

Fischer's Build USA Infrastructure Act would move the first \$21.4 billion of revenues collected per year from freight and passengers at international borders into the Highway Trust Fund for five years.

The Bond Buyer

By Jim Watts

February 2, 2017

[The Week in Public Finance: Battling Over Retirement, Gorsuch on Online Sales Taxes and Fiscal Irresponsibility.](#)

A [roundup](#) of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 10, 2017

[MSRB Enhances EMMA Alerts Tool.](#)

Washington, DC - Investors and others who track municipal bonds with email alerts from the [Electronic Municipal Market Access \(EMMA®\) website](#) can now further customize their notifications and see more detail about the securities they follow.

As part of an ongoing effort to improve the usability of its EMMA website, the Municipal Securities Rulemaking Board (MSRB) has enhanced EMMA's automated email alerts so that users can specify the types of continuing disclosure filings to trigger a notification. For example, an investor can choose to receive email alerts only when new audited financial statements or notices of bond calls are posted. Previously, users could opt to receive alerts for every financial disclosure or all event filings for one or more securities but could not narrow their selection to specific documents or events.

EMMA's automated alerts have also been improved to include more useful details about the relevant bond and its associated trade activity or filing that triggered the alert.

"Thousands of investors and other EMMA users rely on the alerts feature to stay up to date with the latest available information on their securities," said MSRB Executive Director Lynnette Kelly. "These enhancements allow users to be more selective about the types of alerts they wish to receive and provide more descriptive information about the nature of the alert."

EMMA alerts are available for trade activity and when new disclosure documents are filed for one or more securities. Disclosure filings include annual financial information that provides an updated view of the issuer's financial health and notices of events that can have an impact on the bonds. [To access EMMA alerts, create a free MyEMMA account on the EMMA website.](#)

The MSRB is continuing to consider additional changes to the alerts function to support website performance and usability. For unlimited real-time access to trade data and disclosure filings, the MSRB offers paid subscription services.

The MSRB's EMMA website is the official source of data and disclosure documents on more than one million outstanding municipal securities. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: February 8, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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[Munis Could be Caught Up in Revised CHOICE Act's Mandated SEC Reviews.](#)

WASHINGTON - House Financial Services Committee Republicans have floated a revised version of their Financial CHOICE Act that would require the Securities and Exchange Commission to review municipal market and other self-regulatory organizations' inefficiencies as well as reform its enforcement process.

The memo dated Feb. 6 from committee Republicans includes many Dodd-Frank Act and other changes that may be proposed in the new version of the Financial CHOICE Act, which is expected to soon be introduced.

Committee chair Rep. Jeb Hensarling, R-Texas, introduced a version of the CHOICE Act during the last session that was approved by the committee but not taken up by the full House. Democrats have made clear they intend to fight Republican reforms to Dodd-Frank during the session.

Rep. Maxine Waters, the top Democrat on the committee, said Hensarling is trying to destroy protections that stop Wall Street from "ripping off hardworking Americans" and that the changes indicated in the memo show a new Financial CHOICE Act that "is even worse than the original." The committee's Republican staff would not return calls to verify and expand upon the memo.

One proposal in the memo is to have the SEC chair "provide a report within one year on eliminating duplication and inefficiencies amongst the various self-regulatory organizations." Sources said that language could mean exploring possible opportunities to roll back regulations and streamline rulemakings between the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority.

Executive orders from President Donald Trump have already directed the SEC to play a role in identifying how Dodd-Frank's implementation has not worked as well as how existing regulations could be streamlined.

Dealer groups have welcomed the attention to rulemaking and enforcement as they have consistently complained about the increasing costs and burdens of the many rules during the last few years that implemented Dodd-Frank provisions. The act subjected non-dealer municipal advisors to federal regulation for the first time and directed the MSRB to protect issuers as well as investors. The memo also proposes to prohibit the SEC from undertaking “rulemaking by enforcement.”

One source said a large segment of the muni market saw the SEC’s Municipalities Continuing Disclosure Cooperation initiative as rulemaking by enforcement because the commission had not directly spoken to issuers in recent years about their responsibilities under SEC Rule 15c2-12 on disclosure. MCDC promised underwriters and issuers that they would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely stated in offering documents that they were in compliance with their continuing disclosure agreements.

Another proposal would direct the SEC to establish a “Wells Committee 2.0 to reevaluate its enforcement program.” Sources said the “Wells Committee 2.0” likely refers to a requirement to conduct similar analyses to what the SEC’s Wells Committee did in the 1970s. That committee reviewed commission enforcement activity and recommended, among other things, that the SEC implement the practice of giving an individual or firm that may face a commission civil action an opportunity to explain why the action should not be brought. The notice given to the potential parties in the actions is called a Wells Notice.

There were several muni-related portions of the previously introduced CHOICE Act that are not mentioned in the memo, that sources said may still be in the bill when it is reintroduced.

One would move the SEC’s Office of Municipal Securities back into the commission’s trading and markets division, where it was before Dodd-Frank required it to be independent and report directly to the SEC chairman. Another would divert the funding the MSRB regularly receives from SEC and FINRA enforcement actions over muni rule violations to the Treasury for deficit reduction. Of the MSRB’s roughly \$35.4 million in revenue in its fiscal year 2016, \$1.2 million came from fines for muni rule violations.

The original CHOICE Act also would have allowed the SEC to triple monetary fines in administrative and civil actions where penalties are tied to illegal profits as well as in enforcement cases dealing with repeat violators of laws and rules.

The Bond Buyer

By Jack Casey

February 10, 2017

[How a Corporate `War' Over Covenants May Affect Munis.](#)

PHOENIX - New language designed to protect investors appeared last month in the offering documents of a taxable hospital deal, as the ripple effect of a battle in the corporate bond arena spread to the municipal market.

The language, which appeared in offering documents for a \$350 million taxable Children’s Hospital Corporation (Mass.) issuance, makes clear that investors are due a premium in the event of a default. It specifies that investors are due an amount “equal to the make-whole redemption price.”

Municipal finance pros said the language appears to have crossed over as a result of a dust-up over corporate bond covenants in late 2016 – though some expressed skepticism that such covenants would take hold in the municipal market.

Adam Cohen, a corporate finance attorney who founded and writes for a research firm called Covenant Review, said the issue arose in October when corporate borrowers started including provisions in their offering documents that prevented buyers from collecting any kind of premium if the bonds were redeemed early. They started doing so as an effort to “opt out” of court rulings that ordered some corporate borrowers to pay make-whole redemptions after covenant breaches, a move that investors quickly began railing against.

That meant that issuers could voluntarily breach their covenants and only pay out par. An ugly “war” played out over this in the corporate market late last year, Cohen said, leading borrowers to drop their insistence on that provision. The language in the Children’s Hospital Corporation deal is the “reverse” of what the corporate borrowers tried to do, Cohen said.

“It’s a big deal because this war from corporate bonds leapt over to munis,” Cohen said, adding that had personally spoken to some fund managers that said they would want this protective language in future muni deals they bought, but that the majority of the market appears unaware of the issue.

But despite the uproar the deal caused in the corporate world, muni market professionals seem skeptical that the issue is as big in the tax-exempt market. The hospital deal that included the make-whole provision was taxable, and so not representative of the most common type of muni bond issuances.

A bond lawyer who reviewed the offering documents at The Bond Buyer’s request but requested anonymity to comment on the deal said he didn’t believe that the provision would become commonplace in the muni market, and probably wasn’t necessary. The attorney said that taxable deals are generally sold to corporate buyers, and as such reflect the expectations of the corporate market.

“Our clients don’t have the same incentives to game the system like corporate players do,” the lawyer said. “I’m surprised they had this whole kabuki dance.”

Triet Nguyen, managing director and head of public finance credit at NewOak said that he had not seen the provision in a muni deal, and didn’t see much utility in including it in a tax-exempt issuance.

“I think it will be hard to enforce in bankruptcy and does not have any direct impact on recovery,” said Nguyen. “In a sense, all it does is inflate the bondholders’ potential claim.”

The Bond Buyer

By Kyle Glazier

February 7, 2017

[The Timeline of Tax Reform and the Danger For Munis.](#)

AUSTIN – Federal tax reform efforts will accelerate in just a few weeks, and municipal market

participants need to be pushing hard to protect the muni interest exemption right now, lawyers told attendees at a conference here Thursday.

Speaking at The Bond Buyer's Texas Public Finance Conference luncheon, Bracewell attorneys Curtis Beaulieu and Charles Almond warned that the exemption could be in danger very soon despite President Donald Trump's apparent support for leaving that part of the tax code unchanged. Republicans have been pushing to lower corporate and individual income tax rates, a goal that puts the muni exemption in danger of being limited or eliminated.

The momentum will pick up about six weeks from now, Beaulieu said, when House Ways and Means Committee chair Kevin Brady, R-Texas, releases the first draft of tax reform legislation. This draft, called the "chairman's mark," is crucial for the future of the muni exemption, said Almond. If the mark comes out and does not include a tax exemption for municipal bond interest, the lawyer warned, that means someone on the committee will then have to work to get it in.

"You really want things taken care of in the chairman's mark," Almond said, urging conference attendees to begin lobbying their representatives now if they hadn't already, warning them against waiting weeks to do so. Almond said that the "House blueprint" for tax reform that has already been publicly circulated could already be interpreted as limiting the tax exemption, and proposed eliminating "special-interest" deductions and credits.

A September estimate released by the Treasury pegs federal "tax expenditures" for tax-exempt bonds issued by state and local governments at about \$565 billion over the 10-year period from 2017-2026. While that ranks only 15th on Treasury's list of tax expenditures, Almond said it still provides lawmakers with a potentially appealing way of helping to lower tax rates without adding to the deficit.

"To get those rates down, they're going to go searching for other places to raise revenues," said Almond.

Beaulieu said that even if the tax exemption is on the table, legislation would still be very unlikely to include a retroactive change to the status of outstanding tax-exempt bonds.

"Republicans typically do not support retroactive tax increases," Beaulieu said. "So there's probably no chance."

Almond downplayed the comfort that market participants can take in then President-Elect Trump's comments to the U.S. Conference of Mayors in December, during which Trump spoke about his proposed \$1 trillion ten-year infrastructure plan and said that he plans to maintain the tax-exempt standing of municipal bonds.

"I don't think you can rely on anything until it's Tweeted," joked Almond.

Beaulieu said that Republicans can pass tax reform legislation on a partisan basis in the House, where they GOP maintains a sizeable majority. But when the discussion moves over to the Senate, he said, Republicans will likely need to abandon their partisan approach and get some Democrats on board. Republicans control 52 Senate seats, but the upper chamber's rules essentially require 60 votes to pass a bill because of the ability of Senators to filibuster and more easily amend bills they dislike.

"Everything slows down in the Senate," said Beaulieu.

The Bracewell lawyers' estimated timeline includes consideration of tax reform legislation by the full

House by August. The full Senate could consider it by the end of 2017, and a conference report could produce a joint product by spring 2018.

The Bond Buyer

By Kyle Glazier

February 9, 2017

States, Localities Could Issue \$5B of PABs for Public Building P3s.

WASHINGTON - Companion bills introduced in the House and Senate would allow state and local governments to issue up to \$5 billion of private activity bonds to finance the repair or construction of public buildings under public-private partnership arrangements.

The "Public Buildings Renewal Act" was introduced in the House on Feb. 7 as H.R. 960 by Rep. Mike Kelly, R-Pa., and eight cosponsors, five of whom besides Kelly are members of the House Ways and Means Committee.

The measure in the Senate, which has not been assigned a number yet, is being introduced by Sens. Dean Heller, R-Nev., and Bill Nelson, D-Fla., both of whom sit on the Senate Finance Committee.

The bills they introduced last session were H.R. 5361 and S. 3177.

The legislation would create a new category of tax-exempt PABs that would allow states and localities to partner with private parties to construct or renovate qualified government buildings, which would be governmentally owned.

These could include public buildings, schools, state colleges or universities, public libraries, and courthouses, according to the bills' text. They could also include government-owned hospital, health care, laboratory or research facilities and public safety facilities such as police stations or firehouses.

The bonds could not be issued to finance buildings or facilities for retail food and beverage services, private golf course or country clubs, or other sports or entertainment facilities, according to the text.

These kinds of projects cannot currently be financed with tax-exempt PABs because there is not a specific qualified PAB category for bonds for public buildings.

Jessica Giroux, Bond Dealers of America's general counsel and managing director, said the bills, "fit the administration's call for more infrastructure spending."

"There has been a fair degree of interest and a few transactions done as P3s for what is called social infrastructure" such as courthouses and government office buildings, Giroux said. "The downside is that it's hard to do these economically if you can't use tax-exempt bonds. So this sort of thing would be a fix for that."

Emily Brock, director of the Government Finance Officer's Association's federal liaison center, said the bills are in line with GFOA policy.

"The GFOA has a long-standing policy that encourages Congress and the Department of the

Treasury to consider easing private activity restrictions on public use facilities,” she said. “We look forward to working with the bill sponsors to discuss how this concept can augment the financing toolkit for state and local governments, which also must include the full preservation of the municipal bond interest exemption.

Michael Decker, managing director at the Securities Industry and Financial Markets Association and co-head of its muni division, said, “Private activity bonds can provide an efficient mechanism for financing the debt portion of infrastructure projects. It’s appropriate for governments who determine that public-private partnerships are the most efficient financing model to be able to tap the tax-exempt, private-activity bond market to finance the project. This principle should apply to public buildings, as Sens. Heller and Nelson and Congressman Kelly have proposed, and other infrastructure projects as well.”

Rep. Kelly said in a release on the bill pending in the House, “Our country’s public buildings are in a historic state of disrepair and in need of a bold solution. That’s where the Public Buildings Renewal Act can come to the rescue.”

Blumenauer added, “Congress has failed to display the political courage to adequately invest in infrastructure – from roads to light rail to schools and courthouses. Our nation is literally falling apart and falling behind. We need an ‘all of the above’ approach to infrastructure funding and simple fixes to lower investment barriers are steps in the right direction.”

The other House and Ways and Means Committee members co-sponsoring the bill in the House are: Reps. Carlose Curbelo, R-Fla., Lynn Jenkins, R-Kan., James Renacci, R-Ohio, and Ron Kind, D-Wis. Reps. Lee Zeldin, R-N.Y., Will Hurd, R-Texas, and Scott Perry, R-Pa., are also co-sponsors.

The Bond Buyer

By Lynn Hume

February 9, 2017

[House Resolutions Introduced to Undo State, City Secure Choice Rules.](#)

Resolutions to block Department of Labor rules allowing states to set up private-sector retirement savings programs were introduced Wednesday by two members of the House Education and the Workforce Committee.

The Department of Labor issued final rules on Aug. 25 granting states a safe harbor to set up payroll deduction individual retirement accounts for private-sector workers who do not have access to workplace retirement savings programs. On Dec. 19, the DOL issued similar final rules for cities and other large political subdivisions. The rules remove concern over being pre-empted by federal regulators by clarifying that such programs would not be covered by ERISA.

H.J. Res. 66, introduced by Rep. Tim Walberg, R-Mich., who chairs the Subcommittee on Health, Employment, Labor and Pensions, would remove the safe harbor for states, and H.J. Res. 67, introduced by committee member Rep. Francis Rooney, R-Fla., would block the rules for cities.

Both measures, called resolutions of disapproval, take advantage of the Congressional Review Act, which allows Congress to legally prevent a federal agency from implementing a rule or issuing a

substantially similar rule without congressional authorization.

“Our nation faces difficult retirement challenges, but more government isn’t the solution,” Mr. Walberg said in a statement. Mr. Rooney, in the same statement, said the rules would force people into government-run plans with fewer protections and less control, and present employers with “a confusing patchwork of rules” that could result in fewer retirement plans being offered.

In a letter to House Speaker Paul Ryan, R-Wis., the ERISA Industry Committee, which represents large employers on benefits issues, said its members “are discouraged by recent proposals at the state and local level that unnecessarily disrupt active employer-sponsored retirement plans that are already in full compliance with federal law and regulations,” particularly those that operate across state lines.

“Rules that are too onerous or restrictive can chill an employer’s commitment to offer a retirement plan,” the ERIC letter said.

A vote on the joint resolutions has not been scheduled, but is expected to happen as early as next week.

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD | FEBRUARY 8, 2017 3:19 PM | UPDATED 4:47 PM

— Contact Hazel Bradford at hbradford@pionline.com | [@Bradford_PI](#)

[**SIFMA Survey Projects Slip in Long-Term Muni Issuance this Year.**](#)

WASHINGTON - Long-term municipal bond issuance is expected to fall to \$417.5 billion this year from \$423.8 billion last year, according to a survey released by the Securities Industry and Financial Markets Association on Wednesday.

Total muni issuance is expected to rise to \$461 billion in 2017, with increases in short-term munis, but a decline in refundings, the survey of six municipal market firms showed.

SIFMA conducted its 2017 Municipal Bond Issuance Survey between Nov. 14 and Feb. 3 based on the median values of figures submitted from: Bank of America-Merrill Lynch; Hilltop Securities; J.P. Morgan Chase & Co.; RBC Capital Markets; Stoeber Glass; and Wells Fargo Securities.

The \$461 billion of total muni issuance would be up from \$459.4 billion in 2016. That increase is tied to an expected jump in short-term issuance to \$43.5 billion from \$35.6 billion in 2016, according to the survey results. The participating firms said long-term issuance would reach anywhere from \$320 billion to \$450 billion for 2017, the median of which is \$417.5 billion. Long-term tax-exempt muni issuance is expected to reach \$375 billion in 2017, a 2.1% drop from the \$383.1 billion in 2016. The firms expect taxable issuances to rise to \$30 billion in 2017 from \$28.5 billion in 2016, a 5.2% increase. Alternative minimum tax issuance is also expected to rise to \$12.5 billion in 2017 from \$12.2 billion in 2016.

Of the total issuances, only 41% are expected to be refundings in 2017 compared to the 51% in 2016.

Michael Decker, managing director and co-head of munis for SIFMA, said the lower number of refundings is likely due to the expectations of further Federal Reserve Board rate increases and the fact that 2007 was a relatively weak year for issuance. "Many bonds are issued with ten-year par calls so one of the driving factors for refunding volume is ... the new money issuance volume ten years ago," Decker said. "2007 was a relatively weak year so there will be relatively fewer issues that come up for refunding in 2017. That, compounded with the rate increase we saw toward the end of last year and maybe a smaller uptick in rates throughout this year, will together cause refunding volume to be lower than it has been."

