
San Francisco Boom Spurs Record Debt Sale for Airport Expansion.

In San Francisco, almost everything is flying high: real estate, start-ups and now, the airport.

Serving a region whose economy is fueled by the technology industry, San Francisco International Airport is embarking on a $5.7 billion expansion as it grapples with traffic that has nearly doubled in nine years. The city's sale next week of $881 million in airport bonds, its biggest ever, is the first in a series that will draw demand from municipal investors who've snapped up airline-related debt, leaving the securities on pace to outperform the overall municipal market for a sixth straight year.

Overall, airports have benefited from lower fuel costs and the recovering U.S. economy, as higher numbers of passengers boost collections from parking fees and bar tabs. San Francisco's airport is seeing even more travelers, thanks in part to Silicon Valley.

"Traffic has been booming," said Kevin Kone, the airport's managing director for finance. "Here in the Bay area, the economy is strong. We're responding to the needs of the traveling public."

At San Francisco International, tourists, budding tech executives and professionals browse high-end boutiques and stretch in yoga rooms as they pass through the region or head to the Pacific Rim. Arrivals and departures total 51.4 million in the 2016 fiscal year, up from 33.9 million nine years ago, documents circulated among investors show. Moody's Investors Service ranks the debt A1, the fifth-highest investment grade, pointing to the hub's strong market position and ability to scale back expansion plans if needed.

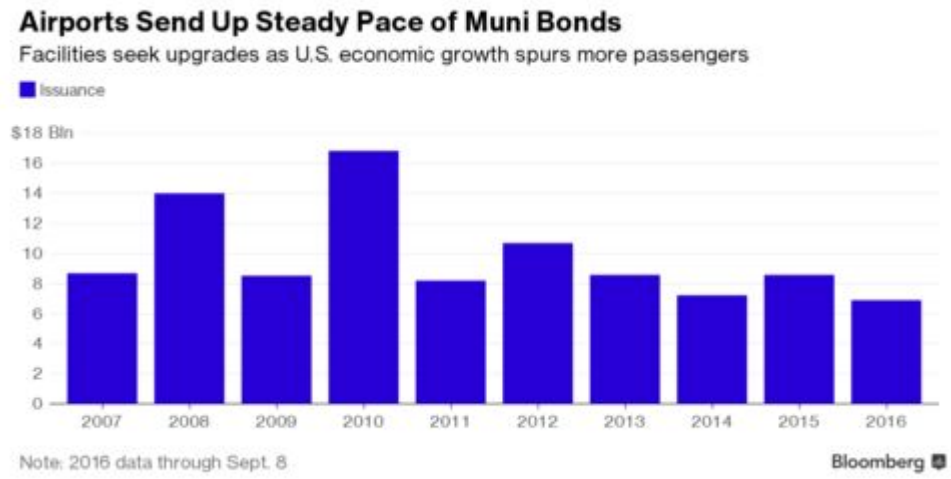
The sale comes amid a streak in airport bonds. In 2015, the securities gained 4 percent, beating the market's 3.6 percent advance, marking the fifth straight year of outperformance, Bank of America Merrill Lynch data show. So far this year, the debt has continued to have an edge, albeit a smaller one: a 4.6 percent return to the market's 4.5 percent through Sept. 7.

"The lower hanging fruit has been picked within the sector," said Gabe Diederich, a Menomonee Falls, Wisconsin-based portfolio manager at Wells Fargo Asset Management, which manages about $40 billion of municipals. He may buy the San Francisco deal if the yields are high enough. "If you have a change that's due to a slowing economy or yields moving up more broadly and that causes outflows from mutual funds, that could certainly change the performance."

For now, airports are still reporting growth in passenger traffic. Moody's has a positive outlook on the sector as it expects volume to grow as much as 4 percent this year.

"Although it's notably a cyclical sector in general, the economic expansion seems to be hanging in there," said John Miller, co-head of fixed income in Chicago at Nuveen Asset Management, which oversees $124 billion of munis. He's looking to add more airport debt and will consider San Francisco's. "It's prolonged and extended."

San Francisco International may sell bonds once or twice a year for the next five years – which will help keep the pace of such debt steady, as has been the case over the past few years. Similar issues have been easily placed: In May, a consortium sold $2.4 billion in bonds to finance a new terminal at New York's LaGuardia Airport.



The San Francisco area is "at the vanguard of the national expansion," with personal incomes growing by 21 percent since the first quarter of 2012 compared with the national 15 percent advance, according to Chris Lafakis, economist at Moody's Analytics. That, coupled with demand from California residents for tax-free income, should make the deal "very successful," Miller said.

The city through its airport commission is embarking on the five-year construction project to add six gates, renovate others to alleviate congestion and connect two terminals. The deal is almost twice as big as its second-largest sale of $500 million in 1998, said Kone, the airport finance official.

"There are more airplanes that want to come in than we have gates during peak periods. That would sometimes cause delays," Kone said. "We're really building to meet today's demands."

Bloomberg Business

by Romy Varghese

September 9, 2016 — 2:00 AM PDT Updated on September 9, 2016 — 8:48 AM PDT

Bloomberg Brief Weekly Video - 09/08

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch video.

September 8, 2016

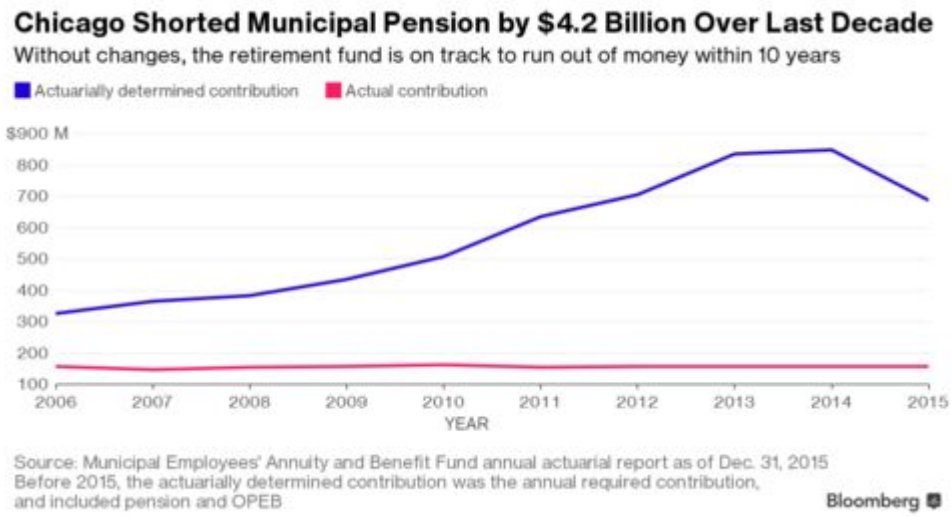
Chicago Moves to Increase Utility Taxes to Bolster Pension.

Chicago moved closer to keeping its largest pension fund from running out of money within the next decade.

The city council's finance committee on Thursday approved raising the levy on water and sewer usage over the next five years to avert insolvency for the municipal pension, the most underfunded of the city's four retirement systems. Last month, Mayor Rahm Emanuel outlined his plan to get the Municipal Employees' Annuity and Benefit Fund of Chicago to 90 percent funded in 40 years. The hike still needs to be adopted by the full council, which next meets on Sept. 14.

"We are going from the potential of bankruptcy to the potential of solvency" for the pensions, Carole Brown, Chicago's chief financial officer, said in response to questions from committee members. She acknowledged that the city will still need more revenue down the line. "It puts us on a path where we're addressing the needs of not only this fund but every other pension fund.''

Chicago shortchanged its pension funds for years, neglecting to put aside enough money to cover the rising cost of benefits for retirees. That failure has left the city with $34 billion of retirement debt across its four funds. The strain of the unfunded liabilities pressures its budget and led Moody's Investors Service to slash Chicago's rating to junk last year.



The city's bonds have rallied since Emanuel outlined the plan to hike the utility tax on Aug. 3. That move follows a record increase in the property tax, pushed through by Emanuel in October, to bolster the police and fire pensions. A telephone tax will help shore up the laborers' retirement system. If the plan for the municipal fund is approved, all four funds will be on a path to solvency, according to city officials. The four pensions are only 23 percent funded, according to an annual financial analysis.

A portion of the city's taxable debt, which matures in 2042, traded for an average of 92 cents on the dollar Thursday, compared to 87 cents on Aug. 3, the day Emanuel outlined his plan. The debt yields 6 percent, down from 6.5 percent.

Emanuel's plan for the municipal fund also ramps up the city's payments. Chicago will pay about $3 billion to the fund over the next six years. That compares to only $1 billion under the current funding schedule. In 2022, the city will start making the actuarially-required payment to get to 90 percent funded in 2057.

Chicago plans to seek state authorization to increase its pension payments and alter the employee contributions.

The council has to approve the higher utility rates. Over five years, water and sewer charges will rise by about 33 percent with the new tax. The higher levies will help cover the city's municipal pension bills over the next six years. After 2022, the city will need to find additional revenue to cover the stepped-up payments.

Some council members expressed concern that the tax won't fully cover the revenue needed over the full 40-year period. Brown and Alex Holt, the city's budget director, acknowledged that the work isn't done.

"We're not going to ask taxpayers today to pay for an expense that's 40 years down the line,'' Holt said. "We need to work and put a sustainable plan into place that deals with the biggest increase, which is between now and 2023, and then we need to work towards putting additional sustainable revenues or additional reforms and savings in place to deal with this issue over the 40-year time period.''

Bloomberg Business

by Elizabeth Campbell

September 8, 2016 — 11:14 AM PDT Updated on September 8, 2016 — 12:08 PM PDT

An Introduction to Evaluation Designs in Pay for Success Projects.

Abstract

This brief provides a basic overview of evaluation designs to assist pay for success (PFS) stakeholders engaged in deal development. It focuses on comparison and its relation to various designs, and it presents key questions that PFS planners should address as they participate in evaluation design discussions. In PFS projects, strong evaluations are tasked with determining what happened, if the program caused these outcomes, and if outcome payments are triggered.

Read the full Brief.

The Urban Institute

Kelly Walsh, Rebecca TeKolste, Ben Holston, John Roman

September 7, 2016

City Parks Become Privatization Battlegrounds.

COLORADO SPRINGS, Colo. — A new conservation battleground is emerging in crowded cities, where proposals to convert municipal parkland to other uses have provoked public furor.

Here at the base of the Rocky Mountains, a citizens group in August filed a suit to overturn a deal approved by the city in May to trade 190 acres of historic North Cheyenne Cañon Park to a private resort controlled by Denver billionaire Philip Anschutz. As part of the deal, the city gets access to land in more remote terrain.

“This should not become a theme park for the rich,” Sue Spengler, a nearby resident, said as she surveyed a pine-fringed meadow in the park known as Strawberry Hill.

Officials of the The Broadmoor resort said the park is used by few people, and said the opposition was motivated by neighbors who largely want to keep Strawberry Hill for their own use, such as for walking dogs. “The group that is opposed to this is small in number but loud in voice,” said Jack Damioli, president and chief executive officer.

Municipal parks have long faced threats from new roads and other infrastructure development, but conservationists say cities are under added pressure to sell or trade them because of population growth on limited land.

Of 54 cities responding to a survey earlier this year by the Trust for Public Land, a conservation advocacy group, 14, including Dallas, Phoenix and Detroit, reported they were facing the loss of parkland; 18 said they had lost a total of 688 acres over the past five years.

Officials of the Trust for Public Land said there has also been an increase in organized opposition to park transfers fueled by social media.

“In the past, you would have one park defender with one voice,” said Adrian Benepe, former New York City parks commissioner and a director of Trust for Public Land. “Now because of the internet that defender potentially has a huge voice.”

In Memphis, Tenn., a grass-roots movement sprang up in 2014 to oppose a decades-old practice of the city allowing the Memphis Zoo to use a stretch of grass in Overton Park as a parking lot.

The group organized protests over Facebook, including a standoff last March when some lovers of the 110-year-old park held their arms out to police to be arrested. In July, the city council voted to restrict parking there, prompting cheers from residents packed into the meeting.

In Tulsa, Okla., residents are trying to overturn a sale by a city public trust of nine acres of 67-acre Helmerich Park to a real-estate developer. That part of the park, on a bank of the Arkansas River, is slated for a shopping center and was sold by the Tulsa Public Facilities Authority trust for $1.5 million in August last year.

Officials of the authority said that part of the park, which was first acquired in 1991, was never developed for recreation. But former Mayor Terry Young and a group of other residents who filed suit in state district court in July 2015 to invalidate the deal said the park is held in trust for the public and can’t be sold. The trust countersued in November, asking that a judge affirm its sale.

With the cases pending, opponents of the deal have held protest rallies and peppered local elected officials with emails and calls asking them to reconsider.

“Once you lose open space, you don’t get it back,” said Mr. Young, now 68.

The Colorado Springs issue started in 2014 when city officials approached The Broadmoor over gaining easements to use portions of the resort’s 5,000-acre property to help connect a popular hiking trail that the resort bisects. The resort turned its attention to adjoining Strawberry Hill, after discovering the city might one day open it to downhill bicycle racing and disrupt the solitude for guests, said Mr. Damioli, the resort president.

“We want to keep the land as pristine as possible,” he said.

The two sides agreed to a swap: Strawberry Hill for the resort, in exchange for access to about 500 acres of forest land for the city. The resort agreed to continue allowing public access on all but a nine-acre meadow of Strawberry Hill, where it plans to host barbecues and horseback riding for guests.

“It’s an absolute no-brainer for the city of Colorado Springs,” Mayor John Suthers said in an interview.
L
Some conservationists support the exchange. “At the end of the day, we end up with more acres of park, open space and more miles of trail,” said Susan Davies, executive director of Trails and Open Space Coalition, a local conservation group.

But some residents reacted with outrage when the city council approved the exchange, saying Strawberry Hill is part of a city park residents in 1885 voted to preserve.

“You’re going to have the wealthy elite having lavish parties in the center, with the plebes looking in

from the perimeter," said Dana Duggan, a media consultant who helped organize opposition to the deal.

Among other concerns by the residents is that much of the property being traded by the resort is far less accessible than Strawberry Hill.

"The bottom line is we get a bunch of junk and we trade a valuable piece of property," said Michael Chaussee, a local resident and real-estate investor.

City officials declined to comment on the litigation.

THE WALL STREET JOURNAL

By JIM CARLTON

Sept. 9, 2016 3:14 p.m. ET

Write to Jim Carlton at jim.carlton@wsj.com

Puerto Rico Debt Fix Unlikely to Resemble Detroit's.

NEW YORK — The federal appointees tapped to help map Puerto Rico's economic future are technocrats more than political actors, and that could make the U.S. territory's fiscal turnaround look more like a corporate restructuring than a politically charged municipal bankruptcy in the vein of Detroit.

The law known as PROMESA, which created the board when it passed the U.S. Congress in June with bipartisan support, envisioned a pragmatic solution for an island combating $70 billion in debt, 45 percent poverty and a brain drain as residents bolt in droves for the mainland United States.

Its members, four Republicans and three Democrats appointed last week, were chosen by Republican and Democratic lawmakers and President Barack Obama. The board has broad powers to help stabilize the island's economy, from investigating Puerto Rico's government to working with that government on projects to spur economic growth.

It must also approve the island's annual budgets, and will eventually facilitate debt-restructuring talks with creditors. In the latter endeavor, it will have to navigate a minefield of competing interests.

The island has 18 separate debt issuers, backed by different revenues streams, as well as $18 billion in so-called general obligation debt backed by the "full faith and credit" of the territory's government. While that promise is legally weak in a bankruptcy setting, it is a sacrosanct pledge in municipal debt markets.

Holders of all that debt will jockey for payouts against government vendors and beneficiaries of the island's public pensions, which have less than $2 billion in assets to cover some $45 billion in liabilities.

Detroit's bankruptcy, which ended in December 2014, treated city pensions much better than its outstanding bonds, which were largely insured. Some Puerto Rico creditors, still suffering Detroit flashbacks, feared Puerto Rico could look similar – especially since Governor Alejandro Garcia

Padilla has pushed big haircuts and railed against the idea of reducing government services.

But the makeup of the Puerto Rico board has offered some reassurance, said Nader Tavakoli, chief executive officer of Ambac, which insures $2.2 billion of Puerto Rican bonds and also insured some of Detroit's bonds. "These board members are technocrats, and it gives us confidence that this is not going to be overly politicized," he said.

Deal makers also feature prominently, with an ex-bankruptcy judge, a banker and a hedge fund operator in the mix.

Republicans, generally seen as creditor-friendly, nominated a bankruptcy academic who favors restructuring the island's debt, David Skeel. And Democrats nominated a banker, Jose Ramon Gonzalez, and a Democratic finance expert in Ana Matosantos who directed California's budget under former Republican Governor Arnold Schwarzenegger.

Experts see the group as likely to push a solution that sees all sides share a burden, a typical approach for companies restructuring under Chapter 11.

"There are no ideologues in the group," said Keefe Bruyette & Woods analyst Chas Tyson.

That does not mean there are not drawbacks. For one, the board will have to navigate a testy local political climate with residents who largely revile a panel they see as an extension of colonial rule. Island voters broadly unhappy with the Garcia Padilla administration in November will elect a new governor as well as members of the legislature and scores of mayors.

"There are still politics here," said veteran bankruptcy attorney Richard Levin, who is following the situation. "The governor and legislature retain some authority."

For Height Securities analyst Daniel Hanson, the board is short on expertise in economic development. Any real solution for Puerto Rico requires fundamental economic changes, including at its underperforming education department, and it's unclear whether the board can facilitate such change.

But from a financial perspective, at least, the board seems less inclined to promote a political agenda than figure out a collaborative fix and then get out, said Matt Fabian, partner at Municipal Market Analytics.

"The board is not being installed to fight with Puerto Ricans or to impose some kind of federal view," Fabian said. "They just want these troubles to be fixed."

By REUTERS

SEPT. 5, 2016, 7:21 P.M. E.D.T.

(Reporting and writing by Nick Brown; Additional reporting by Hilary Russ; Editing by Dan Burns and Andrew Hay)

MSRB Submits Recommendations for Puerto Rico to the Congressional Task Force.

Read the MSRB's recommendations.

MSRB Leverages Learning Technology to Offer Municipal Market Education.

Washington, DC – Leveraging advances in online learning technology, the Municipal Securities Rulemaking Board (MSRB) today launched MuniEdPro, a suite of interactive, online courses about municipal market activities and regulations. Each MuniEdPro course provides real-world simulations that allow the learner to understand municipal securities transactions and the related market and regulatory considerations.

"We are excited to be able to combine our goal of providing relevant educational content with the latest digital learning methodologies," said MSRB Executive Director Lynnette Kelly. "Courses that improve the understanding of the municipal securities market—which is so important to investors and state and local governments—will benefit many market participants."

MuniEdPro courses are a resource for anyone looking to enhance their understanding of how municipal securities are issued, sold and traded. However, the courses are designed for financial professionals who want to reinforce their knowledge of the municipal securities market and its regulations.

The MSRB plans to regularly add courses to the MuniEdPro course catalog, which today features courses on:

- **The Decision to Borrow:** Roles and Responsibilities of Market Participants in Fixed-Rate, Primary Market Offerings; and
- **Rules and Risks:** Applying MSRB Rules in Relation to Municipal Market Risks.

"As we fully develop our new learning management system, we welcome feedback from market stakeholders to ensure that MuniEdPro meets the needs and expectations of its users," Kelly said.

Each MuniEdPro course is available for purchase individually or by subscription for organizations that wish to make MuniEdPro courses available to employees on a bulk basis or through an internal learning management system. Read more about MuniEdPro. Click here to access MuniEdPro.

The MSRB has provided municipal market education resources for many years, including free regulatory webinars and digital content available through its Education Center.

Date: September 6, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- SEC Investor Advocate Worried About Narrowing of Muni Market.
- Treasury Department Releases 2016-17 Priority Guidance Plan for Tax-Exempt Bonds – And It's Already About One-Third Complete!
- MSRB Seeks Mark-up Disclosure for Municipal Securities Transactions.

- Dallas' Statler Hotel Sells City's Incentives in Unheard Of Bond Offering.
- GASB Proposes Guidance for Debt that is Extinguished Early Using Only Existing Resources.
- NABL: IRS Modifies Rev. Proc. 2016-44 Transition Date.
- IRS Releases Updated Safe Harbors For Management Contracts In Tax-Exempt Bond-Financed Projects: Thompson Coburn
- Those of you interested in pensions, might want to take a look at *Marin Association of Public Employees v. Marin County Employees' Retirement Association*, *Puckett v. Lexington-Fayette Urban County Government*, and *Lenander v. Washington State Department of Retirement Systems.*
- And finally, *Res Ipsa Oh My God, What's that Smell?* is brought to you this week by *Tangedal v. Mertens*, in which property owners sued county inspectors for gross negligence following the implosion of their septic tank. "You're honor, we're contesting negligence. We'll stipulate to gross."

PUBLIC CONTRACTS - CALIFORNIA

California-American Water Company v. Marina Coast Water District

Court of Appeal, First District, Division 1, California - August 18, 2016 - Cal.Rptr.3d - 2016 WL 4400452 - 16 Cal. Daily Op. Serv. 9086

Water utility brought action against water district and county water resources agency for declaratory judgment that five contracts related to desalination project were void because a board member of the county water resources agency was financially interested in the contract.

Water district cross-complained for a declaration barring any challenge to the contracts, and county water resources agency cross-complained for a declaration the contracts were void. The Superior Court declared four of the contracts void after bench trial. Water district appealed.

The Court of Appeal held that:

- A public agency is not bound by the 60–day limitation period that governs validation actions when it seeks a judicial determination of the validity of a contract under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity;
- Water resources agency's cross-complaint was not barred by statute of limitations; and
- Board member had sufficient financial interest to invalidate contracts.

In water utility's action against water district and county water resources agency for declaratory judgment that contracts were void under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity, water resources agency's cross-complaint against the water district for declaratory judgment that the contracts were void related back to the water district's cross-complaint against the water resources agency that the contracts were valid, and thus the four-year limitation period for water resources agency's cross-complaint stopped running upon the water district's cross-complaint.

Member of county water resources agency's board of directors had a sufficient financial interest in four contracts related to desalination project for his participation in the agency's negotiation of the agreements to support invalidation of the contracts under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity, where the board member was a paid consultant for the project manager, the project manager increased board member's compensation from $25,000 to $160,000 while three of the contracts were being negotiated, and board member reasonably could have expected to receive more work based on the execution of a fourth contract that was negotiated after manager stopped working as a consultant.

PENSIONS - CALIFORNIA

Marin Association of Public Employees v. Marin County Employees' Retirement Association

Court of Appeal, First District, Division 2, California - August 17, 2016 - Cal.Rptr.3d - 2016 WL 4379316 - 16 Cal. Daily Op. Serv. 9044

County employees and their unions brought action against county employees' retirement association for declaratory, injunctive, and writ relief to halt implementation of revised retirement income formula. State intervened to defend constitutionality of Pension Reform Act.

The Superior Court sustained demurrer without leave to amend. Employees and unions appealed.

The Court of Appeal held that:

- Statutory hearing procedure did not apply to retirement board's determination that all members were barred from including in-kind benefits converted to cash in pension calculation because they had "been paid to enhance a member's retirement benefit";
- Retirement association's revision of members' retirement income formula was not an unconstitutional impairment of contracts; and
- Retirement association had no authority to establish equitable estoppel requiring items to be included in calculation of "compensation earnable."

Trial court's order sustaining county employees' retirement association's demurrer to county employees' and unions' estoppel and constitutional contract clause challenges to the revision of their retirement income formula under Pension Reform Act satisfied the statute requiring a statement of the specific grounds for the trial court's decision, and thus the judgment was not subject to reversal based on the brevity of the trial court's statement of grounds, where the order stated that a "statute, once duly enacted, is presumed to be constitutional."

The statute providing that a county employees' retirement board "shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit," and thus whether the element of compensation was subject to exclusion from the retirement association member's "compensation earnable" in calculating the member's pension, did not require a county retirement board to follow such a procedure in determining that in-kind benefits converted to cash were categorically "paid to enhance a member's retirement benefit" as applied to every member of the retirement association, and thus that in the future the payments would be excluded from every member's pension calculation.

County employees' retirement association's revision of retirement income formula under the Pension Reform Act for members who had not yet retired, in excluding payments for services rendered outside of normal working hours and for in-kind benefits converted to cash, was not an unconstitutional impairment of contracts under federal and state constitutions, since the revision was not an "unreasonable" change or a "substantial" impairment of the contracts, even though the revision resulted in a net decrease in the pension benefit, where the revision caused the county to stop making paycheck deductions for the items that were excluded from the pension calculation, and the revision excluded the items from the pension calculation only prospectively for future pay periods.

Short of actual abolition, a radical reduction of benefits, or a fiscally unjustifiable increase in employee contributions, the governing body may make reasonable modifications and changes to

public employees' pension before the pension becomes payable, and until that time the employee does not have a right under the contract clause of the constitution to any fixed or definite benefits but only to a substantial or reasonable pension.

A public pension system is subject to the implied qualification that the governing body may make reasonable modification and changes before the pension becomes payable and that until that time the employee does not have a right to any fixed or definite benefits, which can mean that any one or more of the various benefits may be wholly eliminated prior to the time they become payable, so long as the employee retains the right to a substantial pension.

Any representations or promises made by county employees' retirement association to county employees regarding calculation of their pensions could not, under doctrine of equitable estoppel, prevent the association from implementing and enforcing new definition of "compensation earnable" set out in Pension Reform Act, and require the association to instead calculate "compensation earnable" to include in-kind benefits converted to cash or payments for additional services rendered outside of normal working hours. Association's representations or promises could not displace clear statutory language or delay its implementation.

PENSIONS - KENTUCKY

Puckett v. Lexington-Fayette Urban County Government

United States Court of Appeals, Sixth Circuit - August 15, 2016 - F.3d - 2016 WL 4269802

Retired county employees brought action against county, Commonwealth of Kentucky, and others, alleging that statutory amendment reducing cost of living adjustments (COLA) to their service retirement annuities violated Contract Clause, Due Process Clause, and Takings Clause of state and federal constitutions.

The United States District Court granted defendants' motions to dismiss and subsequently denied plaintiffs' motions to alter or amend judgment and for leave to amend complaint. Plaintiffs appealed.

The Court of Appeals held that:

- The court was without jurisdiction to consider the claims against the Commonwealth based on Eleventh Amendment sovereign immunity principles;
- The Ex parte Young doctrine was applicable to permit suit against individual state officers for the alleged violations of plaintiffs' federal constitutional rights;
- Addressing questions of first impression in the circuit, the legislature's statutory scheme for reducing the extent of future COLA increases to retired county workers did not constitute an unconstitutional impairment of contracts;
- Assuming arguendo that plaintiffs had a protected property interest, plaintiffs did not state a plausible procedural due process claim;
- Assuming arguendo that plaintiffs had a protected property interest, plaintiffs did not state a plausible substantive due process claim;
- Plaintiffs did not state a plausible Takings Clause claim; and
- Plaintiffs waived their argument that the district court erred when it denied their motion for leave to amend their complaint.

Based on Eleventh Amendment sovereign immunity principles, the Court of Appeals was without jurisdiction to consider claims brought by retired county employees against Commonwealth of

Kentucky concerning reduced cost of living adjustments (COLA) to their service retirement annuities. Kentucky, which did not file an answer to employees' complaint, did not waive its immunity defense by raising that defense in its motion to dismiss, there was no question that Congress had not abrogated Kentucky's immunity for present purposes, and none of the exceptions to the doctrine of sovereign immunity applied.

In action brought by retired county employees against Commonwealth of Kentucky and various state officials concerning reduced cost of living adjustments (COLA) to employees' service retirement annuities, the doctrine set forth in Ex parte Young was applicable to permit suit against individual state officers pursuant to § 1983 for the alleged constitutional violations where the complaint alleged an ongoing violation of federal law and sought prospective relief.

Kentucky legislature's statutory scheme for reducing the extent of future cost of living adjustment (COLA) increases to retired county employees' service retirement annuities did not constitute an unconstitutional impairment of contracts. Even assuming that the Police and Firefighters' Retirement and Benefit Fund Act created some contractual obligations, employees did not plead facts showing a clear intent on the part of the legislature to create contractual rights against the modification of a specific COLA formula, as employees pointed to no language within the Act, such as a provision giving them immutable lifetime entitlement to COLA increases, and nothing in the Act's legislative history, such as evidence that COLA formula was part of bargained-for exchange, indicating any expression of intent by the legislature to create a contractual right to the specific COLA formula in effect at the time they retired.

Assuming arguendo that retired county employees had a protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, employees did not state a plausible procedural due process claim in connection with Kentucky legislature's amendment of statute to reduce future COLAs. Although amendments to state's Police and Firefighters' Retirement and Benefit Fund Act were designated as emergency legislation, employees failed to allege any reason why the legislature's emergency designation was improper, or how that designation denied them any sort of "process" they were due.

Assuming arguendo that retired county employees had a protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, employees did not state a plausible substantive due process claim in connection with Kentucky legislature's amendment of statute to reduce future COLAs. When it amended the Act, the Kentucky General Assembly explained that its basis for doing so was to keep the Policemen's and Firefighters' Retirement Fund financially sound and resolve its financial difficulties, and employees' conclusory allegation, that there was "no rational connection between the amendments to the Act and any legitimate government interest," was nothing more than recitation of essential element of claim, insufficient to withstand motion to dismiss.

Where retired employees of Kentucky county had no protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, their claim under the Takings Clause necessarily also failed.

Plaintiffs waived their amendment claim on appeal where, although they requested reversal of the district court's denial of their motion to amend the complaint, they developed no argument in their brief.

ZONING - MASSACHUSETTS

311 West Broadway LLC v. Zoning Bd. of Appeal of Boston

Appeals Court of Massachusetts, Suffolk - August 23, 2016 - N.E.3d - 90 Mass.App.Ct. 68 - 2016 WL 4431561

Neighbor appealed from decision by city zoning board of appeal granting landowner approval to change occupancy of its property.

After the case was remanded by the Superior Court and proceedings were stayed, the board issued another decision in landowner's favor. After more than 20 days, landowner moved to dismiss the Superior Court action for neighbor's failure to appeal second decision. The Superior Court Department granted the motion. Neighbor appealed.

The Appeals Court held that neighbor was not required to appeal second decision to invoke Superior Court's subject matter jurisdiction.

Neighbor challenging zoning appeal board's approval of landowner's change of occupancy, who had already appealed an earlier decision of board in litigation that remained pending, was not required to appeal board's decision after superior court remand or to amend its complaint within 20 days, in order to invoke subject matter jurisdiction of superior court, despite ordinance stating that appeal must be filed within 20 days. Neighbor had been diligent in efforts to assert rights, landowner could not claim surprise and was not prejudiced by any delay, and decision after remand did not concern an entirely different or new project.

PUBLIC LANDS - MASSACHUSETTS

Smith v. City of Westfield

Appeals Court of Massachusetts - August 25, 2016 - N.E.3d - 2016 WL 4467901

After a preliminary injunction had been granted that prevented school construction project at city playground, the Superior Court vacated injunction. Residents appealed.

The Appeals Court held that:

- City did not specifically designate playground for public use, and thus constitutional protections were not triggered;
- Statewide comprehensive outdoor recreation plan (SCORP) was inconsistent with statutory and judicial interpretation of applicable constitutional provision; and
- Prior public use doctrine did not apply to preclude city from permitting construction of school building on property.

City did not specifically designate, in a manner sufficient to invoke constitutional protections, by deed or other recorded restriction on the land, a playground for public purposes and land was not taken for those purposes, and therefore city was not required to obtain two-thirds vote of the General Court before permitting construction of school building on land. art. 97 of the Amendments to the Massachusetts Constitution.

Statewide comprehensive outdoor recreation plan (SCORP) that considered land rehabilitated with Federal Land and Water Conservation Fund (LWCF) as being public lands protected under state constitution did not render playground rehabilitated with LWCF grant public lands subject to constitutional protections. SCORP contradicted statutory and judicial interpretation of applicable constitutional provision. art. 97 of the Amendments to the Massachusetts Constitution.

Prior public use doctrine did not preclude city from permitting construction of school building on land that had previously been used as playground, where land had been conveyed to city with no limitation on its use, and there was neither a taking nor a prior public or private grant restricting the use of the land.

ENVIRONMENTAL - MISSOURI

City of Harrisonville v. McCall Service Stations

Supreme Court of Missouri, en banc - August 23, 2016 - S.W.3d - 2016 WL 4443950

City filed suit against owner and prior owner of gas station for negligence and trespass arising out of soil contamination caused by leak from underground petroleum storage tanks, which was discovered during city's project to upgrade sewer system. City also brought claims for compensatory and punitive damages against Missouri Petroleum Storage Tank Insurance Fund for negligent and fraudulent misrepresentation, after Fund refused to pay costs incurred by city to hire contractor qualified to perform that portion of contract affected by contamination.

The Circuit Court entered judgment on jury's verdict for city on all claims, and then entered remittitur on punitive damages award against Fund. Fund, owner, and prior owner appealed, and city cross-appealed remittitur of punitive damages award.

