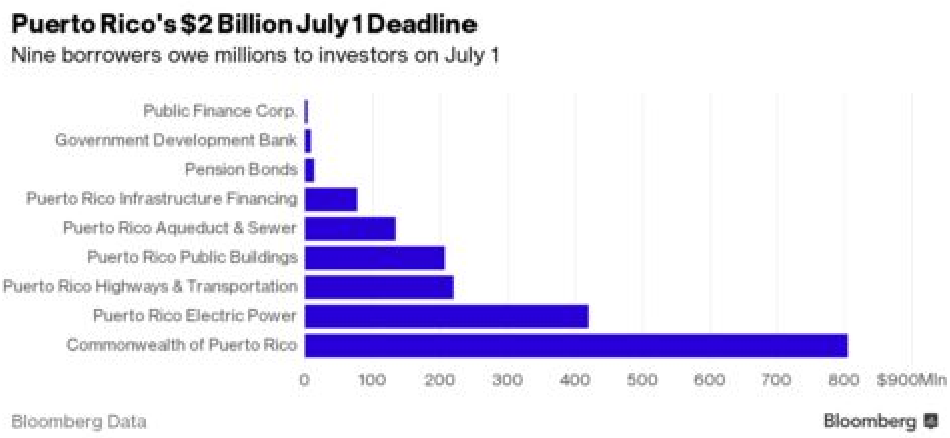

[Puerto Rico Faces Record Default: A Look at the Bonds Due.](#)

Puerto Rico Governor Alejandro Garcia Padilla says the island won't pay general-obligation debt coming due on Friday even with President Obama poised to sign a bill that enables the commonwealth to restructure its $70 billion debt load.

Puerto Rico and its agencies owe $2 billion of principal and interest. It may mark the island's biggest default yet and the first time it's skipped payments on general-obligation bonds, which are given the first claim on the island's funds. The federal bill, called Promesa, enables the commonwealth to restructure its debt through a control board that will also weigh in on its spending plans. The measure also shields Puerto Rico from creditor lawsuits seeking repayment. The island's electric utility agreed Thursday to extend an agreement with creditors so it can make its July payments.

Following is a breakdown of what's coming due on July 1, according to data compiled by Bloomberg:



General-obligations: About $816 million of principal and interest. Puerto Rico's constitution stipulates that the government must repay general obligations before other expenses. Garcia Padilla said on Wednesday that the island won't pay general obligations because there isn't enough money to cover essential services and pay investors. The commonwealth has $13 billion of general obligations and a default on the securities would be the first payment failure from a state-level borrower on its direct debt since Arkansas in 1933.

Puerto Rico Electric Power Authority: $420 million of principal and interest. The island's main electricity provider, called Prepa, will avoid defaulting Friday after it reached an agreement with its creditors. Bondholders and insurers will buy bonds from Prepa in a similar arrangement to how the utility averted defaulting on Jan. 1.

Puerto Rico Highways & Transportation Authority: $220 million of principal and interest. The highway agency repays its debt with gas-tax receipts and toll revenue. The authority is expected to pay investors on July 1 from reserve funds already held by the bond trustee, according to S&P Global Ratings. Future payment are uncertain because Puerto Rico has redirected a portion of the agency's revenue to the general fund. HTA has $6.4 billion of bonds and notes outstanding.

Puerto Rico Public Buildings Authority: $207 million of principal and interest. The bonds are repaid with rents that public agencies pay for their office buildings and are guaranteed by the commonwealth. The authority has about $4 billion of bonds outstanding.

Puerto Rico Aqueduct and Sewer Authority: $135 million of principal and interest. Island lawmakers are working on legislation intended to allow the water agency to raise money by issuing debt through a newly created entity. If it can't, the authority has said it may redirect funds used to pay debt to cover overdue bills to contractors and suppliers. It has $4 billion of bonds outstanding.

Puerto Rico Infrastructure Financing Authority: $78 million of principal and interest. Called Prifa, the agency has sold the island's rum-tax bonds. Bond anticipation notes maturing July 1 are expected to default after Puerto Rico said it would instead use the revenue that normally repays Prifa debt to cover essential services instead. Prifa also defaulted on a Jan. 1 interest payment. It has $1.9 billion of bonds outstanding.

Puerto Rico Convention Center District Authority: $20.8 million of principal and interest. The authority has reserve funds with its bond trustee to make the July 1 payment, but those funds could dry up for the next payment due Jan. 1 because Puerto Rico is redirecting its revenue, according to S&P. The agency uses hotel-room tax receipts to repay debt. It has $397.7 million of bonds outstanding.

Puerto Rico Pension-Obligation Bonds: $13.9 million of interest. The taxable debt was sold to bolster the island's nearly depleted pension fund. The bonds are repaid from contributions that the commonwealth and municipalities make to the retirement system. It has $2.9 billion of bonds outstanding.

Government Development Bank for Puerto Rico: $9.1 million of interest. The bank has restricted withdrawals unless they are used for essential services. The bank defaulted May 1 on nearly $400 million that was due. It has $5.1 billion of debt outstanding.

Puerto Rico Public Finance Corp.: $4 million of principal. Since August the agency has failed to pay investors and was the first Puerto Rico agency to default after the legislature failed to appropriate needed funds. It has $1.1 billion of debt outstanding.

Bloomberg Business

by Michelle Kaske & Sowjana Sivaloganathan

June 30, 2016 — 9:39 AM PDT Updated on June 30, 2016 — 11:13 AM PDT

Puerto Rico's Electric Utility Extends Pact to Pay Bonds.

Puerto Rico's main electric utility reached an agreement with creditors to borrow more money and extend an existing debt-restructuring pact for six months, enabling it to make a $415 million bond payment due Friday.

The accord came as President Barack Obama signed legislation authorizing a control board to oversee a reorganization of the island’s overall $70 billion debt burden. The agreement reached in December with the utility known as Prepa was seen by analysts as a road map for other debt restructurings on the island.

A group of mutual-fund companies and hedge funds holding about 35 percent of Puerto Rico Electric Power Authority debt, and bond-insurance companies that guarantee repayment on some of the utility’s securities, agreed to buy $264 million of additional bonds from the agency, according to a statement from Prepa. The bond sale will free up cash to help Prepa make the July 1 payment.

“It keeps it alive,” Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics, said about Prepa avoiding default and extending the restructuring accord. For the future control board, “it builds credibility for what they’ve done.”

S&P Global Ratings lowered Prepa’s rating to D from CC as the transaction constitutes a “distressed exchange restructuring, tantamount to default under our criteria,” Jeff Panger, an S&P analyst, wrote in a report Thursday.

Most Puerto Rico securities have been gaining in value as the bill know as Promesa, which is Spanish for promise, advanced through Congress. Prepa bonds maturing July 2040, the most-actively traded debt of the utility in the past three months, changed hands at an average price of 63.2 cents on the dollar, up from 61.3 cents on Wednesday, according to data compiled by Bloomberg.

“We are pleased to have reached an agreement allowing us to make the payment to bondholders and avoid a default,” Lisa Donahue, Prepa’s chief restructuring officer, said in a statement. “Today’s outcome is another step towards Prepa’s transformation. As a result of these agreements, we have preserved our cash position as we continue to implement an operational and financial restructuring.”

In the transaction, the investors known as the Ad-Hoc Group and the insurers MBIA Inc., Assured Guaranty Ltd. and Syncora Guarantee Inc. will buy the new power-revenue securities from Prepa. The July 1 agreement is similar to a deal the parties reached to avoid a miss payment on Jan. 1.

Prepa has registered to sell debt, according to MSRB’s website, called EMMA. Prepa Series 2016C, Series 2016D and Series 2016E will mature from 2018 through 2022 with a 10 percent interest rate, according to the website. Series 2016B bonds sold as part of the January deal carry a zero coupon and priced at 74.4 cents on the dollar to yield 10 percent, according to data compiled by Bloomberg.

Prepa struck a larger accord in December with the group and the insurers to restructure $9 billion in debt.

The parties on Thursday agreed to extend the expiration deadline for that agreement to Dec. 15, 2016, according to Prepa’s statement. The agreement was the first reached between a commonwealth entity and creditors. The U.S. Supreme Court on June 13 struck down an island law that would have let its public utilities restructure their debt over the objection of creditors.

Under the restructuring agreement, bondholders will take a 15 percent loss on their securities in exchange for new debt repaid with dedicated revenue that Prepa doesn’t have access to and flows straight to the bond trustee. Last week, the island’s energy commission approved a 3.10-cent per kilowatt hour surcharge that will repay the restructuring bonds.

Members of the Ad-Hoc Group include Angelo, Gordon & Co., BlueMountain Capital Management LLC, D.E. Shaw & Co., Knighthead Capital Management LLC, Marathon Asset Management LP, Franklin Advisers Inc., Goldman Sachs Group Inc. and OppenheimerFunds Inc.

Bloomberg Business

by Michelle Kaske

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Puerto Rico Crisis Enters New Phase as Obama Signs Debt Bill.

Puerto Rico's fiscal crisis reached a turning point as President Barack Obama signed bipartisan legislation Thursday that allows the island to escape from debts Wall Street once viewed as ironclad.

As Obama was signing the bill, Puerto Rico Governor Alejandro Garcia Padilla declared a moratorium on debt payments, one day before $2 billion are due, setting in motion its biggest default yet. It will be the first time the U.S. territory has failed to pay on its general-obligation bonds.

"We finally have legislation that at least is going to give Puerto Rico the capacity and opportunity to get out beyond its debt," Obama said at a signing ceremony. "People of Puerto Rico need to know they're not forgotten."

The legislation, which protects the island from creditors, creates a financial control board to help restructure Puerto Rico's $70 billion in debt and oversee the island's finances, marking the largest federal intervention ever into the U.S. municipal bond market. The Senate passed the bill Wednesday in a 68-30 vote.

The territory had continued to pay the securities even as it rapidly went broke. The bill signed by Obama doesn't provide any additional funding, but it allows Puerto Rico to turn to federal court to cut its obligations and protects the government from creditor lawsuits by putting them on hold.

In return, Puerto Rico is being forced to accept strict oversight by a control board that will have significant power over its day-to-day affairs. The legislation, S. 2328, also does little to alleviate the underlying economic conditions on the island that led to its vast accumulation of debt.

Ryan's Triumph

Enactment of the measure is a significant accomplishment for Republican leaders in Congress, particularly House Speaker Paul Ryan, who vowed late last year to address the burgeoning debt crisis. His promise came after demands for action by Minority Leader Nancy Pelosi, who also pushed Democrats to back the final bill.

"This bipartisan legislation addresses the fiscal crisis in Puerto Rico while protecting American taxpayers from a bailout of the territory," Ryan said in a statement after the vote.

The Obama administration also claimed victory after Treasury Secretary Jacob J. Lew worked hard to shape the bill and press lawmakers in both chambers to support it.

There were plenty of doubts along the way that Congress and the White House could come through with a serious plan to address the crisis, even as the territory's fiscal woes sparked migration from the island and took a toll on its public health services and economy.

Congressional leaders had to overcome strong opposition from conservatives to any kind of federal bailout, while many Democrats were unhappy about proposals they said would infringe on the sovereignty of a U.S.
territory. In addition, public advertising campaigns funded by hedge funds with stakes in Puerto Rico's debt targeted lawmakers who voiced support for a debt restructuring.

In the end, nobody in Congress was fully satisfied with the final bill. Democratic Senators Bob Menendez and Bernie Sanders blasted it as "colonial," while several Republicans wanted to impose even stricter discipline on Puerto Rico's government.

But Majority Leader Mitch McConnell waited until nearly the last possible minute to bring up the bill, presenting senators with the choice to reluctantly back the measure or risk triggering an even deeper crisis.

"Thanks to the stubbornness of the Treasury Department and lack of transparency from the government of Puerto Rico, it is the only option on the table, and delaying action would only hurt the Americans who reside on the island," Senate Finance Chairman Orrin Hatch of Utah said Wednesday on the Senate floor, explaining why he voted to advance the measure.

Breathing Room

In the short term, the bill does help give Puerto Rico some breathing room, which has some investors concerned.

With passage, "the governor has zero incentive to pay debt service and every incentive to divert debt service to his pet causes and to establish his own reputation as a populist warrior," said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. Fabian said this is "the last easy time" for Puerto Rican officials to divert money for their uses before the board is established.

"The fiscal control board has its work cut out for it," Fabian said. "It not only will have to remediate Puerto Rico's finances, it's going to have to do so with Puerto Rico probably working against it from the shadows."

The legislation is the beginning of an effort to address a problem that has been years in the making.

Because Puerto Rico bonds aren't taxed anywhere in the U.S., the commonwealth was able to raise money for years from mainland investors, who were assured that — unlike many cities — the government wouldn't be able to escape from its debts in bankruptcy court. That assurance also left investors less willing to negotiate, calculating that the government had no choice but to pay.

The bill also places a stay on bondholder litigation, which is aimed at averting disorderly legal battles as Puerto Rico defaults on a growing share of its debts.

While the law gives the commonwealth some breathing room, "it's not addressing the fundamental problems with the economy," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees $6.3 billion of local debt.

'Creates a Framework'

Some investors have been eager for the legislation to pass because creditors can begin negotiating with a control board after months of talks with Puerto Rico officials have failed to result in a deal, said Daniel Solender, who oversees $19 billion, including Puerto Rico securities, as head of municipals at Lord Abbett & Co. in Jersey City, New Jersey.

The bill "creates a framework to start negotiations, which have not really occurred so far in any real constructive manner," Solender said. "So it's a positive that there's a mechanism in place, but the negative is it's still uncertain what the objectives of the board will be."

The island's debt restructuring is by far the largest ever in the $3.7 trillion U.S. municipal bond market, a haven for buy-and-hold investors seeking tax-exempt income with little risk. With the island's $70 billion in debt, this far surpasses the record $18 billion bankruptcy of Detroit in 2014.

Bloomberg Business

by Billy House, Michelle Kaske & Steven T. Dennis

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Puerto Rico Says $911 Million in Payments Missed in Default.

Puerto Rico is skipping a record $911 million of bond payments due Friday in the culmination of a more than year-long effort to force creditors into restructuring what island and federal officials have characterized as a crushing debt burden.

Governor Alejandro Garcia Padilla said during a press conference in San Juan that the biggest missed payment is for $780 million of general-obligation bonds. On Thursday, he evoked a local moratorium provision after President Barack Obama signed a bill into law that sets a debt restructuring in motion and shelters the island from liability. The commonwealth had about $2 billion in bond payments due Friday.

"Today, we complete a cycle," Garcia Padilla said. "If anybody had any doubt as to whether we would continue providing public services or paying Wall Street bondholders, I choose to provide services to our people."

The legislation, called Promesa, which means promise in Spanish, creates a seven-member federal board that will begin overseeing the island's finances. It also postpones creditor lawsuits seeking repayment and allows the control board to force reluctant bondholders into court, if need be, to reduce the island's roughly $70 billion debt load.

Obama has until Sept. 15 to appoint board members from Congress's recommendations. The panel will then analyze the island's finances and its debt structure.

The island's crisis has been steadily building, with the economy continuing to shrink and the government effectively locked out of the bond market, where it routinely sold debt for years to paper over budget shortfalls. The concern about the consequences of the July 1 default triggered rare bi-partisan action on Capitol Hill, a step lawmakers decided was needed to avoid a financial bailout later.

Even with the risk of default, most Puerto Rico securities have gained in price as the bill moved through Congress and the possibility of federal oversight increased. General obligation with an 8 percent coupon and maturing 2035 traded Friday at an average price of 67.5 cents on the dollar, the highest since April 19 and up from 64.4 cents on Monday, data compiled by Bloomberg show.

An index of Puerto Rico securities has gained for 24 straight days through Thursday, the longest winning streak since May 2011, to the highest since the governor's announcement a year ago that the commonwealth was unable to repay all of its debt and would seek to restructure, according to S&P Dow Jones Indices.

Ownership Breakdown

Puerto Rico began defaulting in August on smaller payments on agency debt that have weaker repayment pledges. The missed payments affect traditional municipal-bond investors, hedge funds and bond-insurance companies that guarantee repayment in the event of a default.

Hedge funds own about one-third, or $23 billion, of Puerto Rico's debt, according to Antonio Weiss, a counselor to U.S. Treasury Secretary Jacob J. Lew, who helped Congress craft the Promesa bill. Municipal mutual funds hold almost $8 billion of commonwealth securities, according to Morningstar Inc. data. On-island investors hold about $15 billion, according to Backyard Bondholders, which is negotiating with Puerto Rico on behalf of residents.

Holders of bonds issued by the island's Government Development Bank said that they filed a motion to ensure that they may continue to pursue challenges to the moratorium. The plaintiffs are funds managed or advised by Brigade Capital Management, Claren Road Asset Management, Fir Tree Partners LP, Fore Research & Management and Solus Alternative Asset Management.

Missed Payments

Along with its general obligations, the Puerto Rico Infrastructure Financing Authority is defaulting on a $77.1 million payment on rum-tax bonds, the Puerto Rico Highways and Transportation Authority is skipping a $4.4 million payment and the Puerto Rico Public Finance Corp. is omitting $1.4 million, according to the GDB. The Puerto Rico Public Buildings Authority will make a partial payment of $151.8 million using reserve funds, leaving $25 million unpaid.

The Puerto Rico Aqueduct and Sewer Authority, the island's main water utility, will pay $135 million of principal and interest, according to the GDB. Puerto Rico and bondholders reached a forbearance agreement on another $12.7 million due on the water agency's rural development bonds, which are guaranteed by the commonwealth.

Puerto Rico's default is the first payment failure from a state-level borrower on debt backed by the full power to raise taxes since Arkansas in 1933. Because the commonwealth's crisis is unique, there hasn't been any broader impact on the municipal-bond market, a haven where prices have been rising as money floods into the safest assets.

Bloomberg Business

by Michelle Kaske and Alexander Lopez

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Puerto Rico Bill Passes Senate.

WASHINGTON—Senate approval of debt-relief legislation for Puerto Rico on Wednesday paved the way for President Barack Obama to sign the bipartisan bill into law before Friday, when Puerto Rico's government says it will default on some of its most senior debt payments.

The legislation, which the Senate passed on a 68-to-30 vote, creates a process to guide what could be the largest municipal-debt workout in U.S. history. The House approved the measure earlier this month.

Puerto Rico's government has begun defaulting on $70 billion in debts and says the territory will be unable to make $2 billion in debt payments due Friday. The legislation doesn't authorize or prevent a default, but it would provide the island with a stay against creditor litigation.

The bill won majorities within both parties in the House and in the Senate, and the White House strongly backed the bill.

The legislation has been a rare instance of bipartisan compromise on Capitol Hill, a feat made more remarkable by the fraught and technically complex subject matter. Congress, for example, deadlocked this week over how to approve funding to combat the Zika virus.

"In a world where people have given up on Washington to deal with technical, complicated, controversial things, it ought to be a moment of some encouragement," Treasury Secretary Jacob Lew said in an interview Wednesday.

Earlier this year, many observers doubted Congress would take swift action on Puerto Rico, but the measure emerged because of the strong backing of House Speaker Paul Ryan (R., Wis.), who negotiated the compromise with Mr. Lew after committing to finding a solution with House Minority Leader Nancy Pelosi (D., Calif.) at the end of last year.

In recent days, Treasury officials voiced alarm over a looming race to the courthouse that they said would be hard to stop if the bill wasn't approved by Friday, potentially forcing cuts in public services in Puerto Rico.

U.S. hedge funds that own the island's most senior bonds sued earlier this month to block a local debt-moratorium law, arguing that their bonds are "required to be paid first in times of scarcity, ahead of even what government deems 'essential services.'"

Treasury officials said the lawsuit hinted at the likelihood that investors would seek an injunction in the event of a default that would force Puerto Rico to cut public services to pay its constitutionally prioritized debts.

"If anyone had any doubt about what would happen on July 1, the lawsuit…puts those doubts aside," Antonio Weiss, a Treasury counselor, said last week.

Republicans have argued the measure was necessary to prevent a taxpayer bailout of the island down the road.

Some bond investors and outside political groups spent millions of dollars on a lobbying effort to kill the debt-relief bill, which could force them to accept larger upfront losses on their investments. Some bondholders say the island's government, with the blessing of the Treasury Department, has made Puerto Rico's difficulties worse by threatening to default on debt. They say the territory has exaggerated its financial difficulties.

Labor unions also opposed the bill.

The legislation authorizes a seven-member oversight board, appointed by Mr. Obama with input from Congress, to oversee the territory's finances and approve any court-supervised debt restructuring.

THE WALL STREET JOURNAL

By NICK TIMIRAOS

Updated June 29, 2016 8:03 p.m. ET

Write to Nick Timiraos at nick.timiraos@wsj.com

Puerto Rico to Default on Constitutionally Guaranteed Debt.

Puerto Rico will default on its constitutionally guaranteed debt for the first time Friday by failing to make most of some $1 billion in payments due, officials said on Friday.

The island's Government Development Bank said the territory faces an imminent cash crunch and that its cash balances have dropped to "dangerously low" levels. As a result, the government isn't likely to make any of the $779 million payment on general obligation bonds due Friday.

"Even if the commonwealth were to devote every last penny" in its operating account to Friday's debt payments, "it would still owe holders of the public debt hundreds of millions of dollars," the GDB said in a statement.

The government said Friday that even after it employs certain emergency measures to delay other payments to suppliers, which it has done in the past to scrape together the cash to pay bondholders, the island could still run out of money in August or September.

Puerto Rico's benchmark general obligation bond prices were up slightly Friday, with bonds selling for as much as 67 cents on the dollar compared with 65 cents on Monday. Analysts said the slight uptick in prices, which began Thursday, is likely a response not to Friday's default but to the enactment of federal restructuring legislation that authorizes the creation of a fiscal control board to oversee a debt work-out.

"I guess it's being viewed as a positive that Congress passed the bill," said Dan Solender, director of municipal bond management at Lord Abbett. "The big question is 'what is the control board going to focus on and how are they going to prioritize?'"

The restructuring legislation, which President Barack Obama signed Thursday, doesn't provide any mechanism to avoid such a default. Instead, it gives the island a stay against creditor litigation.

A default would force the three major insurers backing Puerto Rico's debt to pay out as much as hundreds of millions of dollars to bondholders. Ambac Financial Group backs $122 million in Puerto Rico debt due Friday, company disclosures show. National Public Finance Guarantee Corp. backs $173 million in general obligation debt coming due Friday, records show. Assured Guaranty Ltd.

backs $428 million coming due in the third quarter, most of it also due Friday.

All three insurers have money set aside for such claims. Insurers agree to pay only the amount due on the day it is due, not to accelerate payment on the defaulted bonds.

The law signed by Mr. Obama on Thursday doesn't commit any federal funding for the territory, meaning the bulk of any fiscal readjustment will fall on the island's creditors, government and residents. It empowers a seven-member oversight board, appointed by the president with the input of congressional leaders, to supervise a financial overhaul with the authority to initiate debt restructuring.

Puerto Rico's government for weeks has said that it would be unable to make debt payments, in part because it hasn't been setting aside reserves. Still, some analysts have said the island would find a way to make the most senior payments, repeating a pattern seen over the past year in which the island said it couldn't afford to pay debt but drew on reserves and took other emergency steps to make payments.

Nearly $2 billion in bond payments is due Friday, the majority of which are bonds protected by a constitutional lien on the island's revenues. The territory is unlikely to make more than $900 million of the $2 billion in payments, including all of the interest and principal due on general obligation bonds.

The island has been in a recession for most of the past decade and has seen a large drop in its population as residents, who are U.S. citizens, leave for the mainland.

"The market has been waiting for this default for two years, but really it's been 15 years in the making," said Matt Fabian, partner at research firm Municipal Market Analytics. "These defaults now are essentially Puerto Rico impounding funds for working capital."

Mr. Fabian said the defaults "will weigh on market psychology regardless of how prepared people are."

Puerto Rico has amassed nearly $70 billion in debt across more than a dozen different issuers. The island had become "a colony of Wall Street," said Gov. Alejandro Garcia Padilla at a news conference Friday in San Juan. With Friday's default and the new federal legislation, "we are starting the process of putting it back in the hands of Puerto Ricans," he said.

Creditors have raised concerns that the federal legislation removes any urgency for the territory to continue good-faith efforts to make payments.

But other officials, including at the Treasury Department, have warned that the island lacked the resources to make the payments.

Without the legal stay in place before Friday to prevent a court from ordering payments to be made ahead of essential services, the island's debt crisis would have grown "much worse and might have been unsolvable," said Treasury Secretary Jacob Lew on Wednesday.

THE WALL STREET JOURNAL

By HEATHER GILLERS and NICK TIMIRAOS

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Write to Heather Gillers at heather.gillers@wsj.com and Nick Timiraos at nick.timiraos@wsj.com

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- Kroll Bond Rating Methodologies (see Finance, below).
- Why SIFMA, BDA Want Shorter Dealer Closeout Timeframes.
- Hawkins Advisory: MSRB Rule G-42.
- MSRB: New Rules Coming this Summer.
- Colleges Find Attractive Option in P3 Funding.
- CDFA // BNY Mellon Development Finance Webcast: 501(c)3 Nonprofit Financing.
- *Village of Montgomery v. Fidelity and Deposit Co. of Maryland* – Appeals court holds that developer that had purchased subdivision property from initial developer's bankruptcy estate was primarily liable to Village for the installation of certain public improvements in the subdivision covered by issuer of subdivision bond and that issuer, as surety, was only secondarily liable.
- And finally, the court in *State v. Vaduva* ruled that the city panhandling ordinance was violated only when an individual requests money for his personal use, not when raising money for charity. That sound you hear is the collective sigh of relief from Salvation Army Santas everywhere. "You! Fat Man! Down on the ground!

BALLOT INITIATIVE - CALIFORNIA

Brown v. Superior Court

Supreme Court of California - June 6, 2016 - P.3d - 63 Cal.4th 335 - 203 Cal.Rptr.3d 1

Challengers to amendment to proposed ballot initiative measure sought writ of mandate requiring Attorney General to reject amendment.

The Superior Court granted writ. Proponents of amendment sought emergency relief in the Supreme Court.

The Supreme Court of California held that:

- Statute governing amendments to proposed measures did not preclude substantive amendments and was intended to facilitate feedback, and
- Amendment was reasonably germane to theme, purpose, or subject of original measure.

Statute governing process by which proposed ballot initiative measure was submitted for public comment, which specified that any amendments submitted for comment must be reasonably germane to the theme, purpose, or subject of measure as originally proposed, did not preclude substantive amendments and was intended to create comment period to facilitate feedback, rather than broad public forum. Comment period was intended to allow public to suggest amendments or correct flaws, limitation imposed on amendments was a lenient one, and by ensuring that comments would be transmitted directly to proponents, legislature signaled its intent that comments were for the benefit of proponents, not for the purpose of fostering public discussion.

Amendment to proposed ballot initiative measure that replaced original amendment to statute governing parole hearings for prisoners under the age of 23 at time of offense with a broader constitutional amendment modifying parole consideration for all state prisoners convicted of non-violent felony offenses was reasonably germane to theme, purpose, or subject of original measure. Both proposals addressed parole suitability review with an eye toward making such review available at earlier stage than under existing law, both proposals were intended to benefit prisoners who had rehabilitated themselves in custody and to reduce cost of incarceration, and amended proposal applied to same class of offenders as original proposal, so long as their offense was nonviolent.

SUBDIVISION BOND - ILLINOIS

Village of Montgomery v. Fidelity and Deposit Co. of Maryland

Appellate Court of Illinois, Second District - April 21, 2016 - Not Reported in N.E.3d - 2016 IL App (2d) 150571-U - 2016 WL 1621971

After a subdivision developer, Kimball Hill, Inc. (KHI), went bankrupt, the Village of Montgomery (Village), demanded that Fidelity and Deposit Company of Maryland (Fidelity), complete certain public improvements secured by a subdivision bond Fidelity had issued to KHI. After Fidelity refused, the Village sued Fidelity, alleging breach of the subdivision bond.

TRG Venture Two, LLC (TRG), had purchased all of KHI's remaining property in the subdivision from KHI's bankruptcy estate. Fidelity filed an amended third-party complaint against TRG, alleging that TRG, as successor owner, was primarily liable to the Village for the installation of certain public improvements in the subdivision covered by Fidelity's subdivision bond and that Fidelity, as surety, was only secondarily liable. Fidelity brought claims for indemnity/reimbursement, exoneration, and quia timet /collateralization, all of which were premised on its argument that it adequately pleaded a surety relationship between it and TRG.

TRG moved to dismiss Fidelity's third-party complaint and the trial court granted TRG's motion and dismissed Fidelity's complaint with prejudice. (Subsequently, the Village and Fidelity settled their dispute.) Fidelity appealed the dismissal of its third-party complaint against TRG, alleging primarily that the Illinois Municipal Code (65 ILCS 5/1–1–1 et seq. and/or an annexation agreement between the Village and KHI reflect that TRG, as successor in title to KHI's holdings, assumed KHI's obligations to install public improvements in the subdivision and that TRG's obligations are primary and Fidelity's obligations are only secondary. For the following reasons, we reverse and remand.

The appeals court reversed, holding that the trial court erred in dismissing, for failure to state a claim, surety's complaint seeking, among other relief, indemnity/reimbursement from successor owner of subdivision for payments for public improvements that surety had secured with bond it issued to initial developer, who had defaulted. Annexation agreement between municipality and initial developer, which is binding on successor owners, provided that initial developer would not be released of its obligations until property was conveyed and substitute bond was posted, the latter of which never occurred. Although the initial developer was never released, agreement's substitute-bond provision did not apply to successor owner, who, upon acquisition of property, became primarily liable for payment for the improvements and surety remained secondarily liable. Further, surety stated a claim for indemnity/reimbursement.

MUNICIPAL EMPLOYMENT - INDIANA

Claussen v. Pence

United States Court of Appeals, Seventh Circuit - June 10, 2016 - F.3d - 2016 WL 3213036

Municipal employees, who simultaneously held elected office in municipality, brought action against Governor of Indiana, challenging, under First Amendment and Equal Protection Clause, Indiana law prohibiting persons from simultaneously holding elected office and being employed as civil servants in same unit of government.

The United States District Court granted Governor's motion to dismiss for failure to state claim. Employees appealed.

The Court of Appeals held that:

- Law did not implicate fundamental rights;
- Indiana's interests in law outweighed law's burden on employees' First Amendment rights;
- Law's prohibition on civil servants holding elected office, without containing similar prohibition for government contractors, was rationally related to Indiana's interest in avoiding corruption.

EMINENT DOMAIN - KENTUCKY

[Hedgespeth v. Taylor County Fiscal Court]()

Supreme Court of Kentucky - May 5, 2016 - S.W.3d - 2016 WL 2609298

Landowner filed suit against the Taylor County Fiscal Court, alleging ownership of the land where bridge would be constructed, articulating actions to quiet title and for inverse condemnation, and seeking temporary injunction to prevent the construction of the new bridge.

The Taylor Circuit Court denied the request for a temporary injunction, and landowner sought interlocutory relief. The Court of Appeals ruled that the trial court did not abuse its discretion in denying landowner's request for a temporary injunction. Landowner filed motion for interlocutory relief.

The Supreme Court of Kentucky held that landowner was not entitled to temporary injunction to prevent the construction of the new bridge.

Landowner, who alleged ownership of the land where the new bridge would be constructed, was not entitled to temporary injunction to prevent the construction of the new bridge. Deeds and maps indicated that the road was public in nature as opposed to being landowner's private property, and thus, landowner did not have a substantial likelihood of prevailing on the underlying merits, public's need for continued use of the bridge and a safe replacement was not outweighed by landowner's desire to delay construction, and if entry of agents of the Taylor County Fiscal Court onto landowner's land was later found to be wrongful, landowner could seek redress for his injuries through a request for damages commensurate with the injury caused.

CHARTER AMENDMENTS - MARYLAND

Mayor and City Council of Hagerstown v. International Ass'n of Firefighters, Local 1605

Court of Special Appeals of Maryland - March 21, 2016 - Not Reported in A.3d - 2016 WL 1098755

"Propelled apparently by the efforts of the leaders and membership of the International Association of Firefighters (IAFF), Local 1605, a sufficient number of verified signatures of registered voters in the City of Hagerstown were garnered in 2014 on a petition to amend the City Charter (and requiring the Mayor and City Council (hereinafter "the City")) to enact implementation provisions to install collective bargaining and binding arbitration as to non-management employees of the City's police and fire departments."

"The proposed Charter amendment was to have been adopted by the City or placed on the ballot of the next general City election for a thumbs-up or down vote by the registered voters; however, the City declined to adopt the proposed amendment or a resolution setting a date for a referendum vote by the City electorate. The City justified this inaction on the basis that the proposed amendment was not appropriate charter material and/or was an impermissible delegation of the local legislature's powers. To no one's surprise, litigation ensued."

"Local 16051 filed a complaint in the Circuit Court for Washington County seeking injunctive, mandamus, and declaratory relief to compel the City to adopt the proposed Charter amendment or set a date for a referendum vote of the municipal electorate. The City responded with a counter-complaint asking for a declaration that the binding arbitration language in the proposed Charter amendment was not proper charter material; an impermissible delegation of the Mayor and Council's legislative authority; and, illegal otherwise."

The Circuit Court granted Local 1605's motion for summary judgment, concluding that the proposed charter amendment constituted proper charter material and was not an unlawful delegation of the legislative power of the City Council. City appealed and Court of Special Appeals affirmed.

"The proposed charter amendment remains completely within appropriate charter mandates. It leaves the City sufficient legislative leeway and authority. Under the operation of the charter, the proposed amendment is not considered legislative in nature and should be put to the referendum process for action by the voters, if the City hasn't the political will to adopt it. The conclusion by the Court of Appeals in Atkinson makes clear that a charter amendment which allows for the local legislative body to retain its lawmaking power is proper charter material and an appropriate delegation."

LIABILITY - NEW YORK

Costa v. State

Supreme Court, Appellate Division, First Department, New York - May 26, 2016 - N.Y.S.3d - 2016 WL 3006030 - 2016 N.Y. Slip Op. 04119

Construction worker brought action against city for injuries he suffered when metal beam collapsed and struck him while he was performing a stair renovation on property that the state was the record title holder of, but which was maintained by a public benefit corporation created by the Hudson River Park Act.

City moved for summary judgment, and the motion was granted. Claimant moved for leave to file a late notice of claim against state. The Court of Claims denied motion. Claimant appealed.

The Supreme Court, Appellate Division, held that state was not owner of property for purposes of scaffold law and Labor Law provision imposing certain safety requirements on contractors and owners involved in construction, excavation, or demolition work.

Under Hudson River Park Act legislature intended to exempt state as registered title holder to property from any liability that would otherwise have flowed from its ownership of property that was turned over to public benefit corporation created by Act, and thus state was not owner of property for purposes of scaffold law and Labor Law provision imposing certain safety requirements on contractors and owners involved in construction, excavation, or demolition work at time of accident involving collapse of metal beam which struck construction worker while he was working on property.

MUNICIPAL ORDINANCE - OHIO

State v. Vaduva

Court of Appeals of Ohio, Second District, Greene County - June 10, 2016 - N.E.3d - 2016 WL 3219670 - 2016 -Ohio- 3362

Pro se defendant was convicted by jury in Municipal Court of panhandling in violation of city ordinance.

Defendant appealed.

The Court of Appeals held that:

- Definition of “panhandling” in ordinance requires a request for money, items of value, or a donation to be for the requestor’s personal use;
- Trial court’s omission of personal use element in its jury instructions created a manifest miscarriage of justice; and
- Court of Appeals would decline to review defendant’s waived constitutional challenge to ordinance.

Definition of “panhandling” in city ordinance prohibiting a person from requesting verbally, in writing, or by gesture or other actions, “money, items of value, a donation, or other personal financial assistance”, requires a request for money, items of value, or a donation to be for the requestor’s personal use, and does not include requests for money for a charity.

Misinformation provided to jury during closing arguments in panhandling trial, and trial court’s omission of the personal use element in its jury instructions, created a manifest miscarriage of justice, warranting reversal of conviction and remand; jury was led to believe that one engages in panhandling under city criminal ordinance by simply making any request for money, and defendant was requesting money for charity.

STATUTE OF LIMITATIONS - PENNSYLVANIA

Township of Salem v. Miller Penn Development, LLC

Commonwealth Court of Pennsylvania - May 26, 2016 - A.3d - 2016 WL 3023809

Township brought action against subdivision developer to remedy defects in subdivision street.

The Court of Common Pleas entered judgment for township.

The Commonwealth Court held that:

- Under the doctrine of nullum tempus occurrit regi, statute of limitations did not bar township’s action;
- Township lacked claim in equity for specific performance; and

- Evidence was sufficient to support award of damages only for paving roads.

Under the doctrine of nullum tempus occurrit regi, statute of limitations did not bar township's action against subdivision developer regarding defects in subdivision roads. Ensuring adequate construction of streets was purely public purpose within township's obligations to its citizens rather than a voluntary contractual undertaking, township had duty to require that developer complete street in accordance with subdivision and land development ordinance, and township had statutory right to recover cost of improvements from developer.

Township lacked any cause of action in equity action to compel specific performance to require subdivision developer to fix defects in subdivision streets or post a bond to cover that work. Neither county subdivision and land development ordinance nor statute authorized equitable action, and township's damages were capable of ascertainment and proof.

Evidence in township's action against subdivision developer regarding defective subdivision streets was sufficient to support award of damages only for repaving roads. While expert testified that there was no base installed and that entire road needed replacing, there was other evidence that a base was installed, that the primary defect was lack of compaction, and that township's engineers had proposed adding an extra asphalt wearing course layer as repair, and expert admitted that costs for paving unpaved cul-de-sac included utility relocation and excavation but that utilities had not been located and that he did not know what type of excavation would be involved.

EASEMENTS - MASSACHUSETTS

Melrose Fish and Game Club, Inc. v. Tennessee Gas Pipeline Co., LLC

Appeals Court of Massachusetts, Middlesex.June 20, 2016--- N.E.3d ----89 Mass.App.Ct. 5942015 WL 11023788

Fish and game club brought trespass action against gas pipeline company, alleging interference with an easement. Club and company filed cross motions for summary judgment.

The Superior Court Department granted company's motion and denied club's. Club appealed.

The Appeals Court held that:

- Company was estopped from denying existence of club's easement;
- Approval of a plan to pave part of a paper street did not frustrate the purpose of club's easement;
- Club's easement was not extinguished by planning board's approval of subdivision plan; and
- Club's action was not barred by laches.

Pipeline company was estopped from denying existence of fish and game club's easement of way over paper street across which company had built a natural gas pipeline facility. Lots owned by company and club had a common grantor, and recorded deed and plans clearly indicated that the club lots abutted the paper street.

Approval of a plan to pave part of a paper street did not frustrate the purpose of fish and game club's easement over a portion of the unpaved portion of the paper street across which gas pipeline company had built a natural gas pipeline facility, as would extinguish club's easement. Paving of a portion of a paper street did not make it impossible to pave more of it later.

Fish and game club's easement over paper street across which pipeline company had built a natural gas pipeline facility was not extinguished by planning board's later approval of subdivision plan which provided for paving a different part of the paper street. Decision to pave part of the paper street did not extinguish private easement rights in rest of the street, subdivision plan approvals could not act as a taking, and plan did not relate at all to club's lots.

Gas pipeline company was not prejudiced by fish and game club's 15-year delay in bringing trespass claim against company for company's interference with the club's easement over a paper street across which company had constructed a natural gas pipeline facility, and therefore, doctrine of laches did not apply. Company did not explicitly identify a detrimental change in its position or an injury to its legal rights resulting from club's delay, and the cost of building the facility and maintaining it were not the result of club's delay.

Kroll Public Finance: Special Tax Revenue Bond Rating Methodology.

Kroll Public Finance: Special Tax Revenue Bond Rating Methodology.

6/17/16

Kroll Public Finance: U.S. Local Government GO Methodology.

Kroll Public Finance: U.S. Local Government GO Methodology.

6/17/16

Kroll Public Finance: Private, Not-For-Profit U.S. Higher Education Rating Methodology.

Kroll Public Finance: Private, Not-For-Profit U.S. Higher Education Rating Methodology.

6/17/16

Kroll Public Finance: General Property Tax/Assessment Revenue Methodology.

Kroll Public Finance: General Property Tax/Assessment Revenue Methodology.

6/17/16

Kroll Public Finance: General Revenue Bond Methodology.

Kroll Public Finance: General Revenue Bond Methodology.

6/17/16

Kroll Public Finance: U.S. State and Local Government Abatement Lease Rating Methodology.

Kroll Public Finance: U.S. State and Local Government Abatement Lease Rating Methodology.

6/17/16

Kroll Public Finance: U.S. General Airport Revenue Bond Rating Methodology.

Kroll Public Finance: U.S. General Airport Revenue Bond Rating Methodology.

6/17/16

Kroll Public Finance: U.S. Municipal Water and Sewer Revenue Rating Methodology.

Kroll Public Finance: U.S. Municipal Water and Sewer Revenue Rating Methodology.

6/17/16

Kroll Public Finance: U.S. Public Toll Roads, Bridges & Tunnels Revenue Bond Rating Methodology.

Kroll Public Finance: U.S. Public Toll Roads, Bridges & Tunnels Revenue Bond Rating Methodology.

6/17/16

Advisory Committee Recommends Electronic 8038 Filing, More Targeted Enforcement to IRS.

The Advisory Committee on Tax-Exempt and Government Entities provided its annual set of recommendations to the IRS recently. Among other things, the panel recommended that the IRS implement electronic filing of Form 8038s and decrease the frequency of random audits, shifting instead to more targeted audits of tax-advantaged bond issues.

The Committee is a group of private sector individuals that work in various areas under the jurisdiction of the IRS Tax-Exempt and Government Entities. The Committee provides an organized forum for discussion between IRS officials and the private sector; three of the Committee's members come from the tax-advantaged bond community.

The Committee provides annual reports to the IRS Commissioner of the Tax-Exempt and Government Entities division (currently Sunita Lough), and the section of the Committee from the tax-advantaged bond community makes recommendations for continuous improvement and enhancing resources in the tax-advantaged bond market. Two of the Committee's comments are worth discussing.

The Committee recommends that the IRS should adopt electronic filing for Forms 8038.

Issuers of tax-advantaged bonds file one of the forms in the 8038 series to report the issuance of tax-advantaged bonds (or, in the case of direct pay tax-advantaged bonds, they file Form 8038-CP to request a direct payment) to the IRS. As the parties to a tax-advantaged bond transaction rush to close the deal, they often push the filing of the 8038 until after the bond deal closes; the due date can be as far off as several months depending on where the issuance date falls in a calendar quarter. And in some cases, the parties forget to do it altogether. The Form is filed via snail mail to the IRS Service Center in Ogden, Utah. While at one time the IRS would send mail confirmation that it had received the applicable 8038, it no longer does so. It is difficult, if not impossible, to contact the IRS to affirmatively confirm that the IRS received the form. Often, the only confirmation available comes when the IRS writes to ask for missing information or to ask the parties to correct information on the form that is incorrect. Once the IRS receives the forms, they are presumably scanned or entered by hand into the IRS's computer system.

The Committee recommends that the IRS allow electronic filing of 8038s. This is a great idea. While it is clear that the IRS faces a tightened budget from Congress, spending money to improve the IRS's technology so that it can accept electronic filing of 8038s should make the IRS operate more efficiently and allow it to save money elsewhere. The IRS already allows electronic filing of income tax returns for various taxpayers, so it should not be a stretch to extend the technology to information returns for tax-advantaged bonds. Electronic filing would prevent errors in transcription and allow IRS employees to focus their efforts on other tasks.

An even better approach would be to take the "interactive form" approach that the IRS has recently implemented for Forms 8038-CP and expand it to all 8038s. The new "interactive" Form 8038-CP can be accessed here. It contains some very helpful features for 8038-CP filings that would greatly benefit issuers filing other 8038s to report the issuance of tax-advantaged bonds. For example, the interactive form (best viewed in Internet Explorer), contains a number of error-checking features. After a bit of monkeying around, I discovered that the form will tell you if you've accidentally entered an interest payment date that precedes the issue date, if you've improperly done the multiplication required to calculate the amount of the subsidy payment, and many other helpful checks. The form also contains a "Verify and Print" button that allows for final confirmation that everything is in place before filing the form. (But you do still have to print the form and mail it in.) The ultimate goal should be to combine both the interactive form and electronic filing of 8038s.

The Committee recommends that the IRS move more resources away from random audits and shift them to targeted audits.

In addition, putting the information on the 8038 into an electronic format from the beginning should allow the IRS to more easily review trends in 8038 filing and better determine particular topics in which to concentrate its enforcement efforts. As the Committee Report notes, some stakeholders might find this unappealing on a superficial level because it arguably makes it easier for the IRS to audit bond issues. But this result would be in everyone's best interest. Anyone who has slogged through a random audit of a tax-exempt bond issue that has no defects, and the attendant time-consuming gathering of papers and payment of legal bills to defend the audit, knows that it would be more appropriate and efficient for the IRS to be able to more efficiently parse the 8038s that it receives to determine which truly need a further look.

For this reason (and others), the Committee recommends that the IRS increase its use of targeted audits. This is also a good idea. The first Information Document Request of the audit routinely contains over 30 questions that require a great many pieces of information simply to acquaint the IRS agent with the transaction in the first place.

It remains to be seen whether either suggestion will be adopted, but both suggestions would be an improvement.

The Public Finance Tax Blog

by John W. Hutchinson

June 23, 2016

Squire Patton Boggs

Colleges Find Attractive Option in P3 Funding.

DALLAS — Cash-strapped colleges and universities are finding public/private partnerships as an attractive avenue for financing student housing and other campus infrastructure projects, according to Fitch Ratings.

The benefits of a P3 financing include an efficient construction process and less operational risk for the school, Fitch analysts said in a new report on college P3s.

“Recent P3s by some colleges have been able to procure funds more quickly and efficiently than traditional sources while offloading risk to the private sector and preserving colleges' balance sheets,” said Fitch senior director Seth Lehman, chief analyst on the report.

College campuses are like small cities that provide a number of public services that can generate the revenues sought by private investors, Lehman said.

“It's not for every university,” Lehman said. “The schools have to be willing to give up some control to the private investors, like the ability to set dormitory fees.”

Higher education P3 ratings are likely to fall within the triple-B category but higher ratings are possible for P3s with robust coverage and little cost risk, he said.

“Strong contractors and sufficient third-party security packages can also result in a higher rating for higher ed P3s” Lehman said.

Large public flagship universities with good credit ratings are less likely to turn to P3 financing than are the smaller schools, according to Lehman.

“The larger schools with good access to the municipal market often don’t see that they can justify it but secondary institutions are less certain to find funds for renovations or other infrastructure needs,” he said.

A $1.14 billion campus expansion project at the University of California at Merced announced in November 2015 could be a model for future higher education P3 projects, Lehman said.

“That’s one that a lot of people are going to be looking at,” he said. “It’s certainly one of the larger ones you’ll see in the higher ed market.”

The UC Merced 2020 Project will be financed with $600 million of University of California revenue bonds that the UC Board of Regents will be asked to approve in July and $157 million of UCMerced funds.

Plenary Properties Merced was selected Wednesday as the winning bidder for the 39-year concession to build and operate almost 1 million square feet of new facilities on the campus located near Yosemite National Park.

Plenary Group, an international infrastructure developer, is the lead partner and equity provider.

The consortium of international financial, engineering, and design partners will contribute $386 million of equity to the four-year construction effort and receive $51 million per year of availability payments for 35 years.

The UC Merced project will include classrooms and housing for 1,700 students as well as recreational areas, dining spots and walkways. Work will begin later this year and be completed by 2020.

The new buildings will feature classrooms and meeting spaces on the ground floors and student residences on the upper levels.

The Merced deal is the largest P3 of its kind in the U.S. higher education sector and the first time that the UC system will use a single private development team for a multiyear, multi-building project, said UC president Janet Napolitano.

The work will be completed nearly twice as fast as a traditional public construction project, she said.

“UC Merced is poised to become a model for our other campuses as we look for the most efficient ways to construct, operate and maintain facilities that enable us to pursue our teaching, research and public service missions,” Napolitano said.

UC Merced is the newest and smallest full-service campus in the UC system, with 6,685 students. The expansion project will provide space for 10,000 students.

The Bond Buyer

By Jim Watts

June 16, 2016

[CDFA // BNY Mellon Development Finance Webcast: 501(c)3 Nonprofit Financing.]

501(c)3 Nonprofit Financing – Healthcare, Education, Tribal & Community Facilities in the Crosshairs

July 19, 2016
@ 1:00 pm Eastern

The non-profit, 501(c)3, community is a major driver of jobs, investment and community development throughout the country. However, 501(c)3 struggle with financing questions just like a for-profit enterprise. Thankfully, the toolbox for supporting non-profits is expansive. From 501(c)3 bonds and charter school finance corporations to tribal financing CDFIs and the highly popular USDA community facilities program, the resources to support non-profits are abundant. This month's special 2-hour CDFA // BNY Mellon Development Finance Webcast will unlock financing for 501(c)3s to demonstrated the variety and depth of financial tools available to drive development in your community.

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Senior Loan Officer
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House Blueprint for Tax Reform Worries Muni Pros.

WASHINGTON – House Republicans released a blueprint for tax reform that left some muni groups and experts concerned that the tax-exempt status of municipal bonds may be in jeopardy.

The 35-page plan, which at no point directly references municipal bonds, was released Friday by House Speaker Rep. Paul Ryan, R-Wis., under his "A Better Way" agenda. The blueprint includes several significant, though not unexpected reforms to the current tax code: A reduction of the corporate income tax rate to 20%; a reduction of the current seven-bracket individual income tax rate to three brackets with a top rate of 33%; and a repeal of the Alternative Minimum Tax for both corporations and individuals.

Because the blueprint doesn't mention munis directly but does mention repealing unnamed special-interest provisions, Jessica Giroux, general counsel and managing director for Bond Dealers of America, said the organization was concerned that munis' tax exemption could be included.

Republicans have proposed several tax reform plans that limit or eliminate exclusions like tax-exempt bond interest in an effort to lower tax rates and broaden the tax base in the past.

“It’s definitely a real concern,” Giroux said. “The general statements they’re making now are going to appeal to a lot of people, but we’re going to be more concerned with the details. We can glean that tax exemption is not safe.”

She said BDA will continue its effort to educate both staff and members of Congress about the importance and value in maintaining the tax-exempt status of municipal bonds.Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said her organization also noted the lack of any explicit reference to munis in Friday’s blueprint. She said that GFOA will continue to stress the importance of their tax-exempt status to lawmakers.

“I hope not,” Brock said of any potential loss of tax exemption. “As this plan starts to materialize, we’ll continue to maintain the importance of municipal bonds and the partnership between federal and state governments.”

Rep. Kevin Brady, R-Tex., who chairs of both the House Ways and Means Committee and its Task Force on Tax Reform, said Friday that lawmakers will continue to seek input from taxpayers and lobbying groups ahead of a formal tax reform bill Republicans hope to introduce in 2017. He said the blueprint will continue to be amended to help achieve a “fairer and simpler” tax code.

“Tax reform only happens once in a generation,” Brady said. “House Republicans believe it is time for a change.”

The plan would reduce the corporate rate to 20% from 35%, which Brady said would encourage businesses to remain in the United States rather than relocate overseas. It would also condense the current seven-bracket individual income tax rate with a top rate of 39.6% into three brackets of 12%, 25% and 33%, and require taxpayers to submit returns on a postcard.

Like the Tax Reform Act of 2014, the legislation introduced by former Ways and Means Committee chairman Dave Camp, R-Mich., the current proposal would repeal the corporate and individual alternative minimum taxes (AMT).

This, Giroux said, could spell positives for bonds.

High-income earners as well as private activity bonds are subject to the AMT, meaning taxpayers who invest in the latter must include interest earned on the bonds in their modified adjusted gross income. Some of that interest is subject to the current federal income tax rate of 28%, which shrinks the yield on those bonds.

Eliminating the AMT removes the need to determine if investing in the bonds makes sense, she said,but if interest on municipal bonds eventually becomes taxable, the change in AMT will be a moot point.

Speaking at a news conference at the Capitol Friday, Brady said the Republicans’ proposed “pro-growth” tax code is “built for the growth of paychecks, growth of local jobs and economy, and the growth of America’s economy.”

“I’m convinced our nation’s biggest threat is government debt and deficits,” Brady said. “Spending cuts will get us halfway back to a balanced budget but we’ll need a much stronger economy to finish the job and start paying down the national debt. Tax reform can get this economy going again.”

Ryan, also speaking to reporters Friday morning, said the proposed tax code is being developed to not only make the tax code less burdensome, but to also reform the Internal Revenue Service. It would include the installation of a new IRS commissioner, he said.

"All of these things are going to grow our economy and grow jobs," Ryan said. "And all of these things will fix our tax code."

House Republicans first announced plans to reform the tax code at their annual issue conference in January before announcing the formation of the committee-led task force in February. The task force released a set of principles in March where it sought to limit deductions, exclusions and credits in the current tax code as well as close existing loopholes.

The task force held several hearings throughout the spring that focused on shifting from an income tax base to a consumption or cash-flow tax base. It also discussed as well as legislation targeting the income tax base.

Its policy reform goals include lowering tax rates for families, small businesses and corporations; eliminating special-interest carve-outs; simplifying the tax code; reducing the double taxation of savings and investment; and preventing American businesses from relocating overseas for tax purposes.In an op-ed published in The Wall Street Journal Friday, Brady said the IRS will be redesigned into three independent units: one for business taxation, another for individual taxation, and one to help resolve tax issues in the form of a small-claims court.

"It delivers simplicity and fairness, yet is built primarily for growth in jobs, paychecks and America's economy," Brady wrote.