The Fed's Federal Open Market Committee raised the federal funds target rate to 0.50% to 0.75% in December. The federal funds rate is expected to rise from 0.62% by the end of March 2017 to 0.94% by the end of December 2017, according to the survey. Most survey respondents said the largest sector of new munis would be general purpose for the next year. The balance will be evenly split between transportation, education, and public facilities, they said. General purpose has traditionally been the largest issuing sector by gross amount in past years.

The most likely event that would have the greatest effect on the muni market during the year is the possible curtailment of the tax exemption for municipal bond interest, the survey participants said. Muni groups have been actively lobbying legislators and federal government officials about the importance of maintaining the tax exemption for munis. Regulatory and compliance burdens dealers and others continue to experience will also have a large impact on the market in 2017, according to the surveyed firms.

The firms also said they expect the number of issuers that will default in 2017 to range from 20 to 25, comprising a par value that could range from \$400 million to \$26 billion. The survey defined default as the occurrence of a missed interest or principal payment or a bankruptcy filing.

The Bond Buyer

By Jack Casey

February 8, 2017

[Trump Executive Order Encourages SEC to Review Cost of Regulations.](#)

WASHINGTON - President Donald Trump's executive order to decrease regulations and the costs they impose encourages independent agencies like the Securities and Exchange Commission to review their rules, even though the order does not directly apply to them, according to guidance issued Monday.

Trump's order, signed on Jan. 30, mandates executive departments and agencies to repeal two rules for the adoption of every new rule that imposes costs. It requires the savings from the repealed rules to fully offset the costs of the new action, according to the guidance published by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

OIRA makes clear in its guidance that independent agencies are not covered, but notes that "nevertheless, we encourage independent regulatory agencies to identify existing regulations that, if repealed or revised, would achieve cost savings that would fully offset the costs of new significant regulatory actions."

The Jan. 30 executive order is connected to another order Trump signed on Feb. 3 that directs the Treasury secretary to meet with major financial regulators, including the SEC, and report within 120 days on what Dodd-Frank Act provisions are working and not working.

Municipal market participants have consistently said they are concerned about the high cost of implementing and complying with the slew of regulations that the Municipal Securities Rulemaking Board and SEC have adopted over the last several years, many of which implemented Dodd-Frank provisions. The act put non-dealer municipal advisors under a federal regulatory regime for the first time and also made the MSRB responsible for protecting issuers as well as investors.

Bond Dealers of America welcomed the Feb. 3 order as a chance for a “critical reassessment” of Dodd-Frank regulations and the Securities Industry and Financial Markets Association commended the Trump administration for taking the action.

“It is imperative to ensure that our financial regulatory framework does not unnecessarily impede capital formation that drives job creation, economic growth and investor opportunity in this country,” SIFMA president and CEO Ken Bentsen said in a release late last week.

The SEC is currently working with only two commissioners, but Trump has nominated Jay Clayton, a Wall Street lawyer, to succeed Mary Jo White as chair. Market participants see Clayton as someone who will work with the Trump administration to focus on deregulation where possible, suggesting he will likely follow the Jan. 30 executive order.

In announcing his nomination of Clayton as SEC chair in early January, Trump said the administration needs to “undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers.”

The Senate has yet to schedule a hearing for Clayton but several Senate Republicans have released statements and tweets about successful meetings with the nominee.

The Bond Buyer

By Jack Casey

February 6, 2017

[S&P: For Illinois, Having A Plan Beats No Plan.](#)

A bipartisan package of proposed budget legislation recently unveiled in the Illinois State Senate could mark a breakthrough in the state’s nearly two-year-long budget impasse. The legislation, which includes appropriations for the remainder of fiscal 2017 and increased tax rates, offers the potential for the semblance, at least, of a shift toward fiscal stabilization.

[Continue reading.](#)

Feb. 6, 2017

[S&P U.S. Public Finance Team Comments On Emerging Trends For 2017.](#)

In January, S&P Global's U.S. Public Finance Ratings team published their 2017 sector outlooks. In this CreditMatters TV segment, Managing Director Robin Prunty provides us with an overview of the key themes, credit risks, and opportunities in the municipal finance sector this year.

[Watch video.](#)

Feb. 9, 2017

[S&P: Although Risks Remain, Global Toll Road Operators Can Expect Credit Stability In 2017.](#)

S&P Global Ratings' 2017 outlook for business conditions and credit quality for rated toll road facilities around the world is generally stable. The exception is the U.S., where the overall outlook is positive.

[Continue Reading](#)

Feb. 8, 2017

[Rainy Day Funds Show States Are More Vulnerable to Next Downturn.](#)

- Median reserves of expenses among states slipping in 2017
- Lack of budgetary cushion in past recession heightened woes

More states are failing to sock away cash for the next rainy day.

The number without budget reserves has doubled to four from last year, according to data from the National Association of State Budget Officers. And discipline in building up cushions has slipped, with the median balance 4.9 percent of expenditures in fiscal 2017, down from 5.1 percent, Bank of America Merrill Lynch analysts said in a note to clients.

The number of states with rainy day funds of less than 1 percent of expenses rose to five from three in fiscal 2017, while those with balances of up to 5 percent declined to 17 from 19, the budget officers' report showed.

Skimpier reserves risk exacerbating the effect of a national slowdown, as well as that from federal policies. President Donald Trump has pledged to repeal the Affordable Care Act, which would likely hit state budgets, and any overhaul that reduces taxes may curb demand for tax-free municipal bonds, which could make it more costly for localities to borrow.

Investors have punished states with low reserves. Of the four with none — Illinois, New Jersey, Nevada and North Dakota— Illinois and New Jersey must pay the highest premiums over benchmark debt among 20 states surveyed by Bloomberg. The two, which grapple with chronic budget deficits and elevated pension costs, are also the lowest-ranked U.S. states.

Other states have learned their lessons. California is enjoying its highest credit rating since the turn of the century, thanks partly to bolstering its rainy-day funds.

Lawmakers in California and in capitols across the country weren't prepared for the last recession. In 2009, when it ended, budget gaps totaled \$117 billion, about twice the level of reserves, according to Pew Charitable Trusts.

Analysts don't expect a recession soon. The economy will probably expand through at least the first quarter of 2018, according to analysts surveyed by Bloomberg.

Even so, some state officials are girding for the eventual decline. Half of states expect to pad their reserves in fiscal 2017, according to the budget officers' group. That includes California, where Governor Jerry Brown wants to further lift the savings account to \$7.9 billion in fiscal 2018 from \$6.7 billion this year.

"Saving now would allow the state to spend from its rainy day fund later to soften the magnitude and length of any necessary cuts," California's budget said.

Bloomberg

by Romy Varghese

February 7, 2017, 2:01 AM PST

[Universities Found Way to Keep Debt Off Books in Dorm Arms Race.](#)

- Colleges tapping developers to finance, build dormitories
- Partnership with Kean University selling \$43 million of bonds

New Jersey's Kean University is joining a growing number of colleges tapping outsiders to finance dorms, a step that holds down debt as they cope with declining state aid and pressure to limit tuition increases.

Kean, the fourth-largest public university in the Garden State, located about 20 miles (32 kilometers) southwest of Manhattan, is working with a Baton Rouge, Louisiana-based non-profit to finance a new 385-bed dorm on campus. Provident Group-Kean Properties LLC is planning to sell \$43.3 million municipal bonds Wednesday to pay for the project.

Rendering of new Kean University dorm building. Source: Kean University

"We're able to, rather than tacking on more debt to the university directly, have this partner share in the burden," said Felice Vazquez, Kean's associate vice president for strategic initiatives.

Kean, the University of Massachusetts Boston, and Texas A&M are among universities that in the last year turned to separate non-profits to build dorms backed solely by revenue from the projects. That preserves universities' capacity to borrow for classrooms and labs while reducing the risks of constructing new housing facilities that are a selling point to prospective students.

"Some universities are choosing a strategy of sticking to their knitting and divesting itself of anything that's not purely academic," said Jessica Matsumori, an analyst with S&P Global Ratings. In addition, "developers are seeing quite a bit of opportunity in this space and they're getting much more aggressive in their marketing and pitching to universities."

While such deals don't officially add to a university's debt, Matsumori said the company considers them contingent liabilities, given that administrators may want to spare their schools the stigma of a default.

"We believe if the project were distressed, they would likely be compelled to step in and assist - as it would affect their students, possibly their campus, and potentially their reputation," Matsumori said.

Kean enrolled about 15,500 students for the current academic year, with about 2,000 living on campus. The university, which offers admission to about three-quarters of applicants, has adopted a strategic plan that calls for more rigorous academic programs and decreasing the share of students living off campus.

"When you're here, 7 days a week, 24 hours a day, you do better and you're more likely to graduate in four years," said Vazquez.

With about \$340 million in outstanding debt carrying an A- rating, Kean isn't on the hook to pay debt service for the new dorm, which is replacing half-century-old residence halls and will include a 2,000 square foot bistro once it's finished in August 2018.

Kean will treat the new dorm as part of its student housing program and won't build and operate another unless there's demand enough to keep them filled, according to an S&P rating report. In addition, Kean, which is managing the residence hall, agreed to reduce the number of spaces elsewhere so the new project will have enough students to meet debt-service coverage requirements.

S&P rates the bonds BBB-, the lowest investment grade and three steps below the university's bonds.

Kean's partner, Provident Resources Group, was founded in 1999 by a former public finance lawyer. The non-profit owns student housing at Montclair State University in New Jersey, Towson University in Maryland, and North Carolina State University.

In October, Provident partnered with the UMass Boston to finance a 1,080-bed residence hall, the commuter school's first. Provident Commonwealth Education Resources, Inc. priced about \$130 million of bonds rated BBB- for yields of as much as 3.74 percent on securities due in 32 years, or about 2 percentage points more than top-rated debt, according to data compiled by Bloomberg. With interest rates having risen since, the bonds traded for an average yield of about 4.4 percent this week.

Provident Commonwealth will own the dorm. Birmingham, Alabama-based Capstone Companies will develop and manage the facility. UMass Boston will get about \$1 million per year in rent after bondholders are paid.

"We don't have any housing on the campus right now, so it just really makes sense to bring in a private operator," said Patricia Filippone, executive director of the University of Massachusetts Building Authority. She said the financing will help the university preserve debt capacity for projects that don't directly generate revenue.

The project is being done as a "design-build" in which design and construction are contracted to single entity. Advocates say better coordination allows problems to be solved faster. Governments benefit from contracting with a single entity responsible for guaranteeing price and schedule.

"This is just a more efficient delivery method," said Filippone.

Bloomberg

by Martin Z Braun

February 8, 2017, 2:00 AM PST

Puerto Rico Collapse Casts Bond-Market Pall Over Pacific Island.

- Territory of Guam's bonds lose since Congress acted on crisis
- Guam still investment grade as other territories cut to junk

The bond-market gales that battered U.S. territories in the Caribbean are reaching a Pacific Ocean island more than 7,000 miles away.

As Puerto Rico stumbles through record-setting defaults and the U.S. Virgin Islands contends with a building fiscal crisis, Guam is being penalized by investors even though it's kept an investment-grade rating. The island's debt has lost 4.4 percent since the end of June, following the unprecedented U.S. rescue of Puerto Rico, compared with a 2.5 percent loss in the broader municipal market, according to S&P Dow Jones Indices.

"They are all struggling financially," said Dan Solender, head of municipals at Lord Abbett & Co., which hold about \$100 million of Puerto Rico bonds and isn't buying territory debt. "As an investor, you don't know what your downside is anymore. You don't know if the terms you agreed to when you originally loaned them the money will be the terms that will be used to handle the situation if something goes wrong."

Investors' confidence in America's territories has been undermined by the U.S. effort to save Puerto Rico. That law, enacted in June, gave the government legal powers to cut its debts in bankruptcy-like proceedings, setting a precedent that Congress could extend to other cash-strapped territories.

The territories are wrestling with pension bills, heavy debt loads and economies dominated by a few key industries. The Virgin Islands since December has twice delayed a bond sale that it was counting on to help pay bills, and Monday its water and power company debt was downgraded to a few notches above securities already in default. Last month, Moody's Investors Service said it may cut American Samoa deeper into junk, in part because of the economic hit caused by the closing of a tuna-packing plan.

Star Territory

But Guam has avoided falling into junk-bond status. In July, S&P Global Ratings graded the island's bonds BBB+, the third-lowest investment grade, after deciding not to change its assessment in light of the Puerto Rico legislation. While Moody's Investors Service doesn't rate all of Guam's bonds, it grades the power authority's securities Baa2, two steps above junk.

Guam is the "shining star of the territories," said Ken Kurtz, an analyst with Moody's. "It's not on the edge of a cash crisis like the Virgin Islands is. Guam could deal with its issues if it chooses to."

Governor Eddie Calvo on Jan. 31 proposed a \$722 million budget for the next fiscal year that he said balances after setting aside money for tax refunds and using \$14.7 million to pay down the deficit. Guam, with about 170,000 residents, had about \$2.6 billion of debt outstanding as of May — or

about \$15,000 per capita, according to bond documents.

“The governor has always taken the stance that we don’t need federal assistance when it comes to our financial situation because we will pay our debts no matter what,” said Jay Rojas, administrator for the Guam Economic Development Authority. “It’s in the budget for us to be able to take care of all the debt service that’s required.”

The island’s reliance on military bases, which occupy one-third of its territory, could be bolstered by President Donald Trump’s promise of increased military spending. International tourism is another major industry. Rojas said the governor’s office is looking at opportunities to expand into the shipping industry or the high-tech space.

“Diversification is always good,” said Rojas. “Right now we have a two-legged stool. If we add a third leg — which would be, you know, the creation of a new economy or a new industry on the island — it would make us even more secure.”

Bloomberg Markets

by Jordyn Holman

February 9, 2017, 2:00 AM PST

[Bloomberg Brief Weekly Video - 02/09](#)

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week’s municipal market news.

[Watch video.](#)

Bloomberg

February 9, 2017

[Fitch: Alaska Power Pool Is Likely Credit Positive.](#)

Fitch Ratings-New York-07 February 2017: Public power utilities in Alaska’s recently announced power pool should benefit from greater efficiencies, lower costs and a potential reduction in capex over the long term, Fitch Ratings says. To the extent that projected savings are used to build cash reserves, fund capital expenditures or reduce outstanding debt, credit quality among the participating utilities could improve. However, if the savings are passed back to the rate payers, creation of the power pool would likely be credit neutral.

The proposed power pooling and joint dispatch agreement between Chugach Electric Association, Inc., Anchorage Municipal Light and Power (ML&P), the Municipality of Anchorage, and Matanuska Electric Association was filed with the Regulatory Commission of Alaska (RCA) on Jan. 30. The proposed power pool expands on earlier efforts by Chugach and ML&P.

The pool will benefit the utilities by reducing the cost of power, increasing efficiencies and lowering

the use of natural gas and emissions of carbon dioxide. The pool's goal is to meet the combined needs of the systems at the lowest possible cost by dispatching the most efficient resource, regardless of ownership, to meet the combined need. This approach allows for the better utilization of existing resources serving the region and reduces the need to develop and construct redundant resources, lowering capital costs over the long term.

The expanded power pool would include significant hydroelectric resources; two recently built natural-gas-fired combined cycle baseload plants, and quick-start peaking resources. By dispatching the most efficient resources across the pool, the utilities project savings of \$12 million to \$16 million annually in fuel and operation and maintenance costs. The increased efficiency and reduction in natural gas use would also extend the life of current supplies and reduce carbon dioxide emissions by an estimated 90,000 to 120,000 tons per year.

The proposal is currently considered an informational regulatory filing, providing the general framework for the pool's operation and goals. The participating utilities are still working out details regarding the power pool's operation and settlement process. A final, long-term agreement is expected to be filed with the RCA in 2018.

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[Fitch Downgrades Illinois Ratings to 'BBB'; Negative Rating Watch Maintained.](#)

Fitch Ratings-New York-01 February 2017: Fitch Ratings has downgraded the following ratings of the state of Illinois:

- Issuer Default Rating (IDR) to 'BBB' from 'BBB+;
- \$25.9 billion in outstanding general obligation (GO) bonds to 'BBB' from 'BBB+';
- \$431 million Illinois Sports Facilities Authority sports facilities bonds (state tax supported) to 'BBB-' from 'BBB';
- \$2.6 billion Metropolitan Pier and Exposition Authority McCormick Place expansion project bonds to 'BBB-' from 'BBB';
- \$267.8 million city of Chicago motor fuel tax revenue bonds to 'BBB-' from 'BBB'.

The Rating Watch Negative is maintained.

SECURITY

GO bonds are general obligations, full faith and credit of the state of Illinois.

State statutory mechanisms include an irrevocable and continuing appropriation for all GO debt service, and continuing authority and direction to the state treasurer and comptroller to make all necessary transfers from any and all revenues and funds of the state. The state funds debt service in advance by setting aside 1/12 of principal and 1/6 of interest every month for payments due in the ensuing 12 months.

The Sports Facilities Authority, Metropolitan Pier and Exposition Authority, and motor fuel tax bonds require state appropriation for the payment of debt service, resulting in a rating one notch below the state's IDR.

KEY RATING DRIVERS

The downgrade of Illinois's IDR and related ratings reflects the unprecedented failure of the state to enact a full budget for two consecutive years and the financial implications of spending far in excess of available revenues, which has resulted in increased accumulated liabilities and reduced financial flexibility. Even if the current attempts at a resolution to the extended impasse prove successful, Fitch believes that the failure to act to date has fundamentally weakened the state's financial profile.

The Negative Watch reflects Fitch's expectation that the state's implementation of a solution, whether temporary or permanent, will be a challenge in the current political environment and that in the interim the state will continue to delay and defer payments in lieu of balancing the budget. While Fitch acknowledges that there is a plan being developed in the state Senate that contains elements that could ultimately resolve the impasse, its passage is uncertain and the timing of implementing solutions is unknown. Fitch expects to resolve the Rating Watch within the next six months based on an assessment of the state's fiscal trajectory as it starts fiscal 2018. If the state continues on the current path, a further downgrade would be warranted.

Illinois has failed to capitalize on the economic growth of recent years to bolster its financial position. Rather, the decision to allow temporary tax increases to expire and the subsequent failure to develop a budget that aligns revenues with expenditures have resulted in a marked deterioration in the state's finances during this time of recovery. Once again, the state has displayed an unwillingness to utilize its extensive control over revenues and spending to address numerous fiscal challenges.

The 'BBB' rating continues to reflect the strengths inherent in a state's independent ability to control its budget, which remain substantial in Illinois despite policy decisions over a long period that have reduced expenditure flexibility. The rating also incorporates the state's elevated but still moderate liability burden, even considering its accumulated budgetary liabilities. These factors are offset by a history of notable fiscal management weakness that manifests itself in weak operating performance throughout the economic cycle.