The Supreme Court of Missouri held that:

- Jury instructions referencing "consequential" damages did not give jury impermissible "roving commission";
- Whether city incurred additional costs that exceeded $72,009.89 in completing portion of sewer system upgrade affected by soil contamination, for purposes of calculating compensatory damages, was question for jury;
- Whether city relied to its detriment on misrepresentation by Fund's third-party administrator that Fund would pay costs incurred by city to hire contractor, recommended by administrator, to perform portion of city's sewer system upgrade affected by soil contamination, less amount that city would have paid if it had not hired contractor, was question for jury;
- Statute authorizing Fund to provide coverage for claims involving property damage or bodily injury caused by leaking petroleum storage tanks did not authorize award of compensatory and punitive damages;
  Fund's board of trustees, and not Fund itself, was party subject to liability for fraudulent and negligent misrepresentation; and
- Interests of justice warranted remand following reversal of punitive damages award against Fund, in order to permit city to amend complaint to substitute/add board trustees and its members as defendants.

ANNEXATION - NEBRASKA

City of Springfield v. City of Papillion

Supreme Court of Nebraska - August 26, 2016 - N.W.2d - 294 Neb. 604 - 2016 WL 4491757

City filed suit, claiming that another city and county illegally annexed land that it had mapped for future growth and development.

The District Court dismissed the case for lack of standing. City appealed.

The Supreme Court of Nebraska held, as a matter of first impression, that County Industrial Sewer Construction Act granted city standing to challenge allegedly illegal annexation.

County Industrial Sewer Construction Act granted city standing to challenge other city's and county's annexation of land that infringed on the city's powers over areas mapped for future growth and development. City's right to exercise powers under the Act, associated with a municipality's area of future growth and development, was a personal, legal interest of the city's, regardless of whether it was actively exercising those rights at time the other city annexed the disputed territory.

FAIR HOUSING ACT - NEW JERSEY

In re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean

Superior Court of New Jersey, Appellate Division- July 11, 2016 - 446 N.J.Super. 259 - 141 A.3d 359

Several municipalities brought declaratory judgment actions seeking determination of their fair share of affordable housing obligation under Fair Housing Act (FHA).

Actions were consolidated. The Superior Court, Law Division, Ocean County entered order directing Special Regional Master to include as part of fair share calculation a separate component for municipalities' fair share obligation during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation. Municipalities sought interlocutory review.

The Superior Court, Appellate Division, held that:

- Separate component was improper, and
- Doctrine of judicial estoppel did not preclude such holding.

Separate, retroactive obligation for municipalities' fair share of affordable housing during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation was not an appropriate component of municipalities' housing obligation for third-round cycle under Fair Housing Act (FHA). Text of FHA demonstrated legislature's concern with present and prospective fair share housing, low and moderate income households formed during gap period needing affordable housing could be captured in calculation of municipalities' fair share without resort to retroactive obligation component, and imposition of new obligation was best left to executive and legislative branches.

Doctrine of judicial estoppel did not preclude Appellate Division's holding that separate, retroactive obligation for municipalities' fair share of affordable housing during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation was not an appropriate component of housing obligation for third-round cycle under Fair Housing Act (FHA). Appellate Division had not previously been asked to address, and had not sanctioned, a gap-period affordable housing obligation in prior action, and none of the parties in instant action participated in prior action.

UTILITY IMPACT FEES - NORTH CAROLINA

Quality Built Homes Incorporated v. Town of Carthage

Supreme Court of North Carolina - August 19, 2016 - S.E.2d - 2016 WL 4410716

Developers brought action seeking declaration that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority under Public Enterprise Statutes.

The Superior Court granted summary judgment in favor of city. Developers appealed. The Court of Appeals affirmed. Developers sought discretionary review, which was granted.

The Supreme Court of North Carolina held that water and sewer impact fee ordinances exceeded city's authority under Public Enterprise Statutes.

Water and sewer impact fee ordinances that triggered immediate charges for future and sewer water expansion, regardless of whether the property owner ever connects to the system or whether city ever expanded the system, was not collection of monies for operation, maintenance, and expansion of water and sewer systems permitted by Public Enterprise Statutes. While Statutes allowed city to charge for the contemporaneous use of its water and sewer systems, the plain language of the Public Enterprise Statutes clearly failed to empower city to impose impact fees for future services.

MUNICIPAL UTILITIES - NORTH CAROLINA

Acts Retirement-Life Communities, Inc. v. Town of Columbus

Court of Appeals of North Carolina - August 2, 2016 - S.E.2d - 2016 WL 4087669

Owner of retirement facility brought action against town, seeking a declaration that town's decision to charge retirement facility the commercial rate for some water and sewer services but the residential rate for others violated town's charter and state constitution, alleging claim for relief based on unjust enrichment, and requesting permanent injunction requiring town to reclassify meters as commercial.

After bench trial, the Superior Court ruled that reclassification was arbitrary, capricious, and unreasonable, awarded owner compensatory damages, and denied request for injunctive relief. Town appealed, and owner cross-appealed.

The Court of Appeals held that:

- Owner's cause of action accrued, and three-year statute of limitations began to run, when reclassification took effect, and
- Continuing wrong doctrine did not apply.

Owner of retirement facility's cause of action against town challenging town's reclassification of water meters from commercial to residential, seeking declaratory and injunctive relief as well as damages for unjust enrichment, accrued, and three-year statute of limitations began to run, when reclassification took effect.

Each water bill issued by town to owner of retirement facility, after reclassifying some of retirement facility's water meters from commercial to residential, did not constitute a separate wrong that

triggered its own limitations period, and thus continuing wrong doctrine did not apply to the three-year statute of limitations applicable to owner's action against town seeking declaratory and injunctive relief as well as damages for unjust enrichment resulting from alleged overcharges. Overcharges were the continual ill effects of the allegedly unlawful reclassification, which triggered the statute of limitations, and town did not reclassify the water meters each month.

IMMUNITY - NORTH DAKOTA

Tangedal v. Mertens

Supreme Court of North Dakota - August 25, 2016 - N.W.2d - 2016 WL 4485811 - 2016 ND 170

Property owners brought negligence action against governmental entity responsible for septic system inspections.

The District Court granted summary judgment in favor of entity and denied property owners' motion to amend their complaint to add entity employee as a defendant. Property owners appealed.

The Supreme Court of North Dakota held that public duty immunity precluded property owners' negligence claim against governmental entity responsible for septic system inspections and its employee.

There was no special relationship between property owners and governmental entity responsible for septic system inspections and its employee, and therefore public duty immunity precluded property owners' negligence claims against entity and employee stemming from inspection, where invoice for septic inspection identified property owners' real estate agent as the customer, and property owners proffered no evidence to establish he existence of a special relationship.

A political subdivision and an employee may not be held jointly liable for a claim for an injury caused by the performance or nonperformance of a public duty unless a special relationship is established. When the existence of a special relationship is established, the political subdivision may be liable if the employee's actions are within the scope of employment and the employee may be personally liable if the employee's conduct within the scope of employment constitutes reckless or grossly negligent conduct, or willful or wanton misconduct.

IMMUNITY - UTAH

Craig v. Provo City

Supreme Court of Utah - August 26, 2016 - P.3d - 2016 WL 4506309 - 2016 UT 40

Plaintiffs brought timely tort action against city pursuant to the Governmental Immunity Act, which was dismissed without prejudice after the limitations period had lapsed for plaintiffs' failure to submit statutorily-required bond.

Plaintiffs filed second action with the appropriate bond under statute allowing parties to commence a second action within one year of dismissal of original action for reasons other than on the merits.

The Fourth District Court held statute allowing parties to commence a second action did not apply to claims against governmental entities, and dismissed the second action. Plaintiffs appealed. The

Court of Appeals reversed. City filed petition for certiorari, which was granted.

The Supreme Court of Utah held that claim filed outside time limits of Act is time-barred and cannot be resurrected by terms of Savings Statute.

PENSIONS - WASHINGTON

Lenander v. Washington State Department of Retirement Systems

Supreme Court of Washington, En Banc - August 18, 2016 - P.3d - 2016 WL 4401213

Retired state trooper brought declaratory judgment action against Department of Retirement Systems (DRS), asserting statutory and constitutional challenges to newly adopted actuarial factors by which DRS reduced trooper's monthly pension benefits based on his opting for a pension that would allow surviving spouse to receive monthly pension benefits at the same amount after his death. Trooper also appealed from administrative proceeding in which DRS held the actuarial reduction was properly calculated.

The Superior Court denied trooper's claims for relief. Trooper appealed. The Supreme Court granted direct review.

The Supreme Court of Washington held that:

- DRS had statutory authority to amend its regulations to ensure that benefits paid to Washington State Patrol Retirement System (WSPRS) retirees who opted for a pension that would allow a surviving spouse to continue to receive monthly pension benefits at the same amount after the retiree's death remained actuarially equivalent in value to the pension benefit previously available;
- DRS has broad authority to adopt such actuarial factors as it deems necessary for the purpose of calculating a WSPRS survivor benefit of "equal value" to the only previously available benefit, but, at a minimum, the DRS must consider and adopt a mortality rate and interest rate it deems appropriate; and
- Amendment by DRS of regulations containing actuarial factors for calculating survivor benefit for retired Washington State Patrol employees did not substantially impair the pension contract rights of retired state trooper, for purposes of analysis under State Constitution's Contract Clause.

Department of Retirement Systems (DRS) had statutory authority to amend its regulations to ensure that benefits paid to Washington State Patrol Retirement System retirees who opted for a pension that would allow a surviving spouse to continue to receive monthly pension benefits at the same amount after the retiree's death remained actuarially equivalent in value to the only pension benefit previously available, i.e., a survivor benefit for a spouse who outlived the retiree that was usually equal to 50 percent of the retiree's monthly benefit. Such authority existed without express statutory language reserving authority to DRS to make future amendments to actuarial factors.

Department of Retirement Systems (DRS) has broad authority, under statute requiring it to collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, to adopt such actuarial factors as it deems necessary for the purpose of calculating a Washington State Patrol Retirement System survivor benefit of "equal value" to the only previously available benefit, i.e., 50 percent of retiree's monthly benefit, but, at a minimum, the DRS must consider and adopt a mortality rate and interest rate it deems appropriate.

Retired state trooper had contractually protected right under Washington State Patrol Retirement

System and Department of Retirement Systems (DRS) statutes to a retirement allowance for life, computed based on years of public service and final average salary, as well as the right to select a survivor benefit that was of equal value, subject to DRS's authority to update the actuarial factors involved in that calculation of equivalency, but retired trooper did not have a vested contract right to the three percent actuarial reduction first used by DRS in calculating survivor benefit.

Amendment by Department of Retirement Systems (DRS) of regulations containing actuarial factors for calculating survivor benefit for retired Washington State Patrol employees did not substantially impair the pension contract rights of state trooper, for purposes of analysis under State Constitution's Contract Clause. Trooper was still entitled to receive a retirement benefit based on same calculation of average final salary and years of service.

Piper Jaffray Fined $12,500 Over Primary Market Disclosure Violations.

WASHINGTON – Piper Jaffray & Co. has agreed to pay a $12,500 fine after the Financial Industry Regulatory Authority found it submitted 23 disclosure documents related to primary offerings late to the Municipal Securities Rulemaking Board's EMMA system.

Representatives from the Minneapolis-based firm could not be reached for comment. The firm accepted the settlement without admitting or denying FINRA's findings.

The self-regulator found that the late filings, which violated MSRB Rule G32 on disclosures in connection with primary offerings rules, took place from November 2014 through September 2015. Each of the late filings was related to primary offerings of municipal bonds that Piper Jaffray underwrote.

Of the 23 documents, 12 were official statements, one was an amendment to an official statement, eight were notices for offerings that were exempt under Securities and Exchange Act Rule 15c212 on disclosure, and two were advanced refunding documents. The submissions were filed from one to 27 business days late. The 23 documents represented 2.4% of Piper Jaffray's submissions to EMMA during FINRA's review period.

MSRB Rule G32(b) requires that the underwriter of a primary offering of municipal securities submit certain documents to EMMA by specified deadlines. Underwriters generally have to submit the official statement linked to the offering within one business day after receiving it and at the latest by the transaction closing date.

If Rule 15c212 exempts the offering and an official statement won't be created, the underwriter must submit a notice divulging that information along with the preliminary official statement by the closing date. If there is no preliminary official statement prepared, the underwriter must give notice of that fact.

Additionally, the rule states that if a primary offering advance refunds outstanding munis and an advanced refunding document is prepared, the underwriter must submit that document and certain other information within five business days after the transaction's closing date.

FINRA found that Piper Jaffray's late filings that violated those provisions were because of turnover in the staff of the department that was responsible for submitting documents to EMMA.

The firm did not have written policies and procedures that adequately addressed the possible effect

of turnover on EMMA submissions and thus also violated MSRB Rule G27 on supervisions, FINRA said.

Piper Jaffray has since modified its written supervisory procedures and its supervisory system generally with regard to instructions about the process for submitting documents to EMMA, among other steps, according to FINRA.

The Bond Buyer

By Jack Casey

August 29, 2016

How to Best Use Zoning Policies to Spur Workforce Housing Development.

The potential and limitations associated with inclusionary zoning, a tool used by a growing number of U.S. cities to encourage or require workforce housing development, are explored in a new ULI report, The Economics of Inclusionary Zoning.

While many U.S. cities have experienced a post–Great Recession economic revival, the accompanying run-up in housing costs is threatening to undermine this success by pricing workers out of cities, lengthening their commutes, and diminishing livability, notes the report. As a result, local officials are turning to inclusionary zoning as a way to combat the shortage of housing that is affordable to moderate- and lower-income workers.

The growing use of this zoning authority in cities across the United States—including New York, San Francisco, Atlanta, Detroit, Los Angeles, Nashville, Pittsburgh, and Seattle—has prompted requests for a ULI analysis of its effectiveness, explains J. Ronald Terwilliger, founder and chairman of the ULI Terwilliger Center for Housing and a former ULI chairman. “A number of local government officials and other stakeholders in different localities have sought objective advice from ULI on how to structure an inclusionary zoning policy that addresses the housing needs of their communities,” he says. “This report shows how inclusionary zoning can best be used to do just that. Ultimately, we are aiming to foster greater private sector involvement in affordable housing development.”

Through inclusionary zoning, cities require or encourage developers to create below-market rental apartments or owner-occupied housing in connection with local zoning approval of a proposed market-rate development. Inclusionary zoning policies depend on a prevalence of market-rate development to be successful; the policies tend to be ineffective in areas not experiencing significant market-rate activity.

“Our analysis and research find that local zoning policies can effectively encourage development of workforce housing, mostly in strong real estate market environments where communities provide the optimal mix of incentives,” says Stockton Williams, the author of the report and the executive director of the Terwilliger Center.

More than 500 cities and counties in 27 states and the District of Columbia have adopted inclusionary zoning policies that either are mandatory or voluntary or that incorporate a mix of the two approaches, the report notes. In general, the less flexible policies tend to be mandatory, require greater set-asides of affordable units, impose longer rent restrictions, target a lower-income category, and are applicable community-wide with no opt-outs and few or no incentives to make the

policies more appealing to landowners and developers. The more flexible policies tend to be voluntary, require fewer set-asides, impose shorter rent restrictions, have a higher-income target, apply to specific housing types and locations within a community, make opt-outs available, and include market-responsive incentives.

The report, which focuses on multifamily rental development, is divided into three areas:

- Understanding the economics of development, which provides an overview of real estate development economics and key drivers of real estate development feasibility from a developer's perspective;
- Assessing the impacts of inclusionary zoning on development, which assesses how key features of inclusionary zoning, such as share of below-market-rate housing and income targeting for those units, affect development feasibility; and
- Optimizing the effectiveness of incentives for inclusionary development, including direct subsidies, tax abatements, density bonuses, and reduced parking requirements.

"To the extent that inclusionary zoning policies remain in place over a sustained period of time, land prices may adjust and the requirements may be absorbed as a 'cost of doing business' in the jurisdiction," the report says. "The challenge is that the most effective policies need to have the ability to adapt in response to changing market conditions. Both policy consistency and policy flexibility have value to developers and contribute to the success of an inclusionary zoning policy. Balancing them [consistency and flexibility] appropriately is perhaps the central challenge for cities seeking to make the best use of this particular policy tool."

Urban Land Institute

By Trisha Riggs

September 2, 2016

Treasury Department Releases 2016-17 Priority Guidance Plan for Tax-Exempt Bonds - And It's Already About One-Third Complete!

On August 15, 2016, the Treasury Department released its 2016 – 2017 Priority Guidance Plan (the "Plan"). Tax-exempt bonds are the last category in the Plan, but the Plan lists the priority guidance categories in alphabetical order. Had these categories been listed in order of esteem, we know that tax-exempt bonds would have been [INSERT ESTEEM-BASED POSITION HERE].

Any respectable "to-do" list includes items that already have been, or soon will be, completed. This balances against the difficult items that have languished so that the person who created the list (or had it thrust upon him or her) has some sense of accomplishment. Otherwise, the creation or review of the to-do list would be the soul crushing experience that it's intended to be. By this standard, the Plan's priority guidance for tax-exempt bonds is an exceptionally well crafted to-do list. Sure, the seven items on the list include projects that have been there (and will very likely continue to be there) for years, but it also includes two items that are complete – one of which was completed before the Plan was released! So, what's the Plan for tax-exempt bonds? Read on.

Herewith are the Treasury Department's 2016 – 2017 priority guidance plan items for tax-exempt bonds:

1. Guidance on remedial actions for tax-advantaged bonds under §§54A, 54AA, and 141.
2. Regulations on the definition of political subdivision under §103 for purposes of the tax-exempt, tax credit, and direct pay bond provisions. Proposed regulations were published on February 23, 2016. As we have previously discussed (here, here, and here), these proposed regulations require nothing short of a page-one rewrite.
3. Revenue procedure that will update Revenue Procedure 97-13 relating to the conditions under which a management contract does not result in private business use under §141. This update was released in the form of Revenue Procedure 2016-44 on August 22, 2016.
4. Final regulations on public approval requirements for private activity bonds under §147(f). Proposed regulations were published on September 9, 2008. This is one of the languishing items that needed the ameliorative counterbalancing of a completed task.
5. Final regulations on arbitrage investment restrictions under §148. These final regulations were promulgated as Treasury Decision 9777 on July 18, 2016 (finalizing proposed regulations that were published on September 26, 2007 and September 16, 2013).
6. Final regulations on the definition of issue price for tax-exempt bonds under §148. Proposed regulations were published on June 24, 2015. As those that follow the tax-exempt bond industry and those that read our blog (there should be complete identity between these groups) know, these proposed regulations are quite controversial.
7. Regulations on bond reissuance under §150. This is another perennial task on the to-do list.

We have been summarizing and analyzing the tax-exempt bond guidance items in the Plan as they have been released (including in the iterative form of proposed regulations), so watch this space for more as the Treasury Department continues to release its tax-exempt bond guidance.

Squire Patton Boggs – Michael A. Cullers

USA August 31 2016

San Antonio's Key to Economic Success: Immigrants.

The city demonstrates how to leverage foreign partnerships.

The typical view of an immigrant in this country is not far removed from the image of thousands of people pouring in to Ellis Island in the early 1900s — people with little money to their names and big dreams of making their fortunes in America. That view is still true in many ways, but it's also true that many of today's immigrants are well-to-do international elites. For instance, in Miami — long associated with Cubans arriving by raft — there are now a lot of rich South Americans. West Coast cities like Seattle and San Francisco have many affluent East Asians. Houston has wealthy Indians, New York City many Russian tycoons, and so on. These immigrants bring financial and human capital. But are cities leveraging their immigrants, and their broader connection with certain countries, to generate growth locally?

The answer varies, but one successful example has been the relationship between San Antonio and Mexico. Their ties run deep; Texas was a part of Mexico until its independence in 1836. Since then, San Antonio has attracted Mexican immigrants. But as crime has risen in Mexico in recent years, there's been a professional-class exodus of Mexican nationals to affluent northern San Antonio.

The influx also has to do with long-existing business partnerships that have been actively encouraged by San Antonio's political establishment. The relationship really blossomed in 1981,

when Henry Cisneros was elected as the first Hispanic mayor of a major U.S. city. Cisneros wanted to connect local San Antonio businesses with Mexican consumers. So he established a relationship with the Mexican president, further bolstered existing sister city partnerships, promoted tourism and attended Mexico's trade fairs.

The relationship has grown ever since — getting a strong boost from the signing of the North American Free Trade Agreement in 1992. NAFTA made San Antonio a prominent stop on the Mexico-to-Canada trade route. All this has combined to spur growth in San Antonio, which according to the Milken Institute is one of America's best-performing cities economically. Various Mexican institutions, such as Cemex concrete and the University of Mexico, have opened branches there. According to the local Hispanic Chamber of Commerce, San Antonio exports more goods and services to Mexico than 42 U.S. states combined. Such commerce has encouraged the residential growth of Mexican nationals. "San Antonio is a platform for Mexicans and Mexican companies that want a halfway step [into the U.S.]," says Cisneros. "It's culturally comfortable; business is conducted in multiple languages."

San Antonio, which is 63 percent Hispanic and has been called "Mexico's northernmost city," may be an extreme example of this local-foreign alignment. But the concept is applicable elsewhere. It is common, after all, for municipal officials to travel nationwide recruiting companies and building partnerships. In cities with business-savvy immigrants and existing foreign ties, there is the potential to create lucrative international partnerships that generate growth locally.

GOVERNING.COM

BY SCOTT BEYER | SEPTEMBER 2016

The Metro Areas With More New Businesses.

Younger businesses and startups are often key to fueling future economic growth, so considering the age of employers can provide valuable insight into a local economy.

A Governing analysis of data released Thursday by the U.S. Census Bureau depicts sizable variation in the presence of employers that have been operating for no more than three years. In the largest metro areas, younger companies make up anywhere from 15 percent to 30 percent of employers. Nationally, they account for about 22 percent of businesses with paid employees.

The census estimates were published as part of the new Annual Survey of Entrepreneurs, which covers data collected in 2014 for states and the top 50 metro areas.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | SEPTEMBER 1, 2016

Jobs Report: Local Government Employment Picking Up.

The latest job estimates from the Labor Department suggest a recent uptick in local government

payrolls.

In August, the sector added 24,000 jobs, while July estimates were revised for a monthly gain of 43,000 positions nationally. Total local government employment, including education, has expanded by about 1 percent so far this year.

Growth in hiring among schools, in particular, appears to have accelerated after changing little over the first half of the year. Aggregate totals increased by 12,000 jobs last month and 35,000 in July.

Employment for all other areas of local government registered increases each month this year, albeit very slight gains some months. In all, local public employment (excluding education) has expanded by 68,000 positions since December, an increase of 1.1 percent.

Still, local government employment remains a long way off from pre-recession levels. The Labor Department's August estimate is more than 300,000 jobs below peak employment, a figure that rises substantially when population growth is taken into consideration.

By comparison, state-level public employment has showed little movement. Current estimates for total state government jobs, excluding education, are the same as they were in January.

GOVERNING.COM

BY MIKE MACIAG | SEPTEMBER 2, 2016

In Flint's Aftermath, Water Will Run by New Rules.

The water crisis in Michigan highlighted major problems with not just federal regulations but the way localities enforce them. That's all likely to change soon.

For years, Denver Water, like many other drinking water utilities, would refer its customers concerned about the lead content in their water to state-approved labs that could collect and analyze samples from the homeowners' faucets. This summer, Denver Water made the process much easier: Now if a resident is concerned, the agency will send out a testing kit, analyze the water in its own labs and report the results back to the customer — all for free. More than 100 homeowners used the new service in its first month.

Perhaps this should have been done earlier. But it wouldn't be happening now had it not been for Flint, Mich. The Flint water crisis, which exposed adults and children to dangerous levels of lead in their drinking water, is reverberating throughout the country.

The Denver agency, which serves 1.4 million people in the city and nearby communities, has also started automatically replacing lead service lines as it finds them in its normal maintenance work. The service lines, which connect water mains under streets to individual buildings, are the main source of lead contamination in water systems. But they usually have split ownership. In many cities, the utility owns everything up to the sidewalk, while homeowners and other landlords own everything on their property. The divided ownership makes it difficult to replace the pipes. In Denver, the property owner actually owns the entire service line. Nonetheless, Denver Water is offering to do the replacements for free, at least in places where it's already digging to do other work.

“Since the tragedy in Flint, people are more aware of what could be happening in their own plumbing and in their homes,” says Travis Thompson, a Denver Water spokesman. “But now with people paying attention, how can we use that to get the lead completely out of our community?”

It’s a clear-cut goal, but not an easy one to achieve. Just a handful of cities have actually eliminated all the lead in their drinking water systems, and then only through a years-long process. Local officials who want to replace lead pipes completely still have to ensure that the lead plumbing already in the ground is safe until the day, however distant, when those lead pipes are finally removed.

Lead in drinking water has been an issue for decades. Thirty years ago, Congress banned the use of plumbing that contained lead after research showed that any exposure to it can be dangerous, particularly to pregnant women and children. It can damage the brain, red blood cells and kidneys, and can cause lifelong developmental problems.

The disaster in Flint reminded the country, though, that lead pipes are still in operation in many water systems. There are approximately 7.3 million lead service lines throughout the U.S. that connect water mains to buildings. And service lines aren’t the only source of lead in water. Lead can leach into the water supply from old plumbing fixtures and drinking fountains. Galvanized steel pipes, which were used frequently for service lines before the 1960s, can also cause lead poisoning. While national attention has focused on Flint, dangerous lead levels have surfaced, among other places, in schools in Newark, N.J., and Portland, Ore.; state homes for the disabled in Texas; and even the drinking fountains in the U.S. Capitol.

The reason why stories like those are not more common — with so many lead pipes still in use — is that water utilities treat their water with chemicals that form a protective layer on the surface of lead pipes. The chemical barrier prevents lead from leaching into the water. In fact, the federal government required drinking water systems to use that approach when the U.S. Environmental Protection Agency (EPA) issued the regulations known as the Lead and Copper Rule in 1991. The rule requires drinking water utilities to take water samples from high-risk homes or buildings every six months. If 10 percent of those samples contain more than 15 parts per billion of lead, the utility must take steps to address it, including the use of anticorrosive chemicals.

The problem with this approach, though, is that the protective coating is fragile. It can be damaged when the pipe is moved or connected to another pipe made of a different metal, or when there is a change in the water source. In Flint, the water system and individual homes have had lead plumbing for decades. Residents didn’t report anything out of the ordinary until April 2014, when the city, under a state-appointed emergency manager, switched the source of its drinking water from Detroit’s Lake Huron to the Flint River. Because Flint failed to add anticorrosive chemicals to the river water — as required by the EPA — the new water source corroded the pipes, and the toxic metal entered the drinking water.

It’s to prevent disasters like the one in Flint that the EPA requires water systems to conduct tests in homes regularly for high levels of lead. Local and state officials in Flint broke those rules. For example, the water samples are supposed to be taken from homes most at risk of lead poisoning, ones which the utility knows or suspects are served by lead service lines. But in Flint, more than half of the samples submitted by the city after the switch to river water were taken from homes with service lines made of copper, rather than lead. Flint’s water utility also told customers to run their water for several minutes before taking a sample. The practice, known as “pre-flushing,” can lower lead levels in samples submitted for testing.

The testing violations in Flint were particularly egregious, and three officials from the city and

Michigan's Department of Environmental Quality face criminal charges for the apparent deception. But environmental and health activists have long complained that the EPA's testing protocol is too lax and ambiguous.

As news of the Flint water crisis spread, it became clear that utilities weren't all conducting their tests the same way. Some, as in Flint, recommended pre-flushing. Others told customers to remove aerators before collecting the sample. Most wanted samples of the water that first came out of the faucet; some asked for samples after the water changed temperature. "One thing that the water utility industry wants is specific instructions on how we do things," says Scott Potter, the director of the Nashville Metro Water Service and the president of the Association of Metropolitan Water Agencies. "If you have specificity, then the entire industry is doing it one way — the way scientists say is the best way — and we can all trust the data."

New rules to address these issues could come as soon as next year, as the federal agency wraps up a six-year effort to rewrite the Lead and Copper Rule. In light of Flint, the new rules could require major changes for water utilities. The federal government could require them to test homes more often. It could lower the threshold of lead in water that requires utilities to respond. And it could even push water utilities to replace lead service lines altogether.

Activists say it's not just the rules that matter, but the way they are enforced. They hope the EPA and the state agencies charged with administering its rules will become more aggressive in making sure they're followed. "Flint is an extreme example of governmental indifference and callousness," says Eric Olson, the director of the health program at the Natural Resources Defense Council. "But I do believe it highlights a more systemic problem with a lack of attention to and, frankly, political will for enforcement and for stepping in and insisting on compliance."

Only 11.2 percent of the 8,000 violations of the Lead and Copper Rule throughout the country resulted in any sort of enforcement action in 2015, according to Olson's analysis of EPA data. Even in those cases, which mostly involved small water systems, regulators operated with a soft touch, typically just prodding the utilities to fix their systems. It's the regulatory equivalent of being let off at a traffic stop with a written warning. Regulators sought or assessed penalties in only 3 percent of the reported violations. There is also evidence that suggests states are underreporting violations. Flint isn't even included in the list of Michigan water systems that broke the rule in 2015. Only government regulators, not individual residents, can start the enforcement process, so if the regulators fail to do their jobs, nothing happens. "There is," Olson says, "no cop on the beat."

Regulators don't usually penalize water utilities because state and federal regulators try to act as "partners" to the water agencies they oversee. "Yes, it's true, you want collaboration. You want partnerships if the folks are doing their jobs," Olson says. "But if the water utility is simply failing to comply with the law, that's where enforcement is legally required."

Diane VanDe Hei, the CEO of the Association of Metropolitan Water Agencies, admits that a "handful" of states have trouble regulating drinking water. "I don't think it's a secret that some states do not have the resources to do all of the things they're supposed to do," she says. "They have a lack of funds or personnel."

A slow response from utilities and their regulators — or no response at all — is another problem. About a decade ago, Virgil Bernero, then a Michigan state senator, grew increasingly frustrated when he and his office tried to track down information about lead levels in Lansing's water. Bernero started looking into it when a constituent raised the issue. It became more urgent when he learned about a major lead-in-water crisis in Washington, D.C., where the local water agency tried to minimize the extent of its problem. At a recent congressional hearing, Virginia Tech engineering

professor Marc Edwards, one of the first people to identify the high levels in both Washington and Flint, said the crisis in Washington in the early 2000s had been “20 to 30 times worse” than that of Flint. As many as 42,000 children were affected before the crisis was resolved. The district’s problems started when its water utility switched from using chlorine to chloramine as a disinfectant, making the water more corrosive.

Bernero — energized by what he learned about Washington’s lead-in-water crisis — wasn’t satisfied with the answers he was getting from his local water utility, so he set up a legislative task force that invited Edwards and others to testify about Lansing’s water, and particularly about the utility’s testing methods. Bernero said the utility’s responses amounted to “patting us on the head and saying, ‘We’re the experts, don’t worry about it.’” But Edwards had a different message, Bernero recalls: “Don’t buy that. You can’t leave this to the so-called experts.”

So Bernero didn’t. When he became mayor of Lansing, the city did what very few others in the country have done: It embarked on a decade-long program to replace all of the lead service lines in the city. By next year, all of the lead service lines in Lansing will be gone.

The reason so few cities have done what Lansing is doing, though, is that swapping out lead pipes isn’t easy. Or cheap.

The first major task for many utilities is to find all of the lead service lines in their system. That sounds much simpler than it often is. It can require water operators to go back through old documents and make their best guess about what kinds of pipes are in the ground, based on historical records. That’s because, until the last few decades, water utilities often didn’t track what kind of materials their service lines were made of. It’s especially true for the portion of the service lines on private property, which typically are the responsibility of the property owner rather than the utility.

The service lines are usually installed during building construction, explains David LaFrance, the CEO of the American Water Works Association, which represents 4,000 water utilities. “Just as the water utility doesn’t know whether a house has hardwood floors or linoleum, they wouldn’t naturally have an inventory of what the material is for the service line,” he says. “When the general public hears that the utility doesn’t know, it’s surprising. But for the utility it isn’t really part of the infrastructure that they put into the ground and they maintain. That’s where the problem comes.”

Incomplete and inaccurate information has already frustrated Flint’s efforts to replace its lead and galvanized steel pipes. When the crisis started, most of Flint’s records on the kinds of pipe it had were still on index cards. The state helped the city convert those records into a GIS database to track which properties had which types of service lines. More than half of the active service lines were made of copper pipe. But that still left nearly half of the lines as candidates for replacement: Eight percent of the lines were made of lead, 18 percent were made of galvanized steel and the remaining 21 percent were unknown.

And that’s assuming the records were even accurate. A contractor hired by the city to replace the service lines of 30 homes throughout the city, in order to gauge the feasibility of a much larger replacement program, found that the records of sites chosen for the new lines were correct only 64 percent of the time.

A second major hurdle for replacing service lines, of course, is cost. Estimates vary greatly on how expensive it is to switch out the pipes, but the most common estimate is near $5,000 a line. As Lansing replaced its pipes, it developed a method, which the city is considering patenting, that speeds up the process and lowers costs. Lansing crews can replace pipes without digging long

trenches. They attach the new pipe to the back of the old pipe, and then pull the old pipe out to the street, leaving the new one in place. Lansing officials say the technique can lower the cost of replacing a service line to between $2,000 and $3,000. But that may not hold true for other cities. When Flint started replacing lines, even with help from Lansing crews, their average cost was $7,500 apiece.