In both the blueprint and at Friday's news conference, Republicans said efforts to implement these changes are targeted for 2017, as most lawmakers and experts have concluded that tax reform is not probable in an election year.

The blueprint marked the first major tax reform proposal since Camp's, which drew criticism from muni experts because of its curbing of the muni exemption in order to pay for other aspects of his plan. That bill would have capped the muni exemption at 25% and eliminated the tax exemption for qualified private activity bonds and advance refunding bonds issued after 2014.

Earlier this year, Rep. Bob Goodlatte, R-Va., introduced the Tax Code Termination Act (H.R. 27), which would repeal the current tax code at the end of 2019 and would require Congress to adopt a new tax system by July of that year. It is currently in front of the House Rules committee.

Ryan's "A Better Way" agenda also includes reforms to improve poverty, national security, the economy, health care and the Constitution. House Republicans introduced their tax proposal before a one-week recess set to begin Monday and roughly a month before the party's national convention.

The Bond Buyer

By Evan Fallor

June 24, 2016

Why SIFMA, BDA Want Shorter Dealer Closeout Timeframes.

WASHINGTON – Dealer groups are urging the Municipal Securities Rulemaking Board to cut in half a proposed requirement that would mandate municipal securities transactions to be closed out within 20 days of settlement.

The change to a 20-day closeout requirement from the current 90-day recommendation under the MSRB Rule G-12 on uniform disclosure would lessen the effect of interdealer transaction failures on the market, the MSRB has said. The self-regulator filed the proposed change for approval with the Securities and Exchange Commission on May 11.

Mike Nicholas, Bond Dealers of America's chief executive officer, and Leslie Norwood, associate general counsel and co-head of munis for the Securities Industry and Financial Markets Association, agreed with the MSRB's reasoning for shortening the closeout timeframe.

However, they said in comment letters to the SEC that they believe the mandatory close-out deadline should be shortened to no later than 10 calendar days after settlement. The groups are also proposing that there be a caveat allowing a dealer to extend that deadline another 10 days, for a total of 20 days, if the dealer gets the consent of the buyer.

"We feel it is better for all market participants, the dealers as well as the investors, if failed transactions get settled sooner rather than later," Norwood said. SIFMA believes the majority of dealers would close out the transactions within the 10-day window because "the exemption to go another 10 days is not a slam dunk where it is just something that the dealer opts into," she added.

The MSRB originally proposed amending the rule to require transactions are closed out no later than 30 days after settlement. SIFMA responded similarly to that proposal, recommending the period be cut to 15 days with the possibility of an extra 15 days if the buyer consents. The MSRB chose against the 15-day timeframe because it said it was concerned small dealers would be overburdened by a shorter timeline and because it wanted to give all dealers the same fixed timeframe.

Norwood, in her most recent comment letter, said that after extensive discussions with SIMFA's broad range of broker-dealer members, the group feels the MSRB's concerns are not warranted.

The MSRB is also seeking rule changes that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

In addition to their recommendations about the closeout timeframe, BDA and SIFMA also asked the MSRB to provide further guidance as to how the MSRB's multiple changes would work in practice.

SIFMA brought up an issue it had noted in past comments, saying it would be "extremely helpful" to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won't agree to do so. Dealers aren't allowed to use their discretion when working with self-directed accounts, SIFMA said, though the MSRB does have the ability to mandate dealers act as well as the ability to provide regulatory relief.

BDA is asking for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). The system facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

Nicholas wrote that the timeframe under the G-12 amendment would work for ACATS, though he said ACATS transfers are based on a “validation” date as opposed to a “settlement” date. Fail transfers can additionally be closed out by a fail reversal if the receiving firm cannot buy-in the security due to a lack of market availability, but the portion of G-12 that would be amended doesn’t mention fail reversals as a closeout process, he wrote.

Dealers would have a 90-calendar day grace period after the MSRB’s rule change is approved to resolve all outstanding dealer fails.

The Bond Buyer

By Jack Casey

June 24, 2016

After Brexit Rally, Munis to See Low Yields, Strong Demand.

In one of the biggest rallies in recent memory, municipal bonds surged on Friday after Britain voted to leave the European Union.

Yields on some top-rated municipals fell as much as 17 basis points to record low levels. Analysts said the move signaled that yields will remain near all time lows longer than anyone had expected and that negative U.S. interest rates may be on the horizon.

A New York muni trader who has been in the business for over 25 years said that Friday was one of the wildest trading days that he had ever seen.

“The flight to quality was crazy overnight and muni ratios got ridiculous cheap,” the trader said. “We pretty much had two types of buyers who came in and bought. We saw the mutual funds who were getting squeezed because they were getting higher coupons getting redeemed and taken out, which forced them to re-invest at lower yields. When they come in, they chase the market. But on top of that, we saw absolute low yields and attractive relative yields.”

While analysts saw Friday’s trading as just a one-day price movement, they also felt there were longer-term implications looming for the market.

“Today’s rally is an overreaction, no doubt” said Vikram Rai, CFA and head of municipal strategy at Citi. “But there is no doubt that Brexit will mean lower yields for a longer time.”

Rai said Federal Reserve Chair Janet Yellen is very cautious about roiling the financial markets by raising interest rates too early – and that she had waited and bypassed a chance for a June hike in order to study any possible effects of a Brexit yes vote.

Others also saw a cautious Fed ahead.

“With the news, it seems pretty likely you take the Fed off the table now,” said Jim Grabovac, senior portfolio manager at McDonnell Investment Management.

“It is off the table for July [and] unlikely conditions would warrant actions prior to the end of the year," Grabovac said. "Aside from the near-term shock, over the medium-term I think this will put pressure on rates to remain low and will stay persistent. This could also be seen as a positive for the dollar, and a stronger dollar would pressure U.S. inflation higher."

Municipal Market Data's Senior Market Analyst Randy Smolik also said he that a July rate hike by the Fed was probably off the table, but that doesn't mean the Fed won't move later in the year.

"There's no immediate satisfaction," he said, noting that Britain has up to two years to negotiate a withdrawal from the EU and that a lot could change in that time.

On the buy side, sources stressed both the short- and long-term consequences to the Brexit vote.

"The immediate impact is lower yields and higher dollar prices on most high to medium-quality bonds," said Michael Pietronico, chief executive officer at Miller Tabak Asset Management in New York City. "We sense 5% coupons will begin to lag as the ultra-high dollar prices will turn retail investors off."

Pietronico said his firm has long held that negative interest rates were heading to the United States. "We have been vocal on that call for months with our target for this to occur in the second half of 2017," he said. "If we are wrong on this call it will only be because it happens sooner.

"The United States economy cannot sustain growth with a strong U.S. dollar and the direct consequence of Brexit will be downward pressure on inflation here in America, and a Federal Reserve [that] will no longer even challenge the notion outwardly of raising rates again."

According to Friday's final read of Municipal Market Data's triple-A scale, the yield on 10-year benchmark muni general obligation fell 17 basis points to 1.36% from 1.53% on Thursday, while the 30-year muni yield declined 15 basis points to 2.08% from 2.23%. Both maturities are now at record low levels. At one point during the day, yields were down by as much as 20 basis points.

Markit said the effects from Brexit vote were felt throughout the market early on Friday, with yields on investment-grade bonds tightening 17 to 20 basis points from previous day's close.

According to Markit's evaluated bond pricing service (http://www.markit.com/Product/Pricing-Dat--Bonds-Municipal), yields on University of California, 5's of '46, tightened by 18 basis points.

And the rally was not isolated to top rated-munis, Markit said, adding that yields on lower rated Loma Linda University Medical Center, 5.25's of 56, tightening 14 basis points as well. Taxable California, 7.6's of 40, also rallied 10 basis points from previous day's levels.

Some analysts see a continued demand from buyers of municipal securities.

"The market for munis has been strong and this will only add to the dynamic," said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management. "I am not surprised the vote went that way, but I was surprised by the margin of Exit; it was a wider win than I thought would occur. What is happening today is a unwinding on the equity side."

Other market strategists agreed.

"I expect business as usual for munis after the dust of today's rally settles," Janney Municipal Strategist Alan Schankel said in an email on Friday. "As low as our rates look (munis and Treasuries), they are still above rates of Euro economies, some of which are negative (Switzerland and Germany)."

George Rusnak, Head of Global Fixed Income at Wells Fargo Wealth Management, saw a fair amount of trading volatility but said that was “both exacerbated and muted by this being a Friday in summertime,” when there is typically less trading being done.

He said he was not seeing the market have any liquidity problems, but added there was a bifurcation in munis, with some buyers gravitating toward a risk off trade while other looking moving into it as a risk on trade.

Munis have done very well so far this year, he said, in terms of mutual bond fund inflows and muni to Treasury ratios.

He said the only fly in the ointment might be that low yields are forcing higher pricing and that issuers might have to change their focus.

“They are running into retail resistance,” he said, adding that there’s a recalibration taking in mindsets, so there may be more issues being priced with lower than 5% coupons.

But most saw strength in munis lasting beyond the day.

“We have lower yields now, but munis are hanging in there,” said Dawn Mangerson, senior portfolio manager at McDonnell Investment Management. “I would say hold onto your munis for a little longer, they are a safe haven and a complement to equities.”

She added that “positive yield is awesome for foreign investors.”

Other analysts agreed.

While there is likely to be global economic uncertainty and global financial-market volatility, Peter Donisanu, global research analyst, and Paul Christopher, head global market strategist at Wells Fargo Investment Institute believe that the domestic impact will be manageable and investors should remain active.

“Outside of limited trade ties, the direct impact around the world is likely to be contained, and we believe that growth in the U.S. economy may slow from 1.9% to 1.7% in 2016,” the team wrote in a June 24 global investment strategy report.

“Systemic risks are likely to remain subdued given significant financial tools available to central bankers and the significant amount of global liquidity available,” the analysts wrote. “We believe that it is important that investors look through the uncertainties related to UK’s upcoming negotiations with the EU and remain fully committed and fully invested in their long-term investment plan,” Donisanu and Christopher added.

There are longer-term effects of the Brexit referendum that should be taken into account as well, strategists said.

Rai saw three possible scenarios. Politically the vote could embolden some political parties in other EU counties to also push for a membership referendum. Economically, the impact could result in slower growth in the Eurozone, he said. Slower growth means lower yields, he said, and that could be good for U.S. Treasuries. Financially, it may mean many banks which had moved headquarters to London may move back to the continent, which might hurt bank profitability.

Heckman also saw a possible political danger

"On the long term, if other countries want to make votes to leave the EU, that would be problematic and create volatility," said Heckman.

The Brexit vote should bolster and support municipal bond prices, especially with a favorable July and August seasonal period on tap, while the long term implications of the British exit from the EU will take time to evaluate, according to Anthony Valeri of LPL Financial.

"The negative economic implications and lingering uncertainty are positive for municipal prices," Valeri told The Bond Buyer Friday afternoon. "As is typical during flight-to-safety rallies, munis lag Treasuries but are still enjoying broad-based strength — long-term bonds outperforming intermediate, which in turn is outperforming short-term bonds."

"Despite a strong start to 2016, I don't envision recent gains fading soon," Valeri said.

Overall, Valeri said Brexit should reinforce investor demand for high-quality bonds, however, while a flight-to-safety is underway, he said municipals are unlikely to match the pace of Treasury gains. In addition, he said, central banks are now more bond friendly and the Federal Reserve rate hikes before end of year are highly unlikely.

The Bond Buyer

By Chip Barnett and Aaron Weitzman

June 24, 2016

Christine Albano contributed to this story.

MSRB Adds Economic Calendar to EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it has added an economic calendar to its Electronic Municipal Market Access (EMMA®) website. Without having to leave EMMA, users can now freely access a calendar with dates and descriptions of key upcoming macroeconomic developments that could have an impact on the trading and issuance of municipal securities.

"EMMA's new economic calendar is a great resource for all market participants interested in assessing market-related events," said MSRB Executive Director Lynnette Kelly. "From an issuer's perspective, it could be the most informative tool we have added to EMMA in recent years."

The economic calendar features upcoming federal data releases, labor and housing statistics, and other leading economic indicators that can assist municipal market participants in monitoring real-time data releases. It is the first resource to be provided on the EMMA website that helps investors understand broader market activities that may affect the municipal bond market.

The economic calendar joins other free tools on EMMA aimed at assisting municipal market participants, including the price discovery tool, which enables users to identify and compare bonds that share key characteristics, and email alerts that help investors stay up to date when new information becomes available about an individual security or groups of securities on EMMA.

The MSRB's EMMA website is the official source of data and documents for the municipal market.

The free website contains information on more than 1 million outstanding municipal securities and displays real-time trade price and yield data for every municipal bond. 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: June 27, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Already Hot U.S. Municipal Bond Market Rallies Further on Brexit.

NEW YORK, June 24 (Reuters) – U.S. municipal bond yields blew through previous record lows on Friday as investors snapped up tax-free debt amid a global flight to safety after Britain voted to leave the European Union.

Yields on top-rated munis fell as much as 20 basis points, with movement especially steep in longer maturities, according to a preliminary read of Thomson Reuters' Municipal Market Data's (MMD) benchmark scale. Bond prices move inversely to yields.

The $3.7 trillion muni market, most of which is investment-grade tax-exempt debt issued by states and cities, was already on a hot streak with no end in sight, with demand outstripping supply for months.

For 38 straight weeks, investors have poured money into muni bond funds with a net $30.4 billion added year-to-date. The week ended June 22 had the highest inflows in over three years at $1.4 billion, according to Lipper data.

Over the past 12 months, munis have returned 7.03 percent versus 5.18 percent for Treasuries, according to Barclays indices.

The "feeding frenzy" for muni bonds is unabated, said Bank of America Merrill Lynch research strategist Philip Fischer.

"Munis are very strongly bid and we've been bullish on the muni market for a long time. We remain bullish," he said, adding: "We expect we will have another new low in muni rates in the next couple of weeks and we'll probably get some profit taking then and rates will go back down before the end of the year."

Low muni yields allow state and local governments to borrow, for infrastructure, school construction and more, and refinance old debt at affordable interest rates.

Yet debt issuance has been low in part because of a lingering austerity mindset among many public officials after the recession prompted painful public sector spending cuts.

Issuance totals $205.5 billion so far this year, a 2 percent drop over the same period in 2015, according to Thomson Reuters data.

Yields hit lows on June 16 for 10-year and 30-year munis, at 1.42 percent and 2.13 percent, respectively, according to MMD.

MMD data goes back to June 1981, when the yield on a AAA-rated 30-year bond was 10.20 percent.

Some have urged caution because even riskier muni bonds are now expensive.

Even so, investors are not likely to rush to cash out, said Dawn Daggy-Mangerson, director of municipal portfolio management at McDonnell Investment Management.

“Munis are a nice place to put your money until things settle down,” she said.

By Hilary Russ

(Reporting by Edward Krudy and Hilary Russ in New York; Additional reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Tom Brown)

VACATION - WASHINGTON

Lake Forest Park Water Dist. v. City of Lake Forest Park

Court of Appeals of Washington, Division 1 - April 25, 2016 - Not Reported in P.3d - 2016 WL 1627823

When a city vacates a right-of-way, title transfers to the abutting property owners. Here, the City of Lake Forest Park (City) passed an ordinance that purported to vacate the right-of-way for yet unopened streets and retain title for the City.

The parties agreed that the portion of the ordinance retaining title is void.

The Court of Appeals held that the ordinance’s severability clause did not preserve the vacation provision because retention of title was an integral part of the entire ordinance. Its underlying purpose and legislative history show that the City would not have passed the ordinance had the City not retained title.

TAX - TEXAS

Lower Colorado River Authority v. Burnet Central Appraisal District

Court of Appeals of Texas, Austin - June 7, 2016 - S.W.3d - 2016 WL 3230596

The Lower Colorado River Authority (LCRA) sought review in the trial court of a final order of the Burnet Central Appraisal District (BCAD) determining that LCRA’s Sunset Point RV Park (the Park) was not exempt from ad valorem taxes.

The trial court granted BCAD’s motion for summary judgment, and LCRA appealed.

The central issue was whether the fact that LCRA leases the Park to a private for-profit entity to be operated as a public facility and park cause LCRA to forfeit the Park’s tax exemption?

The Court of Appeals concluded that it does not, as the legislature had explicitly authorized LCRA to negotiate contracts with any firm or corporation “for the operation and maintenance” of its parks and recreational facilities.

Puerto Rico's Options Dwindle as Senate May Delay Rescue Bill.

WASHINGTON – The Senate is expected to keep Puerto Rico waiting for progress on a House bill to help the island address its debt crisis, as other options for the commonwealth have continued to be eliminated.

Senate Majority Whip John Cornyn, R-Tex., said that the Senate is expected to take up the bill, called PROMESA, next week while the House is on a recess that ends July 5, according to media reports.

That announcement came a day after Federal Reserve Board chair Janet Yellen told the Senate Banking, Housing and Urban Affairs Committee that Puerto Rico's struggle with roughly $70 billion in debt and $46 billion in unfunded pension liabilities "is inherently a matter for Congress."

"Our authority is extremely limited. and it wouldn't be appropriate for us to give loans to Puerto Rico," Yellen said in answer to a question from Sen. David Vitter, R-La, on Tuesday. "We have very limited authority to buy municipal debt and the authority we have, if we were [able to] buy eligible debt, I don't think it would be helpful to Puerto Rico … Beyond that we have no ability to make emergency loans."

Her comments come a week after the Supreme Court eliminated another possible fix Puerto Rico had to address its debt. The Court ruled that a Puerto Rico law that would have allowed the commonwealth's utilities to restructure their debts in a similar way to what is allowed in municipal bankruptcies violated federal bankruptcy code and thus the Supremacy Clause of the Constitution.

The Senate leadership's decision to take the bill up next week means that if the Senate approves the bill with any amendments, the bill cannot move through Congress until after the House returns to consider the changes. The timing leaves Puerto Rico vulnerable to creditor lawsuits that would stem from an expected commonwealth default on a $1.9 billion debt payment due July 1. PROMESA contains a provision that would stay such suits, but the stay only becomes effective after the bill becomes law.

The commonwealth already faces several debt-related lawsuits, including one that hedge funds holding Puerto Rican general obligation bonds filed in New York on Tuesday after debt restructuring talks broke down.

Though PROMESA passed the House 297 to 127 on June 9, the measure has drawn criticism from senators on both sides of the aisle, leaving amendments a strong possibility. The bill would create a seven-member oversight board that would have the power to require balanced budgets and fiscal plans, as well as to file debt restructuring petitions on behalf of the commonwealth and its entities in a federal district court as a last resort if voluntary negotiations fail.

Senate Minority Leader Harry Reid, D-Nev., said on Tuesday that there are "some serious concerns" from Democrats about the bill and that the legislation will need some amendments. He didn't specify amendments, though he said one area of focus could be a provision that gives the governor discretion to allow employers to pay individuals under 25 years old a wage of $4.25 per hour instead of the federal minimum wage of $7.25.

Sens. Bernie Sanders, I-Vt., and Bob Menendez, D-N.J., have also been vocal opponents of the bill, comparing it to colonialism and critiquing, among other things, the lack of a say Puerto Rican officials get in choosing who will serve on the board.

The Bond Buyer

By Jack Casey

June 22, 2016

[U.S. House of Representatives Release: "A Better Way: A Pro-Growth Tax Code for All Americans"]

Today, the U.S. House of Representatives released [“A Better Way: A Pro-Growth Tax Code for All Americans”.] This document represents the long-awaited outline of a federal tax reform plan that is an out-growth of dozens of hearings, meetings, and briefings conducted by the House Ways and Means Committee. BDA has carefully examined the document for insights into how the tax-treatment of municipal bonds may be altered and for other initiatives that could incentivize investment in infrastructure and municipal bonds.

- The document is very general in nature and provides a broad outline of proposed changes to corporate and individual tax laws. The following proposals outlined in the document will be of interest to issuers and investors in municipal bonds:
- The proposal contains no direct commentary on municipal bonds or the future of the current-law tax exempt status of municipal bonds. Rather, the document does reference the need to eliminate numerous deductions, exemptions, and credits that are viewed as “special interest” provisions. However, no details are provided on which deductions, exemptions, and credits may be impacted.
- The Alternative Minimum Tax is eliminated for both individuals and corporations.
- The corporate income tax rate is reduced to 20 percent. The current slate of individual tax brackets is reduced to three brackets of 12%, 25%, and 33%.
- The plan proposes to retain items such as the mortgage interest deduction and the charitable deduction for individuals and also provide for immediate expensing for corporations and indefinite net operating loss carry-forward.

This tax reform plan is expected to serve as the basis for future discussions on tax reform conducted by the House of Representatives in 2016, but mostly in 2017. The House Ways and Means Committee has promised to continue conducting hearings and briefings on tax reform matters and to gradually refine and provide further details on provisions in the plan. BDA expects that most of this activity will occur in 2017 and beyond as the House is in session for legislative business for less than 30 days between today and the end of 2016 (including an anticipated lame duck session) following the November presidential elections.

Additional Information

- You can view a summary of the tax plan [here].
- You can view the Washington Post’s coverage [here].

For more information on the Municipal Bonds for America coalition, please visit our website: www.munibondsforamerica.org

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Hawkins Advisory: MSRB Rule G-42.

Read the Advisory.

June 23, 2016

Hawkins Delafield & Wood LLP

P3 Innovations Cut Costs But Rate of Adoption is Conservative, Study Finds.

Public agencies enter into P3 agreements to reduce a project's construction and life cycle costs, expedite their completion, and improve their efficiency and reliability. In addition to skills and experience, private developers often count on having the flexibility to use innovative techniques and technologies to help them meet these expectations.

Although more than half of the innovations that are typically incorporated into P3 projects are "incremental," they can help to shave 30 percent from a project's costs, especially in transportation and transit projects, a new study indicates.
"Understanding the Effect of P3s on Canadian Infrastructure Projects," conducted by researchers at the Ryerson Institute for Infrastructure Innovation at Toronto's Ryerson University, reports the results of a literature review of P3 project documents and interviews with 19 people who were associated with 15 successful Canadian P3 projects.

The researchers found that about 60 percent of the innovations these projects included were relatively modest in scope because timely, cost-effective project delivery, not innovation, are procuring agencies' top priority. The relatively short time frame developers have to respond to requests for proposals and the tendency of public and private partners to be risk averse also discourage exploratory approaches to project development. As a result, proven rather than experimental technology tends to be proposed and accepted, the study's authors found.

This finding notwithstanding, many of the requests for proposals Canadian agencies issue encourage developers to propose innovative approaches, although their means of doing so varies. British Columbia and Alberta use very general terminology to attract innovative proposals, for example, while Infrastructure Ontario will issue required or preferred innovation provisions in its RFPs.

The researchers found that the types of new technology or techniques that were introduced, and when, varied by project type. Facility P3s, such as hospitals and court houses were most likely to incorporate innovation in the design rather than construction phase and were often described in the RFP. These new approaches usually involved technological adaptation or changes to respond to the demand for services or to achieve energy or architectural sustainability.

Most innovations in transportation and transit projects, on the other hand, were proposed and implemented after financial close and focused on construction challenges. These changes were often developed to address geotechnical, traffic management and project durability challenges. "This is a good indication that P3s have successfully transferred the construction risk to the private sector," the researchers wrote.

The authors also provided a glimpse into major innovations interview subjects had introduced in specific P3 projects. These included "compact footprint, building orientation and use of spandrel glass panels" to make a courthouse project more green, installing a pneumatic tube system and automatic guided vehicles to streamline a hospital's delivery process, and building cut-and-cover tunnels rather than boring them as part of a railway project.

Almost all of the interview subjects agreed that the procuring agencies accepted proposed innovations based on cost and said that far more proposed innovations were rejected than accepted. Approval was based on the proposed innovation's affordability and ability to enhance performance.

The researchers made several recommendations to public agencies and private developers to encourage innovation and its acceptance in P3 projects. They called on agencies to focus less exclusively on contract compliance and more on addressing the needs a project is intended to address, its preferred functionality, performance and the level of services it is intended to provide.

Private developers were encouraged to focus on projects that involve life cycle development rather than short-term project completion.

The researchers also urged the P3 community to collaborate with universities and applied research centers to spur radical innovation and advised governments to invest in infrastructure research and development.

Finally, they called for more research into innovative ways to finance P3s.

NCPPP

June 23, 2016

S&P's Public Finance Podcast ("Debt Levels Flatline as U.S. States Prioritize Budget Management Over Investment")

Carol Spain, an Associate Director in the States Group out of Chicago, discusses our recently published article "Debt Levels Flatline As US States Prioritize Budget Management Over Investment".

Listen to the Podcast.

Jun. 23, 2016

Why the SEC Barred a Former Charter School Operator From the Market.

WASHINGTON – The Securities and Exchange Commission has settled with a former Chicago charter school operator over charges that he negligently approved and signed a misleading official statement for a $37.5 million bond offering to build three charter schools.

Juan Rangel, the former president of Chicago-based UNO Charter School Network, Inc. and former chief executive officer of United Neighborhood Organization of Chicago, agreed to pay $10,000 and be barred from participating in any future municipal bond offerings to settle the charges. The SEC refers collectively to both organizations Rangel led as "UNO" throughout its complaint.

"We allege that Juan Rangel signed off on the offering document without even reading it," said David

Glockner, regional director of the SEC's Chicago regional office. "This kind of negligent behavior is unacceptable in the securities markets."

One market participant said the settlement is especially noteworthy because "a significant portion of municipal officials who sign don't actually read the document."

"[The SEC is] basically saying there has to be a widespread change in the actions of municipal officials with respect to approving official statements," the market participant said.

Rangel, in a statement responding to the settlement, said he takes "full responsibility for not reading the document and should have done more than rely upon others to brief [him] on its contents."

"Although questions were raised about UNO's overall school construction and contracting processes, it is important to note that new schools were indeed built for our community with every penny documented and accounted for," he added.

The settlement is related to a prior one between UNO and the SEC in 2014 over charges that UNO defrauded investors in the same $37.5 million 2011 bond offering.

The 2011 bond issuance listed UCSN as borrower, UNOC as guarantor, and the Illinois Finance Authority as the conduit issuer. UNOC and UCSN were both liable to repay the proceeds of the bonds and had to rely on per pupil revenues that they would receive from Chicago Public Schools in exchange for operating the charter schools to do so. Some of the schools that would generate revenues still had to be built.

In 2009, the state of Illinois appropriated $98 million to fund school construction by UNO. In connection with the appropriation, UNO entered into two grant agreements with the Illinois Department of Commerce and Economic Opportunity (IDCEO) to build three schools. Each grant contained a conflicts of interest provision that required UNO to certify that there was no conflict of interest at the time that it signed the grant agreements and that it would immediately notify IDCEO in writing of any conflicts of interest that arose after the signing. IDCEO could suspend the payment of the grants and recover any grant funds that had already been paid if it found UNO violated the conflicts provision.

During 2011 and 2012, the SEC found that UNO violated the conflict of interest provision by engaging one company and approving the engagement of another company, both of which were owned by brothers of the then chief operating officer of UNOC.

UNO contracted to pay one of the companies, a window subcontractor, roughly $11 million to supply and install windows and the other about $1.9 million to serve as an owner's representative during construction.

Each of the engagements required Rangel's approval.

The official statement for the 2011 bond issuance that Rangel signed failed to disclose the engagement of the window subcontractor as well as the breach of the conflict of interest provision in one of its grant agreements by engaging the owner's representative and approving the window subcontractor without notifying IDCEO, the SEC found. The official statement also did not explain that IDCEO could recoup its grant money because of the failure.

The SEC said in its complaint that reasonable investors would have wanted to know those facts.

IDCEO discovered UNO's failure to disclose the conflicts of interest after the Chicago Sun-Times published an article in 2013 about UNO's use of the Illinois grant funds. IDCEO suspended one of the grants after discovering the failure. At the time of the suspension, UNO had received $25 million of the $53 million IDCEO had agreed to provide under the grant.

The SEC found that Rangel directly and indirectly violated Section 17(a)(2) of the Securities Act of 1933, which says it is unlawful to obtain money or property through untrue statements or omissions of material facts.

The Bond Buyer

By Jack Casey

June 21, 2016

[The Billions We're Wasting in Our Jails.]

By using data analytics to make decisions about pretrial detention, local governments could find substantial savings while making their communities safer.

Few areas of local government spending present better opportunities for dramatic savings than those that surround pretrial detention. Cities and counties are wasting more than $3 billion a year, and often inducing crime and job loss, by holding the wrong people while they await trial. The problem: Only 10 percent of jurisdictions use risk data analytics when deciding which defendants should be detained.

As a result, dangerous people are out in our communities, while many who could be safely in the community are behind bars. Vast numbers of people accused of petty offenses spend their pretrial detention time jailed alongside hardened convicts, learning from them how to be better criminals.

Ideally, deciding who should stay in jail and who can safely be released would be based on the individual's risk of not showing up for court and his or her risk of committing a crime while awaiting trial. Instead, the deciding factor is often the defendant's pocketbook. Those who have the money for bail — including those who are more successful criminals — get out, while the rest remain in jail. Nearly half of Americans don't have $400 for emergencies; if they get arrested, they are probably going to stay in jail until trial or a guilty plea. The long-term economic impact of incarceration is an earnings drop of 40 percent.

In this era of big data, analytics not only can predict and prevent crime but also can discern who should be diverted from jail to treatment for underlying mental health or substance abuse issues. Avoided costs aggregating in the billions could be better spent on detaining high-risk individuals, more mental health and substance abuse treatment, more police officers and other public safety services.

Jurisdictions that do use data to make pretrial decisions have achieved not only lower costs but also greater fairness and lower crime rates. Washington, D.C., releases 85 percent of defendants awaiting trial. Compared to the national average, those released in D.C. are two and a half times more likely to remain arrest-free and one and a half times as likely to show up for court.

Louisville, Ky., implemented risk-based decision-making using a tool developed by the Laura and John Arnold Foundation and now releases 70 percent of defendants before trial. Those released have turned out to be twice as likely to return to court and to stay arrest-free as those in other jurisdictions. Mesa County, Colo., and Allegheny County, Pa., both have achieved significant savings from reduced jail populations due to data-driven release of low-risk defendants.

Data-driven approaches are beginning to produce benefits not only in the area of pretrial detention but throughout the criminal justice process. Dashboards now in use in a handful of jurisdictions allow not only administrators but also the public to see court waiting times by offender type and to identify and address processing bottlenecks.

Fast-tracking minor cases allowed Tarrant County, Texas, for example, to reduce its jail population by 40 percent; mental-health diversion resulted in $10 million in savings per year in Bexar County, Texas; and New Orleans reduced crime while witnessing a two-thirds decrease in its in jail population by using risk-based pretrial decision-making and turning to summonses rather than detention for low-level offenses such as disturbing the peace and marijuana possession.

Why isn't every jurisdiction moving toward data-driven criminal justice decision-making? One of us served as a three-term "tough-on-crime" district attorney and the other as a high-ranking state criminal justice official, yet neither of us saw much semblance of a systemic approach. Change that involves multiple stakeholders is hard and requires dedicated leadership. Only a coordinated system can accurately balance community risk and benefit. There will be mistakes. Someone who is released will commit a serious crime. But large-scale pretrial incarceration of minor offenders just creates more crime.

As more jurisdictions realize that what is fiscally responsible is also just, we have the opportunity not only to save money but also to make our communities safer and economically stronger. Data-driven decision-making might not solve all of the challenges of achieving justice, but it's a good place to start.

GOVERNING.COM

BY STEPHEN GOLDSMITH, JANE WISEMAN | JUNE 22, 2016

The Tricky Trend That's Blurring Budget Transparency.

Governments' increasing reliance on special funds can put them in financial and legal trouble.

State and local budgets are based on general fund revenues. The cash usually comes from such primary sources as income and sales taxes, and pays for a wide swath of government services. When managers talk about "balancing the budget," they're almost always referring to balancing the spending and revenues from this repository.

Reliance on the general fund as the centerpiece of fiscal management, however, has growing flaws. This is largely because the general fund is diminishing as the main source of money for governments. Data from the National Association of State Budget Officers shows a fairly steady drop in the portion the general fund makes up of the total — 41 percent in 2014 compared with 52 percent in the early 1990s. In Virginia, the general fund made up 47 percent of the total in 2006 and only 39 percent in 2015.

Some of the drop comes from an increase in bonds and, even more so, federal funds, but there's also been a slow and steady rise in the size and quantity of special funds that are earmarked for specific purposes and get little attention in the annual budget debate.

The Fiscal Futures Project at the University of Illinois at Chicago (UIC) has pinpointed a number of problems with this shift. Depending on state law, special funds may bypass the appropriations process, and unlike the general fund, money collected and unspent may be retained at year's end rather than being returned to the general coffers. This makes special funds an appealing target when tough budget times hit. Lawmakers see these plush balances outside the general fund as a means to balance the budget. They may transfer or lend money from the special funds to the general fund.

That leads to additional problems. It is a common tenet of responsible budget management that one-time money be used for one-time expenditures. If these funds are raided, then unless revenues are raised or expenses are cut, the government will still come up short in the next budget cycle.

The movement of money between general and special funds "has reduced the transparency of budgeting," says David Merriman, a professor at the Institute of Government and Public Affairs at UIC. The cloudiness of the budget picture enables political leaders to boast about a reduction of general fund spending, when spending has just been added to one or more special funds.

States can also put themselves in legal peril by using funds for general purposes that are restricted to a specific use. Just after the recession ended, for example, the Wisconsin Supreme Court nixed the transfer of money from a malpractice fund into the state's general fund. The state had to pay back the $200 million along with interest.

New Mexico's reliance on special funds has led to a host of policy and management problems. As the state auditor pointed out in a February analysis of fund balances, New Mexico had $4.4 billion in unused balances socked away outside of the general fund at the end of fiscal year 2015. Some of that money is untouchable because of iron-clad restrictions about its use.

The large amounts of unspent money raise questions about whether so much should be in funds that get so little attention. Auditors in New Mexico, for instance, found that a significant amount of money was being retained in revolving funds, which are intended as a cash-flow device for agencies and local governments. Localities are supposed to use this money and then return it so it can be used again. The practice isn't the problem, but the auditor found that some of the funds had very little lending activity, even though the state faces critical infrastructure needs for which it could be used. For example, $34 million sat unused in a revolving fund account for rural infrastructure between fiscal years 2014 and 2015. "You can't justify a loan fund that had no loans out of it," says Tim Keller, New Mexico's state auditor.

Keller, who was a legislator for six years before he took over last year as state auditor, spells out the real-life drawbacks of low-attention money. As a member of the legislature, he helped secure financing to build a dam in Las Vegas, N.M. "I thought that fixing the dam was important and I put my political weight behind it," he says. He wasn't alone. The governor and local legislators "were all taking credit for the dam," he says.

But that back-patting was premature. With less visibility, money outside the general fund can go unspent, particularly when a legislative appropriation only provides partial funding as was the case for the dam. That's because "there's no one constantly monitoring it," says Sarita Nair, general counsel in the auditor's office.

Today, the dam is half finished, the money that was appropriated is largely unspent, the project's opponents have brought a lawsuit to stop its progress and the town still has a water crisis. "You can take credit for funding something, but that's a different question than actually having it built," Keller says.

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | JUNE 2016

Pensions Could Get Better ... or Worse.

The average funded status of public pension plans dipped slightly in 2015 and could continue in that direction if plans consistently fail to meet their desired investment rate of return, according to a new report.

The report, released by the Boston College's Center for Retirement Research, found that the average pension plan in 2015 had about 72 percent of the assets on hand to pay its total liabilities. That's down from 74 percent the year before. The decrease can largely be attributed to mediocre stock market returns in fiscal 2015, causing most plans to miss their target rate of return of 7 or 8 percent.

The decline comes even as governments are getting better about paying their pension bills. On average, they paid 90 percent of their pension contributions in 2015 — up from about 86 percent the year before.

The Takeaway: If plans continue to miss their marks, the center predicts that pensions' health could continue to decline to about 71 percent funded by 2020. On the other hand, if market conditions improve, then pensions' funded status could improve to nearly 78 percent. "What happens from here on out depends very much on investment performance," the report concluded.

GOVERNING.COM

BY LIZ FARMER | JUNE 24, 2016

Alaska Gets No Relief From Oil Rebound as Downgrades Sting Bonds.

Not even an 86 percent increase in the price of crude oil since February is enough to right Alaska's finances.

The energy-rich state, which sold $128 million of bonds on Wednesday, had to pay up to borrow in its latest deal following the loss of its AAA rank from the three biggest credit-rating companies this year. Alaska is currently caught in a political standoff over how to close a $4 billion budget deficit — equivalent to about $5,400 for every one of its 738,000 residents. While the price of crude has climbed back to almost $49 a barrel, Alaska once counted on it holding above $100 and hasn't cut spending enough to make up for the drop, according to Moody's Investors Service.

"The rebound to $50 per barrel is nice, but it won't make up for the gap between revenues and expenditures," Moody's analyst Dan Seymour said. "It's ultimately an unsustainable situation."

The swing in the price of oil has put a squeeze on energy-industry states such as North Dakota, Oklahoma and Texas, where jobs and tax revenue disappeared as companies shut wells and cut back on exploration. But nowhere has it been as severe as in Alaska, which gets about 90 percent of its general revenue from oil and sends annual royalty checks to its residents. Last year, they were a record $2,072 each.

"We can't afford to pay dividends at the level we've been paying and keeping the government at a level that the people expect unless oil rises," said Jerry Burnett, deputy commissioner for Alaska's Department of Revenue. "We need to recognize other sources of revenue, but the legislature has been reluctant to put votes behind it."

Alaska Governor Bill Walker, an independent, and the Republican-controlled legislature are at an impasse over how to erase the shortfall for the year beginning in July. In the meantime, Alaska is burning through $11 million in savings a day.

To raise revenue, Walker proposed increasing taxes, cutting subsidies to oil companies and reducing residents' annual payouts. Lawmakers passed a $4.26 billion budget on May 31 that drew from an $8 billion savings account to close the deficit. Walker has yet to receive the measure and on June 19 called the legislature into a special session to reconsider his revenue-raising measures.

Without a fix in place, investors are demanding higher yields to hold Alaska's bonds instead of benchmark securities as borrowing costs in the $3.7 trillion market hold at the lowest since 1965. Wednesday's sale of $128 million of debt saw 10-year securities yielding 1.86 percent, 0.46 percentage point more than top-rated debt, according to data compiled by Bloomberg. In its March 2015 offering, similarly dated debt yielded 2.08 percent, 0.01 percentage point less than the benchmark.

The most-traded Alaska general obligations of the past month, which mature in August 2028, last changed hands on June 16 for an average yield of 1.97 percent, or about 0.62 percentage point more than AAA debt, data compiled by Bloomberg show.

If "they don't come up with a fix for the deficit and adjust for what might be a more prolonged lower price of oil, this is a credit you have to price in a future downgrade," Gabe Diederich, a Wisconsin-based money manager at Wells Fargo Asset Management, which oversees about $39 billion of municipal bonds.

Fitch Ratings was the latest of the three largest credit rating companies to strip Alaska of its top rank, dropping it to AA+ June 14. Moody's Investors Service downgraded the state to Aa1 in February, a month after the cut by S&P Global Ratings.

Bloomberg Business

by Molly Smith and Jennifer Oldham

June 22, 2016 — 2:00 AM PDT Updated on June 22, 2016 — 11:26 AM PDT

Former Chicago Charter School Head Settles Muni Fraud Charges.

Juan Rangel, the ex-president of UNO Charter School Network Inc. and a former chief executive officer of United Neighborhood Organization of Chicago, approved an offering statement in 2011 that failed to disclose the schools' $13 million contracts with two brothers of the organization's chief operating officer, which “could have threatened UNO’s ability to repay bond investors,” the U.S. Securities and Exchange Commission said.

Rangel agreed to pay $10,000 and to be barred from participating in any future municipal-bond deals to settle the SEC complaint.

Bloomberg Business

by Romy Varghese

June 21, 2016 — 11:07 AM PDT

Puerto Rico Lawsuit Suggesting Split Among Creditor Groups.

A closer look at the hedge funds behind the lawsuit contesting Puerto Rico’s debt-moratorium law may suggest a widening division among the holders of the island’s general-obligation bonds.

While the suit was filed this week against the commonwealth by little known entities specifically set up to limit liabilities, the firms are Aurelius Capital Management, Autonomy Capital, Fundamental Advisors and Monarch Alternative Capital, according to a person familiar with the parties involved in the legal dispute. Representatives for the four hedge funds didn’t have any immediate comments.

“It’s not a monolithic investor class,” said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. “They all have different strategies and positions, so we’re seeing some of that diversity.”

Aurelius, for example, is one of several hedge funds that rejected Argentina’s debt-restructuring offers for years before finally agreeing in February to a deal. The moratorium law allows Governor Alejandro Garcia Padilla to suspend principal and interest payments on Puerto Rico’s $70 billion in debt through January.

Repayment Pledge

Some general-obligation holders have maintained that Puerto Rico’s constitution requires they be paid in full even though Congress is moving to pass a law that would allow the commonwealth to reorganize its finances under a control board. The suit was announced Tuesday, the same day Puerto Rico said that negotiations with creditors including general-obligation owners broke down after counter proposals were exchanged.

Other large general-obligation holders such as OppenheimerFunds, Franklin Resources, Goldman Sachs, Stone Lion Capital and Davidson Kempner Capital aren’t part of the lawsuit. The claim was filed by so-called special purpose vehicles identified in the filing as Jacana Holdings, Lex Claims, MPR Investors and RRW.

“It’s likely that these creditors wanted to file a lawsuit before, but held back in the name of broader negotiations and then once negotiations broke down, they felt like it was time to pursue their own strategy,” Fabian said.

The law suit claims that Puerto Rico is unable to impose its moratorium law against its general obligations, including its most recent sale in 2014, because the island’s constitution states that if the commonwealth's resources are insufficient to meet all of its desired spending, then the public debt will be paid first, according to the complaint. The firms are "substantial" holders of the 2014 general obligations, according to the complaint.

Looming Default

Puerto Rico and its agencies racked up its debt burden by borrowing for years to paper over budget shortfalls as its economy shrunk. The commonwealth and its agencies owe $2 billion of principal and interest on July 1, including $805 million for general obligations that Garcia Padilla said Thursday the island couldn't pay even if he shut down the government.

The bill under consideration by the Senate would also shield the commonwealth from creditor lawsuits through February. Bond insurance companies and investors, including holders of general-obligation debt, have lobbied federal lawmakers to make the legislation more favorable to creditors.

Congressional Action

Puerto Rico securities have plunged in price since Garcia Padilla announced in June 2015 that the commonwealth was unable to repay all of its obligations and would seek to restructure its debts. Whether an investor bought the bonds at par, a slight discount or a deep discount influences how the bondholder chooses to negotiate with Puerto Rico on repayment, said Brandon Barford, a partner at Beacon Policy Advisors in Washington.

The general obligations issued in 2014 carry an 8 percent coupon and were sold at 93 cents on the dollar.

Aurelius, Fundamental and Monarch bought a portion of the debt. The bonds climbed to as high as 96.6 cents in March 2014, before dropping to 66.6 cents in June 2015, according to data compiled by Bloomberg. The bonds dipped to an average 63.9 cents on April 6, the day Garcia Padilla signed the moratorium into law. They traded Thursday at an average 66.2 cents, to yield about 12.8 percent.

"The difference among the GO bondholders, it really depends on when you bought the bonds," Barford said about the different hedge funds and distressed-debt buyers.

The general-obligation holders not party to the suit may be choosing not to sue at this time because if the bill known as Promesa becomes law, any restructuring of debt would be determined by the federal control board and not Puerto Rico's administration, Barford said.

"The majority of funds are not engaged in litigation against the moratorium at this time because they assume if Promesa becomes law, then it's not worth the cost," Barford said.

Bloomberg Business

by Michelle Kaske

June 23, 2016 — 7:17 PM PDT Updated on June 24, 2016 — 4:31 AM PDT

Muni Fund Investors Squeezed as Flattening Curve Reduces Payouts.

Investors who've come to depend on steady income checks from leveraged municipal-bond funds are starting to feel the pinch from the narrowing in the difference between short- and long-term borrowing rates.

BlackRock Inc., Nuveen Investments Inc. and Eaton Vance Corp. earlier this month made widespread cuts to distributions in their closed-end funds as the cost to borrow to boost returns rose and higher yielding bonds held were called as longer-term rates fell. The three companies are among the biggest providers of closed-end funds.

UBS Financial Services, Inc. said in a June 16 report that it couldn't "recall a period in recent memory when so many funds cut distributions at one time." The cuts, which only affected leveraged funds, ranged from 2 percent to 15 percent, UBS said.

"In the flattening yield curve environment, add in the higher cost of leverage, a lot of these funds haven't been able to maintain their high payouts," said Ryan Paylor, a portfolio manager at Thomas J. Herzfeld Advisors, Inc. in Miami.

Closed-end funds raise a fixed amount of money from shareholders in a public offering, unlike mutual funds, which continually sell and redeem shares. Closed-end funds are traded on stock exchanges and can trade at premiums or discounts to their net asset value. Open-end mutual funds trade daily at their net asset value.

Most municipal closed-end funds borrow short-term and buy long-dated debt. The weekly benchmark for yields in the variable-rate tax-exempt bond market surged in March from 0.02 percent to 0.4 percent as investors tapped muni money-market funds to pay taxes.

In the last 12 months, the three-month London interbank offer rate, or Libor, has increased to 0.64 percent from 0.28 percent. The Federal Reserve raised its target rate for overnight loans between banks in December for the first time since 2006.

The slope of the municipal yield curve has flattened to the lowest in more than eight years as investors, including foreign buyers in search of higher yields, have poured money into municipal bond funds for 38 consecutive weeks, according to Lipper data. While short-term rates have risen, the demand helped push 30-year tax-exempt yields to a record-low of 2.23 percent on June 16.

"Because municipal bond yields are so low, as funds have bonds called away they can't be reinvested at the same rate," said Sangeeta Marfatia, a UBS executive director for closed-end fund research. "They're reinvesting the proceeds at lower rates and that's putting pressure on the earnings too."

On June 1, BlackRock said it cut distributions on 38 of its 52 closed-end muni bond funds, according to a news release. Eaton Vance cut distributions on 11 of 21 funds. Nuveen cut 17 of 55.

The average distribution yield for municipal close-end funds is 5.2 percent, a decline from 5.8 percent at the beginning of the year, Paylor said.

"If we get another rate rise and the curve flattens even more it's going to be really tough to sustain their dividends," he said.

Despite the cuts, share prices have gone up. National, New Jersey and New York leveraged funds were up an average of 10 percent in terms of market returns through June 10, compared to their net asset value returns of 6 percent, according to UBS.

After the "Taper Tantrum" in May 2013, when then-Fed Chair Ben Bernanke jarred bond investors with plans to scale back asset purchases, muni closed-end funds traded at a discount to net asset value of more than 13 percent on average, Paylor said. Now they trade at a 1.7 percent discount.

“Muni investors usually are the type that like to chase returns, especially in the closed-end funds space,” Paylor said. “As a result they’re pushing these things towards premiums.”

Bloomberg Business

by Martin Z Braun

June 23, 2016 — 9:05 PM PDT Updated on June 24, 2016 — 7:15 AM PDT

Bloomberg Brief Weekly Video - 06/23

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

Watch the video.

June 23, 2016

Puerto Rico, Bondholders Remain at Odds.

Puerto Rico drew back the curtain on its talks with bondholders, underscoring how far apart the sides remain in a fight over the restructuring of $70 billion of municipal debt.

Puerto Rico’s Government Development Bank on Tuesday disclosed terms of various restructuring proposals discussed in negotiations that have ended. The talks included a committee representing investors in the commonwealth’s general obligation bonds, a group holding senior sales-tax-backed, or “Cofina,” bonds, and a single investor with large holdings of general obligation bonds and junior Cofina bonds, according to the disclosure.

Uncertainty about a looming U.S. congressional vote on a restructuring framework for Puerto Rico has made it difficult for the island to come to terms with the various creditor groups, investors and analysts said. Neither the island nor its bondholders are likely to agree to a deal until rules are worked out on Capitol Hill, they said.

Meanwhile, some general obligation bondholders filed a lawsuit Tuesday challenging Puerto Rico’s April debt moratorium law, which allows the commonwealth to suspend bond payments while it addresses its financial crisis. Plaintiffs in the suit are Jaçana Holdings, Lex Claims, MPR Investors and RRW I.

Puerto Rico has said it can’t afford to make a $2 billion payment on its general obligation debt due July 1.

Grace Santana, chief of staff to Gov. Alejandro García Padilla, said the governor’s office is reviewing the suit, but “the hedge funds’ decision to litigate instead of continuing good-faith negotiations further demonstrates their continued refusal to acknowledge the reality of the commonwealth’s fiscal crisis.”

Puerto Rico presented investors on June 14 with a proposal that amended a previous restructuring plan by offering to give bondholders more of a new bond that would pay interest in cash, instead of additional debt.

The changes were most significant for holders of junior Cofina bonds, improving recoveries to 60 cents on the dollar from at least 43 cents under the government’s previous deal, according to the disclosure.

Oppenheimer Funds Inc. and Franklin Templeton Inc. are two of the largest holders of the junior Cofina bonds, with combined investments of $3.1 billion. The two mutual-fund managers also own $6.6 billion of other Puerto Rico bonds.

An Oppenheimer spokeswoman said the firm didn’t participate in negotiations but looks forward to working with other stakeholders “to help get Puerto Rico on a sustainable path forward while serving the interests of our shareholders.” Franklin Templeton declined to comment.

Other stakeholders include hedge funds and insurance companies, which back more than $10 billion in Puerto Rico debt. The Government Development Bank said some insurers were involved in the discussions. The two insurers with the most debt, Assured Guaranty Ltd. and National Public Finance Guarantee Corp., a unit of MBIA Inc., declined to comment. They hold a combined $8.8 billion, according to documents posted on the firms’ websites.

In Puerto Rico’s latest proposal, the island would improve general obligation recoveries to 81 cents on the dollar from at least 72 cents and Cofina senior bond recoveries to 80 cents from at least 61 cents.

Creditors countered with a proposal that sought 95 cents on the dollar for senior Cofina bonds and 89 cents for general obligation bonds.

Gov. García Padilla said the counterproposals “fall short of what Puerto Rico needs to secure a prosperous future.”

The island’s general obligation bonds changed hands at about 66 cents on the dollar on Tuesday, reflecting investor doubts about Puerto Rico’s offer and the island’s substantial financial problems, investors and analysts said.

Current prices imply the new exchange bond Puerto Rico is proposing would trade at a yield of about 7%, much higher than the 5% yield the government proposed, they said. Bond yields rise as prices fall.

THE WALL STREET JOURNAL

By HEATHER GILLERS and MATT WIRZ

June 21, 2016 7:16 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com and Matt Wirz at matthieu.wirz@wsj.com

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Nixon Signs Bill to Limit Missouri Cities' Profit From Fines.

JEFFERSON CITY, Mo. — Missouri Gov. Jay Nixon on Friday signed legislation he touted as further limiting cities’ ability to profit from traffic tickets and fines, a policy goal that gained traction following the fatal police shooting of Michael Brown in Ferguson.

The measure builds on a law passed last year that caps profits that cities and other municipalities can keep from traffic tickets and court fines. The new law will expand that to include fines from ordinance violations. It takes effect Aug. 28.

The legislation also will lower maximum fines for minor traffic violations from $300 to $225. It limits fines for ordinance violations, ranging from at most $200 for a first offense to $450 for a fourth offense in a year.

Brown's shooting didn't involve a traffic stop; the black, unarmed 18-year-old was walking in the street when white police Officer Darren Wilson stopped him in August 2014. A U.S. Justice Department investigation cleared Wilson of wrongdoing in Brown's death, and a state grand jury declined to bring charges.

But Brown's death and the sometimes violent protests that followed drew attention to some residents' and legal advocates' concerns about the generally white police force's treatment of those in the predominantly black St. Louis suburb, including the use of police to collect revenue through traffic fines and court fees.

Bill sponsor Sen. Eric Schmitt, a Republican from Glendale, said Missouri residents are concerned with local governments that he described as "shaking down residents, especially poor and disadvantaged citizens."

"It is unconscionable cities would use fine money — whether from traffic tickets or silly violations like the location of one's barbecue grill or the way their blinds are hanging — to prop up bloated bureaucracies," Schmitt said in a statement.

Ferguson Democratic Rep. Courtney Allen Curtis, one of 48 House members to vote against the bill, said in a statement that the black community has been "victimized by these practices for too long." But he said the state needs to help communities grow economic opportunities, which he said would have made cities and towns less reliant on revenue from fines and fees.

He said the bill failed to ban attorneys from also working as judges, a practice he said could lead to conflicts of interest and allowed municipal court issues to go unaddressed.

St. Louis Democratic Rep. Joe Adams also voted against the bill and criticized it as adding to current law, which he said unfairly targets St. Louis County.

Lawmakers last year lowered the percentage of revenue most cities can collect from traffic fines and fees from 30 percent to 20 percent. Any extra money must go to schools, an attempt by lawmakers to take away incentives for local governments to overly rely on ticketing for funding.

Adams and other lawmakers have raised concerns with the lower limit for cities in St. Louis County, which are capped at 12.5 percent. Twelve towns in St. Louis County sued over that provision of the law, which was ruled unconstitutional by a Cole County judge and is in the appeals process.

By THE ASSOCIATED PRESS

JUNE 17, 2016, 7:31 P.M. E.D.T.

Detroit City Council Approves Bond Refunding, Pension Funding.

(Reuters) – The Detroit City Council on Tuesday unanimously approved the issuance of up to $660 million of refunding bonds to save an estimated $37 million and help pave the city's return to the municipal market after a trip through bankruptcy.

The council also agreed to put aside $30 million from a budget surplus to deal with a possible pension funding shortfall of nearly $500 million.