Economic Resource Base

The state benefits from a large, diverse economy centered on the Chicago metropolitan area, which is the nation's third largest and is a nationally important business and transportation center. Economic growth through the current expansion has lagged that of the U.S. as a whole.

Revenue Framework: 'aa' factor assessment

Illinois' broad revenue base, primarily income and sales taxes, captures the diversity in its economy and has shown modest growth since the end of the recession. Fitch expects revenue performance to continue to track slow economic growth. The state has unlimited legal ability to raise revenues.

Expenditure Framework: 'a' factor assessment

Illinois has adequate expenditure flexibility despite elevated carrying costs for debt service and retiree benefits, with much of the broad expense-cutting ability common to most U.S. states. However, it is unlikely that reductions in state spending alone would be sufficient to achieve budgetary balance given the magnitude of the current budget gap. Funding demands associated with retiree benefits will continue to be a pressure, as these benefits are constitutionally protected.

Long-Term Liability Burden: 'a' factor assessment

Liabilities are an elevated but still moderate burden on Illinois' resource base, even when considering the large and growing accounts payable backlog that the state has accumulated. The state has very limited flexibility with regard to pension obligations following a May 2015 Illinois Supreme Court decision that found 2013 pension reform unconstitutional.

Operating Performance: 'bbb' factor assessment

Illinois' operating performance, both during the great recession and in this subsequent period of economic growth, has been very weak. The failure to address a long-standing structural budget gap with permanent and comprehensive solutions, whether revenue or expenditure, has left the state with an gaping hole in its operating budget and increasing budgetary liabilities.

RATING SENSITIVITIES

BUDGET SOLUTIONS: Failure to enact a balanced budget for fiscal 2018 would result in a further downgrade. Successful implementation of measures to enact a structurally balanced budget and reduce accumulated budget liabilities would stabilize the credit.

LIQUIDITY: The rating is sensitive to a material reduction in the state's ability to manage within available revenues through discretionary payment deferrals. Furthermore, failure of the state to make its statutorily required debt service transfers as scheduled, 12 months in advance on a rolling basis, would result in an immediate downgrade of the rating to below investment grade because it would suggest that the state's liquidity pressures are presenting a risk to bondholder interests that has not been evidenced to date.

CREDIT PROFILE

Illinois is a large, wealthy state at the center of the Great Lakes region. It benefits from a diverse economy centered on the Chicago metropolitan area. Illinois' economy has gradually shifted, similarly to the U.S. in general, away from manufacturing to professional business services. The remaining manufacturing sector does include more resilient non-durables, and is less concentrated in the auto sector than surrounding states, but remains vulnerable to cyclical downturn. By most measures the economy has grown slower than the nation for many years and population levels have been stagnant to declining.

Revenue Framework

Illinois has a reasonably diversified revenue base. It relies most heavily on personal income taxes (close to half of general fund revenues) and sales tax. The balance consists of corporate income tax, lottery and gaming revenues, and a variety of other smaller taxes and transfers. The state has a flat personal income tax rate of 3.75%, which was temporarily increased to 5% between 2011 and 2015 from the prior flat rate of 3% to close post-recession budget gaps and reduce accumulated liabilities.

Historical revenue growth, adjusted for the estimated impact of policy changes, has been slightly above inflation but has somewhat lagged national economic growth. With Illinois' economic performance also lagging national growth, Fitch expects a continuation of this trend of flat-to-modest real revenue growth.

Illinois has no legal limitations on its ability to raise revenues through base broadenings, rate increases, or the assessment of new taxes or fees.

Expenditure Framework

As with most states, Illinois' spending is largely for social services and education, although its carrying costs for debt service and pension payments are comparatively high.

Spending growth, absent policy actions, is likely to be higher than revenue growth, driven mainly by increasing pension costs. Illinois has chronically underfunded its pension system based on a statutory formula that permitted a slow incremental build-up to higher pension funding and targeting only 90% of full actuarial funding. Pension costs are unusually large and continuing to grow, crowding out other spending. As with most states, other spending drivers include Medicaid and education.

The fiscal challenge of Medicaid is common to all U.S. states. Federal action to revise Medicaid's programmatic and financial structure appears likely, although the magnitude and timing of changes for state budgets remain unknown. Both the new presidential administration and congressional leadership support significant Medicaid policy shifts. As one of the largest parts of state budgets and by far the biggest source of federal funding to the states, federal decisions could have significant implications for states' ability to manage this key budget item.

Despite carrying costs that are among the highest of the states, Fitch believes that Illinois retains adequate expenditure flexibility that could be used in the budget process. Illinois funds a broad range of services for its citizens and did not significantly reduce spending during the recession. This leaves the state with ongoing capacity to make spending reductions. However, Illinois has no ability to unilaterally modify retiree benefits following the May 2015 Illinois Supreme Court decision that found 2013 pension reforms unconstitutional.

During the current budget impasse, almost 90% of spending continued to be funded in fiscal 2016 at the 2015 rate, based on continuing appropriations, consent decrees, and court orders, as well as the enacted education budget. A similar partial general funds budget was enacted for fiscal 2017, including full-year appropriations for K-12 education and other state and federal funds; however, the partial budget expired Jan. 1, 2017 and the state is again operating without a full budget in place. There is little flexibility to control spending outside of the budget process in part because the governor cannot unilaterally make many changes without legislative participation.

Long-Term Liability Burden

Illinois' long-term liabilities, particularly pension liabilities, are very high for a U.S. state. Illinois is the weakest of the states in terms of its ratio of debt and unfunded pension liabilities to personal income, at 23% as of 2016, well above the 5.1% median for states. The state's three largest pension systems, covering teachers, universities, and state employees, have low funded ratios driven by a history of weak contribution practices.

In addition to its long-term liabilities, the state has a sizeable accounts payable balance that has accumulated through multiple years of operating at a deficit. As of the end of fiscal 2016, the accounts payable balance totaled \$7.6 billion and it has increased since with the ongoing budget impasse. If the senate proposal to issue bonds to reduce or eliminate this budgetary liability proceeds, Illinois' debt levels would be further elevated but would remain within the moderate range.

Short-term borrowing is allowed, subject to a limitation of 5% of appropriations for revenue anticipation purposes, which must be repaid by the close of the fiscal year, and 15% to meet revenue

failure, which must be repaid within one year. The state has no short-term borrowing currently outstanding or planned, although notes were issued during the downturn.

Operating Performance

Illinois is poorly positioned to address a future economic downturn. While it has substantial theoretical capacity to weather a downturn, in terms of both revenue-raising potential and spending flexibility, it has not demonstrated the political capacity to achieve a long-term solution to its chronic budget deficits. During the great recession, the state largely maintained spending but delayed payments to address lower revenues. It accrued, as a result, an accounts payable balance that at its peak, reached 20% of the operating budget. In the absence of a change in management's approach to state finances, it is Fitch's expectation that future deficits would also be addressed by deferring state payments and increasing accumulated liabilities, although this approach is made more challenging by the state's already significant and growing deferrals during this period of economic growth.

Illinois' budget management during the current period of expansion has been especially weak. Temporary increases in personal and corporate income tax rates in place for four years, from Jan. 1, 2011 through Dec. 31, 2014, closed or partially closed the budget gap across five fiscal years. However, with their expiration, and the failure to enact a spending plan within expected revenues, the budget gap has ballooned. As a result, the state finds itself with a current operating deficit, structural budget deficit, cash crunch, and accumulation of accounts payable that will surpass its highest level at the depth of the recession.

The governor and state legislature could not come to agreement on a realistic spending and revenue plan for either the fiscal year that ended June 30, 2016 or the current fiscal year. With spending that far exceeded available revenues in fiscal 2016, the state's accounts payable balance grew to an estimated \$7.9 billion at year-end, a significant portion of which was for the state employee health insurance plan. Similarly unable to enact a full-year balanced budget for fiscal 2017, the governor proposed, and the legislature enacted, a partial budget to fund operations while continuing negotiations over the budget and the governor's proposed reform agenda, which addresses issues separate from the budget. The partial budget has now expired, and if spending continues in the current year without approval of new revenues or the enacting of severe budget reductions, which seem unlikely, the state is on course to once again run a sizeable deficit that would flow through to the accounts payable bottom line.

The state Senate has put forth a series of bills that have the potential to lead to a compromise that will resolve the impasse. The Senate bills include raising the state income tax and other revenue measures, debt issuance to reduce accumulated budgetary liabilities, pension reforms, aid to Chicago public schools, and non-budgetary reforms sought by the governor, including a freeze on property taxes, workers compensation reform, and some form of term limits. These proposals, if they proceed through the full legislature and are signed by the governor, have the potential to meet the requirements to stabilize the Illinois IDR and related ratings. However, their passage is uncertain as is the timing of the implementation of any solutions.

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Fitch: California School Downgrades Outpace Upgrades.

Fitch Ratings-San Francisco-07 February 2017: Most California school district ratings have been affirmed under Fitch Ratings' new criteria, though the bulk of rating changes have been downgrades, in contrast to the local government portfolio in general, which has seen significantly more upgrades than downgrades with the criteria change.

Fitch is currently conducting a portfolio review of California school districts under its revised U.S. tax-supported criteria, which was released in April 2016. Eighty percent have been affirmed to date.

CRITERIA HIGHLIGHT FINANCIAL RESILIENCE THROUGH THE CYCLE

Downgrades to date reflect certain common features of California school district credits that play a greater role in the rating analysis following the criteria revision. The revised criteria emphasize an issuer's revenue framework and financial resilience in light of an issuer's sensitivity in downturns. California school districts have little independent legal control over revenues, which are primarily driven by relative enrollment rather than the local economy, and comparatively high revenue volatility due to the state's funding framework. Expectations for elevated volatility increase the financial cushion necessary to offset future declines. This inherent volatility, when compounded by a trend of thinning reserves observed in some districts, weakens the assessment of financial resilience through the cycle.

ENROLLMENT DRIVES REVENUE GROWTH PROSPECTS

The revised criteria highlight the significance of average daily attendance (ADA) to growth prospects for California school district revenues, as total per-student revenue from state and local sources is set by the state's Local Control Funding Formula (LCFF). Most districts have experienced solid revenue growth in recent years due to LCFF's funding mechanism, which is also tied to the state's solid revenue performance. However, LCFF is near full implementation, and given the state's constitutional school funding formula, future district revenue growth is expected to be more closely tied to local ADA trends relative to overall state revenue and enrollment performance.

PROP 13 LIMITS REVENUE FLEXIBILITY

California school districts' ability to independently raise revenues is constrained by constitutional limitations under Prop 13. Districts may not raise the operating property tax rate under any

circumstance, and may only raise a parcel tax with a vote of the people. In districts with ADA declines, the confluence of limited revenue flexibility and weaker revenue growth prospects has been the central credit factor in many downgrades. This includes situations where the local tax base and economy are strong but enrollment is declining due to factors such as demographic changes and competition from charter schools.

VOLATILITY AND RESERVE DECLINES HINDER FINANCIAL RESILIENCE

Fitch's assessment of financial resilience, which considers financial reserves in the context of expected revenue volatility and budgetary flexibility in the event of a typical economic downturn, has also driven some downgrades. State school aid in California historically has been notably more volatile than typical municipal revenues because of the state's tax structure and funding framework. California's funding framework is governed by Prop 98, which ties school funding, in part, to year to year changes in state revenue (with a minimum guarantee of 40% of the state budget), thereby linking volatility in the state tax structure to local districts. While the state's tax structure remains more volatile than most (and can be exacerbated for a district by declining ADA), Fitch believes that the institutional reforms implemented during and coming out of the great recession may reduce school funding volatility somewhat going forward.

Higher expected volatility increases the level of reserves necessary to offset declines in Fitch's scenario analysis; however, the state's reforms moderate to a limited degree Fitch's expectation for districts' future volatility. Furthermore, many districts have been drawing down high fund balances to more historical levels in the improving state revenue environment, which Fitch believes reduces their financial flexibility in the event of an economic downturn.

California school districts benefit from a very strong financial oversight framework under AB 1200. For districts with limited gap-closing capacity, where financial operations could otherwise become distressed in the event of a revenue downturn in Fitch's scenario analysis, Fitch expects support by the state oversight mechanism to ensure that finances return to stable operations and recover financial flexibility. This strong oversight system supports an overall operating performance assessment that is slightly higher than the level suggested by Fitch's scenario analysis alone.

SPECIAL REVENUE ANALYSIS YIELDS STRONG RATINGS

Fitch continues to rate the general obligation securities of certain California school districts above the level of the issuer rating based on our assessment that bondholders are legally insulated from any operating risk of the district. (See 'California School Districts: Special Revenue Analysis Yields Strong Ratings' dated Sept 30, 2016.) In these cases, the general obligation bond rating is based on a dedicated tax analysis without regard to the district's financial operations because there is a reasonable basis for concluding that the tax revenues levied to repay the bonds would be considered pledged special revenues in the event of a district bankruptcy.

Fitch sets a high bar for considering local government tax-supported debt to be secured by special revenues, which provide security that survives the filing of a municipal bankruptcy (in preservation of the lien) and benefit from relief from the automatic stay provision of the bankruptcy code. Fitch gives credit to special revenue status only if, in its view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues under Section 902 (2) (e) of the U.S. Bankruptcy Code. No such ratings have been affected by implementation of the revised criteria.

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[Connecticut Gov. Proposes School Funds Move from Wealthy Towns to Poor Ones.](#)

The plan is the governor's first attempt to address disparities in school funding after a court ruled that the current system is unconstitutional

Connecticut Gov. Dannel Malloy is seeking to redistribute funds for education from affluent towns like Greenwich and Groton to poor cities like Bridgeport and Hartford, as part of his \$18 billion budget proposal revealed Wednesday.

Under Mr. Malloy's plan, education funding to municipalities, including for special education, would increase 8% to \$2.19 billion for the fiscal year beginning July, but wealthier towns would get less money while poor cities would get more.

Under the new system, the state would reduce funding to the town of Groton for schools and special education by 33% to \$16.8 million while the Hartford school system would receive an 11% increase to \$221 million. School funding is largely derived from local property taxes.

The proposed changes are the governor's first attempt to address disparities in school funding after a Connecticut judge ruled in September that the current system is unconstitutional. The state Supreme Court is reviewing that order.

"I agree that we are not meeting our constitutional requirement of a fair and equitable public education system—one that guarantees every student the opportunity for success," Mr. Malloy, a Democrat, said during a budget address in Hartford.

The changes to education funding come as the governor tries to close a projected \$1.7 billion budget deficit in the coming fiscal year. To deal with the shortfall, Mr. Malloy proposed \$256 million in cuts to spending by state agencies for higher education, mental health and addiction services and other measures. It also increases tax revenue by \$205 million by eliminating a property tax credit and raising levies on cigarettes.

The governor's budget also assumes \$700 million in savings from unstated concessions from state employees. If the state and public-sector unions can't come to an agreement on concessions, up to 4,200 state employees could be laid off under the governor's plan.

Mr. Malloy also wants to shift about \$408 million in teacher pension costs from the state to cities and towns.

The proposal, if approved, would result in 31 towns and cities receiving more funding in the coming fiscal year than the current one, according to the state budget office. The state's remaining 138 towns in the state would get funding cuts.

"That's a lot of municipalities that are losing under this budget," said Elizabeth Gara, executive director of the Connecticut Council of Small Towns. Local governments will be forced to raise property taxes to make up the shortfall in state funding, she said.

Benjamin Barnes, the state's budget chief, said the changes are being driven by the fact that many towns are in good financial shape while others have poor finances.

"We've tried to restack our municipal aid program to reflect that and to provide more concentrated relief to the communities that desperately need it," Mr. Barnes said.

Mr. Malloy's education funding proposal would change the metric used to determine poverty levels in schools from the number of children receiving free and reduced lunches to the number of students on Medicaid, which the governor says is a more accurate measure of poverty.

The change would also take into account a school district's current enrollment levels as well as its financial strength.

Mark Waxenberg, executive director of the Connecticut Education Association, the state's largest teachers union, said the governor's proposal would hurt middle-class communities.

"You are basically creating a winners-and-losers system," Mr. Waxenberg said. "That's just not a good way to fund public education in Connecticut."

Mr. Waxenberg said the state should increase funding for education so that towns don't lose what they currently receive rather than reallocating money from affluent communities to low-income school districts. He said lawmakers should consider raising new tax revenue to make that possible.

Jennifer Alexander, chief executive of Connecticut Coalition for Achievement Now, an advocacy organization that supports charter schools, said it welcomed the governor's efforts to give more financial resources to students with greatest learning needs.

"I think that the governor's proposal reflects the harsh reality of Connecticut's budget—that there are no new dollars to add into the system," Ms. Alexander said.

But the funding cuts coupled with potentially new teacher pension obligations would put pressure on towns and school districts to trim expenses, said Patrice McCarthy, general counsel of the Connecticut Association of Boards of Education.

That could lead to increased class sizes, less investment in technology and fewer paraprofessionals to support teachers and students, she said.

THE WALL STREET JOURNAL

By JOSEPH DE AVILA

Feb. 8, 2017 5:27 p.m. ET

Write to Joseph De Avila at joseph.deavila@wsj.com

Michigan Leads Effort to Shift Workers Away From Pensions.

LANSING, Mich. — Struggling under the weight of pension and health care obligations, Michigan lawmakers appear ready to take another whack at public employee benefits — a move that reflects renewed determination to shift workers to 401(k)-style retirement systems, even if it happens in baby steps.

Other states have made more modest changes, but the latest push shows that conservatives want to approve big reforms 20 years after Michigan became the first state to close pensions to future state workers. Republican Gov. Rick Snyder is pressing to address \$14 billion in unfunded liabilities, mostly from retiree medical costs, spread across more than 330 communities.

“As a state, we cannot get ahead if too many of our local communities have problems,” he said.

The proposals could serve as a national blueprint, and they will provoke a pitched battle with public unions that are desperate to preserve traditional benefits.

Michigan is taking a leading role because of its size and the fact that GOP legislators and Snyder turned what was once a stronghold of organized labor into a right-to-work state. They also forced teachers and state employees to contribute a portion of their paychecks to avoid receiving smaller pensions in retirement.

After ending pensions for new state workers in the late 1990s, Republican legislators are now considering moving all newly hired teachers and local government workers to 401(k)-type plans and cutting municipal retiree health benefits. Just one other state, Alaska, has ended teacher pensions.

The governor, a former accountant and venture capitalist, has not outlined specific retirement proposals other than to be cool to shifting new teachers away from pensions because of the large upfront costs. But he warns that if nothing is done, retiree obligations — especially medical costs — will squeeze city budgets further and jeopardize basic services.