Split ownership remains a financing complication for almost any locality trying to do line replacement. In Madison, Wis., which also removed all of its lead service lines, it was a major hurdle. State regulators blocked Madison from using taxpayers' money to pay for the replacement on private property, so the city had to find other creative revenue sources — such as income from renting out space on its water towers to cellular providers — to help subsidize the water pipe replacement costs for homeowners.

Lansing paid for its program with rate increases, but that's not an option for most cities. "We can't just do that," says Michael Deane, the executive director of the National Association of Water Companies, because private utilities — and some public utilities, like Madison's — need to have their rate increases approved by state public utility commissions. "We have to work with our economic regulator on how we pay for it. How do we get the capital to make this? How do we earn a return on that capital investment?"

The list of thorny issues goes on, but it's clear that an increasing number of communities are interested in getting rid of lead service lines, whether the EPA ends up requiring it or not. There is a growing consensus in the water industry, too. Even the American Water Works Association, which once blocked EPA regulations making it easier to replace the private portion of service lines, now supports the goal of taking out the lead service lines. To share their expertise with localities, major water industry groups have joined with environmental and public health groups to form an organization called the Lead Service Line Replacement Collaborative.

As sensible as it might seem to replace every single lead service line in the U.S., there are plenty of reasons to be cautious.

One is that replacing lead service lines doesn't always solve lead poisoning issues. The Flint water crisis first came to light in part because residents called on Edwards, the Virginia Tech professor, to investigate their situation. Through independent testing, he showed that lead levels in the industrial city were far beyond the federal thresholds. Of the 271 houses Edwards and his team tested, the worst belonged to Elnora Carthan, on the city's north side. Her water registered readings of 1,000 parts per billion of lead, or 67 times higher than the federal maximum of 15 parts per billion. But when crews in Flint came to replace the service line in Carthan's home, they found out the line was made of copper, not lead. The lead in her water had to be coming from somewhere else, likely her home's internal plumbing.

"I'm all for getting the lead pipe out," Edwards said when the discovery was made. "I want Flint to become the model for replacing lead pipe, but it's not necessarily going to get rid of the lead problem. We're still going to have a lead problem if corrosivity is not controlled."

And ultimately, there is the question of opportunity cost. How wise is it to prioritize lead pipe replacement over other water system needs? Water utilities have many other pressing concerns, such as removing other harmful, corrosive chemicals from drinking water or just trying to maintain and improve decrepit infrastructure. "If you spend $300 million on lead service lines," says VanDe Hei of the Association of Metropolitan Water Agencies, "what are you not doing? What are you not doing that has perhaps more risk?"

GOVERNING.COM

BY DANIEL C. VOCK | SEPTEMBER 2016

TAX - NEW YORK

Joon Management One Corp. v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - August 17, 2016 - N.Y.S.3d - 2016 WL 4371715 - 2016 N.Y. Slip Op. 05795

Property owner brought action against town seeking a judgment declaring that property's tax assessment was overstated and erroneous.

The Supreme Court, Rockland County, granted town's motion for summary judgment and denied property's owner's motion for leave to amend or to enforce settlement agreement. Property owner appealed.

The Supreme Court, Appellate Division, held that:

- Statute of limitations for tax certiorari proceedings applied to action;
- Town's motion for summary judgment was not premature;
- Supreme Court properly denied property owner's motion for leave to amend; and
- Supreme Court properly denied property owner's cross-motion to enforce alleged settlement agreement.

Statute of limitations for tax certiorari proceedings, which required such proceedings to be commenced after exhaustion of administrative grievance remedies and within 30 days after filing of the final assessment roll, applied to property owner's against town seeking judgment declaring that its property's tax assessment was overstated and erroneous, where gravamen of property owner's claim was that its property was overtaxed.

Town's motion for summary judgment on property owner's claim that its property tax assessment was overstated and erroneous was not premature, despite property owner's assertion to the contrary, where property owner failed to demonstrate how discovery might have lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the town.

Supreme Court properly denied property owner's motion for leave to amend its complaint against town challenging tax assessment, where property owner's proposed amendments, which were to add causes of action to recover money had and received and to recover damages pursuant to § 1983 for violation of constitutional rights, were devoid of merit.

Supreme Court properly denied property owner's cross-motion to enforce alleged settlement agreement between owner and town with regard to owner's action against town challenging its property tax assessment, where stipulation of settlement was never approved by town board, thus never becoming binding upon town.

TAX - NEW YORK

Nearpass v. Seneca County Indus. Development Agency

Supreme Court, Seneca County, New York - August 18, 2016 - N.Y.S.3d - 2016 WL 4419135 - 2016 N.Y. Slip Op. 26264

Property owners commenced Article 78 proceeding claiming that resolution by county industrial development agency (IDA) to provide tax benefits to developer of casino being built in county was void under New York State Industrial Development Act (IDA Act), impermissibly provided public assistance for private purpose, unlawfully failed to specify amount of tax benefit, materially miscalculated and misstated amount of tax benefit, and was null due to attorney conflicts of interest, and that IDA usurped town assessor's authority to value property improvements.

The Supreme Court, Seneca County, held that:

- Casino was a commercial project and recreation facility within the meaning of the IDA;
- IDA's decision to grant tax benefits to casino was not arbitrary and capricious;
- IDA was not required to specify amount of tax abatement;
- IDA's failure to adopt critique of appraisal report on casino's value was not arbitrary and capricious; and
- Powers of town assessor were not preempted by tax agreement.

Infrastructure Managers Feeling the Heat.

Infrastructure managers are under pressure to increase their investment in the U.S. as American investors boost infrastructure exposure and the investment climate in Europe — the top region for infrastructure deals — becomes less hospitable.

Managers are in a tough spot. They have more capital than viable deals. At the end of the first quarter, infrastructure managers were sitting on a record $124 billion in unspent capital commitments, according to London-based alternative investment research firm Preqin.

At the same time, the U.K.'s vote to leave the European Union, combined with the upcoming referendum on the Italian government and elections in Germany and France, are starting to cause some infrastructure managers and investors to steer clear of Europe.

This makes the U.S.'s infrastructure need — estimated by the American Society of Civil Engineers to total $3.6 trillion by 2020 — a tempting target. But the much lower cost of municipal bond financing and the high political cost of privatizing publicly funded infrastructure has put the bulk of these potential projects beyond managers' reach.

However, there are signs of change.

Both U.S. presidential candidates have plans to boost infrastructure investment. Democratic nominee Hillary Clinton's proposal is to spend $275 billion over five years for infrastructure that would be funded through business tax reform. Some $250 billion would be direct public investment with the remainder going to fund a national infrastructure bank that would offer loans, loan guarantees and other forms of credit. The bank would expand the Build America Bonds program.

Republican nominee Donald J. Trump has proposed $800 million to $1 billion in infrastructure spending, which would be financed with government bonds.

What's more, U.S. state and local governments are beginning to increase their use of public-private partnerships for everything from roads to courthouses.

And a new IRS regulation released in August makes it easier for infrastructure to be financed with a combination of municipal bonds and private investment.

Geopolitical uncertainty

Outside of public-private partnerships, infrastructure managers increasingly are investing in renewable energy as the U.S. moves away from coal and traditional energy sources. Regulatory changes are making renewable energy investments more attractive to investors.

"A lot of institutional investors today, because of uncertainty in Europe, don't want to take the geopolitical risk that is happening there," said Timothy C. Ng, chief investment officer of outsourced CIO firm Clearbrook Global Advisors LLC, New York. "If anything goes sideways, it will affect your projects and they won't get done."

So a lot of capital is flowing to the U.S. for infrastructure, as well as for real estate and private equity investment, Mr. Ng explained.

"There's huge money here now," Mr. Ng said.

And that is putting more pressure on managers to seek out deals in North America.

Europe is the top region for infrastructure investment. There were 266 deals in Europe in the first half of this year compared with 178 in North America, according to Preqin. The U.S. accounted for 140 of the North American transactions.

Investors typically like to invest their money at home first, said John Sweeney, vice president of New York-based placement agency Park Madison Partners LLC.

Institutional investors globally have an increased appetite for infrastructure, Mr. Sweeney said, because of its low volatility and risk profile.

"This creates a problem for infrastructure funds and infrastructure investors because as more capital is flowing into the sector, pricing is becoming more competitive," Mr. Sweeney said. "And the deal flow was already not as robust as it should be considering there's a lot of need in the U.S."

For investors, the too-much-capital-for-too-few investments is a classic recipe for lower returns, increasing the burden on managers to find viable deal sources.

This overabundance of capital is a concern for officials at longtime infrastructure investor New Mexico Educational Retirement Board, Santa Fe, said Bob Jacksha, CIO of the $11.4 billion pension fund.

"We were one of the first, perhaps the first, U.S. public pension plans to have an active infrastructure program," Mr. Jacksha said. New Mexico ERB has invested in infrastructure since 2008.

"We have seen the demand increase as other funds have joined us and as they have allocated more and more capital to the space," he said.

A lot of that demand is for core assets, because of the perceived safety of that category, Mr. Jacksha

said. So New Mexico ERB officials have been investing in projects that involve construction.

“We are now often investing in something other than core, as that has become expensive,” and in core greenfield projects, Mr. Jacksha said. “Some other investors may not classify these as core.”

The ERB also has invested in build-to-core projects — projects sold to core buyers after they’re built.

ERB has about 73% of its $413 million in infrastructure exposure — fair value plus unfunded commitments — in the U.S.

Move to U.S.

Infrastructure manager IFM Investors Pty. Ltd. plans to invest as equally as possible in the U.S. and Europe to maintain the diversification of its open-end fund, said Julio Garcia, head of infrastructure, North America, in the New York office. Some 55% of IFM’s global open-end fund portfolio is invested in the U.S., Mr. Garcia said.

In the past 18 months, IFM invested a combined $4 billion in two toll roads: the Indiana Toll Road and the Circuito Exterior Mexiquense in Mexico City. In May, IFM sold a stake in the Indiana Toll Road to the $307.2 billion California Public Employees’ Retirement System, Sacramento, and Allstate Corp.

Mr. Garcia sees a lot of opportunity in the U.S. in energy infrastructure — especially in the midstream space, the pipes that transport oil from source to refinery to market.

Wilson Magee, New York-based director of global real estate and infrastructure securities at Franklin Templeton (BEN) Institutional LLC, said he is seeing “interesting capital investment opportunities” in water and wastewater projects as municipalities need to upgrade their systems.

Franklin Templeton’s global infrastructure funds have 30% to 35% invested in the U.S.

Over time, Mr. Magee said he expects that airports, which are mostly publicly owned in the U.S., will switch to a model that includes private ownership. “The model elsewhere around the world is long-term concession contracts,” he said.

The first big airport project in the U.S. is a public-private partnership that includes finance, design, construction, operation and maintenance of New York City’s LaGuardia Airport Central Terminal B, with a lease term through 2050.

There are other airport public-private partnerships on the drawing board. Los Angeles World Airports, the city agency that operates the City of Los Angeles’ three airports, is considering a public-private partnership to finance a modernization program for Los Angeles International Airport that would include a 2.25-mile automated people mover.

In August, the Denver City Council approved continued negotiations with a consortium led by Ferrovial, a Spanish firm that runs London’s Heathrow Airport, for a partnership to upgrade one of its terminals.

“There is increased interest in P3 in the U.S. recently,” said Justine Kastan, an attorney in law firm Rutan & Tucker LLP’s Palo Alto, Calif., office who specializes in public-private partnership infrastructure investments.

In August, the IRS made regulatory changes that increase the length and flexibility of public-private

partnerships, Ms. Kastan said.

But even before the IRS rule change, governmental interest in P3s had increased, she said.

“I think there is a growing national awareness that we have infrastructure needs that aren’t being met,” Ms. Kastan said.

PENSIONS & INVESTMENTS

BY ARLEEN JACOBIUS | SEPTEMBER 5, 2016

This article originally appeared in the September 5, 2016 print issue as, “Infrastructure managers feeling the heat”.

— Contact Arleen Jacobius at ajacobius@pionline.com | @Jacobius_PI

IRS Releases Updated Safe Harbors For Management Contracts In Tax-Exempt Bond-Financed Projects: Thompson Coburn

On August 22, 2016, the Internal Revenue Service released Revenue Procedure 2016-44. The purpose of this revenue procedure is to provide revised and broader “safe harbors” under which certain private management contracts will not result in private business use of projects that were financed with the proceeds of tax-exempt governmental or qualified 501(c)(3) bonds.

Potentially impacted issuers and conduit borrowers include governmental and nonprofit healthcare, higher educational and other entities. Market participants have expressed the belief that the more flexible safe harbor provisions may also help facilitate the structuring of public-private partnership (P3) transactions.

The revised safe harbors set forth in the revenue procedure build upon the existing safe harbors originally set forth in Revenue Procedure 97-13, which were in turn modified by Revenue Procedure 2001-39, and amplified by Notice 2014-67. The existing guidance sets forth conditions under which a management contract does not result in private business use, which conditions include constraints on net profits arrangements, the permitted term of the management contract, the types of compensation provided under the arrangement, and the relationship between the parties. Under such existing guidance, the extent to which the compensation to the private party is a fixed amount is key, in that the greater the percentage of fixed compensation, the longer the term of the management contract is permitted to be. Notice 2014-67 provided additional flexibility within the safe harbors by allowing a broader range of variable compensation arrangements for shorter-term (i.e., up to five year) management contracts.

Continue reading.

Last Updated: August 31 2016

Article by Steve Mitchell and Henry Bettendorf

Thompson Coburn LLP

Baltimore Project Would Include Largest TIF District in City History.

WASHINGTON – The proposed $6.9 billion Port Covington development project in Baltimore would include the largest tax increment financing district in the city's history and would be financed in part with $660 million of bonds backed by the increased property tax revenues.

The project, proposed by Under Armour CEO Kevin Plank, would include a new global headquarters for the sports apparel company as well as residential and retail facilities within a development district.

A new 50-acre, 3.9 million-square-foot headquarters for Under Armour would serve as the project's anchor, and would be flanked by roughly 11 million square feet of mixed-use development.

The project would be owned by Sagamore Development Company, a Baltimore-based real estate firm founded in 2013 by Plank and developer Marc Weller. Development would take place on Port Covington, a 260-acre industrial area roughly two miles south of downtown Baltimore between I-95 and the Middle Branch of the Patapsco River.

The project would be partly financed by $535 million of increased property tax revenue to be collected within a tax increment financing district. Those funds would go toward the construction of infrastructure, including roads and public spaces. None of the TIF revenues would go toward the Under Armour headquarters.

The total bond cost would be $660 million including issuance costs and other costs not associated with construction, according to Baltimore Deputy Finance Director Stephen Kraus.

Kraus said the bonds would be issued by the city of Baltimore Department of Finance in four-to-five phases over the next 12 years. Construction is expected to be developed in phases over roughly 25 years, according to plans.

The $535 million of expected increased property tax revenue, combined with an additional $349.5 million from the state and $224.2 from the federal government would total almost $1.2 billion in city, state and federal subsidies. Private funding provided by Sagamore is roughly $327.8 million. Of the private and governmental funding of roughly $1.4 billion, $115 million would go toward land acquisition costs, $138 million would go toward site work and $1.2 billion would be used for infrastructure.

The bonds would be paid back by incremental tax revenue generated by the development, as is customary in TIF districts. Tax increment financing secures tax-exempt borrowing by anticipated increases in tax revenues within a defined development district.

The Baltimore Development Corporation, the private nonprofit that grants TIFs for the city, approved the TIF application in March, and it is now before the City Council's Taxation, Finance and Economic Development Committee. The committee has held three hearings regarding the project, but moved a work session originally scheduled for Monday to Sept. 8.

At the time of the application, Baltimore had 14 TIF districts with outstanding debt of $147.2 million.

"One risk is that the developer may not move forward with the development once the tax increment financing district and documents authorizing the issuance of bonds have been approved by the city," officials wrote in the TIF application. "Provided that is the case, the tax increment financing district

would remain in place but the bonds would not be issued and debt would not be incurred."

According to plans, the first tranche of TIF bonds would be issued in June 2017 for $62 million, followed by a second tranche of $208.3 million in 2018. A third tranche of $169.7 million would be issued in 2023, and a fourth tranche of $218.7 million would be issued in 2028.

The developer would initially purchase the bonds, which are projected to be outstanding between 2046 and 2058.

Proponents claim the project will bring roughly 8,000 jobs to Baltimore and will revitalize a largely vacant three-mile section of waterfront.

"An area essentially cut off from Baltimore's downtown neighborhoods by the elevated structure of I-95 and the adjacent CSX rail yard will become a dynamic, innovative, mixed-use experience and destination," officials wrote in the application. "As one of the largest urban revitalization projects in the United States, the redevelopment of Port Covington will provide extraordinary economic growth and job opportunities for both the city and the greater region."

Mark Pollak, a partner with Ballard Spahr in Baltimore who is serving as counsel for the developers, said project officials hope to have the initial financing occur in early 2017. Pollak, who described the project as "one of the greatest opportunities the city has ever had," said TIF funding would be phased in over an initial period. He did not comment on what the length of that period may be, and said it was dependent on the growth of Under Armour among other factors.

As among the largest TIF deals in U.S. history, the process could take a while, he said.

"I think everybody recognizes it as a potential transformative project for the city because of the scope," Pollak said, adding that Baltimore Mayor Stephanie Rawlings-Blake has expressed support for the proposed plan. "Clearly Under Armour has the opportunity to grow in many places and we and the city would hope that they can keep the growth in this city."

Still, he said there has been discussion in regards to the TIF size and negotiations to provide benefits to other parts of the city.

Some of those concerns have been expressed by Baltimoreans United in Leadership Development (BUILD), which in July called for a TIF agreement to include local hiring mandates of 51% for all future businesses in the TIF district. Should that mandate not be met, BUILD officials said the city should invoke "substantial financial penalties" on the parties responsible.

"BUILD calls on the City Council, Sagamore Development, and Mr. Plank to not agree to any city-wide benefits agreement without the city conducting a comprehensive independent analysis of the deal," said BUILD co-chair Rev. Andrew Foster Connors. "If after the analysis the city concludes that the costs associated with the development can be managed, then any agreement must treat the city of Baltimore as a 'first in' investor."

Pollak said the cost of the project is $5.5 billion, but rises to $6.9 billion when accounting for infrastructure costs. Estimates have placed Port Covington's assessed value after construction at $2.6 billion.

In addition to the new Under Armour headquarters, the completed Port Covington project as proposed would include: 1.5 million square feet of retail and entertainment space, more than 7,500 rental and for-sale residential units, 500,000 square feet of industrial/light manufacturing space, 200 hotel rooms, 1.5 million square feet of office space, and 41 acres of public parks and waterfront

space, according to the TIF application.

BDC president and CEO William Cole said the group's TIF recommendation was contingent on five factors, which are that: returns to the city exceed the city's hurdle rate, a profit-sharing agreement is negotiated, there is federal and state participation in infrastructure, there is no adverse effect on school funding, and there is no adverse effect on the city's bonding capacity.

If and when the proposal clears the City Council's Taxation, Finance and Economic Development Committee, it will then go before the full City Council for consideration.

Under Armour's headquarters is expected to be built over 15-plus years, according to plans. The Baltimore-based company currently has headquarters in the Tide Point neighborhood of Baltimore, where it has been for 18 years.

In January, Under Armour completed a $40 million office space that houses more than 600 employees, marking the first new building to be opened on the Port Covington campus. Plank's Sagamore Development Company has also completed a reuse of a city garage in Port Covington and the construction of the Sagamore Spirit Distillery in the same neighborhood.

The Bond Buyer

By Evan Fallor

August 30, 2016

Kicking the Taxpayers to Boost a Soccer Stadium.

Los Angeles wants to use antipoverty funds for development around a private arena. Is that any way to help the poor?

Most people outside of the University of Texas at San Antonio have probably never heard of one of its professors, Heywood Sanders, but taxpayers across the country owe him a debt of gratitude. For years Sanders has shined light on questionable state and local investments in convention-center development. Now he's turned his attention to Los Angeles' effort to get low-interest federal loans for a private sports complex development.

In his work on convention centers, Sanders has highlighted a process that repeats itself across the country: State and/or local government officials propose to build or expand a convention center, claiming the tab will be picked up by hotel taxes and other fees paid by visitors. Consultants are engaged who invariably conclude that the project will be an economic windfall.

Yet once the center is built or expanded, its economic impact is almost always a fraction of what was projected. The next time the consultants are called upon to evaluate a similar project, they ignore the trail of past failures and again tout it as an engine of economic growth. Sanders' work is beginning to bear fruit. Last year, Massachusetts Gov. Charlie Baker pulled the plug on expanding the Boston Convention & Exhibition Center.

Now Los Angeles has applied for a $22.5 million Department of Housing and Urban Development loan to help develop a conference center, restaurants and a soccer museum as part of a project anchored by a major-league soccer stadium. The Section 108 Loan Guarantee Program is meant to

fill small funding gaps in development projects in return for a promise to give up to 51 percent of jobs the project creates to low-income populations.

Of course, lost in this scenario is the basic premise that just building the stadium is what's supposed to attract businesses.

Section 108 loan guarantees are designed to be an anti-poverty program. But in this case, the loan appears to be a last-ditch effort to save a $250 million stadium project without blowing a hole in the city's debt capacity. If that strikes you as neither fiscally prudent nor an effective way to help the poor, you're not alone. "If you had a spare $25 million [in anti-poverty resources] laying around, would you put it towards a stadium?" Sanders told Equity Factor, a blog published by the nonprofit Next City.

As Roger Noll, an economics professor at Stanford University and former member of the President's Council of Economic Advisers, points out, the seasonal nature of sports means stadiums don't generate enough tax revenue to merit public investment. Economic impact also tends to be contained in a very concentrated area around the facility. Some argue that high-paid athletes will spend money in the community, but most tend to leave when the season is over.

Heywood Sanders' work has taught us, once again, that state and local government officials should approach stadium and convention-center developments with skepticism. If the goal is to promote economic development, with a particular focus on low-income populations, propping up sagging private developments is hardly the best way to achieve it. Among the many better approaches would be to focus investments on improving the poor condition of basic infrastructure that is choking off economic growth and making the hard decisions — financial and otherwise — needed to improve public education.

GOVERNING.COM

BY CHARLES CHIEPPO | SEPTEMBER 6, 2016

Big-Box Stores Battle Local Governments Over Property Taxes.

The retailers are deploying a 'dark store' strategy that's hurting cities and counties around the country.

On Michigan's sparsely populated Upper Peninsula, big-box stores are a modern necessity. Where towns are spaced far apart and winters are long, one-stop shopping to load up on supplies adds a crucial convenience to what can be — at least for many — a rugged existence.

Landing one large retailer is a coup. Having more than one can make a city or town a regional shopping destination. Marquette Township, a small community adjacent to the larger city of Marquette, is in the unique position of having a handful of big-box chain stores. Taking advantage of the fact that the city of Marquette was mostly built out, the township began encouraging large-scale commercial development on its western edge early in the 2000s.

The town now boasts the only Lowe's on the Upper Peninsula, and the only PetSmart, Target and Best Buy. A Menards home improvement store and a Walmart Superstore are there as well. The flurry of new building and retail was so great that the township's tax revenue never took a hit during the Great Recession, even at a time when most small towns on the peninsula and elsewhere in

Michigan were struggling.

But recently, the township suffered a dramatic drop in its property tax revenue. It had to cut back on spending, trim employee benefits and reduce library hours. The impact has reached up to surrounding Marquette County, which earlier this year closed a youth home to save money. The reason for the lost revenue isn't declining consumer demand. It's a series of rulings by the Michigan Tax Tribunal that have allowed large retailers to reduce their property tax assessments, in many cases by as much as half.

Big-box retailers argue that the market value of their commercial property should be the sale price of similarly sized but vacant retail buildings. They point out that these buildings are extremely hard to sell as-is once the retailer moves out. They tend to sit empty for long periods. Thus, the assertion is, they aren't worth nearly as much as local tax assessors have traditionally assumed in valuing the property.

This appeals approach was first largely successful in the Detroit area following the recession, when nearly all retailers were dealing with depressed property values. But since then, it has spread across otherwise thriving areas in Michigan to the point where it is difficult to find a county that hasn't been challenged on the issue. The assessment community has even given it a name, dubbing it the "dark-store" strategy.

Local governments, needless to say, aren't buying this. "When you get your house appraised, they're going to look at properties that are occupied," says Steve Currie of the Michigan Association of Counties. "They're not going to look at the foreclosed one because that's not an equitable property. It's the same case here."

Michigan is far from alone in seeing localities take dark-store hits to their property tax base. Counties in Alabama, Florida and Indiana are seeing widespread challenges that make use of the dark-store method. The National Association of Counties says it's an emerging issue in Iowa, North Carolina, Ohio, Tennessee, Washington and Wisconsin.

Still, while these cases have been proceeding for the better part of a decade, it's only been recently that county organizations and public officials have realized the geographical magnitude of the challenge. County assessors forced to respond to it aren't always aware of similar controversies outside their jurisdiction. This is particularly true in places that are geographically isolated and where assessors are part-time employees.

Getting policymakers clued in to the problem has also been tricky. The world of property tax assessments is loaded with definitions and methodology that, to the average outsider, can seem overwhelming. Property appraisal laws vary by state, and arguments that hold water in one state might not in the next. So it's not always clear to lawmakers what — if anything — they can do legislatively to help counties respond to the threat.

Even in places where counties have pieced together a coordinated effort to fend off challenges, response on the state level has varied. The Indiana General Assembly took arguably the strong-est action, passing two laws last year that essentially banned the dark-store tactic. But those laws were repealed and replaced with a weaker law this year. Alabama passed a law that amounted to an administrative change giving counties more legal resources. The Michigan Legislature has considered but not approved bills dealing with how the Tax Tribunal hears assessment challenges. In these places and elsewhere, many are concerned that the longer it takes for a concerted state response, the more money counties and local governments will lose.

Big-box retail stores aren't the first to complain that their property's uniqueness should afford them special consideration when it comes to their taxable value. Nearly a century ago, the owners of the New York Stock Exchange tried to get the building's appraisal value lowered by arguing that the building's unusual — and expensive — design would be of no value to any future buyer. In fact, the argument went, the building actually lowered the value of the land itself because a future buyer would be forced to shell out the money for demolition costs. While the court rejected that argument in 1928, it has become a popular case to make ever since, with varying levels of success.

There are different nuances and different case law in every state, but it can be generally said that appraisers look at three factors in determining the taxable value of property: the sale price of comparable properties, the current cost to build minus depreciation and the income generated by rents charged to tenants. Appraisers can apply a blend of these approaches to arrive at a property's value, or place most of the weight on just a single approach.

When it comes to unique properties like big boxes, finding comparable sales is difficult. Property values differ by market and it's simply not often that an oversized retailer in a market area sells its property. For this reason, appraisers prefer giving more weight to building costs.

But big-box retailers say using the construction costs of a building to determine the assessment artificially inflates the value. And they insist it's unfair to value their retail properties based on their worth to the current user (referred to as "value-in-use") instead of the value the property would have on the open market (called "value-in-exchange"). The appropriate use of the competing valuation methods is a topic of seething debate in the appraisal world. Retail representatives fall decidedly on value-in-exchange. "It's easy to be confused by the presence of a business," says Florida real estate broker Sheila Anderson, whose firm Commercial Property Services has represented owners in scores of appeals. "But a business is not [what needs to be] assessed." In her view, it's only the resale value of the empty building that matters for taxation. And that is nearly always a much smaller amount.

Complicating the matter are deed restrictions the big-box retailers place on the properties they do sell. Typically, a retailer closes a location to open up another store close by, or leaves because the market isn't viable anymore. But just to be sure a competitor doesn't move in and fare better, the deed bars the new owner from operating a similar business. Assessors say this limitation artificially depresses the market value of the property. The retailers consider it insignificant.

The debate leads to real questions about the fairest way to value these prolific but unique properties, says Allen Booth, a former city assessor in Rhode Island without any affiliation to a dark-store case. "The reality is there are very few tenants that will move into the custom building when you're dealing with these big-box situations," he says. But, he adds, officials are leery of retail attorneys' motives because they can profit greatly from the challenges by taking a cut of the tax refund if they win. "You have to wonder," Booth says, "are these people just being obnoxious or are the properties really overvalued and it's just that now someone's looking at it?"

Tax courts in Michigan have generally agreed with retailers that properties were being overvalued. In Marquette Township, Lowe's successfully used this argument in a 2012 challenge to its property assessment and succeeded in reducing its taxable value from $5.2 million to less than $2 million, even though the store alone cost $10 million to build. The township spent several hundred thousand dollars in legal costs but failed to win in the appeals process. As a result, the ruling applied to other pending challenges. All told, the township's total property tax collections have fallen nearly 22 percent in just a few years.

Statewide, the results have been similar. According to the International Association of Assessing Officers, the valuation on large retailers across the country is anywhere from $45 to $75 per square

foot, depending on the market. After five years of litigation in Michigan, says tax attorney Jack Van Coevering, the average per-square-foot value in the state is $20.

The big-box retailer Meijer brought a case at one of its most successful Indiana locations, in Marion County, after winning reduced assessments in Michigan. The attorney for Meijer went so far as to tell the Indianapolis Business Journal that the appeal in Marion County was a test case because "whatever the value is there would be the upper limit of the value across the state." The retailer won in late 2014 and got its assessment slashed from $83 per square foot to $30 per square foot. The decision applied retroactively, requiring Marion County to refund Meijer $2.4 million for nine years of back taxes. Indiana county officials estimated that if the decision were to be extended to the more than 17,000 commercial properties across the state, it would mean a loss of $120 million in property tax revenue statewide.

Indiana lawmakers responded quickly. In 2015, the legislature passed two bills: One effectively banned using the dark-store method to value existing businesses, and the other required using the cost method for properties over a certain square footage. But those laws were repealed this year under concerns they violated the uniformity clause in the state's constitution, which requires all property to be assessed on an equal basis. The Indiana General Assembly then passed a new law that requires assessments to be based on the value of properties that are "similarly situated in the marketplace."

Other states have tried other tactics. Alabama passed a law this year that allows counties to remove these cases from their district attorney's jurisdiction and hire outside attorneys to fight them. In Michigan, a bill passed the House that would require the Tax Tribunal to consider all three valuation methods (rather than just the one the retailer is arguing for). It will be considered in the Senate later this fall.

In short, the legislative authority of lawmakers to intervene is murky. "It's always appropriate for the legislature to try to clarify and remedy a situation when appropriate," says Joan Youngman, a property tax expert with the Lincoln Institute of Land Policy. "But you want to be sure this is a problem with the existing law."

In the end, the best way to beat back the challenges is to win in court. But that's a tough task for counties that don't have a lot of resources. In Tampa, Fla., Hillsborough County's director of valuation, Tim Wilmath, says counties in his state have caught on early to the dark-store challenge and have for the most part been able to mount successful defenses. Wilmath co-authored an article in an industry magazine last year advising county assessors on how to challenge the tactic, which has made him a de facto adviser to smaller counties across the country. "They're looking for advice on how best to go at it," he says of the calls from outside Florida. "But even when they know all the right things to do, they still settle because they just don't have the money."

In Michigan, a recent Court of Appeals ruling may prove to be a turning point. In May, the court overturned a 2015 decision by the Michigan Tax Tribunal that had favored the retailer Menard against the city of Escanaba in a property tax dispute. The court found that Escanaba's cost-based approach was more reasonable than the retailer's comparable sales method, which included using dark stores. The case was remanded back to the tribunal with directions to consider all the assessment methods. It may end up setting a precedent for cases in Michigan that are currently open.

Still, for counties and townships that have already lost or settled cases, the damage has been done. And because of limits on how much localities can increase the property tax each year, the previous losses in tax revenue will never be made up. In Marquette Township, that means officials will have to

figure out how to replenish the reserves that were drained to pay back Lowe's, at the same time adjusting permanently to a shrunken tax base.

"The long and short of it," says Marquette Township Manager Randy Girard, "is that we will not recover."

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 2016

A Comeback for Bond Insurance.

Bond insurers — companies that provide a money back guarantee to investors on bonds sold by municipalities — were one of the biggest casualties of the 2008 financial crisis. Governments liked to insure their bonds because it typically allowed them to sell the bond with the insurer's higher credit rating. That let governments get a lower interest rate cost on the bonds, making it worth the insurance expense. But the insurers' effectiveness was essentially obliterated when their own credit ratings were downgraded amid the 2008 crisis. A little over a decade ago, half of new bonds issued in the municipal market were insured. Today, just 6 percent are.

While they're down, bond insurers are far from out.

In their monthly outlook, analysts Alan Schankel and Eric Kazatsky of Janney Montgomery Scott predict insurers are biding their time for a comeback. Some existing bond insurers have restructured since the crisis while a new one — Build America Mutual — has come on the scene.

Meanwhile, insurers have been decreasing their exposure to outstanding bonds as governments have not re-upped their insurance when refinancing old debt.

The Takeaway: Low-interest rates have driven down the need for bond insurance because even low-grade governments are getting historically low rates on their bonds. But Schankel and Kazatsky say that has also provided a window for insurers to regain their financial health after losing a lot of money in municipal bankruptcies. When rates rise, more governments will turn back to insurance.

"Bond insurance plays an important role for many municipal investors," the authors wrote. "We expect that role to expand, along with market share, if not immediately, then in coming months and years."

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 2, 2016

Smart Skills Versus Mindless Megadeals.