Mayor Mike Duggan disclosed the potential shortfall earlier this year, warning the city may sue consultants who worked on its bankruptcy exit plan which projected future pension payments using outdated mortality tables. Last week, the city council agreed to hire actuarial consultant Cheiron to work on a new pension funding model.

The plan to refund up to $275 million of unlimited tax general obligation bonds sold in 2014 and up to $385 million of limited tax GO bonds sold in 2010 and 2012 now heads to the Detroit Financial Review Commission for final approval. The city's post-bankruptcy oversight commission meets on June 27.

The bonds, backed by state revenue earmarked for Detroit, would be issued through the Michigan Finance Authority in a deal lead by underwriter Barclays in late July. It would mark Detroit's first GO bond issuance in the market since it exited the biggest-ever U.S. municipal bankruptcy in December 2014.

"We hope this leads to a better general obligation bond rating, which would help us in the future," John Naglick, Detroit's finance director, told the city council.

After defaulting on bond payments just prior to and during its historical bankruptcy that began in 2013, Detroit's GO bond ratings fell deep into "junk" territory and are currently B3 with Moody's Investors Service and B with Standard & Poor's. Ratings in the single-A or double-A level are expected for the refunded bonds due to an intercept mechanism that will send revenue earmarked for debt service payments directly to the bond trustee, according to a report by the city council's legislative policy division.

Detroit plans to take advantage of record-low yields in the muni market to refund the bonds, saving $15 million for the next two city budgets and about $20 million for property tax bills.

In its first post-bankruptcy public debt offering last August, the city restructured $245 million of variable-rate revenue bonds backed by city income taxes into a fixed-rate mode.

By REUTERS

JUNE 21, 2016, 2:24 P.M. E.D.T.

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

SIFMA Submits Comments to the SEC on MSRB Rule G-12 Proposal.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to the

MSRB proposal to update MSRB requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer fail transactions.

Read SIFMA's Comments.

June 22, 2016

MSRB: New Rules Coming this Summer.

Core Rules and Effective Dates for Municipal Advisors

Duties of Non-Solicitor Municipal Advisors

Rule G-42 to establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities
Effective June 23, 2016

Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

Amended Rule G-37 to extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business
Effective August 17, 2016

Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

Amended Rule G-8 to establish recordkeeping requirements that apply when a municipal advisor makes a suitability determination or reviews the recommendation of another party
Effective June 23, 2016

Additional amendments to Rule G-8 to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons that apply to dealers and their associated persons
Effective August 17, 2016

Preservation of Records

Amended Rule G-9 to require municipal advisors to preserve for six years the records required to be made concerning political contributions
Effective August 17, 2016

MSRB Makes ABLE Offering Documents Available on EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that for the first time, an offering document about securities established by states under the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) is available on the MSRB's Electronic Municipal Market Access (EMMA®) website. The ABLE Act allows states to establish tax-advantaged savings vehicles that support individuals with disabilities in maintaining health, independence and quality of life.

ABLE offering documents—also known as program disclosure booklets—will be made available on EMMA both voluntarily by states and per MSRB regulations by municipal securities dealers involved in the primary offering of ABLE programs. The program disclosure booklet for the State of Ohio's ABLE program is now on EMMA.

"We are very happy to see that the first ABLE disclosure document was filed voluntarily by a state," said MSRB Executive Director Lynnette Kelly. "To promote a fair and transparent municipal securities market, we look forward to making all ABLE program disclosure booklets widely available to the public on EMMA."

ABLE programs sold by MSRB-regulated dealers, which underwrite other municipal fund securities such as 529 college savings plans, are required to comply with investor protection rules. These rules include providing a customer, no later than the settlement of the transaction, a copy of the program disclosure booklet, which now can also be found on EMMA.

The EMMA website is the MSRB's official repository for information on virtually all municipal securities, including municipal fund securities. EMMA provides free public access to official disclosures, trade data, credit ratings, educational materials and other information about the municipal securities market.

Date: June 21, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.
- GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.
- MSRB: Implications for Supervisory Procedures of Newly Effective Rules.
- GFOA Issues Alert on Rule G-42.
- SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.
- MSRB Updates Content Outline for Municipal Advisor Qualification Exam.
- SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.
- Defending Wall Street Fees.
- Going Green: Evolution of Renewables ABS Discussed.
- Trail of Defaults Leads to Dark Corner of Tax-Exempt Bond Market.
- Bill Would Create New $5B Category of PABs for Government Buildings.
- NABL: IRS TEB Announces Form 8038-CP Changes.
- And finally, please bow your heads for a moment of silence to commemorate the demise of "adult-content" conventions in Dallas, Texas. While Three Expo Events, L.L.C. claimed that participants in its three-day adult entertainment expo called "Exxxotica" (inclusion of an additional x or two, clearly an oversight) complied with all applicable City regulations, the City begged to differ. As the court's opinion drily notes, "The City offers a different view of what occurred at the 2015 Exxxotica expo." The ensuing litany of offenses are, sadly, unfit for enumeration in a fine, upstanding publication such as this, but please feel free to visit the opinion.

ZONING - GEORGIA

[Schumacher v. City of Roswell]

Court of Appeals of Georgia - June 1, 2016 - S.E.2d - 2016 WL 3086089

City property owners filed an action against city that challenged city's approval of a new zoning ordinance and map that rezoned owners' properties.

The Superior Court granted city's motion for judgment on the pleadings. Property owners appealed.

The Court of Appeals held that city property owners' appeal from the Superior Court's review of a local government zoning decision required appeal by discretionary action.

Appeal by city property owners from the Superior Court's review of a local government zoning decision required appeal by discretionary action, pursuant to statute stating appeals from Superior Court decisions reviewing decisions of state and local administrative agencies must be brought by application for discretionary appeal. Owners' amended complaint seeking declaratory and injunctive relief challenged city council's decision to approve a new zoning map on constitutional due process and other grounds, all of owners' requests for relief were tied to city council's zoning decision, and relief could not be granted or denied without affirming or reversing the city council's zoning decision.

MUNICIPAL ORDINANCE - ILLINOIS

[McGrath v. City of Kankakee]

Appellate Court of Illinois, Third District - May 16, 2016 - N.E.3d - 2016 IL App (3d) 140523 - 2016 WL 2853444

Owner of vehicle that had been impounded brought purported class action against city alleging that its impoundment ordinance violated due process and was an unlawful attempt to use police powers to produce revenue.

The Circuit Court granted city's motion to dismiss. Owner appealed.

The Appellate Court held that:

- Owner lacked standing to assert due process challenge to ordinance, and
- Ordinance was not unconstitutional attempt to raise revenue through use of police powers.

Named plaintiff of class action did not allege that signs were not posed when her car was impounded, and therefore plaintiff lacked standing to challenge city's impoundment ordinance as violative of due process based on lack of adequate notice. Although plaintiff alleged that city did not post signs notifying drivers of ordinance until five years after it was passed, plaintiff did not allege that she was not provided with notice prior to city impounding her vehicle.

City's impoundment ordinance, which contained a $500 charge, did not constitute an attempt to raise revenue through police powers in violation of state constitution. City's use of the word "penalty" in the ordinance established that the charge was a fine, not a fee, and fine was reasonably related to legitimate interest of deterring crime.

LABOR - MINNESOTA

In re Clarification of an Appropriate Unit

Court of Appeals of Minnesota - May 16, 2016 - N.W.2d - 2016 WL 2842883 - 2016 L.R.R.M. (BNA) 154, 574

Association of public-school teachers petitioned the Bureau of Mediation Services (BMS) for clarification as to whether school district's pre-kindergarten instructors were included in teacher bargaining unit.

A BMS hearing officer concluded that the instructors were not included in the bargaining unit. Association appealed.

The Court of Appeals held that the instructors were not "teachers" for purposes of the Public Employee Labor Relations Act (PELRA), and thus were properly excluded from the bargaining unit.

School district's pre-kindergarten instructors were not "teachers" for purposes of the Public Employee Labor Relations Act (PELRA), and thus were properly excluded from the teacher bargaining unit. Instructors were not required to be licensed by the board of teaching or the commissioner of education, as there was no licensure requirement in state statutes governing pre-kindergarten school-readiness programs, no licensure requirement in federal law governing pre-kindergarten programs receiving federal Title I funds, and no licensure requirement imposed by the school district.

IMMUNITY - MISSISSIPPI

Mississippi Transp. Com'n v. Adams ex rel. Adams

Supreme Court of Mississippi - June 2, 2016 - So.3d - 2016 WL 3091194

Motorcyclist's widow filed suit against Mississippi Department of Transportation (MDOT) and Mississippi Transportation Commission for wrongful death, arising out of motorcycle hitting uneven portion of pavement while motorcyclist, who had inadvertently entered closed portion of highway that was under construction, was attempting to reenter open portion of road, which caused motorcycle to rotate, and motorcyclist being thrown from motorcycle into traffic.

The Circuit Court denied defendants' motion for summary judgment on grounds of immunity under Mississippi Tort Claims Act (MTCA), and defendants appealed.

The Supreme Court of Mississippi held that:

- Defendants' generally discretionary function with respect to placement of traffic control devices was rendered ministerial by MTC's adoption of Red Book standards for road and bridge construction, for purposes of immunity;
- Adoption of Red Book standards imposed ministerial, mandatory duty on MDOT to replace white edge lines that had been covered or removed during operations with temporary stripe before work was discontinued for day;
- Ministerial duty to "organize an adequate and continuous patrol for the maintenance, repair, and inspection of all of the state-maintained state highway system" encompassed section of interstate highway that was under reconstruction; and
- Provision of MTCA that "governmental entity and its employees acting within the course and scope

of their employment or duties shall not be liable for any claim … arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets" did not apply.

LIABILITY - MISSISSIPPI

City of Vicksburg v. Williams

Supreme Court of Mississippi - May 26, 2016 - So.3d - 2016 WL 3022658

Arrestee filed a complaint against city after he was arrested for discharging a firearm.

City filed a motion to dismiss. The Circuit Court denied the motion. City filed an interlocutory appeal.

The Supreme Court of Mississippi held that arrestee's allegation that city police officers acted with complete disregard to arrestee's rights, thereby injuring him, when they placed him under arrest for discharging a firearm within city limits was sufficient to state a claim against city for gross negligence.

Arrestee's allegation that city police officers acted with complete disregard to arrestee's rights, thereby injuring him, when they placed him under arrest for discharging a firearm within city limits, even though arrestee discharged his firearm to avoid being attacked by neighbor's dog, was sufficient to state a claim against city for gross negligence.

STANDING - MISSOURI

City of Slater v. State

Missouri Court of Appeals, Western District - May 3, 2016 - S.W.3d - 2016 WL 2338532

City, Missouri municipal league, assistant city administrator, municipal court clerk, and individual sought declaratory relief challenging state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund.

The Circuit Court granted defendants' motion to dismiss. Plaintiffs appealed.

The Missouri Court of Appeals held that:

- Court of Appeals had appellate jurisdiction to consider the challenge;
- Assistant city administrator and municipal court clerk lacked taxpayer standing;
- City, nor assistant city administrator and municipal court clerk in their official capacities, alleged any direct impact resulting from the statute, and thus lacked standing;
- Missouri municipal league lacked associational standing; and
- Individual lacked standing.

The Court of Appeals had appellate jurisdiction to consider city's challenge to statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund. The challenge was conditional, depending on the manner in which the statute was construed, and thus did not vest exclusive appellate jurisdiction with the Supreme Court.

Assistant city administrator and municipal court clerk lacked taxpayer standing to seek declaratory judgment on state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, where petition failed to allege that compliance with the requirements of the statute would require expenditures, directly caused by the allegedly unlawful surcharge, which were separate and apart from the general operating expenses that municipal courts would incur regardless.

City, nor assistant city administrator and municipal court clerk in their official capacities, alleged any direct impact resulting from rule requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, and thus, they lacked standing to seek declaratory judgment on state's and office of state courts' interpretation of the rule. They did not allege that they were entitled to receive any part of the surcharge, or that the surcharge diverted money away from their municipalities, rather, they merely alleged that they would be required to collect and distribute a particular surcharge along with other court costs.

Missouri municipal league lacked associational standing to seek declaratory judgment on state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, where petition failed to allege facts sufficient to confer standing on Missouri municipalities.

Injury claimed by individual, prior payment of surcharge under statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, could not be remedied by relief he requested, and thus, he lacked standing to seek declaratory judgment on state's and office of state courts' interpretation of the statute, where individual was not seeking a refund of amount paid, damages for allegedly improper collection of the surcharge, nor had he argued that he would again be subject to the surcharge at some point in the future.

ZONING - NEBRASKA

Lindner v. Kindig

Supreme Court of Nebraska - May 27, 2016 - N.W.2d - 293 Neb. 661 - 2016 WL 3036328

Resident brought action against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

The District Court dismissed action on limitations grounds. Resident appealed. The Supreme Court of Nebraska reversed and remanded. On remand, the District Court granted summary judgment for city and mayor. Resident appealed.

The Supreme Court of Nebraska held that:

- A constitutional claim can become time-barred just as any other claim, and
- Four-year catchall limitations period applied to action.

Four-year catchall limitations period applied to action brought by resident against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

ATTORNEYS' FEES - NORTH DAKOTA

Jury v. Barnes County Mun. Airport Authority

Supreme Court of North Dakota - June 2, 2016 - N.W.2d - 2016 WL 3090685 - 2016 ND 106

Self-represented employee sued municipal airport authority after it terminated her at-will employment, asserting causes of action including workplace discrimination.

The District Court granted summary judgment to authority and awarded attorney fees to authority. Employee appealed.

The Supreme Court of North Dakota held that:

- District court was not required to independently provide notice to former employee of hearing on authority's summary judgment motion after authority had already provided notice of hearing; and
- District court did not abuse its discretion in awarding $10,000 in attorney fees to authority.

District court was not required to independently provide notice to former employee of municipal airport authority of hearing on authority's summary judgment motion in employee's action on claims including employment discrimination after authority had already provided notice of the hearing, though district court had previously provided notice to employee of five telephonic hearings.

District court did not abuse its discretion in awarding $10,000 in attorney fees to municipal airport authority, as defendant in employment discrimination action by terminated employee, based on authority's prevailing party status upon granting of summary judgment, as well as employee's repeated failures to timely cooperate in discovery, bringing meritless motions, and disregarding court orders.

BANKRUPTCY - PUERTO RICO

Puerto Rico v. Franklin California Tax-Free Trust

Supreme Court of the United States - June 13, 2016 - S.Ct. - 2016 WL 3221517

Investors commenced actions against Commonwealth of Puerto Rico, its Governor, its Secretary of Justice, and the Government Development Bank to challenge validity of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, and enjoin its implementation.

The United States District Court consolidated actions and permanently enjoined enforcement of the Recovery Act on ground that it was preempted. Defendants appealed. The Court of Appeals affirmed. Certiorari was granted.

The Supreme Court of the United States held that although Puerto Rico is not a "State" for purposes of the federal Bankruptcy Code's "gateway" provision governing who may be a debtor, and so cannot authorize its municipalities to seek relief under Chapter 9 of the Code, it is a "State" for other purposes related to Chapter 9, including that chapter's preemption provision, such that the Code preempts Puerto Rico's Recovery Act.

PENSIONS - RHODE ISLAND

[Morse v. Employees Retirement System of City of Providence]

Supreme Court of Rhode Island - June 6, 2016 - A.3d - 2016 WL 3141754

City employee, a fire-rescue captain, petitioned for writ of certiorari seeking review of decision of city retirement board denying his application for an accidental disability pension.

As a matter of first impression, the Supreme Court of Rhode Island held that employee was not required to show that all three independent medical examiners agreed that he was permanently disabled as a result of a work-related injury.

A city employee who applies for accidental disability retirement benefits under an ordinance requiring three independent medical examiners to “so certify” to the city retirement board the conditions of the service performed by the employee resulting in such disability is not subject to a rule requiring all three to agree that the employee is permanently disabled as a result of a work-related injury.

ZONING - TEXAS

[Town of Lakewood Village v. Bizios]

Supreme Court of Texas - May 27, 2016 - S.W.3d - 2016 WL 3157476

Town, a general-law municipality, brought action against owner of subdivision lot located in town’s extraterritorial jurisdiction (ETJ), seeking injunction to stop owner’s construction of home on lot until owner obtained town building permit.

The District Court granted temporary injunction. Owner filed interlocutory appeal. The Court of Appeals reversed and remanded. Town filed petition for review, which was granted.

The Supreme Court of Texas held that:

- Supreme Court had jurisdiction over interlocutory appeal;
- Town did not have statutory authority to enforce its building codes within its ETJ, abrogating *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811; and
- Public policy arguments did not permit town to enforce building codes within its ETJ.

Supreme Court had jurisdiction over town’s petition for review from decision on interlocutory appeal reversing and remanding temporary injunction granted in favor of town to stop owner of subdivision lot located in town’s extraterritorial jurisdiction (ETJ) from constructing home on lot until owner obtained town building permit. Although decision reversing and remanding temporary injunction was unanimous, decision conflicted with other appellate court decisions.

Town, a general-law municipality, did not have statutory authority to enforce its building codes or building-permit requirements within its extraterritorial jurisdiction (ETJ) in order to require owner of subdivision lot located in town’s ETJ to obtain town building permit prior to building home on lot. Although town had authority to enforce rules and ordinances governing plats and subdivisions of land within its ETJ, building codes and building-permit requirements were not rules governing plats and subdivisions, statutes that referenced enforcement of building codes within ETJs and recognized that other statutes might permit such authority did not authorize town to enforce building codes within its ETJ, and Local Government Code did not impliedly allow town to enforce building codes within its ETJ; abrogating *City of Lucas v. North Texas Municipal Water District,* 724 S.W.2d 811.

Public policy arguments in support of position that town, as general-law municipality, had power to enforce building codes and building-permit requirements within its extraterritorial jurisdiction (ETJ) did not permit town to enforce codes in order to require owner of subdivision lot within town's ETJ to obtain town building permit prior to constructing home on lot; as general-law municipality, town was not permitted to exercise its powers outside its corporate limits unless legislature expressly or necessarily granted such authority, and courts were not permitted to judicially confer authority on town, regardless of compelling public policy reasons for doing so.

IRRIGATION AND DRAINAGE PERMITS - TEXAS

Sumner v. Board of Adjustment of City of Spring Valley Village

Court of Appeals of Texas, Houston (14th Dist.) - May 17, 2016 - Not Reported in S.W.3d - 2016 WL 2935881

Landowner brought action against city, city's board of adjustment, city building official, and neighbor, alleging numerous claims arising from drainage dispute, seeking declaratory judgment, and seeking certiorari review of board's decision rejecting landowner's protest of irrigation and drainage permit issued to landowner's neighbor.

The District Court denied petition for writ of certiorari, dismissed all claims against building official, and granted summary judgment to city and board. Landowner appealed.

The Court of Appeals held that:

- Trial court acted within discretion in severing claims against municipal defendants from claims against neighbor;
- Landowner failed to exhaust administrative remedies regarding his challenge to certificate of occupancy issued by city building official, as would be required for trial court to have subject matter jurisdiction over landowner's petition for writ of certiorari seeking review of issuance of certificate;
- Harris County District Court lacked subject matter jurisdiction over landowner's inverse condemnation claim; and
- Landowner's action against building official was not proper subject of ultra vires claim.

Trial court acted within discretion in granting severance of landowner's claims against municipal defendants from claims against neighbor, in action arising out of drainage dispute in which landowner alleged that neighbor was improperly issued a permit for irrigation system and drain, even though claims included assertion that city building official acted in concert with neighbor to violate landowner's Water Code and constitutional rights. Severed claims could all be subject of independent lawsuits, and claims against municipal defendants were all resolved by trial court's grant of their motions to dismiss or for summary judgment.

Landowner failed to exhaust administrative remedies regarding his challenge to certificate of occupancy issued by city building official, as would be required for trial court to have subject matter jurisdiction over landowner's petition for writ of certiorari seeking review of issuance of certificate, where landowner did not appeal issuance to city's board of adjustment.

Harris County District Court lacked subject matter jurisdiction over landowner's inverse condemnation claim. While district courts were typically courts of general jurisdiction, Legislature had vested exclusive jurisdiction over inverse condemnation claims in the Harris County Courts at

Law.

Landowner’s request for declaration that city building official acted in concert with landowner’s neighbor to violate Texas Water Code was not proper subject of ultra vires claim, in case arising out of official’s grant of irrigation permit to neighbor. Real substance of request for declaratory relief was in fact a suit to recover for damage allegedly caused to landowner’s property by altering flow of water on landowner’s property.

Landowner’s ultra vires claim against city building official, arising out of drainage dispute between landowner and landowner’s neighbor, who had applied for and been granted an irrigation permit, was not ripe, where landowner did not complain of past action performed by official but instead sought to control future actions in event that neighbor submitted another plan for approval.

PUBLIC UTILITIES - TEXAS

Amarillo v. Railroad Commission of Texas

Court of Appeals of Texas, El Paso - May 25, 2016 - S.W.3d - 2016 WL 3020304

Cities sought judicial review of Railroad Commission’s decision to set gas rates on a system-wide basis.

The District Court affirmed. Cities appealed.

The Court of Appeals held that:

- Cities lacked standing to challenge implementation of system-wide rates, and
- Exception to mootness doctrine for claims capable of repetition yet evading review did not apply.

Cities lacked standing to challenge implementation of system-wide gas rate increases and procedural fairness of hearing at which Railroad Commission approved the rates, where cities and gas utility entered into settlement agreement stipulating to rates consistent with implementing system-wide approach and precluding any charge back for past revenues, and cities enacted ordinances for the new rates, so that dispute as to rates was rendered moot, as reversal would not impact prior bills paid by customers, dispute as to procedural fairness was no longer ripe, as any decision would have been relevant only to future disputes handled in same fashion, and any decision would have been mere advisory opinion as to propriety of procedures for determining past rates.

Exception to mootness doctrine for claims capable of repetition yet evading review did not apply to cities’ challenge of implementation of system-wide gas rate increase, which was rendered moot by partial settlement agreement between cities and gas utility stipulating to use of system-wide approach and cities’ enactment of ordinances for new rates, where there was nothing inherently short about time period for approval and implementation of rates that precluded judicial review, and there was no indication that future rate cases would have been handled by Railroad Commission in same fashion.

TRESPASS - TEXAS

Savering v. City of Mansfield

Court of Appeals of Texas, Fort Worth - May 26, 2016 - S.W.3d - 2016 WL 3021928

Residential homeowners in gated community sued their homeowners' association and city, which had built a bridge over creek to connect the property adjacent to homeowners' land to public park, seeking a declaratory judgment that association owned the property adjacent to homeowners' land and seeking to quiet title to the property, and asserting claims against city for trespass, breach of restrictive covenants, and inverse condemnation.

The District Court denied homeowners' application for temporary injunction, and they appealed.

On denial of motion for reconsideration, the Court of Appeals held that:

- Trial court did not abuse its discretion by denying the homeowners a temporary injunction, preventing general public from accessing bridge, and
- Developer's purported conveyance of property to homeowners' association was not effective, and thus homeowners did not have standing to claim that city's alleged trespass caused them a presumed injury supporting injunctive relief.

Trial court did not abuse its discretion by denying residential homeowners in gated community a temporary mandatory injunction, requiring city to temporarily barricade bridge, which city had built over creek to connect property adjacent to homeowners' land to public park. Trial court had the discretion to believe or disbelieve any of the testimony, to determine that the additional pedestrian access provided by the bridge, when the neighborhood had already had a pedestrian access point that homeowner was aware of when she bought her home, did not constitute irreparable injury or extreme hardship, and to conclude that homeowners had not made a clear and compelling presentation of extreme necessity or hardship.

Even if declaration filed by subdivision's developer containing the gated neighborhood's restrictive covenants attempted to convey lots at issue to homeowners' association as part of the common properties, such conveyance was not effective because the developer filed declaration before the articles of incorporation for homeowners' association were executed or filed, and thus homeowners in the subdivision did not have standing to claim that city's alleged trespass on the property, by building bridge that connected the property to public park, caused them a presumed injury, supporting their request for temporary injunction preventing public from accessing the bridge.

CONSTITUTIONALITY - TEXAS

Three Expo Events, L.L.C. v. City of Dallas, Texas

United States District Court, N.D. Texas, Dallas Division - April 21, 2016 - F.Supp.3d - 2016 WL 1595500

Promoter of adult-content conventions brought action against city, alleging that it passed a content-based and viewpoint-based resolution prohibiting city from contracting with promoter to use convention center in violation of the First Amendment. Promoter moved for preliminary injunctive relief compelling city to contract with it for use of convention center.

The District Court held that:

- Promoter had standing to sue;
- Promoter failed to show convention center was a designated public forum for which strict scrutiny standard would be applied to city's actions;
- City's decision not to contract with promoter was reasonable; and
- Promoter failed to present evidence that city's refusal to contract with it was viewpoint-based.

Promoter of adult-content conventions adequately pleaded facts necessary to establish it had standing to sue city for preliminary injunction compelling city to contract with it for use of convention center to hold three-day entertainment exposition. Promoter pleaded a constitutional injury, the deprivation of its First Amendment rights, that was capable of being redressed by relief sought, an injunction restraining city from enforcing resolution and ordering city to enter into contract with promoter for its three-day exposition at city's convention center.

Promoter of adult-content conventions failed to provide any evidence that city convention center was a designated public forum, and therefore could not establish likelihood of success on essential element of its claim that, under strict scrutiny standard, city's denial of contract for use of convention center violated promoter's First Amendment rights, as required to obtain preliminary injunction compelling city to contract with it for use of convention center for three-day expo. Promoter did not offer any evidence that in creating or operating convention center, city had intentionally opened up a nontraditional forum for public discourse such that city would have heavy burden of showing its actions did not infringe promoter's First Amendment rights.

City established that its decision not to contract with promoter of adult-content conventions was reasonable in light of the purpose of the city's convention center, and thus promoter could not show likelihood of success on merits of its claim that city resolution prohibiting city from contracting with promoter for use of convention center violated promoter's First Amendment rights, as required to obtain preliminary injunction mandating that city enter into contract with promoter for use of convention center for three-day expo. City could have reasonably believed, having observed what transpired at promoter's previous expo held the year before, that it would be incongruous with purpose of the convention center, to promote economic development of the city, to host an event that would likely include public lewdness and other conduct city ordinance would permit it to otherwise regulate.

Promoter of adult-content conventions failed to provide any evidence that was sufficient to rebut city's showing that it declined to contract with promoter for use of convention center for three-day expo based on belief about expected content of the expo rather than in opposition to promoter's purported viewpoints, and therefore promoter could not show likelihood of success on its First Amendment claim as required to obtain preliminary injunction compelling city to contract with it to use convention center. City's resolution prohibiting city from entering contract with promoter was both content and viewpoint neutral, and there was no clearly articulated particular viewpoint against which city could have discriminated when it passed the resolution.

TAX - FLORIDA

City of Fort Pierce v. Treasure Coast Marina, LC

District Court of Appeal of Florida, Fourth District - May 31, 2016 - So.3d - 2016 WL 3087680

After city was granted exemption from ad valorem taxes on two marinas it owned and operated, owner of private marina, which was not exempted, brought suit seeking declaratory and injunctive relief against application of the exemption to the city's marinas. Both parties moved for summary judgment.

The Circuit Court granted summary judgment to owner. City appealed.

On motion for rehearing, the District Court of Appeal held that city's marinas served a municipal or public purpose, and thus city was entitled to an ad valorem tax exemption.

City's marinas served a "municipal or public purpose," and thus city was entitled to an ad valorem tax exemption, even though they competed with other private marinas in the area. The marinas were open to public use, were exclusively owned and operated by the city, provided recreation for local residents, supported the local economy by attracting non-local residents, and were part of a larger recreational park complex.

SEC: Muni Advisors Acted Deceptively With California School Districts.

The Securities and Exchange Commission today announced that two California-based municipal advisory firms and their executives have agreed to settle charges that they used deceptive practices when soliciting the business of five California school districts.

An SEC investigation found that while School Business Consulting Inc. was advising the school districts about their hiring process for financial professionals, it was simultaneously retained by Keygent LLC, which was seeking the municipal advisory business of the same school districts. Without permission, School Business Consulting shared confidential information with Keygent, including questions to be asked in Keygent's interviews with the school districts and details of competitors' proposals including their fees. The school districts were unaware that Keygent had the benefit of these confidential details throughout the hiring process. Keygent ultimately won the municipal advisory contracts.

This is the SEC's first enforcement action under the municipal advisor antifraud provisions of the Dodd-Frank Act.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting also is charged with failing to register as a municipal advisor.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Without admitting or denying the findings in the SEC's orders instituting settled administrative proceedings:

- School Business Consulting agreed to a censure and a $30,000 penalty.
- The firm's president Terrance Bradley agreed to be barred from acting as a municipal advisor and must pay a $20,000 penalty.
- Keygent agreed to a censure and a $100,000 penalty.
- Keygent's principals Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000 respectively.

The SEC's investigation was conducted by Brian P. Knight, Monique C. Winkler, and Deputy Chief Mark R. Zehner of the Public Finance Abuse Unit with assistance from John Yun of the San

Francisco Regional Office.

Date 13/06/2016

ACA Financial Guaranty Sues City of Buena Vista, Virginia.

- **Suit Seeks Payment On $9.2 million Bond Issue Used to Finance the Building of the Municipal Golf Course, Vista Links**
- **Legal Action Could Result in the Foreclosure of City Property including the City Hall, the Police Department Building, and Vista Links Golf Course.**

NEW YORK–(BUSINESS WIRE)–ACA Financial Guaranty Corporation ("ACA") filed suit today against the City of Buena Vista, Virginia for its default on $9.2 million in Lease Revenue Bonds issued in 2005 ("Series 2005") to refund debt the City had incurred building the municipal golf course, Vista Links.

Steve Higgs, Principal Attorney with The Higgs Law Firm stated, "ACA has worked with the City of Buena Vista for many years to accommodate its needs, and more recently has worked to come to a comprehensive resolution that would benefit all parties. After 16 months of continued non-payment by the City, ACA has decided to sue the City to force it to renew payments on the money it borrowed, and to demand it comply with the promises it made under the Bond agreements. The failure of the City to pay back its Bonds has already resulted in it being excluded from some state borrowing programs, and is likely to impair future efforts for it to borrow from debt markets as long as it remains in default.

"The City's failure to make its Bond payments could result in the foreclosure of its City Hall, its police department building, and its municipal golf course."

The City of Buena Vista, Virginia issued annual appropriation bonds in 2005 in the amount of $9.2 million to refund debt the City had incurred to build Vista Links, a municipal golf course. The Bonds are "moral obligation" bonds to be paid back from monies appropriated by the City Council. The City further secured the bonds through a lien on certain city property including the City Hall, the police department building, and municipal golf course, Vista Links. The City also promised to give ACA a first lien on any building to which it moves its municipal services.

In July 2011, at the City's request, ACA and the City entered into a Forbearance Agreement in which ACA allowed the City to reduce its debt payments to 50% of required debt service for five years. ACA agreed to allow the City to defer repayment of this money until 2035-2040, interest free.

In January, 2015 the City Council unilaterally violated the forbearance agreement by discontinuing all payments on the Series 2005 bonds, despite four members of the City Council having voted in favor of the forbearance agreement. The City then offered to settle the 2005 bonds by paying the value of the municipal golf course, City Hall and police department building, a value prohibitively less than the $9.2 million outstanding.

Mr. Higgs continued, "When the City was having problems in 2011, it came to ACA and asked for help. ACA agreed to reduce the payments by 50%, to be paid back on an extended basis. That's a deal you would be hard pressed to get from any financial institution. Now the City has broken even that promise, and claims it cannot afford to pay the money back. But the City is not pursuing bankruptcy and is still paying all its other debt. That is unfair.

"In the long run, when you factor in the costs of litigation, the potential loss of the municipal buildings and golf course, the impaired ability to borrow in the future, and uncertainty about whether you can trust the City's promises, the City would be better off paying the Bonds. The only way that not paying the Bonds makes any financial sense is if the City was contemplating reverting to town status and have Rockbridge County agree to accept it as part of the County.

"The City is engaging in conduct it would never allow from its own citizens. The City Council should honor its promises and pay back the money it borrowed. Even the City has to pay its debts."

ACA is represented in this matter by Steven L. Higgs of STEVEN L. HIGGS, P.C. in Roanoke, VA.

June 13, 2016 05:30 PM Eastern Daylight Time

S&P: Debt Levels Flatline As U.S. States Prioritize Budget Management Over Investment.

After a small increase in fiscal 2014, the amount of aggregate tax-supported debt outstanding among the U.S. states declined in 2015. According to S&P Global Ratings' calculations, total tax-backed debt balances outstanding fell by 1.04% compared with 2014. In some states, sluggish economic and revenue growth has limited bonding capacity. But even where legal debt limits aren't a constraint, still-lean fiscal margins have contributed to a general reluctance on the part of many states to add new spending commitments despite low interest rates.

For instance, adding new infrastructure can involve more than incrementally higher debt service costs. Often, it also entails new ongoing spending to operate and maintain new roads or facilities. According to the Congressional Budget Office, it's common for more than half of total spending on transportation and water infrastructure to be for operations and maintenance.

Continue reading.

14-Jun-2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker/dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker/dealers. SEC Rule 15c212 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

[Bill Would Create New $5B Category of PABs for Government Buildings.]

WASHINGTON – A bipartisan bill introduced in the House would allow state and local governments to issue up to $5 billion in private activity bonds to finance the construction and upkeep of certain publicly owned buildings.

The Public Buildings Renewal Act (H.R. 5361), introduced by Rep. Mike Kelly, RPa., would create a new category of private activity bonds for governments to join with private parties to help finance schools, medical facilities, police stations and other social infrastructure.

The recently introduced bill, which has nine co-sponsors, would amend the federal tax code to provide another layer of tax-exempt financing that would encourage the use of public-private partnerships.

Section 142 of the federal tax code includes 15 categories of "qualified" PABs, one of which is qualified public educational facilities. Kelly's legislation would add a 16th category for qualified government buildings.

Kelly, a member of the House Ways and Means Committee, said his legislation would help resolve an "ongoing infrastructure crisis" that exists in public schools.

Kelly's bill defines qualified government buildings as an elementary or secondary school; public university buildings used for educational purposes; public libraries; courts; hospitals, health care facilities, laboratories and research buildings; public safety buildings including police and fire stations, medical facilities and jails; and government offices.

Tom Qualtere, a spokesman for Kelly, said the bonds would be exempt from state volume cap restrictions generally applied to PABS, and instead would be subject to a new, national cap of $5 billion.

State and local governments would be required to submit a funding application to the Treasury Department that includes the amount requested; the governmental unit that will own the project; and a project description and timeline.

Governments would also be required to provide anticipated funding sources and uses of funds for the project. Entities would be required to issue bonds in the amount allocated by Treasury within two years after the allocation date. If they fail to do so, the unused portion of the allocation would be revoked.

The bill would exclude any retail food or beverage facilities or buildings used for recreation and entertainment, including private golf courses, country clubs, convention centers and sports arenas.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said the organization supports the proposed legislation because of the new financing routes it could provide municipalities.

“BDA would be supportive of this effort as yet another tool to provide state and local governments additional flexibility to build and rebuild important infrastructure projects, coupled with the benefits of leveraging private expertise,” Giroux said. “It is important to remember that tax-exempt bonds have been the cornerstone by which local governments have been able to keep taxes and utility rates lower for ratepayers for over 100 years and it is critical that we maintain this important avenue for growth.”

Under current tax regulations, public entities often must choose between taxable P3 financing or a non-P3 structure using tax-exempt bonds. If the legislation were to be enacted, P3 deals could use tax-exempt financing, thus expanding municipalities’ ability to take advantage of the P3 structure for public building projects. Qualified PABs are also commonly used to fund transportation and public works projects.

Linda Schakel, a partner at Ballard Spahr in Washington, said there is a “fair amount” of privatization that currently exists in jail and correctional facilities as well as government offices, but is not sure if such private arrangements are common in public schools. She also supported Kelly’s bill, but said it was yet to be seen if the partnerships would be based on a lease or a management contract.

“I think it’s a great idea to get private parties to come in and do particularly renovations that are needed,” Schakel said.

Still, Schakel said some private entities may have hesitations about entering into these agreements because they would not receive depreciation on the government-owned facilities.

“It may narrow the number of private parties interested in participating in the program,” she said. “Or it may end up being mainly private parties want to enter into long-term management contracts.”

Kelly’s legislation was referred to the House Ways and Means Committee on May 26.

The Bond Buyer

By Evan Fallor

June 14, 2016

SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.

WASHINGTON – In a first of a kind case, two California-based municipal advisory firms and their executives agreed to pay a total of $200,000 to settle Securities and Exchange Commission charges that they used deceptive business practices in dealing with five school districts.

This is the first enforcement action the SEC has taken under the municipal advisor antifraud provisions of the Dodd-Frank Act.

School Business Consulting, Inc. (SBIC) was censured and fined a $30,000 while its president and sole employee Terrance Bradley was barred from acting as a municipal advisor and agreed to pay $20,000. The other MA firm, Keygent LLC, agreed to a censure and penalty of $100,000 and two of its managing directors, Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000, respectively.

The SEC found that while School Business Consulting, through Bradley, was advising school districts about hiring financial professionals, it was simultaneously retained by Keygent LLC, which was seeking MA business from the school districts. During that relationship, Bradley improperly provided confidential information about the hiring processes of five school districts that were his clients to Keygent, Hsieh, and Wang, which may have led to the districts to hire Keygent as a municipal advisor.

The SEC found Bradley verbally disclosed his relationship with Keygent to the school district officials and Keygent's contracts with the school districts also disclosed that Bradley was on its advisory board, but the districts were not aware Bradley was sharing the confidential information.

The defendants settled the charges without admitting or denying the charges.

A spokesperson for Keygent said in a statement that Keygent "did not ask for this information, nor did [it] change [its] proposals or fees based on the information." However, the spokesperson said the firm acknowledges that mistakes were made and is taking responsibility.

"In addition to complying fully with the SEC's order, we have taken proactive steps to improve our compliance program and to ensure that all business practices are entirely in line with the SEC's regulations and best professional and ethical standards," the spokesperson said.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said municipal entities "should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

The events leading up to the enforcement action began in September 2010, when Keygent retained SBCI to serve on its advisory board for $2,500 a month. Bradley had numerous contacts in school districts across California and, through the relationship, Keygent gained access to those contacts with the possibility of introductions to officials in districts that Hsieh and Wang had identified as having refinancing opportunities, the SEC found.

Many of the school districts that Bradley solicited on Keygent's behalf were SBCI's own clients, the SEC said in its documents.

Bradley drafted, and assisted in drafting, the request for qualification documents that the five school districts used in their hiring process. Each of the school districts directed candidates not to make contact with anyone other than specified officials in an effort to make sure the candidates were on an even footing, the SEC found.

Despite that direction, Bradley gave Keygent information like advanced copies of draft interview questions and details of competitors' proposals, sometimes including competitors' fees, the SEC said. He also had discussions with Keygent about how to answer interview questions and suggested topics to bring up during the interviews.

Although Bradley recused himself from four of the five school districts' interview processes, citing a conflict of interest, he never informed the districts he was sharing the information and continued to recommend Keygent to the districts, according to the SEC. The one process in which he participated was at the discretion of the district after Bradley informed the officials of his believed conflict of interest.

The SEC found that SBCI violated Section 15B(a)(1)(B) of the Securities and Exchange Act because it was soliciting for Keygent without being registered as a municipal advisor. The SEC said Bradley, as the firm's sole employee, caused the violation.

SBCI and Bradley also violated Section 15B(c)(1) of the Exchange Act because they did not act consistently with their fiduciary duty to its client. Additionally, they violated Municipal Securities Rulemaking Board Rule G-17 on fair dealing and Section 15B(a)(5), which prohibits MAs from engaging in any fraudulent, deceptive, or manipulative act or practice, while soliciting a municipal entity.

The SEC found Keygent and Hsieh also violated Section 15B(c)(1) and MSRB Rule G-17. The commission also said Keygent, Hsieh, and Wang were a cause of SBCI's and Bradley's violations of Sections 15B(c)(1), 15B(a)(5), and Rule G-17.

The Bond Buyer

By Jack Casey and Lynn Hume

June 13, 2016

White: SEC Focused on Possible Puerto Rico Bond-Related Violations.

WASHINGTON — The Securities and Exchange Commission is "very focused" on examining whether there were any securities law violations involving Puerto Rico bonds as the commonwealth's fiscal situation deteriorated over the last few years, SEC chair Mary Jo White told the Senate Banking Committee on Tuesday.

She made her comments after Sen. Bob Menendez, D-N.J., pressed her on the topic during a committee hearing. After the hearing, Menendez and six other senators sent White a letter asking the SEC to investigate potential fraud and illegal conduct that may have contributed to Puerto Rico's debt and fiscal crisis.

"The people of Puerto Rico deserve to know whether illegal activity by advisors to Puerto Rico and its municipal entities contributed to the current debt crisis," Menendez said during the hearing.

The letter from the seven senators urged the SEC to "immediately commence an investigation into the acts, actions and activities in connection with the underwriting, sale, distribution and trading of Puerto Rico debt in the years leading up to the present crisis."

The commonwealth is currently struggling with roughly $70 billion in debt and $46 billion in unfunded pension liabilities.

The Senate lawmakers also asked White to update them on the recommendations listed in the 2012 Report on the Municipal Securities Market and "whether the SEC needs new authorities to better protect municipal entities in Puerto Rico and elsewhere."

Sens. Elizabeth Warren, D-Mass., Chuck Schumer, D-N.Y., Kirsten Gillibrand, D-N.Y., Jeff Merkley, D-Ore., Richard Blumenthal, D-Conn., and Bernie Sanders, I-Vt. co-signed the letter. White said during the hearing that the SEC has been involved in these issues, with its enforcement division releasing several actions related to Puerto Rico bonds over the last few years and its division of investment management issuing guidance for investors assessing Puerto Rico bonds.

"I can't comment on specifics [of] ongoing [actions] … but I think we can say that we are very focused on the issues you have raised," she told Menendez.

Legislation designed to help the commonwealth deal with its debt crisis has also passed the House and is now waiting for consideration in the Senate. One amendment that was added to the House bill before it was approved would provide discretionary authority to a seven-person oversight board to to investigate whether brokers and investment advisers either failed to disclose or misrepresented the risks of Puerto Rico securities sold to retail investors.

The SEC, along with the Financial Industry Regulatory Authority, settled with UBS Financial Services, Inc. of Puerto Rico for $34 million in September 2015 after the regulators found the firm failed to supervise the suitability of transactions in Puerto Rican closed-end fund shares. The commission also charged a former broker with fraud after he had customers invest in the CEFs using money borrowed from an affiliated bank.

The action against the former broker, Jose G. Ramirez, Jr., is ongoing in Puerto Rico district court.

UBS did not admit or deny the SEC's findings that between Jan. 1, 2009 and July 31, 2013 UBSPR allowed 165 customer accounts with conservative investment objectives and $2 million or less in assets to be more than 75% concentrated in highly leveraged CEF shares. By mid-August 2013, Puerto Rico's bond market had declined considerably and most CEF shares and Puerto Rico munis lost between 20% and 50% of their value.

The SEC also brought two cases in 2014 and 2015 that led to settlements with 14 firms that the SEC found had sold bonds in amounts below the minimum denomination set by the issuer.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in the official statement. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them.

The Bond Buyer

By Jack Casey

June 14, 2016

Phoenix Investment Firm Probed on Muni-Bond Sales.

A financial regulatory group has accused a Phoenix investment company of securities fraud in connection with municipal bond sales to finance an Arizona charter school and two Alabama health-care facilities.

FINRA, or the Financial Industry Regulatory Authority, filed a complaint against Lawson Financial Corp. and Robert Lawson, the firm's president and CEO, alleging securities fraud over the sale of millions of dollars worth of municipal bonds. Lawson denied the allegations in an interview with The

Arizona Republic.

FINRA also charged Robert Lawson along with Pamela Lawson, his wife and the company's chief operating officer, with self-dealing and misuse of customers funds by abusing their positions as co-trustees of a charitable-remainder trust. A statement released Thursday said they improperly used trust funds to prop up bonds issued for the charter school, Hillcrest Academy in Mesa, which is being opened as a campus of an unaffiliated company, the Leman Academy of Excellence.

The charter-school bonds were sold in a $10.5 million offering that Lawson Financial underwrote in October 2014. According to FINRA, the bonds were sold to Lawson Financial's customers. Lawson Financial also sold muni bonds to raise financing for two assisted-living facilities in Alabama, the complaint said.

The complaint starts a formal proceeding by FINRA and doesn't represent a decision on the allegations. Companies or individuals named in a complaint can file a response and request a hearing. The complaint could result in a fine, censure, suspension or ban from the securities industry, as well as restitution or repayment of any gains that resulted from the alleged actions.

Robert Lawson said he believes FINRA's interpretation of the facts in the case and conclusions are incorrect. He said Lawson Financial will file a response and request a hearing.

"We've been in business in Phoenix for 32 years and always have tried to act in the best interest of our clients," Lawson told TheRepublic.

The complaint alleges that Lawson and the company were aware of financial difficulties faced by Hillcrest and the two Alabama facilities and fraudulently hid from bond buyers material facts that the school and health facilities were under financial stress.

The complaint alleges that Robert Lawson, with the knowledge of Pamela Lawson, improperly transferred millions of dollars from the account to assist the bond borrowers. FINRA said this came at a time the bond issuers weren't able to pay their operating expenses and, in some cases, were unable to make interest payments. Charitable-remainder trusts are vehicles that allow people to donate assets to a non-profit at death while receiving income from those assets while still alive.

Since 1988, Arizona charter schools have raised $1.5 billion in more than 120 municipal-bond sales, according to a 2015 report by Charter School Advisors. Arizona ranks second only to Texas in this regard, the report said.

Russ Wiles, The Republic | azcentral.com 5:50 p.m. MST May 19, 2016

Reach the reporter at russ.wiles@arizonarepublic.com or 602-444-8616.

Largest PACE Bond Securitization Completed.

Seventh Securitization of PACE Bonds by Renovate America Totals $305.3 Million; Brings Company's Total of Widely Marketed PACE Green Bonds to $1.35 Billion

SAN DIEGO, June 6, 2016 /PRNewswire/ — Renovate America, the largest provider of residential Property Assessed Clean Energy (PACE) financing in the U.S., announced the closing of its seventh securitization of PACE bonds – the largest ever completed to date by any issuer and a designated green bond. The securitization, HERO 2016-2, includes $305,313,000 in Class A Notes rated AA (sf) by Kroll and AA (sf) by DBRS, secured by 13,432 PACE assessments levied on residential properties in 31 California counties. The PACE assessments have an average balance of approximately $24,433, a weighted-average annual interest rate of 7.96 percent and a weighted-average original term of 14.95 years. The PACE assessments were originated between January 2016 and April 2016.

"This transaction is our most successful issuance so far in terms of the level of interest from investors including, for the first time, international investment," said Renovate America's CEO J.P. McNeill. "This private capital is directly benefitting homeowners and communities by lowering utility bills, reducing carbon emissions, and creating clean energy jobs. This all comes at no cost to taxpayers."

The HERO Bond platform is the first asset-backed securities (ABS) platform to solely produce green bonds, with each of the company's seven securitizations having been assessed by Sustainalytics, a leading provider of ESG and corporate governance research and ratings. The company provided a second opinion that the bonds adhere to the Green Bond Principles, and that the proceeds fund projects with measurable environmental benefits. PACE green bonds have received significant interest in part because they do not fund aspirational or speculative projects; the proceeds have already been invested in projects with verified environmental impact.

"Investor interest in HERO Bonds is growing with each issuance because the bonds provide significant relative value versus bonds of similar credit and duration," said Renovate America's SVP for Capital Markets Adam Garfinkle. "Our core investor base remains solid and we add new investors with each transaction."

Renovate America partners with local governments to provide its version of PACE, the HERO Program (Home Energy Renovation Opportunity), to homeowners who finance a wide variety of product installations to conserve water and energy. These installations include energy-efficient products like HVAC, windows, and roofing; renewable and alternative products like solar; and water efficiency products for indoor systems and outdoor landscaping. HERO is unique in that it provides 100 percent financing for energy and water saving products for up to 20 years with fixed interest rates designed to make payments affordable. Homeowners make payments along with their property taxes, and in the event the property is sold, the remaining balance may be able to transfer to the new owner.

Since 2011, the HERO Program has financed more than $1.5 billion in home improvements which will save more than $2 billion on energy bills, conserve nearly 10 billion kWh of electricity, reduce emissions by more than 2.6 million tons, and save more than 4.4 billion gallons of water. It has already created 12,700 jobs across California and had a local economic impact of more than $2.6 billion.

HERO is the largest and most successful residential PACE program in the United States. More than 415 cities and counties have adopted the program across California, including the cities of Los Angeles, San Francisco, San Diego, Sacramento, San Jose, Fresno, Riverside, Anaheim, Santa Ana, Bakersfield, and San Bernardino, among others. HERO will expand into the states of Missouri and Florida in 2016.

About Renovate America

Renovate America is the leading provider of financing for energy and water efficiency home improvements in the U.S. The company's HERO Program provides local governments with a comprehensive residential PACE financing solution that also includes consumer protection, business automation software, workforce training and ongoing access to private capital. This unique public-private partnership offers consumers access to more than 60 types of products that reduce energy and water consumption, without the need for government funding. The HERO Program has received a number of awards including the Governor's Environmental and Economic Leadership Award in California, the Urban Land Institute Best of the Best, and the Southern California Association of Governments President's Award for Excellence. In March, HERO was awarded the U.S. Climate Leadership Certificate for Innovative Partnerships by the U.S. Environmental Protection Agency and was a participant in the 2016 White House Water Summit. Additional information can be found at www.renovateamerica.com and www.heroprogram.com.

Jun 06, 2016, 16:24 ET from Renovate America

GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.

Issuers that self-reported under the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) initiative can expect to receive settlement offers containing standard provisions to which they must consent in the near future. The SEC is requesting an extraordinarily short turn-around for the settlement—5 to 10 days—but has indicated that it will extend the settlement offer upon request. This alert provides governments with an overview of the process and GFOA's recommendations that state and local governments participating in the MCDC initiative become familiar with the standard terms that are expected to be in the offered settlements. GFOA strongly recommends that issuers seek legal advice prior to finalizing or signing the proposed SEC settlement agreement and make sure they fully understand the consequences of the proposed settlement.

Click here for the alert.

Wednesday, June 8, 2016

Things You Didn't Know About Detroit's Historic Bankruptcy.

Nathan Bomey, author of a new book on the largest Chapter 9 filing in U.S. history, reveals the unsung heroes and true timeline of the event.

Nearly three years ago, Detroit's $18 billion bankruptcy — the largest municipal Chapter 9 filing in American history — captured the nation's attention. Detroit, like so many other Rust Belt cities, had suffered from decades of economic decline, as well as shrinking economic support from the state; mismanagement from city leaders that hurt the public trust and shattered finances; and the exodus of more affluent and generally white residents to the suburbs.

These effects and more are captured in the new book *Detroit Resurrected*. It's the first book to extensively chronicle the city's story into and out of bankruptcy, and it's written by journalist Nathan Bomey, who was the Detroit Free Press' lead reporter on the city's bankruptcy and is currently a writer at USA Today. Bomey, who spoke with Governing about the book, based it not only on his extensive reporting at the time but also on revealing and frank post-bankruptcy interviews with key players.

The following interview is edited for length and clarity.

I didn’t know until reading your book that bankruptcy was being talked about in Detroit several years before 2013.

It was. In Detroit, the promises to retirees were actually broken many years before the bankruptcy process. I think the problem was [that by the time bankruptcy was considered], political leaders didn’t really have the political will to make the tough decisions to avoid this type of process. So they put it off. And one factor in Detroit’s bankruptcy that has been widely misunderstood is that the emergency manager law was uniquely tailored to make a bankruptcy go fast. Kevyn Orr got the job about four months before the city ultimately filed for bankruptcy. I think looking back on it, most people would agree that by the time he was installed, bankruptcy was probably inevitable.

You say that Detroit’s approach to securing money to restore services is an unusual approach in bankruptcy. Please explain.

Creditors are used to getting their best interests put before the interests of the debtor. But Judge Steven Rhodes put the people of Detroit before the creditors of Detroit because he realized that Chapter 9 bankruptcy does not have to be about who gets paid the highest percentage of their claims. It can also be about, how do we restore a city to serve its people and make public safety come first? So Rhodes allowed Detroit to structure its debt-cutting plan in a way that preserved money for services before it actually carved out the money for creditors.

Explain the so-called Rhodes Test that emerged from this case.

If you look at fairness purely on legal terms and assessing debt, then [restructuring] might be a matter of just following the rule book on who gets paid back what. But if you introduce the idea that certain creditors are more vulnerable than other creditors, all of a sudden it’s up to the judge’s discretion whether equal treatment is fair treatment. In the end, Rhodes ruled that his own conscience could dictate whether it was fair for the pensioners to get a higher percentage on their claim back than the Wall Street creditors — and he decided it was fair. If future judges are allowed to apply their conscience to decisions about what’s fair and not fair, we could see some very divisive rulings.

Were there any unsung heroes who emerged in your reporting?

Very few people know about two retirees who were extremely important to the resolution of the case: Shirley Lightsey and Don Taylor. They helped negotiate the decision to accept the [roughly 10 percent] cuts in pensions and [90 percent cut] in health care. They had to convince their constituents to vote in favor of it. And I think what they did was remarkable because it was a triumph of pragmatism and it was an example of a sacrifice that we just don’t see in politics.

Did any villains emerge?

One of the messages I really wanted to send with this book is that I think the heroes and villains are not always who you think they are. The villains most people cite were the bond insurers Syncora and Financial Guaranty Insurance Company, [whom Detroit proposed paying back 10 cents on the dollar]. But when I look at the case, they were simply fighting to protect their rights. And I’m not sure we should expect anyone to do anything differently. You can quibble with the aggressiveness of their position and the fact that they attacked the Detroit Institute of Arts and tried to liquidate that. But that’s more a matter of opinion whether the museum was something that should have been liquidated to pay off creditors.