Influential conservatives point to Detroit, where thousands of people had their pensions cut by 4.5 percent in the bankruptcy. Annual cost-of-living increases were eliminated, and health coverage was replaced with a monthly stipend to buy insurance through the federal exchanges.

“If any more of the cities go bankrupt, their workers are not going to get what they were promised. That’s just not fair,” said John Kennedy, president and CEO of Autocam Medical in Grand Rapids, who led an informal task force that Snyder formed to study the issue. He is also a board member at the West Michigan Policy Forum, a group of business leaders and GOP donors that has listed unfunded retirement costs as its top priority.

Municipal officials are eager to see changes, too.

“This is essentially a mortgage crisis. We can’t afford our payments, and they’re ballooning,” said Port Huron City Manager James Freed, who worries that his town of 29,000 people an hour’s drive outside of Detroit will have to cut spending by up to 20 percent in coming years if nothing is done.

“We’ve already gone through 10 years of budget cuts,” Freed said. “At this point we’re not talking

about cutting services. We're talking about eliminating services."

Options that may be considered in the Legislature include prohibiting retiree health benefits from being a subject of collective bargaining, capping how much local governments pay toward retiree medical insurance and eliminating traditional coverage in retirement for new workers in favor of contributions toward tax-deferred accounts, which is already in effect for new teachers and state employees.

Critics say the state should not intervene in local labor contracts and describe the push as an attack on police and firefighters who risk their lives and typically must retire earlier than other workers.

"We thought what we had was bought and paid for," said 56-year-old Monty Nye, who retired from the Meridian Township Fire Department outside Lansing two years ago.

An officer in the statewide union, Nye said some new hires have already ceased to qualify for health care in retirement and will receive smaller pensions. Veteran firefighters agreed to smaller pay raises to keep intact the size of their pension, he said.

Nye said he pays \$800 a month for his family's health insurance — half of the premium. He also challenged a contention by Republicans that millennial workers prefer 401(k) systems because the plans are portable from job to job.

"That might be people that are looking to move around in the corporate world," Nye said. "But the people that go to fire departments go there for the stability of the job."

A pension, he said, lets first responders retire no matter how the stock market is faring.

"You don't want some 65-year-old firefighter trying to drag your butt out of a burning house," he said.

Oklahoma and Alaska are the only other states besides Michigan where new state employees are in mandatory 401(k)-style plans, which have been common in the private sector for many years.

If Michigan were to shift all new local workers and teachers to 401(k)-style plans, "it would be the first large state that's taken that kind of action. People would certainly look closely at it," said Greg Mennis, who studies public-sector retirement systems for the Pew Charitable Trusts.

The drive comes as President Donald Trump's administration explores how to implement at the federal level parts of a Wisconsin law that all but eliminated collective bargaining for public-sector unions in that state, according to Gov. Scott Walker.

Michigan conservatives are determined to take action.

"At some point, the political resolve needs to be applied to this problem," said Sen. Phil Pavlov, a Republican from St. Clair, north of Detroit.

Democrats say they are willing to talk about easing long-term liabilities but not without also discussing cuts in state revenue that have contributed to local budget woes.

Senate Minority Leader Jim Ananich of Flint said it would be foolish to rush bills while there is so much uncertainty over the future of the federal health care law and Medicare in the GOP-controlled Congress.

“You can’t talk about cutting benefits for teachers and firefighters ... and expect the federal government to come in,” he said. “After what their plans are, people are going to be more economically insecure.”

By THE ASSOCIATED PRESS

FEB. 5, 2017, 12:27 P.M. E.S.T.

Follow David Eggert on Twitter at <https://twitter.com/DavidEggert00> . His work can be found at <http://bigstory.ap.org/author/david-eggert> .

[Iowa Lawmakers Champion Bill to Limit Public-Sector Unions.](#)

(Reuters) - Iowa lawmakers considered legislation on Wednesday to limit the powers of public-sector unions to negotiate for state and local employees, restrictions similar to those enacted in Wisconsin and Michigan despite huge protests.

Republicans in Iowa have gained an important advantage in pushing for legislation to rein in public-sector salaries and benefits after gaining control of the state Senate in last November’s election. Republicans also control the state House of Representatives.

Iowa Republican Governor Terry Branstad supports the legislation, which if approved, would see Iowa join Wisconsin and Michigan in imposing restrictions on public-sector unions in the past decade. Branstad said the measure was needed to save money for the state.

Many Southern states have long limited collective bargaining by public-sector workers.

Union members protested the measure at the state capitol on Tuesday, according to local media.

The American Federation of State, County and Municipal Employees has said the measure, supported by the billionaire Koch Brothers’ political spending group Americans for Prosperity, would gut collective bargaining rights.

Ross Eisenbrey, a vice president at the left-leaning Economic Policy Institute, said the measure was in line with efforts by conservative lawmakers to overrule minimum-wage increases adopted by cities and push for lower wages for construction workers on state projects.

The Iowa measure would lift mandates that require the state and local governments to negotiate with public-sector unions on how much employees receive in health benefits, according to a text of the legislation.

Instead, mandated negotiations would center on wages. Public safety employees, including police and firefighters, would be exempted from those provisions.

The legislation also would make it easier to dismiss certain state and local employees, including teachers, who are deemed by their supervisors to be poor performers.

The measure was heard by House and Senate subcommittees on Wednesday, according to the legislature’s website. It was not immediately clear when the state House and Senate might vote on the measure.

Branstad told a news conference on Tuesday that state employees covered by public-sector unions typically pay \$20 a month for their health coverage, leaving taxpayers on the hook for over \$22,000.

"This is wrong and it's certainly out of whack with what everybody else in the state has to pay," he said.

By REUTERS

FEB. 8, 2017, 6:15 P.M. E.S.T.

(Reporting by Alex Dobuzinskis in Los Angeles; Editing by Peter Cooney)

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- [GASB Issues Guidance on Fiduciary Activities.](#)
 - [Fitch Disagrees with Moody's Legal Analysis on Chicago Public Schools.](#)
 - [Fitch Calls Out Moody's on Chicago Schools Analysis.](#)
 - [MSRB Plans to Codify CUSIP Requirements for Private Placements.](#)
 - [Making Sound Cost Decisions in Pay for Success Projects.](#)
 - [GASB Webinar: Financial Reporting Model Improvements - Governmental Funds.](#)
 - [Exploring the Impact of GASB 77: CDFR // BNY Mellon Development Finance Webcast](#)
 - [U.S. Bank National Association v. Podes](#) - In action to recover damages in connection with defaulted bonds, appeals court holds that expert's damage report - which calculated the value of the bonds as simply the interest rate on the face value of the bonds held to maturity - did not constitute an impermissible net opinion.
 - And finally, a devastating blow was dealt this week to trolls residing under bridges everywhere via [Doug Garber Construction, Inc. v. King](#), in which Bernice Garber appealed the award of \$112k for property taken by the state for a new freeway interchange, opining that the property was in fact worth \$347 million in lost profits as the new location of the freeway would have allowed her to assess a \$2 toll on each vehicle entering the city. The Supreme Court of Kansas responded with this exceedingly polite, deadpan gem: "Even if we ignored the speculative character of Ms. Garber's envisioned "Golden Gateway" to Lawrence, and even if a private citizen could lawfully collect tolls from drivers on a public roadway, such testimony is inadmissible to establish property valuation."

EMINENT DOMAIN - KANSAS

[Doug Garber Construction, Inc. v. King](#)

Supreme Court of Kansas - January 27, 2017 - P.3d - 2017 WL 383342

Eminent domain proceeding was commenced regarding property condemned by Secretary of Transportation in order to facilitate construction of highway.

The District Court awarded property owner \$112,000 as compensation, and property owner appealed.

The Supreme Court of Kansas held that:

- Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project such that projects had to be treated as one for valuation purposes, and

- Property owner's lay testimony that taken half-acre plot was worth \$40 million was not based on permissible considerations.

Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project which destroyed wetlands such that projects had to be treated as one for valuation purposes and project influence rule prohibited expert's testimony as to valuation of taken property based on its proximity to new intersection of highway and relocated street. Expert's report treated the completion of the highway and street as a unified project that would catalyze commercial development, and report based its fair market value calculation on new land use opportunities that would arise after the highway was constructed and the relocated street served as a new gateway to city.

Property owner's lay testimony that taken half-acre plot was worth \$40 million was not based on permissible considerations and thus was inadmissible to determine value in eminent domain proceeding. Valuation was based on miles of highway in other states which had been sold for billions of dollar, and required property owner to be able to lawfully collect tolls from road users.

ZONING & PLANNING - CALIFORNIA

**[San Jose Unified School District v. Santa Clara County Office of Education](#)
Court of Appeal, Sixth District, California - January 24, 2017 - Cal.Rptr.3d - 2017 WL 345136**

School district and neighbor of proposed charter school site petitioned for writ of mandate challenging county board of education's issuance of zoning exemption for charter schools.

The Superior Court granted writ of mandate. County board of education and charter school operator appealed.

The Court of Appeal held that county boards of education have no authority to issue zoning exemptions under the statute granting such authority to a "governing board of a school district."

STORMWATER FEES - FLORIDA

**[City of Key West v. Key West Golf Club Homeowners' Association, Inc.](#)
District Court of Appeal of Florida, Third District - January 26, 2017 - So.3d - 2017 WL 384338**

Landholders brought action against city, challenging legality of stormwater utility fees.

After a bench trial, the Circuit Court found in favor of landholders. City appealed, and landholders cross-appealed.

The District Court of Appeal held that:

- Landholders on island were nonusers or minimum users of city's stormwater services, and therefore, city's stormwater utility fee was arbitrary and discriminatory as applied; and
- Landholders were entitled to refund of fees paid.

Landholders on island were nonusers or minimum users of city's stormwater services, and therefore, city's stormwater utility fee was arbitrary and discriminatory as applied; culverts under one road were the only public infrastructure serving the landholders' stormwater for both pollution and flood control purposes, and such culverts were naturally scoured from tidal action and city had never performed any maintenance on them.

Landholders' payment of stormwater utility fees was involuntary, and therefore, after fees were found unlawful, landholders were entitled to refund of fees paid; stormwater ordinance imposed severe penalties for nonpayment.

LABOR & EMPLOYMENT - ILLINOIS

[Village of Bartonville v. Lopez](#)

Supreme Court of Illinois - January 20, 2017 - N.E.3d - 2017 IL 120643 - 2017 WL 243398 - 208 L.R.R.M. (BNA) 3175

Village brought declaratory judgment action seeking stay of arbitration of grievance filed by police officer and police officers' union.

The Circuit Court granted summary judgment to village. Officer and union appealed. The Appellate Court reversed and remanded. Village petitioned for leave to appeal.

After grant of leave, the Supreme Court of Illinois held that:

- Officer and union implicitly waived labor contract right, if any, to arbitrate grievance regarding officer's termination;
- Portion of Municipal Code providing for arbitration as an alternative or supplemental form of due process for a dispute regarding suspension or discharge of civil service employee did not allow officer and union to have proceedings before administrative board and arbitration proceedings operate in conjunction with one another;
- Res judicata barred further litigation, through arbitration, of officer's grievance regarding termination.

Police officer and police officers' union implicitly waived any right under labor contract to arbitrate grievance regarding officer's termination, where officer and union participated in hearing, on complaint for termination, before Board of Fire and Police Commissioners, including cross-examining witnesses and giving a closing argument, and officer and union never questioned Board's jurisdiction to conduct the hearing based upon defendants' right to grievance arbitration under the parties' labor contract.

Portion of Municipal Code providing for arbitration as an alternative or supplemental form of due process for a dispute regarding suspension or discharge of civil service employee did not allow police officer and union to have proceedings before administrative board and arbitration proceedings operate in conjunction with one another. Allowing combination of jurisdictional proceedings and mixed tribunals would have provided opportunity for a higher level court to be overruled by a lower level proceeding.

Board of Fire and Police Commissioners' decision, following hearing on complaint for termination of police officer, was a final judgment on the merits, as would support finding that res judicata barred further litigation, through arbitration, of officer's grievance regarding termination, where there was an adversarial hearing conducted under oath and on the record, officer testified at hearing, and

counsel for officer and police officers' union presented evidence, cross-examined witnesses, and made a closing argument.

MUNICIPAL ORDINANCE - MINNESOTA

[State v. Vasko](#)

Supreme Court of Minnesota - January 18, 2017 - N.W.2d - 2017 WL 239945

Defendant was convicted following bench trial in the District Court of violating city's municipal ordinance, which prohibited residents from keeping junked or abandoned vehicles on their property for longer than 30 days without special use permit.

Defendant appealed. The Court of Appeals reversed. State petitioned for review, which the Supreme Court granted.

The Supreme Court of Minnesota held that:

- Court of Appeals was required to determine meaning of city's municipal ordinance in order to determine whether defendant's conviction was supported by sufficient evidence;
 - City's municipal ordinance did not require city to give notice of the vehicle to resident violating the ordinance;
 - Defendant's car was an "abandoned vehicle" under city's municipal ordinance; and
 - Defendant's abandoned car was kept in her yard for longer than 30 days without special use permit in violation of city's municipal ordinance.
-

COUNTY CHARTER AMENDMENT - MISSOURI

[Pepper v. St. Charles County, Missouri](#)

Missouri Court of Appeals, Eastern District, Division Five - January 24, 2017 - S.W.3d - 2017 WL 362607

Cities and taxpayers brought action against county and county director of elections, challenging validity of amendment to county charter prohibiting use of "red-light cameras" throughout county and contesting election that resulted in the amendment's approval.

After taxpayers who supported the amendment intervened as defendants, the Circuit Court, granted defendants' motion for summary judgment, and plaintiffs appealed.

The Court of Appeals held that:

- Statutes concerning cities' authority over traffic regulations and city streets did not limit county's authority to prohibit red-light cameras;
- Amendment did not violate any statewide public policy;
- Amendment satisfied all requirements for exercise of countywide legislative power under state constitution;
- County did not exceed its own authority under county charter;
- Amendment did not impermissibly interfere with judiciary's powers; and
- Ballot proposition satisfied constitutional requirements.

BONDS - NEW JERSEY

[U.S. Bank National Association v. Podes](#)

Superior Court of New Jersey, Appellate Division - December 20, 2016 - Not Reported in A.3d - 2016 WL 7369027

Following bankruptcy and default, holders of Multifamily Housing Revenue Bonds brought action against Property Manager. The Bondholders' complaint alleged that negligent management of the property and its breach of the requirements under the Forbearance Agreement led to a default, preventing Bondholders from receiving the full value of the bonds.

To support their complaint, the Bondholders submitted three expert reports. Two reports addressed liability, and the third addressed damages. Prior to trial, the Property Manager moved in limine to bar the testimony of Bondholders' damages expert. In his report, the damages expert stated the amount realized were the bonds held to maturity based on an interest rate of "24.56% of par, or \$1,228.06 for each \$5,000.00 face bond." He then calculated the difference between that sum and what was realized by selling the bonds prior to maturity, concluding the loss amounted to \$2,862,000.

The Property Manager's argument challenged the expert opinion as an inadmissible net opinion principally because the bonds were a speculative investment when purchased and there was no support for an assumption the bonds would reach maturity entitling the Bondholders to full face value. Other deficiencies included: (1) the expert failed to account for present value of the monies received on redemption or interest realized on the reinvestment of the sums received on redemption; (2) there was an absence of explanations describing a bond or how market value is calculated; and (3) the report assumed the bonds would be held to maturity allowing recoupment of full face value. As a result, the Property Manager asserted that the expert's analysis amounted to a mere arithmetic calculation of the difference in two numbers.

The trial judge granted the Property Manager's in limine motion to strike, finding that the report constituted a net opinion. The lack of an expert precluded the Bondholders from proving damages; therefore, the judge in turn granted the Property Manager's motion for summary judgment and dismissed the complaint. Reconsideration was denied, and this appeal followed.

The Appeals Court reversed, ordered reinstatement of the expert opinion, and remanded.

The Court began with a blanket rebuke of the misuse of in limine motions filed on the eve of trial, and emphasized that such motion tactics shall not be utilized to secure summary judgment resulting in the dismissal of a plaintiff's case or the suppression of a defendant's defenses.

"Following our review, which is guided by these standards, we conclude the judge mistakenly barred Hawk's testimony as net opinion. First, there is no challenge to Hawk's qualifications; the depth of experience in municipal bond purchasing, selling and research, as well as his experience with numerous transactions similar to this matter, demonstrated his expertise."

"Second, Hawk's report contained the foundation for his opinion, stating it was based on the bond documents establishing the price of the bonds, their maturity date, and interest rates. Further, he referenced the loan agreement, Indenture of Trust, and Forbearance Agreement to describe the transaction. The documents of record served as the foundation of Hawk's damage conclusion, from which he provided "the why and wherefore" of his calculations."

"The net opinion rule "does not mandate an expert organize or support an opinion in a particular

manner, which opposing counsel deems preferable. Further, an expert's proposed testimony should not be excluded merely 'because it fails to account for some particular condition or fact which the adversary considers relevant.' " Townsend, supra, 221 N.J. at 54 (quoting Creanga, supra, 185 N.J. at 360). In this regard, it cannot be ignored that Hawk's opinion addressed damages, not liability. His assumption the Podeses would have held all bonds to maturity may be attacked and even shown to be flawed, but that premise does not erase the factual basis for his damage calculation."

"Simply because the opinion may be subject to attack on cross-examination for not including other meaningful considerations also does not make it a net opinion."

EMINENT DOMAIN - NORTH CAROLINA

[Wilkie v. City of Boiling Spring Lakes](#)

Court of Appeals of North Carolina - December 30, 2016 - S.E.2d - 2016 WL 7976113

Property owners brought inverse condemnation by the city after city raised level of a lake and caused flooding on their property.

The Superior Court entered an order concluding that property owners were entitled to damages from city's taking of their property, and city appealed.

The Court of Appeals held that:

- Appeal was properly before Court of Appeals;
- Action taken by city was not inverse condemnation; and
- Property owners had a direct claim against city under state constitution.

City's appeal of order that concluded that city had taken property through inverse condemnation when it raised the water level of a lake and flooded their property, was properly before Court of Appeals. Although the order was interlocutory, it was issued pursuant to the public condemnation statute, addressed the area taken by city, and affected a substantial right.

Action taken by city in which it raised water level in city owned lake, which resulted in the flooding of property owners' property, was not inverse condemnation, and thus property owners did not have remedy through an inverse condemnation action. City's action to raise lake water level was intended to benefit property owners whose lots bordered lake, which was a private, rather than public, use.