Smart Skills versus Mindless Megadeals: Cost-Effective Workforce Development versus Costly "Buffalo Hunting," with Proven Policy Solutions

Using data from dozens of programs and deals in Good Jobs First's Subsidy Tracker database, we

draw sharp comparisons between the costs of workforce development programs versus company-specific “megadeals.” Whereas 31 out of 33 training programs have four-figure costs per job, our current megadeals database shows an average cost to taxpayers of more than $658,000 per job.

Read the Report.

Good Jobs First

by Thomas Cafcas and Greg LeRoy

September 2016

Broadband Law Could Force Rural Residents Off Information Superhighway.

WILSON, N.C. — On the first day of the harvest last week, a line of trucks brimming with sweet potatoes rolled into Vick Family Farms, headed for a new packing plant that runs on ultrafast internet.

The potatoes were tagged with online bar codes to detail the plots where they grew, their types of seed, and dates and times picked. On a conveyor belt, 50 flashing cameras captured and sent images of the spuds to an online program that sorted the Carolina Golds by size and quality and kicked them into boxes.

The Vick family built the plant only after the nearby city of Wilson agreed early last year to bring its municipal broadband service to the 7,000-acre farm. Since the plant opened in October, the farm’s production and sales to Europe have jumped.

But now, after a legal battle between state and federal officials over broadband, the farm and hundreds of other customers in the eastern region of the state may get unplugged.

Continue Reading.

THE NEW YORK TIMES

By CECILIA KANG

AUG. 28, 2016

SEC Investor Advocate Worried About Narrowing of Muni Market.

WASHINGTON – Financial regulators and others should work to reverse the increased narrowing of the municipal market caused by fewer retail investors and more munis concentrated among wealthier bondholders, the Securities and Exchange Commission’s Investor Advocate told regulators.

“Personally, I hope we can reverse this trend toward concentration of assets among fewer investors,” Rick Fleming said in a speech at the Municipal Securities Rulemaking Board’s Securities Regulator Summit on Aug. 25.

Fleming said that, as of December 2015, individuals owned approximately 70% of munis either directly or indirectly through mutual funds or other pooled investment vehicles with the average age of a muni investor at 62.

“However, if you drill beneath those statistics, some interesting – and some might say troubling – patterns emerge,” he said.

Fleming noted that “a mere 2.4% of households hold any municipal debt,” about half of what the percentage was in 1998.

Further, the wealthiest one-half percent of U.S. households now own 42% of all municipal bonds, compared to ownership of only 24% in 1989. Additionally, the bottom 90% of households, as measured by net wealth, hold less than 5% of munis, falling from 15% in 1989, Fleming said.

“How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an investment option for the middle and upper-middle classes?” Fleming asked.

The investor advocate traced the narrowing of holdings to munis’ tax exemption. While the tax-exempt status is attractive when compared to other investments, the interest rate on munis is often lower than the interest rate on other taxable fixed-income securities like corporate bonds, he said.

Households in higher tax brackets have always had more incentive to invest in muni bonds, he said, adding “this is not news.” In addition, the shift from defined benefit pension plans, where the plan sponsor promises payments based on a pre-defined formula rather than individual investment returns, to defined contribution pension plans, where the employer and employee both make regular contributions to an account, “seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis,” he said.

Fleming said that the lower-yield for lower-tax tradeoff that munis promise to investors tends to be less attractive to individuals that have tax-advantaged retirement accounts where all holdings are tax-deferred.

“It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b), and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis,” Fleming said. That means that muni investors are likely to be individuals who are wealthy enough to have fully funded their retirement accounts, he added.

While Fleming said more study is probably needed, he added it is “worth asking whether the tax benefits of municipal bonds, which were presumably intended … to incentivize investment in munis, are actually accomplishing that objective.”

“Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields,” Fleming said.

“Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes,” Fleming said.

He further warned that “if the current trends continue and we see fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future.”

The Bond Buyer

By Jack Casey

August 29, 2016

SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors that are also considered investment advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC's pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission's secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB's pay-to-play rule, can only be excluded under the SEC's rule if the commission finds, by order, that the MSRB's revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

Under the MSRB's revised rule, municipal advisors, similarly to dealers, are now barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule for dealers. It allows a municipal finance professional or municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The SEC's filing lists six examples of how the rules are substantially similar, including the two-year ban on engaging in muni business after a contribution and the prohibition on MAs and their professionals from soliciting contributions, or coordinating contributions, to certain municipal officials with which the MA is engaging or is seeking to engage in muni business.

The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

The SEC's pay-to-play rule was also subject to a legal challenge from two of the three groups but that lawsuit was thrown out after a three-judge panel ruled the Republican groups failed to follow proper appeals procedures.

The Bond Buyer

By Jack Casey

August 26, 2016

Deloitte Power & Utilities Accounting, Financial Reporting, and Tax Update.

Tuesday, November 29, 2016
Chicago, IL

During day one of the seminar, Deloitte's energy specialists focus on industry technical accounting and tax issues to assist participants in preparing for calendar year-end accounting, reporting, and tax requirements.

Participants may choose one of the following sessions:

- **The Accounting and Financial Reporting Update**
  This session includes presentations by Deloitte specialists and industry thought leaders, covering topics such as Securities and Exchange Commission (SEC) developments and trends in SEC comment letters, recently issued and proposed accounting standards, and current tax developments. After attending this seminar, participants will be able to better interpret and apply accounting, financial reporting, and tax rules to current industry issues.
- **The Tax Update**
  This session includes presentations by Deloitte specialists regarding federal income tax topics unique to the power and utility industry, regulatory reporting for income taxes and other income tax and financial accounting for income tax subjects relevant to large corporations. This session will assist participants in applying recent and pending tax and accounting developments in their tax planning and rate filings.

Click here to learn more and to register.

NABL: IRS Modifies Rev. Proc. 2016-44 Transition Date.

The IRS has modified the effective date of Rev. Proc. 2016-44 to extend the transition period by 6 months.

The revision allows an issuer to apply the safe harbors in Rev. Proc. 97-13, as modified and amplified, to a management contract entered into before August 18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other than pursuant to a renewal option as defined in sec. 1.141-1(b)).

The August 18, 2017 date is 6 months later than previously announced.

The updated version will be printed in next week's Internal Revenue Bulletin.

The revised version of Rev. Proc. 2016-44 is available here.

SEC: Investor Protection in the Municipal Securities Markets.

Rick A. Fleming, Investor Advocate

U.S. Securities and Exchange Commission [1]

MSRB Municipal Securities Regulator Summit
Washington, D.C.

Aug. 25, 2016

Thank you, Lynnette [Kelly], for that kind introduction and for inviting me to participate in your event today. It has been a pleasure to spend time with a variety of regulators who are on the front lines of investor protection, and I appreciate the opportunity to provide some closing remarks for your conference. Of course, I need to remind you that the views I express are my own and do not necessarily reflect those of the Commission, the Commissioners, or Commission staff.

I have been the Investor Advocate at the SEC since early 2014, and since day one, I have actively supported a variety of reforms in the municipal securities markets. My interest in these issues is explained, in large part, by the high concentration of individual investors within the muni market. As of December 2015, approximately 41 percent of municipal bonds are owned directly by individual investors, and another 29 percent are owned indirectly through mutual funds or other pooled investment vehicles.[2]

However, if you drill beneath those statistics, some interesting—some might say disturbing—patterns emerge. First, we've seen a narrowing of the market. A mere 2.4 percent of households hold any municipal debt (either direct or indirect), and that figure is about half of what it was in 1998.[3] Second, as we've seen in other areas of wealth concentration, the wealthiest households own an increasing share of total municipal debt. The wealthiest one-half percent of U.S. households now own 42 percent of all municipal bonds, as compared to ownership of 24 percent in 1989. The bottom 90 percent of U.S. households, as measured by net wealth, now hold less than 5 percent of muni bonds, falling from almost 15 percent in 1989.[4]

How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an investment option for the middle and upper-middle classes? Ironically, the answer appears to lie with the tax advantages of muni bonds. Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds—this is not news to this audience. However, the shift from defined benefit pension plans to defined contribution retirement plans seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis.

As you are no doubt aware, the interest on municipal bonds is exempt from federal income tax, and often from state and local taxes. However, given these tax benefits, which make muni bonds attractive as compared to other investments, the interest rate for muni bonds is usually lower than the interest rate on other taxable fixed-income securities such as corporate bonds.[5]

This lower-yield for lower-tax tradeoff may be attractive for certain investors, but it tends to lose its appeal within the context of a tax-advantaged retirement account, where all holdings are tax-deferred. It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b),[6] and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis.[7]

As employers have shifted away from defined benefit pension plans, there has been a significant increase in tax-advantaged defined contribution plans such as 401(k)s.[8] One outgrowth of this trend, however, is that muni bonds may no longer be attractive for the average investor. Today's muni investors are likely to be those who are wealthy enough to have fully funded their retirement accounts and, unfortunately, recent data suggests this may be a relatively small proportion of the population.[9]

More study is probably needed, but I think it is worth asking whether the tax benefits of municipal bonds, which were presumably intended (at least in part) to incentivize investment in munis, are actually accomplishing that objective. Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields. But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future.

Personally, I hope we can reverse this trend toward concentration of assets among fewer investors. Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes.

Notwithstanding the current concentration of assets, we still have a big job to do. Even though only a small percentage of U.S. households hold municipal securities, that is still millions of people, and it represents a lot of hard-earned money—approximately $3.71 trillion, in fact.[10] And, because the average age of the muni investor is 62 years old,[11] it means that a lot of those investors are seniors, whose vulnerabilities may increase as they age.

This is why I, and many of you, have been fighting for reforms in the muni markets. Although there is still plenty of work to be done, the past few years are evidence that regulators can take strides toward an innovative, flexible market while continuing to protect investors. The MSRB and FINRA have continued to enhance Electronic Municipal Market Access (EMMA) and Trade Reporting and Compliance Engine (TRACE), respectively, so investors would have better access to pricing and other important market information. The MSRB finalized its best execution guidance for dealers and the best execution rule took effect on March 21, 2016. Additionally, FINRA and the MSRB continue to collaborate on a markup disclosure rule and the MSRB is considering interpretive guidance to assist bond dealer in establishing "prevailing market price." These are important initiatives that will make the markets a better place for investors, which will in turn make it a better place for issuers to get the funds they need for important projects.

As I close, I would like to take advantage of the fact that I am speaking to a group of regulators, and just extend my thanks, on behalf of America's investors, for the jobs you do. Many of you have been on examinations of dealers, making sure they abide by the rules of the road and treat customers appropriately. Others have been involved in rulemakings that will improve those rules of the road. Some of you have worked to inform consumers about investment products or warn them away from scams, or you have personally talked to them and tried to give them whatever help they need.

Most days, you probably are not thanked for the work you do, but this is not one of those days. Thank you for all you do, each and every day, with little recognition or reward, on behalf of the American public.

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues

upon the staff of the Commission.

[2] Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2015, Table L.212 (Mar. 10, 2016, 12:00 PM), http://www.federalreserve.gov/releases/z1/current/z1.pdf.

[3] See Bergstresser and Cohen, Changing Patterns in Household Ownership of Municipal Debt: Evidence from the 1989-2013, (Current draft June 2015), at Figure 1; https://www.brookings.edu/wp-content/uploads/2016/07/Bergstresser-Cohen-with-tables.pdf.

[4] Id., at Figure 2.

[5] See https://www.investor.gov/introduction-investing/basics/investment-products/municipal-bonds.

[6] See, e.g., https://www.alamocapital.com/investment-products/bonds-and-fixed-income/municipal-bonds/ ("The placement of tax-free municipal securities into a qualified account is deemed to be an anomaly because (1) historically the yield on tax-free municipal securities is less than the yield on taxable securities, (2) the normally lower yield on municipal securities is justified by comparing its yield to the after-tax yield on taxable securities, and (3) the tax-free benefit is lost when "tax-free" securities are placed into a qualified account. The interest received from a "tax-free" security is taxed at ordinary income tax rates at the time it is withdrawn from the qualified account. Therefore the normal rule is that, given a choice, tax-free securities should be placed in a non-qualified account to retain their tax-free treatment.").

[7] Id., at 3.

[8] See Rick A. Fleming, Protecting Elderly Investors from Financial Exploitation, Feb. 5, 2015, https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html ("Up until 1985, the aggregate value of defined contribution plans was less than half the value of defined benefit plans. By 2012, however, defined contribution plans were more than 50 percent larger than the aggregate size of defined benefit plans.").

[9] According to the Employee Benefit Research Institute, 74 percent of American workers have saved less than $100,000 for retirement. 2016 RCS Fact Sheet #3, Preparing for Retirement in America, at Figure 3, https://www.ebri.org/files/RCS_16.FS-3_Preps.pdf.

[10] Federal Reserve Board, supra note 2.

[11] Bergstresser and Cohen, supra note 3 at Table 10.

Muni-Bond Investors Stick With Active Fund Managers Even as They Fall Short.

Municipal-bond buyers are sticking by their mutual-fund managers, even though the chance that many of them will beat the market is no better than a coin toss.

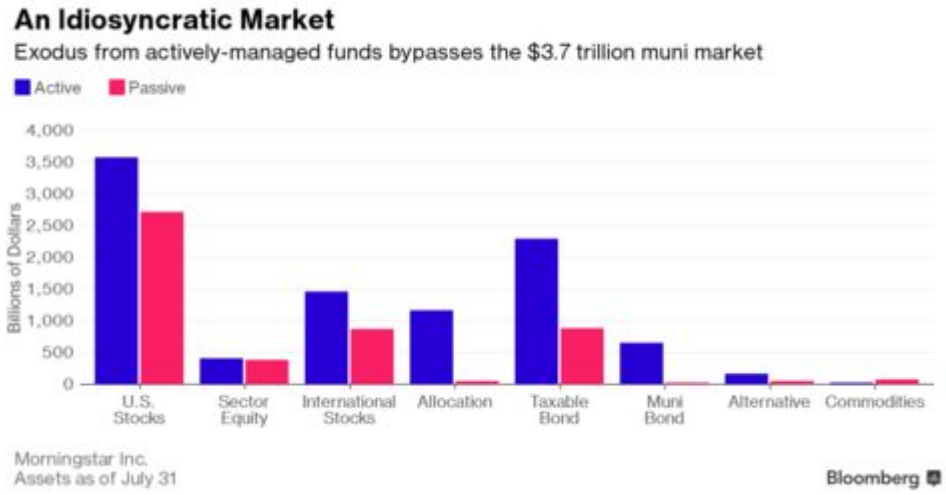
The broad shift into low-cost index funds, which have drawn cash away from those that buy and sell stocks and bonds in a quest for outsize returns, has largely stopped at the U.S. state and local securities market, a bastion of buy-and-hold investors looking for steady, tax-exempt income. And they're not necessarily being rewarded for their loyalty: About 50 percent of the actively-managed

funds lagged a Bloomberg benchmark over the past five years, according to Morningstar Inc. data on those holding debt maturing from 5 to 12 years.

“You have some entrenched ways of investing here,” said Chris Alwine, who oversees more than $167 billion in municipal-bond assets at Vanguard Group Inc., one of the biggest providers of index funds. “You had the belief that you couldn’t index it. That’s been thrown out.”

The traditional way of investing hasn’t gone with it. As cash flooded into municipals amid turmoil in global financial markets, actively run funds took in $48.7 billion in the 12 months through July — eight times more than those built to mimic the performance of an index, according to Morningstar. As a result, the managed investment vehicles had $653 billion of assets, compared with $27 billion held by their passive competitors.

That stands in contrast to other markets over the same time period. Souring on underperforming stock and taxable-bond managers, investors withdrew almost $380 billion and put $367 billion into index funds.



While passive municipal funds are growing at a faster rate than active ones — if only because they are relatively new and had far fewer assets to begin with — there are several reasons for their slow inroad to the $3.7 trillion market, said Karen Schenone, a San Francisco-based fixed-income strategist at BlackRock Inc.’s iShares unit, a provider of exchange-traded funds, or ETFs.

Some investors prefer buying bonds issued by their local governments or, if they live in high-tax states like New York and California, state-specific funds, instead of the nationally oriented ETFs. Investors also tend to focus on the indicated yield without considering total return, Schenone and Alwine said. Active funds generally yield more than ETFs.

“Most people think, ‘I want a manager who’s doing credit research, adjusting for duration, looking for blowups,” Schenone said.

That also leads to bigger fees, though not necessarily better returns. The average expense for actively-managed open-end municipal funds is 0.91 percent, compared with 0.3 percent for ETFs, according to Morningstar. Yet over the past five years, only about half of the intermediate active funds tracked by Morningstar returned more than the Bloomberg Barclays Intermediate Index as of June 30. The index returned 6.48 percent for the 1-year period, 4.7 percent over three-years return and 4.47 percent over five.

Awaiting Opportunity

JPMorgan Chase & Co.'s $4.5 billion Intermediate Tax Free Bond Fund was among the laggards. Chloe Etsekson, a spokeswoman for JPMorgan, said more than 90 percent of the fund's holdings were in lower-yielding AAA and AA rated bonds, a higher percentage than the index.

"VSITX is a low volatility fund for asset allocators looking to use the municipal portion of their overall fixed income allocation as the anchor and source of cash when fixed income volatility spikes," she said in an e-mail. "It is structured to provide liquidity when other opportunities arise."

BlackRock's $7.6 billion, iShares National Muni Bond ETF, the biggest municipal ETF, outperformed 77 percent and 72 percent of national intermediate active managers, over 1 and 3 years, according to data compiled by Bloomberg.

The rise of "robo advisers," that use software programs to build portfolios could give a boost to ETFs, said Schenone. Web-based financial advisers Wealthfront Inc. and Betterment are using BlackRock's as its only municipal holding, she said.

Vanguard, a pioneer in mutual fund indexing, has been a later entrant than BlackRock to passive municipal management. The world's largest mutual fund manager started its first fund last year. Vanguard's $460 million index fund pales in comparison to its actively managed $52 billion intermediate fund.

This year, the passive fund's ETF shares returned 4.13 percent, beating the 3.92 percent posted by Vanguard's actively managed intermediate fund.

"We believe fully in low-cost active but we also believe in indexing," Alwine said. "Ultimately, it comes down to investor preferences."

Bloomberg Business

by Martin Z Braun

August 29, 2016 — 2:00 AM PDT

Dallas' Statler Hotel Sells City's Incentives in Unheard Of Bond Offering.

Commerce Statler Development LLC — the company created by developer Mehrdad Moayedi to redevelop the landmark hotel — sold the tax increment finance grant the city of Dallas provided for the huge downtown deal.

The Statler developer used the almost $46.5 million in city incentives that helped fund the project to back a unique $26.5 million public bond offering, filings for the bond offerings show.

Securities firm Jefferies LLC underwrote the public debt offering, which was made through the Wisconsin Public Finance Authority.

The sale of the tax-free bonds allowed the Statler developer to access funds that wouldn't be provided from the city's tax increment financing for years.

"This is an innovative funding tool that will allow Dallas taxpayers to realize immediate benefit of the

TIF money the city of Dallas is investing," Moayedi said in a statement. "It made sense to us to be able to utilize funds now to enhance the quality of the project.

"We are thrilled with the outcome and the citizens of Dallas are going to be impressed with the new Statler."

The City of Dallas approved the sale of the debt based on the future payout from the TIF district.

"The city had to approve this deal because the municipal bond issuer in Wisconsin required the consent of the municipality in which the project is located," said Karl Zavitkovsky, who heads Dallas' economic development office.

He said other developers may have have sold their incentives in the private markets without requiring the city's consent.

"I've never heard of anyone doing this," said John Crawford with the economic development group Downtown Dallas Inc. "It's a very unique creative concept to getting your money on the front end.

"Typically it's paid out over several years, and you have to wait your turn because of the amount of money available," Crawford said. "It makes a lot of sense for the developer to do this and expedites the project and reduces the liability."

The cost of the Statler redevelopment has grown to more than $221 million, according to the SEC filings.

The original budget for the ambitious project was estimated about $175 million in early 2014 when the Dallas City Council approved redevelopment plans for the landmark downtown building.

Opened 58 years ago as one of the country's most modern hotels, the 19-story building on Commerce Street had been empty for a decade when construction work started to transform the building in a mixed-use development.

The current construction — which is scheduled to wrap up early next year — will remake the old Statler Hotel into 219 apartments, 150 hotel rooms, and retail and office space. Originally the project had been expected to open in late 2016.

To qualify for the $46.5 million in city economic incentives, the developers must have completed the Statler redo by October of next year and have invested a minimum of $120 million in the project, according to the prospectus for the bond offerings.

The massive redevelopment has been financed in part with an $85 million EB-5 loan and $51.2 million in bridge loans based on the value of tax credits promised on the project by the federal and state governments, according to details provided to the bond buyers.

Financial data provided for the Statler project indicates that the redevelopment will cost almost $150 million. There's more than $63 million additionally in "soft costs" for the developer's fee, architectural and engineering fees and other items.

New York-based bond rating firm Moody's assigned a Baa3 rating to the bonds, which pay an interest rate of about 3.8 percent.

Investors who purchased the Statler bonds were warned that the project must be completed and meet all city requirements before the public incentives will be paid.

Developer Moayedi also warned bond investors of his ties to United Development Funding, a Grapevine-based investor and lender that is being investigated by federal prosecutors.

About 40 percent of Moayedi's projects have previously been developed with UDF funding.

"UDF is not associated with funding" of the Statler, according to the information supplied to bondholders.

The Statler developer said that it couldn't predict what impact the federal investigation of UDF "may have on the developer or the developer's ability to complete the project or continue funding the project."

Other developers who have redone downtown historic buildings say they know of no other cases where the city economic incentives have been sold as a bond to investors.

It's creative — it may set a trend," said Larry Hamilton, whose firm has done more downtown historic building conversions than any other company. "What a great idea."

The Dallas Morning News

By Steve Brown

Real Estate Editor

Published: 31 August 2016 12:52 PM
Updated: 01 September 2016 01:55 PM

SEC's Investor Advocate Talks Municipal Bonds.

The U.S. Securities and Exchange Commission's Investor Advocate Rick Fleming recently gave a speech discussing the state of the the municipal securities market.

Fleming noted approximately 41 percent of municipal bonds are owned by individual investors, while another 29 percent are owned by investors indirectly through mutual funds or other pooled investments.

However, there are some "disturbing" patterns beginning to emerge. Specifically, Fleming noted a "mere" 2.4 percent of households hold any form of municipal debt, which is half of what it was in 1998. On the other hand, the "wealthiest households" own an "increasing share" of total municipal debt, as the top one-half percent of U.S. households own 42 percent of all municipal bonds.

"Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds — this is not news to this audience," Fleming continued. "However, the shift from defined benefit pension plans to defined contribution retirement plans seems [sic.] to have significantly deteriorated the incentive for less wealthy persons to invest in munis."

Naturally, interest on municipal bonds is exempt from federal income tax, and in many cases, state and local taxes. However, the yield on municipal bonds is often less than other taxable fixed-income securities.

The lower yield could be attractive for certain investors but it does lose its appeal within the context of a tax-advantaged retirement account where all holdings are tax-deferred. As such, it makes “little sense” for investors to hold tax-exempt municipal bonds in an IRA, 401(k) or 403(b).

This leads Fleming to question if the tax benefits of municipal bonds designed to encourage investment dollars are actually accomplishing the objective.

“Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields,” Fleming expanded. “But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-to--distant future.”

Jayson Derrick, Benzinga Staff Writer

September 01, 2016 11:12am

Do you have ideas for articles/interviews you’d like to see more of on Benzinga? Please email feedback@benzinga.com with your best article ideas. One person will be randomly selected to win a $20 Amazon gift card!

An Obscure, Outrageous Reason Your Property Taxes Are So High.

In many parts of the country, they supply our water, fight our fires and help us get to work, but “special districts” are a form of government that receives very little attention. The lack of media scrutiny and public interest in special districts provides opportunities for insiders to feast on the billions of tax dollars these entities collect each year. One such group of insiders are the intermediaries who help districts issue their bonds.

The Census Bureau counted over 38,000 special districts in its 2012 enumeration of local governments (the next count will be in 2017). The Census also found that these districts had aggregate revenue of $206 billion and debt of $370 billion, representing about 10 percent of the municipal bond market.

In an amusing and informative piece in March, HBO’s John Oliver showed viewers the ups and downs of these special districts. One inspiring scene in Oliver’s report shows two officials of a New Hampshire mosquito control district conducting a fully by-the-book public meeting with precisely zero members of the public attending.

Less inspiring was the case of a Texas special district formed when a company wheeled a mobile home onto a vacant plot of land and then rented it to a married couple for $150 per month short term. Those two individuals held the entire voting power of the special district – a power they used to authorize $500 million in new bonds to be issued by the district. Those bonds will finance water, sewer and other infrastructure for a new subdivision to be built on the vacant land.

But an electorate of two short-timers lacks the ability and incentive to ensure that the new bonds are issued in a cost-efficient manner. And it appears that underwriters, lawyers, financial advisors and other service providers are raking in outsized shares of these new bond proceeds.

On Aug. 20, James Drew of the *Houston Chronicle* reported on two special districts in Fort Bend

County that paid issuance costs of between 9 percent and 11 percent of the face value of the bonds issued (Drew also reported that one of the special districts, MUD 187, was formed when a Houston developer arranged for two people to move their trailer onto what was then an empty field).

The issuance costs paid by these two special districts is well above the national average of 1.02 percent that I calculated in a 2015 study published by the Haas Institute for a Fair and Inclusive Society at UC Berkeley. Issuance costs are to local governments like points are to a consumer taking out a home mortgage. In both cases, the goal should normally be to minimize them.

Subsequently I looked at several bonds issued by special districts in the Dallas suburbs for the Texas Public Policy Institute. Costs of issuance ranged from 11 percent to 15 percent of the face value of the securities. In a number of the Texas cases (both those near Houston and those around Dallas) underwriting fees alone accounted for 3 percent of face value – compared to a national average of about 0.5 percent reported by Bloomberg.

Late last year, the California State Treasurer's Office released a comprehensive database of bonds issued in the Golden State with cost of issuance details. While my study provides data for a nationwide sample of bonds, the California State Treasurer's Office has now posted issuance cost details for all municipal bonds issued statewide. This impressive data set can be found here. The data were collected by the California Debt and Investment Advisory Commission (CDIAC), a unit of the State Treasurer's Office. Under state law, California local governments must report their debt data to CDIAC. The commission had been publishing some of this data, but Treasurer John Chiang, an advocate for transparency, recently decided to publish everything, including details on issuance costs.

A review of the California data shows numerous issuance cost ratios in excess of 10 percent of the issued amount – and even some exceeding 20 percent. Many of the higher issuance cost levels were associated with small bond issues from special districts. Since some of the issuance costs don't vary with issuance size, they can hit small issuers relatively hard.

In 2013, San Jacinto special districts (called Community Facilities Districts) issued two special tax bonds totaling $985,000 and $925,000 respectively. In each case, costs of issuance exceeded 20 percent.

According to the Official Statement for the $925,000 bond, the district received a mere $532,066 of the bond proceeds. The Estimated Sources and Uses of Funds on page 6 of the document show $90,428 being deposited into a reserve fund and a total of $295,890 going to the underwriter, attorneys and other service providers. The remaining $6,616 reflected an original issue discount, arising from the bonds being sold below face value.

The debt service schedule on page 10 of the Official Statement shows that the district will pay $1,240,252 in interest on the $925,000 of bonds through 2043. Total debt service of $2,165,252 over the life of the bond issue is four times the net proceeds received by the district.

Whether high-cost bonds are issued in Texas, California or another state, the victims are homeowners living in or moving into the special district; their property taxes must be increased to service the bonds. Higher tax rates must be levied over the life of these securities – often as long as 30 years – and can lead to depressed property values.

While special district voters may be unable or uninterested in protecting themselves from excessive bond fees, other levels of government can. More states can follow California's lead by making issuance cost data public and readily accessible, facilitating the type of research I have reported

here (Texas has a similar resource here).

Also, regulators can take action against unscrupulous bond market providers. Earlier this year, the Financial Industry Regulatory Authority (FINRA) fined a securities firm for charging a 4.3 percent underwriting fee to a Colorado school district, concluding that the fee "was inappropriate given the underwriting work performed." Hopefully FINRA will turn its attention to special districts, thereby protecting the property taxpayers of tomorrow.

The Financial Times

By Marc Joffe

September 2, 2016

S&P Global Ratings' Public Finance Podcast (Policy Shift on Federal Prisons & Illinois Higher Education)

Jenny Poree discusses how a provides a policy change by the US Department of Justice regarding federal prisons will negatively impact our rated prison portfolio and Ashley Ramchandani provides an update on higher education rating actions in Illinois.

Listen to the podcast.

Aug. 30, 2016

Bloomberg Brief Weekly Video - 09/01

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

Watch the video.

September 1, 2016

Fitch Teleconference: 2016 Median Ratios for Nonprofit Hospitals and Healthcare Systems.

Fitch Ratings is hosting a teleconference on Thursday, September 8, 2016 at 2:00pm EDT to discuss 2016 Median Ratios for Nonprofit Hospitals and Healthcare Systems.

There will be a question and answer session at the end of the call. Questions can also be emailed in advance to: danielle.riles@fitchratings.com.

Contact:
Michele O'Brien

Senior Director, Public Finance – Investor Development
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Click here to register.

Fitch: US Public Pension Amortization Practices Remain a Problem.

Fitch Ratings-New York-29 August 2016: The chances of a near-term improvement in funded ratios for many state-wide pension systems are remote, Fitch Ratings says, even as annual pension contributions made by state governments continue to rise. In particular, state systems that employ 30-year rolling amortization or similar methods to calculate their annual required contributions (ARC) are at greater risk of having pension sustainability problems over the long run.

Actual pension contributions have risen rapidly in recent years as governments have attempted to stem the erosion of their systems' funded ratios and catch up with rising ARCs, the contribution benchmark calculated by actuaries as necessary to eliminate the unfunded pension liability over time. The average actual contribution in fiscal 2014 is roughly 89% greater than in 2008, the year the global financial crisis began, while the ARC has risen an average of 72% since then.

However, actual contributions remain inadequate relative to the ARC. Based on Fitch's last state pension update, a little more than half of major state-wide systems received an annual contribution in fiscal 2014 at or above their ARC. The remaining systems received lower contributions. A shortfall in actual contributions, relative to the ARC, deprives a system of investable resources, increases its unfunded liability and elevates the future ARC that will be calculated at subsequent funding valuations.

Inadequate contributions relative to the ARC are not the only weak contribution practice. In many cases, a system's ARC itself is a poor benchmark of contribution adequacy. The ARC is a product of multiple, separate assumptions reflecting the disparate policy priorities of each system. These priorities include cost stability, equity and certainty of achieving full funding. For many systems, progress in achieving full funding is sacrificed for short-term cost stability. This is particularly true for major systems employing 30-year rolling amortization or other amortization assumptions that create a similar outcome.

Under a 30-year rolling amortization, the ARC is an inadequate measure of contribution sufficiency because at each successive annual funding valuation the ARC is recalculated based on a new 30-year open period, much like refinancing a home mortgage loan year after year. The resulting ARC is likely to provide a higher degree of contribution stability at a lower cost than if it were calculated based on more conservative, alternative methods, such as a consistently fixed, closed-period amortization, various layered amortization approaches, or even a shorter rolling period, such as over 20-years.

For systems using a 30-year rolling amortization, the resulting ARC may too low to cover the cost of new benefits each year plus the accrued interest on the pre-existing unfunded liability — hence the unfunded liability can rise each year, even when the full ARC is paid and other assumptions are achieved. Many governments using 30-year rolling amortization while consistently paying their full ARC each year have still seen their funded ratios languish well below prerecession levels.

Implementation of GASB 67 and 68 standards, which created a new, parallel "accounting" valuation for financial reporting purposes, has not altered the challenges associated with weak pension funding practices. Although similar assumptions inform both funding and accounting valuations for

the pension liability, the funding valuation remains how systems arrive at an ARC, the rough equivalent of the actuarially determined employer contribution (ADEC) under the new standards.

Given legal protections that limit the near-term positive impact of reforms and other trends affecting pensions, we expect liabilities will remain elevated and ARC increases to continue. Most governments have been able to absorb higher pension contributions, and Fitch expects this to remain the case, especially as past reforms begin to have an impact. In a smaller number of cases, pensions may result in downward rating pressure, particularly as past contribution shortfalls and limited reforms continue to drive the unfunded liability and ARC higher, reducing expenditure flexibility and straining operations.

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Puerto Rico's Fiscal Affairs Will Be Overseen by 7 Experts in Finance and Law.

The White House said it had chosen seven experts in finance and the law to supervise Puerto Rico's fiscal affairs in the coming months under a law enacted this summer intended to help the island restructure its $72 billion debt.

Four of the supervisory board members are Republicans and three are Democrats, chosen from lists

provided to the White House by the party leaders of both houses of Congress. And four of the members are Puerto Ricans, which is three more than required under the new debt-restructuring law.

The Republicans named to the board are:

■ Andrew G. Biggs, a resident scholar at the American Enterprise Institute.

■ José B. Carrión III, president of Hub International, an insurance brokerage in Puerto Rico.

■ Carlos M. García, founder and chief executive of BayBoston Managers, a private equity firm.

■ David A. Skeel Jr., a University of Pennsylvania law professor with expertise in bankruptcy.