Detroit taught us a lot about how pensioners and bondholders can be treated in

bankruptcy. Are there any other lessons for cities here?

I think that one of the key lessons is someday the bill will come due. The promises you make will eventually be paid for by somebody. In Detroit, it was the retirees and Wall Street who sacrificed. So think about that when you set the budget.

GOVERNING.COM

BY LIZ FARMER | JUNE 16, 2016

Dot-Govs Get a Much-Needed Facelift.

Several big cities are decluttering and redesigning their government websites to make them easier to use.

Is it time to give the government website a makeover? For years, city and state sites have been designed as portals through which the public could find as much information as possible. The motto was clearly, “the more, the better.” But the result has been an overwhelming hodgepodge of columns and boxes filled with tiny text, drop-down menus that run on and on, and buttons everywhere.

With so much information crammed on to a home page, visitors are lucky if they manage to find what they’re looking for, says John McKown, president of Evo Studios Inc., a Web design firm that works with municipalities. “The problem with so many government websites has been information overload.”

That’s certainly the case with the city of Philadelphia’s website, which contains more than 66,000 pages and documents, some of which have never been viewed, according to Aaron Ogle, the city’s former civic technology director.

Information overload is just one problem. Another is the way information is organized, typically around the name of an agency or department, rather than how it can help someone. And exacerbating the issue are the growing number of online services that cities and states have added. These and other new services, such as slideshows and videos, weigh down sites, making them slow and frustrating for users.

Perhaps the biggest problem is that these sites were built for PCs, but users are going mobile. Forty percent of people who visited a federal website in the first three months of this year used some kind of mobile device, according to the site analytics.usa.gov. This is a real concern since lower-income users tend to rely on their smartphones as their one and only device for accessing the Internet.

Aware of the issue, some states and localities have begun modernizing the look and feel of their websites. In 2014, New York state updated its 15-year-old site. In the redesign, the state emphasized ease of use, simple design and a more intuitive way to find information. The new home page uses a photo-rich design, with a high-resolution image dominating the screen and just a few buttons to direct the user to content. Gone is a typical photo of the state’s chief executive, Gov. Andrew Cuomo. The refresh has paid off: Page views jumped from 313,170 in 2013 to 1.1 million in 2014.

Boston and Philadelphia are redoing their websites as well. Both cities have launched beta versions of their new websites that users can visit and try out while the existing website is still up and running. The pilots will give the cities a way to test with actual users what works and what doesn't.

Boston's new pilot version went live in January. It's far cleaner looking and more efficient. "It represents a cultural change around what a portal is," says Lauren Lockwood, the city's chief digital officer.

The biggest lesson that cities and states are learning is to make the new websites more reflective of the work that is done by the city and to present the information in a more readable fashion. Some of the information on Boston's site was found to be written at a post-graduate school level. "Everybody is your audience," says Lockwood, "so you want to humanize their experience."

GOVERNING.COM

BY TOD NEWCOMBE | JUNE 2016

Defending Wall Street Fees.

The performance fees that public pension plans pay private equity and hedge fund managers are coming under scrutiny. Some say the high fees aren't worth the returns on investment and complain that many costs remain hidden. Those two points were part of a critical report last month by the right-leaning Maryland Public Policy Institute on Maryland's hidden Wall Street fees.

Now, the Maryland State Retirement Agency has issued a lengthy response questioning the institute's conclusions. In a letter published this month by Executive Director R. Dean Kenderdine and Chief Investment Officer Andrew C. Palmer, the system's officials attack the institute's methodology while defending its own financials.

Maryland reported paying $85 million in performance fees in 2014, but according to the report it may have actually paid more than $250 million. The policy institute made that estimate by comparing Maryland's disclosed performance fee rate against the rate of performance fees disclosed by New Jersey, which has a similarly sized alternative investment portfolio and fairly comprehensive fee disclosure policy.

But Kenderdine and Palmer say Maryland's $85 million in reported fees are accurate because New Jersey has been "much more aggressive in its pacing of investments." In other words, the private equity funds New Jersey invests in are designed to start producing returns soon after the pension puts money in the fund. Maryland's private equity funds, however, haven't hit that so-called harvesting period when investments are sold and managers receive performance fees from that profit, said Kenderdine and Palmer. So the performance fees are smaller but could theoretically be larger in the coming years.

Though Maryland's investment performance is lagging compared with most plans, according to Kenderdine and Palmer, they may be better off later. That's because stock market losses in the 2001 and 2008 financial crises left them feeling too exposed to one of the "most volatile asset classes," so Maryland now has less of its investments in public stocks than most other plans. That means that "during periods of strong public equity performance, as has been experienced over the past five years, [Maryland] will lag the peer group," the officials said. But, Maryland "should perform better during periods of market stress."

The Takeaway: The pension system's dispute of the figures in the institute's study shows just how murky the issue of reporting Wall Street fees is. In their response, Kenderdine and Palmer also say they support an [effort to standardize performance fee reporting](). But they join many public pension officials in arguing that even if Maryland's fees were higher, they would be worth it.

"Large amounts of [performance fees] should be considered a positive result, as this would imply much greater gains to the investor," they noted.

In other words, the higher a performance fee, according to them, the higher Maryland's profit from that investment is. While that's true, many contend that cheaper funds can produce comparable (or better) returns on investment.

GOVERNING.COM

BY LIZ FARMER | JUNE 17, 2016

NABL: House Bill Would Create New PAB Category for Government Buildings.

Representative Mike Kelly (R-PA) has introduced H.R. 5361, the Public Buildings Renewal Act, which would create a new category of private activity bonds (PABs) to finance the construction and continued upkeep of publicly owned buildings. H.R. 5361 defines qualified government buildings as elementary or secondary schools, colleges or universities, public libraries, courts, hospitals, public safety buildings and government offices. The bonds issued under H.R. 5361 would also be exempt from state volume caps restrictions usually given to PABs, and would instead be subjected to a new national cap of $5 billion. The intent of the bill is to encourage public-private partnerships by using the definition of governmental ownership applicable to airports, docks and wharves, and mass commuting facilities. H.R. 5361 was referred to the House Ways and Means Committee.

H.R. 5361 is available here.

GFOA Testifies at IRS/Treasury Department Hearing on Political Subdivisions.

On June 6, 2016, Patrick J. McCoy, GFOA President-Elect and director of finance for the New York City Metropolitan Finance Authority testified on behalf of GFOA at a hearing held by the Internal Revenue Service and the Department of the Treasury on their proposed rule on political subdivisions. The proposal would increase restrictions on the definition of "political subdivision" for the purpose of being able to issue tax-exempt bonds.

McCoy's testimony reiterated concerns expressed in GFOA's member survey—specifically, that it isn't possible to construct a one-size-fits-all definition of what constitutes acceptable governmental control of a political subdivision, given the varied nature of states and tens of thousands of local governments. The proposed rule creates a high level of uncertainty about the status of political subdivisions that have been authorized by governments and a high level of risk for many entities across the country concerning their ability to issue tax-exempt bonds. This is especially true in cases where districts are intentionally designed to reach across multiple jurisdictions in order to create service delivery efficiencies directly to citizens.

McCoy underscored the heart of GFOA's argument against the proposed regulations, stating that they “question the legitimacy and authority of the bodies that enacted the enabling legislation that created the political subdivisions in the first place.” The additional requirements of the proposed rule attempt to regulate governing matters that, in the absence of abuse, should be left to the states, as have been the case for decades.

Please click here for the testimony.

Wednesday, June 8, 2016

IRS TE/GE Advisory Committee Issue 2016 Report of Recommendations.

On June 8, 2016, the 21 members of the ACT presented its 15th report of recommendations to the IRS in a public meeting in Washington, DC.

The ACT report addressed five issues:

> **Employee Plans:** Analysis and Recommendations Regarding Changes to the Determination Letter Program
>
> **Exempt Organizations:** Stewards of the Public Trust: Long-Range Planning for the Future of the IRS and the Exempt Community
>
> **Federal, State and Local Governments:** Revised FSLG Trainings and Communicating with Small Local Governments
>
> **Indian Tribal Governments:** Survey of Tribes Regarding IRS Effectiveness with Current Topics of Concerns and Recommendations
>
> **Tax Exempt Bonds:** Recommendations for Continuous Improvement and Enhancing Resources in the Tax Exempt Bond Market

ACT members provide observations about current or proposed IRS policies, programs and procedures, and suggest improvements. The members are selected by the Commissioner of the IRS and then appointed by the Department of the Treasury. The IRS seeks a diverse group of members representing a broad spectrum of people experienced in employee plans; exempt organizations; tax-exempt bonds; federal, state, local and Indian tribal governments.

Read the Report.

MSRB Reminds Municipal Advisors of June 23, 2016 Effective Date of New Rule G-42.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that MSRB Rule G-42 on duties of non-solicitor municipal advisors and related amendments to MSRB Rule G-8 on recordkeeping become effective on June 23, 2016.

The new rule establishes core standards of conduct for municipal advisors that engage in municipal advisory activities, other than municipal advisory solicitation activities.

View the regulatory notice.

View the approval order.

Resources:
Watch an on-demand webinar (CPE credit available)
Read an overview of the rule for municipal advisors

Grassley Seeks Updates from IRS on Tax-exempt Hospital Work in Light of Recent Cases.

WASHINGTON – Sen. Chuck Grassley of Iowa today asked the IRS for updates on implementing tax-exempt hospital accountability measures, citing two instances of non-profit hospitals in the news for aggressively suing patients.

"As Commissioner of the Internal Revenue Service (IRS), you should be made aware of problematic activity within the charitable hospital community," Grassley wrote to IRS Commissioner John Koskinen. "Granted, we can both agree that many charitable hospitals perform good work on behalf of the communities that they service. However, some charitable hospitals get as close to the line as possible, while others callously breach it. It is important that Congress, via its oversight role, and the IRS ensure that charitable hospitals are functioning as intended."

Grassley cited the example of Mosaic Life Care, a Missouri non-profit hospital that ultimately forgave $16.9 million in debt for patients after news coverage of its aggressive collection practices and a persistent inquiry from Grassley. He also cited an Indiana non-profit hospital, Deaconess, that also agreed to help low-income patients after being in the news for patient collection lawsuits.

"These are welcome improvements to the charitable hospital community and others should follow the examples set by Mosaic and Deaconess to better fulfill their charitable mission,"Grassley wrote.

Grassley asked for updates on the IRS' implementation of non-profit hospital reforms that he authored and that were enacted in 2009. These include the public provision of a financial assistance policy and imposing restrictions on certain billing and collection procedures. "Given the abuses observed in my investigation of Mosaic, I am interested in learning more about the IRS' implementation and enforcement of these provisions," Grassley wrote. "The information provided with respect to Mosaic illustrates the value of congressional oversight and sheds light on some of the steps that other charitable hospitals can take to ensure that low-income patients are treated fairly."

Grassley also asked about the status of the requirement, which he also authored, that the IRS and the Department of Health and Human Services collect information on non-profit hospitals and provide an annual report to Congress. The first report was issued in January 2015 covering 2011. The IRS has yet to issue a 2016 report covering 2012.

Grassley has a long record of holding tax-exempt organizations accountable for the tax benefits they receive. His efforts have resulted in well-funded universities' voluntarily spending more from their tax-favored endowments on student aid and reforms to governance at major tax-exempt organizations including the Nature Conservancy and the Red Cross.

Grassley's letter today is available here. More information on his Mosaic inquiry is available here.

Jun 09, 2016

TAX - NEW YORK

[Westchester Joint Water Works v. Assessor of City of Rye]

Court of Appeals of New York - June 9, 2016 - N.E.3d - 2016 WL 3189055 - 2016 N.Y. Slip Op. 04438

Taxpayer commenced tax certiorari proceeding challenging real property tax assessments on parcels. School district intervened.

The Supreme Court, Westchester County, denied assessor's motion to dismiss proceedings on ground that notices of petition and petitions were not served upon school district's superintendent, but granted school district's motion to dismiss on same ground. Taxpayer appealed, and assessor cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Leave to appeal was granted.

The Court of Appeals held that recommencement of a tax certiorari proceeding is unavailable where such proceeding is dismissed for an unexcused failure to comply with the requirement that, within ten days of the service of the notice of petition and petition on a municipality, a petitioner must mail a copy of the same document to the superintendent of schools of any district within which the property is located; abrogating *Matter of MM 1, LLC v. LaVancher*, 72 A.D.3d 1497, 899 N.Y.S.2d 774, and *Matter of Consolidated Edison Co. of N.Y., Inc. v. Assessor & Bd. of Assessment Review for the Town of Pleasant Val.*, 82 A.D.3d 761, 918 N.Y.S.2d 169.

[For Whom the Bond Calls.]

Like most bond investors, you probably check your online brokerage accounts two to three times a week. You might brace yourself for alerts advising you that another bond or two is being called. You may flinch, wince and may even shout a few expletives. Welcome to the insane world of zero/negative interest rates whose ramifications are painful.

The global drive for yield has broken all the rules: Europeans, Asians and foreign corporations are buying taxable and tax-free municipal bonds like crazy. The tax status is irrelevant; it's the yield that matters. The global demand for all U.S. bonds has been insatiable. You may hate U.S. bond yields but foreign investors find them luscious.

Think about it. If you are a German citizen or the cash manager of a German insurance company and have a choice of investing in a ten-year German bund at 0.02% or a ten-year U.S. Treasury at 1.65%, which would you choose? Asked and answered. Plus, capital flows are a simple click away.

With interest rates grinding lower, it's important to stay on top of your bond positions. A perfect example is municipal housing bonds. These are bonds used to finance multi-family or single family mortgages secured by the payments of the underlying mortgage loans. These bonds raise money for affordable housing. Most states issue such housing bonds. Their credit quality overall is good but there is a downside. When there are mortgage prepayments, unexpended, unused proceeds from the bonds issue—you guessed it—bonds can and will be called. If you paid a premium when you purchased the housing bonds and the bonds get called at par, the yield you thought was locked in wasn't.

Many of my California clients and I own California State Department of Veteran Affairs Home Purchase Revenue bonds. Bonds were state and federal tax exempt, 3.50% due December 1, 2021. When the bond was issued in 2011 it had serial maturities going from December 2013 to the longest dated maturity of December 2028.

As rates have continued to grind down we looked at which bonds have been called and where we stood in the maturity conga line. We were right in the line of fire. Most bonds in the series have already been called. Even though the 2018-2020 maturities are non-callable, they have caveats: Bonds can be called, "from unexpended proceeds at any date prior to their respective stated maturity dates," according to the official statement.

As you can imagine, our bonds were selling at a premium over par value, roughly $110 ($1,100 per 1,000 face value). Brokers' bids varied widely and wildly. The low bid was $107; the high bid was $109.983. What were the odds that our issue would be called at par? Difficult to say. But we've seen other lower coupon housing bonds called. So the old saying, "a bird in the hand…" We sold our bonds at the high premium and let the new owners worry about losing their premium.

Bottom line: Check your bond positions for call provisions—both those that are clearly stated and those that have unusual call features. If you aren't preemptive and sell, then your premiums will vanish. 'Tis the season of low interest rates."

All issuers—taxable, tax free, corporations, government agencies—wish to lower their net interest costs. Calling bonds is one way to accomplish this. Good for them, bad for us bondholders.

FORBES

MARILY COHEN

JUN 13, 2016 @ 12:18 PM

Marilyn Cohen is founder and CEO of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

The Case for Favoring Revenue Bonds Over General Obligation Bonds.

General obligation bonds have encountered problems as municipal issuers face rising fixed legacy costs that challenge revenue growth

A municipal bond is a municipal bond is a municipal bond. Anyone who believes that to be true has failed to see the increasingly idiosyncratic nature of the municipal marketplace.

A testament to that fact: The Barclays Puerto Rico Index declined 12% in 2015, and nothing else followed suit. Muni investors were wise not to draw conclusions about the broader market based on the unique case of Puerto Rico.

The need to be discerning doesn't stop at credit ratings. In fact, it's important to be selective even among traditionally high-quality credits. Currently, there is a strong case to be made for favoring revenue bonds over general obligation bonds.

GO bonds, which today make up one-third of the investible muni market, historically have been considered among the safest forms of municipal debt. Repayment of GOs is secured by a constitutionally prescribed “general obligation” or “full faith and credit” pledge. GOs are paid out of tax revenues and are deemed to have first priority of payment. But municipalities also must use their tax revenues to cover onerous operating costs, and that can leave less money available to pay debt service.

In the past, the security of the GO pledge was rarely questioned. More recently, however, GOs have encountered problems as municipal issuers face rising fixed legacy costs that are challenging or outpacing revenue growth.

Detroit was the first to call into question the sanctity of the GO pledge. As the city took steps to negotiate its way out of Chapter 9 bankruptcy, the repayment of GO debt became a question of willingness, rather than ability, to pay. The question was raised again in discussions in Puerto Rico. There, GOs’ constitutional priority had given bondholders confidence in their legal remedies should the commonwealth default. That sense of safety was compromised when a preliminary restructuring plan last year indicated “sacrifice” was needed from all creditors, including holders of GO bonds.

The market has now started to infer potential implications for GO debt in stressed locales such as New Jersey, Illinois and Chicago. While these issuers could raise taxes to meet their debt obligations, such moves are always politically difficult, unpopular and therefore, not easy to implement. The question becomes not whether these stressed locales are able to make the necessary decisions, arrangements and concessions to pay their GO debt, but rather: Are they willing to do what’s necessary? Willingness is much harder to read and analyze than ability, and that means GO bonds have been and may continue to be volatile.

Revenue bonds, on the other hand, are underpinned by a dedicated revenue stream, which essentially eliminates any question around a municipality’s willingness to pay. Monies generated are specifically assigned to pay debt service. The most common types of revenue bonds are essential-service, revenue-generating projects such as toll roads, airports and water and sewer systems, where the money made (via tolls, fees, etc.) is used to repay bondholders. Revenue bonds are not backed by a full faith and credit pledge, but issuers have the ability to increase user rates should the dedicated revenue stream fall short, and traditionally they have done so to ensure full debt payments.

Not only are revenue bonds showing lower volatility than GOs, but at two-thirds of the investible municipal universe, they represent the largest subset of the market. This means ample opportunity for investors. The health care and transportation sectors, in particular, present some attractive income and return possibilities — the former underpinned by Affordable Care Act-induced demand, demographically driven health care needs and merger-and-acquisition activity, and the latter supported by lower gas prices and increased travel.

Looking to the opposite end of the credit quality spectrum, high yield remains another high-potential area of the municipal market. The sector has produced strong results, tobacco in particular, and is outperforming the broad market year-to-date — notwithstanding Puerto Rico. High yield represents an important source of carried interest and, therefore, income.

Municipal high yield is distinctly different from the corporate high yield market. The two, in fact, have been shown to be uncorrelated. In 2015, for example, collapsing energy prices weighed on corporate high yield and contributed to rising defaults. The Morningstar taxable high yield bond fund category lost 4%, while the high yield municipal fund category was up by slightly more than 4%.

Overall, creditworthiness in the broad municipal space is stronger than at any time since the financial crisis. The market also appears well positioned to continue the solid performance it exhibited in 2015 and so far in 2016. But investors should pick their places, conduct diligent credit research and seek to make the most of all the municipal bond market has to offer.

Investment News

By Peter Hayes

Jun 13, 2016 @ 10:52 am

Peter Hayes is head of the municipal bonds group at BlackRock Inc.

SIFMA Calls for IRS to Withdraw Proposal on Political Subdivisions.

Last week, SIFMA staff testified at a public hearing conducted by the IRS on proposed changes to the definition of "political subdivision" in the context of which issuers are eligible to issue tax-exempt bonds. In our presentation, we reiterated our call for the IRS to withdraw its proposal on the basis that the rule is unnecessary and that it would drastically constrain the ability of state and local governments to finance needed infrastructure. The proposal would have a particularly onerous effect on special districts and similar issuers.

Under the IRS's proposal, in order to qualify as a political subdivision and issue tax-exempt bonds, an entity such as a special district would need to possess "sovereign powers, governmental purpose, and governmental control." Sovereign powers would be demonstrated by "eminent domain, police power, or taxing power," which is the extent of the current definition. Governmental purpose would require that an entity serve a public purpose and operate "in a manner that provides a significant public benefit with no more than incidental benefit to private persons." Governmental control would be demonstrated by the ability to approve and remove a majority of an entity's governing body, the ability to elect a majority of the governing body, or the ability to approve or direct an entity's funds or assets. The proposal includes other provisions as well. Read the full IRS proposal.

At last week's hearing, of the approximately 10 presenters, which included representatives of dealers, issuers, bond lawyers, developers and other market participants, all but one expressed substantial opposition to the IRS proposal.

View SIFMA's full comment letter to the IRS on this issue.

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

On June 9, SIFMA and AMG jointly submitted a letter to SEC Chair Mary Jo White urging the SEC to amend Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issues is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance," said SIFMA president and CEO Kenneth E. Bentsen, Jr. "Additionally, SIFMA recently submitted our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance. Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Read SIFMA's letter to SEC

Download SIFMA Rule15c2-12 Whitepaper to SEC

TAX - OHIO

Hyde Park Circle, L.L.C. v. Cincinnati

Court of Appeals of Ohio, First District, Hamilton County - May 25, 2016 - N.E.3d - 2016 WL 3003413 - 2016 -Ohio- 3130

Developer brought action against city alleging that city breached development agreement and illegally used tax-increment-financing (TIF) funds. City filed counterclaim for breach of agreement.

The Court of Common Pleas enjoined city from loaning itself TIF-account funds to pay general-fund obligations, ordered city to return $4 million to TIF accounts, awarded developer $177,124.65 in attorney fees and costs, determined that developer could not be reimbursed for actions it took prior to entering agreement, that city was not liable for handling of city improvements, but that developer should have been reimbursed in amount of $247,500, and found that developer had materially breached agreement, but that city suffered no damages. Both parties appealed.

The Court of Appeals held that:

- Developer was entitled to $89,448.77, as opposed to $247,500 on its breach of contract claim, and
- Developer had standing to bring its statutory-taxpayer action.

Developer was entitled to $89,448.77, as opposed to $247,500, on its breach of contract claim against city for failure to reimburse developer for work performed by subcontractor. While there was no dispute that services provided by subcontractor were proper subject for tax-increment-financing (TIF) reimbursement, and, thus, developer was not barred from seeking to recover money from city for reimbursement under development agreement between developer and city, agreement was clear that project was capped at $4 million in TIF funds, and evidence showed that city had spent $49,000 in TIF funds to complete work that should have been performed by developer and that only $138,448.77 remained of funds.

Developer had standing to bring its statutory-taxpayer action against city alleging that city illegally used tax-increment-financing (TIF) funds. Taxpayer action did not only benefit developer, as, in determining that city had illegally used TIF funds to cover budget shortfall with city public schools, court found that city had treated TIF accounts as if they were mini-general fund from which it could randomly make loans to itself that could be delayed or forgiven, taxpayer action sought relief in form of injunction to keep city from engaging in illegal loaning practice in future and judgment requiring city to return $4 million to all of neighborhood TIF accounts, and, TIF laws were established to encourage economic development, which benefited public at large, not just developer.

NABL: IRS TEB Announces Form 8038-CP Changes.

The Internal Revenue Service (IRS) Office of Tax-Exempt Bonds (TEB) has announced changes to how TEB processes Form 8038-CP requests for refundable credit payments, which applies to all forms received after May 16, 2016. Form 8038-CP is now interactive, and includes a "Verify and Print" feature, which will alert you of any missing fields and other errors. If any information is missing from the form, the IRS will mail a correspondence letter requesting the missing information and give 30 days for a response. Failure to respond to IRS correspondence results in the IRS not processing Form 8038-CP.

More information on the changes, including the interactive form, is available here.

MSRB Webinar Reminder: Application of MSRB Rule G-37 on Political Contributions and Prohibitions on Municipal Advisory Business to Municipal Advisors.

Thursday, July 7, 2016
3:00 p.m. – 4:00 p.m. ET

MSRB staff will review the new key provisions of MSRB Rule G-37 that extend requirements to municipal advisors related to their political contributions and engagement in municipal advisory business.

Register.

MSRB: Implications for Supervisory Procedures of Newly Effective Rules.

With several MSRB rules for municipal advisors effective in 2016, the MSRB reminds municipal advisors to make any necessary modifications to their written supervisory procedures and compliance policies.

For example, provisions for municipal advisors of MSRB Rule G-20 related to gift-giving became effective on May 6, 2016. Accordingly, a municipal advisor's written supervisory procedures should now include procedures reasonably designed to avoid improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal advisory activities of the recipients' employers. Written supervisory procedures should include a description of how the designated municipal advisor principal(s) will monitor and review the municipal advisory activities of associated persons for compliance with Rule G-20.

Since 2015, municipal advisors have been required under MSRB Rule G-44 to have supervisory procedures and compliance policies “reasonably designed to achieve compliance with all applicable rules” and since April 23 2016, to certify annually “processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures.”

GFOA Issues Alert on Rule G-42.

The new G-42 rule from the Municipal Securities Rulemaking Board (MSRB) becomes effective June 23, 2016. Rule G-42, or Duties of Municipal Advisors, stems from the Dodd Frank Act and the SEC’s subsequent municipal advisor rule. This rule does not establish any responsibilities for issuers, but it does create numerous responsibilities for the municipal advisors that are hired by state and local governments. GFOA’s alert provides information on the types of information and written correspondence that municipal advisors will now be providing issuers, including disclosures of conflicts of interest and acknowledgement of the scope of services for which the advisor is hired. The primer also includes information on aspects of the overall municipal advisor rule and the types of exemptions that are in place when a party other than a municipal advisor provides advice to issuers.

Please click here to access the alert.

Wednesday, June 8, 2016

Market Groups, Regulators Clash Over Political Subdivision Rules.

WASHINGTON – The Internal Revenue Service and Treasury Department’s proposed rules on political subdivisions are “overly restrictive” and “misguided,” and should be withdrawn or reproposed with a much narrower scope, municipal market groups told the agencies on Monday.

The complaints came during the agencies’ joint public hearing over a proposed new definition of political subdivision that has drawn sharp criticism since it was first proposed in February.

Representatives from groups including the Government Finance Officers Association, the Securities Industry and Financial Markets Association and the National Association of Bond Lawyers said the proposed political subdivision rules are unnecessary and could potentially upend much of the muni market.

“We believe the approach taken is misguided,” said Scott Lilienthal, a former president of the National Association of Bond Lawyers. “It would create continued uncertainty in the financial markets.”

Pat McCoy, the director of finance for the Metropolitan Transportation Authority in New York who spoke on behalf of GFOA, said the group, like others, has been unable to fully grasp the reason for requiring a political subdivision to have a government purpose “with no more than an incidental private benefit.”

“Our view is this adds a new layer of incidental private benefit that we were feeling was ambiguous and difficult to define,” McCoy said.

Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation, and policing.

The proposed Treasury and IRS regulations would add two new requirements – that political subdivisions serve a governmental purpose "with no more than an incidental private benefit" and that they be governmentally controlled. To be governmentally controlled, a political subdivision would have to be controlled by a state or local governmental unit or an electorate. Whether an entity serves a governmental purpose would be based on whether it carries out public purposes stated in its enabling legislation and provides no more than incidental private benefit.

The new rules were proposed in response to concerns about who was controlling political subdivisions, John Cross, the Treasury Department's associate legislative tax counsel, said Monday. Some IRS audits found that developers or other private entities were wielding significant control over political subdivisions and this raised concerns among numerous federal officials.

"A core policy goal of the proposal was to enhance accountability in a targeted way," Cross said. "We wanted to add safeguards to ensure that an unreasonably small number of people do not control political subdivisions."

But several speakers at the hearing, including Michael Decker, managing director and co-head of munis at SIFMA, said the current definition is sufficient and does not need any amendment. Decker said the new rules would create "substantially higher" financing costs for local governments in two ways: either investors would pay less for the bonds, creating higher yields, because the bonds would pose more risk or issuers would simply have to issue taxable bonds.

The taxable market would be entirely different due to expectations about issuance size and cash flow structure, he said.

Several of the ten speakers called for a full withdrawal of the rules without suggesting any alternatives, which Cross challenged as unconstructive. Several of those speaking on behalf of utility organizations said the abuses perceived by Treasury and IRS over private parties' control of political subdivisions do not seem to apply to them.

Thomas Devine, general counsel for the Airports Council International – North America, called for more targeted rules that wouldn't disturb what he called "non-problematic" entities like airport authorities.

"We believe there is a bullseye on our back," Devine said. "We believe we are not the subject of your concerns."

In response, Cross said the IRS is not targeting airports or other similar agencies.

That message was echoed by Erica Spitzig, deputy general counsel for the National Association of Clean Water Agencies, who said that the new definition could threaten access to the tax-exempt bond market for water and sewer issuers.

Spitzig said 48 states used tax-exempt bonds to fund sewer and water projects in 2012, a testament to their importance in public infrastructure.

David Schryver, executive vice president of the American Public Gas Association, also called for the withdrawal of the rules, which he said would eliminate the ability for communities to purchase gas with tax-exempt financing.

"Our message is the proposed regulations throw the baby out with the bathwater," he said.

The four-member panel of IRS and Treasury officials said they would consider the comments in finalizing the rules, but also defended much of what was proposed.

Spence Hanemann, an IRS attorney, said the rules were developed to "limit undue private control," while Timothy Jones, senior counsel for the IRS, said the agency was "particularly interested in development districts with a single owner."

Hanemann called the proposed rules "prospective," stressing that they would not go into effect for three years if and when they are finalized. He did not say whether the agencies would withdraw, repropose or leave the current proposed rules unchanged before they are finalized.

Other speakers included: James Thompson, mayor of Sugar Land, Tex.; T.J. Sullivan, a former IRS official and current lawyer with Drinker Biddle & Reath representing Clemson University; and Bond Dealers of America director of federal policy John Vahey.

Vahey was particularly concerned about the public purpose test. "It introduces a level of subjectivity and a significant level of uncertainty," he said, adding that the proposed regulations would also raise the costs of infrastructure projects.

The IRS and Treasury panel also included Diana Imholtz, special counsel for the IRS.

The hearing follows months of criticism leveled at the Treasury and IRS over the proposed rules on political subdivisions.

The agencies received a total of 124 written comments from groups including the NABL and port authorities who argued the new regulations threaten the tax-exemption of many entities long considered political subdivisions as well as the tax-exempt status of their bonds.

The Bond Buyer

By Evan Fallor

June 6, 2016

IRS Publishes New Guidance On Renewable Energy Tax Credits.

In December 2015, the U.S. Congress passed a multi-year extension of renewable energy tax credits, including credits for wind, solar, geothermal, hydropower and biomass facilities. Many of the deadlines for credit qualification in the new law involve the starting date of renewable energy projects, although the time of completion is also significant. Previously, the IRS provided guidance for the "beginning of construction" period. The IRS has now issued additional guidance with respect to the newly passed schedule of credits.

The new guidance, which generally is viewed as favorable to renewable energy project development, is in the form of "safe harbors." If a taxpayer meets the requirements of either of two safe harbors (the "Physical Work Test" or the "Five Percent Safe Harbor"), then it is deemed to have complied with the requirements of the new law that concern when construction commences. After construction has begun, it becomes necessary to show that the work is continuing, which is the purpose of the “Continuity Safe Harbor.”

By its recent action, the IRS extended and modified the Continuity Safe Harbor for the third time and provided additional guidance regarding the application of the Continuity Safe Harbor and the Physical Work Test. Additionally, the IRS clarified the application of the Five Percent Safe Harbor to retrofitted renewable energy facilities.

Specifically, the IRS explained that if a taxpayer places a facility in service during a calendar year that occurs no more than four calendar years after the calendar year during which the construction of the facility began, then that facility will be considered to have satisfied the Continuity Safe Harbor requirement. The IRS also noted that a taxpayer may not rely on the Physical Work Test or the Five Percent Safe Harbor in alternating calendar years in order to satisfy the beginning of construction requirement or the Continuity Requirement. The IRS guidance outlines the following factors (among others): (i) “excusable disruptions” to Continuous Construction, or Continuous Efforts Tests, and (ii) the conditions of qualification for the Physical Work Test.

Finally, the IRS emphasized that a facility may qualify as originally placed in service even though it also may contain some used property, as long as the fair-market value of the used property is not more than 20% of the facility’s total value (i.e., the cost of the new property plus the value of the used property) (the “80/20 Rule”). Because the Five Percent Harbor is applied only with respect to the cost of new property that is used to retrofit an existing facility, the IRS explained, only expenditures paid or incurred that relate to new construction should be taken into account for purposes of the Five Percent Safe Harbor.

The IRS stated that this guidance clarifies and modifies Notices 2013-29, 2013-60, 2014-46 and 2015-25.

Last Updated: June 2 2016

Article by Cadwalader, Wickersham & Taft LLP

Cadwalader, Wickersham & Taft 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.

Muni Demand Won't Waver Anytime Soon.

BlackRock’s municipal group said any seasonal pullback in the market this month should be seen as restoring value and presenting a buying opportunity.

Entering June, BlackRock shortened duration in its portfolio in recognition of the market’s strong run and increased gross issuance. Issuance generally picks up meaningfully in June, the market’s worst-performing month over the past five years, but considering the uptick this May, the usual pattern may not fully develop, BlackRock wrote in its monthly municipal market update.

“On balance, we would see any pullback as healthy, short lived and a potential buying opportunity,” the report said. “We continue to favor the A-rated space, revenue bonds and the health care and transportation sectors.”

In a presentation to reporters Wednesday Peter Hayes, managing director and head of the municipal bonds group, pointed to the strong demand.

“We are seeing a lot of non-traditional buyers have [become] interested in the asset class as well just because global rates are so low and in many cases, negative,” he said.

“$28 billion coming into the asset class this year alone is phenomenal but it is not sustainable,” said Blackrock Director Sean Carney, head of municipal strategy. “Because of what is driving it, we don’t see any catalysts that will change it. Fund flows are the product of past performance and future rate forecasts. Performance has been better than good and future rate forecasts are sideways to lower.”

Carney noted the deals have been digested easily and oversubscribed as issuance picked up, as sellers offered a something for everyone with bonds that are evenly distributed across the credit curve.

“2016 issuance is still running about 19% above the five and 10 year average, although its true its down about 7% year over year but we are still on track to end the year around $400 billion and we are about to enter a strong seasonal pattern,” Carney said. “Coupon payments will be coming in soon and get re-invested in the market, come July and August.”

Illinois, which still doesn’t have a budget, is going to access the market with only a minor penalty on yields, the Blackrock strategists said.

“I think it has gotten some attention but the struggle over what is preventing the budget from passing to me is more indicative of the broader market and more problematic of things you might see going forward,” said Hayes.

Yesterday, Illinois announced plans to borrow $550 million on June 16. The Prairie State is currently the lowest rated U.S. state.

“We as municipal market participants should really be penalizing in some way, by almost not giving them any access to the market,” said Hayes. “Think about it, they are a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money.”

Carney said the strong demand has reduced the penalty for fiscal problems.

“Spreads have widened quite considerably,” he said. “There are a few ways to look at it. One way is that you see the spreads widening but another way to look at it is that with rates continuing to fall, even though they are coming in at wider spreads, the all-in interest cost is not that much greater then where they were, when they previously issued.”

The Bond Buyer

By Aaron Weitzman

June 8, 2016

SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to amend its Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

The dealer group made its request for changes to the SEC rule in a letter sent to SEC chair Mary Jo White from SIFMA president and chief executive officer Ken Bentsen.

The letter highlights recent requests from market groups to modify the rule to include bank loan disclosure as well as a white paper from SIFMA in April pressing for modernization of Rule 15c2-12.

“Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12,” Bentsen wrote.

The Municipal Securities Rulemaking Board has consistently urged issuers to voluntarily disclose their bank loans. But after concluding the disclosures are still lacking in this area, the board released a concept proposal in March asking market participants about a possible rule that would require municipal advisors to disclose information regarding their municipal clients’ bank loans and private placements.

While some investor groups applauded the idea, many market groups said it would be harmful and ineffective. Almost every group that responded recommended that the SEC instead boost bank loan disclosure by requiring it under 15c2-12.

“SIFMA’s dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is … made transparent to the market,” Bentsen told White. “We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.”

SIFMA’s white paper, released on April 12, recommended a number of updates to 15c2-12.

It suggested that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is not false or misleading.

Leslie Norwood, SIFMA associate general counsel, co-head of munis, and author of the white paper, said that while the paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer’s duties onto them.

SIFMA also suggested that the commission eliminate the requirement that issuers file event notices for rating changes since those are now posted on the MSRB’s EMMA system.

Additionally, the group also asked for the SEC to affirm the position it took in its initial proposing release for 15c2-12 that, given the structure of a competitive deal, “the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer.”

SIFMA wanted the SEC to eliminate current complex language in 15c2-12 that dictates when a participating underwriter is expected to send customers copies of the final OS. Instead, the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close, it said.

Rule 15c2-12 should also require issuers to set an actual date as the due date for their disclosures of annual financial and operating information, the group said in the white paper. Currently, issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to "burn brain cells" and count days, Norwood said at the time the paper was circulated.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

By Jack Casey

June 10, 2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker-dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker-dealers. SEC Rule 15c2-12 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

Washington, D.C., June 10, 2016 – In a letter to SEC Chair White, SIFMA president and CEO Kenneth E. Bentsen, Jr. urges the SEC to amend Rule 15c2-12, which covers dealers continuing disclosure obligations, and release additional guidance. The text of the letter is as follows:

"The Securities Industry and Financial Markets Association ("SIFMA") and SIFMA's Asset Management Group (the "AMG") together respectfully submit this letter to urge you to direct staff at the Securities and Exchange Commission (the "SEC") to develop a proposal to amend Rule 15c2-12 and release additional guidance.

"The Municipal Securities Rulemaking Board (the "MSRB") recently requested comment on a concept proposal to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients to the MSRB's Electronic Municipal Market Access ("EMMA") system for public dissemination. SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market. We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance. Additionally, SIFMA recently submitted to you our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance.

"Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Release Date: June 10, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

SIFMA Believes States Best Positioned to Improve Muni Disclosure.

New York, NY, June 15, 2016 – States have a unique opportunity to be proactive in helping to ensure that local governments that issue bonds in the public market make complete and timely disclosure of financial information and comply with all federal and contractual requirements. To that end, SIFMA is encouraging states to build on existing financial disclosure regimes with the goal of ensuring that investors have access to the financial information they need and that local governments are in compliance with their obligations.

SIFMA's recommendations follow from a 50-state review of state policies governing local government bond issuance, information disclosure and financial audits.

"SIFMA supports a robust disclosure regime in the municipal market to ensure that investors have timely access to information they need to evaluate their investments," said Michael Decker, managing director and co-head of SIFMA's Municipal Securities Division. "In light of our review of state policies, we believe states are the best positioned to lead the way going forward to ensure the highest level of compliance and investor information."

In the review, SIFMA conducted a thorough examination of policies that govern local government disclosure, issuance and audit practices in all 50 states, Washington, D.C. and three territories, in an effort to determine the extent to which states oversee the continuing disclosure activity of local governments. Continuing disclosure involves the public dissemination of annual financial statements and certain event notices that are material to investors who own or may consider buying bonds issued by governments, authorities, agencies, districts and other public sector issuers.

In its review SIFMA looked at questions like whether states require the submission of and make public official statements (OSs), audited annual financial statements and other information relevant to investors.

The survey found that only one state, Louisiana, has a law in place designed to help ensure that local governments meet their legal disclosure obligations. In 2014 Louisiana enacted Act 463, a state law which both requires local governments to maintain records of Continuing Disclosure Agreement (CDA) requirements and compliance actions and requires financial auditors to examine governments' CDA records and check that local governments have made required financial filings.

Some states have policies which require the filing of OSs with state repositories and impose other disclosure requirements on local governments related to bond issuance. These states include: Arizona, California, Colorado, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, New York, North Carolina, Oklahoma, Oregon, Tennessee, Washington and West Virginia. These policies are a positive step towards improving market transparency. Four states and one territory have laws in place requiring the filing of financial audit information and make those filings publicly available: California, Missouri, New Jersey, Texas and the U.S. Virgin Islands.

SIFMA believes states are in a unique position to help ensure that local government issuers make complete and timely disclosure of financial information and comply with all federal and contractual requirements. We encourage states to adopt laws that:

- Require auditors to check for compliance with continuing disclosure requirements in the context of annual or periodic financial audits; and
- Require local governments to adopt internal policies and procedures related to compliance with all disclosure requirements.

In addition, some states have processes in place that could be leveraged to help ensure disclosure compliance. In North Carolina, for example, all local government bond issues are generally required to be approved by the Local Government Commission. A state with such a process already in place could include compliance with outstanding CDAs as a condition of approving future bond issuance.

Release Date: June 15, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

MSRB Updates Content Outline for Municipal Advisor Qualification Exam.

Read the Outline.

TAX - WASHINGTON

[Lee v. State]

Supreme Court of Washington, En Banc - May 26, 2016 - P.3d - 2016 WL 3042994

Taxpayers brought action to challenge adopted ballot initiative which provided for an immediate reduction in the sales tax rate unless the legislature proposed a constitutional amendment.

The Superior Court entered order voiding the initiative, and State appealed.

The Supreme Court of Washington held that:

- Action presented a justiciable controversy under the Uniform Declaratory Judgments Act (UDJA);
- Action was justiciable under the public interest exception;
- Title of adopted ballot initiative violated single subject rule and thus was unconstitutional; and
- Adopted ballot initiative altered the process for amending the state constitution and thus was unconstitutional.

Taxpayers' action for declaratory relief that adopted voter initiative, which provided for an immediate reduction in the sales tax rate unless the legislature proposed a constitutional amendment, was unconstitutional presented issues of substantial public interest which required prompt resolution, and thus was justiciable under the public interest exception. If constitutional, the initiative would result in either an immediate and yearly $1.4 billion reduction to the State's operating budget or a change to the State's constitution by essentially only a majority of voters.

Title of adopted ballot initiative which provided for decrease in sales tax rate unless the legislature amended constitution to requiring supermajority vote or voter approval to raise all taxes and legislative approval to increase any fees violated single subject rule and thus was unconstitutional, as sales tax reduction was unrelated to both a constitutional amendment, which would impact future legislatures, and to the way that future taxes and fees would be approved. While both subjects related to general title of fiscal restraint or taxes, they were not germane to each other, legislative action was not contingent on sales tax reduction, but rather was a means to avoid it, and there was no nexus between constitutional amendment and current sales tax rate.

Adopted ballot initiative which provided for decrease in sales tax rate unless the legislature amended constitution to require supermajority vote or voter approval to raise all taxes and legislative approval to increase any fees altered the process for amending the state constitution and thus was unconstitutional. while legislature would still have to go through the processes outlined in the constitution, the "do this or else" structure of the initiative established a new process for amending the constitution by simple majority vote.

[Puerto Rico Loss Is Bondholders' Gain With Congress's Path Clear.]

Things are starting to look up for Puerto Rico's bondholders after the U.S. Supreme Court struck down an island law that would have allowed some agencies to turn to court to restructure their debt.

The U.S. territory's securities climbed, with some bonds backed by sales-tax revenue reaching their highest since 2014, as the decision Monday eliminated a risk that Puerto Rican authorities would treat bondholders worse in a debt workout than a federal oversight board. Congress is advancing legislation to empower such a panel to help chart a path out of the island's fiscal crisis.

"Investors will doubtlessly fair better in a federally-directed restructuring program," Height Securities analyst Daniel Hanson said in a report. "The court's decision essentially holds that Puerto Rico has no authority under U.S. law to take action outside the ultimate source of authority — the U.S. Congress."

The relationship between investors and Governor Alejandro Garcia Padilla has become increasingly adversarial since his administration began defaulting on some securities in August, saying it doesn't have enough money to repay its $70 billion debt without shutting off services crucial to its 3.5 million residents. The court decision Monday eliminated a way for Puerto Rico to escape from some debt on its own.

Puerto Rico enacted the Recovery Act in 2014 to give bankruptcy-like powers to some agencies that, unlike many U.S. local governments, can't file for court protection from creditors. If allowed to stand, the law would have affected more than $20 billion in debt and strengthened the commonwealth's hand in negotiations aimed at persuading investors to accept less than they are owed.

The court ruled 5-2 in favor of bondholders who argued that the measure was barred under the federal bankruptcy law, which doesn't apply to the territory. The decision upheld a lower court ruling against the Puerto Rico law.

"Our constitutional structure does not permit this court to rewrite the statute that Congress has enacted," Justice Clarence Thomas wrote for the majority. Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented, saying that Congress didn't intend to leave the island without access to either a federal or local restructuring law.

The decision leaves Puerto Rico largely dependent on Congress, which is advancing legislation to extricate the island from its difficulties. The U.S. House on Thursday passed a bill, called Promesa, that would establish a seven-member board to manage a restructuring of the commonwealth's debt and oversee its finances. The panel could ask a judge to order a forced restructuring if the government can't reach a deal with bondholders, ensure that the budget is balanced and recommend sales of assets to produce cash.

The Senate plans to take up the measure in the next several weeks, before July 1, when Puerto Rico owes $2 billion on a variety of securities.

Promesa is likely a "much better outcome" for creditors than the Recovery Act, according to Charles Tyson, an analyst at Keefe Bruyette & Woods who follows municipal-bond insurers. The local law had "some provisions even more draconian" than those in Chapter 9 bankruptcy, according to Mark Palmer at BTIG LLC.

The outcome of the crisis, which has been building over the past year, is far from certain and bondholders are still unlikely to recoup the full value of their investments. Garcia Padilla has said the government can't afford to cover all that it owes next month, which may mark its first default on general-obligation bonds. In December, holders of Puerto Rico's electric utility debt agreed to accept a 15 percent loss on their investments, though aspects of that deal are still in flux.

The verdict was welcome news to investors because reinstating the law would have injected fresh uncertainty just as Congress is moving to address the crisis. The most-traded fixed-rate senior sales-tax bonds, known as Cofinas, climbed to 64 cents on the dollar Monday, after last changing hands at

55 cents in April. Zero-coupon Cofina bonds due in 2047 traded on the highest volume since February at 13.3 cents, the highest since June 2013.

Securities due in 2038 from the Puerto Rico Aqueduct and Sewer Authority, which would have been included in the local Recovery Act, climbed from an average of 68.8 cents Friday to as much as 72.3 cents, the highest price since September.

Puerto Rico's benchmark general obligations, which have an 8 percent coupon and are due in 2035, were little changed after the ruling, trading Tuesday at the highest average price since May 24, Bloomberg data show. Three of the five other general-obligation securities with at least $1 million worth of trades on Monday increased in price.

While the federal control board could ultimately force creditors to accept a restructuring in court if the parties failed to reach consensus, the Supreme Court's decision makes it less likely for Puerto Rico to use the legal system to reduce its obligations, Hanson said.

"This idea that Puerto Rico's going to go to court and make some persuasive police-powers argument that gets them out of paying debt seems somewhat less persuasive in the context of the Supreme Court ruling," Hanson said in an interview.

Bloomberg Business

by Brian Chappatta and Michelle Kaske

June 14, 2016 — 2:00 AM PDT Updated on June 14, 2016 — 8:20 AM PDT

Bloomberg Brief Weekly Video (06/16)

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

Watch the video.

June 16, 2016

Scaling Impact for Community Development Financial Institutions.

Abstract

The link between economic equity and financial and economic inclusion has long been the focus of community development financial institutions (CDFIs). CDFIs provide financial products and services to low-income, low-wealth, and underserved communities. In this brief, we examine what scale means for CDFIs, distinguishing size from impact. We look at how CDFIs deepen their impact through development and technical assistance services. Finally, we highlight the important role funding and balance-sheet management play in determining the type of future growth the industry can achieve. These questions are especially relevant given today's ongoing public debate about economic growth and equity.

[Read the Brief.]

The Urban Institute

by Brett Theodos, Sameera Fazili, Ellen Seidman

June 16, 2016

[Supreme Court Ruling on Puerto Rico Debt Seen Positive for Investors.]

The U.S. Supreme Court's invalidation of a Puerto Rican law giving the island's public utilities access to a bankruptcy-like process isthe latest twist on the path to an eventual restructuring of the U.S. territory's $70 billion debt load.

Monday's decision closes off one avenue for Puerto Rico to revamp some of its obligations and means any workout would depend on Congress, which is considering federal restructuring legislation.

Few public utility bonds changed hands Monday following the court decision. Some fifteen-year bonds issued by Puerto Rico's Aqueduct and Sewer Authority in 2012 traded at 72 cents on the dollar Tuesday morning after hovering in the low- to mid- 60s for much of the year. Benchmark general obligation bonds traded at between about 65 and 67 cents on the dollar Monday afternoon, just as they did Friday.

Bondholders and investment funds had asked the courts to strike down the law, which would have made at least $16 billion of Puerto Rican debt eligible for bankruptcy-like protection.

"We view the ruling as incrementally positive for investors, since the Court has enjoined the Commonwealth from taking unilateral action to force a restructuring," said Daniel Hanson of Height Securities in an analysis of the court's decision. The ruling affirmed a lower court finding that Puerto Rico lacks the authority to make bankruptcy protection available to its agencies.

Momentum on the federal restructuring legislation has already buoyed investors. Bond prices rose after the U.S. House on Thursday approved a restructuring package, with yields on the Barclays Puerto Rico Municipal Bond Index falling about 10 basis points to 4.06% Friday. The measure awaits action in the Senate.

Puerto Rico has more than a dozen debt-issuing entities, with each set of bonds carrying different legal protections. Many stakeholders fear that without a restructuring framework, the island's financial crisis could devolve into a lengthy and expensive legal battle.

The local bankruptcy law struck down Monday would have given the commonwealth more authority to renegotiate its debt on its own than would the U.S. House bill, which envisions a federally appointed financial control board.

Unlike the local bankruptcy law, the congressional measure means that "a lot of discussion and negotiating have to happen before they can force an outcome on creditors," said Daniel Solender, director of municipal-bond management at Lord Abbett & Co., which holds some Puerto Rican debt in its portfolio.

Howard Cure, director of municipal research at Evercore Wealth Management, which also holds some Puerto Rican debt, said creditors "would rather take their chances with a financial control board than to have the commonwealth decide how much of its outstanding debt to pay."

Puerto Rico Gov. Alejandro Garcia Padilla had no immediate comment on the decision. But in a statement Thursday, he criticized an earlier Supreme Court decision that underscored Puerto Rico's dependent status and limited authority.

THE NEW YORK TIMES

By HEATHER GILLERS

Updated June 14, 2016 11:05 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

New Jersey Top Court Sides With State in High-Stakes Pension Case.

(Reuters) – The New Jersey Supreme Court ruled on Thursday that retired public employees do not have a contractual right to receive increasing cost-of-living adjustments, a decision that saves the state $17.5 billion.

Governor Chris Christie's administration suspended the COLA payments, which are tied to inflation, as part of 2011 reforms aimed at curtailing the ballooning cost of public pensions.

Despite running a heavily Democratic state, Christie, a former Republican presidential candidate now stumping for presumptive nominee Donald Trump, has notched several victories against the public sector, beginning with his ability to garner bipartisan support for the pension reforms.

He was even allowed to go back on promises he made in those same reforms when, in 2014, he slashed the state's pension contributions, saying a surprise revenue gap left him no choice. The state Supreme Court vindicated that move last year.

"State taxpayers have won another huge victory, one that spares them from the burden of unaffordable benefit increases for public employee unions," Christie said of Thursday's ruling, citing the billions saved.

Credit rating agencies rank New Jersey the second-worst U.S. state partly because of its growing pension costs and narrow reserves.

Thursday's ruling "eliminates a major threat to the state's fiscal stability," said Moody's Investors Service analyst Baye Larsen in a statement.

The status of the state's roughly $83 billion pension system has never been worse. The state's aggregate funded ratio for all plans is 48.6 percent.

Retired prosecutor Charles Ouslander and others sued when the reforms froze COLAs at 2011 levels, saying they had as much right to that benefit as their base pensions.

"The ramifications of a contract of that sort are harsh" because it binds the legislature "to a policy choice and surrenders the power of future elected representatives to cut back," Justice Jaynee

LaVecchia wrote in the 6-1 opinion.

She cited a 2014 federal appellate decision upholding Maine's suspension of COLAs, agreeing that legislatures must use unmistakable language when creating contracts.

Ouslander, who argued the appeal himself, said after the decision that "all public employees should be gravely concerned that their remaining pension benefits have any legal protections left."

The only fix now, Ouslander said, is a potential November ballot initiative to fully fund annual state pension contributions, which Christie opposes.

Wendell Steinhauer, president of the New Jersey Education Association, a teachers union, said the benefit freeze is "theft, plain and simple."

New Jersey Justice Barry Albin dissented from the majority, saying he did not agree that the statutes lacked clarity.

In deciding when to retire, "public employees relied on the legislative promise that COLAs would protect their pensions from the ravages of inflation," Albin wrote.

However, the United States has not had significant inflation in more than a decade and it likely will not for years to come, said municipal bond expert Richard Ciccarone, CEO of Merritt Research Services.

"To keep COLAs as a rigid right provides public servants with an advantage that surpasses what most taxpayers can earn on a parallel basis," he said.

By REUTERS

JUNE 9, 2016, 2:54 P.M. E.D.T.

(Reporting by Hilary Russ in New York; editing by Phil Berlowitz, Bernard Orr)

Michigan Lawmakers Approve Detroit School Rescue Package.

(Reuters) – Legislation approved by Michigan lawmakers on Thursday to bail out the Detroit Public Schools (DPS) will keep the district operating, but falls short on funding to fix its crumbling buildings, according to school officials.