Property owners, who had their property flooded after city took measures to raise water level of city owned lake, had a direct claim against city under state constitution. Property owners had no adequate state law remedy, and alleged that the city caused the damage to their property, that city took property belonging to them, and that city affected their property rights in violation of their constitutional rights.

LABOR & EMPLOYMENT - OREGON

[American Federation of State County and Municipal Employees v. City of Lebanon](#)

Supreme Court of Oregon, En Banc - February 2, 2017 - P.3d - 360 Or. 809 - 2017 WL 445082

City sought judicial review of the Employment Relations Board's (ERB) decision that city had engaged in an unfair labor practice when a city council member urged city employees to decertify their union.

The Court of Appeals reversed. Union petitioned for review, which was accepted.

The Supreme Court of Oregon held that a public employer may be liable for the unfair labor practices of an individual if employees reasonably believe that the individual acted on behalf of the employer.

EMINENT DOMAIN - PENNSYLVANIA

[Alpha Financial Mortgage, Inc. v. Redevelopment Authority of Fayette County](#)

Commonwealth Court of Pennsylvania - December 22, 2016 - A.3d - 2016 WL 7405777

Property owners filed petitions for appointment of viewers to ascertain just compensation for properties condemned by county redevelopment authority.

Authority filed preliminary objections, asserting that the petitions were untimely under one-year statute of limitations set out in Urban Redevelopment Law (URL).

The Court of Common Pleas sustained authority's preliminary objections. Property owners appealed.

The Commonwealth Court held that enactment of general six-year limitations period for eminent domain challenges did not repeal one-year period provided in URL.

Enactment of statute providing a six-year statute of limitations for filing a petition for appointment of viewers after a declaration of taking did not repeal and supplant the one-year statute of limitations under the Urban Redevelopment Law (URL) for challenging redevelopment authority's estimation of just compensation; legislation that created the six-year limitations period did not explicitly refer to URL statute setting out the one-year limitations period, the URL statute was not repugnant to six-year limitations period, just as it had not been repugnant to prior five-year limitations period, and legislation applied generally to all condemnations, whereas URL applied exclusively to redevelopment authorities.

SECURITIES - PUERTO RICO

[Fernandez v. UBS AG](#)

United States District Court, S.D. New York - December 7, 2016 - F.Supp.3d - 2016 WL 7163823

Investors in Puerto Rico tax-free closed-end mutual funds brought putative class action against broker-dealers, investment advisors, administrator of funds, and officers of one of the broker-dealers, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract.

Defendants filed motions to dismiss for lack of subject matter jurisdiction and failure to state a claim.

The District Court held that:

- Investors had Article III standing to assert claims on behalf of putative class;
- Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against same broker-dealer;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against different broker-dealer;
- Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied to claims alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing;
- PRUSA's two-year statute of repose did not apply to claims alleging breach of an express contractual provision imposing an obligation to conduct a suitability analysis;
- Claims alleging breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty, failed to plead fraud with sufficient particularity; and
- Only those investors whose contracts contained a provision obligating defendants to perform a suitability analysis sufficiently stated a claim for breach of contract.

Investors in Puerto Rico tax-free closed-end mutual funds had Article III standing to assert breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims against broker-dealers, investment advisors, and fund administrator, on behalf of putative class of investors in Puerto Rico tax-free closed-end mutual funds administered by same party; while not all investors had invested in same funds, the underlying allegations regarding defendants' misconduct applied to all of the funds, and the funds were all alleged to be structured the same way and to hold the same types of assets by the same defendants.

Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims, in putative class action alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims, regardless of whether the claims sounded in fraud, because no misrepresentations were alleged to have been made in connection with the purchase or sale of covered securities.

Investors discovered or reasonably should have discovered broker-dealers' alleged breach of their fiduciary duty, triggering Puerto Rico's one-year limitations period for tort claims, when reports of lawsuits and administrative proceedings against broker-dealer, which were probative of alleged breach of fiduciary duty, were publicized.

Publicized reports of lawsuits and administrative proceedings against broker-dealer, and accompanying media coverage, did not put investors on notice of their breach of fiduciary duty claims against a second broker-dealer, as would trigger Puerto Rico's one-year limitations period for tort claims, where second broker-dealer was not explicitly named in reports or media coverage.

Investors' claims against broker-dealer, alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, sounded in fraud, rather than mere negligence, and thus Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied, where the main thrust of the claims was that broker-dealer misrepresented the risks involved in investing in Puerto Rico tax-free closed-end mutual funds and pushed investor to invest in the funds in order "to line their own pockets," without disclosing all of their conflicts of interest and without assessing the suitability of the investments for their clients, when broker-dealer knew or should have known how risky the funds were because it helped underwrite the bonds that comprised the bulk of the funds.

Investors' breach of contract claims against broker-dealers, which were premised on an alleged breach of an express provision imposing an obligation to conduct a suitability analysis, were not

subject to Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose, as such breach of contract claims did not rely on allegations of fraudulent conduct.

General allegations that broker-dealer pushed investors to invest in Puerto Rico tax-free closed-end mutual funds, by representing that they were safe when they were actually risky, did not plead fraud with sufficient particularity, as required to state claims of breach of fiduciary duty and breach of implied covenant of good faith; allegations did not include the required who/what/where/why/when of the alleged misrepresentations or omissions.

Blanket allegations that broker-dealer and fund manager breached implied covenant of good faith and fair dealing, based on misrepresentations and omissions, did not satisfy rule requiring fraud be pled with particularity; investors failed to attribute the purported misrepresentations and omissions to any particular defendant, and it was unclear as to when, where, or by whom the alleged misrepresentations or omissions were purportedly made.

Under Massachusetts law, investor whose contracts contained a provision obligating broker-dealer to perform a suitability analysis sufficiently stated a claim for breach of contract based on failure to conduct such analysis.

Under Puerto Rico law, investor whose contract did not contain a provision obligating broker-dealer to perform a suitability analysis failed to state a claim for breach of contract based on broker-dealer's failure to conduct such analysis.

MSRB Plans to Codify CUSIP Requirements for Private Placements.

WASHINGTON - The Municipal Securities Rulemaking Board plans to propose codifying its long-time regulatory interpretation that dealers are required to apply for CUSIP numbers when conducting private placements.

MSRB executive director Lynnette Kelly told reporters on Monday that the board, during its quarterly meeting here late last week, decided to issue the proposal and seek comment on it within the next few months.

The proposed changes to MSRB Rule G-34 on CUSIP numbers would harmonize the definition of underwriter in that rule with the definition under MSRB Rule G-32 on disclosure in connection with primary offerings. The definition of underwriter in G-32 tracks the one used in Securities and Exchange Commission Rule 15c2-12 on disclosure. Whether bank loans are included as private placements that need CUSIP numbers would still depend on whether they are considered loans or securities, MSRB staff said.

The rule changes to G-34 will be the first proposed amendment coming from the MSRB's multi-year initiative to review primary market practices. Kelly said the review of dealer rules in the primary market will continue.

The MSRB is also planning to file a continuing education requirement for municipal advisors with the SEC after receiving requests from MAs to more carefully evaluate and explain the requirements the board had previously circulated for comment. The circulated requirements would create a single-pronged approach similar to one of the two prongs that dealers are currently required to satisfy for their continuing education requirements. All associated persons of MAs who engage in MA activities as well as those who manage, direct, or supervise the firm's municipal advisor activities and its

associated persons would be required to participate.

The National Association of Municipal Advisors had emphasized the need for the MSRB to keep small MAs in mind as it pursues the requirements so that there isn't an overwhelming economic or administrative burden on those MAs.

Kelly said that the proposed amendments, which would require MAs to conduct annual needs analyses and develop a written training plan, would call for the analyses to be customized to the size and scope of a firm's business activities. She said the board expects that customization to mitigate negative effects on small MAs. The board will also be giving examples of needs analyses as part of its effort to help guide implementation.

The MSRB also plans over the next few months to create a new MA advertising Rule G-40 that would apply the core principles of current MSRB Rule G-21 for dealers on advertising in aiming to ensure accuracy and balance in promotional materials, according to the MSRB.

Kelly said the board will ask for comments on the proposal, which will also include updates to the dealer rule. The board felt that there were enough differences in the ways that dealers and MAs advertise that two separate rules made the most sense, Kelly said.

Two days of the three-day meeting were devoted to strategic planning for the next two to four years, according to Kelly. The strategic planning discussion included numerous letters the self-regulator got from market participants after it circulated a call for comments in October on where it should focus moving forward. The commenters made suggestions like asking the MSRB to improve its EMMA system, increase transparency of board operations and costs, do more cost-benefit analyses of its rulemaking, and study the complexities and burdens that have arisen from the board's rulemaking over the last several years.

EMMA has drawn attention recently as seven municipal bond groups sent a letter on Jan. 23 asking the MSRB to improve the system's accessibility and usefulness. The recommendations fell into four areas: searchability; ease of data imputing and uploading; improving linkages among related data; and the ability to correct information already on the EMMA platform.

Some suggestions included: permitting the search of a borrower and a project; standardized templates for the submission of financial information, customized by sector; and a quality assurance process or enhanced uploading processes to reduce categorization errors.

One other area the board touched on during its meeting was the way it could help to improve continuing disclosure in the market. Continuing disclosure has been discussed often in recent years. It was the focus of the SEC Enforcement Division's Municipalities Continuing Disclosure Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The MSRB said it is evaluating how it can do more to help issuers meet their disclosure obligations in a timely way. It is expecting to update a report issued in May 2015, which, among other things, detailed the amount of time it takes issuers to file their disclosures.

The Bond Buyer

By Jack Casey

January 30, 2017

Fitch Disagrees with Moody's Legal Analysis on Chicago Public Schools.

Fitch Ratings-New York-01 February 2017: Moody's Investor Services (Moody's) has issued a report discussing:

- Legal options available to the Chicago Public Schools (CPS) to address its operating deficit, suggesting CPS can divert state aid to support operations to get around a restriction on a certain tax levy; and
- Bondholder protections provided by CPS' dedicated capital improvement tax bonds series 2016 (CIT bonds), minimizing the special revenue status while crediting a 'lock box' device as a real enhancement.

Fitch Ratings disagrees with Moody's on both points.

State Aid Not Available for Budget Relief

Moody's report "Chicago Public Schools, IL Frequently Asked Questions", released on Jan. 12, states "the district could elect to use unrestricted [general state aid] GSA for operations instead of debt service" on alternate bonds issued under the Illinois Local Government Debt Reform Act (the Act). Unless by 'elect' Moody's is referring to a successful ballot referendum, a plain reading of the Act indicates this is not the case. Section 15(e) of the Act clearly indicates that CPS must apply available alternate revenues {state aid} to debt service. As there is no option in the law to apply alternate revenues to operations, Fitch believes any attempt to do it would draw a successful challenge in litigation opposing an attempt to levy taxes while alternate revenues were available for debt service.

The law (Section 15(e)) is pretty clear in our opinion, as it states: "[t]he ...revenue source ..shall be in fact pledged to the payment of the alternate bonds; and the governing body shall covenant, to the extent it is empowered to do so, to provide for, collect AND APPLY [emphasis added] such ...revenue source ...to the payment of the alternate bonds." It further states "The pledge ...as provided in this Section for alternate bonds, shall constitute a continuing obligation of the governmental unit ... and a continuing appropriation of the amounts received. All covenants relating to alternate bonds and the conditions and obligations imposed by this Section are enforceable by any bondholder of alternate bonds affected, any taxpayer of the governmental unit, and the People of the State of Illinois acting through the Attorney General ... The intent is that such revenue source, shall be ...applied to the payment of debt service on such alternate bonds so that taxes need not be levied, or if levied need not be extended, for such payment."

Alternate Bonds Not Same as Other ULTGOs

Fitch believes this constraint on extending property taxes absent a referendum is consistent with the Property Tax Extension Limitation Law (PTELL), which limits growth in the property tax extension to the lesser of 5% or CPI in the prior calendar year unless the increase is approved by voters. Debt service is limited to the "debt service extension base", which is based on the 1994 property tax extension for debt service, increased annually at the lesser of 5% or CPI, unless approved by voters. The Act exempts alternate bonds from this limitation. If an entity could readily opt to extend the property tax instead of paying debt service from the identified revenue source (GSA, in this case) despite the availability of the alternate source, the PTELL's constraint on the rate of property tax growth for debt service would be ineffective. Fitch believes that the only way CPS could extend the ad valorem tax for debt service would be an insufficiency of pledged state aid revenues, which of course would create other serious financial challenges.

Lockbox Does Not Enhance Credit Quality

Unlike Moody's, Fitch does not give rating uplift for the presence of a third-party lockbox structure absent other legal considerations. A lock box is a simple security device that loses its effectiveness upon a bankruptcy filing as a consensual lien on revenues generally does not continue once bankruptcy begins. There are two exceptions: bonds secured by pledged special revenues and bonds secured by a statutory lien. In a Chapter 9 bankruptcy, Fitch does not believe such a structure would insulate ordinary pledged revenues from an automatic stay. Therefore bonds utilizing that structure but not secured by pledged 'special revenues' as defined under section 902(2) of the code or by a statutory lien on pledged revenues could not be rated above the Issuer Default Rating (IDR).

No Statutory Lien Under Bankruptcy Code

Fitch also does not agree that the CIT bonds are secured by a statutory lien, which is defined in Section 101(53) of the Code as a lien arising automatically, by force of statute, on specified circumstances or conditions. This lien is in contrast to a consensual lien (or security interest [defined in Section 101(51) of the Code]), in which a lien is created by agreement, where both parties to a financing agree to a certain security structure and document that agreement in an indenture or loan document. The Debt Reform Act does not provide a statutory lien for bondholders as defined in the bankruptcy code. It gives effect to a consensual lien without any further requirement for filing or notice and is a protection against other lien holders.

Bankruptcy Protection Arises from Special Revenue Designation

Fitch believes that the pledged CIT revenues would be considered 'pledged special revenues' in the event of a CPS bankruptcy. As Moody's points out, one of the differences between the alternate and CIT bond structures is that the former are "ultimately a general obligation of the district, which pledged its full faith and credit to their repayment." The CIT bonds are "payable from the CIT tax levies only." Fitch believes that this distinction is precisely the reason the CIT bonds can be considered to be secured by special revenues under 902(2)(E) of the code. As stated in Fitch's rating action commentary discussing our 'A' rating/Outlook Stable on the bonds: "Fitch sets a high bar for considering local government tax-supported debt to be secured by special revenues, which provide security that survives the filing of a municipal bankruptcy (in preservation of the lien) and benefit from relief from the automatic stay provision of the bankruptcy code. We give credit to special revenue status only if, in our view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues under Section 902 (2)(E) of the U.S. Bankruptcy Code.

"Fitch has identified a number of elements we consider sufficient to reduce the incentive to challenge the special revenue status given the definitions outlined in the bankruptcy code. These include clear statutory restrictions on the use of pledged revenues to finance identified projects and clear separation from the entity's operations. Fitch has undertaken an extensive review of the statutory provisions that govern the use of the CIT. Those provisions, along with the legal documents governing the bond issuance, and related bankruptcy opinions provide sufficient strength for Fitch to rate the CIT bonds higher than the IDR.

"The bonds are secured by a first priority lien on CIT revenues. The board is authorized under the Illinois School Code to levy the CIT on all taxable property within the district, which is coterminous with the city of Chicago. State statute limits the permitted uses of CIT revenues to include construction, acquisition and equipping of school and administrative buildings, and site improvements. The board has identified specific capital projects in the bond resolution that may be funded either by bond proceeds or by residual CIT revenues. Any amendments to the project list

must be passed by board resolution. The revenues legally cannot be used for general operations of the board.”

CIT Bonds Not Same as Detroit’s DSA Bonds

Revenue ownership is crucial. Moody’s likens the CIT bonds to Detroit’s distributable state aid (DSA) bonds, as in both cases the trustee receives the pledged revenues directly from a third party. However, Fitch views as a crucial distinction that the DSA revenues were not property of the city of Detroit, thus not included in the city’s bankruptcy estate. In the case of CPS, however, the CIT revenues are clearly property of the district. Were they not, Fitch’s rating would have been based on the credit quality of Cook County, which collects the revenues and remits them to the trustee. Fitch’s IDR on Cook County of ‘A’/Stable Outlook, does not cap the CPS rating.

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[Fitch Calls Out Moody's on Chicago Schools Analysis.](#)

CHICAGO - Fitch Ratings in a report Wednesday criticized Moody's Investors Services' recent assessment of Chicago Public Schools' new credit structure and the legal options available to ease its distress.

The report titled "Fitch Disagrees With Moody's Legal Analysis On Chicago Public Schools" was published to counter arguments laid out by Moody's in special credit profile reports published Jan. 12 about the city and CPS.

Fitch's public dissection of another rating agency's opinions was described as "highly unusual" by several market participants.

"This is uncharted. Very rarely except on panels at conferences would you have this sort of open debate or defensiveness," said Howard Cure, director of municipal research at Evercore Wealth Management, LLC. Cure worked for Moody's until 1994.

Moody's has not been asked to rate new deals by either issuer, but maintains junk ratings on their older debt.

Some suggested that Fitch's motive for publicly calling out a peer rating agency may stem from market questions received after Moody's released its commentary.

Fitch said that wasn't the case.

"We read it and we didn't feel all the information was correct and felt it would helpful to the market if we posed our reasons as to why we disagreed," said the report's co-author, Amy Laskey, a Fitch managing director.

"Our goal is to clearly articulate an opinion, and often that means openly disagreeing with other market participants. We may publish those comments if there is strong investor interest, or if we feel our view is meaningfully different from another," said Daniel Noonan, Fitch's global head of corporate communications.

Fitch outlines its disagreement with Moody's on several aspects of its legal assessment of CPS' new capital improvement tax-backed bonds. The district used the new property tax levy for the first time on a \$730 million sale in December.

The deal garnered an A rating from Fitch based on analysts' confidence in its bankruptcy-remote structure.

CPS asked only Fitch and Kroll Bond Rating Agency to review the bonds. Kroll assigned its BBB rating in line with its GO ratings of BBB and BBB-minus.

Fitch rates CPS GO debt B-plus, with a stable outlook. The other two rating agencies also rate CPS GOs at junk.

Fitch countered Moody's suggestion that triggering the ad valorem tax pledge used on most of its \$6 billion of debt offered one option for CPS to free up revenue for operations.

Fitch quoted Moody's report suggesting that the district could elect to use unrestricted general state aid for operations instead of debt service on its alternate bonds issued under the Illinois Local Government Debt Reform Act.