Multimedia Feature: How Puerto Rico Debt Is Grappling With a Debt Crisis
The Democrats are:

■ Arthur J. Gonzalez, a senior fellow at the New York University School of Law and a former chief judge of the United States Bankruptcy Court for the Southern District of New York.

■ José Ramon González, president and chief executive of the Federal Home Loan Bank of New York.

■ Ana J. Matosantos, president of Matosantos Consulting and a former director of the California Department of Finance.

In addition, the governor of Puerto Rico, Alejandro García Padilla, will hold a position on the board. He is not seeking a second term as governor, so whoever is elected to succeed him in November will take his seat on the board.

“These officials have the breadth and depth of knowledge that is needed to tackle this complex challenge,” President Obama said in a statement on Wednesday.

The board was created as part of a new legal framework to shelter Puerto Rico from creditor lawsuits while it seeks to reduce its debt as its financial crisis intensifies. The law was necessary because federal law prohibits Puerto Rico from entering bankruptcy, which is what mainland cities and counties could do in similarly dire straits. It gives the island some restructuring powers normally available only in bankruptcy, but it also requires it to submit to federal oversight. The board is intended to remain in place until Puerto Rico regains the ability to raise money in the capital markets, which could take years.

On the island, public opinion about federal oversight has been mixed, and protesters turned out in San Juan on Wednesday to call for repeal of the new law. Many Puerto Ricans resent Washington oversight, and see the board as an unwelcome vestige of colonialism. But at the same time, many Puerto Ricans have lost faith in their own elected officials, and they harbor some hope that the oversight board will help show the way out of the legal and financial maze in which they are lost.

Mr. Obama acknowledged their hopes and misgivings on Wednesday, saying that for the board to succeed, it “will need to establish an open process for working with the people and government of Puerto Rico.” He said the members would also “have to work collaboratively to build consensus for their decisions.”

Senior administration officials said the board’s first substantive task would be to review the multiyear fiscal plan that Governor García Padilla’s administration is preparing, make sure it meets

all requirements under the law and propose revisions as needed. Ultimately the board must certify the soundness of the fiscal plan, which is to be the bedrock of Puerto Rico's debt restructuring and other important measures to revive its economy.

"Time is of the essence," Secretary Jacob J. Lew of the Treasury said in a statement on Wednesday. "The Puerto Rico government should bring together all of its resources to develop and submit a plan to the Oversight Board as soon as possible."

Unsound fiscal policies in the past have contributed greatly to Puerto Rico's oversize debt. The government failed for many years to balance its budget, and borrowed money to plug the holes. Even as its creditworthiness crumbled, it could still borrow with ease by issuing municipal bonds. As a United States territory, it could offer interest on the bonds that was exempt from federal, state and local taxes, in all 50 states.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

AUG. 31, 2016

GASB Proposes Guidance for Debt that is Extinguished Early Using Only Existing Resources.

Norwalk, CT, August 29, 2016 — The Governmental Accounting Standards Board (GASB) today proposed guidance that state and local governments would apply when extinguishing debt prior to its maturity. Specifically, the Exposure Draft, *Certain Debt Extinguishment Issues,* proposes guidance for transactions in which only existing resources are placed in a trust for the purpose of extinguishing debt.

Current GASB standards provide guidance on how to account for and report when the proceeds of refunding bonds are placed in a trust for the future repayment of outstanding debt. However, the standards do not apply when only existing resources (in other words, other than bond proceeds) are placed in a trust for the future repayment of outstanding debt. Consequently, governments could account for what is essentially the same transaction in two different ways.

The Exposure Draft proposes uniform accounting and financial reporting guidance for debt that is "defeased in substance," regardless of the source of the resources that are placed in a trust.

"Whether you borrow the money to extinguish the debt or use cash you already have, the treatment ought to be the same because the economic substance of the transaction is the same," said GASB Chair David A. Vaudt. "From a government's perspective, the source of the money that is being used to refund debt should not matter as long as the requirements for in-substance defeasance are met."

In this context, in-substance defeasance refers to a situation in which the debt remains outstanding but sufficient resources—in the form of essentially risk-free monetary assets—have been placed into an irrevocable trust to make payments on the debt when they come due. When debt is defeased in substance, the debt and the resources placed in trust are no longer reported in the financial statements. Governments are required, however, to disclose information in the notes to the financial statements about debt that has been defeased in substance.

The Exposure Draft also proposes guidance relating to prepaid insurance on debt that is extinguished and notes to the financial statements for certain defeased debt. One proposal would require disclosure if a government is not prohibited from subsequently exchanging the essentially risk-free monetary assets in the trust with monetary assets that are not essentially risk-free.

The Exposure Draft is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by October 28, 2016.

IRS Issues Final Price Regulations to Be Addressed in Fall.

The IRS priority guidelines released this month include two regulations of importance to many GFOA members: Issue price regulations and proposed rules on the definition of political subdivisions. The priority guidelines specify regulations that the U.S. Department of the Treasury will work on through June 30, 2017.

According to the guidelines, the final regulations on the definition of issue price for tax-exempt bonds will be released this year. GFOA expressed core concerns including safe harbors for competitive sales in testimony before Treasury and IRS officials in 2015. The priority guidelines also include the proposed regulations defining political subdivisions for purposes of the tax exemption, but are not likely to progress, given the extensive response from the issuer community on the topic. GFOA also spoke in opposition to these proposed rules in 2016, specifically emphasizing that the proposed rules question the legitimacy and authority of the bodies enacting the enabling legislation that created the political subdivisions in the first place.

GFOA's Federal Liaison Center will continue to monitor and report the progress of these projects and communicate GFOA's concerns to IRS and Treasury officials throughout the process.

Government Finance Officers Association

Wednesday, August 31, 2016

MSRB Seeks Mark-up Disclosure for Municipal Securities Transactions.

Washington, DC – In an effort to improve investors' ability to assess the cost of transacting in municipal bonds, the Municipal Securities Rulemaking Board (MSRB) today advanced a plan to require dealers to provide retail investors information about compensation dealers receive when buying municipal bonds from, or selling them to, investors.

Currently, retail investors in municipal securities receive less information about the cost of their transactions than investors in the equity market. The MSRB's plan, which was submitted to the Securities and Exchange Commission (SEC) for approval, seeks to provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their transactions.

"The concept of providing this type of transparency of transaction costs for municipal securities was first floated 40 years ago," said MSRB Executive Director Lynnette Kelly. "Changes in technology and in the municipal market have made it possible for investors to receive similar transaction

information as investors in the equity market. This is a meaningful and historic shift for the municipal market."

If approved, the MSRB's proposal will require a dealer to make the new disclosure when, for example, it sells a municipal bond in a principal capacity (for the dealer's own account) to a retail customer and on the same day buys the same security from a third party. In this case, the dealer would disclose on the customer's confirmation its compensation, or "mark-up," from the "prevailing market price" of the security. In addition to providing the dollar value and percentage of the dealer's compensation on a trade, the confirmation would include a reference to trade price data about the security on the MSRB's Electronic Municipal Market Access (EMMA®) website.

"Our proposal will provide dealer compensation information on an estimated 8,000 retail investor municipal securities transactions each day," Kelly said. "That's a significant number of people who will have additional information about the cost of their transactions."

The MSRB's rule filing includes guidance for dealers on establishing the prevailing market price of a security for the purpose of calculating their compensation. Because of the significance of the proposed rule, the MSRB wants dealers to understand its intent with respect to how the rule would apply to different trading situations and the practical realities of the unique municipal market, which has more than one million individual bonds, the majority of which do not trade frequently. The MSRB's guidance specifically addresses establishing the prevailing market price for contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

If approved, the proposed mark-up disclosure rule will be effective no later than one year following SEC approval.

Date: September 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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TAX - NEW YORK

Joon Management One Corp. v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - August 17, 2016 - N.Y.S.3d - 2016 WL 4371715 - 2016 N.Y. Slip Op. 05795

Property owner brought action against town seeking a judgment declaring that property's tax assessment was overstated and erroneous.

The Supreme Court, Rockland County, granted town's motion for summary judgment and denied property's owner's motion for leave to amend or to enforce settlement agreement. Property owner appealed.

The Supreme Court, Appellate Division, held that:

- Statute of limitations for tax certiorari proceedings applied to action;
- Town's motion for summary judgment was not premature;

- Supreme Court properly denied property owner's motion for leave to amend; and
- Supreme Court properly denied property owner's cross-motion to enforce alleged settlement agreement.

Statute of limitations for tax certiorari proceedings, which required such proceedings to be commenced after exhaustion of administrative grievance remedies and within 30 days after filing of the final assessment roll, applied to property owner's against town seeking judgment declaring that its property's tax assessment was overstated and erroneous, where gravamen of property owner's claim was that its property was overtaxed.

Town's motion for summary judgment on property owner's claim that its property tax assessment was overstated and erroneous was not premature, despite property owner's assertion to the contrary, where property owner failed to demonstrate how discovery might have lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the town.

Supreme Court properly denied property owner's motion for leave to amend its complaint against town challenging tax assessment, where property owner's proposed amendments, which were to add causes of action to recover money had and received and to recover damages pursuant to § 1983 for violation of constitutional rights, were devoid of merit.

Supreme Court properly denied property owner's cross-motion to enforce alleged settlement agreement between owner and town with regard to owner's action against town challenging its property tax assessment, where stipulation of settlement was never approved by town board, thus never becoming binding upon town.

- SEC Announces MCDC Issuer Enforcement Actions.
- SEC: Issuer Settlements Show Widespread, Pervasive Disclosure Problems.
- Democratizing Tax Increment Financing through Participatory Budgeting – A Tool Kit.
- The Lowdown On Enhancement Programs For School District Bonds.
- Hawkins Advisory: 2016 Final Arbitrage Regulations.
- IRS Issues New Safe Harbors for Management Contracts to Facilitate P3s.
- Rev. Proc. 2016-44 Greatly Expands Rev. Proc. 97-13 Safe Harbor for Management Contracts, Opening the Door for Long-Term Management Contracts.
- Some Lawyers Have Questions About New Management Contract Safe Harbors.
- New IRS Management Guidance is Flexible, Furthers P3s: Ballard Spahr Webinar.
- And finally, Huggies on Conveyance (2nd ed.) this week brings you *City of Jackson v. Jordan*, in which the Supreme Court of Mississippi informs us that, "An infant's avoidance of a conveyance of property may be evidenced by any act clearly demonstrating a renunciation of the contract." We would now like to invite you to close your eyes and envision the infantile act your particular infant would use to demonstrate the renunciation of a contract. Your tool kit includes – but is certainly not limited to – soggy diapers, crayon fragments, curdled mush, miscellaneous choking hazards, regurgitated peas, and a Black's Law Dictionary covered in drool. Enjoy!

IRS Issues New Safe Harbors for Management Contracts to Facilitate P3s.

WASHINGTON – The Internal Revenue Service on Monday released a revenue procedure containing safe harbors for management contracts that allows them to more easily be used in bond-financed infrastructure and other projects involving public-private partnerships.

Rev. Proc. 2016-44 extends terms of long-term management to up to 30 years from the previous 15 years that market participants had complained was too restrictive. It also removes the formulaic fixed fee requirements for manager compensation, allowing for more incentive compensation.

“These safe harbors aim to give municipalities tools to allow more flexible and efficient incentives for longer-term private management of tax-exempt bond financed projects to facilitate infrastructure initiatives,” said John Cross, the Treasury Department’s associate tax legislative counsel.

The revenue procedure will be published in an Internal Revenue Bulletin on Sept. 6.

The safe harbors apply to any management contract that is entered into on or after Aug. 22, but issuers can also apply the safe harbors to any management contract that was entered into before that date.

Issuers also have the option of applying the more restrictive safe harbors in Rev. Proc. 97-13, issued in 2013, to a management contract that is entered into before Feb. 18, 2017 and not materially modified or extended after that date.

Rev. Proc. 97-13 established safe harbors for long-term management contracts, providing safe harbors under which a contract of up to 10 years would require at least 80% of the manager’s annual compensation to be based on a fixed fee. Fifteen-year contracts would require at least 95% of the annual compensation be based on a fixed fee.

But bond lawyers and other market participants complained that the safe harbors were too restrictive and had not kept pace with recent market practices, such as attempts to use bonds to help finance projects with P3s, where private parties join together with state or local governments to develop, build, and operate infrastructure projects. P3s involve long-term management contracts.

Historically, the IRS has found that bond-financed projects have private business use that may jeopardize the tax-exempt status of bonds if there is private ownership or a private lease of a building or other facility.

This new Rev. Proc. 2016-44 contains three provisions containing limits that ensure there is no private ownership or leases.

The first is that a state or local government “must exercise a significant degree of control of the use of the managed property.” Second, the state or local government “must bear the risk loss upon damage or destruction of the managed property.”

Third, the private party “must agree that it is not entitled to, and will not take any tax position that is consistent with the state or local government with respect to the managed property. The private party must not take any depreciation or amortization, investment tax credit, or deduction for any rent payment for the property.

The revenue procedure also carries over some restrictions from the previous one such as that there must be no net profit-sharing arrangements.

The procedure is receiving praise from many bond and tax lawyers, some of whom had submitted suggestions to Treasury and IRS on how to how to liberalize management contract safe harbors and

clear up points of confusion.

Stefano Taverna, an attorney with McCall, Parkhurst & Horton in Dallas, and the chair of the American Bar Association's tax-exempt financing committee, called the new safe harbors "very significant," adding that they may help facilitate P3s. "I think Treasury did a terrific job at understanding the industry and what it will require in the future and tried to address these concerns," Taverna said. "All in all, I think the industry will welcome what Treasury put forward. It seems to be a lot more flexible and very reasonable."

Carol Lew, a shareholder at Stradling at Newport Beach, Calif., said the prior time limits and compensation structure for management contracts were "too rigid" and called the new rules "much more practical and pragmatic." The new revenue procedure is more representative of how the municipal bond industry has evolved, she said.

"It looks like Treasury and the IRS listened to comments from the industry on how to make the rules achieve IRS objectives and meet the needs of state and local governments," Lew said.

"I think this a helpful rule that can facilitate more public-private partnerships," she said. "It should be a good thing for issuers."

A management contract is defined by the IRS as a "management, service or incentive payment contract between a qualified user and a service provider under which the service provider provides services for a managed property." The contract term limit does not include the portion of a contract for services before a managed property is placed in service, such as construction design or management.

In Jan. 2015, the IRS released Notice 2014-67, which expanded the type of productivity rewards that could be used in management contracts. The notice also said that a management contract would not result in private business use if it is five years or less and compensation for services is based on a stated amount, periodic fixed fee, capitation fee, per-unit fee or any combination.

David Caprera, an attorney with Kutak Rock in Denver, said that this most recent update to management contracts acknowledges that a property manager is not supposed to be the economic equivalent of an owner of the bond-financed property, which he called a "fundamental principle."

"An owner is one who shares in the profits and losses of the business," Caprera said. "If the manager's compensation is reasonable and not tied to profits or losses, the Rev. Proc. recognizes that the manager is not an owner."

"The new rules allow long-term contracts for long-lived projects, and short-term contracts for short-lived assets so long as the compensation is reasonable and not tied to profits or losses," he added. "In particular, the '4 H's' of housing, healthcare, highways and hotels are going to be the beneficiaries, in that long-term assets can now be managed properly on a long-term basis."

Monday's revised Rev. Proc. comes one week after Treasury and IRS released their 2016-17 priority guidance plan, which included six projects for tax-exempt bonds the agencies plan to allocate resources toward through June. Asked about the plan, Cross had said that the most immediate short-term projects were to update management contract safe harbors and issue final regulations on issue price.

The Bond Buyer

By Evan Fallor

August 22, 2016

SEC Approves MSRB's Shorter Period for Resolving Interdealer Failures.

WASHINGTON — Dealers will have 10 calendar days to close out failed inter-dealer transactions now that the Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's amendments to one of its rules.

The amendments to MSRB Rule G-12 on uniform practice require the 10-day closeout period and include an option for a one-time, 10-day extension if the buyer of the municipal security consents. The SEC approved the changes on Thursday and they will take effect on Nov. 16.

The MSRB's current rules for closeout procedures are included in a years-old portion of Rule G-12 and do not mandate a closeout time period. They instead recommend that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The MSRB said when it first proposed the changes that they would help to lessen the effect of interdealer transaction failures on the market. The self-regulator's first proposal would have set the closeout timeframe at 30 days.

The Securities Industry and Financial Markets Association responded to that proposal by asking the MSRB to instead move forward with a 15-day time period with the possibility of a 15-day extension.

The MSRB, citing concerns about small dealers being overburdened by a shorter timeframe, then proposed having a 20-day closeout time period. SIFMA, with the support of the Bond Dealers of America, responded again, saying the MSRB's concerns were unwarranted and that the time frame should be further shortened to the ultimate 10-day period with the possibility of a 10-day extension.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB executive director Lynnette Kelly after the SEC approved the amendments. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

In addition to the changes to the timeline for resolving interdealer failures, the SEC also approved MSRB proposals to 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. The amendments will also 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 will be significantly shortened, the three interdealer options for remedying a failed transaction will 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.

The Bond Buyer

By Jack Casey

August 19, 2016

PUBLIC UTILITIES - CALIFORNIA

Desoto Cab Company, Inc. v. Picker

United States District Court, N.D. California - July 20, 2016 - F.Supp.3d - 2016 WL 3913643

Owner and operator of taxicab company filed § 1983 equal protection claim against California Public Utilities Commission, seeking declaratory and injunctive relief, and alleging that operators of companies that provided prearranged transportation services through online-enabled applications were de facto taxicab companies and therefore should be subject to the same rules and regulations as traditional taxicab companies. The Commission moved to dismiss.

The District Court held that:

- Suit was not barred by the Johnson Act;
- Action was ripe for adjudication; and
- Non-parties were not necessary and required to be joined in action.

Equal protection claim asserted under § 1983 by owner of taxicab company against California Public Utilities Commission, seeking declaratory and injunctive relief, and alleging that companies that provided prearranged transportation services through online-enabled applications were de facto taxicab companies and therefore should be subject to the same rules and regulations as traditional taxicab companies, was not barred by Johnson Act, which precluded federal court jurisdiction over certain state utility rate cases. Although taxicab company owner effectively conceded that companies providing prearranged transportation services were public utilities, and rules and regulations imposed by Commission did not necessarily interfere with interstate commerce, the claim did not challenge order affecting rates charged by a utility, but rather challenged the larger act of the Commission's regulation of companies providing prearranged transportation services, but not taxicab companies.

Equal protection claim asserted under § 1983 by owner of taxicab company against California Public Utilities Commission, seeking declaratory and injunctive relief, and alleging that companies that provided prearranged transportation services through online-enabled applications were de facto taxicab companies and therefore should be subject to the same rules and regulations as traditional taxicab companies, was ripe for adjudication. Even if all of the rules and regulations applicable to the companies providing prearranged transportation services had not been finalized, taxicab company owner challenged the overall regulatory scheme that differentiated between regulations governing the two types of transportation providers.

Companies that provided prearranged transportation services, other traditional taxicab companies, and municipalities that regulated traditional taxicab companies were not necessary parties required to be joined in equal protection action asserted under § 1983 by owner of taxicab company against California Public Utilities Commission, seeking declaratory and injunctive relief, and alleging that companies that provided prearranged transportation services through online-enabled applications were de facto taxicab companies and therefore should be subject to the same rules and regulations as traditional taxicab companies. Disposing of action in absence of traditional taxicab companies, providers of prearranged transportation services, and municipalities would not impede or impair

their ability to protect their interests, as the positions of those entities were represented by the parties to the action.

PARKING FEES - ILLINOIS

Franklin v. Parking Revenue Recovery Services, Inc.

United States Court of Appeals, Seventh Circuit - August 10, 2016 - F.3d - 2016 WL 4248035

Plaintiffs brought putative class action against debt collector, alleging violations of Fair Debt Collection Practices Act (FDCPA) in relation to collection of public parking fees and nonpayment penalties.

The United States District Court granted debt collector's summary judgment motion. Plaintiffs appealed.

The Court of Appeals held that plaintiffs' obligations arose from contract law, and thus were debts covered by FDCPA.

Plaintiffs' obligations for public parking fees and nonpayment penalties arose out of contract law, and thus those obligations constituted debts covered by Fair Debt Collection Practices Act (FDCPA), even though parking lot was owned by municipal agency, and even though contract between agency and contractor that operated lot sometimes referred to nonpayment penalty as "fine," where no municipal ordinance or regulation imposed nonpayment penalty, agency's contract with contractor stated that disputes with parking patrons would be handled as matter of contract law, and, by parking in lot, plaintiffs accepted contractor's offer to park at stated cost, which formed contract obligating them to pay stated price or pay higher price if they left lot without paying.

IMMUNITY - INDIANA

Birge v. Town of Linden

Court of Appeals of Indiana July 25, 2016 - N.E.3d - 2016 WL 3976353

Property owners brought action against town after modifications to a farm drainage system caused flooding on their property, asserting claims for nuisance, civil conspiracy, and inverse condemnation.

The Circuit Court granted town's motion to dismiss, and property owners appealed.

The Court of Appeals held that:

- Town failed to demonstrate that it was entitled to discretionary function immunity under the Tort Claims Act, and
- Property owners' allegations were sufficient to state a claim for civil conspiracy.

Town failed to demonstrate in motion to dismiss property owners' claims for nuisance and inverse condemnation that it was entitled to discretionary function immunity under the Tort Claims Act. Accepting as true the allegations in property owners' complaint as to whether town's actions constituted a nuisance, the question of immunity required additional factual development with

regard to whether or not town consciously weighed competing interests in reaching its decision to modify farm drainage system, and the immunity provisions of the Act did not apply to claims for inverse condemnation.

Property owners' allegations that town conspired with drainage board to improperly utilize existing right-of-way and construct new components for municipal storm drainage system, which caused water to accumulate on property owners' farmland was sufficient to state a claim for civil conspiracy, even if property owners did not allege town acted unlawfully or to accomplish an unlawful purpose. The allegation of civil conspiracy was just another way of asserting a concerted action in the commission of a tort causing damages to the property owners.

HIGHWAYS - MINNESOTA

J & W Asphalt, Inc. v. Belle Plaine Tp.

Court of Appeals of Minnesota - August 1, 2016 - N.W.2d - 2016 WL 4069244

Landowner brought action against township, seeking declaratory and injunctive relief, arguing that township was responsible for maintaining road used to access property.

Parties filed cross-motions for summary judgment. Landowner's motion was granted in part, and the trial court ordered the Department of Transportation be joined as a party. The Department moved to dismiss. The District Court granted the motion, concluding that township, not Department, was responsible for road's maintenance. Township appealed.

The Court of Appeals held that:

- Statute allowing Department to convey to a political subdivision road that was a necessary part of an upgrade to a trunk highway system does not require that the subdivision's acceptance for the conveyance to be effective;
- Road was a public road rather than a cartway; and
- Township was responsible for maintaining road.

Land for road was acquired through condemnation and road was constructed as part of trunk highway upgrade, and therefore, road was a "public road" rather than a "cartway"; there was no petition for establishment of cartway, nor was there a dedication of land to public use.

Township was responsible for maintaining road conveyed to it by Department of Transportation, despite fact that township did not open the road and had not authorized expenditure of funds for its maintenance; road was a necessary part of an upgrade to a trunk highway system and conveyed to township after its creation.

MUNICIPAL ASSESSMENTS - MINNESOTA

First Baptist Church of St. Paul v. City of St. Paul

Supreme Court of Minnesota - August 24, 2016 - N.W.2d - 2016 WL 4446310

Churches brought action challenging city's right-of-way (ROW) assessment.

The District Court entered summary judgment in city's favor, and churches appealed. The Court of

Appeals remanded. On remand, the District Court entered summary judgment in city's favor, and churches appealed. The Court of Appeals affirmed, and churches appealed.

The Supreme Court of Minnesota held that:

- City's ROW assessment was "tax," rather than fee for services, and
- Fact issues remained as to extent of special benefits to churches' properties attributable to right-of-way services.

City's right-of-way (ROW) assessment was "tax," rather than fee for services, even though many services provided addressed conditions that, if left unabated, would have become nuisances, and funds collected through ROW assessment were kept in segregated accounts used only to pay for right-of-way maintenance services, where city charter provided assessments were for "the cost of improvements as are of a local character," that "in no case shall the amounts assessed exceed the benefits to the property," and that one basis to appeal ROW assessment was that it "is in an amount in excess of the actual benefits to the property," city code provisions implementing ROW assessment system made repeated reference to property "benefited," city's policy resolution governing ROW assessments recited that "[t]he law requires that the properties assessed must receive a special benefit from the assessment," ROW assessment functioned as revenue measure, benefiting public in general, and each property owner paid annual assessment without regard to whether owner had violated any ordinance or undertaken any activity requiring regulation.

EMINENT DOMAIN - MISSISSIPPI

City of Jackson v. Jordan

Supreme Court of Mississippi - August 18, 2016 - So.3d - 2016 WL 4398971

Condemnee brought action against condemner, alleging that condemner violated his constitutional rights by depriving him of his property without due process of law.

Following a bench trial, the Circuit Court entered judgment in favor of condemnee and denied condemner's motion for reconsideration. Condemner appealed.

The Supreme Court of Mississippi held that:

- Condemnee had standing to file claim, even though condemnee acquired property from minor-grantor;
- Ten-day statutory limit in which to appeal decision rendered by municipal authorities was inapplicable to condemnee, and thus, condemnee's failure to timely appeal decision did not deprive Circuit Court of jurisdiction;
- Condemner's immunity from tort claims based on administrative action or inaction of a legislative or judicial nature did not protect it from condemnee's claim; and
- Condemner waived issue of proper method of determining damages by failing to preserve the issue at trial and on appeal.

Condemnee had standing to file claim against condemner alleging that he was deprived of his property without due process of law, even though condemnee acquired property from minor-grantor, where grantor did not seek to avoid deed, but ratified the deed by affidavit upon reaching the age of majority.

Ten-day statutory limit in which to appeal decision rendered by municipal authorities was inapplicable to condemnee who filed action against city-condemner after it ordered his house demolished as menace to public health, and thus, condemnee's failure to timely appeal decision did not deprive Circuit Court of jurisdiction, where condemner's notice of condemnation hearing did not provide the statutorily required two-weeks notice, and condemnee did not become aware of the condemnation until after time to appeal condemner's decision had expired.

City-condemner's immunity from tort claims based on administrative action or inaction of a legislative or judicial nature did not protect city from condemnee's claim, alleging that city failed to give him notice of condemnation as required by statute in violation of his due process rights. City's immunity against tort claims did not encompass claims of constitutional violations.

Condemner waived issue of proper method of determining damages in action brought by condemnee, alleging that condemner deprived him of his property without due process of law, by failing to preserve the issue at trial and on appeal, where condemner failed to object that condemnee's receipts for home repairs were improper method for calculating damages, and did not make argument on appeal with citations to relevant legal authority.

PUBLIC CONTRACTS - MISSOURI

Brentwood Glass Company, Inc. v. Pal's Glass Service, Inc.

Supreme Court of Missouri, en banc - August 23, 2016 - S.W.3d - 2016 WL 4444039

Sub-subcontractor brought mechanic's lien claim against county, county's agent for construction of property development project, general contractor, and subcontractor.

The Circuit Court granted summary judgment to defendants. Sub-subcontractor appealed.

The Supreme Court of Missouri held that:

- Public policy did not prohibit sub-subcontractor from perfecting lien against leasehold interest in property held by agent;
- Genuine issue of material fast as to last date that sub-subcontractor worked on project, as would determine whether sub-subcontractor's mechanic's lien was filed within six months of such date, as required by statute, precluded summary judgment in favor of agent;
- Genuine issue of material fact regarding whether sub-subcontractor's mechanic's lien statement contained a just and true account of demand due, despite statement's alleged inclusion of nonlienable items, precluded summary judgment in favor of agent; and
- Agent was not a "contractor" of whom a bond would be statutorily required to be furnished to county.

Sub-subcontractor could not perfect mechanic's lien against county, after sub-subcontractor allegedly failed to receive payment for glass and glazing work done on county's property development project, where county owned property at time sub-subcontractor began working on building, and contract between county and county's agent for construction of project provided that any improvements installed in building immediately became property of county.

Public policy did not prohibit sub-subcontractor from perfecting its mechanic's lien against leasehold interest in property held by county's agent for construction of development project regarding property. County's contract with agent authorized, under certain circumstances, agent to assign its leasehold interest without county's prior written consent, and thus county anticipated circumstances

that would end its control over the leasehold.

Genuine issue of material fast as to last date that sub-subcontractor worked on property development project, as would determine whether sub-subcontractor's mechanic's lien was filed within six months of such date, as required by statute, precluded summary judgment in favor of holder of leasehold interest in property, in sub-subcontractor's action to enforce lien.

Genuine issue of material fact regarding whether sub-subcontractor's mechanic's lien statement contained a just and true account of demand due, despite statement's alleged inclusion of nonlienable items, precluded summary judgment in favor of holder of leasehold interest in property, in sub-subcontractor's action to enforce lien.

Entity with which county contracted regarding property development project was not a "contractor" of whom a bond would be statutorily required, where entity did not provide construction services under its contract with county but rather merely contracted to be county's agent and arranged for construction services to be provided by others.

Sovereign immunity doctrine barred sub-subcontractor's action against county alleging county failed to require purported contractor to furnish a bond for property development project, where sub-subcontractor sued only the county and not any individual public official.

MUNICIPAL ORDINANCE - NEBRASKA

Malone v. City of Omaha

Supreme Court of Nebraska - August 19, 2016 - N.W.2d - 294 Neb. 516 - 2016 WL 4411311

Resident brought action against city challenging an ordinance requiring the licensure of contractors.

After summary judgment was granted to city on all but one claim, the District Court conducted a bench trial and found for city. Resident appealed.

The Supreme Court of Nebraska held that:

- City was not required to recommence notice process after city amended ordinance's title;
- Legislature authorized city to pass ordinance;
- Ordinance was not invalid for monopolistic tendencies;
- Ordinance was not preempted by state laws; and
- Ordinance did not violate resident's constitutional right to conduct lawful business or his right to privacy and property.

EMINENT DOMAIN - NORTH DAKOTA

In re 2015 Application for Permit to Enter Land for Surveys and Examination

Supreme Court of North Dakota - August 18, 2016 - N.W.2d - 2016 WL 4395434 - 2016 ND 165

County water resource district filed applications for permission to enter landowners' properties to conduct surveys, mapping, and examinations in connection with a proposed flood control project.

The District Court granted applications. Landowners appealed, and the appeals were consolidated.

The Supreme Court of North Dakota held that:

- Trial court had subject matter jurisdiction over district's applications, and
- Statute allowing district to "enter upon the land and make examinations, surveys, and maps thereof" entitled district to perform soil borings.

Trial court had subject matter jurisdiction over county water resource district's applications for permission to enter landowners' properties to conduct surveys, mapping, and examinations required for evaluating and designing a proposed flood control project, even though district did not serve eminent domain summonses and complaints on landowners. Proceedings on district's applications were special statutory proceedings exempt from the rules of civil procedure, and such proceedings were preliminary to condemnation proceedings, rather than being condemnation proceedings requiring eminent domain summonses and complaints.

Eminent domain statute authorizing a preliminary proceeding in which the condemning authority may "enter upon the land and make examinations, surveys, and maps thereof" entitled county water resource district to perform soil borings on land in connection with a proposed flood control project, and thus such soil borings did not themselves constitute a compensable taking. Proposed soil borings constituted "examinations" under the statute and were minimally invasive, as district was forbidden to enter or damage buildings or cut trees without the landowners' permission, and was required to restore the affected property to its original condition as nearly as practicable.

MUNICIPAL GOVERNANCE - OHIO

State ex rel. Bates v. Smith

Supreme Court of Ohio - August 23, 2016 - N.E.3d - 2016 WL 4486241 - 2016 -Ohio- 5449

Prosecuting attorney sought peremptory writ of quo warranto to prohibit two township trustees from removing third trustee from office and appointing another trustee.

The Supreme Court of Ohio held that:

- Office of township trustee held by trustee on active military duty was not vacant, and
- Meeting at which trustees removed other trustee from office and appointed trustee violated Open Meetings Act.

Office of township trustee held by trustee who was on active military service was not vacant, and therefore other trustees were not statutorily authorized to remove trustee from office and appoint another trustee. Although applicable statute provided that, when a township officer was absent for more than 90 days, the office was deemed vacant, statute expressly excepted active military service from that provision.

Meeting during which two township trustees removed third trustee from office and appointed another trustee did not qualify as an emergency meeting, and therefore failure to give sufficient notice of meeting violated Open Meetings Act, where trustees had held another meeting less than 24 hours before meeting at issue, with no suggestion of any emergency, let alone one that would have compelled another meeting in less than 24 hours.

PUBLIC RECORDS - PENNSYLVANIA

Clearfield County v. Bigler Boyz Enviro, Inc.

Commonwealth Court of Pennsylvania - July 28, 2016 - A.3d - 2016 WL 4063054

County brought action challenging Office of Open Records' (OOR) determination that handwritten notes made by county commissioner concerning two unsolicited telephone calls she received from private individuals were "records" under Right–to–Know Law (RTKL).

The Court of Common Pleas reversed, and requestor appealed.

The Commonwealth Court held that notes were not "records" subject to disclosure pursuant to RTKL.