The bill package, approved over objections by Democratic lawmakers, creates a new, debt-free district governed by an elected school board, while leaving the current district in place solely to levy property taxes to pay off outstanding debt.

DPS, which has nearly 46,000 students, has been under state control since 2009 because of a financial emergency.

The American Federation of Teachers-Michigan and Detroit Federation of Teachers criticized the lack of a bipartisan compromise in a joint statement on Thursday.

"These bills are a statement by non-Detroit Republicans that they know what is best for Detroit, a city that is overwhelmingly people of color," the groups said. "It has been this attitude that resulted in Detroit Public Schools' massive debt, low academic performance and a 'wild west' system of school openings."

Under the measures approved on Thursday, Michigan would commit $617 million from the state's share of a tobacco settlement in annual increments of $72 million for the new Detroit Community School District. An emergency state loan for transition costs was capped at $150 million, with only $25 million of that amount available for capital improvements, less than the overall $200 million sought by DPS.

"We also look forward to working creatively with the governor's office, the state superintendent, and the Michigan Department of Education to identify the remainder of the critical resources necessary to educate our students," DPS state-appointed transition manager Steven Rhodes said in a statement.

A smaller bailout passed by the House in May raised concerns that DPS would run out of cash later this summer.

Republican lawmakers contended the final $617 million bailout legislation would prevent DPS from filing for municipal bankruptcy even though Rhodes, a former federal bankruptcy judge, has said such a move would be ineffective because much of the district's debt is guaranteed by the state.

Democrats objected to the absence of a Detroit Education Commission to oversee the opening and closing of public and charter schools in Detroit.

The House and Senate approved the package with a series of votes late Wednesday and early Thursday, sending the legislation to the desk of Republican Governor Rick Snyder, who signaled in a statement that he supports it.

By REUTERS

JUNE 9, 2016, 3:03 P.M. E.D.T.

(Reporting by Brendan O'Brien in Milwaukee and Karen Pierog in Chicago; Editing by Dominic Evans and Matthew Lewis)

Supreme Court Rejects Puerto Rico Law in Debt Restructuring Case.

WASHINGTON — The Supreme Court on Monday rejected an effort in Puerto Rico to allow public utilities there to restructure $20 billion in debt, striking down a 2014 Puerto Rico law.

Justice Clarence Thomas, writing for the majority in the 5-to-2 decision, said the law was at odds with the federal bankruptcy code, which bars states and lower units of government from enacting their own versions of bankruptcy law.

Puerto Rico is struggling with $72 billion in debt and has argued that it needs to restructure at least some of it under Chapter 9, the part of the bankruptcy code for insolvent local governments. But Puerto Rico is not permitted to do so, because Chapter 9 specifically excludes it, although it is unclear why.

In 2014, the island tried to get around that exclusion by enacting its own version of a bankruptcy law, intended for its big public utilities, which account for about $26 billion of the total debt. But that attempt, called the Recovery Act, ran afoul of the part of the code that says only Congress may enact bankruptcy laws.

Puerto Rican officials had argued that the Recovery Act addressed a gap in the way its debts are treated. Under the bankruptcy code, they said, states may authorize their cities, counties, public utilities and other branches of government to restructure their debts under Chapter 9 of the code. But that law excludes Puerto Rico and all branches of its government, including its public utilities.

Utility creditors challenged the Recovery Act in federal court, arguing that the bankruptcy code displaced, or pre-empted, it. The justices agreed.

The federal law, Justice Thomas wrote, “bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities.” Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Stephen G. Breyer and Elena Kagan joined him.

Justice Thomas wrote that the decision was compelled by a straightforward reading of the federal law.

In dissent, Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, said the majority’s approach was too mechanical and failed to take into account the purpose of the bankruptcy law and the impact of its decision. The Recovery Act, she wrote, “is the only existing legal option for Puerto Rico to restructure debts that could cripple its citizens.”

“The Commonwealth of Puerto Rico and its municipalities are in the middle of a fiscal crisis,” she wrote. “The combined debt of Puerto Rico’s three main public utilities exceeds $20 billion. These utilities provide power, water, sewer and transportation to residents of the island.”

“With rising interest rates and limited access to capital markets, their debts are proving unserviceable. Soon, Puerto Rico and the utilities contend, they will be unable to pay for things like fuel to generate electricity, which will lead to rolling blackouts,” Justice Sotomayor added. “Other vital public services will be imperiled, including the utilities’ ability to provide safe drinking water, maintain roads and operate public transportation.”

The majority’s approach ignores those realities, she wrote, “rejects contextual analysis in favor of a syllogism” and leaves Puerto Rico “powerless and with no legal process to help” its citizens.

Pedro Pierluisi, Puerto Rico’s nonvoting member of Congress, said: “The practical significance of the court’s holding is crystal clear. Only Congress can provide the Puerto Rico government with the authority to restructure its debts.” He said action by Congress “is essential if the territory is going to overcome its severe — and worsening — economic, fiscal and demographic crisis.”

The case has been vexing for all parties because when Congress amended the bankruptcy code to exclude Puerto Rico, in 1984, it left no written record explaining why. Yet the rule barred the island from the only way under United States law that a debtor can legally reduce debt over the objections of creditors.

Besides passing its own bankruptcy law in 2014, Puerto Rico tried to persuade Congress to delete the 1984 exclusion. It said the provision was inexplicable and may have been inserted by mistake.

Those arguments did not sway Congress. But last year lawmakers realized the United States Constitution gave them the power to “make all needful rules and regulations” for territories, including Puerto Rico. Using that approach, the House of Representatives passed a quasi-bankruptcy bill this month that would apply to all territories (though only Puerto Rico is in dire need at the moment).

Obama administration officials have expressed hope that the Senate will take up the measure quickly and enact it before July 1, when Puerto Rico is supposed to make debt payments totaling nearly $2 billion. It is expected to default, which would normally prompt creditors to sue. As now drafted, the bill would stay such lawsuits, put Puerto Rico under federal oversight and give it other legal powers similar to those found in bankruptcy.

In the majority opinion, Justice Thomas noted that Puerto Rico had also been seeking help from Congress. “After the parties briefed and argued these cases,” he wrote, “members of Congress introduced a bill in the House of Representatives to establish an oversight board to assist Puerto Rico and its instrumentalities,” adding that “the bill does not amend the federal bankruptcy code.”

Justice Sotomayor responded that “the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences of unreliable electricity, transportation and safe water — consequences that members of the executive and legislature have described as a looming ‘humanitarian crisis.’”.

Justice Samuel A. Alito Jr. recused himself from the cases, *Puerto Rico v. Franklin California Tax-Free Trust*, No. 15-233, and *Acosta-Febo v. Franklin California Tax-Free Trust*, No. 15-255. As is the court’s custom, he did not explain why.

THE NEW YORK TIMES

By ADAM LIPTAK and MARY WILLIAMS WALSH

JUNE 13, 2016

Detroit Eyes Refunding of Up to $660 Million Bonds.

(Reuters) – Detroit would sell its first general obligation bonds since exiting bankruptcy in December 2014 under a proposal by Mayor Mike Duggan’s administration to refund up to $660 million of outstanding bonds.

The city council on Tuesday sent the plan to refund up to $275 million of unlimited tax GO bonds sold in 2014 and up to $385 million of limited tax GO bonds sold in 2010 and 2012 to its Budget, Finance and Audit Committee for consideration.

The outstanding bonds were issued through the Michigan Finance Authority and backed by the city’s share of distributable state aid payments.

John Naglick, Detroit’s finance director, said Detroit expects to capture lower interest rates in the bond refundings to save money for the budget and to lower property tax rates supporting the bonds.

“If it wasn’t for this move to record low rates, we wouldn’t do this,” he said.

Ten and 30-year yields on Municipal Market Data’s benchmark triple-A scale are at or near all-time lows, driven by big investor demand for debt sold by states, cities, schools and other municipal issuers.

Detroit was able to shed about $7 billion of its $18 billion of debt and obligations in the biggest-ever U.S. municipal bankruptcy. In its first post-bankruptcy public debt offering last August, the city restructured $245 million of variable-rate revenue bonds backed by city income taxes into a fixed-rate mode at a hefty spread over MMD's scale.

If the GO bond refundings are approved by the city council committee on Wednesday, the measures would head for a full-council vote on June 21. Naglick said the issuance also needs approval from the Detroit Financial Review Commission, the city's post-bankruptcy oversight board, which meets on June 27.

By REUTERS

JUNE 14, 2016, 5:51 P.M. E.D.T.

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

Yield On 10-year Muni Bonds Drops to Record Low 1.42 pct.

The yield on top-rated municipal bonds due in 10 years dropped to 1.42 percent on Thursday, joining 30-year bonds in reaching record lows on Municipal Market Data's benchmark triple-A scale.

The five-basis-point fall in the 10-year yield pushed it below the previous record low of 1.47 percent set in November 2012, according to MMD, a unit of Thomson Reuters. The 30-year bond yield continued its recent move to all-time lows, ending Thursday at 2.13 percent.

The market where states, cities, schools, and other municipal issuers sell bonds has been in rally mode as cash-heavy investors chase low supplies of debt.

Reuters

Thu Jun 16, 2016 3:48pm EDT

(Reporting By Karen Pierog; Editing by Dan Grebler)

SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.

The U.S. Securities and Exchange Commission is considering whether to require state and local governments to disclose bank loans and private placements, according to people familiar with the matter, reflecting bondholders' concerns about the fast-growing segment of municipal finance.

The rule, known as 15c2-12, requires securities dealers to ensure that states and local governments report updated financial information and material events to bondholders. Mutual funds, investment banks and credit analysts have been pushing regulators to respond to extend such requirements to bank loans, which become more prevalent since the 2008 crisis, particularly among smaller borrowers.

"We need a full picture on the balance sheet of our issuers," said Hugh McGuirk, who oversees $23 billion of municipal bonds at T. Rowe Price Inc. in Baltimore. "If we're not seeing the breadth and depth of that market with the terms that go along with it that increases the probability of some sort of surprise.”

Direct lending by banks has proliferated in the $3.7 trillion market as states, local governments and non-profits find they can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. In 2015, S&P Global Ratings evaluated 126 bank loans totaling $5.2 billion. Estimates of the size of the market run as high as $80 billion a year, said Nat Singer, chair of the Municipal Securities Rulemaking Board, the municipal market’s self-regulator.

Because loans aren’t classified as securities, states and cities aren’t immediately required to disclose them, despite the risk they can pose to bondholders. The loan terms can favor banks over other investors and add to a borrower’s financial risk.

For example, banks can demand accelerated principal and interest if a payment is skipped or a government’s cash falls below a specific target, which could push the borrower into a liquidity crisis if it can’t cover the bills. Such provisions last year led S&P to cut one Wisconsin town’s credit rating from the third-highest grade to junk until the terms were renegotiated.

“It has the potential to mask the level of indebtedness,” said Chris Alwine, head of municipals at Vanguard Group Inc. which holds about $160 billion of the securities. “ You might be in a subordinated position that you don’t know about.”

John Nester, an SEC spokesman, declined comment.

Since the SEC can’t regulate state and local government bond issuers, other than through the anti-fraud laws, it imposes its disclosure rules indirectly through its authority over banks.

In 1989, the SEC adopted Rule 15c2-12, requiring bond underwriters to review official statements before a municipal issuer publicly sold securities. It was amended in 1995 and added requirements for continuing disclosure, which the SEC last revisited in 2010.

The rule requires municipal issuers to disclose 14 types of material events within 10 business days, such as failure to pay principal and interest, draws on reserve funds or changes to the security of bondholders. The disclosures are posted on the MSRB’s website.

In January 2015, the MSRB asked the SEC to reconsider whether to require bank-loan disclosure. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online repository, but few municipalities have done so.

The MSRB’s call to revisit the rule has been joined by the Securities Industry and Financial Markets Association and the Bond Dealers of America, both of which represent underwriting firms.

Emily Brock, federal liaison for the Government Finance Officers Association, said the MSRB’s EMMA website isn’t user friendly, hampering voluntary disclosure of bank loans. GFOA encourages debt managers to voluntarily disclose.

“We’re working with a system that can’t accommodate the disclosure in an easy way,” said Brock, whose organization hasn’t taken a position on revisiting the SEC rules. “We too want quality data.”

The SEC could use Form 8-K in the corporate securities market as a template for events that might be appropriate to include for continuing disclosure by municipal bond issuers. One such event is the “creation of a direct financial obligation or an obligation under an off-balance sheet arrangement.”

“Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported,” wrote then-MSRB Chair Kym Arnone to the SEC in 2015.

Bloomberg Business

by Martin Z Braun

June 16, 2016 — 7:35 AM PDT

Illinois Dodging Boycott as Bond-Market Vigilantes Lose Punch.

Illinois can thank plunging global interest rates for saving the state from the consequences of its spreading financial disarray.

The state sold $550 million of bonds on Thursday for a top yield of about 4.1 percent on securities due in 2041, or about 2 percentage points more than benchmark debt, according to data compiled by Bloomberg. Illinois’s first offering since January came after yields on German and Japanese debt slipped deeper below zero and Treasuries veered back toward levels not seen for more than half a century at least.

Rock bottom payouts have sent money pouring into state and local debt as investors search for even modest returns, which allowed Illinois to borrow easily from bond buyers once referred to as vigilantes for imposing discipline on spendthrift governments.

“It’s obviously a very favorable environment to sell anything, Illinois included,” said Matt Fabian, a partner at Municipal Market Analytics, a research firm based in Concord, Massachusetts. “People are more worried about yields going negative than they are rising, so there’s clearly demand for strong positive yield like in Illinois.”

The worldwide rally has pushed Illinois’s 10-year yields down over the past three months by more than a quarter percentage point to 3.3 percent, despite a record-long budget impasse that caused Moody’s Investors Service and S&P Global Ratings to downgrade it last week to the lowest level for a state in over a decade.

BlackRock Inc.’s Peter Hayes, who oversees $119 billion of municipal bonds for the world’s largest money manager, suggested investors consider not buying Illinois’s debt to pressure elected officials, a call that didn’t keep the state from returning to the market.

“Clearly the political inaction has soured the taste for many investors,” said Gabe Diederich, a portfolio manager in Menomonee Falls, Wisconsin at Wells Fargo Asset Management, which manages about $39 billion of munis, including Illinois debt. “Investors will lend them money again at a very steep penalty relative to the rest of the market, but with the expectation that ultimately the state will take the appropriate steps to fix their issues.”

Governor Bruce Rauner, a first-term Republican, and the Democrat-led legislature have been unable to agree on a budget since temporary tax-increases expired last year. Stop-gap measures to keep the government running have left it spending more than it brings in, with a deficit of as much as $6 billion projected for the year ending June 30. The political discord has also kept Illinois from finding a way to pay down its $111 billion pension-fund debt, which is the biggest among U.S. states.

Moody’s lowered Illinois’s credit grade on June 8 to Baa2, two steps above junk and its lowest for a state since Massachusetts in 1992. S&P followed the next day by cutting the state to BBB+, one rank higher than Moody’s. Fitch Ratings warned it may downgrade Illinois, too.

The diminished standing on Wall Street has extracted a cost, preventing Illinois from capturing the full benefits as municipal-market rates hold at the lowest since 1965. The 10-year portion of the bonds sold Thursday yielded 1.86 percentage points more than benchmark debt, according to data compiled by Bloomberg. Bank of America won the bonds after an auction among underwriters.

Rauner, a former private equity executive, told reporters in Chicago on Tuesday that bond buyers support reforms he has pushed as a way to stoke the Illinois economy. Since he took office, Rauner has tried to tie any spending plan to changes in Illinois worker-compensation laws, property-tax reductions and limits on unions, an agenda that’s drawn opposition from Democrats who say it would hurt lower-income residents.

“They’re fed up with the financial mismanagement of the state of Illinois,” Rauner said, referring to investors. “This has been going on for decades.”

Still, Illinois remains investment grade and isn’t seen at risk of default. Illinois law gives debt service priority over other expenditures and requires the state to make monthly deposits for interest and principal payments. And given the decline in yields around the world, Illinois may look appealing.

Investors have added money to municipal-bond mutual funds every week since October, the longest stretch since 2010, Lipper US Fund Flows data show. At the end of March, foreign buyers held a record $89.2 billion of state and local debt, almost triple what they owned a decade ago, according to the Federal Reserve Board.

“Instead of just on the surface saying no to potentially deteriorating credits, they’re going to take a really hard look because that’s the only place to go to get any kind of yield in the public fixed income markets,” said Adam Buchanan, senior vice president of sales and trading at Ziegler, a broker-dealer in Chicago. “Borrowers will benefit from that, no doubt.”

Bloomberg Business

By Elizabeth Campbell

June 16, 2016 — 2:00 AM PDT Updated on June 16, 2016 — 8:59 AM PDT

Investors: Know Your Broker's Best-Execution Requirements.

Overview

Bond dealers, typically referred to as brokers, that execute municipal bond transactions on behalf of investors have specific obligations to their customers that include providing relevant information, making suitable recommendations,
offering a fair price and providing their customers with best execution on their transactions. A broker’s best-execution obligations are paramount to ensure investor protection. This document provides an overview of what investors can
expect of their brokers as part of a broker’s compliance with its best-execution obligation to customers.

Continue reading.

Going Green: Evolution of Renewables ABS Discussed.

Representatives from Renovate America, Kramer Levin and T-Rex recently discussed the development of the renewables ABS market during a live webinar hosted by SCI (view the webinar here). Focusing on the PACE and solar sectors, this Q&A article highlights the main talking points from the session, including structuring and performance considerations. For a broader and more in-depth exploration of these themes, download a special SCI/Renovate America research report on green securitisation.

Q: How has the renewables ABS sector evolved?
Craig Braun, md, capital markets at Renovate America: Beginning with the PACE sector, Renovate America was able to complete the first securitisation in the space in 2014 in a transaction of just over US$100m. We followed this issuance up with six further deals since then and plan to be an active issuer in the ABS space for years to come. In total, we've completed over US$1bn of green bonds that meet the Green Bond Principles of 2015.

PACE is a common form of financing that can be paid back via a voluntary assessment on an annual property tax bill. It has a lien priority that is equal to all other taxes and assessments, which makes it a low-risk asset class from an investor and rating agency perspective.

PACE is a public-private partnership, whereby a PACE provider teams up with a municipal issuer, such as the County of Los Angeles. The municipality uses its bonding ability to issue limited obligation improvement bonds that are backed by the various assessments put in place by PACE providers.

Homeowners can apply for PACE financing to upgrade their HVAC systems, or install solar panels or water conserving measures. There are 55 different product categories that qualify for PACE financing and over a million products within those categories, but the improvements must be energy-efficient, renewable energy-generating or water conserving. For instance, the Californian regime heavily promotes water conservation and even includes seismic protection, while Florida provides for wind protection.

PACE empowers homeowners to make the right choice and the smart choice by providing them with a tool to pursue these improvements with no money out of pocket.

California is by the far the most active state out of the 32 states plus Washington, DC that have implemented PACE legislation. In terms of total PACE volume, around US$1.5bn has been originated so far. HERO, our platform, is available throughout California and will soon be available in Missouri and Florida.

Benjamin Cohen, ceo of T-Rex: The other main renewables ABS asset is solar, which can be purchased via PACE, as well as through power purchase agreements, loans and leases. There has been a 65% compound growth rate in residential and commercial solar panel installments in the US over the last decade, facilitated by improved technology. Technology has enabled the cost of solar power to drop from US$40 per watt four years ago to 60 cents per watt today.

SolarCity and Sunrun have been at the forefront of the development of solar ABS. We have seen seven solar ABS issued to date – six by SolarCity and one by Sunrun. The majority of these deals securitise power purchase agreements and over time the deals have increased in size and in yield as investors become more comfortable with the asset class.

One issue you find with solar and not with PACE is tax equity. Tax equity is derived from the investment tax credit, which typically provides 30% of the capital stack and is incredibly complex – but not impossible – to structure around in a securitisation.

Q: In terms of structuring, what are the differences between PACE bonds and regular ABS?
CB: The main difference is that the underlying asset is a tax lien and those are bundled up into limited obligation improvement bonds, which serve as the collateral for the securitisation. The interesting aspect of the PACE assessment is that, like most taxes, the only money that's due is the annual or semi-annual tax payment.

If there is a default or a foreclosure, the principal balance does not accelerate. This is a unique feature of the asset class, which isn't widely appreciated. The only thing that is at-risk during a foreclosure is the tax payment due during that period.

If a homeowner doesn't pay their taxes, they're subject to a penalty – which in California is 10% of the tax due – and after a certain number of months interest begins accruing at 1.5% a month. In the event of delinquencies, there's actually more cashflow available to a PACE deal than if the property owners default on their mortgage payment.

That being said, PACE delinquencies are very low – people tend to pay their taxes, and people with PACE assessments tend to perform better than the average tax payer because they're somewhat of a self-selecting pool. These are people that are investing in their homes and seeking to reduce the cost of ownership.

Finally, the servicer on PACE deals – certainly in the case of the Californian regime – is the county in which the assessment is being levied. Typically in securitisations, the servicer is an affiliate of the originator or the B-piece buyer. So, in the case of the HERO platform, 28 different servicers are billing and collecting the taxes.

Laurence Pettit, partner at Kramer Levin: Both the solar and PACE asset classes have initially struggled with educating investors as to how servicing works. In the ABS world, we're used to the servicing process being done in a certain way, but in both solar and PACE there are unique aspects to servicing.

In solar, as there is some ongoing maintenance involved on the solar installations and because historically there weren't many companies involved in the sector, the idea of there being a back-up servicer was challenging. In PACE, the challenge is parsing out the different servicing roles: as well as the counties which handle billing and collecting, other servicing duties are performed by the trustee, while the municipality is responsible for foreclosures.

Other than that, the structuring differences are fundamental because PACE is a tax and thus has a benefit from the lien perspective and is secured by the entire property, which is not the case with rooftop solar ABS. In terms of cashflows, you can look to tax lien ABS for comparable payment history and you can access data from counties on how often people are delinquent on their real estate taxes. In the case of California, where limited obligation improvement bonds have been popular for years for other purposes, there is also an indicative history of how those bonds have performed.

Rooftop solar is novel in many respects. We know how diligently people pay utility bills, but the extent to which you can apply that payment history to rooftop solar was open to question from rating agencies and investors. But over time a consensus has formed on how that should be analysed and, as more deals are done, we're starting to develop our own payment history for the bonds – which will provide a significant benefit as the years go by.

Q: California accounts for the majority of PACE assessments currently in place. What are the challenges of expanding the PACE programme into other states?
LP: The initial challenge is something that none of us in the ABS world are very familiar with and it involves state-level politics: each state has its own priorities and legislative issues to deal with. That being said, there is a huge take-up nationwide of PACE legislation – so, despite having to navigate each statehouse separately, PACE is gaining traction because it is popular with both elected officials and consumers.

It resonates with elected officials because the Californian experience has shown PACE to have a tremendous economic stimulus, and it's popular with consumers who embrace new ways to finance home improvements. Seeing as consumers vote for elected officials, PACE creates a virtuous circle.

The most significant attraction is that PACE has a measurable impact on the use of renewable energy and on energy savings. In addition, although it provides a public benefit, it doesn't cost the public sector any money because whoever is hired as the programme administrator (such as Renovate America) will be responsible for ensuring that funding is in place for the improvements installed using PACE.

The programme administrator also has to find an investor to buy the individual assessments or the improvement bonds that are backed by the assessments. There is no period of time during the origination process where the sponsoring municipality has to use its own funds to pay for any of the programme costs.

Renovate America and others have proven that PACE assessments are an interesting asset for ABS investors, but they derive from municipal finance and marrying some legal and contractual concepts from muni finance with the expectations of ABS investors can be a challenge. Therefore it is important to be involved early and scrutinise the contracts and agreements, and the underlying muni bond indentures to ensure they comply with the expectations of an ABS investor and that they provide for contracted cashflows to be paid from the consumer all the way to the ABS investor.

There are always wrinkles in each state that need to be addressed or at least understood before a programme is launched to ensure there's an efficient means for collecting the tax. Clearly California is a good example.

There also needs to be a clear legal framework that tells you as an ABS investor at what point someone has the right to enforce on a delinquent property owner and that there is someone monitoring the process, who will enforce the remedies where necessary.

Q: Why is the scalability of PACE platforms an advantage?
CB: Once you get beyond the political and legislative challenges, with a tech-enabled platform, the PACE business is highly scalable. We estimate that the opportunity for PACE in the US is an annual market of US$159bn in home improvements, which either reduce energy or water consumption, or generate renewable energy.

California represents about US$22bn of this opportunity and so far we've just scratched the surface in the state. If you translate this across other states, there is a huge opportunity – especially considering residential properties account for 20% of US energy consumption and, of that, HVAC systems represent 40%.

However, there are a number of barriers to entry. Each programme administrator has to work in each state and get the issuers lined up and then get each community to the stage where consumers can opt into a PACE programme. It's a lot of hammer-and-chisel work upfront, but once the infrastructure and the contractor (point of sale) network is in place, the platform can easily be scaled up.

Q: How do commercial PACE financings differ from residential PACE financings? Can we expect any term securitisations in the commercial space?
LP: Residential and commercial programmes are almost exactly the same, except that the improvements/projects are larger in the commercial sector and can be more complicated. They tend to require accommodation or negotiation with the property owner/commercial mortgagee and that makes the origination process more time-consuming.

It is just a question of time before commercial PACE programme administrators can put together portfolios that are suitable for securitisation. It is taking time for commercial property owners to realise the benefits of participating in commercial PACE programmes.

Unlike residential consumers, commercial property owners have multiple options available to them and are more cautious on adopting PACE. But the popularity of commercial PACE is growing and there are no structural or legal reasons why there can't be term securitisations of commercial PACE – it's more about accumulating an appropriate pool.

Q: In terms of refinancings, do lenders typically require PACE obligations to be repaid prior to the new funding?
CB: Yes they do. The options for a homeowner are either to pay their PACE obligation off, have it transferred to the new property or apply for a limited subordinate PACE product, which we call PACE 2.0. Any time there is a problem with a homeowner in terms of a refi, we have a dedicated group of property advisors that work with realtors and mortgage brokers to facilitate the sale or transfer.

Q: How should investors evaluate risks in solar and PACE securitisations?
BC: There are a handful of risks to be aware of: the typical prepayment and refinancing risk; if there is a default, what is the lag before payment; and what recoveries can be expected. A lesser risk is creditworthiness. Investors have to figure out the likelihood of these risks occurring across an entire portfolio under various scenarios.

The risks become more complex for solar ABS, but also more transparent. An additional risk for solar is how many hours of energy will be produced by the installation. It is necessary to evaluate the characteristics of the solar panel itself, as well as the purchase/lease/loan agreement.

It also important to look at forward power market conditions – especially when evaluating residual positions – because many contracts are for 20 years, yet the life of the panel will likely last for 40 years. Understanding these risks is critical for liquidity and access to capital.

Q: In general, how have PACE securitisations performed?
CB: Renovate America has only issued six deals and two of our competitors have done a deal each, but they were pure private placements and so there's limited information publicly available. With respect to our transactions, delinquencies tend to rise just after the tax payment is due – because sometimes people forget to pay or they have other issues – and then trend downwards.

For the HERO Funding Trust 2014-1 and 2014-2 deals, delinquencies for the 2014-2015 fiscal tax year are averaging just under 40bp. On the 2015-1 and 2015-2 deals, for the 2015-2016 fiscal tax year, delinquencies are a little over 2%. Overall Californian tax delinquencies are on average double that figure, so the transactions are showing very good performance.

Q: Have solar securitisations performed as well as expected?
BC: Solar securitisations have performed better than expected across a few different metrics, including the default rate applied by rating agencies. While more solar securitisations have been issued than PACE securitisations, the total volume of securitised solar assets is lower and so the sector also has limited data points.

Without adequate tools and confidence in the numbers, rating agencies have taken conservative assumptions towards solar. But all the data that has come in over the brief 2.5 years since the first deal in the space shows that default rates are incredibly low – a fraction of what the rating agencies expected them to be – and all the note ratings have been affirmed thus far.

Another good indication of the performance of solar ABS deals is how the securities trade in the secondary market. A great example is SolarCity's first securitisation: it was rated triple-B plus, with a seven-year WAL, and priced in November 2013 at a spread of swaps plus 265bp. Eight months later, its third deal priced at plus 180bp, with a higher advance rate but the same rating and WAL.

A secondary trade of the first deal was subsequently executed at similar levels. Such spread compression reflects the fact that investors are becoming more comfortable with the asset class and the collateral is becoming more seasoned.

Q: Looking ahead, how is the recent extension of the investment tax credit (ITC) likely to impact the solar sector?
LP: The ITC was extended in December 2015 as a 30% credit for residential and commercial solar projects until end-2019, after which the credit drops year by year. The decreases are to 26% in 2020, 22% in 2021 and then permanently to 10% for commercial solar and zero for residential solar. The Solar Energy Industries Association projects that the extension of the credit will result in 50%-55% additional installation capacity, compared to what would have been expected without the extension.

The association is projecting the installation of 98 gigawatts of solar power by end-2020, which is enough to power over 20 million homes. This is, of course, good news for the solar ABS market and indirectly for PACE providers as well.

Q: What are the prospects for tapping the European investor base?
CB: We view the prospects as bright: we're hoping to attract European investors to the US PACE ABS deals we're issuing. We're aiming to provide additional supply this year and recently had our first four HERO deals verified as being in alignment with the Green Bond Principles. This means that the HERO programme is the first ABS platform to issue solely green bonds and the first entirely green bond platform in the world.

PACE aligns nicely with green bond principles because the energy savings/impact is known upfront. We recognise that the European investor base has certain pockets of money that are dedicated to green investment. We plan to take the HERO programme on the road to Europe and meet with investors at the Global ABS conference in Barcelona.

We're unfamiliar with the legislative landscape in Europe, although PACE can work anywhere – it's a matter of having the enabling legislation in place.

Q: Will PACE cannibalise current renewable energy type-deals?
BC: It can and it has. Because PACE is such a straightforward structure and is very easy for investors to understand, you see Renovate America as a market leader originating tremendous volume in a short space of time. Other renewables finance companies have typically struggled to replicate the efficiencies of PACE and so there is significant opportunity to grow its market share, both in the US and – with appropriate legislation – beyond.

Structured Credit Investor

Monday 13 June 2016 11:04 London/ 06.04 New York/ 19.04 Tokyo

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[Insurer Threatens to Seize City Hall After Muni Bond Default.]

The Blue Ridge mountain hamlet of Buena Vista, Virginia, is in danger of having its City Hall, police headquarters and municipal golf course seized for defaulting on its debt.

The city, with 6,600 residents, has failed for more than a year to make payments on $9.2 million of debt that's insured by ACA Financial Guaranty Corp., the company said in a statement Tuesday. The securities are a "moral obligation" paid with money appropriated by the city council and secured by the golf course and municipal buildings, according to ACA, which said it filed suit over the default.

"The city's failure to make its bond payments could result in the foreclosure of its City Hall, its police department building, and its municipal golf course," Roanoke attorney Steve Higgs, who is representing the company, said in the statement. "The City Council should honor its promises and pay back the money it borrowed."

It would be highly unusual for a city to lose its buildings because of a bond default, highlighting the risk of municipalities putting their credit on the line for speculative projects. Even in municipal bankruptcies, such as Detroit's, residents are protected from having government assets sold off to satisfy creditors, as is routinely done when corporations collapse.

The golf course has been a money-losing proposition since 2004, running up losses of $3.2 million, according to Buena Vista's annual report. It didn't lead to the development of nearby real estate, as the city expected, nor did it draw enough players to cover its costs.

ACA said that in July 2011 it agreed to let the city cut its debt payments by half for five years, but in January 2015 Buena Vista stopped paying altogether.

The city stopped making payments to support the debt service "when it became clear that essential government services would have to be drastically slashed," Brian Kearney, the city's attorney, said in a statement. He said ACA has been unwilling to negotiate a reasonable settlement.

"All bond holders have been paid in full because the city purchased payment insurance from ACA," Kearney said.

Bloomberg Business

by Darrell Preston

June 14, 2016 — 10:34 AM PDT Updated on June 14, 2016 — 2:17 PM PDT

SEC Settles First Muni Advisor Action Under Provisions of Dodd-Frank Act.

Investing.com — The U.S. Securities and Exchange Commission agreed to settle charges with two California-based municipal advisory firms on charges they used deceptive practices while soliciting business opportunities from five California school districts.

The enforcement action marks the first of its kind under the municipal advisor antifraud provisions of the Dodd-Frank Act. Under the enforcement action, the SEC found that School Business Consulting, Inc., a general consulting services company, advised several school districts about their hiring process for a financial advisory company, while it was retained by Keygent, LLC, an ElSegundo, California management consultant. At the same time, Keygent allegedly sought municipal advisory business from the same school districts associated with the consulting company. School Business Consulting, according to the SEC, allegedly shared confidential information with Keygent, including the fees charged by their competitors' proposals and potential questions likely to arise at interviews during the hiring process. Ultimately, Keygent benefited from the confidential information by winning the municipal advisory contracts.

Without admitting or denying the SEC's findings, School Business Consulting agreed to pay a $30,000, while the company's president Terrance Bradley accepted a ban from acting as a municipal advisor. Bradley also agreed to pay a $20,000 penalty. Keygent agreed to pay a $100,000 fine, while two of its principals, Anthony Hsieh and Chet Wang, agreed to fines of $30,000 and $20,000 respectively.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting engaged in the "solicitation of a municipal entity," since it received direct compensation from Keygent, the SEC said in an administrative order. Consequently, SBCI should have registered as a municipal advisor as soon as it started soliciting for Keygent, the SEC added. Section 975 of the Dodd-Frank Act prohibits municipal advisors from engaging in an y course of business that is not consistent with their fiduciary duty.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Jun 13, 2016 08:26PM ET

The Price Illinois Will Pay For its Deepening Debt.

A little-noted but nonetheless important factor in Illinois' long-running fiscal stalemate has been the state's ability to keep borrowing money even as its finances have deteriorated.

Municipal bond markets have served as a pressure release valve, sparing Gov. Bruce Rauner and House Speaker Michael Madigan the full potential consequences of their intransigence and fiscal dereliction. Investors' appetite for Illinois IOUs helps stave off a short-term crisis that might force Rauner and Madigan to compromise.

Bonds finance capital spending, smooth out cash flows and keep $26 billion in existing Illinois bond debt afloat through refinancing. The state has even propped up its ailing pension funds with money borrowed in bond markets. "It's critical to the state," says Laurence Msall, president of the Civic Federation, a fiscal watchdog group.

And so far, Illinois hasn't lost that critical funding source, despite a credit profile that only a payday lender could love. The state has more than $7 billion in unpaid bills, a worst-in-the-nation pension funding shortfall of more than $100 billion, and it's heading into a second straight year without a budget. Yet it floated $480 million in bonds in January and plans to borrow another $550 million this week.

All investors have asked in return is a higher interest rate than fiscally responsible states pay on their bonds. Illinois paid about 4 percent on its last issue, compared with a median rate of 2.34 percent for AAA-rated state bonds, according to Richard Ciccarone, CEO of Merritt Research Services, a provider of research and data on municipal bonds.

But a couple of developments last week suggest the price of profligacy is about to rise. Credit rating agencies Moody's and Standard & Poor's cut Illinois' ratings again, with Moody's parking the state just two levels above junk status. More ominously, an influential bond investor openly questioned the market's willingness to indulge a borrower incapable of basic fiscal discipline.

RISING PRICE OF ADMISSION

"We as municipal market participants should really be penalizing in some way, by almost not giving them any access to the market," Peter Hayes, who oversees a $119 billion municipal bond portfolio at investment giant BlackRock, told Bloomberg News last week. "Think about it—they're a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they're going to come to market and borrow money."

Hayes' remarks shouldn't be taken as a signal that bond markets are about to slam the door on Illinois. Budget or no, many investors can't resist a 4 percent yield in an era of rock-bottom interest rates. And from a bondholder's perspective, risk of a payment default appears low, explains Moody's senior credit officer Ted Hampton.

Despite its fiscal chaos, Illinois still brings in plenty of revenue to cover debt service on bonds. What's more, state law gives bondholders first crack at those revenues, meaning they'll likely get paid before any money goes to struggling social services agencies stiffed by the state. "We don't think the state of Illinois is likely to default on its (bond) debt anytime soon," Hampton says.

What Hayes' comments do suggest, however, is that skepticism toward Illinois is growing among bond investors. Ciccarone notes that some have begun to back away from Illinois bonds, relegating the state to a costlier corner of the market. "With conservative investors you're seeing resistance," he says. "The investors that are stretching for yield are interested."

As demand for Illinois paper shrinks, its borrowing costs will rise. How high? Possibly a lot higher, if paralysis endures in Springfield and Illinois' credit rating keeps falling. Moody's has a negative outlook on Illinois, a sign that at least one more downgrade may be coming. A drop into junk territory would be extremely expensive—junk-rated Chicago Public Schools bonds carry a rate of 8.5 percent.

A far-fetched scenario, perhaps, but Illinois' current fiscal predicament seemed unimaginable not so long ago. As Hampton says, "We're sort of in uncharted territory here with Illinois."

CRAIN'S CHICAGO BUSINESS

BY JOE CAHILL

June 15, 2016

[SEC Announces Deal With Two California-Based Municipal Advisory Firms.]()

SAN FRANCISCO (Legal Newsline) – The Securities and Exchange Commission (SEC) announced that School Business Consulting Inc. and Keygent LLC will settle allegations of using deceptive practices when soliciting business from five California school districts.

According to the SEC, these school districts were using School Business Consulting to advise them on their hiring process for financial professionals. While this was underway, Keygent allegedly retained School Business Consulting. Keygent purportedly sought the municipal advisory business of the same school districts. School Business Consulting allegedly shared confidential information about the districts with Keygent.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," Andrew Ceresney, director of the SEC Enforcement Division, said. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting was additionally charged with failing to register as a municipal adviser.

"These laws apply not only to municipal advisers, but also those who solicit business on behalf of municipal advisers," LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division's Public Finance Abuse Unit, said. "Municipal entities should be able to trust that their selection of a municipal adviser is untainted by any breach of fiduciary duty."

School Business Consulting will pay $30,000, while its president will pay a $20,000 penalty. Keygent will pay $100,000 while its principals will pay $30,000 and $20,000 respectively.

by Mark Iandolo

Jun. 14, 2016, 8:03pm

[History Not a Guide for Possible Chicago Public Schools Bankruptcy.]()

Only four school districts have declared Chapter 9 bankruptcy in the past 62 years, and two of those abandoned the process, says a municipal bankruptcy expert asked about the possibility of Chicago Public Schools doing the same.

CPS, the nation's third-largest school district, faces a nearly $1 billion budget deficit and the possibility of staying closed in the fall if the state fails to pass a budget.

Rather than compromise with legislators over education funding, Gov. Bruce Rauner has publicly supported a bill introduced by Rep. Ron Sandack that would allow Illinois school districts and other local units of government access to Chapter 9 of the federal bankruptcy code.

James Spiotto, managing director of municipal finance consulting firm Chapman Strategic Advisors LLC in Chicago, points out that only four school districts have filed for Chapter 9 out of 322 total filings since 1954. He adds that two of those dismissed their cases in favor of other resolutions.

“The reason for that is there are better methods that states have developed to deal with troubled school districts,” Spiotto said.

“School districts are so important to the economy, the community and the citizens that states have developed mechanisms to monitor, supervise, provide oversight, and if necessary, change the superintendent or board.”

He explains that the San Jose School District in California filed for Chapter 9 in 1983, after a contract dispute with teachers that resulted in an arbitration award that the school district couldn’t afford.

The school district used the process to resolve the dispute and dismissed the bankruptcy without a plan of debt adjustment less than a year later.

Spiotto says Richmond Unified School District in California filed for Chapter 9 in 1991, and announced that it would close several schools. But after students’ parents filed a lawsuit to prevent the closings, the state legislature gave the school district $29 million to bridge its gap in funding.

The school district hired a new superintendent and dismissed the bankruptcy without a plan of debt adjustment later that year. It also changed its name to West Contra Costa School District.

Spiotto contends that the other two school districts that have filed for Chapter 9 in the past 60 years – Copper River School District in Alaska and Chilhowee R-IV School District in Missouri – are too small to serve as examples for larger, urban school districts like CPS that may consider bankruptcy.

He says that Copper River only had 511 students and six schools when it filed for Chapter 9 in 1986. The school district rejected the teachers’ union contract because it couldn’t pay salaries, but in the plan of debt adjustment, the salaries were frozen and significantly reduced.

Spiotto adds that Chilhowee R-IV filed for Chapter 9 in 1992, after five former teachers won a $200,000 judgment against the school district. The school district only had an annual budget of $650,000 at that time.

“Chapter 9 really just deals with debt adjustment,” Spiotto said. “Chapter 9 cannot interfere with the property, government and affairs of the municipality, which can be a school district, without the consent of the school district. So the school district would still control its operations.”

“Since you don’t reach issues of operations, you don’t reach issues of academics and performance and achievement,” he added. “Those are other critical issues, so Chapter 9 really is not a holistic approach for a school district.”

Spiotto contends that major school districts should instead consider state-sponsored resolution mechanisms rather than bankruptcy. For example, he says, California allows state takeover of school duties with an appointed administrator and enables the school district to receive emergency loans from the state general fund.

In Ohio, he says, an academic distress commission helps school districts develop a recovery plan when their academic performance is low. The commission can reassign or appoint school administrators, terminate contracts and develop budgets.

Spiotto points out that Illinois takes a different approach. The Illinois State Board of Education can take control of troubled school districts in cities of less than 500,000 inhabitants, but that obviously doesn't apply to CPS.

"They are separate from any oversight, or setting up a physical oversight panel to review them, which other school districts do have in Illinois," Spiotto said. "Because of the separateness of Chicago Public Schools, it's left to the control of the city."

Spiotto suggests that Illinois set up an oversight authority for CPS that could help the school district with its funding. The authority would provide interim financing and determine what is affordable for the school district, recommend to the legislature additional tax sources or increases in tax limits and ensure that academic achievement continues to improve.

Ted Dabrowski, vice president of policy at the Illinois Policy Institute, points out that the State Board of Education has taken over a few failing school districts, including East St. Louis and North Chicago, but the results have been mixed.

"The biggest issue is that you have one large bureaucracy stepping in to take the place of another bureaucracy," Dabrowski said. "While that might fix some of the financial problems, it doesn't really address the true question, are they helping student outcomes and are we seeing better education for children?"

While Chapter 9 bankruptcy might temporarily improve CPS' finances, Dabrowski also contends that Mayor Rahm Emanuel and the Chicago Board of Education have not made tough decisions on how to use taxpayer money more efficiently and properly provide funds for school programs and teachers' salaries and pensions.

"I would say that a state takeover will only help when there is pension reform and when the Chicago Teachers Union is forced to back off of its unrealistic claims and demands," he said.

Spiotto says despite the "theater that you read about in the newspapers," he wouldn't rule out CPS and the teachers reaching a resolution for the sake of students and the community.

"They work through the problems," Spiotto said. "That is the best solution. And if they need help from the state, that could help them bridge the financial problems that school districts obviously find themselves in from time to time."

FORBES

BY AMANDA ROBERT

JUN 16, 2016 @ 10:01 AM

Illinois Budget Impasse Hits $550 Million Bond Sale.

Illinois' long-running budget impasse stung the state on Thursday in the U.S. municipal market where buyers of its $550 million bond issue demanded bigger yields over the market benchmark.

The pricing was “surprisingly soft,” considering a strong rally in muni bonds on Thursday, said Greg Saulnier, a Municipal Market Data analyst. The results demonstrate that the market is increasing its penalty due to the state’s worsening fiscal and political problems, leaving Illinois unable to take full advantage of the historically low borrowing rates.

Bank of America Merrill Lynch won the tax-exempt general obligation deal in competitive bidding, pricing bonds due in 2026 with a 5 percent coupon to yield 3.32 percent, which is 185 basis points over MMD’s triple-A yield scale. The spread was 175 basis points ahead of the bond sale, according to MMD, a unit of Thomson Reuters.

It was also wider than the 154 basis-point spread in 10 years for Illinois’ $480 million GO bond sale in January.

Illinois is poised to be the only U.S. state since at least the 1930s to end a fiscal year without a complete budget.

Its Republican governor and Democratic-controlled legislature have so far failed to reach a deal on fiscal 2016 or 2017 spending plans. That leaves unaddressed the growing structural budget deficit and huge $111 billion unfunded pension liability in the fifth-biggest U.S. state.

The bond issue itself was seen as a weapon in the political war to pressure Democrats to cave in to Governor Bruce Rauner’s demands, while losing money for the cash-strapped state.

ILLINOIS SELLS INTO MARKET RALLY

Muni yields have been hitting new record lows on MMD’s scale in recent days, driven by cash-heavy investors chasing low supply of debt.

Rauner’s office said the true interest cost for the bonds, which carry maturities from 2017 to 2041, was 3.74 percent, down from 3.99 percent in the January sale, and the lowest ever for similar general obligation bonds issued by the state.

“It’s clear from today’s bond sale that investors realize Illinois now has a governor that is trying to turn the state around and right its fiscal ship,” Rauner spokeswoman Catherine Kelly said in a statement.

Some market participants thought Illinois’ so-called credit spread should be even wider.

“It’s odd to me,” said Nicholos Venditti, a portfolio manager at Thornburg Investment Management. “Illinois has proven time and time again they can’t get anything done.”

Heading into the deal, Illinois’ credit ratings, which were already the lowest among the states, were downgraded by Moody’s Investor Service and Standard & Poor’s.

The governor’s office also revealed on Wednesday that the state lacks appropriations to actually spend all the proceeds earmarked mainly for road construction and mass transit projects due to the impasse.

State Treasurer Michael Frerichs, a first-term Democrat, predicted the bond issue could be a net money-loser for Illinois if the borrowed funds go unspent and must be invested short-term.

“We’ll make far less in interest than we’ll be paying in interest to the bondholders,” Frerichs said in an interview. “I think we need to make these investments in infrastructure, but we’re going about it in the wrong order. It seems backwards issuing the bonds and hoping they get an appropriation to spend them.”

On Wednesday, Rauner administration officials warned of the imminent shutdown of transportation projects and the loss of 25,000 construction jobs without a budget deal.

Spokesmen for House Speaker Michael Madigan and Senate President John Cullerton, both Democrats, declined to speculate on the chances of either legislative chamber granting the Rauner administration the spending authority it needs to fully tap the bond issue.

REUTERS

CHICAGO | BY KAREN PIEROG AND DAVE MCKINNEY

Thu Jun 16, 2016 6:19pm EDT

(Editing by Daniel Bases and Matthew Lewis)

Puerto Rico GO Bond Price Dips, Rescue Bill Moves to Senate.

Puerto Rico’s benchmark General Obligation bond fell in price on Friday in choppy trading after the U.S. House of Representatives passed legislation aimed at helping the U.S. territory fix its fiscal mess.

The GO bond, carrying an 8 percent coupon and maturing in 2035, last traded at 64.74 points in price, pushing the yield to 13.05 percent from 12.73 percent on Thursday, according to data provided by the Municipal Securities Rulemaking Board.

According to the MSRB’s Electronic Municipal Market Access database, about $21 million worth of bonds traded versus $14 million the day before.

Late on Thursday the House passed the “Puerto Rico Oversight, Management and Economic Stability Act” (PROMESA), by a vote of 297-127, with the U.S. Senate expected to take up the bill quickly ahead of a $1.9 billion debt payment due July 1.

Puerto Rico has a $70 billion debt load it says it cannot pay and a staggering 45 percent poverty rate. It faces steady migration of its residents to the mainland and a potential humanitarian crisis because it cannot sustain social services.

PROMESA, if passed by the Senate and signed into law, would establish a powerful seven-member federal Oversight Board to navigate through the restructurings. Among other things, the board would have the authority to enforce balanced budgets.

“It is definitely a step forward, a very good step forward. We think it was necessary. It doesn’t answer all your questions but at least it sets up a framework and does provide fiscal management and oversight which we think was necessary because the credibility of the government is pretty much shot,” said Joe Rosenblum, director of municipal credit research at AllianceBernstein in New York.

“We don’t think at these prices we are ready to dip our toes back in and we haven’t seen a lot of trading activity out there, so I think we are in company,” Rosenblum said.

PROMESA does not set out specific rules for restructuring, leaving such decisions to the control board to work through with creditors. This is a critical point for municipal bond market investors where long-standing rules set out a hierarchy among creditors, typically with GO bondholders considered senior to all others.

“Regardless of how things get restructured today, the fact that the economy continues to shrink and the population continues to shrink is a problem for the credit going forward,” said Craig Brandon, co-director of municipal investments at Eaton Vance in Boston.

REUTERS

NEW YORK | BY DANIEL BASES

Fri Jun 10, 2016 5:52pm EDT

(Reporting By Daniel Bases; Editing by Tom Brown)

BlackRock Says Illinois Should Lose Access to Debt Markets.

The Land of Lincoln should be forced to log-off from the muni bond market, one influential Wall Street firm said Wednesday.

BlackRock, the world’s biggest asset manager, said the debt-drunk state, with the worst pension shortfalls in the land, should lose its access to the $3.7 trillion municipal debt markets.

“They’re a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money,” Peter Hayes, who oversees the firm’s $119 billion in muni bonds, said on Wednesday.

President Obama’s home state, the least credit-worthy in the country, according to Moody’s Investors Service, is also planning its second general obligation bond offering this year, for $550 million.

The state’s legislature has been mired in a standstill over its budget — and hasn’t passed one in more than 11 months. There is also no budget for the fiscal year that begins on July 1.

As it stands, the state has more than $7.2 billion in unpaid bills and more: Its pension has a shortfall of more than $111 billion.

Its GO bonds were downgraded by Moody’s earlier this year — to Baa1 — two steps above junk.

Facing such a calamitous future, Hayes is blowing the whistle.

Wall Street “should really be penalizing in some way, by almost not giving them any access to the market,” Hayes said at a media event.

BlackRock is a giant.

It has about $4.6 trillion in assets — more than six times Illinois' gross domestic product of $736 billion, according to the latest figures from the Federal Reserve Bank of St. Louis.

While certainly an outlier, Illinois, with $148.2 billion in debt, isn't the only entity pretty far out on the debt limb.

Puerto Rico is $72 billion in debt, and has already technically defaulted on some of it. Congress is trying to pass a bill that would create a committee to oversee the island territory's finances and restructure their debt.

A spokeswoman for Illinois Gov. Bruce Rauner declined to comment on Hayes' comments. A spokeswoman for BlackRock declined to elaborate.

Despite being so drunk on debt, most believe Wall Street will keep on serving up more.

"Despite its lack of a budget, [Illinois] is still a state, and state GO bonds haven't defaulted in modern history," Matt Fabian, partner at Municipal Market Analytics, told The Post. "So it is impossible to think that it will not be able to place the new bonds, and probably at yields that aren't too far off from where they sold them the last time around."

Illinois bonds floated in May, before the Moody's downgrade, paid 3.62 percent — roughly 1.83 percentage points over AAA-rated munis, according to Bloomberg.

Still, Fabian added, "BlackRock is one of the largest investors in municipal bonds, so their words (and their lack of interest in buying IL right now) carry more weight than you might think."

Things are so bad in Illinois that the deadbeat state is late in paying $3 million to the FBI for processing fingerprints, the AP reported.

The debt is so old that it could be turned over to Washington's collection agency, the Treasury Department, for collection.

The New York Post

By Kevin Dugan

June 8, 2016 | 11:59pm

Trail of Defaults Leads to Dark Corner of Tax-Exempt Bond Market.

When Philip J. Kennedy needed financing to buy low-income housing in a wealthy Dallas suburb, he bypassed Texas agencies for a tax-exempt bond issuer 700 miles away in Gulf Breeze, Florida.

Leaving the state allowed Kennedy's non-profit American Opportunity Foundation Inc. to secure $35 million to buy Garden Gate Apartments in Plano, Texas, and a development in Fort Worth without answering questions from local authorities about AOF's past difficulties repaying debt.

Scores of non-profit organizations like AOF are required to use government-created agencies when selling bonds. In return, the agencies charge fees. At times, these conduits aren't in the same state as the projects they're financing, giving officials on the ground little incentive to scrutinize the deals.

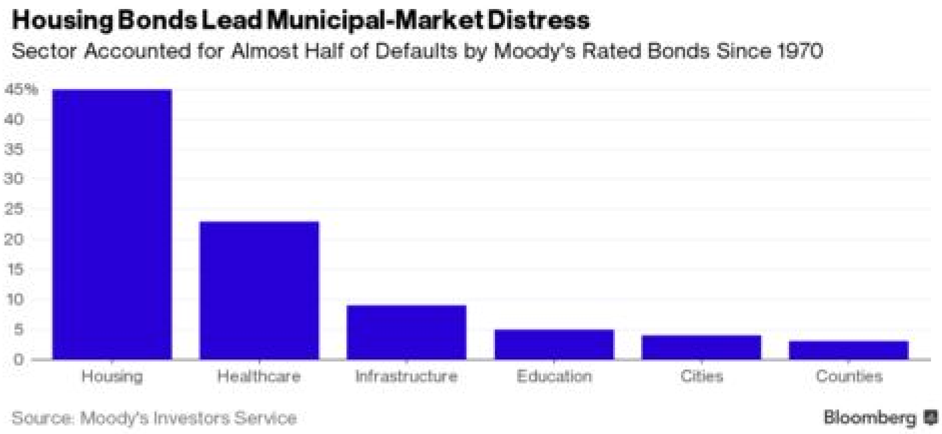
It’s all perfectly legal. But for investors, it can be risky. Such conduit deals account for nearly 60 percent of the defaults in the $3.7 trillion municipal-bond market, according to Municipal Market Analytics. In most cases, bondholders, not taxpayers, are on the hook if the projects flop.