Under the state's alternate revenue structure, an ad valorem tax levy is imposed to repay bonds but it is typically abated as the "alternate" revenues are tapped. About \$373 million in CPS state aid will go to such bond repayments this year.

"We believe that the most likely scenario for CPS is that the district will levy for debt service on GO alternate revenue bonds in order to free up state aid for operations," Moody's wrote. "The district could elect to use unrestricted GSA for operations instead of debt service."

"Unless by 'elect' Moody's is referring to a successful ballot referendum, a plain reading of the act indicates this is not the case," Fitch countered, arguing that the act "clearly" indicates that CPS must apply available alternate revenues to debt service.

"As there is no option in the law to apply alternate revenues to operations, Fitch believes any attempt to do it would draw a successful challenge in litigation opposing an attempt to levy taxes while alternate revenues were available for debt service," Fitch wrote in the report, co-authored by Laskey and lead CPS analyst Arlene Bohner.

Fitch also countered Moody's position on various features of the district's capital improvement tax structure. Moody's had written that features like a "lockbox" on revenues helped "lessen but do not eliminate the risk of bondholder impairment in a future bankruptcy."

"Unlike Moody's, Fitch does not give rating uplift for the presence of a third-party lockbox structure absent other legal considerations," its report said.

A lockbox is a security device that loses its effectiveness in bankruptcy, Fitch said, because a consensual lien on revenues generally does not continue unless the bonds are secured by pledged special revenues or they qualify as bonds secured by a statutory lien.

"In a Chapter 9 bankruptcy, Fitch does not believe such a structure would insulate ordinary pledged revenues from an automatic stay," analysts wrote. "Fitch also does not agree that the CIT bonds are secured by a statutory lien."

Fitch's belief that the bonds would be protected in Chapter 9 stems from opinions that they meet the bankruptcy code's designation of "pledged special revenues" which offers some insulation from impairment.

The belief stems from structural features such as the fact that the bonds are payable solely from segregated CIT revenues that can be used only for capital projects or CIT bond repayment and not for operations.

“We give credit to special revenue status only if, in our view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues,” Fitch wrote.

In its January report, Moody’s had written that it viewed the new structure “to be at least as strong as, if not modestly stronger than, CPS’s GO bonds.”

State law would have to change to allow the school district to file for bankruptcy.

Moody’s spokesman David Jacobson had no direct response to the Fitch report, saying his agency’s Jan. 12 speaks for itself.

Cure said Moody’s opinion “carries weight with the market.”

He noted that the city of Chicago’s recent GO deal priced at junk levels, even though Moody’s is the only rating agency to rate Chicago at junk. CPS’ 30-year CIT bond – despite the Fitch A rating and BBB from Kroll – landed 309 basis points over the Municipal Market Data’s top-rated benchmark, 243 basis points over the single A benchmark, and 207 basis points over the BBB benchmark.

Moody’s January reports were released ahead of Chicago’s \$1.16 billion GO sale and followed the city’s disclosure that it had asked Moody’s to withdraw all of its city ratings in December. Moody’s declined to withdraw.

The Bond Buyer

By Yvette Shields

February 1, 2017

[Trump Order on Dodd-Frank Opens Possibility for Muni Rule Review.](#)

WASHINGTON – President Trump’s executive order to scale back the Dodd-Frank Act could initiate what dealers see as a “critical reassessment” of the slew of muni rules implementing the act, although any substantive changes to the act would have to be left to Congress, market participants said.

The executive order, signed Friday, directs the Treasury secretary to meet with major financial regulators and deliver a report within 120 days detailing what provisions are working and not working with Dodd-Frank. The report would also make recommendations about legal and regulatory changes that should be made to the law. Observers see the order, which cannot overturn portions of the statute, as the start to Trump’s stated goal of dismantling the law, which was enacted in July 2010 as a response to the financial crisis.

While the Securities and Exchange Commission is an independent agency and farther removed from executive orders than executive branch agencies, the order could still spur the SEC to re-evaluate its muni market rules implementing Dodd-Frank, sources said. However, they added, it remains to be seen whether those regulations will warrant a review.

Dodd-Frank was responsible for numerous regulatory developments in the muni market, including imposing a fiduciary duty on municipal advisors (MAs) and creating a federal regulatory framework for MAs. The act required MAs to register with both the SEC and Municipal Securities Rulemaking

Board. Dodd-Frank's fiduciary duty requirement and MSRB authority are not affected by Friday's order, but the SEC has the ability to review how it undertook the directives and implemented them, participants said. Those reviews could focus on decisions that were made while carrying out the act's directives, such as creating the Independent Registered Municipal Advisor exemption for dealers. The IRMA exemption allows dealers to give advice to issuers without having to register as an MA if the issuer has proof that it has an IRMA.

John Vahey, managing director of federal policy for Bond Dealers of America, said BDA members "believe a critical reassessment of the regulations associated with Dodd-Frank and the fiduciary duty rule is a welcome first step" but added that attention to other rules outside the scope of Dodd-Frank are also necessary.

"For smaller broker-dealers, it is absolutely necessary to assess the negative impact on competition that has been caused by the onslaught of regulations, like best execution, retail confirmation disclosure rules, and other rules that are outside the scope of Dodd-Frank, but threaten to bury non-systemically risky U.S. firms with tremendous compliance burdens," Vahey said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said NAMA believes the SEC's MA Rule and other MA regulations stemming from Dodd-Frank "are appropriate and should stay in place" as Trump and others contemplate changes to the wide-ranging law.

"The idea that all regulations would go away a) is hard to believe and b) would have a significant impact on both practice and costs for MA firms to have to readjust," she added, referring to the significant costs firms incurred coming into compliance with Dodd-Frank's requirements. "Those seem to be issues that are cropping up but as an organization we have not yet discussed."

The order is a pre-cursor to the Financial CHOICE Act that House Financial Services Committee chairman Jeb Hensarling, R-Texas, is expected to reintroduce in revised form later this month. The CHOICE Act is Hensarling's alternative to Dodd-Frank and was approved by the committee during the last congressional session. The legislation contains multiple provisions that would affect the muni market, including a requirement to move the SEC's Office of Municipal Securities from directly reporting to the SEC chair to instead fall within the commission's trading and market division. It also would prevent the MSRB from obtaining some of the revenues collected by the SEC and Financial Industry Regulatory Authority from enforcement actions over muni rule violations.

The CHOICE Act would also allow certain municipal securities to qualify as high quality liquid assets (HQLA) for purposes of banking regulator liquidity rules.

It would additionally repeal the Volcker Rule, which prohibits banks from trading on a proprietary basis and restricts their investments in hedge funds and private equity. Muni groups and the MSRB warned at the time the Volcker Rule was proposed that it would bifurcate the market by exempting bonds issued by states, counties, cities, and other units of general government from the rule while not exempting bonds issued by entities like water and sewer districts, school districts, and housing authorities.

Hensarling said Friday that he is "very pleased" that Trump signed the executive action that "closely mirrors provisions that are found in the Financial CHOICE Act."

"Dodd-Frank failed to keep its promises, but President Trump is following through on his promise to the American people to dismantle Dodd-Frank," he said. "That's not what Wall Street wants, but it is what hardworking Americans need to have a healthy economy with more opportunities so they can achieve financial independence."

Any changes to Dodd-Frank are likely to meet heavy resistance from Democrats in Congress.

Senate Minority Leader Chuck Schumer, D-N.Y., said in a statement Friday that Democrats will do everything in their power not to let Dodd-Frank be repealed, “no ifs ands or buts.”

“The President’s attempts to repeal Wall Street reform will be met with a Democratic firewall in Congress,” he said.

Sen. Elizabeth Warren, D-Mass., said in a Friday statement that Trump’s order makes it easier for investment advisors to cheat investors out of their retirement savings and puts two former Goldman Sachs executives in charge of gutting the rules that protect investors from financial fraud and economic meltdown.

“The Wall Street bankers and lobbyists whose greed and recklessness nearly destroyed this country may be toasting each other with champagne, but the American people have not forgotten the 2008 financial crisis – and they will not forget what happened today,” Warren said.

The Bond Buyer

By Jack Casey

February 3, 2017

[New York City, Other Municipal Bond Issuers Warn Investors on Trump Policies.](#)

CHICAGO – President Donald Trump’s agenda to repeal the Affordable Care Act and punish ‘sanctuary cities’ for resisting him on immigration is making its presence felt in the \$3.8 trillion municipal bond market.

Municipal bond sales next week from New York City, the state of Oregon and a California health care provider worth nearly \$1.7 billion include warnings to potential buyers that Trump’s policies could pose a financial risk to these issuers.

The Republican president signed an order on Jan. 25 directing the U.S. attorney general and Homeland Security secretary to withhold federal money from cities that adopted sanctuary policies for undocumented immigrants.

Trump is also pushing to repeal and replace the Affordable Care Act also known as Obamacare, reform the tax code and roll back some or all of the Dodd-Frank financial regulation law.

New York City on Tuesday told potential investors for its upcoming \$800 million bond sale that its sanctuary city status should not result in a substantial loss in federal funding due to Trump’s recent executive order.

While sanctuary city is not an official designation, it represents policies adopted by municipalities where local law enforcement refuse to report undocumented immigrants they encounter to federal authorities. Municipalities have said this does not apply in the case of an undocumented immigrant involved in such things as violent crimes.

Self-proclaimed sanctuary cities say they have identified legal holes in the Trump Administration's arguments saying it cannot cut funding for health care and education.

In the preliminary official statement for the general obligation bonds pricing through Citigroup, New York said federal grants related directly to immigration enforcement comprise a small portion of its budget and that grants supporting law enforcement in general would be exempted from the order.

"If implementation of the executive order results in the reduction of federal aid to the city, the city expects that it would mount a vigorous legal challenge," the disclosure said. "However, there can be no guarantee that implementation of the executive order will not result in a significant reduction or delay in receiving such aid."

In addition to New York, other major cities offering some form of protection to illegal immigrants include Los Angeles, Chicago, Philadelphia, Boston, Denver, Washington, and Seattle.

Another sanctuary city, San Francisco, filed a legal challenge to the order this week. Billions of dollars in federal aid to those cities could be at risk.

Trump and the Republican-controlled Congress also have the repeal of the Affordable Care Act on their agenda.

Oregon, which is selling \$491 million of general obligation bonds through Citigroup, pointed to uncertainty surrounding the Affordable Care Act and its financial support for expanded numbers of Medicaid recipients. Any kind of repeal or replacement of the act "could have a material adverse effect on the financial condition of the state."

The California Municipal Finance Authority also warned investors in a \$405 million conduit debt offering prospectus for a nonprofit health care provider, Community Medical Centers. The document said federal tax reform, the rollback of Dodd-Frank, or replacing the ACA "could have a material impact on the Obligated Group's operations and financial results."

By Karen Pierog and Hilary Russ • Reuters Feb 3, 2017

[FINRA Expels BD, Bars CEO for Fraudulent Muni Bond Sales.](#)

Robert Lawson transferred millions of dollars from a deceased client's trust to hide muni-bond borrowers' poor financial conditions and the bonds' risks

The Financial Industry Regulatory Authority said Thursday that it expelled Phoenix-based Lawson Financial Corp. from the organization and barred CEO and President Robert Lawson from the securities industry due to fraud.

Lawson and others with his firm sold millions of dollars of municipal revenue bonds to clients, which were underwritten by LFC and related to an Arizona charter school and two assisted living facilities in Alabama — borrowers that Robert Lawson and LFC knew faced financial difficulties.

For the fraudulent transactions, Lawson transferred millions of dollars to the borrowers and associated parties from a deceased customer's trust account, according to FINRA, in order to hide the borrowers' financial conditions and the risks associated with the bonds.

When LFC clients bought the bonds, LFC and Lawson “hid the material fact that Lawson was improperly transferring millions of dollars from the trust account to various parties when the borrowers were not able to pay their operating expenses or required interest payments on the bonds,” according to FINRA.

In addition, the regulatory body found that Lawson and his wife Pamela, who was LFC’s chief operating officer, were co-trustees of the trust account — in violation of FINRA rules, since they acted as trustees and engaged in self-dealing with the trust account. Robert Lawson also misused client funds.

Robert Lawson was in the securities industry for 40 years, according to FINRA BrokerCheck. He had nine disclosures during this time, including payments of damages to clients of about \$238,000 in 2009 and \$295,000 in 2001.

FINRA suspended Pamela Lawson from associating with any FINRA member firm for two years and fined her \$30,000. Her BrokerCheck records show that she has been in the industry for 30 years.

This disciplinary action settles a May 2016 complaint filed against LFC, Robert Lawson and Pamela Lawson. In the complaint, FINRA explains that one muni-bond sale was for a \$10.5 million offering in October 2014; the size of secondary market bond sales between January 2013 and July 2015 were not disclosed.

Pamela Lawson’s BrokerCheck records show that complaint involved making payments of \$14 million from a trust account for which she was a co-trustee.

In settling the matter, LFC, Robert Lawson and Pamela Lawson neither admitted nor denied the charges, but consented to the entry of FINRA’s findings.

Calls to LFC were not returned as of press time.

THINKADVISOR

FEBRUARY 2, 2017

[Puerto Rico Says it Will Miss Some Feb. 1 Debt Payments.](#)

Puerto Rico’s government said it will miss some debt payments due on Wednesday, including another payment on general obligation (GO) bonds backed by the U.S. territory’s constitution.

In a statement on Wednesday, the Fiscal Agency and Financial Advisory Authority (FAFAA) said the island will miss the GO debt payment; payments owed at Puerto Rico’s public finance and infrastructure agencies; and \$279 million owed by its Government Development Bank.

Puerto Rico has been defaulting on debt periodically for more than a year, including on GO debt, and the missed payments were expected.

FAFAA said Puerto Rico will make full payments due Wednesday on so-called COFINA debt, which is backed by sales tax, as well as payments owed by the island’s retirement system, water authority, municipal finance authority and industrial development agency.

Puerto Rico is facing \$70 billion in total debt, and nearly half its 3.5 million residents live in poverty.

New Governor Ricardo Rossello, sworn in on Jan. 2, on Sunday signed a law to ensure the government continues to provide essential services.

Rossello has said paying debt is also crucial, and has proposed a number of measures to reduce government spending to free up cash for debt payments.

Still, the island likely cannot afford to pay its debt in full, and is in talks with bondholders to restructure.

Reuters

By Nick Brown

Wed Feb 1, 2017 | 1:08pm EST

[House Transportation and Infrastructure Committee Hearing: “Building a 21st Century Infrastructure for America”](#)

On February 1, the House Transportation and Infrastructure Committee held a hearing on the future of infrastructure, focused largely on the funding of infrastructure projects.

Ranking Member Peter DeFazio (D-Ore.), as well as numerous members of the committee from both parties, expressed support for user fees and other dedicated revenue streams to pay for certain infrastructure projects. The only mention of municipal bonds came from Ranking Member DeFazio, who suggested that 30-year federal infrastructure bonds should be considered as a possible funding option for infrastructure projects.

Witnesses included Frederick W. Smith, Chairman and Chief Executive Officer of the FedEx Corporation; David W. MacLennan, Chairman and Chief Executive Officer of Cargill; Ludwig Willisch, President and Chief Executive Officer of BMW of North America; Mary V. Andringa, Chair of the Board of the Vermeer Corporation; and Richard L. Trumka, President of the AFL-CIO.

[SIFMA's Hearing Summary](#)

TAX - CONNECTICUT

[Kettle Brook Realty, LLC v. Town of East Windsor](#)

Supreme Court of Connecticut - January 24, 2017 - A.3d - 324 Conn. 544 - 2017 WL 194255

Property owner filed municipal tax appeal seeking reduction in property's assessed value.

The Superior Court granted town's motion to dismiss. Property owner appealed. The Appellate Court affirmed. Property filed petition for certification to appeal, which was granted.

The Supreme Court of Connecticut held that appeal was commenced when property owner served appeal documents on municipality, which was outside of two-month deadline, and not when appeal documents were filed with Superior Court, which was within two-month deadline, and thus appeal was untimely.

TAX - NEW HAMPSHIRE

[Bishop of Protestant Episcopal Diocese in New Hampshire v. Town of Durham](#) **Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177763**

Church appealed town's assessment of property tax on 24 spaces in church parking lot that church leased to state university students. The Superior Court, Strafford County, Houran, J., entered summary judgment for town, and church appealed.

The Supreme Court of New Hampshire held that spaces in church's parking lot leased to state university students were not exempt from property tax.

Spaces in church's parking lot leased to state university students were not "used and occupied directly for religious purposes," within meaning of statutory exemption from property tax for "houses of public worship, buildings, and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination"; university students were using parking spaces for their own private and secular purposes, i.e., parking for about six hours each week, plus special event days and during snow plowing and repair operations, and church did not argue that leasing spaces to university students was reasonably necessary to carry out its mission.

[GASB Webinar: Financial Reporting Model Improvements - Governmental Funds.](#)

GASB is hosting a webinar specifically designed for users of governmental financial information like you.

The topic is the GASB's recently published Invitation to Comment that considers several major changes to how state and local governments report their general fund and other governmental funds. Among the potential changes are three alternative recognition approaches that could replace the modified accrual basis of accounting and current financial resources measurement focus now used in governmental fund financial statements. The Invitation to Comment also discusses potential improvements to the format of those financial statements.

The focus of the webinar will be on the kinds of financial information that governments would report under each of the alternative approaches, and how the different approaches would differ from existing reporting and each other.

The webinar is on **Wednesday, February 22, 2017—2:00-3:00 pm EST**, and features David R. Bean, GASB Director of Research and Technical Activities, and Dean Michael Mead, GASB Senior Research Manager.

[Register for the GASB webinar.](#)

[MSRB Mark-up Disclosure Webinar: Replay](#)

In Case You Missed It: Mark-up Disclosure Webinar

The MSRB's free webinar on "Amended MSRB Rules G-15 and G-30 on Required Disclosure of Mark-ups and Mark-downs to Retail Customers on Certain Transactions and to Provide Guidance on Prevailing Market Price" is [available on demand](#) for one continuing education credit.

The webinar covers key provisions of the recently approved amendments to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and MSRB Rule G-30 on prices and commissions related to disclosure of mark-ups and mark-downs on certain customer confirmations and guidance on prevailing market price.

[Bond Math Bootcamp.](#)

March 20-21, 2017

New York City, 14 CPE Credits

[See Full Agenda](#) [Register](#)

The Bond Math Boot Camp program is a two-day training program delivered via interactive lecture format. The BootCamp is facilitated in a fashion that encourages group participation with numerous leading/rhetorical questions to draw the audience into focused discussions. The course concepts and methodologies discussion will be supplemented by in-class hands-on exercises as well as optional homework. This seminar will provide an in-depth exposure to yield, pricing and interest rate conventions for fixed income securities. The session begins with an introduction to such fundamental concepts as time value of money, interest/discount rates as well as the compounding and day count conventions upon which market measures are based.