Handwritten notes made by county commissioner concerning two unsolicited telephone calls she received from private individuals were not produced with county's authority and were not ratified, adopted, or confirmed by county, and thus were not "records" subject to disclosure pursuant to Right–to–Know Law (RTKL), where commissioner did not rely on information to make decision, did not discuss or otherwise share information contained in her notes with other commissioners, and was not authorized to speak for or bind county regarding matter at issue.

TAX - MICHIGAN

United States v. Detroit Medical Center

United States Court of Appeals, Sixth Circuit - August 17, 2016 - F.3d - 2016 WL 4376431

United States brought action against not-for-profit hospital corporation to collect Federal Insurance Contributions Act (FICA) taxes on stipends that hospital corporation paid to medical residents.

The United States District Court for the Eastern District of Michigan granted summary judgment to United States. Hospital corporation appealed. The Court of Appeals affirmed in part, vacated in part, and remanded.

IRS issued administrative ruling that medical residents were students who were exempt from FICA taxes, and issued refunds to hospital corporation.

Hospital corporation sought $9.1 million in additional interest on employer portion refunds, contending it was not "corporation" subject to lower interest rate on refunds.

The District Court granted summary judgment to United States. Hospital corporation appealed.

The Court of Appeals held that hospital corporation was "corporation" subject to lower interest on refund of employer portion of FICA taxes.

Not-for-profit hospital corporation was "corporation" under Internal Revenue Code that was subject to lower interest on refund of employer portion of Federal Insurance Contributions Act (FICA) taxes it paid for medical residents whom IRS subsequently determined were students exempt from FICA taxes. In keeping with common-law definition of "corporation," Internal Revenue Code consistently used "corporation" to include nonprofit corporations organized under state law as well as for-profit corporations, and, contrary to hospital corporation's contention, refund provision's cross-reference to subsection dealing with tax payments by C corporations was to define "taxable period," not corporations subject to lower interest rates on refunds.

The Crumbling Assumptions of US Public Pension Plans.

The governor's office for Illinois, a state with notoriously weak finances, this week issued a stark warning about what might happen if it reduced the assumed rate of return for its Teachers' Retirement System.

"If the board were to approve a lower assumed rate of return taxpayers will be automatically and immediately on the hook for potentially hundreds of millions of dollars in higher taxes or reduced services," the state's senior adviser for revenue and pensions wrote in a memo.

Unlike corporate pensions, US public pensions discount their liabilities using the rate of return they expect to generate on their investments. Some experts complain that these rates have been set unrealistically high. Lower return expectations would push up the cost of liabilities on their balance sheet, and force Illinois to make higher contributions. If costs to the pension were to increase by $250m it would nearly equal an entire year's appropriation for six universities.

Continue reading.

Financial Times

Last updated: August 26, 2016 5:27 pm

Nicole Bullock in New York

The Lowdown On Enhancement Programs For School District Bonds.

Key Points

- Municipal bonds issued by school districts can be part of the stable foundation of a municipal bond portfolio, in our view.
- School district bonds in some states come with extra protection from state enhancement programs that can make missed interest and principal payments.
- The strength of the different enhancement programs varies by program.

It's that time of year when students wind down their summer breaks and start to turn their thoughts to school. Municipal bond investors may want to follow their lead.

Bonds issued by school districts—along with other highly rated general obligation bonds from cities and states and revenue bonds backed by essential services—can serve as the stable foundation of a municipal bond portfolio. School districts in most states tend to have high credit ratings, boasting A-level ratings or better. Why? One reason is that school district bonds in most states are backed by property taxes, which can be a stable and reliable revenue source. A strong property tax pledge can help support the credit quality of school district bonds, in our view.

Continue reading.

FINANCIAL ADVISOR

AUGUST 24, 2016 • COOPER J. HOWARD AND ROB WILLIAMS

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VIEW THE PROGRAM.

REGISTER.

Rev. Proc. 2016-44 Greatly Expands Rev. Proc. 97-13 Safe Harbor for Management Contracts, Opening the Door for Long-Term Management Contracts.

The IRS has released new management contract safe harbors that profoundly change the prior rules under Rev. Proc. 97-13. The new revenue procedure, Rev. Proc. 2016-44, which was released August 22 by the IRS, appears on first glance to have brought many favorable changes to the safe harbor rules. Unlike the prior guidance under Rev. Proc. 97-13, Rev. Proc. 2001-39, and Notice 2014-67, the new safe harbor under Rev. Proc. 2016-44 applies more principles-based tests rather than mechanical tests based on the length of the contract.

The new safe harbor takes effect immediately, but during an initial transition period running until February 18, 2017, issuers and borrowers can apply either the prior safe harbors or the new safe harbor. More specifically, the new safe harbor of Rev. Proc. 2016-44 applies to management contracts entered into on or after August 22, 2016. In addition, issuers may elect to apply the new safe harbor to management contracts entered into earlier. The prior safe harbors may continue to be applied to any contract entered into before February 18, 2017, that is not materially amended or modified on or after February 18, 2017, except pursuant to certain renewal options.

The safe harbor provided by Rev. Proc. 2016-44 is generally available to management contracts that satisfy the following six requirements:

1. General financial requirements. A contract (i) must provide only for "reasonable compensation" (ii), must not give the service provider "a share of net profits," and (iii) must not impose the burden of sharing any of the net losses on the service provider. 5.02.
2. Term of the contract. The contract term, including renewal options, must not be longer than the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the "managed property" (the portion of the project to which the services relate). If contract terms relevant to the safe harbor analysis are "materially modified," the contract must be retested as a new contract. § 5.03.
3. Control over the managed property. The "qualified user" (depending on the project, this is either a governmental person or a 501(c)(3) organization) must exercise a "significant degree of control" over the managed property. § 5.04.
4. Risk of loss of the managed property. The qualified user must bear the risk of loss upon damage or destruction of the property. § 5.05.
5. Consistent tax positions. The service provider must agree "not [to] take any tax position that is inconsistent with being a service provider," e.g., by claiming depreciation with respect to (and presumably, ownership of) the managed property, or by claiming a deduction for a payment as rent (and presumably classifying itself as a lessee of some or all of the managed property). § 5.06.
6. No circumstances substantially limiting the qualified user's ability to exercise its rights. The service provider must not have any role or relationship with the qualified user that acts to substantially limit the qualified user's ability to exercise its rights under the contract. This safe harbor requirement may be satisfied by its own mini-safe harbor that requires showing: (i) that certain individuals affiliated with the service provider (e.g., directors and officers) do not control 20% or more of the vote of the qualified user's governing body, (ii) the qualified user's governing body doesn't include the service provider's chief executive officer ("CEO") or its chairperson (or the equivalents), and (iii) the CEO of the service provider is not the CEO of the qualified user (or CEO of any entity related to the qualified user). § 5.07.

Management contracts also do not result in private business use if they are an "eligible expense reimbursement arrangement." § 5.01. An "eligible expense reimbursement arrangement" means "a management contract under which the only compensation consists of reimbursements of actual and direct expenses paid by the service provider to unrelated parties and reasonable related administrative overhead expenses of the service provider." § 4.01.

Also, use by a service provider that is "functionally related and subordinate to" a management contract that meets the safe harbor requirements does not result in private business use. The functionally related/subordinate use rule is clarified by an example: Storage areas to store equipment used to perform activities required under a management contract that complies with Rev. Proc. 2016-44 does not result in private business use (and presumably would mean that such space would not be treated as leased to the service provider).

A few key points to note:

- The new safe harbor may require certain special provisions that might not otherwise appear in a management contract and might not have been required under 97-13. Where does the service provider have to memorialize its agreement not to take inconsistent tax positions? The logical place is in the text of the management contract itself. Likewise, the qualified user must document its control over the managed property through budgetary control and rate-setting powers – these also may require special contract provisions.
- Under the new safe harbor, we no longer have to examine the termination provisions of a management contract.
- We also no longer have to categorize compensation into various buckets (per unit fee, periodic

fixed fee, etc.).
- The greatly expanded permitted term opens the door to tax-exempt financing for a whole new world of P3 projects with long-term concession contracts

The summary above does not include all of the specifics. The summary also does not include the full definitions of various terms in Rev. Proc. 2016-44 (most of which are in Section 4 of Rev. Proc. 2016-44).

Squire Patton Boggs

by Alexios S. Hadji

USA August 24 2016

Democratizing Tax Increment Financing through Participatory Budgeting – A Tool Kit

In 2014 Chicago was the site of the country's first participatory budgeting (PB) process to allocate tax increment financing (TIF) funds. The community organization Blocks Together worked with residents and businesses in the neighborhood of West Humboldt Park to engage residents in a pilot PB process to directly decide how to spend $2 million in TIF funds for projects that might never have received funding through the usual channels. This process resulted in deep engagement of residents, and five community-developed projects will be implemented over the next few years.

As part of this historic process, Blocks Together, UIC's Great Cities Institute and the Participatory Budgeting Project developed a tool kit that will provide information, resources, and lessons learned from using PB with TIF funds.

The final report, *Democratizing Tax Increment Financing through Participatory Budgeting – A Tool Kit*, is available here.

New IRS Management Guidance is Flexible, Furthers P3s: Ballard Spahr

Ballard Spahr to Conduct Webinar at 12 p.m. ET on September 14, 2016

State and local governments and 501(c)(3) organizations have been given very flexible guidance by the IRS for longer-term private management of tax-exempt bond financed projects to facilitate general operations and major infrastructure initiatives. These safe harbors apply to any management contract that is entered into on or after August 22, 2016.

The maximum term of a qualifying contract is now the lesser of 30 years or 80 percent of the economic life of the managed property. Prior guidance had placed limits on the term of the contract based on the extent to which the compensation was a fixed fee or was variable (percentage of revenues or per unit fees, for example).

Compensation under a qualifying contract must meet the following requirements:

- It must be reasonable compensation for services rendered.

- It must not provide the service provider with a share of net profits from the operation of the managed facility. No element of the compensation can take into account or be contingent upon either the managed property's net profits or both the revenues and expenses for any fiscal year. The Internal Revenue Service will look to the eligibility, the amount, and the timing of the payments to determine if the net profits prohibition is violated.
- Incentive compensation is permissible, so long as it is determined by the service provider's performance in meeting one or more standards that measure quality of services, performance, or productivity.
- It cannot require the service provider to bear the net losses from the operation of the managed property. This requirement is specifically defined for the purposes of the guidance, but would not, for example, limit a contract where the service provider's compensation is reduced by a stated dollar amount for failure to keep the managed property's expenses below a specified target.
- The state or local government or 501(c)(3) organization must exercise a significant amount of control over the use of the managed property, such as approval of the annual budget of the managed property, capital expenditures of the property, disposition of the property, rates charged for the use of the property, and the general nature and type of use of the property.
- The state or local government or 501(c)(3) organization must bear the risk of loss if the managed property is damaged or destroyed. This requirement is met if insurance is purchased from a third party or if a penalty is imposed on the service provider for failure to operate the property in accordance with the standards laid out in the management contract.
- The state and local government/501(c)(3) entity and the service provider must treat the service contract consistently for federal tax purposes. The service provider could not, for example, take depreciation or tax credits with respect to the managed property, which would be inconsistent with the state or local government being the owner having entered into a contract for services.
- The service provider must not have any role or relationship through overlapping boards or executives which limits the ability of the state or local government or 501(c)(3) to exercise its rights under the contract. The safe harbor for determining what might limit the ability to exercise rights is essentially the same as the 1997 guidance.
- Contracts to provide services before the managed property is placed in service (such as pre-operating services for construction design or construction management) are not management contracts that must be analyzed under the rules.
- Contracts that provide for compensation solely to reimburse eligible expenses (reimbursement of actual and direct expenses paid by the service provider to unrelated parties and reasonable related administrative overhead expenses of the service provider) are not management contracts that must be analyzed under the rules.

If a contract is a qualifying contract, other uses of the managed property, such as on-site office or storage space to perform services, will not be treated as private business use.

These safe harbors essentially replace the prior 1997 and 2014 guidelines. Because the prior guidance was more restrictive, contracts complying with the 1997 and 2014 guidelines would likely continue to be qualifying, but the Revenue Procedure goes on to specifically state that the prior guidelines can be applied to contracts entered into before February 18, 2017.

Our attorneys will continue to do an in-depth analysis of these revisions and how they will impact your organization. On September 14, 2016, at 12 p.m. ET, Ballard Spahr will host a webinar where we will explore how these flexible guidance rules will impact negotiations with service providers, how they can be used in combination with the mixed-use allocation rules, the influence this guidance can have on furthering public-private partnerships (P3), as well as what the guidance means for upcoming bond financings. The webinar registration form is available here.

Attorneys in Ballard Spahr's Public Finance Group have participated in every kind of tax-exempt bond financing and have extensive experience with the rules and regulations set by the IRS and U.S. Treasury. Working closely with attorneys in Ballard Spahr's P3/Infrastructure Group, they routinely monitor and report on new developments that impact federal and state infrastructure programs related to transportation and other types of projects.

by the Public Finance Group

August 25, 2016

Some Lawyers Have Questions About New Management Contract Safe Harbors.

WASHINGTON – While the Internal Revenue Service's revenue procedure on management contracts received widespread praise from many bond and tax lawyers who felt it would help facilitate bond financing in public-private partnerships, several attorneys also had questions or concerns about it.

Rev. Proc. 201644, released by the IRS on Monday, contains safe harbors for long-term management contracts of up to 30 years from the previous 15-year limit and also removes the formulaic fixed fee requirements for manager compensation.

The new safe harbor under which a management contract does not result in private business use allows for the contracts to be more accessibly used in funding bond-financed infrastructure projects and public-private partnerships as well as for more incentive-based compensation.

Dave Caprera, an attorney with Kutak Rock in Denver, said the revenue procedure is "simpler, [and] easier to understand and apply" than the prior one. He felt the previous formulaic approach involving fixed fees under Rev. Proc. 9713 released in 2013 was ineffective in addressing compensation and term length. The new safe harbors allow longer-term contracts for long-lived projects and short-term contracts for short-lived assets as long as the compensation is reasonable and not tied to profits or losses.

"The deal guys in my office are partying in the hallway," he said.

Still, Caprera wanted to know if the term or economic life of a contract is retested when a contract is modified or a new contract is entered into.

The new revenue procedure adopts the existing tax law that treats a term which exceeds 80% of the reasonably expected economic life of a facility as being the equivalent of ownership.

“So, I have a 40-year property and I entered into a 30-year contract,” Caprera said hypothetically. “But the contract is terminated at the end of 15 years. I want a new contract. Can it be 30 years? 20 years, something else? What if the property is in bad repair and is only going to last 10 more years?”

Section 5.03 of the new revenue procedure under “Term of the Contract and Revisions” states that, “[a] contract that is materially modified with respect to any matters relevant to this section 5 is retested under this section 5 as a new contract as of the date of the material modification.”

The new revenue procedure amends Rev. Proc. 9713, which provided safe harbors under which a contract of up to 10 years would require at least 80% of the manager’s annual compensation to be based on a fixed fee. Fifteen-year contracts under Rev. Proc. 9713 required at least 95% of annual compensation to be based on a fixed fee.

The new guidance will supersede the safe harbors under Rev. Proc. 9713, which Michael Bailey, a partner with Foley and Lardner in Chicago, said will “raise many questions regarding whether certain contracts that were within the Rec. Proc. 9713 safe harbors will continue to be within the new safe harbors.”

The new rules generally require state or local governments to control rates, but many contracts under the existing safe harbors do not have that requirement, Bailey said. A major example of this is the separate billing arrangements that are often used in hospital management contracts.

Section 7 of the revenue procedure states that the new safe harbors apply to any “management contract that is entered into or after Aug. 22, 2016 and an issuer may apply these safe harbors to any management contract that was entered into before Aug. 22, 2016.”

But it adds that issuers also have the option of applying the safe harbors in Rev. Proc. 9713 “to a management contract that is entered into before Feb. 18, 2017 and that is not materially modified or extended on or after [that date].”

“For contracts entered into after that date, there could be problems,” Bailey said.

While the new guidance is more liberal than Rec. Proc. 9713 in some cases, such as long-term management contracts for public infrastructure projects, it is “not necessarily true in many other cases,” Bailey said.

He called this a “major issue” that he said will likely need to be addressed in comments submitted to the IRS and the Treasury Department.

Scott Lilienthal, a partner at Hogan Lovells in Washington, said on Wednesday that the new rules are helpful in allowing longer terms and greater flexibility for variable compensation, but had a similar analysis as Bailey.

“The revenue procedure also introduces some new conditions, such as requiring a certain amount of control over the managed facility by the qualified user, and it may take some time to see whether those new conditions may be problematic when applied to specific types of agreements,” Lilienthal said.

The new revenue procedure includes several requirements that must be met under a safe harbor in order for a management contract to avoid resulting in private business use. Similar to 9713,

payments cannot be based on a share of net profits.

But the procedure also includes three new requirements to ensure there is no private ownership or lease of a project. A state or local government "must exercise a significant degree of control of the use of the managed property" and "must bear the risk of loss upon damage or destruction of the managed property." In addition, the private party "must agree that it is not entitled to, and will not take any tax position that is consistent with the state or local government with respect to the managed property. The private party must not take any depreciation or amortization, investment tax credit, or deduction for any rent payment for the property.

Christie Martin and Maxwell Solet, attorneys with Mintz Levin in Boston, said that Rev. Proc. 2016-44 "substantially increases flexibility" for an issuer to work with private parties without jeopardizing the tax-exempt status of bonds.

In a post published on the firm's website Wednesday, Martin and Solet wrote, "The overall impact of Rev. Proc. 201644 would seem to be an increase in the ability of bond issuers and tax-exempt users of bond-financed facilities to use for-profit contractors at bond-financed facilities. However, practitioners have already noted that the increased flexibility comes with less certainty and more facts and circumstances analysis with respect to many aspects of the safe harbor."

"One area in which flexibility may be diminished is in the conditions under which payments may be subordinated or deferred, as the guidance indicates that timing of payment may not be conditioned on tests involving both the managed property's revenues and expenses for any fiscal period," they added.

Several other bond attorneys also told The Bond Buyer on Monday that it is clear the IRS and Treasury listened to industry concerns in constructing the new rules, which they said will foster more public-private partnerships.

Many market participants felt the prior rules were too restrictive regarding their ability to use tax-exempt bonds to help finance P3s, where private parties join with state or local governments to develop infrastructure projects under long-term management contracts.

The Bond Buyer

By Evan Fallor

August 24, 2016

Hawkins Advisory: 2016 Final Arbitrage Regulations

Read the Advisory.

Hawkins Delafield & Wood LLP

August 23, 2016

An Interesting Summer for PACE.

Property Assessed Clean Energy (PACE) financing can be a powerful tool for building owners. Financing an energy efficiency or renewable project in this manner enables the work to be done without immediate payment. The obligation is paid over a period of time – generally as long as 20 years – through an assessment on the property's tax bill. If the building is sold, the obligation is assumed by the new owner.

It can be a win/win. The vendor gets the work and the home or business owner gets the upgrade. That work presumably lowers building expenses, increases performance and/or makes the structure more environmentally sound. PACE funding structures must be approved at the state and local jurisdictions.

Continue reading.

Energy Manager Today

By Carl Weinschenk

August 23, 2016

The State Pension Funding Gap: 2014

New accounting rules help provide a clearer picture

Overview

The nation's state-run retirement systems had a $934 billion gap in fiscal year 2014 between the pension benefits that governments have promised their workers and the funding available to meet those obligations. That represents a $35 billion decrease from the shortfall reported for fiscal 2013. The reduction in pension debt was driven primarily by strong investment results, with public plans in fiscal 2014 averaging a 17 percent rateof return.1

This brief focuses on the most recent comprehensive data from all 50 states and does not reflect the impact of weaker investment performance in fiscal 2015, which averaged 3 percent.2 Performance has been even weaker in the first three quarters of fiscal 2016, with negative average returns. Preliminary data from fiscal 2015 point to increases in unfunded liabilities for the majority of states. Total pension debt is expected to be over $1 trillion for state plans, an increase of more than 10 percent from fiscal 2014.

Continue reading.

The Pew Charitable Trusts

August 24, 2016

A Threat to City Fees?

The Minnesota Supreme Court this week ruled that fees St. Paul was charging property owners for street maintenance amounted to a tax and therefore should be subject to the city's constitutional limits on taxing authority.

The case was brought by two churches who argued they were asked to pay for a service that benefitted the public, not just the property owner. The fee applied to routine street services including street sweeping, snow plowing, streetlight maintenance and litter pick-up. It affects more than 81,000 St. Paul homes, churches, nonprofits, universities and businesses.

St. Paul's city attorney framed the loss as a technical one, telling the *Twin Cities Pioneer Press* that "it's not a question of if the city can collect assessments but how it goes about doing so."

The Takeaway: This case is more than a technical debate. St. Paul is like many cities and counties across the country in that it's seen an increasing share of its budgeted income come from fees rather than taxes in recent decades. Simply put, it's easier to raise a fee — or create a new one — than it is to raise a tax.

It's important to note that this ruling only immediately applies to St. Paul. But it could spark copycat suits in other municipalities. At a minimum, it might give municipalities pause when instituting a new fee — to consider whether they are actually charging for an individual service or a public good.

GOVERNING.COM

BY LIZ FARMER | AUGUST 26, 2016

Big Transit Plans Go Before Voters in November.

The proposals could reshape several large U.S. cities for decades to come — if they pass.

Transit agencies in Atlanta, Detroit, Los Angeles and Seattle are appealing to voters this fall to fund new services that the cities hope could transform their metropolitan areas for decades to come.

By going to voters in a presidential election year, the agencies are betting that big turnouts will help their cause. But even though local transportation measures generally fare well at the ballot box, each of these particular metropolitan areas has had a tricky history with transit. In fact, just getting the proposals on the ballot took significant effort in Atlanta and Detroit, and opponents are already organizing to block the far-reaching efforts in Los Angeles and Seattle.

The ballot measures push for new rail lines, better bus service and more connections to destinations such as airports, universities, hospitals and job centers.

Here's a rundown of each.

Going Regional (Finally) in Detroit

Voters in four Detroit-area counties will vote on whether to increase their property taxes by an average of $95 a year to vastly improve transit in the region. If approved, the proposal would cost $4.6 billion over 20 years.

The plan calls for building commuter rail between Detroit and Ann Arbor, adding four new bus rapid transit routes among major traffic arteries, creating bus routes that cross county borders and increasing regular bus service throughout the area. It also ensures that the region's four existing transit providers integrate services to share a fare card and a common call center.

It would be a major development for Detroit, which, until 2012, was the only major metropolitan area without a regional transportation authority. Michigan lawmakers OK'd the authority in order to get federal funding for Detroit's new streetcar line.

Warren Evans, the executive of Wayne County, which includes Detroit, praised the decision to put the tax hike and plan before the voters. That decision means "progress on an intractable problem that has dogged this region for 50 years," he said.

"This is an important decision for the citizens of this region," he added. "They will have to ask themselves a question: Should we join virtually every other urban area in the country in recognizing the importance of an efficient and effective public transportation system?"

Boosting Service in Atlanta

In another transit-starved area, Atlanta voters will decide whether to increase their sales taxes by 0.5 percent over 40 years to get better bus service, expanded rail routes and better incorporation of technology.

MARTA, Atlanta's transit system, hasn't specified exactly how the $2.4 billion raised would be spent. But its leaders have proposed a menu of possibilities that also includes circulator buses, new rail stations on MARTA's existing subway lines and improvements to existing stations. The money would only come from within the city itself, not the rest of the three-county area MARTA now serves.

The vote in November, however, is complicated by the fact that the city council put another sales tax hike of 0.4 percent on the ballot for other transportation measures. That initiative would devote money to acquiring the remaining land to complete the so-called BeltLine, a 22-mile loop of parks, bicycle trails and other amenities around the city. In addition, it would pay for more bike trails, make roads more pedestrian- and bike-friendly, fix up sidewalks, and help coordinate traffic signals.

If both measures pass, it would raise Atlanta's sales tax to 8.9 percent, far higher than it is in other counties in the metropolitan area.

Expanding Farther and Wider in Seattle

Seattle's Sound Transit agency wants to double the size of its light rail network and expand its ability to reach the far-flung areas of Puget Sound. It's asking voters to approve $54 billion in new funding over 25 years. The plan, known as ST3, would pay for seven light rail extensions, which would help grow the network from 54 miles to 116 miles; add commuter rail and bus rapid transit; and reach 37 new communities, bringing ridership up to 700,000 passengers a day.

All of that would cost a pretty penny, about $169 a year for an individual taxpayer or $326 annually for a typical household. It would be paid for through increases in property, sales and car-tab taxes.

Peter Rogoff, Sound Transit's CEO and a former head of the Federal Transit Administration, said the ballot measure could change the nature of the Seattle-area transit agency. "Right now, we are a commuter bus operator with a single light rail line," he told *Progressive Railroading* magazine. "The big transformation will be moving this from a light rail line to a true regional network."

But opponents say the improvements would do little to alleviate congestion in the Seattle area. Even by Sound Transit's own estimates, the agency would only provide 1 percent of trips in the region, according to the group Smarter Transit. "Today innovative ideas around ride sharing, driverless cars and bus rapid transit are being developed. But ST3 has little or none of these," the group says on its website.

Doubling Down on Taxes in Los Angeles

Transportation planners in Los Angeles County want to build on previous wins at the ballot box. They'll ask voters in November to make permanent a previous sales tax hike for transportation, plus add another half-cent sales tax hike to pay for both highway improvements and new transit projects. The tax increases would raise the cumulative sales tax in L.A. County to 9.5 percent.

The proposal, called Measure M, is expected to generate $860 million a year if it passes with the required two-thirds majority. It could be a close call. A similar measure in 2008 barely squeaked by with 67.2 percent of the vote, but a related bonding proposal fell just short in 2012. This year, Measure M will appear on a crowded ballot alongside 17 statewide ballot measures.

County supervisors voted 11-2 to put the put the proposal on the ballot, but many city officials, particularly in the southern part of the county, oppose it.

GOVERNING.COM

BY DANIEL C. VOCK | AUGUST 23, 2016

The Story Behind San Bernardino's Long Bankruptcy.

Unlike Detroit or Stockton, this California city's insolvency can't be blamed on debt or pensions.

Four years ago this month, San Bernardino, Calif., filed for Chapter 9 protection. Today, it's still in Chapter 9 — the longest municipal bankruptcy in recent memory.

Why so long? Many blame it on San Bernardino's lengthy and convoluted charter, a document that gives so much authority to so many officials that it's completely ineffective. "It gets everybody in everybody else's business," said City Manager Mark Scott. "And it keeps anybody from doing anything."

As a result, officials have spent the last two years trying to ensure the current charter is not part of the city's future. A specially appointed committee is proposing to completely overhaul it.

At issue is that unlike many California cities that either have a strong mayor/council form of management or a strong city manager government, San Bernardino's is a hybrid, doling out authority to both sides. For example, fire and police chiefs are appointed by the mayor and subject to approval by the council, but report to both the mayor and city manager. This confusing structure played a role in the city's road to insolvency. "You'd have to say," Scott said, "the charter made it almost impossible to succeed."

The cause of the city's bankruptcy obviously can't be pegged to just one thing. But other municipal bankruptcies have tended to falter thanks to major ticket items. For instance, Stockton, Calif., can largely blame its bankruptcy on bond debt and retiree health-care costs. Detroit had loads of

municipal and pension debt.

But in the case of San Bernardino, an inland city of about 200,000 people, insolvency was sneakier. “It was simply an accumulation of spending more than the revenues they had to support it,” said Andrew Belknap, who is regional vice president of Management Partners and has worked with other struggling California cities.

Belknap said the city’s overly complicated system of checks and balances in its 48-page charter and extreme turnover essentially created a stalled government: Between 2004 and 2014, the city cycled through five city managers, five police chiefs, four finance directors and five public works directors. The situation was so disorganized that by the time officials realized the full magnitude of the city’s finances, it was too late to declare a financial emergency. Instead, San Bernardino officials had to declare insolvency or they weren’t going to make payroll. “They didn’t have the political and management systems in place to see this coming or act ahead of time,” Belknap said.

About two years into the court proceedings, officials realized that they needed to address the management confusion in order to give the city a fighting chance after it emerged from bankruptcy. The current document needs so much explanation it has been supplemented over the years by more than 100 city attorney opinions. Even rules on personnel management had made it into the charter, like directions on how to compensate police and fire fighters and defining which public safety positions had to be filled in by sworn officers.

So for a little more than a year, a charter committee has been developing a new proposal based on the charters of similarly sized California cities and incorporating recommendations made by the National Civic League. The proposed charter– now whittled down to 11 pages — includes a key change: moving to a council-manager form of government. If approved, the city manager will have executive authority that’s held in check by the council. The mayor will still be elected but will act as the legislative head of the council. The charter also would make the city clerk and attorney appointed positions instead of elected.

Residents will vote on the proposed charter this November. It’s not a requirement that voters approve it for the city to exit bankruptcy. Even without that change, officials expect to emerge from Chapter 9 protection sometime in the spring. But some believe the city doesn’t have much of a future in a post-bankruptcy world without it. “I don’t foresee the city coming out of all this with this charter,” said Scott. “Recruiters don’t want to recruit anybody [here] until we fix it.”

GOVERNING.COM

BY LIZ FARMER | AUGUST 25, 2016

Cities and Drones: What Cities Need to Know About Unmanned Aerial Vehicles (UAVs).

National League of Cities’ municipal guide, Cities and Drones, is designed to serve as a primer on drones for local officials, providing insight into the recently released federal rules relating to drone operation, as well as offering suggestions for how local governments can craft their own drone ordinances to encourage innovation while also protecting their cities.

Drones have the potential to revolutionize many industries and city services, particularly as their technology advances. There are many applications for drones within the public sector at the local

and state level. Drones can be used for law enforcement and firefighting, as rural ambulances, and for inspections, environmental monitoring, and disaster management. Any commercial arena that involves outdoor photography or visual inspection will likely be experimenting with drones in the near future, as will retailers who want to speed up package delivery.

However, drones also present challenges. There are some safety issues, for instance, when operators fly their drones over people or near planes. City residents often have privacy concerns when any small device hovering nearby could potentially be taking photos or video. The FAA's final rule on drones left some opportunity for city governments to legislate on this issue. Rather than ban them outright, city officials should consider how this new technology might serve residents or enhance city services.

Read the Report.

TAX - ILLINOIS

State ex rel. Schad v. National Business Furniture, LLC

Appellate Court of Illinois, First District, First Division - August 1, 2016 - N.E.3d - 2016 IL App (1st) 150526 - 2016 WL 4126773

Relator brought qui tam action under False Claims Act (FCA) against retailer, alleging that retailer knowingly failed to collect and remit use taxes on shipping charges for internet and catalog sales.

Following bench trial, the Circuit Court entered judgment in favor of retailer. Relator appealed.

The Appellate Court held that determination that retailer did not act with reckless disregard in failing to collect and remit tax was not against manifest weight of the evidence.

Trial court's determination that retailer did not act with reckless disregard in failing to collect and remit use taxes on shipping charges for internet and catalog sales was not against manifest weight of evidence in relator's qui tam action under False Claims Act (FCA). Retailer's employees testified regarding their practices in ensuring retailer's compliance with law, audit by Illinois Department of Revenue (IDOR) did not indicate that retailer's policies and practices regarding use taxes were not in compliance with law, and relator presented no evidence to show that retailer's employees were anything other than forthright with auditor.

NABL: IRS Issues New Management Contract Safe Harbors.

The IRS has released Rev. Proc. 2016-44, which provides revised management contract safe harbors under which a private management contract does not result in impermissible private business use of projects financed with tax-exempt bonds. Rev. Proc. 2016-44 will be published in Internal Revenue Bulletin Number 2016-36, dated September 6, 2016.

These revised safe harbors give State and local governments the ability to enter into management contracts with private entities to manage or operate tax-exempt bond financed projects with more flexibility for incentives in reasonable compensation arrangements and longer terms of up to 30 years (subject to an economic life limit). The revised safe harbors remove the previous requirements for prescribed percentages of fixed compensation for management contracts for different time

periods.

The revised safe harbors continue a longstanding existing prohibition against sharing of net profits. The revised safe harbors add certain new principles-based constraints (governmental control, governmental risk of loss, and no inconsistent tax positions by private service providers).

The revised safe harbors are effective for any management contract that is entered into on or after August 22, 2016, and an issuer may apply these safe harbors to any management contract that was entered into before August 22, 2016. In addition, an issuer may apply the safe harbors in Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67, to a management contract that is entered into before February 18, 2017 and that is not materially modified or extended on or after February 18, 2017 (other than pursuant to a renewal option as defined in § 1.141-1(b)).

Revenue Procedure 2016-44 is available here.

NABL: IRS Issues Corrections to Final Regulations on Non-Issue Price Arbitrage Regulations.

The Internal Revenue Service (IRS) published today in the Federal Register two documents relating to the final regulations on arbitrage restrictions under section 148 of the Internal Revenue Code that were published July 18, 2016. One document makes two corrections to the preamble and the other corrects two dates in the regulation itself.

The corrections are available here.

SEC Announces MCDC Issuer Enforcement Actions.

The Securities and Exchange Commission (SEC) today announced enforcement actions against 71 issuers for violations in municipal bond offerings. The cases are the first brought against issuers under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative since the deadline for issuers to self-report on December 1, 2014.

The SEC's press release announcing the enforcement actions is available here.