Default History

Between 2000 and 2004, Kennedy’s AOF defaulted on 14 of 18 outstanding municipal bonds issued in the 1990s, affecting about 5,550 units, according to data compiled by Bloomberg. In 2014, AOF defaulted on bonds issued by a Texas affordable-housing agency to buy apartments in Houston, Dallas, and San Antonio. More than 1,700 apartments lost their subsidies, and rents at one complex climbed 22 percent.

Kennedy, 62, didn’t disclose AOF’s default history in materials submitted to Plano, and the town council didn’t ask him whether any of his projects had failed, according to a video of the meeting. The Florida agency that issued the bonds said its due diligence indicated that AOF “know what they’re doing.”

“If they had gone through the Texas finance authorities, like the state one, maybe someone at the state would have questioned whether they should be approved or not,” said Plano resident Jim Dillavou, a retired Deloitte LLP partner and critic of the city’s plan to develop more apartments. “By using a Florida outfit they avoided that scrutiny.”



In an interview, Kennedy said the decision to use a Florida agency wasn’t motivated by AOF’s past defaults in Texas, though it allowed him to avoid the need to win approval from the state’s bond-review board.

“It’s a very, very difficult process in Texas,” he said. “They’ve had a lot of issues with 501c3 defaulted deals and so they just make you jump through a lot of hoops.” Non-profit organizations are known as 501c3s, after the relevant section of the U.S. tax code.

Kennedy said he chose a Florida conduit because his original plan was to also buy an apartment complex in that state. That deal fell through, he said.

AOF was founded in Atlanta in 1983 to sponsor low-income housing. Kennedy became president in 1991. His compensation was about $360,000 in 2014, according to tax filings. AOF owns or has ownership interests in 14,000 apartment units, which are managed by outside firms that it hires.

West Coast

AOF has been successful on the West Coast, where one of its subsidiaries, AOF/Pacific, serves as as general partner and has small ownership interests in more than 100 affordable properties with more than 13,000 units. Many are financed with low-income housing tax-credits so there's less leverage, Kennedy said.

AOF has also acquired, rehabbed and sold 125 single-family homes to first-time buyers.

"I'm not particularly proud of what I did in the 90s," Kennedy said. "I'm proud of the way I hung in there and got it all worked out."

Capital Trust Agency, the Florida conduit, has issued about $1.9 billion of debt for projects such as private-jet facilities and hotels. To raise the money for AOF, Capital Trust charged about $97,400 in fees.

Ed Gray, the executive director, said his agency reviewed financial statements and visited the apartment complexes in Plano and Fort Worth. About $81 million of the debt Capital Trust has issued has defaulted, according to data compiled by Bloomberg.

"I can't speak to that," Gray said of AOF's default history. "I can only speak to projects that I'm aware of that they currently operate, and have found no lack of expertise."

Little Regulation

Public agencies like Capital Trust operate in a little-regulated corner of the municipal market. They issue bonds for private companies and nonprofit organizations that would otherwise lack access to tax-exempt borrowing. Local taxpayers benefit from the fees and aren't on the hook to repay the bonds, which are often used for riskier real-estate projects.

All 50 states have conduit issuers. Florida is one of seven that allow some conduits to issue debt for out-of-state projects, according to the Council of Development Finance Agencies. The practice has drawn criticism from some public officials, who say it can allow debt issuers to elude oversight by financing projects through authorities beyond their jurisdiction.

AOF's Plano and Fort Worth debt was good enough for Bank of America Corp. The bank bought $26.1 million of the bonds, which yielded 5.5 percent. Fundamental Advisors, a New York-based private equity firm, bought another $11 million of subordinate notes that pay interest as high as 15 percent. AOF provided $600,000 in equity, according to Capital Trust. Melissa Kitlowski, a Bank of America spokeswoman, and Julie Oakes, a Fundamental spokeswoman, declined to comment.

Public Purpose

Gray of Capital Trust said AOF's housing complexes were in good shape and generate enough income to support the debt.

"We felt this financing for these properties was a good public purpose for us to be involved and therefore when the applicant came to us to consider issuing the bonds, we did so," Gray said.

Plano, whose median household income is 60 percent higher than the state's, has a population of 280,000 and is located about 20 miles (32.2 kilometers) northeast of Dallas. It's dotted with corporate campuses. In 2014, Toyota Motor Corp. decided to move its North American headquarters to Plano from California. Garden Gate, AOF's apartment complex, is the town's only subsidized low-income housing for families.

“All we’ve done is allowed them the ability to issue tax-exempt” debt, said Denise Tacke, Plano’s finance director. “We have no responsibility for repayment.”

Bloomberg Business

by Martin Z Braun

June 9, 2016 — 2:00 AM PDT Updated on June 9, 2016 — 7:24 AM PDT

U.S. Municipal 30-year Bond Extends Record Low Yield for Third Day.

The yield on AAA-rated 30-year U.S. municipal bonds fell for the third consecutive day to an all-time low of 2.27 percent on Thursday, according to Municipal Market Data’s benchmark scale.

A surge in municipal bond issuance this week was met by strong demand from investors, many of them foreign buyers being drawn to the market in an attempt to escape negative interest rate policies abroad.

“Munis are the most attractive ugly duck left,” said Greg Saulnier, municipal analyst for Municipal Market Data. “Given what foreign money looks like, investors are snapping these up.”

Investors this week saw a whopping $12 billion of new sales enter the market, a high for the year to date.

Municipal market investors have also been encouraged by Federal Reserve Chair Janet Yellen’s comments on Monday that rate hikes could be pushed off until later in the year.

The streak of record lows may not be over yet. July is typically the biggest month for principal and coupon redemptions, which will likely again boost demand for municipals.

Over the past two days, the market also saw record low yields on 30-year AAA-rated municipal bonds of 2.36 percent on Tuesday and 2.34 percent on Wednesday.

The yield on AAA-rated 10-year bonds ended Thursday at 1.56 percent, nine basis points above the all-time low of 1.47 percent set in November 2012.

Reuters

By Robin Respaut

Thu Jun 9, 2016 4:08pm EDT

(Reporting By Robin Respaut; Editing by Bill Trott and Dan Grebler)

U.S. Muni Bond Sales Fall Next Week After Issuance Spike.

New sales of U.S. municipal bonds are expected to slow next week to $5.7 billion from the year high of $12 billion in the week just ended, according to preliminary Thomson Reuters data.

That surge in municipal bond issuance was met by strong demand from investors, many drawn to the market in an attempt to escape low or negative interest rate policies globally.

The demand pushed yields down on AAA-rated 30-year U.S. municipal bonds to record lows three consecutive days in row.

“Sometimes supply feeds demand in a way that we see good performance, and we continue to see yields drop,” said Jim Colby, chief municipal strategist at VanEck.

Despite the expected drop in issuance, municipal analysts predict record-low yields may continue into next week.

“There is sound reasoning that rates could move lower,” said Colby. “The marketplace is saying, maybe rates are going to rise. The Fed is seeing evidence of strength in the marketplace, so short-term rates will rise. Let’s employ a strategy that will let us earn positive returns.”

Investors have poured money into municipal bond funds for 36 straight weeks, the longest stretch of consecutive inflows since 2010, according to data from Lipper, a Thomson Reuters company. Positive flows began in January 2009 and continued every week through March 2010.

Next week’s $5.7 billion in new sales will be lower than the 2016 year-to-date weekly average of $7.5 billion, according to Thomson Reuters’ Municipal Market Data (MMD). That is in part because many issuers rushed to sell bonds this week, before a possible rate hike, said Greg Saulnier, MMD municipal analyst.

Among the largest deals to hit the market next week is $550 million of Illinois general obligation bonds offered in competitive bidding on Thursday. Ahead of the sale, both Moody’s Investors Service and Standard & Poor’s downgraded the state’s credit ratings, which are inching closer to “junk” level.

A political impasse between the state’s Republican governor and Democrats who control the legislature has left Illinois without budgets for the current and next fiscal year and no plan for addressing its $111 billion unfunded pension liability and big structural budget deficit.

REUTERS

SAN FRANCISCO, JUNE 10 | BY ROBIN RESPAUT

(Reporting by Robin Respaut Additional reporting by Hilary Russ; Editing by Daniel Bases and James Dalgleish)

New Jersey's Top Court to Rule in High-Stakes Public Pension Case.

The New Jersey Supreme Court is expected to decide on Thursday whether the state’s 2011 public pension reform improperly froze retirees’ cost-of-living increases, a ruling that could cost the state billions of dollars.

Governor Chris Christie’s administration suspended the so-called COLA payments, which are tied to inflation, as part of bi-partisan reforms aimed at curtailing the ballooning cost of public pensions.

Retired prosecutors challenged the provision, saying they have a contractual right to the adjustments, just as they do to their base pension payments.

If the retirees prevail, New Jersey's already underfunded pension system could be hit with another $17.5 billion of liabilities, according to The Record, a Bergen County newspaper, which cited a court filing.

New Jersey's roughly $83 billion pension system is as poorly funded as it has ever been. The state's aggregate funded ratio for all plans is 48.6 percent.

When including local government contributions, the overall system appears somewhat better funded at 59.5 percent, which is still far below the baseline 80 percent level considered healthy.

The court is expected to release its decision in the case, called Berg v. Christie, on Thursday, according to the court system's website.

Wall Street credit rating agencies rank New Jersey the second-worst U.S. state, behind only Illinois, in part because of its pension problems.

Some holders of New Jersey's roughly $37 billion of outstanding bonds are concerned about the impact the case could have on the state's fiscal condition.

For example, in April a Morgan Stanley wealth management director emailed Charles Ouslander, the retired prosecutor who petitioned the Supreme Court, to ask him about possible outcomes on behalf of the firm's retail clients who own New Jersey bonds, according to the email seen by Reuters.

Spreads on New Jersey 10-year bonds, which measure how much extra yield investors demand for riskier bonds, are a full percentage point higher than general top-rated municipal bonds, according to Municipal Market Data, a Thomson Reuters unit.

Another pressure on state finances could come from a ballot question Democrats hope to put before voters in November.

The constitutional amendment would require the state to fully fund its annual contributions to the retirement system, something it has not done since before Christie's tenure.

The state would need at least $2.8 billion of new taxes by 2022 to pay for the measure, according to a panel convened by Christie.

REUTERS

BY HILARY RUSS

Wed Jun 8, 2016 7:39pm EDT

(This version of the story corrects the name in paragraph four to Kramer instead of Parker.)

As Trump, Clinton Push Infrastructure, Muni Deals at 6-Year High.

Donald Trump and Hillary Clinton don't share many positions. But the need to revamp the nation's infrastructure is one of them.

Clinton, the likely Democratic presidential nominee, says the U.S. is “dramatically underinvesting in our future,” and she’d pour money into roads and waterways. Trump, the presumptive Republican candidate, is blunter: the country’s infrastructure is “terrible” and airports are “a disgrace.” He wants to “start the greatest long-term building project in American history.”

It appears that local leaders are finally coming around to that line of thinking, seven years after the end of the recession. With interest rates the lowest since 1965, states and cities issued $67.3 billion of debt for infrastructure in the five months through May, the most since 2010, Bank of America Merrill Lynch data show. That was the last year of the federal Build America Bonds program, which encouraged governments to borrow by paying a share of the interest bills on debt sold for public works.

While the uptick is still just a fraction of what’s needed to shore up thousands of deficient bridges and countless pothole-laden roads, it reflects a long-awaited shift by municipal officials who have hesitated to borrow for new projects even with interest rates at five-decade lows. The increase coincides with unprecedented demand for tax-exempt debt, suppressing yields and saving states and cities millions of dollars.

“Recent history tells us that simply having low interest rates is not going to be what drives cities to take on new debt,” said Christiana McFarland, director of research in Washington at the National League of Cities. “The looming threat of infrastructure needs is certainly putting cities in a position to do everything they can to take on those projects now.”

The American Society of Civil Engineers estimates that the U.S. will fall $1.44 trillion short of the $3.32 trillion it needs to invest in infrastructure through 2025.

It’s not just states and cities that are responsible for that gap. Congressional officials last year spent weeks haggling over a transportation-funding measure before finally enacting a five-year, $305 billion bill that incrementally raises spending each year.

If presidential campaign promises are to be trusted, help could be on the way.

Clinton’s website features a plan that would raise federal spending on public projects by $275 billion over a five-year period, including a national infrastructure bank that would run an expanded Build America Bonds initiative.

In Trump’s book, “Crippled America: How to Make America Great Again,” he doesn’t put an exact price tag on infrastructure spending, but calls it “a trillion-dollar rebuilding program” that’ll be “one of the biggest projects this country has ever undertaken.”

“Regardless of what happens at the state and local level, the federal government needs to be a strong partner in any solution,” Brian Pallasch, managing director of infrastructure initiatives at American Society of Civil Engineers, said in an interview. “The presidential candidates, I’m heartened to see all of them in different ways at least mentioning infrastructure and saying it’s important that we start dealing with it.”

In the meantime, states and localities are stepping up borrowing for public works as their finances improve. Over the past year, they’ve boosted spending on public construction to the most since 2010, Census Bureau data show.

California, the most-indebted U.S. state, sold $813 million of bonds in March for projects including clean water and clean air, children’s hospitals, earthquake and highway safety, housing and emergency shelters, traffic reduction and port security, offering documents show. Across the country, Maryland borrowed about $1.04 billion on Wednesday for construction projects, grants to localities and other initiatives.

Even with municipalities ramping up bond sales, it's unlikely the pickup will push interest rates higher, according to a report this week from Municipal Market Analytics.

That's because individuals have poured money into muni mutual funds every week since October, the longest streak since 2010, Lipper US Fund Flows data show. The more than $16 billion of inflows to start the year is the most since at least 1992.

The yield on a Bond Buyer index of 20-year municipal general-obligation bonds plunged to 3.18 percent on Thursday, setting a new 51-year low. Top-rated 10-year munis yield 1.55 percent, according to data compiled by Bloomberg, while those due in three decades yield 2.36 percent, the lowest since the data begin in 2009.

"You have budget surpluses in a number of states, and extremely low yields available in the market right now allow them to borrow at attractive rates," said R.J. Gallo, head of the municipal bond group at Federated Investors, which oversees $6.9 billion of the debt. "It all adds up that you're seeing more new-money financing and more public construction. The muni market can certainly handle it."

Bloomberg Business

by Brian Chappatta

June 10, 2016 — 2:00 AM PDT Updated on June 10, 2016 — 6:19 AM PDT

U.S. Municipal Bond Market Grows to $3.747 trln in First Quarter - Fed.

June 9 (Reuters) – The U.S. municipal bond market grew to $3.747 trillion in the first quarter from $3.719 trillion in the fourth quarter, according to a quarterly report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.608 trillion compared with $1.597 trillion the previous quarter.

Property and casualty insurance companies bought $10.4 billion of munis in the first quarter, while life insurance companies acquired $13.3 billion. U.S. banks increased their muni holdings by $48.4 billion.

U.S. mutual funds bought $78.5 billion of munis in the first quarter, while exchanged-traded funds added $7.1 billion.

(Reporting by Robin Respaut; Editing by Meredith Mazzilli)

Despite Strong Muni Market, GO Munis Turn Risky: BlackRock

The muni bond market is now questioning the willingness and ability of some issuers to make *payments on general obligation bonds: BlackRock's Peter Hayes*

Municipal bonds, a favored fixed income asset class among high net worth investors, are experiencing strong demand this year despite the debt troubles of Puerto Rico, New Jersey and Illinois and gains that, unlike last year's, are lagging those of Treasuries and investment grade and high yield corporate bonds.

Flows into muni bond funds topped $22 billion for the first five months of the year, and muni fund assets reached a record high of $632 billion as of June 1, according to Lipper. Demand from foreign borrowers seeking higher yields is adding to demand. Year-to-date investment grade munis have returned just over 3%, capturing most of the gains that BlackRock's Municipal Bonds Group had been expecting for the full year.

Peter Hayes, a managing director and head of the group, said Wednesday the firm is now reassessing its outlook but expects another 1.5% return for the remainder of the year.

Despite the relatively strong performance of municipal bonds overall, however, he expects the problems of issuers like New Jersey and Illinois, which have large fixed costs for pensions but not enough revenues to pay them, will likely get worse, and general obligation bonds will suffer the most.

The GO category of muni bonds, backed by the full faith and credit of the issuer, have traditionally been considered the gold standard and safest type of issue among muni credits, but that view has been upended by the problems dating back at least to Detroit, said Hayes.

"The muni bond market is now questioning the willingness and ability to pay of some entities to pay," said Hayes. He doesn't expect that sentiment will abate anytime soon.

"Two things have to happen first," said Hayes. "You have to have significant pension reform and cut benefits or you've got to pay for it. Many of the entities have the ability to pay for it to some degree but politically they don't want to."

Those politics could potentially change in some states if elections result in one party rule of the governor's office and legislature, but in the meantime the muni market "will continue to question the GO structure," said Hayes. And spreads in such states, which also include Pennsylvania and Connecticut, could widen further.

About Illinois which recently announced plans to borrow $550 million for capital projects, Hayes said the state should be penalized by muni market participants "in some way, by almost not giving them any access to the market….Think about it — they're a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they're going to come to market and borrow money."

ThinkAdvisor

By Bernice Napach
Senior Writer

JUNE 8, 2016

Surprise: Taxable Munis Beat Tax-Free this Year and Longer.

Municipal bonds that are taxable at the federal level are surprising outperformers this year. While tax-free munis were up 2.7% through the end of May, taxable munis were up 6.71%. That's even better than high-yield munis, which were up 4.73% in that time frame, according to Eaton Vance.

It's not just this year. The 5-year and 10-year returns of taxable munis are also higher than tax-exempt munis. Taxable munis gained an average of 8.1% a year over the last five years and 6% over the past 10 years. Tax-exempt munis gained 5.3% and 4.7% in those two time periods.

Most individual investors don't know even know taxable munis exist. But institutional investors, looking for yield under every stone, are increasingly finding these securities attractive, says Adam Weigold, portfolio manager at Eaton Vance, who wrote a blog post Tuesday that explains the dynamics of the market.

One dynamic is that a lot of foreign investors are buying these bonds for their high yields and relative safety.

Weigold concludes his piece:

> We believe a flexible opportunistic approach allows access to all parts of the muni market: Taxable or Tax Exempt. Taxable municipal bonds can round out a diversified fixed-income portfolio, offering competitive yields, high quality and low risks of default. As a result, taxable U.S. municipal bonds are bringing the potential rewards of investing in U.S. infrastructure and other public-purpose projects to a growing number of U.S. and non-U.S. investors alike.

Weigold manages Eaton Vance Municipal Opportunities (EMOAX), which has returns in the top 3% of all muni funds for the five-year, three-year and one-year periods, according to Morningstar.

Barron's

By Amey Stone

June 7, 2016, 2:42 P.M. ET

El Paso Turns Around a Losing Game by Refinancing Stadium Bonds.

When El Paso, Texas, sold bonds three years ago to build a 9,500-seat stadium for its minor league baseball team, Detroit had just gone bankrupt and speculation was rife that the Federal Reserve was poised raise interest rates. The yields were so high they prompted a political outcry over why the deal wasn't done sooner.

Thanks to a turnabout in the market, which has driven municipal borrowing costs to the lowest since 1965, the city has made some of that expensive legacy go away.

El Paso sold $17.7 million of bonds last week, refinancing almost a third of the debt issued in August 2013, for a top yield of 3.4 percent on securities due in 2043. The first time around, the city paid as much as 5.95 percent on the tax-exempt bonds. On a $10 million loan, that difference amounts to about $255,000 a year.

“They’re very excited about cutting the cost,” said Maria Urbina, the city’s financial adviser with First Southwest, a division of Hilltop Securities.

El Paso, with a population of about 680,000 along the Rio Grande, built the new home for the Chihuahuas, a Triple-A franchise of the San Diego Padres, to revitalize its downtown, a development strategy that’s been used by cities such as Biloxi, Mississippi, and Hartford, Connecticut.

With the Federal Reserve holding monetary policy steady amid signs of an economic slowdown, El Paso joined another trend: refinancing debt. About $107 billion, or 61 percent, of the new municipal bonds sold during the first five months of the year were used to pay off higher-interest securities, according to Bank of America.

Refinancing will let the city spread out what would have been a $17 million balloon payment in 2023, said Mark Sutter, El Paso’s chief financial officer, who took the job after the original bonds were issued.
“This makes our debt service much more manageable,” he said.

The stadium was approved in November 2012, when voters signed off on a hotel-tax increase needed to pay for it. While officials initially intended to sell the bonds as soon as possible, that was delayed in part because of a May 2013 city election and ongoing controversy over the ballpark. Its construction required razing the former city hall.

That June, bond prices began tumbling after the Fed said it would wind down its program of buying bonds to hold down interest rates. A month later Detroit filed the largest municipal bankruptcy in U.S. history.

The El Paso stadium bonds priced in late August. Since the start of June, 30-year municipal yields had risen 1.4 percentage points to about 4.7 percent, the highest since 2011, according to data compiled by Bloomberg.

The timing led city council members to call for audits into how the financing was handled. Taylor Moreno, chief of staff for Mayor Oscar Lesser, had no immediate comment.

Yields at more than 50-year lows have allowed the city to rework part of it.

“They couldn’t have caught the market at a better time,” said David Jaderlund of Jaderlund Investments in Santa Fe, New Mexico. “This should produce some good savings for them.”

Bloomberg Business

by Darrell Preston

June 6, 2016 — 2:00 AM PDT Updated on June 6, 2016 — 6:25 AM PDT

- **Ed. Note:** Surprise! Just when you thought it was safe to go back in your inbox… We’ll actually be taking next week off. We’ll be off the grid (OTG) this week, so please remember that the password is **muni**.
- MSRB to Launch Permanent Series 50 Exam September 12, 2016.
- Why Market Groups Want MSRB to Abandon Bank Loan Proposal.
- GFOA: The Perils of “Benefit Bonds” and Social Impact Bonds.

- IRS PLR: Management Contract Will Not Result in Private Business Use.
- New Reporting Rules Subject OID on Tax-Exempt Bonds to Information Reporting.
- *McGee v. Balfour Beatty Construction, LLC* – Court of Appeal holds that school districts are exempt from obtaining competitive bids when entering into "lease-leaseback" agreements to improve school property, even if the districts fund the projects, and regardless of whether the leases are site leases or subleases.
- *In re Validation of Tax Anticipation Note, Series 2014* – Supreme Court of Mississippi holds that, under exceptions to mootness doctrine (as the note had been repaid) the Court would consider appeal challenging issuance of tax anticipation note by county board of supervisors; holds that board had authority to issue note that borrowed against total anticipated ad valorem tax revenues; remands for consideration of objector's evidence regarding validity of signatures on petition to submit matter to public for election. This one's worth a read-through, including the concurrence/dissent.
- And finally, Embracing the Mystery is brought to you this week by *Stanton v. Oceanside Union Free School Dist.,* in which school district was sued after "inflatable rides" it had leased became airborne and injured festival participants. What were these "rides"? How did they become airborne? Were the passengers taken aloft along with the rides? We'll never know, so we invite you to close your eyes and envision bouncy castles falling from the heavens. You're welcome.

SCHOOL FINANCE - CALIFORNIA

McGee v. Balfour Beatty Construction, LLC

Court of Appeal, Second District, Division 8, California - April 12, 2016 - Cal.Rptr.3d - 247 Cal.App.4th 235 - 2016 WL 2620116

Taxpayers brought action against school district and construction company under competitive bidding statutes.

The Superior Court, Los Angeles County, sustained demurrer without leave to amend. Taxpayers appealed.

The Court of Appeal held that:

- School districts were exempt from obtaining competitive bids when entering into "lease-leaseback" construction contracts, but
- Construction contractor's alleged provision of construction management services could establish violation of conflict of interest statute.

School districts were exempt from obtaining competitive bids when entering into "lease-leaseback" agreements to improve school property, even if the districts funded the projects, and regardless of whether the leases were site leases or subleases.

School construction contractor's alleged acts of providing school district's professional program management, construction management, and preconstruction services were sufficient to establish a violation of the conflict of interest provision in the statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor's lease-leaseback school construction contracts with the district, where the contractor allegedly filled the roles and positions of officers, employees, and agents of the district.

SCHOOL BOARD ELECTIONS - COLORADO

[Carson v. Reiner]

Supreme Court of Colorado - May 23, 2016 - P.3d - 2016 WL 2996939 - 2016 CO 38

Electors of school district filed petition challenging qualifications of candidate for school board.

The District Court, Mesa County, David A. Bottger, J., denied the petition. Electors appealed.

The Supreme Court of Colorado held that challenge of candidate's qualifications was not permitted before election more than five days after candidate's certification to ballot.

Statute governing election official's neglect of duty did not permit electors of school district to challenge, before election, qualifications of candidate for school board after termination of five-day period for bringing such challenges following certification of candidate to ballot under statute governing candidate's eligibility. Neglect statute was general provision, whereas eligibility statute was specific, permitting challenge under neglect statute any time before election would have rendered superfluous the five-day period to bring challenge under eligibility statute, and unqualified candidate who had not been challenged within five-day period could later be challenged after the election, resulting, if successful, in vacancy in office.

IMMUNITY - INDIANA

[City of Beech Grove v. Beloat]

Supreme Court of Indiana - April 5, 2016 - N.E.3d - 2016 WL 1329559

Injured pedestrian brought negligence action against city. The Superior Court denied city's motion for summary judgment. City appealed.

On petition to transfer, the Supreme Court of Indiana held that city failed to meet its burden on summary judgment to prove entitlement to discretionary function immunity.

City failed to show that it was immune from liability under discretionary function immunity provision of Indiana Tort Claims Act (ITCA) in injured pedestrian's action against city. Mayor's affidavit and city council minutes did not demonstrate prioritization of cost-benefit analysis that went into development of project to reconstruct street on which pedestrian was injured, but only reflected steps taken to fund project that had already been discussed, planned, and approved.

TAX ANTICIPATION NOTE VALIDATION - MISSISSIPPI

[In re Validation of Tax Anticipation Note, Series 2014]

Supreme Court of Mississippi - March 31, 2016 - 187 So.3d 1025

County board of supervisors submitted issuance of tax anticipation note for validation in the amount of 25% of the total anticipated ad valorem tax revenues of the county.

The Chancery Court validated the note.

Objector appealed, arguing that the statutory borrowing limit was 25% of a specifically identified fund, not 25% of the total anticipated ad valorem tax revenues of the county. Objector also appealed the Chancery Court's refusal to accept his proffered evidence regarding the validity of the signatures on his petition to submit the note to the public for election after certain signatures were removed from the initial petition.

The Supreme Court of Mississippi held that:

- Consideration of appeal was warranted under exceptions to mootness doctrine, as the note had been repaid before the case could be heard;
- Board had authority to issue note that borrowed against total anticipated ad valorem tax revenues; and
- Objector was entitled to present evidence regarding validity of signatures on petition to submit matter to public for election.

Under exceptions to mootness doctrine for public policy questions and for decisions capable of repetition but evading review, Supreme Court would consider appeal challenging issuance of tax anticipation note by county board of supervisors, even though note had been paid at time of appeal. Question of whether board complied with statutory requirements in obtaining notes in correct statutory amount was a matter of public interest.

County board of supervisors had authority to issue tax anticipation note that borrowed against total anticipated ad valorem tax revenues from preceding annual tax levy.

At tax anticipation note validation hearing that occurred after county board of supervisors had ruled that petition did not contain sufficient number of signatures of qualified electors to require submission of matter to public for election, objector was entitled to present evidence regarding sufficiency of signatures.

"While the statutory language does limit boards of supervisors to borrowing twenty-five percent "of the estimated amount of taxes collected and to be collected under the last preceding annual tax levies for the particular fund for which said money is borrowed," the statute permits boards of supervisors to borrow money "from any available fund in the county treasury, or from any other source." Miss.Code Ann. § 19–9–27 (Rev.2012). This is sufficiently broad to allow counties to borrow against total anticipated ad valorem tax revenues from the preceding annual tax levy."

LIABILITY - NEW YORK

Stanton v. Oceanside Union Free School Dist.

Supreme Court, Appellate Division, Second Department, New York - June 1, 2016 - N.Y.S.3d - 2016 WL 3064564 - 2016 N.Y. Slip Op. 04199

Five festival patrons brought related personal injury actions against school district, soccer club, and lessor of inflatable rides, for injuries sustained when inflatable rides became airborne and struck patrons.

Defendants moved for summary judgment. The Supreme Court, Nassau County, denied motion. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Club owned no duty for negligent acts of lessor;
- District did not create or have actual or constructive notice of alleged dangerous condition of rides; and
- Club was not liable for contractual indemnification to lessor.

BENEFITS - NEW YORK

[Masullo v. City of Mount Vernon]

Supreme Court, Appellate Division, Second Department, New York - June 1, 2016 - N.Y.S.3d - 2016 WL 3064892 - 2016 N.Y. Slip Op. 04225

Firefighter, who had been receiving permanent disability retirement benefits for four years, brought article 78 proceeding to review determination of city fire commissioner which adopted the recommendation of a hearing officer denying firefighter's application for benefits subsequent to his retirement.

The Supreme Court determined that firefighter was obligated to submit an application for benefits, affirmed eligibility review process, and transferred proceeding. Firefighter appealed.

The Supreme Court, Appellate Division, held that:

- As a matter of first impression, a municipality is not authorized to terminate previously awarded permanent disability retirement benefits or require the submission of a formal application for such benefits after the firefighter has retired, and
- City was without authority to require firefighter to submit to application and eligibility processes.

A municipality is not authorized to terminate previously awarded permanent disability retirement benefits or require the submission of a formal application for such benefits after the firefighter has retired, as this essentially amounts to an improper reconsideration of an award of benefits based on improved medical condition.

Absent any evidence that permanent disability retirement benefit payments were actually erroneously made, city was without authority to require firefighter to submit to application and eligibility processes adopted by city subsequent to retirement, and after city had already paid firefighter benefits for over four years; city's subsequent final determination denying firefighter's application for benefits was impermissibly based on improved medical condition.

PUBLIC UTILITIES - OHIO

[In re Application of Ohio Edison Co.]

Supreme Court of Ohio - May 18, 2016 - N.E.3d - 2016 WL 2908551 - 2016 -Ohio- 3021

Public energy council and environmental center appealed the decision of the Public Utilities Commission that approved, and affirmed its approval, of electric-distribution utility's application for extension of electric-security plan.

The Supreme Court of Ohio held that:

- Commission is not bound to a strict price comparison to determine if an electric-security plan is more favorable than a market-rate offer;

- Market-rate offer was not more favorable than utility's electric-security plan;
- Energy council was not prejudiced by Commission taking administrative notice of additional benefits for customers; and
- Commission could approve partial stipulation submitted with application.

Electric-security plan statute does not bind the Public Utilities Commission to a strict price comparison to determine if an electric-security plan is more favorable in the aggregate as compared to the expected results of a market-rate offer. On the contrary, the statute instructs the Commission to consider pricing and all other terms and conditions in evaluating whether the electric-security plan is more favorable in the aggregate than an expected market-rate offer.

Standard service offer based on market-rate offer was not more favorable than electric-distribution utility's electric-security plan, despite contentions that inclusion of delivery capital recovery rider, which authorized suppliers to recover certain investment costs, made electric-security plan more costly for consumers, and that Public Utilities Commission should have considered possibility that rider could have been renewed perpetually. Under market-rate offer, suppliers would still have been able to recover investment costs by way of distribution-rate case, cost to consumers under rider or distribution-rate case would have been a wash over sufficient time period, and decision on rider calculation fell within expertise of Commission.

Public energy council was not prejudiced by Public Utilities Commission taking administrative notice of additional benefits for customers, as stated by witness, who did not testify in hearing, in her prefiled testimony in prior case regarding electric-distribution utility's standard service offer. Customer benefits were also stated in other witness's prefiled testimony, other witness did testify at hearing and was subject to cross-examination, and thus council had advance notice of alleged benefits and opportunity to challenge them with evidence of its own.

Public Utilities Commission could approve partial stipulation submitted with electric-distribution utility's application to extend electric-security plan, despite contention that stipulation was not product of "serious bargaining," based on allegedly erroneous inclusion of double counting benefits of extension and on failure to have conventional meeting. Even if double counting error occurred, single error in complex filing was not necessarily evidence that parties failed to bargain seriously, utility gave every party to prior plan opportunity to review and comment on draft stipulation for extension, and serious bargaining could occur without all parties assembled around physical table.

PUBLIC UTILITIES - OHIO

[In re Comm. Rev. of Capacity Charges of Ohio Power Co.]

Supreme Court of Ohio - April 21, 2016 - N.E.3d - 2016 WL 1592897 - 2016 -Ohio- 1607

Public Utilities Commission opened a case when it found that an investigation was necessary to determine the impact of electric utility's proposed change in capacity charges. The Commission approved the change. Ohio Consumers' Counsel appealed, and utility cross-appealed.

The Supreme Court of Ohio held that:

- Commission was not required to find that utility's existing capacity charge was unjust, unreasonable, or unlawful prior to setting a new capacity charge;
- Commission set forth reasonable grounds for complaint to open investigation into capacity charges and hold an evidentiary hearing;

- Calculation of energy credit, used to reduce utility's cost-based capacity charge, through usage of static shopping level was warranted; and
- Commission failed to adequately address objections made by utility regarding inputs used in calculating energy credit.

Public Utilities Commission was not required to find that electric utility's existing capacity charge was unjust, unreasonable, or unlawful prior to setting a new capacity charge. Statute required only that commission's initiative or complaint allege that the rate or charge was unjust or unreasonable, and did not require any specific finding before commission could change an existing rate.

Public Utilities Commission set forth reasonable grounds for complaint to open investigation into electric utility's capacity charges and hold an evidentiary hearing. Commission found that investigation was necessary in order to determine the impact of utility's request with Federal Energy Regulatory Commission (FERC) to change its capacity charge from a market rate to a cost-based mechanism, and that utility's then-existing capacity charge might have been below the utility's costs to provide capacity.

Calculation of energy credit by Public Utilities Commission, used to reduce electric utility's cost-based capacity charge, through usage of static shopping level was warranted, despite evidence that level of shopping had increased. Commission adopted static shopping level to provide certainty to both the energy credit and the capacity charge, and expected the shopping level to fluctuate in both directions over time periods at issue.

Public Utilities Commission failed to adequately address objections made by electric utility regarding inputs used in calculating energy credit, which reduced utility's cost-based capacity charge. In dismissing utility's concerns, commission framed the dispute as one involving credit calculation methodologies, but dispute was with the inputs and not the choice of methodologies.

VOTING - RHODE ISLAND

Davidson v. City of Cranston

United States District Court, D. Rhode Island - May 24, 2016 - F.Supp.3d - 2016 WL 3008194

Residents and voters brought action against city, challenging its ward redistricting plan, in which entire population of state prison was placed within one of city's six wards. Parties filed cross-motions for summary judgment.

The District Court held that redistricting plan violated "one person, one vote" principle of Fourteenth Amendment's equal protection clause.

City's redistricting plan violated "one person, one vote" principle of Fourteenth Amendment's equal protection clause, where, by including entire population of state's only prison in one of city's six wards, it unfairly inflated voice of that ward's other inhabitants, and diluted voting strength and political influence of residents of other wards.

INVERSE CONDEMNATION - TEXAS

Padilla v. Metropolitan Transit Authority of Harris County

Court of Appeals of Texas, Houston (14th Dist.) - May 24, 2016 - S.W.3d - 2016 WL 2997098

Restaurant owners brought inverse condemnation action against county transit authority, alleging that construction of a light rail line blocked access to the restaurant for significant periods of time, forcing the closure of the restaurant.

The County Civil Court at Law granted transit authority's motion to dismiss for lack of subject-matter jurisdiction, and restaurant owners appealed.

The Court of Appeals held that:

- Affidavit by restaurant employee was not conclusory and was sufficient to create a genuine issue of material fact as to whether access to restaurant was totally blocked, and
- Genuine issue of material fact as to whether county transit authority knew light rail project was causing harm to restaurant property or was substantially certain to result in specific property damage precluded summary judgment.

ZONING - VERMONT

In re Burns Two-Unit Residential Bldg.

Supreme Court of Vermont - May 27, 2016 - A.3d - 2016 WL 3031694 - 2016 VT 63

Neighbors sought review of decision of the city development review board, denying appeal from decision of city planning and zoning department that no permit was required for property owners' modifications to residential building.

The Superior Court, Environmental Division, declined to reach merits of claim. Neighbors appealed.

The Supreme Court of Vermont held that letter sent by city "zoning specialist" in response to citizen complaint was not a decision of the zoning administrator within meaning of statute governing effect of failure to appeal.

Letter sent by city "zoning specialist" in response to citizen complaint regarding modifications being made to residential property was not a decision of zoning administrator for purposes of statute governing effect of a failure of interested persons to appeal decision of administrative officer, and thus failure to appeal the letter did not preclude neighbors from requesting zoning administrator to enforce zoning ordinance against property owners and from appealing to city development review board from zoning administrator's decision that permit was not needed; letter was reviewed and approved but not signed by zoning administrator, and letter did not say that it was a decision of zoning administrator, even though zoning administrator was responsible for enforcement of the zoning ordinance and had exclusive jurisdiction to interpret that ordinance

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PUBLIC RECORDS - WISCONSIN

Moustakis v. State of Wisconsin Dept. of Justice

Supreme Court of Wisconsin - May 20, 2016 - N.W.2d - 2016 WL 2931596 - 2016 WI 42

County district attorney filed action seeking a restraining order to prevent Wisconsin Department of Justice (DOJ) from releasing certain records pertaining to District Attorney in response to newspaper's public records request.

The Circuit Court granted DOJ's motion to dismiss action. District attorney appealed. The Court of Appeals affirmed and remanded. The Supreme Court granted district attorney's petition for review.

The Supreme Court of Wisconsin held that district attorney was not "employee" entitled to judicial review of DOJ's decision to release records relating to investigations into an employee's conduct.

County district attorney was not "employee," within meaning of provision of public records law granting an employee pre-release notice and judicial review of an authority's decision to release records relating to an investigation into a disciplinary matter or possible employment related violation, and thus district attorney was not entitled to maintain action to restrain state Department of Justice from releasing records relating to complaints and investigations into his handling of cases. Definition of "employee" included being employed by an employer other than an authority, definition of "authority" included state or local office and elective officials, and district attorney was state public office and also an elective official.

Deloitte: Shutting Down Fraud, Waste, and Abuse.

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Deloitte Public Sector Practice

May 31, 2016

Still Budget-Less Illinois Has U.S. Muni Market On Edge.

The possibility that Illinois could enter an unprecedented second straight fiscal year without a budget had the U.S. municipal bond market worried on Wednesday over when the state might begin to make progress in addressing its financial woes.

The Democratic-controlled legislature wrapped up its spring session late on Tuesday without a fiscal 2017 spending plan or even a school funding budget that both the House and Senate could agree on. Democratic leaders, who are battling Republican Governor Bruce Rauner over his pro-business and labor-weakening reform agenda, also refused to immediately take up the governor's short-term budget plan.

Illinois has limped through 11 months of fiscal 2016 as the only U.S. state without a complete budget, operating under court-ordered spending, and continuing and stopgap appropriations. As of Wednesday, any budget legislation would need a more demanding three-fifths majority vote to pass.

"I don't see anyone blinking an eye unless the political pressure becomes so intense or the finances and credit rating of the state become even more dire," said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management.

Credit rating agencies have warned Illinois, which has the lowest bond ratings among the 50 states, of further downgrades if it fails to tackle a $111 billion unfunded pension liability and huge structural budget deficit.

"Political paralysis is preventing the state from addressing its pressing financial challenges," said Ted Hampton, an analyst at Moody's Investors Service, which rates Illinois Baa1 with a negative outlook.

Richard Ciccarone, the head of Merritt Research Services, which analyzes municipal bond credits, said he expects the state's so-called credit spread to widen in the municipal bond market as a result of the continuing impasse.

On Wednesday, the spread for Illinois bonds due in 10 years remained steady at 175 basis points over Municipal Market Data's benchmark triple-A yield scale. By contrast, the spread for New Jersey, another state with fiscal problems, was 100 basis points, while California's was only 20 basis points.

"If (Illinois) made significant changes, the market would applaud with a little support," Ciccarone said.

The state appears to be bracing for credit rating cuts. The governor's budget office has hired consultants to help Illinois disentangle from interest rate swap agreements that could cost the state more than $100 million should its ratings fall below specified levels.

REUTERS

CHICAGO, JUNE 1 | BY KAREN PIEROG

(Editing by Matthew Lewis)

Minnesota Faces Problems with Municipal Bonds.

The state of Minnesota is in a new and troubling kind of crisis. And that is because they have been trying to liquidate as many municipal bonds that they can to in order to ensure that they are capable of funding their own infrastructure projects. The Internal Revenue Services of the United States of America has clamped down hard on the state of Minnesota and asked them to hold back their municipal bonds and spending in order to facilitate and improve the larger federal economy. At the moment there are several infrastructure projects underway in the state of Minnesota that would require a few more rounds of funding in order to get completed.

More IRS trouble

The Internal Revenue Services will now be issuing strict measures that would disallow the issuing of tax exempt bonds. The state of Minnesota, like any other state across the United States of America issues a certain number of bonds that allow the state to borrow money from the public in order to fund several of their infrastructure, health care and education systems and projects. This is what the Internal Revenue Services intend on changing in order to apparently make sure that there is a larger sense of accountability within the state system.

The move to clamp down on the tax free bond issue has brought together many critics of the federal government's monetary and tax policy. Many critics claim that the move to clamp down on the state bonds will not only impede the state's ability to raise money for projects, but will paralyze it. The critics are also skeptical about the rate of accountability that the IRS intend to bring in with the new law that is about to be passed. The critics are also questioning the kind of socialist system that is forming in the government. Many critics claim that the move to stop the state bonds tax exemption is an undemocratic way of doing things.

Proponent view

On the other hand, while the Internal Revenue Services have been a strong part of executing the movement, there are several proponents for the law. Many people claim that this would bring in some much needed accountability into the state system. In the meanwhile, the IRS has been entirely silent on the matter and has failed to comment over any of the happenings despite several journalists reaching out to the federal agency.

Financial Buzz

By: Danny

02 Jun, 2016

MSRB to Launch Permanent Series 50 Exam September 12, 2016.

The Municipal Securities Rulemaking Board (MSRB) will make available the permanent Municipal Advisor Representative Qualification Examination (Series 50) beginning September 12, 2016. As provided for under MSRB Rule G-3, municipal advisor representatives are required to take and pass the Series 50 in order to engage in municipal advisory activities. The score required to pass the Series 50 exam is 71 percent.

[Read the regulatory notice.]

[Refer to FAQs on the Municipal Advisor Representative Qualification Examination (Series 50).]

[Access information about the Series 50 exam on the MSRB's website.]

IRS PLR: Management Contract Will Not Result in Private Business Use.

The IRS ruled that a management contract between a bond issuer — which issued bonds for permanent financing of a hotel — and the manager of the hotel for payment of the manager of annual fees composed of both base fees and incentive fees based on gross revenue will not result in private business use of the hotel.

[Read the Private Letter Ruling.]

DOJ's Recent Rulemaking Action for State and Local Government Websites Reveals Its Current Thinking on Web Accessibility.

Seyfarth Synopsis: *If you would rather not read the 30-page small print Federal Register notice, this summary will provide you with what you need to know about the Justice Department's most recent official pronouncement on web accessibility.*

As we reported, last week DOJ issued a lengthy Supplemental ANPRM (SANPRM) for state and local government websites, which some commentators have decried as a "do-over." This unusual move was a surprise, to be sure, but we do not view it as a complete setback. The SANPRM appears to be DOJ's attempt to preview its position on key issues and obtain public comment. As such, the SANPRM has very serious implications that go far beyond the realm of state and local governments. The rules that DOJ ultimately issues in the state and local government website rulemaking will likely provide the framework for the proposed rule for public accommodations websites — currently slated for 2018. Accordingly, public accommodations and the organizations that represent them need to submit comments in response to the SANPRM before the comment period closes on August 8, 2016.

We normally don't write long blog posts but the lengthy SANPRM — containing no fewer than 123 questions for public comment — warrants an exception. Below is a high level summary of the key issues, with some of our preliminary commentary:

- **Scope of Regulation.** DOJ is considering broadening the scope of the future rule from websites to "Web content." This expansion could potentially cover web content that a covered entity places on websites that it does not own or control (g. advertising), and could have far reaching implications.
- Accessibility Standard. DOJ believes that WCAG 2.0 AA should be the standard for Web content, as we've predicted.
- **Compliance Period.** DOJ is considering giving public entities "two years after the publication of a final rule to make their Web sites and Web content accessible in conformance with WCAG 2.0 Level AA, unless compliance with the requirements would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." This begs the question of why DOJ's enforcement attorneys have been demanding that businesses and state local governments make their websites comply with WCAG 2.0 AA right now. The two-year

proposal is a shift away from DOJ's initial, 2010, ANPRM position where it contemplated different compliance dates for existing web pages versus new webpages or websites. The SANPRM also notes DOJ is considering a longer three-year compliance period for captioning of live audio content.

- **Consultants.** DOJ wants to know if there is a shortage of consultants who can bring Web content into conformance with the proposed WCAG 2.0 AA standard. Rather than rely on anecdotal comments, we suggest that DOJ canvas the field of such consultants and interview them to see if they are actually qualified. DOJ will likely learn that there are very few truly experienced digital accessibility consulting firms – certainly not enough to assist the thousands of state and local governments, let alone the millions of public accommodations that will most certainly need guidance.
- **Less Demanding Standard for Small Entities.** DOJ is considering whether "small public entities" or "special district governments" should have a different compliance timetable or be subject to a less demanding standard such as WCAG 2.0 A, as opposed to AA. This approach could set the precedent for small businesses in a future proposed rule applicable to public accommodations.
- **Possible Exemptions.** DOJ is considering exempting the following Web content from compliance with the proposed WCAG 2.0 AA standard:
  Archived Web Content. To be considered "archived Web content," the content would have to be (1) maintained exclusively for reference, research, or recordkeeping; (2) not altered or updated after the date of archiving; and (3) organized and stored in a dedicated area or areas clearly identified as being archived. Covered entities would still have to provide accessible versions of this content if someone asks for it.
  Conventional Electronic Files (g. PDFs, Word documents, Excel spreadsheets, and PPT presentations) that existed on a Web site before the compliance date of any proposed rule.
  Third-party Web Content Linked from the Public Entity's Website. Note, however, there would be no exception for linked Web content if the public entity "uses the third-party Web site or Web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities." For example, if the state parking enforcement authority contracts with a third party to process parking ticket payments on a third party site, that site would also need to conform to WCAG 2.0 AA.
  Third Party Content. A public entity would not have to make content that is posted on its website by third parties conform with the proposed standard, unless the information is essential for engaging in civic participation or if the Web site owner has chosen to include the third party content on the Web site. This proposal strikes us as highly ambiguous. Would YouTube have to provide captioning for every video posted by third parties because it has chosen to invite such third parties to post the videos? Would allowing people to post be considered an affirmative choice by the website owner triggering the compliance obligation? What if a website owner needs to include key third party content on its site but the vendor but the vendor won't agree to make it accessible? Would the website owner be barred from including this third party content on its website, even if no vendor will provides it?
- **Social Media Platforms.** DOJ considers social media platforms such as Facebook, YouTube, Twitter, and LinkedIn to be covered by Title III of the ADA and proposes to not address the use of these platforms by state and local governments (subject to Title II) in this rule. However, DOJ says that any information provided by public entities on those social media platforms must also be available in some alternative way if the platforms are not accessible.
- **Web content of Educational Institutions.** DOJ is considering requiring educational institutions to make all content available to the public (as opposed to exclusively for students) on their Web sites conform to WCAG 2.0 AA. Universities should be gearing up to fight this proposition vigorously because their websites tend to be vast repositories of information (some of which may never be accessed or viewed), including thousands of videos, that would have to be made to

conform to WCAG 2.0 AA. DOJ said that content relevant to a particular student or parent must be made accessible on demand "in a timely manner."

- **Conforming Alternate Versions of Web Pages and Web Content.** DOJ may permit the use of conforming alternate versions of a Web page and/or Web content (1) when it is not possible to make Web content directly accessible due to technical or legal limitations; or (2) when used to provide access to conventional electronic documents.
- **Undue Burden and Fundamental Alteration Defenses.** DOJ is considering the use of these defenses as grounds to not make Web content conform to WCAG 2.0 AA, but (1) the burden of proving defense would remain on the public entity; (2) the decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity; and (3) the decision must be documented with a written statement of the reasons for reaching that conclusion. Moreover, the public entity still has to take any other action that would not result in such an alteration or such burdens. Moreover, the public entity still has to provide access in some alternative fashion unless doing so would also result in a fundamental alteration in the nature of a service, program, or activity or undue financial and administrative burdens.
- **Does Compliance with WCAG 2.0 AA Satisfy a Public Entity's ADA Obligations?** Not entirely. DOJ says that a public entity would not be required to go beyond this standard even if a person with a disability is unable to access the Web content. However, the public entity would still have to utilize an alternative method of providing the individual with a disability equal access to the information, service, program, or activity on its Web site unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of the service, program, or activity or undue financial and administrative burdens.
- **Measuring Compliance with WCAG 2.0 AA: DOJ is seeking public comment on how compliance with WCAG.** Level AA should be assessed or measured, particularly for minor or temporary noncompliance. Should the measurement be based on the percentage of Web content that is accessible, or some minimum threshold of compliance? The DOJ also wants to know if there are circumstances where Web accessibility errors may not be significant barriers to accessing the information or functions of a Web site. We strongly believe that the regulations must contain a clear statement that temporary noncompliance is not a violation of the ADA. Websites change all the time and there are bound to be bugs and issues that come up. And, guidance on how compliance with the standard will be measured given the dynamic nature of websites is essential.
- **Coverage of Mobile Apps.** DOJ asks whether its rule should cover mobile apps and which standard should be used. DOJ specifically called out WCAG 2.0, the User Agent Accessibility Guidelines 2.0, the Authoring Tools Accessibility Guidelines 2.0, or ANSI/Human Factors Engineering of Software Interfaces 200 as possible accessibility requirements for mobile apps.

As you can see, there are a many issues requiring public comment in the SANPRM. State and local governments, persons with disabilities, digital accessibility experts, vendors of third-party content and public accommodations all need

Last Updated: May 27 2016

Article by Minh N. Vu and Kristina M. Launey

Seyfarth Shaw LLP

Maryland, Georgia Headline Spike in U.S. Muni Bond Issuance Next Week.

A whopping $12 billion of new sales of U.S. municipal bonds will come to market next week, a high for the year to date, highlighted by two offers of more than $1 billion in general obligation bonds from Maryland and Georgia.

The week's sales are considerably above the weekly average of $7.9 billion this year, according to preliminary Thomson Reuters data. The massive issuance is driven in part because of fears of a possible U.S. interest rate hike when the Federal Open Market Committee (FOMC) meets later this month.

The concerns were alleviated somewhat on Friday after the U.S. government reported weaker than expected May labor data, which pushed down the possibility of a Fed rate hike in June or July, according to analysts.

Non-farm payrolls rose by only 38,000 in May compared with economists' expectations of over 164,000, the government reported.

Jeffrey Lipton, head of municipal research and strategy at Oppenheimer and Co Inc, said the Fed would likely delay any increase in rates until after the "Brexit" vote on June 23, when the UK will vote on whether to leave the European Union.

Alan Schankel, managing director at Janney Montgomery Scott, said although there is often positioning ahead of the FOMC meetings, he did not see the June meeting as a huge factor in the timing of decisions.

"Market perception is that a bump in short rates (Fed) will have little if any impact on longer rates," he said. "I do think that we are seeing a pickup in overall muni new issue volume."

Phil Fischer, head of municipal research at Bank of America Merrill Lynch, said the substantial amount of issuance is good news for the U.S. economy.

"It's a positive story because we get more infrastructure, the state and local government refund their debt to save money, and there's a demand for the paper, so this is good stuff," he said.

REUTERS

SAN FRANCISCO, JUNE 3 | BY RORY CARROLL

(Reporting by Rory Carroll, editing by G Crosse)

U.S. Municipal Debt Draws Rush of Investors.

Cash has poured into muni-bond mutual funds this year, sending yields down to near-record lows

Investors are buying municipal debt at a record clip, enduring low returns in exchange for the relative stability of bonds sold by U.S. state and local governments.

Municipal-bond funds had more than $632 billion in assets as of June 1, a record high, according to

Lipper data going back to 1992. Investors have poured a net $22.5 billion into such mutual funds in 2016 through Wednesday, the best start to a year since 2009. They have pulled $39.97 billion from equity funds in the same time.

The buying is being spurred by ongoing concerns about the slow pace of global growth and the prospect of interest rates staying lower for longer, concerns boosted by Friday’s weak jobs report.

In addition, low—or negative—yields on government bonds world-wide have made munis increasingly appealing relative to other fixed-income assets. The amount of municipal debt held by foreign investors increased 44% to $85 billion from 2009 through 2015, according to Federal Reserve data.

Munis also provided a haven for investors during sharp swings this winter in the equity and high-yield corporate-bond markets. And years of price appreciation in munis have left investors hungry to snap up new issues.

Enthusiasm for the debt has driven prices in the roughly $3.7 trillion market so high that yields have fallen to near-record lows. The enthusiasm comes even as Puerto Rico is defaulting and concerns persist about the financial health of some cities and states. In addition, U.S. interest rates are still expected to rise this year, which can hurt the value of outstanding bonds.

Investors prize munis in general because they are considered nearly as safe as Treasurys, backed by tax revenue or fees on critical public services, such as water. The debt also offers interest payments that are typically free from federal taxes. In the years since the financial crisis, the highest-rated municipal bonds have often yielded more than Treasury debt. But that trend has begun to reverse in recent months, intensifying some analysts’ concerns about the risks of purchases at current prices.