The balance of the class will be devoted to exploring how these concepts are applied to the determination of price, yield, interest/discount rates, rates of return, accrued interest, etc.

The presentation will incorporate the mechanics of the calculation: formula or methodology for determining a numeric value; source and nature of inputs into formula; implicit or explicit assumptions being used. This discussion of conventional calculations will be augmented by an introduction to the interpretation and application of the numbers – how market participants use the numbers for investment/market insights. We strongly recommend that you bring an HP12c calculator or a similar model to ensure you get the benefit of the hands-on activities during this two-day class.

Concepts and measures will be addressed in a pertinent fixed income market context, illustrating these ideas with a discussion of their use by bond traders and portfolio managers when assessing risk and return. The approach taken to address each of the major topics:

First, explain the concept and the related market intuition, what does the concept/number attempt to quantify and how do market participants interpret the number regarding any insight into market conditions/securities valuation.

Second, review the specific methodology by which the measure/concept is quantified, what is the structure of the computation or process by which the number is determined, what are the inputs for the computation/process and how are they obtained as well as any implicit assumptions used in the calculation.

Third, illustrate the computation/process using current market data, taking values/rates/contract details of treasury, corporate and mortgage-backed securities. To the extent possible the presentation will be guided by participant questions.

[GASB Issues Guidance on Fiduciary Activities.](#)

The Governmental Accounting Standards Board (GASB) has issued guidance for state and local governments regarding what constitutes fiduciary activities for financial reporting purposes, how fiduciary activities should be reported, and when liabilities to beneficiaries should be recognized.

Governments currently are required to report fiduciary activities in fiduciary fund financial statements. Existing standards are not explicit, however, about what constitutes a fiduciary activity for financial reporting purposes. Consequently, there is diversity in practice with regard to identifying and reporting fiduciary activities.

[GASB Statement No. 84](#), *Fiduciary Activities*, establishes criteria for identifying fiduciary activities of all state and local governments. The criteria generally focus on:

- Whether a government is controlling the assets of the fiduciary activity, and
- The beneficiaries with whom a fiduciary relationship exists.

Separate criteria are included to identify fiduciary component units and postemployment benefit arrangements that are fiduciary activities.

An activity meeting the criteria in Statement 84 should be reported in a fiduciary fund in the basic financial statements. Governments with activities meeting the criteria should present a statement of fiduciary net position and a statement of changes in fiduciary net position.

Statement 84 describes four types of fiduciary funds that should be reported, if applicable. The Statement clarifies the definitions of the three existing fiduciary funds associated with trusts that meet specific criteria:

- Pension (and other employee benefit) trust funds
- Investment trust funds
- Private-purpose trust funds, and
- Custodial funds.

Activities now reported in agency funds will be classified as custodial funds when Statement 84 is implemented.

[KBRA Comments on Stress Cases Applied to Puerto Rico Insured Debt.](#)

Kroll Bond Rating Agency (KBRA) rates three bond insurers with exposure to Puerto Rico totaling \$9.3 billion of outstanding bonds issued by several Commonwealth issuers. In KBRA's view, recent developments have had potentially significant effects upon Puerto Rico's credit profile notwithstanding its continuing defaults. KBRA uses stress case loss assumptions for Puerto Rico issuers to address the continuing uncertainty in these exposures when rating bond insurers.

In KBRA's view, the ability of the three bond insurers to satisfy these assumed stress case losses supports their strong rating levels. Further details regarding the stress case loss assumptions are presented in the comment linked below.

Please [click here](#) to access the full comment.

Mayors Fight to Keep Municipal Bonds Tax Free.

Mayors present and past swear by the value of municipal bonds, while also swearing by the tax deduction for investing in them.

Hence their ongoing battle to preserve that tax benefit as Congress considers changes that could cut the deduction or trim it back in some way as part of an overall tax overhaul, despite some whispered assurance that the century-old exemption won't get touched.

Advocates don't want to take anything for granted.

Still, it doesn't hurt that they have easy allies on the House Ways and Means Committee, where legislative changes to the U.S. tax code begin. Multiple GOP members are former mayors who are fighting opposition to the tax break.

"As we go through the tax reform debate, I will be a voice in that camp," said Rep. Tom Reed (R-N.Y.), who ran City Hall in Corning, N.Y., in 2008 and 2009.

Municipal bonding is critical to building infrastructure such as roads, he told Bloomberg BNA, adding that no financing alternatives exist. That echoes a point raised by members of the U.S. Conference of Mayors in an effort to keep the tax benefit.

The group recently launched a formal campaign to ensure the status quo.

Local and state governments financed nearly \$1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012, but would have paid nearly \$500 billion more if investors couldn't use the deduction over that decade, according to data from the mayors' group.

That kind of impact would have caused higher taxes and job losses, a number of mayors argued at a recent gathering in Washington for their 85th winter meeting.

\$195 Billion

The tax benefit for municipal bonds adds up to an estimated \$195 billion in lost revenue from the 2016 federal fiscal year through 2020, according to an analysis released Jan. 30 by the Joint Committee on Taxation.

That federal subsidy for state and local outlays represents wasteful spending that accrues to top-income taxpayers, said Chris Edwards, director of tax policy studies at the libertarian Cato Institute. He has recommended repealing the provision because it favors government infrastructure over the private sector.

"It's a distortion because it discourages state and local governments from making privatization reforms," Edwards told Bloomberg BNA, repeating a message he has delivered directly to Ways and Means Chairman Kevin Brady (R-Texas) and committee staff.

Private ownership of airports, seaports and highways is much more common in countries like Canada and the U.K., Edwards said, adding that it is more efficient than government-run infrastructure.

But new water and sewer infrastructure would be imperiled without municipal bond financing in South Carolina's state capital, Columbia, said its mayor, Steve Benjamin.

The project, which he said should service 300,000 people in the region when completed, hasn't required higher taxes. In fact, the city hasn't raised taxes in a decade and has ended five of the last six years with a budget surplus, Benjamin said.

"We don't need rate increases simply based on the unavailability of additional capital," he told Bloomberg BNA. "That's the concern here. Certain cities will always be able to access the market. But if in fact we saw the tax exemption go away, or any other jolts to the muni market, there are several cities that wouldn't be able to access markets."

Trump Support

President Donald Trump agrees with keeping the tax benefit, according to Benjamin, who in December met with Trump in New York along with New Orleans Mayor Mitch Landrieu and Oklahoma City Mayor Mick Cornett, president of the U.S. Conference of Mayors.

Behind the scenes, some Ways and Means Republicans don't expect change, according to two sources close to the talks who spoke on condition of anonymity so they could speak freely about the ongoing discussions, but the tax exemption's defenders don't feel safe.

"That alarms us because we know that that cuts directly into the amount of infrastructure that we're able to finance in our nation's cities," Cornett said at a news conference during the group's Washington meeting.

Several mayors had meetings with Ways and Means members and staff, Benjamin said, without providing specifics. He stayed in town through Trump's inauguration, but didn't have another meeting with the president.

"I can tell you it's one of the potential things to look at as far as replacing and simplifying the tax code," said Rep. James B. Renacci (R-Ohio), another former mayor among Ways and Means' GOP roster.

Committee members are being petitioned on a host of tax benefits that could be on the chopping block as part of tax reform, for which legislation is being developed based on the loose framework released in June by Brady and House Speaker Paul D. Ryan (R-Wis.).

"Being on the front line of that debate previously, I think mayors—and myself included—tend to understand the need for municipal bonding, and if you don't have it, how difficult it would be to meet the needs of local communities," Reed said.

Still Waiting

Renacci has pushed back against the opposition, and like Reed, would prefer to maintain the tax exemption. But the former mayor of Wadsworth, Ohio, admitted that such decisions remain out of his hands for now.

"We don't know what's in or what's out; we haven't seen the bill in writing," Renacci told Bloomberg

BNA. “It’s the same old answer—we just have to continue to wait and see what the committee staff puts in writing and we’ll have a better answer.”

Other former mayors on Ways and Means include Reps. Kenny Marchant (R-Texas), who said bonding was an essential ingredient to funding municipal projects during his tenure running Carrollton, Texas.

Ways and Means ranking member Richard E. Neal (D-Mass.), the former mayor of Springfield, Mass., said bonds’ guarantees are essential for communities and investors, and that he couldn’t imagine changing tax policy to alter their attractiveness.

“It’s a public good,” Neal told Bloomberg BNA. “I don’t think that’s a difficult one.”

But the tax overhaul blueprint needs revenue to minimize more red ink on the federal ledger, something Brady has pledged to ensure when estimating economic upside that would come from the myriad tax cuts involved in the plan.

Both Reed and Renacci cautioned that changes to tax-exempt municipal bonds remain a possibility. But Reed said he won’t hold back his opinions.

“To me, it’s a tool that’s worked for years and years and years,” he said. “And as we go through tax reform I’m about fixing the broken parts of the tax code, but for the provisions that work, we’re a voice to say let’s continue that.”

Bloomberg BNA

By Aaron E. Lorenzo

February 6, 2016

To contact the reporter on this story: Aaron E. Lorenzo in Washington at aaron@bna.com

To contact the editor responsible for this story: Meg Shreve at mshreve@bna.com

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[Exploring the Impact of GASB 77: CDFA // BNY Mellon Development Finance Webcast](#)

Exploring the Impact of GASB 77

March 14, 2017

@ 1:00 pm Eastern

This past December marked the official start of GASB 77, a new accounting standard requiring all government agencies to report tax abatements as lost revenue. How do these changes affect development finance agencies, audit requirements, and the negotiation of future tax abatement deals? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will provide an in depth look into the implications of this new accounting standard.

Speakers:

Rena Nakashima, Moderator
Senior Product Manager
The Bank of New York Mellon

[Click here](#) to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

2017 - What lies ahead?

The year 2017 promises, and threatens, to be a potentially momentous one for public finance in the United States. The Trump Administration and the 115th Congress may put in place tax reforms and infrastructure programs that will have transformative consequences for the financing of public projects in all sectors and at all levels. These are only a few of the issues that state and local officials and public finance professionals will be following closely in the coming year:

- Will income tax rates be reduced and, if so, will lower rates reduce the relative attractiveness of tax-exempt municipal bonds?
- Will new restrictions be placed on the purposes for which tax-exempt bonds may be issued or on the manner in which they may be sold, or how their proceeds may be invested?
- Will the new Administration pursue the trillion-dollar, ten-year infrastructure program that President Trump proposed during the campaign? Will Congress approve it? If so, which categories of infrastructure improvements will be given priority?
- How will any major infrastructure program be paid for? As a candidate, President Trump indicated that he would propose new tax credits as a funding method. If enacted, would those tax credits enhance or undermine traditional municipal bond financing?
- Will the Alternative Minimum Tax be eliminated and, if so, will that increase the relative attractiveness of “AMT Bonds” (e.g., exempt facility bonds) commonly issued to finance certain types of large infrastructure projects?

[Continue reading.](#)

Squire Patton Boggs

The Public Finance Tax Blog

By Joel Swearingen, Johnny Hutchinson and Bob Eidnier on February 3, 2017

NCPFP, ULI Publishes Report: “Enabling Infrastructure Investment: Leveling the Playing Field for Federal Real Property”

NCPFP and the Public Development and Infrastructure Council of the Urban Land Institute have published “Enabling Infrastructure Investment: Leveling the Playing Field for Federal Real Property,” a report that explores opportunities and options for responsible infrastructure reform specifically through the lens of re-evaluating the federal real estate project scoring rules and using reform of those rules as a testing ground for developing new practices in similar areas.

The beginning of a new presidential administration and Congress provides a novel opportunity to

reconsider existing practices and develop a framework for funding federal infrastructure projects outside of traditional funding models. With this in mind, NCPPP urges the incoming administration to prioritize reform of the budgeting and financing of federal real estate investments while widening avenues for private and commercial investment in these projects starting with revisiting the existing mechanisms for scoring and operating capital investment to eliminate existing loopholes.

The authors made the following four recommendations for the new White House to address this issue:

- The Office of Management and Budget (OMB) should test an alternative approach to scoring real property transactions that eliminates exceptions which allow the budgeted cost of investment to be spread over multiple fiscal years.
- Federal investments in real estate assets should be evaluated on a life-cycle cost basis with up-front funding provided for the net present value of long term costs for all investment.
- OMB should develop and evaluate a model for scoring the “cost of doing nothing” through calculating the long term cost of deferred maintenance of federally owned real estate.
- The new administration and Congress should convene a Commission on Budget Concepts to review the efficacy of the current model and develop new paradigms for assessing the cost and value of capital investments.

The full report can be downloaded [here](#).

February 2, 2017

[S&P Webcast Replay: 2017 U.S. State and Local Government Credit Outlook.](#)

S&P Global Ratings U.S. Public Finance held a live Webcast and Q&A on Tuesday, January 24th, 2017 at 3:30 p.m. Eastern Time for discussion on our 2017 U.S. State and Local Government Credit Outlook.

[View The Webcast Replay](#)

Jan. 24, 2017 | New York

[IRS Opens Probe Into Financing for Statler Redevelopment.](#)

The Internal Revenue Service is investigating a deal that raised millions of dollars for the redevelopment of the Statler Hotel and Dallas Central Library, according to lawyers involved in the financing.

The *Dallas Morning News* recently signed a lease agreement to move into the old library building once it has been renovated. The library and 19-story hotel are on Commerce Street across from the Main Street Garden Park.

The IRS is examining a complex financing that raised \$26.5 million for the \$221 million project. Mehrdad Moayedi, a real estate developer known for building residential communities in North Texas, is spearheading the project through Commerce Statler Development LLC.

[The financing](#) to help pay for the redevelopment involved tax-exempt bonds, which are regulated by the IRS.

The bonds were sold by an agency in Wisconsin and were backed by future tax grants to the project from the city of Dallas. Local experts called that structure unusual when it was announced in August.

Lawyers involved in the tax-exempt bond sale published a [notice](#) Monday telling investors that the IRS is examining the deal because of concerns “that the debt issuance may fail one or more provisions” of the tax code. The notice said the concerns may have been raised by “external sources.”

The agency did not respond to requests for comment Monday night.

The Public Finance Authority in Wisconsin “believes the bonds complied with all applicable provisions of the Internal Revenue Code,” according to the law firm that posted the disclosure, Orrick, Herring & Sutcliffe. The firm declined to comment to *The News*.

The city of Dallas approved the bond sale based on the future payout of the tax incentives.

Moayed's spokeswoman referred questions about the IRS inquiry to Kirk Wilson, a financial consultant for the project. Noting that the developer has not received any information directly from the agency, he said that the IRS is simply asking for more information in a routine audit.

The bonds are backed by so-called tax-increment financing, in which the city promises to give developers tax breaks over time for developing in designated areas. City representatives did not immediately respond to requests for comment.

The Dallas Morning News

by Terri Langford

Miles Moffeit contributed to this story

[CDFA Agenda Includes Pushing for Bond Bills, Supporting Tax Exemption.](#)

WASHINGTON - The Council of Development Finance Agencies this year will work to obtain separate bills that would ease certain tax restrictions for manufacturing bonds and remove water and sewer bonds from the private activity bond volume cap.

The goals are in the 2017 policy agenda the group is circulating to its members.

The CDFFA also will work to preserve and strengthen tax-exempt bonds in general, obtain increased funding for the Water Infrastructure Finance and Innovation Act (WIFIA) and promote the launching of a federal urban tax increment finance program, among other things.

“The bond issues outlined in our agenda are our primary focus in 2017, said Toby Rittner, CDFFA’s president and chief executive officer. “Working with our partners in Congress to get MAMBA passed would be a great victory for issuers, and for our industry as a whole. Our efforts to protect the tax-exempt status of municipal and private activity bonds are also important. With tax reform likely coming this year, it’s essential that we make sure members of Congress are fully aware of the importance of the tax exemption, and that they protect it at all costs.”

MAMBA is the acronym for “Modernizing American Manufacturing Bonds Act,” companion bills introduced by House and Senate members last year and the year before that would have loosened tax law restrictions for qualified small issue manufacturing bonds. These bonds are used to finance facilities for small and mid-sized manufacturers. They are also called industrial development bonds (IDBs). The bill (S. 3416) in the Senate was offered on Sept. 28 of last year by Sens. Sherrod Brown, D-Ohio, and David Perdue, R-Ga., The one (H.R. 2890) in the House was introduced on June 25, 2015 by Reps. Randy Hultgren, R-Ill., Richard Neal, D-Mass., and James Renacci, R-Ohio. Neal is now the top Democrat on the House Ways and Means Committee. The two congressmen had offered the bill the previous year as well.

The House and Senate bills would have made two tax law changes that had been put into effect in 2009 and 2010 under the American Recovery and Reinvestment Act. They would have expanded the definition of manufacturing facility to include intangible property, such as software, as well as tangible facility. The bills also would have allowed IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials and laboratories that test raw materials.

Additionally, the measures would have made two other tax law changes. They would have increased the maximum size of an IDB issue to \$30 million from \$10 million. The limit hasn’t increased since 1979 and hasn’t ever been indexed to inflation.

They also would have increased the capital expenditure limitation for IDBs. Currently, a manufacturer can only issue IDBs if their capital expenditures, including the bond proceeds, are not more than \$20 million in the six-year period beginning three years before the date of the proposed new issue and ending three years after that date. Under the bills, that capital expenditure limitation would have increased to \$40 million.

On tax-exempt financing in general, CDFA’s agenda said, “The administration must commit to preserving and protecting tax-exempt bonds under any and all circumstances. The restriction, capping, and/or eliminating of the tax-exempt status for municipal and private activity bonds should be dismissed outright.”

In addition, the group said, any tax reform measures considered by Congress should take into account the importance of private-sector led investment and “the critical role that tax-exempt bonds play in generating private investment.”

CDFA also wants to push for the reintroduction of legislation that would remove PAB volume caps for water and sewer bonds. A bill (S. 2606) was introduced in the Senate on Feb. 29 last year by Sens. Robert Menendez, D-N.J. and Mike Crapo, R-Idaho. The one (H.R. 499) in the House was introduced by Reps. John Duncan, Jr., R-Tenn., and Bill Pascrell, DN.J., the year before in January.

In addition, the group wants increased funding for WIFIA, which provides credit assistance in the form of loans for large water infrastructure projects.