The orders are available here.

Not-For-Profits and the New Revenue Recognition Standard.

In May 2014, the Financial Accounting Standards Board (FASB) issued ASU 2014-09 – Revenue from Contracts with Customers. The Standard was originally effective for annual reporting periods beginning after December 15, 2016 for public entities, and for annual reporting periods beginning after December 15, 2017 for all other entities. However, during August of 2015, the FASB issued ASU 2015-14, which deferred the effective date by one year. Public business entities, certain not-fo--profit entities and certain employee benefit plans should apply the guidance in Update 2014-09 to

annual reporting periods beginning after December 15, 2017. All other entities should apply the guidance in Update 2014-09 to annual reporting periods beginning after December 15, 2018.

Is a not-for-profit organization considered a “public entity?” Possibly. A not-for-profit organization that has issued, or is a conduit bond obligor for, securities that are traded, listed or quoted on an exchange or an over-the-counter market is considered a public entity and is therefore required to implement the new standard at the earlier implementation date.

Under the new standard, an entity should recognize revenue to reflect the transfer of goods or services to customers in the amount that represents the consideration to which the entity expects to be entitled for those goods or services. An entity should apply a five-step process to determine when revenue should be recognized:

1. Identify the contract(s) with a customer.
2. Identify the performances obligations in the contract.
3. Determine the transaction price.
4. Allocate the transaction price to the performance obligations in the contract.
5. Recognize revenue when (or as) the entity satisfies a performance obligation.

Specific guidance about these steps is outside the scope of this article.

Does the new revenue recognition standard affect not-for-profit organizations? It does, if the not-fo--profit receives revenue or support that is considered to be a contract. A contract is defined as an agreement between two or more parties that creates enforceable rights and obligations. Based on this definition, donations and contributions are not within the scope of the new standard. However, not-for profit organizations have many other types of revenue and support that may qualify as contracts, such as program service revenue, membership dues and tuition, to name a few examples.

Although specific guidance of how this new standard affects certain types of organizations has not yet been finalized, the AICPA is working towards publishing audit guides for various industries to assist in determining when to recognize revenue.

On June 5, 2016, the AICPA’s Financial Reporting Executive Committee (FinREC) published working drafts of interpretive guidance to address specific implementation issues for the FASB’s revenue recognition standard. The implementation issues are the result of work performed by 16 industry task forces assigned by the FinREC with the task of developing guidance for a revenue recognition guide the AICPA plans to publish in January 2017. Included in the 16 task forces is the Not-for-Profit Revenue Recognition Task Force, which has issued three exposure drafts to date: 1) tuition and housing revenue, 2) contributions and 3) bifurcation of transactions between contribution and exchanges components. These exposure drafts are out for comment until September 1, 2016. The FinREC is also working on an exposure draft to provide guidance for revenue recognition related to subscriptions and membership dues, which has not yet been released.

Last Updated: August 24 2016
Article by Barbara Miller

Ostrow Reisin Berk & Abrams

SEC: Issuer Settlements Show Widespread, Pervasive Disclosure Problems.

WASHINGTON – The Securities and Exchange Commission's settlements with 71 issuers announced on Wednesday under a voluntary continuing disclosure enforcement initiative showed "a widespread and pervasive problem" with continuing disclosure in the municipal bond market but have led to some improvements, the SEC's enforcement chief said Wednesday.

The settlements, which include large and small issuers as well as non-profit borrowers from 45 states, were part of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The settlements included disclosure failures that occurred between 2011 and 2014 and were the first ones with issuers under the initiative since the first MCDC action was announced against California's Kings Canyon Joint Unified School District in July 2014.

Andrew Ceresney, director of the SEC's enforcement division, said the commission has seen a dramatic uptick in the number of disclosure filings with the Municipal Securities Rulemaking Board since the MCDC initiative was announced in 2013.

"We think that … market participants are much more focused on [disclosure] issues and [there are many] more that are complying at a much greater rate than they were prior to the initiative," said Andrew Ceresney, director of the SEC enforcement division. "Having said that, we are obviously going to monitor the market closely to make sure that these types of violations are not continuing, but signs are that the market has gotten the message."

However, Ceresney made clear that the scope and diversity of the 71 issuers and borrowers that settled "demonstrate that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market."

Ceresney refused to comment on whether the initiative's findings warrant SEC regulation of issuers' disclosures, saying this is a policy rather than an enforcement matter. He also declined to comment on whether the SEC is investigating any issuer officials in connection with the settled cases.

The enforcement chief said the SEC believes it is important to hold individuals accountable and that he can't rule out actions against individuals in the future.

Ceresney also refused to comment on whether there will be more rounds of issuer settlements under the initiative or how many reporting issuers the SEC reviewed under the program. The underwriter settlements came out in three rounds. The SEC fined 72 muni underwriting firms, comprising 96% of the market share for muni underwritings a total of $18 million.

One lawyer speculated that the SEC did not disclose whether there would be more settlements because of a disagreement within the commission about whether to proceed with the initiative.

The lawyer said it would not be surprising if this is the only round of issuer settlements because the SEC had decided to only go after the most egregious examples of issuers not meeting their disclosure obligations.

"The point is that they clearly were trying to get a representative [group], at least one from each

state, and trying to show it was across-the-board," the lawyer said, adding there's "a good likelihood" the SEC "may just declare victory and go home."

Another lawyer said the wording of the SEC's announcement seems to indicate there may be more rounds. The SEC's release said, "Today's actions are the first against municipal issuers since …."

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said in the release that because the issuers voluntarily agreed to take steps to prevent future violations, both they and their investors have benefited from the initiative.

Each of the issuers settled without admitting or denying the SEC's findings and agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding continuing disclosure obligations to ensure compliance with federal securities laws. They each also agreed to designate an individual or officer responsible for ensuring they are compliant with their policies and procedures, which must be adopted within 180 days of the settlement. The designated individual will also be responsible for implementing and maintaining a record of the issuer's disclosure training.

Additionally, the issuers agreed to bring themselves into compliance with all of their continuing disclosure undertakings, including past delinquent filings, within 180 days of the settlement if they are not currently in compliance. They will have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuer settlements bring the total number of settlements under the initiative to 142 actions against 143 respondents. Although there were 71 issuers named in the actions the SEC announced Wednesday, two Connecticut-based issuers, Lawrence & Memorial Hospital Inc. and its parent corporation Lawrence & Memorial Corp. were combined into one action. The 71 issuers include two states: Minnesota and Hawaii. Seven of the issuers were state authorities, including several focused on transportation, and 29 were localities, which ranged from small towns to larger counties. Additionally, there were seven local authorities, nine school districts or charter schools, and six colleges or universities. Also included were five healthcare providers, five utilities, and one retirement community.

The issuer settlements were somewhat similar to the ones for underwriters in that they included both negotiated and competitive bond deals, although negotiated transactions were more heavily represented.

The SEC also listed each issuer or obligated person's violations in bullet-point form as it did for underwriters. Numerous issuers only had one bullet point listing violations in their settlements and the majority had three or fewer. However, some, like the Andover, Kan. and the Township of East Brunswick, N.J., had five. Berrien County, Mich. had the most bullet points listed, with seven.

The conduct the SEC cited in the settlements ranged from instances where issuers failed to disclose that they had not made continuing disclosures at all to those where the disclosures were very late or incomplete. They also included situations where issuers made false statements that they were in compliance with their continuing disclosure agreements as well as those where issuers were silent about their continuing disclosure and misled investors by omission.

Failure to file a material event notice was also mentioned for example in the settlement with Missouri-based Ascension Health Alliance, which the SEC found failed to file certain notices of defeasances before a 2012 negotiated offering.

The settlements were unlike those with underwriters in that the issuers and borrowers were not fined.

Bond Dealers of America and the Securities Industry and Financial Markets Association each said in releases that MCDC has been a difficult process for the market and urged the SEC to revise and update its Rule 15c2-12 on disclosure.

Citing its recent study of disclosure in the 50 states, SIFMA added it believes "states are in a unique position to improve municipal disclosure" and it would like to see states "adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements."

The settlements may provide fuel for the National Federation of Municipal Analysts' recent disclosure recommendations, including one calling for the SEC to regulate issuers' disclosure practices.

The Bond Buyer

By Jack Casey

August 24, 2016

IRS TE/GE Advisory Committee Requests Applications.

The IRS has requested applications for members to serve on its Advisory Committee on Tax Exempt and Government Entities, which will have vacancies in June 2017; applications are due by September 26, 2016.

Click here to learn more and to apply.

NABL Submits Suggested Revisions to the Internal Revenue Manual.

On August 26, 2016, The National Association of Bond Lawyers submitted comments and recommendations for further revisions to the provisions of the Internal Revenue Manual regarding bond examinations and technical advice in an attempt to make those provisions more clear, efficient and useful both for the Internal Revenue Service and for municipal bond issuers.

The comments were prepared by an ad hoc task force of NABL members, led by Thomas Vander Molen, Dorsey & Whitney LLP, with substantial input from individual members of the NABL Board of Directors.

SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC's pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission's secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB's pay-to-play rule, can only be excluded under the SEC's rule if the commission finds, by order, that the MSRB's revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

Under the MSRB's revised rule, municipal advisors, similarly to dealers, are now barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule for dealers. It allows a municipal finance professional or municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The SEC's filing lists six examples of how the rules are substantially similar, including the two-year ban on engaging in muni business after a contribution and the prohibition on MAs and their professionals from soliciting contributions, or coordinating contributions, to certain municipal officials with which the MA is engaging or is seeking to engage in muni business.

The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

The SEC's pay-to-play rule was also subject to a legal challenge from two of the three groups but that lawsuit was thrown out after a three-judge panel ruled the Republican groups failed to follow proper appeals procedures.

The Bond Buyer

By Jack Casey

August 26, 2016

City Should Consider Using P3s to Bolster Pension Plan and Water System, Observer Says.

In addition to providing the financing, technical expertise and labor cities need to maintain and

improve vital infrastructure projects, P3s can produce revenues that could keep municipal pension plans solvent, suggested a resident of one Florida city that is facing this dilemma.

A solid pension plan should be 80 percent to 90 percent funded but Sarasota's general plan is only 71 percent funded and is projected to incur a $54 million unfunded liability in the years ahead, wrote Lewis Solomon, a professor emeritus at George Washington University Law School in an Aug. 8 Herald Tribune op-ed.

To keep its underfunded pension plan afloat, the city is reducing cost-of-living adjustments and other plan benefits and limiting the number of workers who can enroll. The city should instead consider investing the plan's funds in a P3 project that can serve the dual purpose of producing good returns for the plan while rehabilitating Sarasota's struggling water and wastewater system, Solomon suggested.

"Rather than these palliatives, Sarasota could monetize its water and sewer system by entering into a public-private partnership for these assets. By providing access to private capital, this approach would quickly help the municipality achieve the general plan's 80 percent funding target and substantially lessen the millions in current, annual contributions to pay down the plan's unfunded liabilities," he wrote.

Robert Poole of the Reason Foundation recently made a similar suggestion, pointing out that pension funds looking for relatively safe investments would do well to consider buying into existing or "brownfield" infrastructure P3 projects than in new "greenfield" ones.

By leasing its water system — representing more than $100 million in water and sewer projects — to a private developer for 20 to 30 years, Sarasota could obtain private financing for and rehabilitation of 175 miles of water pipes and its deteriorating lift stations, Solomon estimated.

More than 2,000 communities use P3s to fund and conduct vital water-related infrastructure projects, Michael Deane, executive director of the National Association of Water Companies has noted.

One example is the Bayonne (N.J.) Municipal Utilities Authority, which leased its ailing water and wastewater system to Kohlberg Kravis Roberts and United Water in 2012 for 40 years, Solomon pointed out. Through the deal, the authority received $150 million from the developer, which also agreed to invest $107 million in the city's water system and provide technical expertise to rehabilitate it.

"This infusion of capital was critically important to the city because it eliminated $130 million of existing debt and improved both the authority's finances and Bayonne's credit rating," according to a June 10, 2015, article on two successful municipal water P3s published by the Wharton School at the University of Pennsylvania.

Although it is not yet common for pension plans in this country to invest in public infrastructure projects, interest is growing. For instance, the California Public Employees Retirement System announced recently its purchase of a 10 percent share — at least $330 million — of the company that operates and maintains the Indiana Toll Road.

Pension fund managers in Canada have figured this out. Several are invested in such projects internationally and the Trudeau government is encouraging them to do so domestically.

NCPPP

August 22, 2016

S&P Public Finance Podcast (MCDC Initiative & Pennsylvania Local Governments)

Geoff Buswick provides an overview of the MCDC initiative and Carol Spain discusses current economic factors impacting Pennsylvania local governments.

Listen to the Podcast.

Aug. 23, 2016

Flood-Ravaged Louisiana Facing Biggest Cash Crunch Since 1980s.

Add a short-term cash squeeze to the list of woes besetting Louisiana, suffering already from historic flooding and the collapse of oil prices.

The state is considering the sale of as much as $500 million in revenue anticipation notes — its first cash-flow borrowing in nearly 30 years — because it no longer has reserves available that officials once tapped to pay its bills while awaiting tax collection. Such short-term borrowing gives the state money to pay bills until it collects enough tax revenue used for repayment.

“The state has used internal funds for liquidity in the past,” said Sussan Corson, analyst with S&P Global Ratings in New York. “Now that they can’t it’s a sign of weakness and deterioration.”

The state paid a price for its financial pressures when it borrowed about $275 million in April. Investors demanded yields of as much as 2.51 percent on 13-year securities, about a full percentage point more than top-rated debt, according to data compiled by Bloomberg. That gap was was 0.2 percentage point higher than it was when Louisiana sold similar bonds in May 2015, before Moody’s Investors Service and Fitch Ratings cut their credit ratings. That premium has since declined as borrowing rates in the municipal-bond market dropped to generational lows.

The short-term borrowing is just the start. Louisiana plans to sell $186.7 million in bonds next week and another $265.6 million of general-obligation debt a few weeks later to repay bond-anticipation notes. The state’s bond commission will consider final approval of the revenue-anticipation notes at its Sept. 15 meeting. The cash flow borrowing could be placed with a bank, though a final decision hasn’t been made, said Lela Folse, director.

The state has about $3.25 billion of outstanding general-obligation debt. Louisiana may further boost borrowing in coming years as the increased tax revenue approved by lawmakers this year raises the state’s debt capacity, which is limited to 6 percent of revenue.

Louisiana, like other states dependent on energy production, has been forced to cut spending and raise taxes to close $2 billion of budget deficits in its current fiscal year as the price of oil has fallen to less than half the value it was two years ago, reducing state revenue. Alaska, Oklahoma and North Dakota are are among those contending with budget deficits since prices tumbled.

Crude Collapse

But Louisiana's pressures began building before the oil price collapse as lawmakers used one-time revenue sources, including reserves, to balance its budget and put restrictions on some internal borrowing. The state is rated AA with a negative outlook by S&P, AA- by Fitch with a stable outlook and Aa3 with a negative outlook by Moody's.

"The amount of money available for borrowing is a lot less," said Treasurer John Kennedy at a state Bond Commission meeting last month. "It's gone."

Meanwhile, the state still faces revenue pressure as fiscal year 2016 receipts through June 30 were $388 million, or 5 percent, below the same period a year earlier, according to S&P. When the numbers for fiscal 2016 are in the state may end the year with a deficit, which could force midyear spending adjustments in fiscal 2017, S&P said.

The state balanced its $9.6 billion fiscal 2017 budget with about $1.4 billion of new tax revenue and cutting expenses, according to S&P. The state's negative employment growth and slowing income growth have contributed to weakness in sales and corporate tax revenue, S&P said. S&P said the amount of available cash in the general fund for internal borrowing had declined to $1.2 billion as of June 30, 2016, from more than $1.7 billion in November 2015.

Revenue Collections

"It wouldn't take a very big error in the forecast to need these funds," said Renee Boicourt, managing director with Lamont Financial Services Corp., the state's financial adviser, at the July bond commission meeting.

Though revenue collections did strengthen in July, according to Kennedy, it's too soon into the new fiscal year to know how much borrowing may be needed, though the flooding of thousands of homes and businesses in and around Baton Rouge may put additional financial pressures as the state absorbs some recovery costs.
President Barrack Obama is visiting the flood zone in the state Tuesday, four days after Republican Donald Trump toured the area and nearly 11 years after Hurricane Katrina struck the state. Federal support for the victims has reached $127 million, Obama said.

Two feet of rain that began Aug. 12 in some areas led rivers and creeks to back up, causing flooding in at least 20 of the state's parishes and damaging an estimated 60,000 homes and contributing to the deaths of 13 people. The storm closed businesses and government offices and forced thousands of people to relocate to shelters and hotels. The storm has been called the worst since Hurricane Sandy in 2012.

"We view the use of such borrowing to be a negative credit event which should place pressure on the state's already low ratings," wrote Court Street Group Research LLC in its weekly municipal market newsletter Aug. 19.

Bloomberg Markets

by Darrell Preston

August 23, 2016 — 2:00 AM PDT Updated on August 23, 2016 — 11:23 AM PDT

Rhode Island Reaches Settlements Over Curt Schilling Bonds.

Rhode Island struck a settlement with Wells Fargo & Co. and Barclays Plc, agreeing to accept about $26 million to drop litigation over a municipal-bond sale that benefited the video-game startup led by former baseball pitcher Curt Schilling that later failed.

The deal with the banks, who deny wrongdoing, must be approved by Rhode Island Superior Court, according to a statement by the state's Commerce Corporation. The economic development agency is still pursuing lawsuits with other defendants over the $75 million bond offering.

This settlement is the biggest and brings the total garnered through such deals to more than $42 million, the agency said.

"It's our job to be as aggressive as we can in recovering as much taxpayer money as possible," Governor Gina Raimondo said in a statement. "Rhode Islanders understandably feel hurt by this deal — and I do too — but I want everyone to know that we are demanding accountability, getting money back, and moving the state forward."

SEC Litigation

The Commerce Corporation, formerly known as the Rhode Island Economic Development Corp., and Wells Fargo still face a lawsuit by the U.S. Securities and Exchange Commission. The SEC said in March that the agency and bank mislead investors about how much money was needed by Schilling's video-game company, called 38 Studios LLC, after his Boston Red Sox uniform number.

In 2010, Schilling's company was developing a multi-player online game that it estimated it would need at least $75 million to complete, according to an SEC statement in March. When 38 Studios couldn't obtain additional financing following the bond sale, it failed to produce the game and defaulted on the loan.

The state had sold the debt for 38 Studios as a way to lure the company to Providence from Massachusetts. 38 Studios entered bankruptcy in 2012, leaving taxpayers on the hook.

"We are pleased to have reached an agreement in this case. We are not admitting liability, nor did we do anything improper," Gabriel Boehmer, a spokesman for Wells Fargo, said in a statement. "It is simply in our shareholders' best interest to minimize the risk that accompanies lengthy litigation."

Barclays spokesman Marc Hazleton declined to comment.

Bloomberg Business

by Romy Varghese

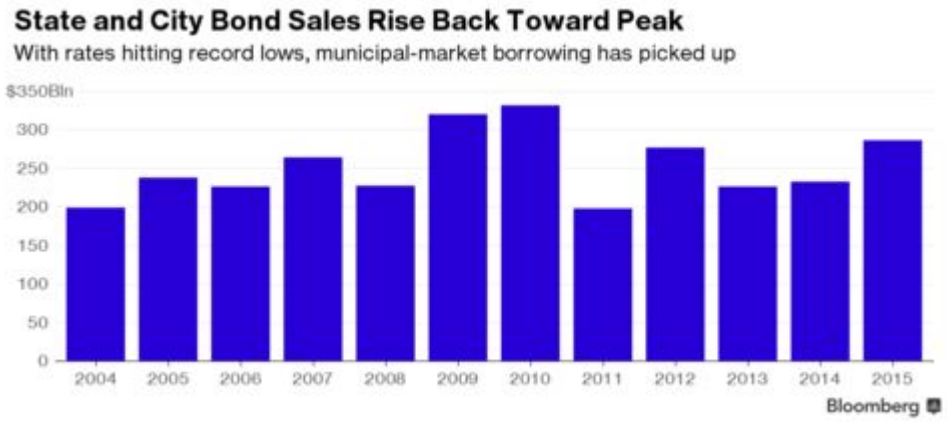
August 23, 2016 — 12:46 PM PDT Updated on August 23, 2016 — 2:21 PM PDT

Long-Awaited U.S. Infrastructure Spending Comes to Fruition.

America's states and cities are finally seizing on record-low interest rates to finance needed work on roads, bridges and schools.

After borrowing costs tumbled worldwide as central banks sought to jump-start their economies, agencies from New York to California have sold about $272 billion of bonds this year and are funneling more into construction projects, instead of just paying off higher-cost debt. That's put the municipal market on track to approach the record level of sales reached in 2010, when the federal government was seeking to hasten the nation's recovery by footing some of the bills on debt issued for public works.

"That's going to be the story for the year — rebuilding infrastructure," said Mikhail Foux, head of municipal strategy in New York for underwriter Barclays Plc, which forecasts that issuance may reach $400 billion this year.



The spree shows how local U.S. agencies are benefiting from turbulence in global financial markets that's kept the Federal Reserve from raising interest rates since its initial increase in December — a move that at the time spurred speculation states and cities were missing an opportunity. The need for such spending has been injected into the U.S. presidential campaign, with both Democrat Hillary Clinton and Republican rival Donald Trump promising hundreds of billions of dollars for the country's fraying infrastructure.

While localities for years pocketed savings by refinancing, this year they've stepped up borrowing for planned public works — many of which were put on hold as officials struggled with budget shortfalls that persisted long after the recession ended in 2009. So-called new-money deals — which fund projects instead of paying off old debt — accounted for 40 percent of the sales through early August, compared with 35 percent for the same period last year, according to Bank of America Merrill Lynch.

The new issues this year included those for a terminal at New York's LaGuardia Airport, improvements at Chicago's schools and work on Texas's roads. Next month, Alabama plans to offer $550 million of debt backed by highway funding it's set to receive from the federal government, allowing it to begin work without waiting on Washington.

Irvine Ranch Water District, an agency serving 380,000 customers in California's Orange County, this month issued its first new-money bonds since December 2010. The timing of its $117 million deal, some of which retired older securities, was driven partly by the market, said Rob Jacobson, the district's treasurer. The proceeds are being used for a facility to treat waste-water remnants called biosolids, which are currently processed elsewhere.

"It turned out to be an excellent time," Jacobson said. "The market is fantastic."

The longest-maturing securities, which come due in March 2046, yielded 2.23 percent, 0.74 percentage point above benchmark munis. The 10-year securities yielded 1.29 percent, 0.64 percentage point less than top-rated bonds, data compiled by Bloomberg show.

The pace of new bond deals is expected to stay brisk. There were $16 billion scheduled over the next month, an increase from the $6.9 billion that were planned for 30 days out at the start of July, data compiled by Bloomberg show.

On Friday, Fed Chair Janet Yellen said the case for raising interest rates is getting stronger, and speculation has increased that the central bank will tighten monetary policy: the futures market predicts a 56 percent chance that rates will be increased in December, compared with the 45 percent odds given a month ago.

The increased supply hasn't diminished the municipal market's rally, which has driven yields — which move in the opposite direction as prices — to record lows. With negative rates in Japan and Germany, even the diminished payouts have been a draw to investors looking. U.S. state and local-government debt funds have taken in cash for almost a full straight year, according to Lipper US Fund Flows data.

Barclay's Foux said more bonds may be on the way if either Trump or Clinton follow through on their promises to fix crumbling roads and bridges.

"It's going to be a massive boost," he said.

Bloomberg Business

by Romy Varghese

August 26, 2016 — 2:00 AM PDT Updated on August 26, 2016 — 7:24 AM PDT

Lowest-Rated State Now Has $573 Million of AAA Bonds to Issue.

Illinois's next big bond deal sounds like a municipal-market oxymoron: the worst-rated state in the nation is offering more than half a billion dollars of AAA debt.

The $573 million of securities the state plans to sell Thursday are secured by a stream of sales-tax revenue that's diverted to investors, earning the deal the highest ranking from S&P Global Ratings. That's seven steps above the state's general-obligation debt, which is backed only by the government's guaranty to pay what it owes.

"We expect the state of Illinois's sales-tax bonds to fare better than the state of Illinois's GO bonds, primarily due to the substantial support from the designated sales tax," said Richard Ciccarone, the Chicago-based president of Merritt Research Services LLC, which analyzes municipal finances. "However, they will suffer. It will extract a higher borrowing penalty than would normally be expected for such a high-rated bond issue because of the chronic financial pressures."

Governor Bruce Rauner, a Republican, and the Democratic-led legislature only recently emerged from a record-long fight over the budget, agreeing on June 30 to a six-month plan that will avert a shutdown through the end of the year. Without revenue increases or deep spending cuts needed to eliminate the government's deficit, Illinois is still on track to end the fiscal year at least $5.5 billion

in the red and even the top-rated debt has a negative outlook from S&P — indicating it's not immune to a downgrade.

The political discord has cast ripples throughout Illinois, leaving universities and other municipal borrowers there with more downgrades in the second quarter from Moody's Investors Service than those in any other U.S. state. Illinois's rating was slashed to Baa2, two levels above junk, the lowest Moody's has graded a state since 1992. Moody's isn't rating Thursday's deal.

Despite the fiscal strain, Illinois has continued to pay investors on time and its law provides for "an irrevocable and continuing appropriation" for bonds, according to disclosure documents for the sale. The primary source of payment for Thursday's deal is a share of Illinois's 6.25 percent sales tax, which provides even more security.

"It's one of the strongest revenue streams that the state has," said Dennis Derby, a money manager in Menomonee Falls, Wisconsin, at Wells Fargo Asset Management, which holds Illinois bonds among its $39 billion of municipal debt and may buy Thursday's deal. "It'll be interesting to see where these price. Almost every issuer in the state of Illinois has some type of issuance penalty."

While investors demand yields on Illinois bonds that are higher than any of the other 19 states tracked by Bloomberg, the interest penalty has fallen since the stopgap budget was passed. Illinois's 10-year debt yields about 3.1 percent, or 1.7 percentage point more than benchmark securities, according to data compiled by Bloomberg. That gap was 1.9 percentage point on June 30.

The agreement between Rauner and Democrats failed to eliminate the deficits that were left after temporary tax hikes expired last year. And Rauner wants his agenda, including curbs on labor unions and property taxes, to come with any budget fix — something Democrats have steadfastly resisted.

With municipal-market interest rates holding near the lowest in more than half a century, the political turmoil is likely to prove a draw to investors looking for higher yields, said Dan Heckman, a senior fixed-income strategist in Kansas City at U.S. Bank Wealth Management, which oversees $133 billion and may buy some of the AAA securities. He said the yields will likely be higher than other top-rated bonds.

"There's been a real lack of quality issuance in Illinois," Heckman said. "There's a lot of pent-up demand. You'll see that if it's priced right."

Catherine Kelly, a spokeswoman for Rauner, declined to comment on speculation about how the bonds will be priced.

It won't be the last chance for buyers looking for highly rated Illinois debt. The Illinois Finance Authority plans to sell $500 million of bonds next week for the state's clean-water program, which makes loans to local governments for projects. The grade from S&P and Fitch Ratings? AAA.

Bloomberg Business

by Elizabeth Campbell

August 24, 2016 — 2:00 AM PDT

SEC Says 71 Muni Borrowers Lied About Disclosure Histories.

The U.S. Securities and Exchange Commission said it reached settlements with 71 state and local borrowers for lying to investors about their compliance with disclosure requirements when they sold bonds in the $3.7 trillion municipal market.

Issuers from New York's Syracuse University to Boulder County, Colorado, to Hawaii voluntary self reported "materially false statements or omissions about their compliance with continuing disclosure obligations" in bond offering documents from 2011 to 2014, the SEC said in a statement. Muni issuers are required to provide investors with annual financial reports and other material event information that could affect the value of their debt.

"Continuing disclosure failures were a widespread and pervasive problem in the municipal bond market," Andrew Ceresney, director of the SEC enforcement division, said in the statement. The actions will bring attention to disclosure problems in the market and lead to increased compliance, he said.

The actions came under an SEC initiative to crack down on disclosure failures by offering issuers favorable settlement terms in exchange for self-reporting material misstatements and omissions about their compliance with disclosure requirements. Under terms of the settlement the issuers will "cease and desist" from future violations and establish procedures to ensure compliance in the future. The SEC has brought 143 actions over disclosure in the market, according to the release.

Minnesota Example

In 2012, the SEC said in a report that failure to properly comply with disclosure requirements was "a major challenge" for investors trying to find information about their municipal-bond holdings. In February, 14 underwriters agreed to settle allegations by the SEC that they issued bonds for municipalities that failed to make adequate disclosures.

Minnesota, for example, told investors that it hadn't failed to comply with disclosure requirements in bond issues in 2011 and 2013, when in fact it had failed to file required audit reports in 2008 and 2010 for previous bond issues, according to the SEC's order.

The state's commissioner of management and budget failed to comply "in all material respects with its commitment to provide certain types of continuing disclosure," the order says.

S&P Expectations

The settlement has afforded Minnesota the opportunity to improve its disclosure, said Myron Frans, the commissioner, who joined the agency in January 2015, in a statement in response to the SEC order.
"Transparency is a critical function of government and I am glad to report that our agency published these required disclosures last August, almost one year in advance of the SEC's order," Frans said in the statement.

Meanwhile, when the state sold nearly $799 million of general-obligation bonds earlier this month for highways, economic development and higher education, it detailed its disclosure failures in 2012 and some prior years, according to the official statement.

S&P Global Ratings, in a report Aug. 15 in anticipation of the disclosure settlements, said it would consider the potential credit implications of each agreement on a case-by-case basis, but that it

would expect limited impact on the credit quality of issuers.

Bloomberg Business

by Darrell Preston

August 24, 2016 — 9:52 AM PDT Updated on August 24, 2016 — 12:25 PM PDT

Bloomberg Brief Weekly Video - 08/25

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

Watch the video.

August 25, 2016

Fitch: US Transit Woes Will Continue Until Funding Is Clear.

Fitch Ratings-New York-19 August 2016: Maintenance problems that halted two of the US's largest transit systems will likely spread to other systems unless funding needs are addressed and adequately managed, Fitch Ratings says, noting that long-term planning will help manage maintenance and capital requirements.

Although Washington Metropolitan Area Transit Authority's (Metro) funding process has begun, Metro demonstrates that successful funding requires effective planning and oversight.

Following an accident in 2009, the National Transportation Safety Board recommended that Metro implement a series of costly safety improvements. In 2010, Metro began a $5 billion, six-year capital-improvement plan to address those recommendations and others. As of January 2016, the authority had spent approximately $3.7 billion of the capital plan. Despite the expenditures, safety issues remain due to lack of planning and oversight. Last month, Metro began a project that will last for the rest of the year and shut down some train lines for as long as 24 days at a time to address emergencies.

In June, Southeastern Pennsylvania Transportation Authority (SEPTA) removed one-third of its train fleet due to a defect. Last week, it announced a plan to bring some of the cars back into service on Aug. 21. The defect's source appears to have been attributable to the manufacturer. However, SEPTA's significant long-term capital improvement backlog could contribute to maintenance issues that may interrupt its service.

Between fiscal 2011 and 2014, SEPTA's capital program funding fell to approximately $300 million per year on state funding cuts. In 2013, the authority estimated its repair backlog to be $5 billion, dwarfing the amount of the capital program. A rise in state funding is projected to nearly double the annual capital program by fiscal 2018. However, at that rate, the repair backlog will take many years to address, raising the likelihood of additional costly service disruptions.

The knock-on effects of the downtime to these systems will affect an increasingly large number of

people and businesses. For many transit systems, increased demand has been rising as migration to US cities has increased. According to the US Census Bureau, the population of 19 of the 20 largest cities rose in 2015, while New York City saw the largest number of new residents. Reflecting the city's growing population, the Metropolitan Transportation Authority, New York's largest transit system, reported that it provided 1.7 billion annual rides in 2015 — the highest since 1948.

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SEC Charges 71 Muni Issuers for Misleading Investors.

(Reuters) – (Story corrects paragraph 4 to show a Minnesota county municipal finance official did not immediately respond to a request for comment and a state municipal finance official could not immediately be located for comment, not that an official in Minnesota's finance department did not return a call for comment.)

The U.S. Securities and Exchange Commission has charged 71 municipal bond issuers, including the states of Hawaii and Minnesota, as well as related entities, for using offering documents that misled investors, the agency said on Wednesday.

The actions, brought under an SEC initiative that encouraged municipal bond issuers to self-report certain violations, involved conduct that occurred between 2011 and 2014, the SEC said. The initiative offered favorable settlement terms in exchange for self-reporting, the SEC said.

All of the entities involved settled with the SEC without admitting or denying the SEC's findings, the agency said.

A county municipal finance official in Minnesota did not immediately return a call requesting comment. A state municipal official could not immediately be located for comment. A Hawaii finance department spokesman could not be reached for comment.

The action covers a wide range of other issuers and entities, including the Ohio State University, the city of Memphis, the town of Hilton Head Island, South Carolina, and the Delaware Transportation Authority, according to the SEC.

The SEC said that issuers in the case sold municipal bonds using offering documents that contained materially false statements or omissions about their compliance with continuing disclosure obligations.