Yields “aren’t all that attractive anymore, yet we continue to see inflows into the funds,” said James Kochan, chief fixed-income strategist at Wells Fargo Funds Management. “It doesn’t take much to produce negative returns from these levels.”

Yields on the Barclays Municipal Bond Index fell to a record low of 1.75% in mid-May and were at 1.83% on Friday.

Municipal bonds have returned 2.89% so far this year, counting price appreciation and interest payments, according to Barclays PLC as of Friday. That compares with 3.88% for Treasurys, 6.14% for highly rated corporate debt and 8.09% for junk bonds.

Rick Taormina, head of municipal strategies at JPM Asset Management, said some investors have been experiencing “rate shock,” surprised by the low yields even on longer-dated or less-creditworthy debt.

Despite such low yields, the hazards of municipal bonds—including hundreds of millions in defaults from Puerto Rico—seem mild compared with the year’s swings in stocks and other riskier assets.

The supply of new bonds has fallen, helping to drive up prices. Government borrowers have issued $170 billion of bonds from the beginning of 2016 through June 1, down 4.2% from the same period of 2015, according to Thomson Reuters data.

“When there’s less volume, there’s more money chasing after fewer and fewer bonds,” said Howard Cure, director of municipal research at Evercore Wealth Management. “I think a lot of governments are still getting over how tight their finances were just a few years ago.”

For cities and states that do borrow, costs have fallen. Connecticut, which was recently downgraded to double-A-minus by two ratings firms amid concerns about the state's budgetary flexibility, last month sold 10-year bonds yielding 2.33%, down from a yield of 2.75% on 10-year debt the state sold a year ago, notes Matt Fabian, partner at the research firm Municipal Market Analytics.

Despite the threat of higher interest rates, few are predicting a major pullback in munis this year. Analysts said that Puerto Rico's defaults have had little impact on the broader market. And the tax break provided by municipal bonds helps offset the low yields the debt currently offers.

John Miller, co-head of fixed income at Nuveen Asset Management, which manages about $113 billion in state and local debt, said the imbalance between demand for the debt and the supply of new bonds is likely to keep prices high in the short term, even if the Fed raised rates.

"There's a bit less fear around the implications of that," he said. "Even though munis are at low yields relative to history, they're at high yields relative to the rest of the world."

THE WALL STREET JOURNAL

By HEATHER GILLERS and AARON KURILOFF

June 5, 2016 2:24 p.m. ET

S&P Warns Chicago About Potential Rating Cut Over Pensions.

Chicago remains vulnerable to bond rating downgrades unless the city makes comprehensive changes to its municipal and laborers' retirement systems, Standard & Poor's said on Thursday.

"The city's credit quality could weaken unless it gains both union and legislative support for any changes to its municipal and laborers' plans, and identifies a solid funding mechanism to address the unfunded liabilities and prevent further destabilization of its budget," the credit rating agency said in a report.

The Illinois Supreme Court in March threw out a 2014 Illinois law aimed at saving the two systems from insolvency by reducing retirement benefits and increasing pension contributions by the city and affected workers.

Chicago Mayor Rahm Emanuel last month announced an agreement in principal with unions to increase funding for the laborers' system, the smallest of the city's retirement funds. The municipal fund, the city's largest system, is projected to run out of money within 10 years. New accounting changes and other factors doubled its unfunded liability to $18.6 billion at the end of 2015 from $7.13 billion in 2014.

S&P, which rates Chicago's general obligation bonds BBB-plus with a negative outlook, said any deal for the municipal fund would require an identified revenue source.

The report also noted that Chicago has already raised property taxes to boost funding for its police and fire pension funds. Illinois lawmakers this week overrode Governor Bruce Rauner's veto of a bill spreading out the city's payments to those two funds.

Reuters

(Reporting by Karen Pierog; Editing by Matthew Lewis)

Jun 2, 2016 2:38pm EDT

Winnetka Man Gets New Chance to Press Case Village Stormwater Fee is Unconstitutional Tax.

A Winnetka resident, whose lawsuit challenged whether the stormwater utility fee slapped on property owners by the north suburban village is actually a tax, has clearance to sail on, after a state appeals panel said the legal arguments in the challenge hold enough water to survive the village's attempt to sink it via motion to dismiss.

The Illinois First District Appellate Court on May 31 issued an unpublished order overturning the decision of Cook County Circuit Court Judge Kathleen G. Kennedy, who had dismissed the complaint brought against the village by Mark Green. That declaratory judgment action, filed Feb. 13, 2015, alleged Winnetka's stormwater fee actually is a tax. The lawsuit argued the fee violated the uniformity in taxation clause of the Illinois Constitution and Illinois Municipal Code.

Justice Sheldon A. Harris wrote the order, with Justice Joy V. Cunningham concurring. Justice Maureen E. Connors dissented. The order was issued under Supreme Court Rule 23, which restricts its use as precedent, except under very limited circumstances permitted by the Supreme Court rule.

Winnetka's motion to dismiss relied heavily on the 2005 Illinois Third District Appellate Court ruling in Church of Peace v. City of Rock Island, in which the court upheld Rock Island's stormwater fee. Kennedy granted the motion to dismiss on Aug. 19; Green appealed Aug. 28.

Winnetka responded to severe flooding in 2008 by seeking infrastructure improvements, then scuttled those plans after a 100-year flood in 2011 instilled a need for a more significant solution. The result was a stormwater master plan that, among other components, "called for the construction of a 7,900 foot long storm sewer running underneath Willow Road." The tunnel was to cost $34.5 million and would provide flood relief to half the village. Another $8 million in improvements would affect three other drainage areas.

The village, however, opted not to construct the Willow Road tunnel in mid-2015, after projected costs soared to more than $80 million, according to published reports.

A year earlier, however, the village had issued 30-year municipal bonds worth $61.5 million to pay for the stormwater management work. And to cover the debt service on those bonds, the village enacted the stormwater utility fee in March 2014.

In examining the ordinance, Harris noted the village "acknowledges that all real property in the village contributes to runoff and either uses or benefits from the maintenance of the stormwater system." However, the fee is based on the amount of impervious surfaces in the village, such as driveways, sidewalks and roofs. As such, "only those with developed property are subject to the" stormwater fee.

Green alleged the way the village structured the fee scale to cover the debt issuance "bears no relation to a property owner's actual use of the existing stormwater system." He further alleged, "and the Village concedes, no attempt is made to measure the actual stormwater discharged into the system by any property owner," the court documents said.

Harris and Cunnigham agreed with Green's assertion that his complaint states a valid cause of action. Specifically, Green argued the fee is incurred regardless of "whether a property owner actually discharges storm runoff into the system," and further that the fee does not provide a service to property owners, but rather to retire bonds to fund building the tunnel, "which the village has recently decided not to construct."

The order also notes the village's ordinance contradicts its claims the fee is compensatory, since the ordinance directly references the bond debt. The reliance on Church of Peace was misplaced, Harris noted, because that case was decided on summary judgment, whereas Green's complaint remains at litigation.

Ultimately, Harris wrote the court does not have an opinion on the ultimate question of whether the stormwater fee is indeed a tax, "only that the circuit court erred in dismissing this matter at the pleading stage." As such, Kennedy's ruling is reversed and the case remanded for further proceedings.

In her dissent, Connors contended Winnetka's "ordinance specifically contradicts Green's allegations" and said the Church of Peace decision "clearly states that stormwater service charges are a fee and not a tax."

The Cook County Record

By Scott Holland

Jun. 2, 2016, 12:52pm

GASB Project Update: Financial Reporting Model Reexamination.

The GASB added a project to its agenda in September 2015 to reexamine the financial reporting model. The primary guidance that would be impacted by this project is Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, but also includes several other related pronouncements.

Issued in 1999, Statement 34 set the formats and measurement focuses of financial statements that are in place today. The Statement ushered in important innovations to general purpose external financial reporting and made it possible for users to more fully assess a government's overall financial health.

As the GASB continues to work toward an initial document for public comment in its reexamination of the financial reporting model, this article previews key issues the Board expects to address.

Initial Document Expected In 2016

The GASB anticipates issuing an Invitation to Comment before the end of 2016. The Invitation to Comment will seek feedback from stakeholders on certain aspects of the current financial reporting model.

Based on the feedback received during the initial pre-agenda research, the Board decided that rather than starting from a blank slate, the approach of the financial reporting model reexamination should be to make improvements to the existing model. The overall objective of this project is to enhance the effectiveness of the model in providing information needed for making decisions and assessing a government's accountability—and to address application issues.

The Invitation to Comment will address improvements to various aspects of:

- Governmental fund financial statements, which have traditionally focused on the short-term finances of the most basic activities of a government, such as police, fire, sanitation, and
- Government-wide financial statements formats, which cover both the short- and long-run finances of all of a government's activities (except fiduciary activities).

Governmental Fund Financial Statements

GASB research has determined that governmental fund financial statements are not as effective as they could be in providing information that is essential for users to make decisions and for assessing a government's accountability. Research also has led the GASB to determine that opportunities for improvement exist.

For example, rather than being based on a cohesive conceptual foundation, the current financial resources measurement focus used for reporting governmental funds is an accumulation over many decades of common practices and conventions. (A measurement focus describes the types of resources that are reported in a financial statement.) Furthermore, this measurement focus has not been comprehensively reviewed in nearly 20 years. As a result, the information reported in financial statements prepared using this focus can be inconsistent and does not necessarily provide users what they need.

Another issue the Invitation to Comment is expected to address includes how the format of governmental fund financial statements might be revised to improve their utility and understandability.

Government-Wide Financial Statements

Recent Video on the Model

The Invitation to Comment also is expected to address the format of the government-wide statement of activities. The statement of activities reports a government's revenues and expenses, as well as other changes in the government's net position. GASB research has indicated that some users find this financial statement to be somewhat confusing and not as helpful as it might be for making decisions.

Looking Ahead

The project is expected to unfold over a relatively long time horizon, which could mean the reexamination would extend into 2021.

We welcome your input once the Invitation to Comment has been issued. Sharing your views with the Board will be a key element of a successful outcome in this project.

Register to attend the June 21 Task Force meeting in New York.

Read a recent GASB Outlook article on the financial reporting model reexamination.

GFOA: The Perils of "Benefit Bonds" and Social Impact Bonds.

At "Just Say No: Financial Products and Strategies to Avoid," a Tuesday session at GFOA's annual conference, the panelists discussed the pitfalls of newer, more "innovative" financial instruments that local governments have access to.

Pension and OPEB obligation bonds were discussed first. The prospective benefit of these "benefit bonds" is that the investment income that the government earns on the bond proceeds would exceed the interest paid out to the bond buyers. Gaining this benefit requires the government issuer to correctly time the market so that the time period of the borrowing takes place during a time period in the economy when the returns on investments exceed cost of borrowing—something that is easier said than done. Further, benefit bonds can even lead to poor decision-making about future benefit levels. This is because the bonds cause the government's benefit liability funding ratio to appear to be improved – the bond proceeds are used to fund the liability. However, this doesn't take into account the offsetting liability of the need to repay the bonds. Hence, this illusory improvement might offer improved benefits to plan participants.

For more information, see GFOA's advisories:

- Other Postemployment Benefits (OPEB) Bonds
- Pension Obligation Bonds

Social impact bonds are another financial instrument we've been hearing about. Most of them follow a basic formula – private investors pay a government to launch a new social program that's designed to achieve a measurable result. If the program works, funders get their money back, and some or all of the savings attributable to that result. If it fails, the funders lose most or all of their investment. Most social impact bond programs are usually delivered by non-profits that want to try innovative approaches to solving social problems. If the program works, the participant that fronted the money (usually an investment bank) gets investment back plus a return, which comes from cost savings (from small case studies, less expensive cases, and so on). If the project fails, the investor loses its investment.

These investments are incredibly complex, multi-year undertakings, and the first thing a local government considering one needs to determine is whether it can commit to putting a lot of resources into managing the project for a long time. Sophisticated, solid program evaluation is required throughout the program.

The main advantages to social impact bonds are:

- There's a lot to be said for focusing on impact, not outputs or throughputs (despite the difficulty).
- These projects are often about applying a little prevention (to, say, decrease homelessness), and a little prevention goes a long way.
- This can provide an opportunity to "backfill" federal and state funding that had been lost after the recession.
- Evidence-based policy is generally a good idea for new service delivery models.

The main concerns, and they are significant, are:

- It's difficult to measure impact. How is it defined? How do we get the data to measure it? How do you isolate the program's effect on second graders' reading? Even the most sophisticated measures can't single this sort of information out.

- Does “pay for success” imply that what we’ve been doing up until now is paying for failure? Some would say yes, but in many cases, this is not the case, and it does a disservice to the many government projects being run well and producing excellent results.
- What are “cost savings”? Is reducing marginal costs alone a compelling reason for social impact bonds?
- There’s upside risk. If a social impact bonds reduce costs more than expected, is there gain sharing for governments? Some programs have been wildly successfully, and the last thing you want to see is a headline that says “Goldman Sachs profits wildly from investment in City X.”
- Are social impact bonds sustainable without the role of philanthropy?

Why should finance professionals care? Because it’s going to start coming up more and more often. The idea has great headline appeal – no elected officials will want to avoid an opportunity to “leverage private sector and philanthropic investment to transform the lives of children.” Any finance officer approached bout a social impact bond deal should do a thorough feasibility analysis.

Government Finance Officers of America

Tuesday, May 24, 2016

Land Use Policy: Do the Math!

Have you considered how you can use data to look at your city in a different way – to find out what it’s really worth? In his Monday conference presentation, “The Financial Impacts of Land Use Policy,” Joe Minicozzi, principle of Urban3, a consulting firm created by a real estate developer, discussed the importance of data modeling to determine your real potential for increasing tax revenues. His advice is, in short, “Do the math!”

The traditional development model favors big box retail – which does present a substantial tax payoff. But studying all the data can create a different picture. In other words, you have to measure everything to know what you really have.

Minicozzi told the audience to “divide the land into the value.” His research shows an exponential jump in the amount of county property tax received from one- to two-floor residential, and an even bigger jump from two- to three-floor residential. Adding in street-level retail makes the increase even greater. Adding the parcels of land a big-box store would require and comparing the numbers to expected tax returns from the retail development shows that overall, the smaller parcels lead to greater potential tax returns.

Minicozzi noted that this analysis often seems overly simplistic, but he added that simple doesn’t necessarily equate to wrong. After all, he pointed out, “We put a man on the moon before we put wheels on luggage.”

Finance officers can provide the information that makes this kind of analysis possible. Minicozzi noted that when we look at real estate, we tend to look at total value, which isn’t necessarily the best way to understand land use. Taxable value per acre is a better measure. He suggested ditching the spreadsheet and using modeling technology to demonstrate the true value of property.

Take a look at Minicozzi’s conference session slides, which show a number of interesting modeling possibilities.

Learn more about using modeling to affect land use policy in Minicozzi's August 2013 article for Government Finance Review, "Thinking Differently about Development."

Further information is available from GFOA's best practice, Monitoring Economic Development Performance.

Government Finance Officers of America

Monday, May 23, 2016

How States are Working to Address the Retirement Savings Challenge.

An analysis of state-sponsored initiatives to help private sector workers save.

Read the Report.

The Pew Charitable Trusts

June 01, 2016

NAST & SDMN Webinar: Transportation Funding Options.

This webinar covers various transportation financing options and tools available to states including Bonds, GARVEEs, P3s, Managed Lane Programs and TIFIA Loans as well as a brief overview of the U.S. Department of Transportation's Build America Transportation Investment Center (BATIC).

Watch the Webinar.

State Debt Management Network

5/18/16

Rockefeller Institute Reports Highlight Public Pension Risk.

Public pension funds provide benefits to nearly 10 million people, invest over $3.6 trillion in assets, and are deeply underfunded. A new Rockefeller Institute report and policy brief put a spotlight on how the methods that public retirement systems and governments use to fund pensions are affected by investment return volatility. The analysis concludes that a typical 75-percent funded public pension plan has a one in six chance of falling below 40-percent funded within the next 30 years, a crisis level currently faced by only a few major plans. The research brief and associated report are the beginning of a series from the Rockefeller Institute of Government's Pension Simulation Project.

Policy Brief.

Full Report.

New Reporting Rules Subject OID on Tax-Exempt Bonds to Information Reporting.

Generally, a person that pays interest on a debt to another person must report the amount of interest, usually on IRS Form 1099-INT. In the past, payments of tax-exempt interest did not have to be reported in this way; however, beginning in 2006, the statutory exclusion from information reporting for interest on tax-exempt obligations was eliminated. Since that time, interest on tax-exempt obligations has been reported in the same manner as taxable interest. Mercifully, for information reporting purposes, the amount of tax-exempt interest that must be reported has been limited to qualified stated interest (a fancy term which typically refers to the coupon on a debt instrument). Bond trustees and other payors of tax-exempt interest found refuge in a line item in the instructions to the Form 1099-INT that says "[n]o information reporting for tax-exempt OID under section 6049 [of the Internal Revenue Code] will be required until such time as the IRS and Treasury provide future guidance."

If you read the title of this post and your internet server has frozen so that you are unable to navigate away from this page, you have probably guessed that this "future guidance" has now arrived. The Treasury Department recently finalized Treas. Reg. § 1.6049-10 in TD 9750 (the "Final Regulations"). The Final Regulations, among other things, will now require bond trustees and other payors to report original issue discount on tax-exempt obligations.[1] This post will discuss the motivations behind the change as well as the ramifications that the Final Regulations will likely have on the tax-exempt bond community.

Why Would Congress Require the Reporting of Tax-Exempt Interest to the IRS?

You likely know that when you receive a tax information return (e.g., a mortgage statement, Form 1099-INT, etc.) the person that sent it to you also sends the exact same information to the IRS a few weeks later.[2] This "dual reporting" enables the IRS to monitor the taxpayer-recipient to ensure that the taxpayer properly reports on its income tax return (Forms 1040, 1120, 1065 etc.) all of the income that was listed on the information return. For obvious reasons, the IRS has been less concerned with ensuring that tax-exempt interest (including OID) is properly reported on an information return, because tax avoidance is less of a concern when talking about interest that is tax-exempt.

Congress has imposed information reporting requirements on tax-exempt interest (including OID) for two reasons. First, in 2008, Congress enacted the Energy Improvement and Extension Act of 2008 (the "2008 Act"). Tucked away in Section 403 of the 2008 Act is a requirement that brokers use an information return to report "gross proceeds" from the sale of a "covered security."[3] Now, as you might expect when reading a blog dedicated to all things 103, tax-exempt bonds are considered "covered securities" provided they are acquired by the bondholder on or after January 1, 2014.[4] To comply adequately with the 2008 Act, brokers need to report the "adjusted basis" of tax-exempt obligations (to ensure that taxpayers are recognizing the correct amount of gain or loss upon the disposition of tax-exempt obligations[5]), which is calculated by taking into consideration original issue discount and original issue premium.[6]

Second, the information is required to enable the IRS to verify that bondholders are reporting the correct amount of tax-exempt interest (including OID) for alternative minimum tax and other purposes. Interest (including OID) on certain tax-exempt obligations, such as exempt facility bonds, is directly subject to the alternative minimum tax. In addition, even if not directly subject to the alternative minimum tax (e.g., interest on governmental use obligations, qualified 501(c)(3) bonds, etc.), tax-exempt interest (including OID) is frequently included in adjusted current earnings for corporations, which indirectly subjects the interest (including OID) to the alternative minimum tax.

Final Regulations

Pursuant to the Final Regulations, for “tax-exempt obligations” that are acquired on or after January 1, 2017,[7] a “payor” is required to report the daily portions of accrued OID to the holder as if the payor actually paid those daily portions to the holder in the calendar year.[8] “Tax-exempt obligations” include any obligations the interest on which is not includible in gross income under Section 103 of the Code or under any other provision of the law. OID is determined without regard to the de minimis rule in Section 1273(a)(3) of the Code.

“Payor” is broadly defined in the Final Regulations to include (i) every person who makes a payment of the type and of the amount subject to reporting to any other person during a calendar year, or (ii) every person who collects on behalf of another person payments subject to reporting or who otherwise acts as a “middleman” with respect to such payment.[9] A “middleman” includes any person, including a financial institution and a broker, who makes payment of interest for, or collects interest on behalf of, another person, or otherwise acts in a capacity as intermediary between a payor and a payee.[10] It is unclear to what extent, if any, that municipal issuers are considered payors; however, trustees and broker-dealers are almost certainly included.

Conclusion

Prior to 2006, interest as well as OID and original issue premium were exempt from all information reporting requirements. However, the desire to narrow the “Tax Gap” has led to the recent expansion of the information reporting requirements.[11] Although the Final Regulations do not expand on the definition of “payor” beyond the scope of persons previously obligated to report tax-exempt interest, the Final Regulations certainly expand the breadth of reportable payments subject to information reporting. In addition, this expansion signals a fundamental shift in certain payors’ annual reporting obligations to include amounts not actually paid during the calendar year.

Footnotes

[1] Reporting bond premium (Box 13 of the Form 1099-INT) was introduced a few years ago in 2014. In addition, “Specified Private Activity Bond Interest” is reported in Box 9 of the Form 1099-INT so payments on a single tax-exempt obligation are often reported in multiple different boxes on the Form 1099-INT.

[2] The obligation to report various types of “reportable payments” could fall on any number of individuals or entities in addition to financial institutions.

[3] The form to be used is Form 1099-B, which was recently voted the “worst tax form” according to an informal survey of tax preparers.

[4] The January 1, 2014 implementation date was in response to practitioners concerns that the information needed to populate an information return with the details of tax-exempt obligations was not available on the Electronic Municipal Market Access if the obligation was outstanding as of November 1, 2012.

[5] Disclosures frequently say that original issue discount and original issue premium will have no impact on the bondholder if the bondholder holds the instrument to maturity. However, if the bondholder disposes of the bond prior to its maturity, there may be tax consequences that arise from the fact that the bond had original issue premium or discount.

[6] See Treas. Reg. 1.6045-1 (Definition of "adjusted basis" for a debt instrument).

[7] Although OID must be reported to the bondholder for obligations acquired on or after January 1, 2017, brokers have been required to monitor and compute OID on tax-exempt obligations since 2013 when the final basis reporting regulations were promulgated.

[8] See Treas. Reg. 1.6049-10(a) and Treas. Reg. 1.1272-1(2)(b) (for rules governing the accrual of OID and the determination of daily portions of OID).

[9] See Treas. Reg. 1.6049-4(a)(2).

[10] See Treas. Reg. 1.6049-4(f)(4).

[11] The most recent estimated tax gap for calendar years 2008-2010 is $406 billion each year with a net compliance rate of approximately 83.7 percent.

Squire Patton Boggs

The Public Finance Tax Blog

by Joel Swearingen

June 2, 2016

Bridging the Gap Together: A New Model to Modernize U.S. Infrastructure.

We have an extraordinary opportunity in America—to confront the pressure being placed on our nation's roads, water systems, ports, airports, and energy grid with available private capital. This report establishes the framework to unite projects that need funding with private capital ready to invest in a transparent system that allocates risks and resources to the public's benefits.

America is a nation of innovators—we are inspiring new industries through interconnected devices, commercializing suborbital space flight, and advancing cures to life-threatening diseases. Yet if we hope to foster the next generation of entrepreneurs that can push our economy forward and maintain our quality of life, we must invest in our infrastructure. Wise infrastructure investments would create millions of jobs, maintain the health, safety, and security of our communities, and set our nation on track for decades of greater prosperity.

This is a choice between action and paralysis. Not making decisions today has serious consequences for tomorrow. We are already confronting prior mistakes as our infrastructure today is failing us. We are living at risk: driving every day on eroding roadways, questioning whether our water is really safe to drink, and sending our children off to schools built for our parents' generation. The problem is growing worse. It shouldn't be this way in a country that for so long has led and inspired the world.

Download Full Report.

The Bipartison Policy Center

Why Market Groups Want MSRB to Abandon Bank Loan Proposal.

WASHINGTON – Muni market groups are resoundingly saying "no" to the Municipal Securities Rulemaking Board's question of whether it should require municipal advisors to disclose information about their issuer clients' bank loans or privately placed municipal securities.

The MSRB said it asked the question in a March 28 concept release exploring ways to increase the disclosure of bank loans because it worries the current lack of disclosure on EMMA hinders an investor's ability to truly understand the risks of an investment.

Most groups applauded the MSRB's intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed.

Only the National Federation of Municipal Analysts said the concept "is a positive step in improving disclosure of [bank loans]." But that group also proposed other ways to disclose bank loan information.

Terri Heaton, president of the National Association of Municipal Advisors told the board that the "proposal would not get the industry to [the MSRB's] goal line" and would "place an unreasonable burden on municipal advisors."

The MSRB acknowledged in the concept release that there may be impediments to writing such a rule under federal securities laws. The Securities Exchange Act of 1934 contains the Tower Amendment, which bars the MSRB and SEC from requiring information from issuers before offerings. It also bars the MSRB from requesting issuer information after offerings.

But the MSRB said it might be able to write such a rule for MAs along the lines of existing dealer rules like G-32 on primary offering disclosures and G-34 on CUSIPs, new issue, and market information requirements.

Heaton balked at the attempt to justify such a requirement with G-32 and G-34. Unlike dealers, MAs do not have a "customer" relationship with investors or the investing public at large and thus it goes beyond the MSRB's authority to impose such a broad investor delivery requirement on MAs, she wrote.

If the proposal were enacted, it would also threaten the MAs' fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors' core duties, she added.

Ken Artin, president of the National Association of Bond Lawyers, echoed Heaton in a letter for NABL, saying the proposal may present "an unresolvable conflict of interest for the municipal advisor."

He also questioned the MSRB's statutory authority, comparing the possible regulation of MAs to the existing dealer regulation under Securities and Exchange Commission Rule 15c2-12 on disclosure. Under Rule 15c2-12, the SEC regulates the actions of broker-dealers in primary offerings of municipal securities. Dealers are regulated entities. Primary offerings are regulated transactions and municipal securities are regulated products, Artin wrote. The concept release would have the MSRB regulating disclosure of bank loans or direct purchases, which may or may not be municipal securities, he said.

Many industry groups have asked the SEC whether bank loans and private placements can be considered securities but the commission has not provided any guidance. Officials with George K. Baum & Co. suggested in their letter that the MSRB should delay additional regulation on bank loans until the SEC settles the issue and releases guidance.

Leslie Norwood, managing director, associate general counsel, and co-head of munis for the Securities Industry and Financial Markets Association, wrote: “there is no colorable argument that the MSRB has the statutory authority to require disclosure of bank loans, because they are financial instruments that are not securities.”

Bond Dealers of America chief executive officer Mike Nicholas also argued that the idea floated by the MSRB is outside its authority because the board “proposes to require municipal advisors to step into the activities of issuers and issuer responsibilities under the federal securities laws,” a power that the exchange act does not give the self-regulator.

Many groups, including the Government Finance Officers Association, NAMA, and BDA, also criticized the proposal for leaving MAs in the position to make a judgement about the materiality and need to disclose a bank loan when that power arguably should be left to the issuer.

Artin said the requirement could make MAs liable for antifraud violations under federal securities law because they could be considered the “makers” of the statement by disclosing, even though the issuer is the one who prepares it. Even if MAs were not considered “makers,” Artin argued they could still be subject to aiding and abetting liability.

Issuers’ concerns about potential liability as well as their possible desires to avoid bank loan or private placement disclosures may lead some to avoid hiring municipal advisors, several groups argued, which would undermine the purpose of the rule and the benefits of issuers hiring experienced advisors.

Heaton, echoing other comments, said the concept is problematic because there are numerous bank loans and direct purchases that are done without a municipal advisor. Other groups said that MAs who participate in transactions sometimes are not involved in negotiating the loan terms and may lack the required knowledge to make effective disclosures.

The groups offered several proposals of their own to bolster bank loan disclosure, including amending Rule 15c2-12 to include bank loans and private placements as a material event that is required to be disclosed. They also said EMMA should be improved in this area.

SIFMA, BDA, and George K. Baum said the 15c2-12 amendments would be the most comprehensive way to tackle the disclosure problem. Norwood suggested the MSRB could include non-dealer MAs working on direct placements under Rule G-32, which requires dealer MAs that prepare official statements for issuer clients to make electronic versions of the document are promptly made available after issuers approve the distribution of the statements.

Ben Watkins, Florida’s director of bond finance, was one of several commenters who said again that the MSRB needs to make it easier for issuers to upload their bank loan disclosures on EMMA. He suggested the MSRB provide a recommended threshold on the size of bank loans for which disclosures should be made.

The Bond Buyer

By Jack Casey

May 31, 2016

[Muni Entities Could Get Rebates, MSRB Says.]

For nine years, Lynnette Kelly has led the Municipal Securities Rulemaking Board as it carries out its expanded investor-protection mission under the Dodd-Frank Act with respect to state and local governments and other municipal entities.

Now, the self-regulatory organization is weighing what to do with the extra reserves it has collected and may possibly issue rebates to regulated entities, Kelly, the MSRB's executive director, told Bloomberg BNA in a May 10 interview.

The board took in $41.3 million in 2015, 29 percent more than it generated the previous year (07 SLD, 1/12/16). The MSRB ended its 2015 fiscal year with approximately 16-months' operating reserves, versus the 12-month operating expense target, Kelly said. The reserves indicate the length of time the MSRB could operate with no funds being generated.

Revenue, Reserves, Rebates

"We've had a history of under-spending," Kelly said. Just because the board is sitting on extra cash doesn't mean it will spend it right away, she warned. Any excess funds flow into the board's reserves.

The board's revenue comes from primarily three sources: underwriting volume, trading volume, and ancillary revenue such as annual fees, subscriptions, and fines.

Currently, the finance committee is crafting a policy to address when organizational reserves exceed or fall below certain established levels (75 SLD, 4/19/16). Since the current reserves exceed the established reserve target by four months, the board is deciding what to do with the money. In the past, the board has issued rebates to regulated entities, Kelly said. In fiscal year 2014, for example, the board announced a discretionary technology fee rebate of $3.6 million to reduce reserve levels. The rebate was distributed to entities that paid the technology fee between Jan. 1 and June 30, 2014.

The board has several options other than rebates, Kelly said, including using the extra funds to enhance the Electronic Municipal Market Access website—EMMA—website. The final decision should be made by the board's July meeting and any rebate would likely be announced in August.

Muni Advisor Exam

Kelly is also overseeing the rollout of the first-ever qualifying exam for municipal advisors, a three-hour test tentatively scheduled to launch Sept. 12.

The board and a group of industry experts worked three years to develop the test—the Municipal Advisor Representative Qualification Exam (Series 50)—which will determine whether an individual is qualified to serve as a municipal advisor. It should also help weed out "bad actors" in the industry who don't put their clients' needs first, Kelly said.

Municipal dealers who don't also act as municipal advisors won't be required to take the Series 50 exam, as they have separate qualification requirements already in place.

New Authority

The Dodd-Frank Act gave MSRB authority to regulate municipal advisors, a group of approximately

4,000 professionals who advise state and local governments on municipal bond and other investment-related matters, and those who solicit muni bond business from issuers on behalf of others. Currently, municipal advisors who don't also serve as dealers aren't regulated by the MSRB or subject to qualification standards.

About 1,700 municipal advisors took a pilot exam in January (174 SLD, 9/9/15). Pilot participants will be notified of their results the week of May 30. Those who passed the pilot exam are considered qualified and won't have to sit for the new exam, Kelly said. Once registration for the test opens, the remaining 2,300 advisors will have a one-year grace period to pass the exam with a score of 71 percent or better.

The board is also considering how to develop a continuing education program for municipal advisors (75 SLD, 4/19/16). Once an advisor passes the exam, he or she won't have to re-test to keep the qualification current; continuing education is all that will be required. Many advisors also double as municipal dealers, so it's important to make sure there is no duplication of effort, Kelly said. The board is considering tailoring the continuing education requirements to each firm's specific needs, she said, but hasn't made a final decision. It plans to seek comments in the fall.

After the Series 50 exam gets underway, the board plans to create an additional qualification test for those serving as principals—those who manage and supervise the activities of municipal advisors.

Other Concerns

The board also is working with the Financial Industry Regulatory Authority on rule changes to require municipal dealers and member firms to disclose the amount of the mark-up on retail customer confirmations (33 SLD, 2/19/16) (39 SLD, 2/29/16). "It's a top priority that's moving along very quickly," Kelly said.

After reviewing comments on draft rule changes, the board is collaborating with FINRA to determine whether additional changes are needed to make the MSRB standard consistent with the FINRA standard for broker-dealers selling corporate securities.

A rule proposal should be filed with the Securities and Exchange Commission sometime this year, Kelly said. The board is also developing a measure for establishing the presumptive prevailing market price to ensure that retail investors are able to better compare transaction costs.

The board also is going to tackle the issue of bank loans to muni issuers. "Local governments should have access to all financing options, but the lack of disclosure surrounding bank loans is troubling," Kelly said. It has encouraged muni issuers to voluntarily disclose those loans on its public online repository, but that effort has proved ineffective (21 SLD, 2/2/16) (20 SLD, 1/30/15). Recently, the MSRB turned to muni advisors as a possible disclosure option and sought comment on whether its new powers under Dodd Frank enable it to require advisors to make the disclosures (60 SLD, 3/29/16) (207 SLD 207, 10/27/15). Comments are due at the end of May, and the MSRB board will consider them in July.

Bio

Before joining the board, Kelly, from Nelson, Neb., was a managing director and associate general counsel at the Securities Industry and Financial Markets Association where she focused on best market practices in the fixed income markets.

Kelly's interest in the municipal industry began at the University of Nebraska, where she majored in urban design. Through her course work, she learned the importance of infrastructure financing.

After earning her law degree at Tulane University School of Law, Kelly worked on municipal finance matters at several New York law firms. She also served as general counsel for the Municipal Assistance Corporation for the City of New York.

Bloomberg BNA

from Securities Law Daily

By Antoinette Gartrell

Municipal Bond Issuance Up Slightly in May.

Sales of U.S. municipal bonds ticked up slightly in May, with more new sales and refunding deals coming to market than during the first four months of the year, according to Thomson Reuters data.

Total sales in May were $39.4 billion, 17 percent higher than in April, and 16 percent higher than in May 2015.

Overall, calendar year 2016 has thus far resulted in slightly less sales than the same period last year – there has been $168.6 billion of municipal issuance during the first five months of 2016 compared to $177.8 billion in the same period last year – in part due to fewer refunding deals.

Issuers sold $104.3 billion of refunding bonds in 2,653 deals during the first five months of 2016, compared to the $124.1 billion of refunding bonds sold during the same period in 2015 across 3,157 deals, the data shows.

The market saw a rise in new debt sales as issuers sold $16.6 billion in new bonds across 617 deals in May, compared to $13.2 billion over 652 deals in May 2015. Overall, new money deals rose in the first five months of 2016, with $64.4 billion compared to the same period in 2015 with $53.7 billion of new sales.

Municipal investors should prepare for a busy month in June, typically a time of year that experiences higher gross supply before the lethargic summer months, Morgan Stanley reported this month, although market participants should "keep some 'powder dry' due to the possibility of rising interest rates" later in the year.

Reuters

May 31, 2016

(Reporting by Robin Respaut; Editing by James Dalgleish)

P3 Bills In Play In Two States.

The Massachusetts and Pennsylvania legislatures are considering bills that would authorize the development of certain infrastructure projects through public-private partnerships.

The Massachusetts bill (S. 1722), sponsored by Senate Minority Leader Bruce Tarr, would allow municipalities to enter into P3s to develop, finance, operate and maintain municipal water, wastewater and stormwater infrastructure projects for up to 30 years. The developer would be authorized to charge fees or negotiate service contracts for its services. The public agency that negotiates the P3 would be required to provide a copy of the preferred proposal to each affected local jurisdiction and to consider all comments received before signing an agreement. The bill has been referred to the Senate Ways and Means Committee.

The bill is supported by a coalition of associations and industry groups including the Massachusetts Municipal Association, the Massachusetts Municipal Lawyers Association, the American Council of Engineering Companies of Massachusetts, the Boston Society of Civil Engineers/ASCE and the National Association of Industrial and Office Properties.

Matthew Feher, an attorney with the law firm Burns & Levinson, LLP, and a staunch proponent of the bill since it was introduced in January 2015, will be a featured speaker at NCPPP's annual conference, P3Connect 2016, June 27-29 in Chicago.

In Pennsylvania, Rep. Eli Evankovich introduced a bill that would launch a P3 pilot program to build up to 12 social infrastructure projects and establish a state P3 oversight board . The legislation (HB 2113) would authorize the use of P3s to develop water, wastewater and stormwater projects, schools and related infrastructure, government buildings, telecommunications infrastructure, and utility projects. To be eligible, all projects must be valued at $25 million or more and no more than two could be conducted in each of six regions. State agencies and local governments would be permitted to consider unsolicited proposals. The pilot program would end once the last P3 agreement negotiated under it has expired. The bill has been referred to the House Committee on State Government.

Massachusetts and Pennsylvania are the latest states to consider P3 legislation to meet their infrastructure needs. Kentucky and Tennessee recently enacted P3-enabling legislation. For a full list of state P3 laws and regulations, visit the Resources section of the NCPPP website.

NCPPP

June 2, 2016

MSRB: Sept. 12 is Date For Permanent MA Qualification Exam.

WASHINGTON – Municipal advisor professionals who have not already passed the Municipal Securities Rulemaking Board's pilot qualification exam will have one year from Sept. 12 to pass the permanent exam, the self-regulator announced on Tuesday.

MAs will have to score a 71% or higher on the Series 50 exam in order to pass. They can take the test more than once. If they do not pass within the one-year grace period, they will no longer be able to practice as a municipal advisor.

The permanent exam will be modified before Sept. 12 based on the results from the MSRB's pilot qualification exam, which 1,679 individuals took between January 15 and February 15 of this year. The individuals who participated in the pilot represented roughly 41% of the MA market. More than 50% of MA firms had at least one professional take the exam. Eighty-four percent of the individuals passed.

All advisors who participated in the pilot exam, as well as the primary regulatory contact in their firms, will be notified at some point this week about whether they passed. Any MA that did not will have one free opportunity to retake the exam.

“We think the statistics in terms of the types of municipal advisors, the size of their firms, the geographic dispersions, really gave us the kind of data we needed to make sure the [permanent] exam follows all of the best practices in the industry,” said Lynnette Kelly, the MSRB’s executive director.

The high pass rate disproves the idea some people had that individuals were “going to just kind of walk in the door unprepared and give it a shot,” said Kelly.

“I think people took it very seriously,” she said. “I think people studied very hard.” She added that, “the people who took the pilot exam were seasoned municipal advisor processionals so you would very much expect to see a strong showing from this group.”

The MSRB will be releasing a revised Series 50 content outline on or before July 1 to reflect MA rules like G42 on core duties of municipal advisors, G20 on gifts and gratuities, and G37 on political contributions, that were not in place when the pilot exam outline was first published last year. The new outline will include topics covered on the exam, sample questions, and a list last year. The new outline will include topics covered on the exam, sample questions, and a list of reference materials to help the professionals prepare for the exam.

The MSRB also plans to both create continuing education requirements for MAs at some point in the future and implement a separate exam for municipal advisor principals. MSRB Rule G3 on professional qualifications defines an MA principal as a person associated with a municipal advisor who is qualified as an MA representative and is directly engaged in the management direction, or supervision of the MA activities of the firm and its associated persons.

The Bond Buyer

By Jack Casey

May 31, 2016

How Will Arlington, Texas Pay For Another Stadium Bond?

DALLAS – Arlington, Texas, may pay off the debt it issued for a pro football stadium to clear the path for subsidizing a pro baseball stadium.

The city is working on a plan to retire debt the city issued for the Dallas Cowboys’ stadium years earlier than anticipated in order to put the tax revenues behind $500 million of bonds to fund an air-conditioned ballpark for Major League Baseball’s Texas Rangers.

The bond finance scenario is one of two under consideration in advance of a November referendum on the proposed stadium, said Mike Finley, chief financial officer for the city.

“Voters are ultimately going to decide about the stadium option,” Finley said. “Arlington has a 20-year track record of funding these facilities successfully. I’m comfortable in our ability to negotiate a deal that would meet with the expectations of our citizens.”

A master agreement approved May 24 by the City Council calls for an even split between the Rangers and the city to build the $1 billion stadium.

Working with the city on financing the ballpark is David Gordon, managing director at financial advisor Estrada Hinojosa & Co. Estrada has played a role in financing many of the region's stadiums and arenas.

Under one of the proposed financing scenarios, the Texas Rangers would advance the city $100 million to retire bonds used to build AT&T Stadium, the seven-year-old, $1.2 billion Cowboys venue. The city would pay back the Rangers over time.

With the Cowboys stadium debt paid off, the city could apply its dedicated tax revenue to $400 million of bonds for the Texas Rangers.

Under the proposed timetable, the bonds would be issued by 2018 with the stadium completed by 2021.

The tax revenue to support the debt comes from a half-cent sales tax, a 5% car rental tax and a 2% hotel occupancy tax approved by voters in 2004 to build the Cowboys stadium. The tax was originally scheduled to expire in 2028 when the bonds were expected to be paid off. But Arlington is ahead of schedule on the Cowboys bonds, with payoff now expected in 2021.

In the November election, Arlington voters would be asked to extend the tax to finance the new stadium for the Rangers.

Under the second bond-funding scenario, Arlington would extend the maturity of the Cowboys bonds to 2034 at a lower interest rate. That would lower debt service costs enough create room to service the Rangers stadium bonds if voters approve the tax extension.

Arlington has a long track record of subsidizing professional sports team owners, exceeded its financing projections in both major cases.

The city's $135 million debt for the Rangers 22-year-old current stadium, Globe Life Park, was paid off in 2001, a full decade early. The venue was known for much of its life as the Ballpark in Arlington.

The $298 million issued for the Cowboys stadium has also been paid down quickly because the city applied its revenue of 1.5 times debt service to the bonds, Finley said.

In September, Standard & Poor's Global Ratings upgraded the Cowboys bonds to A-plus from A based on the improved debt-service coverage.

"If material pledged revenue increases or early debt retirement results in substantially improved debt service coverage, we could further raise the rating," S&P analyst Omar Tabani said.

In 2015, Arlington paid the last of a $64 million lump-sum payment on stadium debt that wasn't due until 2035. That took seven years off the 30-year bonds' debt-service schedule.

In 2009, the year the Cowboys stadium opened, Arlington refunded $164 million of Series 2005B bonds that were originally sold as variable-rate demand notes supported by a standby bond purchase agreement and hedged with an interest rate swap. The 2009 issue ended the 2005B swap and shifted all the debt into fixed rate.

In 2008, the city retired $104 million of the original $164 million in 2005B bonds after some became bank bonds held by liquidity provider, Depfa Bank PLC. The rest were remarketed in February 2009.

Arlington will ask the Texas Office of the Comptroller to review the fiscal impact to the state before calling the Nov. 8 election on the proposed financing.

To gain support for the project, the Arlington Convention and Visitors Bureau hired HR&A Advisors to estimate the economic impact of a new stadium.

Its analysts said that Arlington would benefit to the tune of $77.5 million annually, while Tarrant County's economy would grow by $137.6 million.

Related development plans include a Texas Live! entertainment complex, convention center annex and hotel adjacent to the new stadium. Direct funding and tax breaks could provide $100 million for the $200 million project, according to the city. Construction is expected to start this year.

Net present value of the Rangers' continued presence between 2016-2054 with a new ballpark would be $2.53 billion for Arlington and $4.49 billion for Tarrant County, according to the study.

The proposed retractable-roof stadium would be built on what is now a team parking lot south of the existing ballpark.

The city and the Rangers are discussing the future of Globe Life Park, with options including office development, park space, parking and other uses.

The Rangers' 30-year lease on the city-owned ballpark is set to end in 2024. With the new proposed master agreement, the Rangers' partnership with Arlington would extend until Jan. 1, 2054.

The Rangers have played in Arlington since they moved from Washington, D.C., in 1971.

The team's first stadium was Arlington Stadium, an expanded minor league ballpark. After 20 years in Arlington, the city broke ground on the team's current stadium, built at a cost of $193 million.

While the current ballpark is considered an architectural gem, Texas' oppressive summer heat has discouraged some fans from attending games in the open-air stadium.

With a population of 379,000, Arlington is the largest of the Mid-Cities between Dallas and Fort Worth. The city's tax base has grown at an annual average of 2.6% over the past five years to $19.5 billion, according to Moody's.

Home to the University of Texas at Arlington and a General Motors Assembly Plant, Arlington has long been known for its entertainment venues such as Six Flags Over Texas and Hurricane Harbor. The opening of the Cowboys stadium in 2009 made the city home to two professional sports franchises.

Plans for the new Rangers stadium call for about $200 million more from the city than was provided for the Cowboys stadium.

With $380.9 million of outstanding general obligation debt, Arlington carries triple-A ratings from S&P and Fitch Ratings. Moody's Investors Service falls a notch lower at Aa1.

In 2014, Arlington voters approved the city's $236 million GO bond proposal. The city has $226.1 million of unissued bonding authority, according to S&P.

The Bond Buyer

By Richard Williamson

May 27, 2016

Local Governments Cry Foul Over Feds' Move to Limit Tax-Free Municipal Bonds.

Public officials in Minnesota and across the nation are scrambling to head off a proposal they say would deliver a devastating blow to their ability to fund infrastructure and economic development projects.

Affordable housing in Albertville, a community gym in Edina, a fire station in Pelican Rapids: These and other projects could become tougher to build and pay for if the IRS succeeds in clamping down on the use of tax-exempt municipal bonds.

"It affects everything in the country that has bonding," said Lori Economy-Scholler, Bloomington's chief financial officer. "It could affect every piece of public financing as it pertains to port authorities and economic development agencies."

The IRS, she added, "is really overstepping their bounds."

IRS officials did not respond to requests for comment on the proposal. The open period for comments on the proposed rules ended May 23, and a hearing is scheduled June 6 in Washington.

The agency is proposing strict new limits on municipal bonding — so strict, critics say, that they would virtually end the use of tax-exempt bonds by port authorities, housing authorities and other economic development agencies.

Some cities might no longer be able to issue tax-exempt bonds for schools, hospitals and other infrastructure.

The regulations would rewrite the rules for bond issuers, including a new requirement that elected officials must exercise significant control over the agency issuing bonds. That would restrict or eliminate the ability of appointed or semi-independent economic development authorities to issue bonds.

Another change would allow the use of tax-exempt bonds only if the project provides no more than "an incidental benefit" to a private entity. That could rule out using tax-exempt bonds to finance items such as parking decks at the Mall of America.

Schane Rudlang, administrator of the Bloomington Port Authority, said the IRS is concerned about the misuse of tax-exempt bonds in some areas of the country. But the severe limits the agency is proposing, he said, "is like using a sledgehammer to kill a mosquito."

Drawing the line

Last year alone, economic development authorities in Minnesota issued more than $275 million worth of bonds, according to Springsted Inc., a financial adviser to municipal governments. That figure doesn't include bonds issued by cities themselves.

Nationally, more than $3.7 trillion in municipal bonds of all types are in force, according to the Municipal Securities Rulemaking Board.

Tax-exempt bonds allow cities and development agencies to borrow money for development projects at below-market interest rates. If taxes were assessed on the bonds, the interest rates would go up a percentage point or more. That doesn't sound like a lot, but it could amount to extra payments totaling hundreds of thousands or even millions of dollars over the life of a bond.

To make up the difference, cities would have to either assess local taxpayers more or scale back their projects.

That might not be a bad thing, said Jay Kiedrowski, a senior fellow at the Humphrey School of Public Affairs and state commissioner of finance under Gov. Rudy Perpich from 1985 to 1987.

"There have been many critics of states and cities who say that tax-exempt debt has been overused as an economic development tool," Kiedrowski said. "Tax-exempt debt makes sense for streets, water projects, sewers, parks, schools. But when tax-exempt debt is used for economic development, it's always been fuzzy as to where that line should be drawn to prevent bad projects vs. good projects."

Minnesota cities overall have a track record of using bonding for worthwhile projects, local officials said.

"Our housing and port authorities have existed for a long time and have done a lot of good work," said Tom Grundhoefer, general counsel for the League of Minnesota Cities. "And that's why we're concerned about these proposals."

Rudlang said the IRS proposal would endanger public infrastructure improvements planned over the next few years in Bloomington's South Loop district, which the city planned to finance with tax-exempt bonds of up to $100 million. The South Loop includes the Mall of America.

State Auditor Rebecca Otto called tax-exempt bonding "an extraordinary tool for local governments. We have 853 cities in Minnesota, and this tool is very important to make sure we can maintain and replace our infrastructure."

The Star Tribune

By John Reinan

May 31, 2016 — 8:07PM

S&P's Public Finance Podcast (Request for Comment on Charter Schools and Pensions)

In this week's edition, Avani Parikh, Associate Director, and Sussan Corson, Director, discuss the requests for comments for proposed changes to rating criteria for charter schools and pensions funded by states.

Listen to the podcast.

May 31, 2016

S&P Request for Comment: Proposed Changes to State Government Ratings Criteria.

In this CreditMatters TV segment, Gabriel Petek, Managing Director of U.S. Public Finance, and Sussan Corson, Director of U.S. Public Finance Ratings, discuss our new report outlining our request for comment on proposed changes to the ratings criteria for U.S. state and territory governments.

Watch the video.

May 31, 2016

Why We Should Put CFOs in the Infrastructure Driver's Seat.

As stewards of public spending, they are best positioned to help us invest effectively

We all know the story, or at least we think we do: The U.S. infrastructure machine is sputtering, and politicians are failing to fill up the tank with funding. But look under the hood and you will see that America's infrastructure engine needs more than just gas. It needs a total engine overhaul and a new chief mechanic: Government's chief financial officers (CFOs) need to be put in charge.

For years, we have let individual government agencies — separate departments of highways, water resources, energy and so on — drive independently while advocating for their favorite infrastructure projects. Procurement systems have favored low-cost capital bids, ignoring the long-term maintenance requirements of assets meant to last a longer lifetime. Most politicians have done little to address the unsexy challenge of deferred maintenance. Why repair a leak or two underground when one can get more press for cutting ribbon on a new project?

Sadly, this kind of thinking — where prevention is undervalued — is why we have public health disasters like Flint's, a broken-down Washington, D.C., regional subway system and our current $3 trillion-plus deferred maintenance bill.

Yet the news is not all bad. There are new efforts emerging nationally and internationally led by CFOs, state treasurers and ministers of finance. The key concept is "performance-based infrastructure," which encourages governments to consider life-cycle asset performance rather than simply taking the low-cost bids and ignoring maintenance costs of assets that are meant to last 30 or 50 years.

This shift in thinking has been led by Canada and New Zealand, where individual agencies sponsoring infrastructure projects must first undertake an "independent infrastructure project assessment." This requires agencies to consider more efficient ways to design, finance, procure and maintain the asset and to determine how best to manage important project risks, such as the effects of climate change.

Results are encouraging. There has been a $110 billion infrastructure-project explosion in Canada in the last decade. This has led to more on-time and on-budget performance and created a new pipeline of financially viable public-private partnerships.

How would this work in the United States?

First, put local and state CFOs in charge of how we can better spend $500 billion annually, especially since 75 percent of infrastructure spending happens at the local level. As stewards of public spending and impartial “owner-advisers” to public agencies, CFOs are best positioned to assess life-cycle risks, reform procurement systems, promote cross-agency integration and identify viable repayment mechanisms to attract private investment. (Want to nerd out even more on how to make this work? Check out the Government Accountability Standards Board’s Statement 34 for how CFOs can implement life-cycle accounting and New York State’s Smart Growth Public Infrastructure Policy Act, which requires resiliency and climate risk analyses to be considered with each infrastructure investment.)

Second, build a new network of local, state and regional centers of expertise to shift the system from the bottom up. Only now is Canada creating a national center after a decade of local testing and proven success in British Columbia, Ontario and seven other provinces. The U.S. is also poised to drive this shift through the regional and metro accelerators scattered across the country, from the West Coast Infrastructure Exchange to accelerators now forming in the Washington, D.C., Northeastern and Intermountain regions.

Third, use “big data” to build infrastructure for the 21st century. The private sector is already doing this. Let’s take climate change. Major insurance companies like Swiss Re are busy looking at ways to monetize avoided storm damages by establishing incentives for resiliency investments before the next Superstorm Sandy happens. Insurers and investors need big data to accurately assess climate change effects. New project-design tools and performance-based infrastructure and data innovation techniques could shave 40 percent off of a projected $57 trillion global infrastructure bill by 2040, according to a McKinsey Global report.

How can the federal government help promote this local and state shift? Support the bipartisan bill passed by Congress last December that calls for funding of more regional centers of expertise to accelerate local public-sector capacity. Another low-cost, high-impact congressional move? Why not allow innovative states and cities to tap into a new “federal flex fund” for the startup and design costs of innovative projects that don’t fit into current funding schemes designed during the Eisenhower era.

We will need more. Universities, business schools and technology companies should team up to train the next generation of infrastructure innovators. A new world of smart grids, driverless cars and broadband technology needs to get built, but first we need government CFOs to fire up their spreadsheets.

GOVERNING.COM

BY DAN CAROL | MAY 31, 2016

Government’s Role in Helping Americans Save for Retirement.

As states begin stepping in to fill a void left by private employers, there are management challenges *to keep in mind.*

Most governments provide their employees with some form of retirement savings, but that's a benefit that has been fading away for decades in the private-sector workplace. Today, only 58 percent of full-time private-sector American workers have access to a workplace retirement plan and 49 percent participate in one, according to a recent report from The Pew Charitable Trusts.

This leaves more than 30 million full-time, full-year workers between the ages of 18 and 64 without access to an employer-based retirement plan. With so many private-sector workers worrying that even with Social Security they won't have enough money for retirement, it's not surprising that many states and the federal government are looking at ways to step into the void left by employers. The aim is not only to increase retirement savings but also to reduce poverty and the need for social assistance –spending that strains state budgets.