The group’s agenda also calls for the launch of a Federal Urban Tax Increment Finance Program that would allow local governments to redirect specific estimated tax revenue to finance urban revitalization efforts. Currently state and local governments set up TIF districts and use the revenue to back tax exempt bonds.

CDFA called for the creation of a State Clean Energy Finance Initiative (SCEFI) pilot program with the Treasury Department that would be authorized for five years with a onetime \$5 billion appropriation. The program would leverage an additional \$50 billion of private investment nationally

for clean energy projects.

The two-plus-page agenda calls for other initiatives as well.

The Bond Buyer

By Lynn Hume

February 2, 2017

[Making the Case for the High Efficiency of the Tax Exemption - It's in the Numbers.](#)

As tax reform takes shape, a key challenge for the municipal market in maintaining full access to the tax exemption stems from a factually flawed methodology utilized by the Joint Committee on Taxation.

Over a long period of time, we have been told, “don’t try arguing with Joint Tax methodology, their methodology is accepted by Congress, the Administration and staff as being gospel.” However, what if the problems with the Joint Tax analysis stem not primarily from methodology, but from factual inaccuracies in the data underpinning the analysis?

Under its analysis, the JCT comes to three conclusions:

1. That municipal yields as a percentage of taxable yields are high;
2. That this high ratio results in the marginal tax rate of the marginal investor in municipals being low; and,
3. That, as a consequence, everyone in a higher tax bracket received a “windfall”—a higher yield than would be needed to needed to attract them to buy municipals.

Under their methodology, long-term municipal yields as a percentage of corporate yields are indeed quite high - roughly 94% on long-term A1/A+-rated paper. However, the high ratio vanishes when two simple but essential adjustments are made to the calculation: The first adjustment is to compare municipals to corporate bonds that are actually similar, which the Joint Tax report demonstrably did not. We stress that this adjustment does not reflect a change in methodology relative to the JCT. It simply makes sure that the analysis involves an “apples vs. apples” comparison.

The second adjustment is to increase municipal yields to the levels that would be needed to clear the market if these municipals came as taxable bonds. That is a higher yield than that which would show on corporate indices, because as currently constructed, municipals have certain disadvantages that would force them to pay a higher yield than corporate bond indices suggest, if they came in the taxable market. These disadvantages include weaker call provisions, lower liquidity on smaller maturities, and a weaker disclosure regime than on corporate bonds. Having shown how these two adjustments would look, we then discuss two other factors, which provide important pieces of evidence that the conclusions of Joint Tax are incorrect—the functioning of the market for “Private Activity Bonds” subject to the Alternative Minimum Tax, and the pattern during the second half of 2009 and 2010, when taxable “Build America Bonds” were available as an alternative to tax-exempts.

The bottom line is that in our view, the 2012 report out of Joint Tax on their methodology for

determining the efficiency of the tax-exemption was severely factually flawed:

- Triple-A corporates were compared to A1/A+ municipals using the Bond Buyer 20-Bond Index (BBI);
- The fact that the BBI severely overstates actual borrowing costs in the municipal bond market was ignored;
- The fact that municipals with shorter maturities compare much more favorably than longer bonds in comparison with taxable bonds was ignored; and,
- The more favorable structure of corporate bonds with respect to call provisions, liquidity and disclosure, which reduces their borrowing cost relative to the likely cost of fully taxable municipals was ignored.

All of the above factors create an illusion the JCT analysis that muni yields as a percentage of corporate bond yields are much higher than they are in the real world.

Finally, the underlying assumption that, if tax-exempts did not exist, investors would only buy fully-taxed corporates as an alternative, is simply incorrect, as Joseph Poterba at MIT has shown. At the maximum 40% tax rate on corporate bond interest, a vast number of investors would, if they could not buy tax exempts, seek out an alternative with a lower Federal tax rate, such as the 20% maximum rate on dividends and capital gains.

Working Through the Numbers

In our analysis, we start with the yield ratio we would expect JCT to derive using its flawed data. Using this starting point, we would have a tripleA corporate bond index of roughly 3.50%, and a yield on the Bond Buyer 20-bond Index of roughly 3.87%. This provides a starting point ratio of roughly 107%.

Adjusting for the factual inaccuracies in the data as shown by JCT in its own analysis works out as follows:

1. Currently, municipal yields are inflated to a degree by tax risk fears. In our estimation, long-term municipal yields would be at least 30 basis points lower under “normal” conditions. Since the election, investors have become reticent to put cash to work in the municipal market as a result of fears that tax reform would damage the value of municipals by sharply cutting tax rates or putting a cap on the value of the tax-exemption. Pressures on the municipal market are shown in municipal bond fund flows, which have been a whopping negative \$15 billion since the election. Adjusting for tax risk fears, and the ratio declines to 3.57% vs. 3.50%, or 102%.
2. Different quality bonds are being compared. A Triple-A rated Corporate Bond index is compared to the A1/A+ Bond Buyer Index. Use of comparably rated bonds would reduce the ratio on municipal yields to corporate yields considerably. (3.57% /3.60% would become 3.57%/4.10%). The yield ratio would thus move down from 102% to 87% - still very high, but wait...
3. The greatly inflated yield on the BBI. The Bond Buyer Index utilized by the JCT in their analysis ALWAYS yields considerably more than actual municipal bonds, as it did over the entire time period included in the JCT report. During their measurement period, the difference typically ran 80120 basis points. Now, with lower yields in all sectors, the difference still runs 50 basis points for similarly rated bonds due in 20 years. So, the 3.57% to 4.10% comparison above becomes 3.07% to 4.10% when real-world yield levels are used instead of the massively inflated BBI, and the ratio declines to 75%.
4. Differences in call provisions, liquidity and disclosure between A1/A+ corporates and A1/A+ municipals are ignored. To be sold in the taxable market without corporate-like attributes, we estimate that municipals would have to have roughly 40-basis-point higher yields than like-rated

- corporates, and 60 basis points more for smaller, less liquid issues. Differences include the lack of call risk on corporate bonds versus the ten-year call on nearly all municipals, stronger liquidity resulting from higher per-maturity issue size, and stronger disclosure requirements. So, the comparable ratios become 3.37% to 4.50%, and 3.37% to 4.70%, or the 74.9% to 73% range.
5. A focus on long maturities. As we discuss below, municipal yields as a percentage of taxable yields tend to be dramatically lower on bonds 11 years and shorter than they are on longer-maturity paper. By our estimate, the ratio in the 10-year range would be at least 7 percentage points lower in 10 years than it is in the 20-year bonds used in the JCT analysis, and on 5-year paper would be another 7 percentage points lower. Using an average of a 10 percentage point drop for paper inside 10 years, and the ratio declines to from 64.9% to 63%.
 6. Evidence for a very high clearing marginal tax rate on shorter maturities comes from BABs. During the period from mid-2009 through the end of 2010, nearly 40% of new issues came as Build America Bonds – fully taxable to the investor, but with a 35% subsidy provided to the issuer. Issuers thus had a choice: accept the reduced yield provided by access to the tax exemption, or accept a 35% subsidy. The two choices would essentially be break even when munis yielded exactly 65% as much as taxable BABs. In terms of measuring the efficiency of the tax exemption, here is the interesting result: during that period, a very large proportion of bonds with a maturity longer than roughly 11 years came as BABs, but nearly all bonds with a maturity inside 11 years came in the tax-exempt market. As far as the efficiency of the tax exemption is concerned, the implications are clear: inside roughly 11-year maturities, municipal bonds were clearing with a ratio to taxable bonds lower than 65%. This compares with the implied tax rate for municipals during 2009 in the Joint Tax analysis of 13.2%. We estimate that the ratio actually stayed above 30% as far out as roughly 15-year maturities, a sizable component of the entire municipal market – roughly 60%-70%.
 7. Thus, simply comparing apples to apples—similarly rated and structured municipals and corporates under current conditions takes the clearing marginal tax rate up from 8% to 34%-38.5%. However, even this purely factual analysis based upon current market conditions ignores an important invalid assumption in the Joint Tax Analysis: That investors who could no longer buy tax-exempts would only buy taxable bonds taxed at their maximum income tax rate as an alternative. The problems with the assumption that taxable bonds are the only alternative in the absence of tax-exempts, is shown in the work of Joseph Poterba and teammates at MIT. (Example: *Portfolio Substitution and the Revenue Cost of the Federal Income Tax Exemption for State and Local Government Bonds*, Poterba, James M. and Verdugo, Arturo Ramírez, National Tax Journal, June 2011.)

It's Not Just Municipals vs Taxable Bonds

Having adjusted the yield comparison to provide an apples-versus-apples comparison, we arrive at an adjusted yield ratio of municipal yields to corporate yields, at various spots along the yield curve. While this adjustment suggests a marginal tax rate for the marginal buyer that is vastly higher than the JCT suggests, we then explain why the assumption that this ratio represents a complete comparison of the two markets is highly flawed. This assumption has been deconstructed by Poterba at MIT, among others.

In reality, in the absence of a tax-exemption, most investors would not buy taxable bonds taxed at their maximum marginal rate; they would hold more cash/nearcash (they currently hold 6X as much cash as the do municipals), or they would buy investments with a lower effective tax rate. Currently, dividends and capital gains are taxed at a maximum rate of 20%. With long-term corporate yields around 4.25%, investors in roughly the 40% tax bracket would earn roughly 2.50%, after-tax. As Drs. Poterba and Verdugo note, lacking access to tax-exempts, many of these investors would choose dividend-paying stocks, or invest for a long-term capital gain, rather than buying fully taxable bonds.

The idea that the difference between the ratio of municipal yields to corporate yields and investors' maximum tax brackets represents a "windfall" to the high bracket investor is simply incorrect, because investors have other choices.

Impact of a Cap on the Tax Exemption—Evidence From the Market for Bonds Subject to the AMT

Our message in the above is that, when comparisons between munis and corporates are measured properly, municipal yields as a percentage of taxable yields are vastly lower than that shown in the Joint Tax analysis. Quite simply, the low marginal efficiency of the tax-exempt market described by Joint Tax in its analysis results from inaccurate data. We do not attack the methodology, we simply show that the clearing marginal tax rate for municipals, properly measured, is quite high under most market conditions.

In addition, the question has come up as to what the impact would be of a 28% cap on the tax-exemption.

In our view there is already evidence of the impact from the functioning of the market for PABs subject to the AMT.

These bonds are subject to a "surtax" on the interest, but only for investors who pay the AMT. For other investors, the AMT has no effect. Even with this limited target for the surtax, bonds subject to the AMT cost issuers roughly 30 basis points more than nonAMT paper. To investors who do not pay the AMT, the extra yield is a "windfall" that provides no tax revenue to the Treasury. Now consider what would occur if all municipals were subject to a surtax in the form of a 28% cap: we would expect the cost of borrowing in the municipal market to rise substantially more than 30 basis points. In our estimate, the impact would range from 50 basis points to 75 basis points or more for the entire market. Please note that when municipals and corporates are compared properly, the clearing ratio of yields generally put the marginal tax rate above 28%. As a consequence, in our view, a 28% cap would be quite damaging in the form of higher borrowing costs.

The Bottom Line

Decision makers often cite the Joint Tax methodology in explaining why they believe the tax exemption to be an inefficient subsidy. To a very significant degree, we believe that the JCT analysis is flawed, not because its methodology is incorrect, but because its data is wrong: its comparison is a clear "apples to oranges" comparison. When the data is adjusted to compare similar bonds in both sectors, we discover that muni yields as a percentage of corporate bonds actually provide a marginal tax rate that is impressively high. In addition, we cite one comparison from the work of Joseph Poterba et al at MIT: we believe, as he does, that if the tax-exemption were eliminated, many investors would substitute other investments with a tax rate roughly half of that on full taxable bond interest. Given all of this, the premise that the muni market clears through investors with a low marginal tax rate—thereby giving a windfall to high bracket investors - is simply incorrect.

The Bond Buyer

By George Friedlander

February 1, 2017

George Friedlander is a managing partner at Court Street Group Research.

As Gas-Tax Profits Decline, More States May Turn to Tolls.

Some states are seeking to fill funding holes and potholes with toll money. But it's an uphill battle.

Tolls have been a fact of life in Indiana for at least 60 years, but state Rep. Edmond Soliday thinks there will have to be more of them if the state wants to keep its roads in good shape.

Soliday, a Republican who chairs his chamber's transportation committee, said the most expensive part of the state's transportation network are the heavily trafficked interstates that are filled with out-of-state trucks. Federal law, however, prevents states from tolling existing interstates without a waiver.

"I say to citizens and my fellow legislators: How much do the citizens of Indiana owe to provide an infrastructure to folks who don't even stop for a Snickers bar?" said Soliday. "It's irresponsible not to take a look at how much of it are Hoosiers willing to pay so that others can use it."

So Soliday introduced an ambitious [road-funding bill](#) earlier this month that would instruct the Indiana Department of Transportation to apply for a federal waiver and to study how tolls could be added.

As traditional sources of transportation revenue, like gas taxes, have declined, tolling has increasingly become a part of everyday life for many Americans.

The miles of managed lanes with tolls on them has [quadrupled](#) since 2010. The number of drivers using toll facilities increased by 7 percent in just a single year, from 2014 to 2015. That growth could continue if lawmakers in places like Connecticut or Wisconsin move ahead this year with long-stalled plans to introduce tolling in their states.

There's been a lot of discussion about whether a federal infrastructure stimulus from the Trump administration could help alleviate states' fiscal pressures on transportation. But Soliday said he isn't depending on help from Washington. Besides, he said, the longer the state waits for help from the federal government, the worse its roads get in the meantime and the more expensive they get to fix.

Tolls may be an expedient source of revenue in the near term, but Soliday's real case is that they'll become even more vital in the years ahead.

Thanks to increasing federal fuel standards, auto manufacturers will soon have to start producing more fuel-efficient vehicles. That could lead to an even bigger drop in gas tax revenue. The firm Cambridge Systematics [predicted](#) that, after accounting for inflation, the \$450 million in revenue that Indiana's gas tax produced in 2015 will bring in only about \$300 million a decade from now.

"We have this huge hole starting in 2021," said Soliday. "The issue is: How do you plug the hole if you can't do it with a reasonable amount of gasoline tax? Tolling is clearly how we're filling that gap starting in the 2021 era in the plan."

But tolling existing interstates, as Soliday proposes, won't be easy.

GOP Gov. Eric Holcomb is reportedly against the idea, and the Senate president has called it a "hard sell." The trucking industry, which opposes most toll increases, will also likely push back.

In addition to upping the number of tolls, Soliday's bill would also increase gas taxes, levy new fees for electric vehicles and hike vehicle registration fees. But raising the state's gas tax would be hard, too.

Indiana voters are unlikely to accept a gas tax increase of more than 10 cents per gallon, said Soliday. Even if they did, a hike that size would only make up for the revenue lost to inflation since Indiana last raised its gasoline tax in 2003 and its diesel tax in 1998.

To improve local roads, Soliday's bill would use the revenue raised from higher registration fees to build on a program created by Indiana lawmakers that set up matching grants for localities that would fund 50 percent of a project's costs up to \$1 million. According to Purdue [researchers](#), 26 percent of city roads, 29 percent of town roads and 40 percent of county roads are in poor condition — and it would take \$773 billion just to keep the road quality the same over the next decade. To make sure no roads were in poor condition, it would cost the state \$1.6 trillion.

The bottom line, said Soliday, is that Indiana can't achieve its goals without tolling or something else that will bring in that kind of revenue.

"If you take anything out of the package, then you've got to put something in, or you've got to lower expectations," he said. "It's a closed system."

GOVERNING.COM

BY DANIEL C. VOCK | JANUARY 30, 2017

[Breaking Down the Financial Impact of Self-Driving Cars.](#)

They would be mostly — but not all — good for state and local revenues.

The expectations over driverless cars are stratospherically high. For one, there's the fascination with the technology and the presumption of an easier commute: The self-driving car will take us to work while we surf the Internet, read files and review emails. Once it drops us off, it returns home where others in our household can use it — until it's time to call it to pick us up and take us home again.

There's more to this futuristic concept than creature comforts, though. With self-driving cars anticipated to be in wider use on our roads within four years, there are promises of extraordinary impacts on state and local finances — most of them positive; a few not. Several reports from some of the biggest names in banking put startling numbers on the effects wrought by a changeover to driverless driving.

Let's start with Morgan Stanley. Its new report, *Autonomous Vehicles & Municipal Bonds*, puts the net positive impact on municipal budgets in excess of half a trillion dollars. That number takes into account more efficient roadway use and a dramatic reduction in parking garages and parking spaces. With parking facilities no longer needed, those properties can be turned into higher-level development, which would provide municipalities with a boost in property taxes. Offsetting those gains, Morgan Stanley foresees losses of roughly \$1.3 billion from such revenue sources as fuel taxes, license fees, parking fees, speeding tickets and personal property taxes.

Barclays, the British banking and financial services company, notes that transportation in the U.S. is the second highest average household expenditure and that the average car is parked 95 percent of

the time. It estimates that the average U.S. household will reduce its car ownership from today's 2.1 vehicles to 1.2. (A figure also cited in a University of Michigan Transportation Research Institute study.) For states and localities, such a reduction could signal an end to what Barclays calls "the fretting" about investing in additional highway lanes or new roads.

That lack of fretting would have quite an effect on infrastructure and the municipal bonds that finance it. The impact starts with this forecast from several researchers: A single self-driving car could replace up to 12 regular vehicles. If that happens, it would affect some of the existing \$3 billion in dedicated tax-exempt state and local parking revenue bonds. It would also affect airport revenue bonds. Airports currently generate 28 percent of their operating revenue from rental cars, parking and ground transportation — revenue that could be at risk from the cascading parking effects of self-driving cars.

The influence on general obligation bonds would be significant in a more positive way. The greater efficiency of self-driving cars and the ability to fit triple the amount of traffic in existing lanes could sharply reduce current projected needs for infrastructure and therefore the need to borrow money to build new roads.

There are other revenue savings. Self-driving cars are predicted by the National Transportation Safety Board to save "many, if not most, of the 33,000 lives lost to traffic fatalities every year on our streets and highways." If true, this would lead to a major benefit via the \$18 billion annual health-care costs from emergency room visits related to motor vehicle injuries, injuries that currently average 15 percent of hospitalized injuries — not to mention the costs to local emergency responders.

Then there's this: For many police departments, 42 percent of police contacts are initiated during a traffic stop — with driving under the influence of alcohol being the second highest cause. Self-driving cars would render DUIs virtually obsolete. That would be a signal benefit not only — and most important — on innocent lives saved, but also in a diminution of emergency medical and police costs.

No wonder Morgan Stanley came up with a half-a-trillion dollar figure.

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BY FRANK SHAFROTH | JANUARY 2017