It's a complex challenge. Access to employer-based retirement plans varies widely. In Wisconsin, for example, 70 percent of full-time workers are able to take advantage of an employer-based plan, compared with just 46 percent in Florida. Gaps in the availability of retirement plans are even wider among the nation's metropolitan areas, according to research by Pew. In Grand Rapids, Mich., for instance, 71 percent of workers had access to a plan, compared with 23 percent in McAllen, Texas.

Access and participation also vary based on employer size, industry type, income, age and education — with some of the largest differences by race and ethnicity. Hispanic workers are almost 25 percent less likely to work for an employer that offers retirement benefits than are white non-Hispanic workers. Black and Asian-American workers also report lower rates of access than white workers.

While Congress and the Obama administration have proposed new ways to increase retirement savings, no major federal legislation has passed on this issue since 2006. As a result, state policymakers and agency heads have been looking at opportunities to fill the gap using tools that range from offering no-cost individual retirement savings accounts to providing tax breaks for contributions or for setting up a plan. The goal is to give employees an incentive — and the ability — to contribute on a regular basis directly from their paychecks.

Lawmakers in more than half of the states have introduced legislation to create or study state-sponsored retirement savings plans for employees who lack access at work. Illinois, Massachusetts, New Jersey, Oregon and Washington state already have moved forward with programs using a variety of approaches. But as state policymakers explore new programs to encourage workers to secure their own financial futures, they need to consider whether they have the administrative and financial capacity to manage a large retirement savings program.

Many states already run retirement plans for public employees, health-insurance exchanges and college savings plans. But creating viable state-run retirement programs for private-sector workers can present unique challenges — in particular, the ability to efficiently manage a large number of small account balances from numerous employers using a wide variety of payroll systems. Additionally, states must consider their responsibility to ensure the integrity of funds and investments, meet reporting and disclosure responsibilities, and provide transparency and accountability.

Although state agencies have considerable financial and policy expertise about public pensions, there is much they can learn from the business community about private-sector retirement plans. A wide array of payroll providers, record keepers, investment professionals, financial educators, software developers and other service providers make up a retirement savings industry with over $5 trillion in assets. States should reach out to these experts to better understand how to successfully manage the administration, outreach and cost-control challenges of a large retirement savings system.

States also can learn from the experiences of one another as they consider the best paths forward, and they would be well served to make policy choices that balance the competing objectives of employee retirement security, employer cost and administrative burdens, and risks for the state. They also need to take into consideration the specific economic and demographic characteristics of the workers who could participate. If states weigh these factors carefully, it may be possible to make a meaningful improvement in the retirement security of many working Americans while minimizing costs and risks to taxpayers.

GOVERNING.COM

BY SUSAN K. URAHN | JUNE 1, 2016

Securing Retirement for All.

Connecticut this week joined the list of states that are creating retirement programs for workers who don't have access to one through their employers.

The new law affects nearly 600,000 private-sector workers. Many of those workers can now be auto-enrolled into retirement plans that are privately managed but overseen by the state.

At least half the states are now exploring or implementing programs to provide retirement savings options for private-sector workers without access to a plan, according to a report released this week by The Pew Charitable Trusts. The states that have already enacted such a plan are Illinois, Massachusetts, New Jersey, Oregon and Washington.

The Takeaway: Most Americans are ill-prepared for retirement. More than 38 million people, or roughly 45 percent of working-age households, have no retirement savings at all, according to data from the National Institute on Retirement Security. More and more states — rightly recognizing that they'll foot the bill for a poor retiree's social service needs — are beginning to do something about this.

GOVERNING.COM

BY LIZ FARMER | JUNE 3, 2016

Bad Credit News.

While the overall number of government entities that defaulted on their debt in the past couple of years has remained virtually unchanged (hovering aroung 50), those rated by Moody's Investors Service have seen an uptick in defaults — from zero in 2014 to four in 2015.

According to a new Moody's report, the four defaults in 2015 were Single Family Mortgage Revenue Bond in Cook County, Ill.; Dowling College (which closed its doors Friday) in Long Island, N.Y.; Puerto Rico Public Finance Corporation; and Cardinal Local School District in Ohio.

In addition, the total percentage of credits that Moody's rates at junk status has doubled over the past five years — from 0.4 percent to 0.8 percent. The rate of junk bonds, however, has significantly decreased from 2014, when 1.6 percent of credits were rated below investment grade by Moody's.

The Takeaway: Municipalities are facing big budget constraints driven by higher expenses and revenue growth that can't keep up. That difficult combination has contributed to an increase in struggling municipalities, and there's no sign these long-term forces pressuring the public sector will abate, said Moody's Senior Vice President Al Medioli.

Moody's is not alone in this warning. Last month, one analyst said that a significant portion of municipal issuers are worse off than they were at the end of the Great Recession — a fact he blames on governments' inability to balance their revenue and spending.

Still, Medioli said, one positive story is that most municipal governments reacted to the recession by making significant budget adjustments. As a result, "Tax bases and fund balance reserves have broadly recovered to pre-recession levels," he said, "and in some cases strongly so."

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BY LIZ FARMER | JUNE 3, 2016

Nonprofits' Tax-Exemption Battle Moves to the Courts.

Legislative attempts to tax nonprofits have fallen short. But recent legal challenges could present a financial problem for nonprofits and a financial boost for governments.

Faced with tight budgets and in search of new sources of revenue, municipalities increasingly have been eyeing the tax-exempt status of nonprofits. Legislators say that universities' record-high endowments and the corporate-like structure of nonprofit hospitals is making it harder and harder to swallow giving these institutions a tax break.

While many of the legislative attempts to start taxing nonprofits have failed, recent legal challenges have proved more promising. If the trend continues, it could present a financial problem for nonprofits and a financial boost for governments. So far, the focus of both legislation and legal action has been on hospitals and higher education institutions, but some worry they could spill over to smaller nonprofits and charities.

The dollars at stake are significant. According to a 2009 study by the Congressional Research Service, property tax exemption is worth $17 to $32 billion nationwide.

Also driving these challenges is the issue of tax fairness. Many nonprofits fork over an annual PILOT, or Payment In Lieu of Taxes, to help offset the governments' loss of revenue. But residents in the vicinity of hospitals or universities often feel that they still end up paying higher taxes to compensate for the revenue lost to nonprofits' exemptions.

But when lawmakers try to address these issues, their efforts often fall short. For instance, a bill in Connecticut proposed taxing earnings on university endowments valued above $10 billion. The law would have only applied to Yale University, but it died last month. Last year, Maine Gov. Paul LePage tried to strip nonprofits of their exemption as part of his overall tax reform package. It was rejected.

When towns and residents resort to lawsuits, however, they appear to be finding more success.

In New Jersey, the town of Morristown sued Memorial Hospital in a case that opened the door for other challenges. After the hospital agreed to pay more than $15 million in back taxes as well as future property taxes, more than a dozen New Jersey hospitals became embroiled in similar litigation.

Even more worrisome for nonprofits is a case in Princeton, N.J. Residents argue that the university there acts like a for-profit institution and that their property taxes are higher because Princeton doesn't pay any. In an unusual ruling, the judge determined that Princeton University must prove its tax-exempt status again. The case is expected to go to trial in the fall.

The Princeton case differs from previous legal challenges in one important way: It was brought by residents. The fee for filing a property tax challenge is typically very low — less than $100. If the residents of Princeton win, it could lead to copycat challenges aimed at nonprofits that have a controversial mission, said Linda Czipo, executive director of the New Jersey Center for Nonprofits. She warns that places like abortion clinics or alcohol and drug rehab centers would be particularly vulnerable.

David L. Thompson, vice president of public policy for the National Council of Nonprofits, argues the real issue is one of public finance and not tax fairness. Many governments' long-term liabilities — health care and pensions — are growing faster than their annual revenue streams. Because of that, said Thompson, it's tempting for politicians and policymakers in times of tight revenue to view nonprofits — however inaccurately — as freeloaders.

For instance, last year he testified before the Pennsylvania General Assembly, which has dealt with chronic budget deficits in recent years. Thompson spoke after the state auditor who testified that taxing the state's tax-exempt properties would net about $1.5 billion in new revenue — but, Thompson immediately clarified, government buildings account for most of that figure.

"They always talk about that dollar figure then say that's why we need to tax nonprofits," said Thompson. "But it's a bait-and-switch argument. And they don't even mention the tax breaks that developers get in incentives. Nonprofits are typically only somewhere between 4 and 8 percent."

GOVERNING.COM

BY LIZ FARMER | JUNE 2, 2016

Pennsylvania to Test Investor Demand as Budget Wounds Remain Raw.

Pennsylvania may soon get a sense of investors' appetite for another year of likely budgetary battles between its Democratic governor and Republican-led legislature.

The Keystone State is selling almost $1 billion in general-obligation debt Wednesday in what is the first sale of the securities since Governor Tom Wolf allowed a budget to be put in place without his signature in March. The first-term leader conceded after failing to sway lawmakers to endorse his tax and spending proposals for the fiscal year ending in June.

Even after the resolution to the budget impasse -- the longest since 1956 — Pennsylvania still faces nearly a $2 billion shortfall in the next fiscal year and an economy growing more slowly than the rest of the nation. Moody’s Investors Service and S&P Global Ratings have warned of further credit-rating downgrades unless they see progress away from one-time budget balancing maneuvers. Investors appear to agree.

“You have a slow-growing state with high legacy costs and a somewhat contentious political process that we fear will result in the state being able to do just the minimum that’s acceptable,” said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt. “I really don’t see a catalyst right now for any improvement in credit quality.”

Conning “probably” won’t buy any of the securities unless the yields are more in line with that of debt graded a step lower than Pennsylvania, which has the fourth-highest rank, said Mansour.

High Yielders

Yields on Pennsylvania’s 10-year bonds are 0.64 percentage point above benchmark securities, near the three-year high of 0.72 percentage point in March, data compiled by Bloomberg show. Only Illinois, New Jersey and Connecticut pay more, according to data on 20 states tracked by Bloomberg.

That may serve as a saving grace for Wednesday’s sale. With tax-exempt mutual funds flush with cash from the longest stretch of inflows in six years and overall tax-exempt market yields not far from record lows, managers have poured money into higher-yielding securities, pushing up demand.

Randy Albright, Pennsylvania’s budget secretary, said the bond sale Wednesday is attracting a “fair amount of interest.”

Pension Funding

“Despite the budget impasse of last year, we continue to have a pretty exemplary track record of taking seriously all of our debt obligations and always being careful in terms of making sure that we’re able to make payments when they’re required to be made,” Albright said.

Even after the compromise following the nine-month budget delay, Wolf and the legislature remain at odds over raising taxes and fixing the underfunded pension system to create another impasse for the next fiscal year beginning in July.

Pennsylvania, the sixth-most populous state, has struggled to fully recover from the recession that ended in 2009. Over the past few years, it has raided reserves and anticipates ending the year with just $232,000 in a rainy day balance that’s supposed to account for 6 percent of its general fund. It’s coping with rising costs from its pension system, which has about 60 percent of the assets needed to cover the benefits promised to about 700,000 employees.

Tax Plan

At Aa3, Pennsylvania already has a Moody’s grade lower than the median of Aa1, second highest. Lowering it one step would make it third-worst ahead of New Jersey and Illinois.

“The commonwealth’s credit challenges are likely to worsen in the near term absent political compromise,” Moody’s said in a May 20 report.

Wolf wanted to raise levies on income and retail sales and implement a new tax on natural-gas drillers. Resistant Republicans pressed to put new state workers into defined-contribution plans similar to 401(k)s, a measure Wolf vetoed.

Moody’s cut the state’s grade and those of school districts. S&P withdrew its ratings of debt issued by schools through a state program that diverts aid to the obligations. Schools and social service agencies were forced to take out loans.

Wolf is pushing a similar spending plan for the new fiscal year that raises $2.7 billion in taxes, and Republicans are again stressing avenues such as reducing pension costs and selling the state liquor operations.

“We believe that we shouldn’t turn to taxpayers first when we’re looking in trying to fix the deficit,” said Jennifer Kocher, a spokeswoman for Senate Republicans in Harrisburg. “There are still other areas where we can generate revenue for the state.”

Bloomberg Business

by Romy Varghese

May 31, 2016 — 10:20 AM PDT

More in Debt Than Puerto Rico, the Virgin Islands Rejects Rescue.

Congress’s plan to throw a lifeline to Puerto Rico is making waves in the U.S. Virgin Islands.

The measure that passed a House committee last week would allow for a federal control board to oversee the finances — and potentially restructure the debt — of any U.S. territory, even though Puerto Rico is the only one now asking for help. Virgin Islands Governor Kenneth Mapp and Rep. Stacey Plaskett have blasted the bill, warning that it may tarnish its standing with investors. That concern is already starting to materialize: Returns on its securities are trailing the $3.7 trillion municipal market for the first time since 2011.

The Caribbean island, Puerto Rico’s closest American neighbor, has a sliver of the population — about 104,300 — and a fraction of the debt, with $2.4 billion across all issuers. But divvied up, that’s $23,000 of obligations per person, even more than Puerto Rico’s $20,000. The two Caribbean territories with a shared culture also have similar fiscal strains: declining populations, underfunded pensions, histories of borrowing to cover budget shortfalls and unemployment rates that are twice as high as the U.S. mainland’s.

“It’s the same template: Over a period of years, you keep issuing debt to cover your operating deficits, your economy isn’t growing, your population isn’t growing, but your liabilities keep growing,” said David Ashley, an associate portfolio manager at Thornburg Investment Management, which holds $11.5 billion in municipal bonds. “Just by virtue of math, your per-capita debt just continues to rise, probably to an unsustainable level at a certain point.”

Territory bonds have long lured buyers across the U.S. because the interest on the securities isn’t taxed at the federal, state or local level. And unlike some American local governments, the territories — – American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands — can’t file for bankruptcy.

That made investors confident they’d be paid back, a faith that was lost as Puerto Rico defaulted and Congress advanced legislation providing a way for distressed territories to reduce their debts in court if needed.

Virgin Islands leaders insist the government can and will pay what it owes, in part because of the way the bonds are structured. Many securities are backed by specific revenue streams, like excise taxes tied to rum production by Diageo Plc and Cruzan International Inc., that go straight from the U.S. Treasury to an escrow agent. Even bonds backed by gross receipt taxes, which offering documents say are "secured by its full faith and credit and taxing power," also give the trustee a lien on the levies.

Virgin Islands officials say they've had to borrow to make up for discrepancies in how the federal government funds territories relative to states. They've called on Congress to extend tax credits for low-income workers to their residents and bolster Medicare and Medicaid payments as well. None of that was included in the Puerto Rico bill.

Disadvantaged Start

"Congress has passed the buck and hasn't done what they needed to do for many years," Plaskett, the Virgin Islands's non-voting representative in Washington, said in a telephone interview. "We're already operating at a disadvantage to the other states, and have had to utilize other monies, such as bonds, to pay for everyday expenses that the people of the territories need."

In a year when municipal-bond investors can't get enough high-yielding bonds, the Virgin Islands are an exception. The territory's debt has gained 2.2 percent so far in 2016, compared with 2.8 percent for all municipal securities, S&P Dow Jones Indices data show. It would be the first time since 2011 its obligations have trailed the market.

Its securities are mostly in the lowest investment-grade tier, unlike Puerto Rico's, which are deemed virtually certain to default. If the Virgin Islands issued pure general obligations, however, Fitch Ratings says it would rate them BB-, the third-highest junk rank.

"In terms of the debt load, on a per-capita basis, on an income basis, it's high," said Marcy Block, the Fitch analyst who tracks the Virgin Islands.

Aside from indebtedness, the Virgin Islands is grappling with similar economic and demographic trends as its beleaguered Caribbean counterpart.

The Virgin Islands's real gross domestic product dropped in each of four years through 2014, according to data from the Bureau of Economic Analysis. Like Puerto Rico's, its contraction has been exaggerated by migration as residents leave in search of jobs. The Virgin Islands's population is down 10 percent from its 2008 peak, according to BEA data, and the unemployment rate is 11.1 percent.

The Department of Interior said in a September 2011 report that the Virgin Islands's pension plan may be unable to pay what it promised by 2025, though a measure passed last year could delay that by a few years.

Mapp, who's unaffiliated with a political party, said in his first budget message a year ago that the territory's general-fund revenue hasn't been enough to cover expenses for the past two decades. The island may end this year in deficit as well.

Yet he says the Virgin Islands "have no financial issues close to or mirroring those of Puerto Rico."

"We're in a precarious situation — we have an enormous budget deficit and we've been struggling with that for quite some time," Plaskett said. "Should we be using bonds for operating costs? I have always argued no, but it's a necessity because Congress has not done its responsibility to give economic tools and support to the territories to be able to grow their own economies."

Bloomberg Business

by Brian Chappatta

May 31, 2016 — 2:00 AM PDT Updated on May 31, 2016 — 6:50 AM PDT

New York University Bond Sale Shows Hype Over STEM in City Real.

Cornell University, which is creating a technology campus on Roosevelt Island, isn't the only school spending millions for science and engineering facilities in New York City.

Columbia University borrowed $50 million in April to finance the construction of a nine-story building that will house a brain-science institute. The City University of New York on May 20 opened a nanofabrication facility, where students and corporations can create extremely small devices, in its $350 million Advanced Science Research Center. New York University joined the spending spree Wednesday, when it sold $832 million of bonds for projects including a 365,000 square-foot medical-school building, an applied science center in Brooklyn and a nanoscience lab.

The bond sale, the biggest by a private university since 2010, draws NYU deeper into a nationwide higher-education push to invest in facilities for science, technology, engineering and math — or STEM — to prepare students for higher-wage jobs, attract faculty and boost their ability to commercialize research.

New York officials have encouraged the universities' expansion in the city, seeing it as a way to spur its technology industry and diversify the economy.

"New York State is playing a pivotal role in providing low-interest financing to support these preeminent universities and colleges," said Gerrard Bushell, the president of the Dormitory Authority of the State of New York, which is issuing the securities on behalf of NYU. "The rising scientific research facilities in New York City's core will diversify the economy as researchers make groundbreaking advances in medicine and technology."

Under former Mayor Michael Bloomberg, Cornell and Technion-Israel Institute of Technology were awarded land on Roosevelt Island and $100 million for infrastructure improvements to build an applied sciences and engineering school that will encompass 1.3 million square feet by 2027. His administration in 2012 reached an agreement with NYU that provided $15 million in subsidies for an applied sciences center in downtown Brooklyn that will focus on challenges facing cities, including infrastructure, energy efficiency, traffic, public safety and health.

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Universities, which can issue bonds in the tax-exempt market, are benefiting from borrowing costs that are holding near five-decade lows. Columbia, which has a AAA credit rating, issued 10-year tax-exempt bonds last month for a yield of 1.67 percent.

NYU's tax-exempt bonds maturing in 2043 were priced with a yield of 2.91 percent. Ten-year bonds yielded 1.91 percent, or 0.27 percentage point more than top-rated bonds with the same maturity. NYU also sold $247 million of taxable debt.

The securities have also paid off for investors: Municipal bonds for educational institutions have returned 3.02 percent this year, 0.35 percentage point more than the overall municipal market, according to Standard & Poor’s indexes.

NYU’s bonds, which are backed by university revenue, are rated Aa3 by Moody’s and AA- by S&P Global Ratings, the fourth-highest grades. About $450 million of bond proceeds will be used to repay lines of credit that financed construction.

With about 47,700 students, NYU has transformed itself in a generation from a regional school to an international research university with a global “brand,” according to Moody’s. The university established degree-granting campuses in Abu Dhabi and Shanghai as well as centers in 11 other cities, including London, Paris, Madrid, Sydney, Buenos Aires, and Tel-Aviv.

It has also used its New York location to attract homegrown and foreign students. International students make up 17 percent of NYU’s undergraduate enrollment, up from 6 percent in 2008, according to Moody’s.

“Parents are more likely to send their children to come to college in New York because it’s safer than it was 15, 20 years ago,” said S&P analyst Carolyn McLean.

NYU’s full-time enrollment has grown more than 20 percent in the last four years and is one of the largest private universities in the U.S. At about $65,000, NYU’s tuition, room and board is among the highest in the country.

Because building in Manhattan is expensive, NYU has also borrowed more than its peers. With this week’s issuance, NYU’s debt will reach about $3.3 billion, not including another $2 billion for its hospital system. It’s moving ahead with a $2 billion expansion plan at its Greenwich Village campus that has angered local residents.

NYU has about $1.4 billion of expendable resources, which is equal to about 40 percent of its debt, a low level compared to its peer group and rating, according to S&P.

“If you’re in the rural Midwest the cost of building a science building is way less than buying up a block in Soho,” said McLean.

Bloomberg Technology

by Martin Z Braun

June 1, 2016 — 2:00 AM PDT Updated on June 1, 2016 — 1:53 PM PDT

Puerto Rico’s U.S. Rescue Won’t Come Soon Enough to Halt Default.

Even if U.S. lawmakers return next week and push through their Puerto Rico rescue with unusual speed, it may not come fast enough to save the island from its biggest default yet.

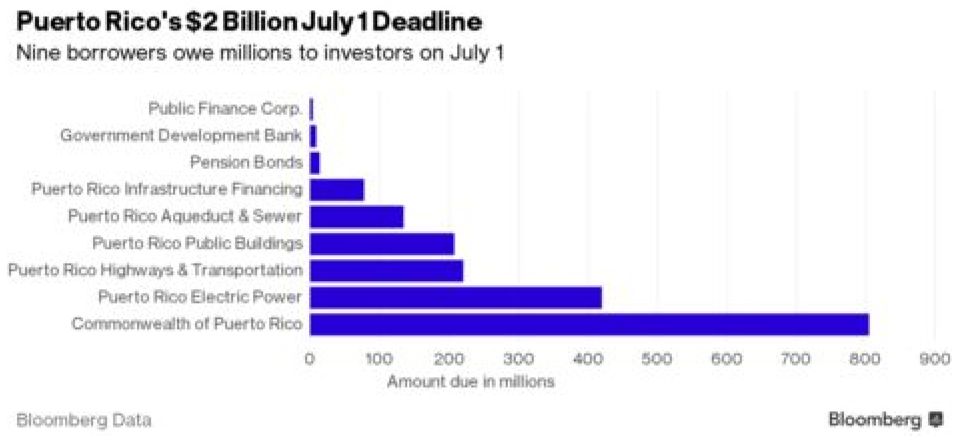
The legislation would put Puerto Rico’s budget and, potentially, a restructuring of its debt in the hands of a federal oversight board appointed by congressional Republicans and President Barack Obama — a body that’s virtually impossible to set up before $2 billion of debt payments come due on July 1. And the bill doesn’t provide any additional federal money to the U.S. territory, whose government says it’s simply too broke to pay.

“I don’t think we would expect that Congress would enact anything that’s quick enough to solve the July 1 debt service problem,” said Phil Fischer, head of municipal research at Bank of America in New York. “There’s a lot of uncertainty about what will be paid and how.”

Puerto Rico’s cascading series of defaults will enter a new phase next month if it skips payments for the first time on general-obligation bonds, which the island’s constitution says must be repaid before everything else. With $805 million due on those securities, Governor Alejandro Garcia Padilla has said the commonwealth can’t cover what it owes without shutting off services crucial to the island’s 3.5 million residents, nearly half of whom live in poverty.

While the lapse would expose the island to a court fight with bondholders — who had little recourse when it defaulted on securities with weaker legal protections — they may still have to wait. A local law shields the government until January from lawsuits in Puerto Rico, while the bill that cleared the House Natural Resources committee last month by a 29-to-10 vote would halt them until February.

The Congressional bill “remains a work in progress, and is unlikely to be finalized and effective in time to prevent July 1 defaults,” Alan Schankel, a managing director in Philadelphia at Janney Montgomery Scott, wrote in a report Thursday. “But it is the best potential next step in the pursuit of economic and fiscal stability for Puerto Rico.”



Puerto Rico bonds are already trading with the expectation that they won’t be repaid on time and in full. General obligations maturing in 2035, one of the most frequently traded securities, changed hands Wednesday at an average 65.6 cents on the dollar to yield 12.9 percent, data compiled by Bloomberg show. That price has tumbled from 93 cents in March 2014, when they were first sold to investors.

The commonwealth’s fiscal crisis has been escalating since last June, when Garcia Padilla said the administration couldn’t afford to repay $70 billion of debt left by years of borrowing to cover budget shortfalls as the economy contracted and residents left at record pace for the U.S. mainland. It has since failed to cover $370 million due on bonds sold by the Government Development Bank and $150 million for two other agencies as it conserved cash.

Help has been slow to emerge from Washington, which has allowed other deadlines to come without stepping in.

In December, despite the governor’s warning of an impending humanitarian disaster, Congress failed to include any aid when it passed a key spending bill. While the House may take up the island legislation as soon as next week, Rep. Rob Bishop, the chairman of the Natural Resources Committee, has said he doesn't view July 1 as a crucial time limit to pass it.

Winning Concessions

Left on its own, Puerto Rico has been negotiating with bondholders and insurance companies to escape from some of its debt. It has already struck such an agreement with creditors of the Puerto Rico Electric Power Authority, the government's electricity provider. When the GDB defaulted last month, it reach a tentative deal with hedge funds holding $900 million of the bank's securities to eventually pay just a fraction of what is owed.

Garcia Padilla has typically waited until days before a payment is due to announce whether it will be made. Liz Kenigsberg, with the public relations firm SKDKnickerbocker in New York, which represents the GDB, didn't have an immediate comment.

The administration will probably negotiate with general-obligation creditors through the end of June, said Mikhail Foux, head of municipal strategy in New York at Barclays Plc.

"The market won't get any clarity pretty much until the 25th hour," Foux said. "There's very little trading because people are effectively just waiting for what's going to happen."

Garcia Padilla has said he will choose to keep essential government services in place over covering debt bills. If his budget is approved by Puerto Rico lawmakers, that's exactly what will happen: For the fiscal year that begins in July, he's proposed spending just $209 million on debt service, a fraction of the $1.39 billion that's supposed to be paid from the government's general revenue.

A default in July may eventually force the issue into court, Bank of America's Fischer said.

"Now we get to a very significant issue on July 1 in regard to constitutionally-protected bonds and this is a big deal in terms of the laws of Puerto Rico," said Fischer. "Is the constitution binding on the governor with regard to debt-service payments in an absolute sense? We're going to find out."

Bloomberg Business

by Michelle Kaske

June 2, 2016 — 2:00 AM PDT Updated on June 2, 2016 — 6:35 AM PDT

A Stadium Plan Goes Sour in Hartford.

The Yard Goats, the Double-A affiliate of the Colorado Rockies, had hoped to open their 2016 season at the new $63 million Dunkin' Donuts Park. Instead, because of a fiscal crisis in Hartford, their new hometown, the team is playing on a borrowed field about 40 miles away.

On May 27, Hartford Mayor Luke Bronin announced the city could no longer afford to cover the cost of construction delays at Dunkin' Donuts Park. Hartford recently cut services and raided its rainy-day fund to close a $50 million budget gap for the 2017 fiscal year, which begins July 1. Now, Bronin is making a claim against the insurance bought by builders Centerplan Construction to guarantee the stadium would be completed. "The developer is responsible for any costs beyond what we approved, and there were quite a few," Bronin says.

The stadium, born out of an idea to revitalize Hartford's desolate north side, isn't what caused the city's budget problems. As Connecticut's capital, Hartford is home to a large number of public buildings; half of all properties in the city are tax-exempt. To compensate, the city has raised business taxes, which are now higher than in any neighboring city.

Bronin's predecessor, Pedro Segarra, insisted the stadium wouldn't just pay for itself but also generate revenue for the city. He oversaw the creation of the Hartford Stadium Authority, which issued $56 million in municipal bonds in 2015 to finance construction. In early January, shortly after Bronin took office, Centerplan reported that it would require an additional $10.4 million to finish the job in time for opening day. Bronin agreed to split those costs with Centerplan in exchange for the builder finishing the project by May 17, a deadline it missed.

Bronin, a 36-year-old former Rhodes scholar who graduated from Yale College and Yale Law School, ran for mayor on a promise to look "under the hood" of the city's deteriorating finances. What he found wasn't pretty. "I knew we were facing some serious fiscal challenges, but this was just a lot worse than I had planned on," says Bronin, who served as a naval reserve officer in Afghanistan and worked for the U.S. Department of the Treasury before returning home to Connecticut, where he was appointed general counsel under Democratic Governor Dannel Malloy.

For the 2018 budget, Bronin anticipates a $34 million shortfall, thanks to payments on debt that are coming due. The gap balloons to $78 million by 2022. "The stadium isn't the straw that broke the camel's back here," says Melissa McCaw, Hartford's director for management, budget, and grants. "It's just some hay that was dumped on a crippled, half-dead camel."

Centerplan says it wasn't able to meet its deadline, in part because of changes the city requested, including the installation of a barn-style door in a luxury suite. The company has threatened to walk off the job until the insurer, Arch Insurance, completes its evaluation of the city's claim. Centerplan principal Jason Rudnick estimates that could take anywhere from six to nine months. If Arch sides with the city, the insurer will cover as much as $47 million to complete the ballpark.

McCaw says that with the stadium unfinished and no new revenue sources available, the city may need to lean on the state for help: "I really just have no idea how we're going to close that budget gap."

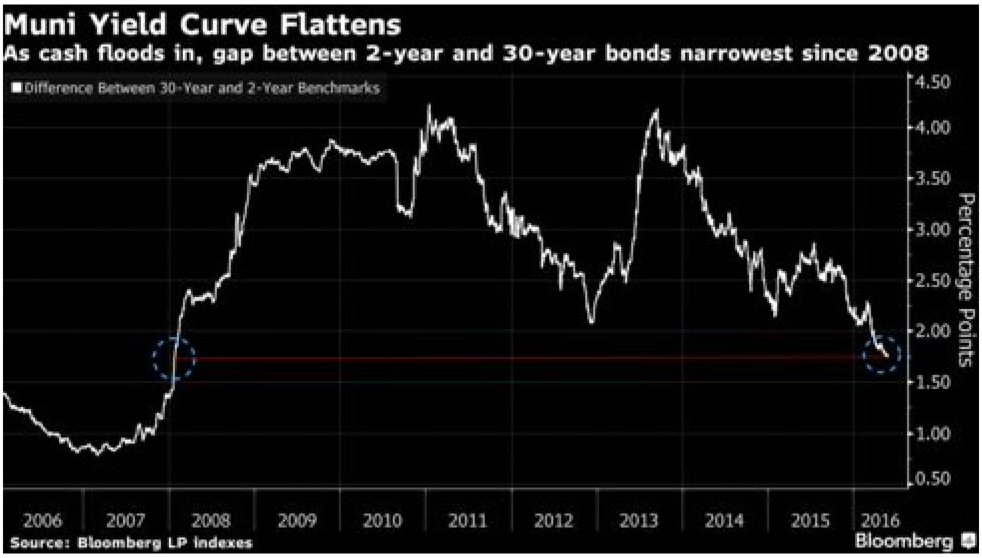
The bottom line: *Hartford, which recently struggled to close a $50 million budget gap, is refusing to cover cost overruns at its new ballpark.*

Bloomberg Businessweek

by Kate Smith

June 2, 2016 — 3:20 PM PDT

Muni-Bond Yield Curve Flattest Since 2008 Credit Crisis: Chart



The difference between short- and long-term yields in the $3.7 trillion municipal-bond market is the smallest in more than eight years. With tax-exempt mutual funds flush with cash from the longest stretch of inflows in six years, managers have poured money into higher-yielding securities, pushing up the price. By the end of last week, that left 30-year yields just 1.75 percentage points more than those on 2-year securities, the smallest since January 2008, when the credit-market crisis was building. That difference, known as the yield curve, shows that investors are receiving little compensation for the risk of owning securities that don't mature for decades.

Bloomberg Business

by William Selway

May 31, 2016 — 8:39 AM PD

Puerto Rico Commission Says Bonds May Violate Constitution.

Puerto Rico may have sold bonds that violated the commonwealth's constitution, according to preliminary findings from an island commission charged with auditing its $70 billion of municipal debt.

The report analyzes the commonwealth's last general-obligation bond sale, a $3.5 billion offering in March 2014, purchased mostly by hedge funds, and a 2015 short-term note issue. The island's constitution restricts annual debt-service on direct obligations and bond maturities, limitations that the 2014 bond sale may have broken, according to the report.

"There is strong factual basis for the commission to continue research into whether the commonwealth complied with the constitution in issuing its debt, and whether the underwriters complied with applicable U.S. Securities and Exchange Commission norms," according to the report.

Puerto Rico and its agencies face a $2 billion payment to investors on July 1, including $805 million for general obligations. Governor Alejandro Garcia Padilla has said the island cannot make that payment and cover essential services for 3.5 million residents. Puerto Rico officials have been negotiating with creditors to reduce its debt by asking bondholders to accept less than full payment on their securities.

Control Board

The U.S. House plans to vote next week on a bill that would create a federal control board to oversee Puerto Rico's budgets and manage any debt restructurings. That panel may choose to analyze whether the general obligations are valid, said Matt Fabian, partner at Concord, Massachusetts-based Municipal Market Analytics.

"This is just one report that potentially gives ammunition to the administration or to the fiscal control board, if they want to pursue it," Fabian said Thursday.

Puerto Rico's constitution stipulates that annual principal and interest on its general obligations and commonwealth-guaranteed debt cannot exceed 15 percent of the island's average annual revenues in the last two years. The commonwealth may have sold debt that fails to fall within that restriction, according to the report. The debt-service margin currently stands at 13.6 percent, leaving some room for additional borrowing, Melba Acosta, president of the Government Development Bank, said Monday during a legislative budget hearing.

"While the administration encourages an open and transparent process to review the commonwealth's aggregate debt load, it has no reason to believe that any of the commonwealth's debt was incurred in violation of the Puerto Rico constitution," Victor Suarez, the island's fiscal agent in charge of overseeing its finances, said in a statement Friday.

Disclosure Requirements

An SEC rule requires underwriters and other outside professionals working on municipal-debt sales to determine that a borrower will provide yearly financial statements and audits on time. On April 30, 2014, six weeks after the 2014 bonds were sold, Puerto Rico released a notice saying it would miss a deadline to file its fiscal 2013 audited financials, according to the report. The commonwealth has yet to release its fiscal 2014 audit.

The legislature created the 17-member commission last year to audit Puerto Rico's debt. The panel is comprised of legislative leaders, representatives from financial institutions, members of organized labor and academics. The report recommends that the committee hire staff and get funds to complete a full audit.

"This is how municipal governments have historically looked to repudiate their bonds, by invalidating all or a portion of the debt either through some limit or some kind of problem with its issuance," Fabian said.

Bloomberg Business

by Michelle Kaske

June 2, 2016 — 10:25 AM PDT Updated on June 3, 2016 — 7:56 AM PDT

[Bloomberg Brief Weekly Video - 06/02]

Joe Mysak, an editor at Bloomberg Briefs, speaks with Amanda Albright about this week's municipal market news.

Watch the video.

June 2, 2016

Political Tax Avoidance Chokes Off Infrastructure Investment.

Every state or municipal government will eventually face the question of whether to raise taxes. Since the era of George H.W. Bush, officials answer increasingly “No.”

“It’s politically hard to make a case for tax increases, and particularly at a time when people have less money in their pockets,” said Lucy Dadayan, a senior policy analyst with the Nelson A. Rockefeller Institute of Government.

The nation’s reluctance to talk taxes has resulted in a drop in borrowing for needed infrastructure as well as missed opportunities to take advantage of historically low interest rates to finance long-term projects.

The political response to rebuilding the Washington D.C. Metro, the nation’s second-largest subway system, has been, don’t expect a bailout.

States increased taxes by $33 billion in response to the Great Recession, 38 percent less than the $54 billion raised after the 1990 recession, according to a 2015 study by the Rockefeller institute.

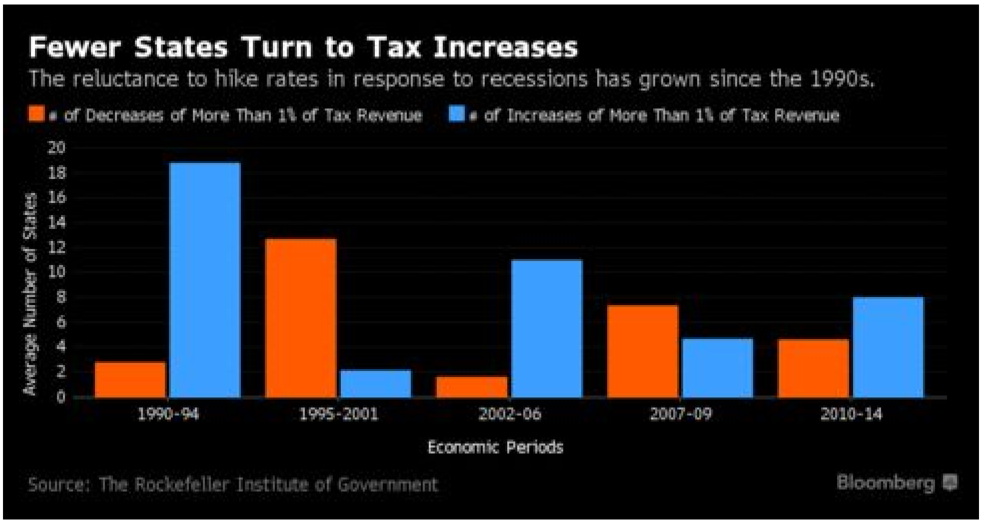
Meanwhile, some states still haven’t recovered completely from the 2008- 2009 financial crisis. At some point, something will have to give. Sooner or later they’ll have to raise taxes.

“It’s inevitable,” Dadayan said. “Otherwise, the fiscal systems are not going to be sustainable over a long period of time.”

George H.W. Bush’s famous 1988 mantra, “Read my lips: No new taxes,” has stuck with state and local government officials to this day, said Emily Evans, a former Nashville councilwoman who is now a managing director at investment research firm Hedgeye Risk Management.

“We are not past that point at all,” said Evans. It varies, “depending where you are. If you’re in a really deep red state like Tennessee, we’re really not past it. If you’re in the purple and blue states, there’s a whole lot more open mindedness about it.”

While Bush’s promise had an impact, so did what happened afterwards, she said. The president eventually raised taxes and didn’t win a second term. “That stands in the minds of most elected officials as a serious problem,” Evans said. “If I raise taxes, I won’t get reelected. That’s the equation. That still is a big part of the thinking that goes into those decisions to vote ’yes’ or ’no’ on new tax projects.”



One example of a changing approach to tax increases can be seen in the state sales tax, said William Fox, a business professor at the University of Tennessee at Knoxville, who studies the subject.

During the 1980s recession, about 30 states raised their rates, he said. The number of states that enacted increases fell to about 20 during the 1990s and continued to decline during the 2000s to the mid-teens, Fox said.
"The pressure is ever-stronger on keeping taxes low," he said. "If you went back into the 1980s, when money got tight in state governments, particularly during recessions, what you would get is a wave of tax-rate increases," he said. "While that is true today, the propensity for that to take place has fallen over time."

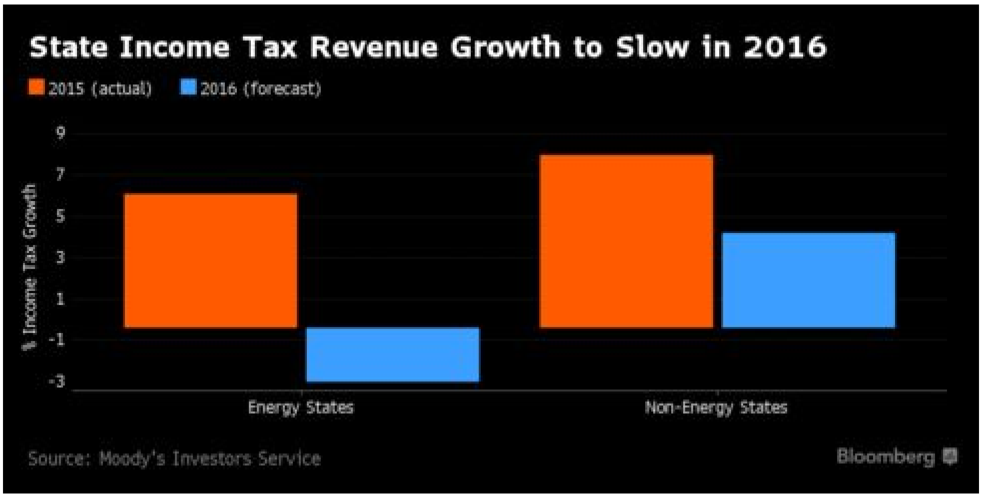
The impact of politicians' reluctance to raise taxes has been felt in the municipal market. New-money municipal issuance has averaged $150 billion annually from 2011 to 2015, which is a marked decline from the previous 10 years, according to an April report by Citigroup Inc.

New-money issuance averaged $242 billion annually during 2001 to 2010, Citigroup found. "In other words, state and local debt as a source of funding for needed projects has been running, on an inflation adjusted basis, at least 45 percent lower over the past five years than it was over the prior 10," Citigroup said in the report.

"State and local governments aren't able to keep up with new project funding needs and urgently needed major maintenance and replacements, and the extent to which they are falling behind continues to grow," Citigroup said.

This reduced level of borrowing is "astonishing" given the state of the country's infrastructure, said Citigroup strategist George Friedlander. "The Republican tax pledge still exists — 'we will not raise taxes in any way that is not offset by reductions in spending somewhere else,"' he said. "That's a big issue. The whole concept of cost-benefit when it comes to infrastructure has vanished. It is not part of the discussion right now.

"Is there a benefit in raising spending on infrastructure which, in terms of keeping us competitive with the rest of the world, will pay an economic benefit down the road? Well, probably, yeah, but nobody cares."



Additionally, politicians' concerns about raising taxes are preventing them from taking advantage of historic low interest rates, said Michael Mazerov, a senior fellow with the Center on Budget and Policy Priorities. "In most cases, those services and the infrastructure is going to be paid through bonding," he said. "Interest rates are so low now that this is a time when states should be investing in infrastructure."

Governments only have a few choices when budgets get tight — taxes are one of the only ways they can generate revenue. Another option is to refinance debt to delay final repayment. This can be a "trick" that state and local governments resort to instead of raising taxes, Evans said.

Evans saw this happen first hand during her time on the Metropolitan Council of the Metropolitan Government of Nashville and Davidson County in 2010. The council approved the issuance of $600.2 million in general obligation bonds, which included retiring commercial paper and refinancing debt. Evans said the refinancing resulted in about $48 million in additional debt service payments because it extended the life of the debt.

The council did so after the mayor at the time promised residents he would not raise property taxes, she said.

"Instead of doing one, cutting expenses, or two, raising revenue, [the mayor] opts for a refinancing of outstanding debt, which cost the taxpayers," she said. "There wasn't any other compelling reason to refinance that debt."

Two Choices

Richard Riebeling, the chief operating officer for Nashville's mayor's office, disputes the $48 million figure, and says the refinancing was one of the smartest things the city did from a financial standpoint during that time.

"It was real simple," he said. "We were in the middle of a recession. The city had two choices that were very poor. One was raise taxes on people during the middle of a recession, which was not a very good idea.

Or second, you significantly reduce services. And so neither of those were strong options, so the third was a slight restructuring of our debt to move back some principal a few years."

Nashville and Davidson County enacted a 53-cent property tax increase per $100 of assessed value for fiscal 2012-13. Riebeling said economic conditions supported a property tax increase.

“There was a need to continue to fund schools and the other needs of the city,” he said. “We did a small property tax [increase] that year because we thought it was the right thing to do. Could we have re-done the debt again? Probably. Would it have been the right thing to do? No, it would have been the wrong thing to do. This restructuring of the debt is not something that you do very often at all.”

One of the first major modern instances of voters voicing their displeasure with tax policies was in 1978, when California voters enacted Proposition 13. The referendum enacted a limit on property tax rates. It was one of the first laws that put a hard limit on municipalities’ ability to raise revenue, Fox said.

To be sure, voters can also approve tax increases, like Californians did in 2012 with Proposition 30, which temporarily increased sales and income taxes.

Voters may be willing to raise taxes for specific issues such as education, said Vladimir Kogan, a political science professor at Ohio State University. “It’s not like voters are clamoring for this,” he said. “It’s a matter of selling it.”

Bloomberg Business

by Amanda Albright

June 3, 2016 — 5:42 AM PDT

San Francisco Mulls Fining, Prosecuting Home-Share Sites Like Airbnb for Listing Unregistered Units.

In 2015, a law took effect in San Francisco that requires those who make short-term rentals available on sharing sites such as Airbnb, HomeAway and VRBO to register with local government.

But only around 1,400 of an estimated 7,000 or more owners who rent rooms and entire homes to travelers have complied. So now some members of the San Francisco Board of Supervisors are working on new draft legislation. It would potentially hold the sharing sites accountable for users who don’t follow registration rules, the San Francisco Chronicle reports.

“This is not about changing existing law,” said supervisor David Campos at a Thursday committee hearing. “It is ultimately about corporate responsibility. About an industry that has made and continues to make tens of millions of dollars in this line of work taking responsibility for the negative impact that they are having on the housing stock.”

Campos, a Democrat and an attorney with a Harvard Law School pedigree, is one of the lawmakers working on the draft legislation. It is scheduled to be presented Tuesday to the full board of supervisors, which is expected to view it favorably, the newspaper reports.

However, dozens of hosts showed up at the hearing and at least some are concerned that registration requirements are too cumbersome. For example, those who register must provide an itemized list for rentals of all “furniture, appliances, supplies, equipment and fixtures,” their cost and acquisition date, so that a “business personal property” tax of roughly 1 percent can be applied.

Under the law being proposed by Campos and fellow Democratic supervisor Aaron Peskin, sharing sites would have to get a registration number from an owner before his or her short-term rental offering could be listed online. Noncompliance could be punished with fines of up to $1,000 a day per listing and misdemeanor prosecution.

Meanwhile, others are concerned that the proposal could violate federal law insulating websites from liability for user content, the Chronicle reports.

"Anytime someone proposes to place liability on the platform because the platform users are doing something wrong, that raises concerns," said David Greene. He is the Electronic Frontier Foundation's civil liberties director.

THE ABA JOURNAL

BY MARTHA NEIL

POSTED JUN 03, 2016 11:53 AM CDT

NASACT Responds to IRS Proposal on Amending the Definition of Political Subdivision for Municipal Bond Purposes.

Read the comment letter.

National Association of State Auditors, Comptrollers and Treasurers

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Default and Loss Experience for Two- to Four-Unit Properties.

Abstract

Two- to four-unit buildings disproportionately provide housing and income to low-income communities and minority owners and renters. This report explains why these loans are important, discusses how difficult it has become to obtain one, and establishes that an overcorrection by policymakers caused that difficulty. We need to encourage lenders to increase their loss tolerance and lend more readily for these properties. We recommend two policy actions: (1) ensure borrowers have counseling on how to minimize and manage income variability and how to be a landlord in a small building and (2) relax the current government-sponsored enterprise loan-to-value requirements.

Download the brief.

The Urban Institute

by Laurie Goodman and Jun Zhu

May 16, 2016

Using the Tax Structure for State Economic Development.

Abstract

Every state uses a different combination of taxes to fund government services. Some rely more heavily on income taxes, and others see the most revenue from consumption taxes, such as general sales taxes or excise taxes on select goods. The effect of a state's tax structure on economic development includes not just the mix of taxes but specific features of those taxes as well. It also depends on the overall tax burden from the combination of different taxes levied. This brief is part of the State and Local Finance Initiative's series on state economic development strategies.

Download the brief.

The Urban Institute

by Norton Francis

May 31, 2016

N.J. Governor Christie Signs Atlantic City Rescue Package Into Law.

(Reuters) – New Jersey Governor Chris Christie on Friday signed into law a package of legislation that provides distressed gambling hub Atlantic City with immediate cash help but also a potential state takeover if the city cannot fix its finances.

The bills will help reform the city's "overblown municipal government" while protecting state and local taxpayers, Christie said in a statement while continuing to take shots at local officials.

"We all agree that Atlantic City's government has not demonstrated the competence to properly manage the people's money without state guidance and oversight," he said.

The legislation "embraces my demand that Atlantic City immediately account for every dollar it receives and spends, and triggers a series of strict conditions and rigorous requirements the city must meet immediately," Christie said.

Atlantic City Mayor Don Guardian did not immediately respond to a request for comment. Earlier on Friday, Guardian marked the opening of summer beach season for the seaside resort city.

The bills provide a $60 million, six-month bridge loan from the state to the city and establish $120 million of payments annually from casinos in lieu of property taxes, a move aimed at stabilizing the city's volatile, eroded tax base.

In return, the city must prepare a balanced budget for fiscal 2017, which begins Jan. 1, and a five-year recovery plan. If it falls short, the state can move to take over operations and throw out collective bargaining agreements, among other powers.

The package could prove positive for the city's credit rating, which is deep in junk territory at Caa3, because it provides much-needed financial relief and removes the immediate threat of default or bankruptcy, Moody's Investors Service said after the governor announced his signature.

But a bond restructuring, which Guardian has said the city will likely pursue, would be considered a default if it includes bondholder impairment, Moody's said.

The city has about $240 million of bond debt outstanding.

By REUTERS

MAY 27, 2016, 4:39 P.M. E.D.T.

(Reporting by Hilary Russ; Editing by Chizu Nomiyama and Jonathan Oatis)

Chicago Gets Some Pension Relief as Rauner Veto Overridden.

SPRINGFIELD, Ill. — Chicago taxpayers will save $1 billion on police and fire pension costs in the short term under a law the General Assembly approved Monday after some House Republicans bucked their governor, who had railed against it as a ridiculous expansion of the Illinois' growing pension hole.

The House voted 72-43 to override Gov. Bruce Rauner's veto of the savings plan, which trumps state law that required the city to pump $4.62 billion into retirement accounts for police officers and firefighters through 2020.

The huge payments could have forced a $300 million property tax increase, Mayor Rahm Emanuel had warned. But Rauner countered that shorting payments will cost an extra $18.6 billion in interest during the next 40 years.

The House quickly followed the Senate in reversing the first-term governor, a businessman who has pounced on the issue of Illinois' woeful pension funding — in municipal as well as state accounts — since he was a candidate.

The city's police and fire funds are $12 billion short of what's needed to cover current and future obligations. Chronic underfunding over the decades is largely to blame, as it is responsible for the $111 billion shortfall Illinois faces in its state-employee accounts. Rauner saw the legislation as another means of delaying the pain accompanying fiscal balance.

"Clearly, those who supported this measure haven't recognized what happens when government fail to promptly fund pension obligations," Rauner said in a statement.

The legislation was approved in the House last year with 65 votes — six short of the number needed for a veto override. But Monday, some Republicans jumped to the Democratic mayor's aid Monday. Arlington Heights Republican Rep. David Harris said Emanuel inherited the mess from his predecessor and already raised property taxes by $500 million just to catch up on underfunded pensions.

"Not a penny for public works, not a penny for infrastructure improvement," Harris said. "That's a tough thing to do and I give him credit for that."

The Democratic-controlled Senate voted 39-19 earlier Monday to OK the plan unions endorse. The Fraternal Order of Police Lodge 7 and Chicago Firefighters Union Local 2 backed the plan they had negotiated with Emanuel.

“We in the city agreed to step up and finally do our part to responsibly fund these pensions,” Emanuel said in a prepared statement.

The plan would reduce Chicago’s required pension deposits to police and fire retirement funds by $1 billion, to $3.63 billion, and stretches the timeline from 2040 to 2055 for the funds to meet a level of funding equal to 90 percent of what they need to cover current and future payouts.

Despite the blow to Rauner, many GOP lawmakers stayed the course.

“At some point, you’re going to have to take fiscal responsibility for your own actions,” Naperville Republican Rep. Grant Wehrli said. “Chicago, raise your taxes.”

By THE ASSOCIATED PRESS

MAY 30, 2016, 8:39 P.M. E.D.T.

New York Airport's $4 Billion Renovation Financing Deal Closes, Begins Lease.

NEW YORK — A $4 billion project to renovate New York’s dilapidated LaGuardia Airport finalized its financing on Wednesday, marking the start of a 34-year lease on one of the most complex public-private partnerships in the United States.

The Port Authority of New York and New Jersey, which operates the critical regional transportation hub, reached financial close on the deal with LaGuardia Gateway Partners (LGP), a consortium of Vantage Airport Group, Skanska and Meridiam.

“We are committed to delivering this project on time and within budget, while keeping communities engaged and informed,” said LGP CEO Stewart Steeves in a statement. “We will build and operate a facility that New Yorkers can be proud of.”

Vice President Joe Biden derided the airport in 2014 when he compared it to “some third-world country.” Last year, he returned there to tout the redevelopment project.

The project is extremely complicated because the airport will remain open and fully operational during the rebuilding of the airport’s central terminal.

The Port Authority chose a public-private partnership to rebuild the terminal in part because it could shift construction risk to the private sector.

After construction is complete, the consortium will operate and maintain the facility for the duration of the lease, which ends in 2050.

On Tuesday, the Port Authority said some terminal roadways could be congested and that it will close some parking lots in June and July as part of the project.

New facilities will begin to open in 2018, with plans to have the project substantially completed in 2022, the consortium said.

The plan for the new terminal includes two pedestrian bridges spanning active aircraft taxi lanes, the first such design in the world, the companies said. It also includes food, beverage and retail stores and additional seating.

The consortium got access to low-cost borrowing through the New York Transportation Development Corporation, which two weeks ago issued $2.5 billion of mostly tax-exempt municipal bonds.

Altogether, two-thirds of the project is to be financed privately.

By REUTERS

JUNE 1, 2016, 3:03 P.M. E.D.T.

(Reporting by Hilary Russ; Editing by Diane Craft)