Continuing disclosure provides municipal bond investors with important information, such as annual financial reports, on an ongoing basis. Failure to comply with continuing disclosure mandates is a "major challenge for investors seeking information about their municipal bond holdings," the SEC said.

Settlements in the cases require the parties to reform their policies, procedures and staff training related to continuing disclosure obligations and to update past filings, among other things, the SEC said.

The cases raised hackles at the Securities Industry and Financial Markets Association (SIFMA), a trade group, which on Wednesday called for broad changes in regulation and practices, given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers.

SIFMA supports a "robust disclosure regime" in the municipal market, but has "serious concerns" about how the SEC carried out the self-reporting initiative for municipal bond issuers, SIFMA said in a statement.

By REUTERS

AUG. 26, 2016, 11:51 A.M. E.D.T.

(Reporting by Suzanne Barlyn; Editing by Frances Kerry and Meredith Mazzilli)

U.S. Public Universities Turning to Private Sector to Meet Campus Needs.

NEW YORK — U.S. public universities are increasingly turning to public-private partnerships to

develop student housing and other campus projects, sometimes using the structure to transfer borrowing and liability risks to the private sector.

Over the last five years, there has been an "uptick" in universities and colleges leveraging the private sector to deliver housing needs, said Kevin Wayer, an international director and co-president of the Public Institutions group at commercial real estate firm Jones Lang LaSalle.

"The notion of having the private sector deliver student housing is something that has been going on for many years, but I think it has definitely increased in utilization since the financial crisis," Wayer said.

The financing structure, known as "P3," is being employed both by schools that are fiscally strapped and those with healthier balance sheets.

Brailsford & Dunlavey, a project management firm, has seen on average a 50 percent year-over-year growth since 2011 in P3 transaction values it has consulted on for higher education institutions, said Brad Noyes, senior vice president.

In 2011, the transaction value for such P3 projects was $320 million, he said. Year-to-date the firm "has $2.5 billion worth of transactions we're providing advisory work on," Noyes said.

Use of P3s can contribute to reduced debt on universities' balance sheets, said Todd Duncan, assistant vice president of housing, food and retail services at the University of Cincinnati's main campus.

While still only a "fraction" of the U.S. municipal infrastructure market, the P3 market is building, Moody's Investors Service said in a report issued in March.

"Universities are also expanding their use of different types of P3s beyond privatized student housing to include other university facilities," Moody's said. The report added: "More local governments and higher education institutions are exploring different types of P3s with more hybrid P3s and DBF (design, build, finance) structures."

Universities might engage in P3s for a number of different reasons, including the efficiency that developers can bring to projects, Duncan said.

Increased operating costs for institutions and decreased state contributions have led to a financing gap, said Kurt Ehlers, managing director at Corvias Campus Living, a development group.

From fiscal 2008 to fiscal year 2016, state spending per student at public two- and four-year colleges decreased 18 percent, according to Michael Mitchell, a senior policy analyst at the Washington, D.C.-based Center on Budget and Policy Priorities.

The National Council for Public-Private Partnerships, a non-profit that advocates for P3s, lists 18 types of P3 partnership structures on its website. The council did not have a national figure for how much money is being spent on higher education P3 projects.

A newer P3 structure gaining in popularity has the developer not only help finance, build or renovate a project, but also maintain the facility, sometimes for decades, Ehlers said. In return for maintaining standards, the developer can count on a fixed incentive fee.

"From a sustainability standpoint, these properties, these assets become self-sustaining," Ehlers said.

At the University of California in Merced, developer group Plenary Properties Merced will finance, build and maintain project areas that include student housing, academic facilities and recreation spaces.

The four-year $1.3 billion project will be financed through payments from the university and through funds contributed by the developer. UC Merced plans to fund its contribution of roughly $600 million by issuing bonds, said Stuart Marks, senior vice president at Plenary Group and a leader on the 2020 Project.

The developer will fund the difference via Plenary equity and privately placed notes, he said.

The university will pay the developer over 35 years while it provides continued maintenance of the facilities, Marks said.

“You get the economies of scale and efficiencies through having one developer responsible,” he said.

By REUTERS

AUG. 26, 2016, 2:18 P.M. E.D.T.

(Reporting by Stephanie Kelly; Editing by Daniel Bases and Dan Grebler)

Post-Implementation Review Concludes GASB’s Pollution Remediation Statement Achieves Purpose.

Norwalk, CT—August 23, 2016—A Post-Implementation Review (PIR) of Governmental Accounting Standards Board (GASB) Statement No. 49, *Accounting and Financial Reporting for Pollution Remediation Obligations* (issued 2006), concluded that Statement 49 accomplished its objectives of providing more consistent, timely, and complete reporting of pollution remediation obligations by state and local governments.

“The PIR report on Statement 49 tells us that, overall, the standard provides creditors and other users of financial statements with useful information,” said GASB Chair David A. Vaudt. “The GASB acknowledges the issues raised by some governments in applying certain provisions of the Statement, and will consider those issues when addressing the provisions in the future.”

The PIR team developed its final report based on input from financial statement users, preparers, and auditors. The Statement 49 PIR team reached the following overall conclusions:

- Statement 49 resolved the primary issues underlying its stated need. In particular, it achieved the objective of reporting pollution remediation obligations that is more consistent, timely, and complete.
- Statement 49 provides creditors and other users of financial statements with useful information. Users of financial statements incorporate information about pollution remediation liabilities in their analyses when pollution remediation obligation amounts are significant. For most governments, however, pollution remediation obligation amounts are not significant.
- Statement 49 is operational because it is understandable, can be applied as intended, and enables information about pollution remediation obligations to be reported reliably. The measurement of a pollution remediation liability requires judgment as with any other accounting estimate.
- The changes made to financial and operating practices as a result of Statement 49 are not

significant or unexpected.
- There were no significant unanticipated consequences as a result of the adoption of Statement 49.
- Overall, implementation and ongoing application costs associated with Statement 49 were not significant and were consistent with the GASB's expectations.
- Statement 49 achieved its expected benefits.

The PIR team had no standard-setting process recommendations as a result of the review.

The review of Statement 49 was undertaken by an independent team of the Financial Accounting Foundation (FAF), the parent organization of the GASB and the Financial Accounting Standards Board (FASB). The team's formal report is available here. The GASB's response letter to the report is available here.

With the completion of the GASB Statement 49 review, the PIR team has begun its review of GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. For more information on the PIR process and to express an interest in participating in a review, visit the FAF website.

SIFMA Statement on SEC MCDC Enforcement Action.

New York, NY, August 24, 2016 – SIFMA today released the following statement from Kenneth E. Bentsen, Jr., president and CEO of SIFMA, on the MCDC enforcement action announced today by the Securities and Exchange Commission:

"SIFMA supports a robust disclosure regime in the municipal market to ensure that investors have timely access to the information they need to evaluate their investments. We have serious concerns about how the SEC executed the MCDC Initiative. Given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers, we believe that broad changes in regulation and practices are warranted.

"To that end, as outlined in our June 2016 letter to SEC Chair White and in our April 2016 white paper, we urge the SEC to revise and update Rule 15c2-12 to improve interpretive guidance with respect to compliance. We also encourage the MSRB to leverage its existing infrastructure and technology to improve investor access to disclosures. In addition, as found in our recent 50-state review of state policies governing local government bond issuance, information disclosure and financial audits, we believe the states are in a unique position to improve municipal disclosure and would like to see states adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements."

Release Date: August 24, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

NFMA Advanced Seminar on Public Power.

The National Federation of Municipal Analyst's Education Committee has opened registration for its Advanced Seminar on Public Power, to take place at the W Seattle, Seattle, Washington, on October

27 & 28.

To view the program, click here.

To register, click here.

- MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.
- S&P: What Will A Continuing-Disclosure Settlement Mean For Muni Credit?
- Issuers Structure Deals to Meet Retail Demand for Lower Coupons.
- CDFA Intro Public-Private Partnership (P3) Finance WebCourse.
- SIFMA Municipal Bank Loans and Direct Placements Seminar.
- California practitioners and eminent domain aficionados (and who isn't?) will want to take a look at *City of Perris v. Stamper*.
- Both Sherman & Howard and Kennedy & Graven are in the market for public finance attorneys and have placed ads in our Classifieds section. Although we prefer to advertise used futons, I suppose that certain exceptions can be made. Please feel free to avail yourselves of this service. There's no charge.
- And finally, Delusions of Leverage is brought to you this week by *Bingman v. City Of Dillingham*, in which taxpayers negotiated to redeem their foreclosed property by offering the city a tax-free promissory note that matured in 20 years. "We're gonna make them an offer they can easily refuse."

IMMUNITY - ALABAMA

Ex parte Harris

Supreme Court of Alabama - July 29, 2016 - So.3d - 2016 WL 4204837

Community entertainment center owner brought action against town and town's police chief, in his individual capacity, asserting claims of malicious prosecution, false arrest, false imprisonment, harassment, intentional infliction of emotional distress, libel, and slander, after owner was arrested for allegedly selling alcohol without license.

The Circuit Court denied defendants' motion for summary judgment. Defendants separately petitioned for writ of mandamus directing trial court to enter summary judgment in their favor on basis of immunity. Petitions were consolidated.

The Supreme Court of Alabama held that:

- Chief carried burden, in seeking state-agent immunity, of showing that he was engaged in discretionary function for which such immunity would be available;
- Chief had at least arguable probable cause to arrest owner and, thus, exception to state-agent immunity applicable to willful, malicious, fraudulent, or bad faith actions did not apply;
- Chief was immune from malicious prosecution claim under doctrine of state-agent immunity; and
- Town was statutorily immune from suit as to all claims.

LIENS - CALIFORNIA

Mechammil v. City of San Jacinto

United States Court of Appeals, Ninth Circuit - June 30, 2016 - Fed.Appx. - 2016 WL 3619398

San Jacinto Municipal Code § 1.28.110(C) allows the city to "place a lien on property that is the subject of a citation if the citation has been issued to the current property owner of record." "[T]he amount of the proposed lien may be collected as a special assessment at the same time and in the same manner as property taxes are collected." SJMC § 1.28.110(C)(3).

Property owner argued that these city ordinances are inconsistent with California state law.

The Court of Appeal agreed, holding that cities in California cannot attach liens or impose special assessments to collect outstanding nuisance fines or penalties.

EMINENT DOMAIN - CALIFORNIA

City of Perris v. Stamper

Supreme Court of California - August 15, 2016 - P.3d - 2016 WL 4268627

City filed eminent domain action to acquire land for truck route though light industrial land, and appraised the take as undevelopable agricultural land on theory that it would not approve any development unless landowners gave or dedicated truck route land to the city.

After bifurcation and court trial on legal issues, the Superior Court entered judgment for city regarding dedication issue. Following stipulated judgment as to appraisal, landowners appealed. The Court of Appeal reversed and remanded. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Requirements of "essential nexus" and "rough proportionality" were questions for the court, not a jury, disapproving *City of Hollister v. McCullough*, 26 Cal.App.4th 289, 31 Cal.Rptr.2d 415, and
- Project effect rule generally applies when it is probable at the time a dedication requirement is put in place that the property subject to the dedication will be included in the project for which condemnation is sought.

The questions of "essential nexus" to a valid public purpose and "rough proportionality" to the impact of the proposed development, for a dedication requirement alleged to reduce the fair market value of condemned property to satisfy the Fifth Amendment, were questions for the court rather than a jury, since they were mixed questions of law and fact in which the legal issues predominated, and they were analytically prior to any factual dispute as to whether the condemner would actually have reduced the value of the property by requiring the dedication as a condition for development; disapproving *City of Hollister v. McCullough*, 26 Cal.App.4th 289, 31 Cal.Rptr.2d 415.

The project effect rule generally applies to an agency's expectation for property to be dedicated as a condition of development of adjacent properties, and thus the dedication requirement is not considered in valuing the property in an eminent domain proceeding, when it is probable at the time a dedication requirement is put in place that the property subject to the dedication will be included in the project for which the condemnation is sought.

MUNICIPAL ORDINANCE - CALIFORNIA

Weiss v. City of Los Angeles

Court of Appeal, Second District, Division 4, California - August 8, 2016 - Cal.Rptr.3d - 2016 WL 4183951

Motorist filed petition seeking a writ of mandate directing city and its processing agency to provide a legally sufficient initial review of parking violation.

The Superior Court issued the writ and awarded attorney's fees, and city and processing agency appealed.

The Court of Appeal held that:

- Motorist lacked any beneficial interest in outcome of mandamus proceeding, as motorist had paid fine;
- Motorist had standing under the "public interest" exception to pursue mandamus relief;
- City was required by statute to conduct initial review of tickets and could not delegate that duty to processing agency;
- Home rule doctrine did not apply to allow charter city to override statute and allow processing agency to review citations;
- Action resulted in the enforcement of an important right affecting the public interest as required for award of private attorney general fees; and
- Writ relief conferred a significant benefit on a large class of persons as required for award of fees under the private attorney general statute.

Motorist lacked any beneficial interest in outcome of mandamus proceeding seeking writ directing city and its processing agency to provide a legally sufficient initial review of parking violations, and thus lacked general standing to pursue the writ, where motorist unsuccessfully challenged his own parking citation at the initial review, then elected to pay the fine rather than pursue further appeal.

Motorist had standing under the "public interest" exception to pursue mandamus relief seeking writ directing city and its processing agency to provide a legally sufficient initial review of parking violations. Ensuring that city followed the proper procedure for processing and collecting parking tickets was a matter of public right, and given the burden of mounting a challenge to the initial review procedure and the typically minimum fine, it was unlikely an individual motorist would do so.

City, as agency issuing parking tickets, was required by statute to conduct initial review of tickets and could not delegate that duty to processing agency, notwithstanding statutory provision stating that an issuing agency may elect to contract with a private vendor for the processing of notices of parking violations prior to filing with the court.

Home rule doctrine did not apply to allow charter city to override statute and allow processing agency to review municipal parking citations, rather than city as required by statute. While administration of parking citations was a core municipal function for purposes of the home rule doctrine, city outsourced its duty to perform initial review of parking citations by way of a contract, not pursuant to a municipal ordinance, regulation or provision of the city charter.

Motorist's action for writ of mandate directing city and its processing agency to provide a legally sufficient initial review of parking violation resulted in the enforcement of an important right affecting the public interest warranting award of private attorney general fees. Motorist was successful in obtaining injunctive and declaratory relief ending processing agency's unlawful but

longstanding practice of conducting initial reviews and compelling the city to comply with its statutory duty to perform that task, and public had fundamental right to review by a tribunal properly convened under the law and authorized by law to conduct the review.

Grant of writ relief requiring city, rather than its processing agency, to provide initial review of parking violations conferred a significant benefit on a large class of persons as required for award of fees under the private attorney general statute. Motorists who parked their cars in the city and received a parking ticket would have the initial review of their parking tickets performed by the city as the issuing agency, rather than the private processing agency, and benefit was significant, as it increased city's accountability and accessibility and city and processing agency had argued that writ would necessitate a "complete changeover."

LIABILITY - CONNECTICUT

Giannoni v. Commissioner of Transp.

Supreme Court of Connecticut - August 9, 2016 - A.3d - 322 Conn. 344 - 2016 WL 4124295

Parents brought highway defect action on behalf of their child, who was injured when he fell into a stream culvert while riding his bicycle on the sidewalk along a state highway, which ended at a private driveway and lawn shortly before the culvert.

The Superior Court denied Commissioner of Transportation's motion to dismiss, and Commissioner appealed.

The Supreme Court of Connecticut held that parents demonstrated that child was a traveler and that culvert was highway defect, as was required to state highway defect claim.

Parents of child, who was injured when he fell into a stream culvert while riding his bicycle on the sidewalk along a state highway, which ended at a private driveway and lawn shortly before the culvert, demonstrated that child was a traveler and that culvert was highway defect, as was required to state highway defect claim. Child retained his status as a traveler on the highway when he moved from the shoulder of the road to the sidewalk along highway because his travel over the sidewalk was incidental to and for a purpose connected with his travel over highway, state reasonably should have expected the public to traverse the culvert area, which would render the culvert a highway defect actionable under statute, sidewalk led directly to the culvert, the sidewalk was an area intended for public travel, and bicyclists were invited and reasonably expected to utilize the sidewalk, when necessary, in connection with their travel over highway.

IMMUNITY - MAINE

Day's Auto Body, Inc. v. Town of Medway

Supreme Judicial Court of Maine - August 2, 2016 - A.3d - 2016 WL 4088076 - 2016 ME 121

Auto body business brought negligence action against town and contractor that assisted town fire department in responding to fire at business location.

The Superior Court granted summary judgment in favor of defendants, and business appealed.

The Supreme Judicial Court held that:

- Town's actions in responding to fire did not fall within the Tort Claims Act's immunity exception for negligent acts or omissions in its ownership, maintenance, or use of vehicles, machinery, and equipment;
- Contractor was a government employee for purposes of the Tort Claims Act;
- Contractor was absolutely immune from personal civil liability for any intentional act or omission within the course and scope of its employment; and
- Tort Claims Act provision that governed the defense and indemnification of government employees by their employers in certain suits arising out of the use of motor vehicles did not apply to hold contractor liable for damages to business to the extent of any private liability insurance contractor held.

Town's actions in responding to fire did not fall within the Tort Claims Act's immunity exception for negligent acts or omissions in its ownership, maintenance, or use of vehicles, machinery, and equipment, regardless of the fact that vehicles or equipment were involved in the conduct that allegedly caused harm, because the gravamen of business's claim was that the town made imprudent tactical decisions in the course of fighting fire at business location.

Contractor that assisted town fire department in responding to fire at business location was a government employee for purposes of the Tort Claims Act. On the day of the fire, town's fire department summoned one of contractor's employees to assist at fire scene with an excavator, employee acted only at the direction of the town, no contract existed for performance of the work performed at a fixed price, and the type of work, fire suppression, was the regular business of the town.

Contractor, that under the Tort Claims Act, was an employee of town when, at the direction of town, it responded to a business fire and used its excavator in an attempt to minimize fire damage, was absolutely immune from personal civil liability for any intentional act or omission within the course and scope of its employment. Contractor's actions were intentional, they were within the scope of its employment, and there was no allegation that they were taken in bad faith.

Tort Claims Act provision that governed the defense and indemnification of government employees by their employers in certain suits arising out of the use of motor vehicles did not apply to hold contractor that assisted town in responding to business fire liable for damages to business to the extent of any private liability insurance contractor held, when contractor, as a government employee, was otherwise immune from suit pursuant to the Act.

IMMUNITY - NEW JERSEY

Parsons v. Mullica Tp. Bd. of Educ.

Supreme Court of New Jersey - August 17, 2016 - A.3d - 2016 WL 4370011

Student, by her parents, brought negligence action against township board of education and nurse who conducted a visual acuity test on student, arising out of delay in reporting results of test to student's parents.

Board and nurse moved for summary judgment. The Superior Court denied motion. Board and nurse appealed, and the Superior Court, Appellate Division, reversed and remanded. Student sought leave to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Visual acuity test of student was a “physical examination” within scope of provision of Tort Claims Act providing immunity to public entities for failing to conduct an adequate physical examination, and
- An “adequate physical examination” includes reporting the results of the examination.

ANNEXATION - NORTH DAKOKA

New Public School Dist. No. 8 v. State Bd. of Public School Educ.

Supreme Court of North Dakota - August 17, 2016 - N.W.2d - 2016 WL 4379223 - 2016 ND 163

School district appealed State Board of Public School Education’s decision approving annexation of certain real properties to another school district.

The Northwest Judicial District Court affirmed the Board’s decision, and school district appealed.

The Supreme Court of North Dakota held that eligibility requirements for annexation by a school district were met when the annexations became effective, even though the real properties to be annexed were not contiguous with the school district at the time the annexation petition was heard.

Statutory eligibility requirements for annexation by a school district were met when the annexations became effective, even though the real properties to be annexed were not contiguous with the school district at the time the annexation petition was heard. The properties to be annexed were contiguous to other property which was contiguous to the school district, to which annexation had previously been approved, and annexation of all of the properties became effective on the same date.

REFERENDA - OKLAHOMA

Save the Illinois River, Inc. v. State ex. rel. Oklahoma State Election Board

Supreme Court of Oklahoma - August 8, 2016 - P.3d - 2016 WL 4189500 - 2016 OK 86

Concerned citizen group filed petition urging that a legislatively proposed constitutional amendment was facially unconstitutional.

Defendants filed a motion to dismiss, submitting that the challenge was untimely. The District Court granted the motion finding the challenge was untimely and was not facially unconstitutional. Citizen group appealed.

The Supreme Court of Oklahoma held that district court properly dismissed citizen group’s petition but should have done so on basis that it should abstain from addressing a legislative referendum before voted on by the people.

EMINENT DOMAIN - PENNSYLVANIA

In re Sunoco Pipeline, L.P.

Commonwealth Court of Pennsylvania - July 14, 2016 - A.3d - 2016 WL 3755774

Pipeline service operator sought to condemn property, and condemnees filed objections.

The Court of Common Pleas overruled the objections. Condemnees appealed.

The Commonwealth Court held that:

- Collateral estoppel did not bar action;
- Operator was public utility corporation empowered to exercise eminent domain;
- Operator had power to condemn property for construction of pipeline; and
- There was no basis for the Court of Common Pleas to review the Public Utility Commission's (PUC) determination of public need.

Issue decided in previous case regarding pipeline service operator's plans to construct interstate natural gas pipeline was not same issue raised in operator's petition to condemn property after pipeline was repurposed to be interstate and intrastate pipeline, and therefore collateral estoppel did not bar action. Prior case addressed only whether operator was public utility corporation because it was subject to regulation as public utility by Federal Energy Regulatory Commission (FERC), and did not decide whether operator was public utility corporation because it was subject to regulation as public utility by Public Utility Commission (PUC).

Service to be provided by natural gas pipeline involved both interstate service, subject to Federal Energy Regulatory Commission (FERC) regulation, and intrastate service, subject to Public Utility Commission (PUC) regulation, and therefore pipeline service operator was public utility corporation empowered to exercise eminent domain, despite contention that pipeline was solely in interstate commerce. Pipeline was to consist of physical structure with access points in Ohio, West Virginia, and Pennsylvania, product was to be placed into pipeline and removed at multiple points within Pennsylvania, and pipeline operator had filed, and received PUC approval, of multiple tariffs applicable to operator's provision of intrastate service.

Public Utility Commission (PUC) regulated intrastate shipments of natural gas liquids, including service provided by pipeline that was authorized expansion of existing service, and therefore pipeline service operator had power of eminent domain to condemn property for construction of pipeline. Operator's certificates of public convenience applied to both existing service and to planned expansion, and operator's approved tariffs proposed to add new origin point for west-to-east intrastate movements of propane, based on the certificates issued.

There was no basis for court of common pleas to review Public Utility Commission's (PUC) determination that public need was demonstrated by pipeline service operator in application to condemn property to construct natural gas pipeline. PUC followed its statutory mandate and evaluated issues within its purview, and allowing such review would have permitted collateral attacks on PUC decisions and would have been contrary to statute that placed review within authority of Commonwealth Court.

PUBLIC UTILITIES - TENNESSEE

Tennessee v. Federal Communications Commission

United States Court of Appeals, Sixth Circuit - August 10, 2016 - F.3d - 2016 WL 4205905

States of Tennessee and North Carolina petitioned for review of an order of the Federal Communications Commission (FCC) which purported to preempt state statutory provisions that either forbade or put onerous restrictions on expansion of broadband service networks by municipal telecommunications providers.

The Court of Appeals held that:

- Clear statement rule applied in determining whether state statutes that either forbid or restricted expansion of broadband service networks by municipal telecommunications providers were preempted by Telecommunications Act, and
- Telecommunications Act provision relating to promotion of competition in broadband marketplace did not preempt state statute regulating expansion of municipal broadband service networks.

Clear statement rule applied in determining whether state statutes that either forbid or restricted expansion of broadband service networks by municipal telecommunications providers were preempted by Telecommunications Act provision relating to promotion of competition in broadband marketplace, as federal preemption of state law threatened to trench on the states' arrangements for conducting their own governments.

Telecommunications Act provision relating to promotion of competition in broadband marketplace did not contain a clear statement authorizing preemption of Tennessee and North Carolina statutes that either forbid or put onerous restrictions on expansion of broadband service networks by municipal telecommunications providers, and, thus provision did not authorize such preemption. Telecommunications Act provision's directive to remove barriers and promote competition could not be read to limit a state's ability to trump a municipality's exercise of discretion otherwise permitted by Federal Communications Commission (FCC) regulations.

TAX - MAINE

Petrin v. Town of Scarborough

Supreme Judicial Court of Maine - August 16, 2016 - A.3d - 2016 WL 4367255 - 2016 ME 136

Taxpayers filed a complaint appealing the decision of the town board of assessment review denying taxpayers' applications for abatements.

The Superior Court concluded that taxpayer did not have standing to assert one of their challenges but otherwise affirmed the board's decision. Taxpayers appealed.

The Supreme Judicial Court of Maine held that:

- Taxpayers established sufficient particularized injury for standing;
- Allowing abutting properties to be treated as a single parcel violated equal protection and the state constitution;
- Allowing abutting properties to be treated as a single parcel violated statutory requirement that each parcel of real estate must be assessed separately;
- Assessing portions of larger single lots at a rate that is lower than the rate applied to the "base" portion of the lots did not violate equal protection and the state constitution; and
- Board of assessment acted within its discretion in finding that partial revaluation of waterfront and water-influenced property improved equity of town's assessments.

Municipal Utility Districts in Texas Have Sweeping Power to Sell Bonds, Levy

Taxes.

MUD 187 came to be when a Houston developer arranged for two people to move their trailer onto a 519-acre site on the edge of Richmond in Fort Bend County, which at the time was an empty field.

As the only "residents" within the municipal utility district's boundaries, the couple headed for the polls in November 2008. The ballot asked whether the state's approval of MUD 187 should be confirmed and whether the district should be authorized to sell up to $188 million in bonds for water and sewage systems, drainage, parks, recreational facilities, roads and a fire station.

The vote was unanimous – 2-0.

"That's not how democracy is supposed to work," said Clifford Gay, a retired construction superintendent who now lives in Del Webb Sweetgrass, a retirement community that owes its existence to MUD 187 – and the taxes it is levying to pay off $24 million in bonds.

Gay and his neighbors wonder how high those taxes might go as more bonds are sold, especially with extraordinary bond issuance costs of 9 percent, according to IRS documents. MUD 187's bonds are rated Baa3 by Moody's, which says they may have "certain speculative characteristics."

Across bright-red Texas, where many politicians tout small government and low taxes, MUDs and other so-called special purpose districts are proliferating – and selling bonds – at a rate many experts inside and outside government find increasingly problematic. They cite high indebtedness, insufficient state oversight, cozy relationships with developers, a lack of responsiveness to citizens and potential conflicts of interest. MUDs can be created either by the Texas Commission on Environmental Quality or the Legislature.

Continue reading.

The Houston Chronicle

By James Drew

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FHA Issues Final Guidelines on PACE Assessments: Dechert

The U.S. Federal Housing Administration (FHA) issued final guidance in the form of Mortgagee Letter 2016-11 regarding the subordination of Property Assessed Clean Energy (PACE) assessments on Tuesday, July 19, 2016. As originally announced in August of 2015, the guidelines are part of a broader initiative to expand the accessibility of clean energy financing options while simultaneously preserving the value of underlying property with PACE assessments.1 Most PACE programs permit the PACE assessment to generate a lien on the property that is pari passu with real estate taxes and other assessments on real property and comes ahead of any mortgage lien on the property; a structure for which both the FHA and the Federal Housing Finance Agency (FHFA), the conservator of Fannie Mae and Freddie Mac, have expressed concerns. To address these concerns, the FHA announced that it will begin insuring mortgages on properties with PACE assessments that meet five conditions.

FHA Guidance on PACE Assessments

Super-Priority Lien Status

The paramount condition in the FHA guidance is centered around the concern that PACE assessments could take super-priority lien status over a mortgage in the event of default or foreclosure. Under this condition, PACE assessments cannot have superior priority lien status to the mortgage, except in the event of a default. Even in the event of default, a PACE assessment can only take priority over an FHA-insured mortgage to the extent of the installment of the PACE assessment that is delinquent. The guidelines also indicate that an event of default cannot accelerate full repayment of the PACE assessment; although, the guidelines permit a notice of lien with respect to the full PACE assessment amount to be filed in the public records.2

Special Assessment Treatment

A second condition requires that PACE assessments are collected and secured in the same way as a special assessment against the property (i.e. the PACE obligation must be escrowed by the lender).3 Essentially, this condition clarifies that the FHA will insure mortgages with PACE assessments attached if such assessments are treated like a property tax under state law, but will not do so if the PACE assessment is given first priority lien status in a manner other than described under the first condition.4 Legally, the FHA cannot accept PACE assessments that would treat the entire PACE assessment as a priority lien over the mortgage, except in circumstances of default or delinquency similar to other property tax assessments.5 This condition should please mortgage lenders, however, it does raise a concern about what would happen in a scenario where the FHA-insured mortgage enters into default and the defaulted assessment amount exceeds the escrow amount. It is unclear whether the FHA would be required to pay the remaining amount owed or whether that amount would be passed along to the purchaser of the foreclosed property.

Free Transferability

A third condition requires that there are no terms or conditions of the PACE assessment that would limit the transfer of the encumbered property to a new homeowner. This requirement includes a prohibition against a restriction that could require third-party consent to transfer the property, unless such restriction could be terminated at no cost by the homeowner.6

Public Record

A fourth condition requires that the PACE assessment be readily apparent in public records to all parties involved in the mortgage transaction and must: (i) state the loan amount; (ii) include the expiration date and cause of expiration; and (iii) specify that a default cannot accelerate the expiration date.7 It is not clear how this requirement will affect PACE programs that allow for a delay in the filing of the assessments in the public records.

Continue with the Property

A fifth and final condition requires that the PACE assessment attach to the property upon sale, including foreclosure.8 This requirement ensures that, in the event of a foreclosure or deed in lieu thereof, the balance of the PACE assessment will transfer to the new property holder instead of becoming immediately due and interfering with payment of the mortgage loan.

Disclosure and Appraisal Requirements

The FHA guidance further includes disclosure and appraisal requirements.

The disclosure requirement specifies that, in the event of sale of a property with a PACE assessment, the sales contract must specify whether the PACE assessment will remain attached to the property or if it will be satisfied by the seller at or before closing.9 If the PACE assessment will remain attached, all terms and conditions of the PACE assessment must be disclosed to the buyer and further made part of the sales contract.

Lastly, if the PACE assessment will remain with the property, any appraiser must include in its analysis the impact of the PACE-related improvements (i.e. solar panels) on the value of the property, irrespective of whether such impact is positive or negative.10

Lingering Questions and Concerns

While the FHA's guidance is certainly a step in the right direction, there are still loose ends that need to be tied up. First, it is unclear from the guidelines who will be charged with enforcing the various conditions and requirements therein. For example, who will ensure that an appraiser is considering the impact of the PACE-related improvements on the value of the property? Will someone at the FHA scrutinize the appraisal, or will the program administrators be stuck with this task?

Second, the FHA's previously-issued guidance in 2015 stated that the FHA intended to coordinate with the Consumer Financial Protection Bureau (CFPB) to address consumer disclosure requirements, yet the final guidance does not refer to any such collaboration. Additionally, though the Department of Energy's Best Practices Guide for Residential PACE Financing (Best Practices Guide) stresses the importance of property owner education and disclosures,11 the utilization of the Best Practices Guide is not mandatory. The FHA explicitly states that it may be used to align state and county PACE programs with consumer protection goals; however, state and local legislatures are not required to utilize the Best Practices Guide.

Lastly, we note that under the "Fair Housing and Equal Opportunity" resources section at the end of the Best Practices Guide, there is a link to the U.S. Department of Housing and Urban Development's website for the purpose of providing more information on "program structure, operation and evaluation to ensure equal access under the Fair Housing laws."12

FHFA's Position Remains Unchanged

The FHFA, the conservator of Fannie Mae and Freddie Mac (who collectively represent roughly 80% of the residential mortgage market), has a long-standing objection towards the "super-priority lien" status of PACE assessments, citing lack of knowledge on behalf of lenders as well as the lenders' inability to account for additional risk and potential decline in the value of the property.13 Indeed, the FHFA recently stood by its objection to PACE assessments receiving super-priority lien status, stating that it does not intend to allow Fannie Mae or Freddie Mac to purchase mortgages on properties encumbered by PACE assessments.14

Conclusion

The guidelines promulgated by the FHA are a positive development and will allow property owners with existing PACE obligations—or those who wish to obtain them— to receive FHA-insured mortgage loans. Any positive impact will be mitigated, however, by the fact that the guidelines will affect roughly only 15% of the residential mortgage market. To have a more resounding and pervasive impact, the FHFA would have to release similar guidelines, yet it remains unclear whether they will do so.

Footnotes

1) U.S Department of Housing and Urban Development, Guidance for Use of FHA Financing on Homes with Existing PACE Liens and Flexible Underwriting through Energy Department's Home Energy Score, (August 2015).
2) U.S Department of Housing and Urban Development, Mortgagee Letter 2016-11, (July 2016).
3) Id.
4) U.S. Department of Housing and Urban Development, FHA to Insure Mortgages on Certain Properties with PACE Assessments, Real Estate Rama, (July 2016).
5) Id.
6) U.S. Department of Housing and Urban Development, Mortgagee Letter 2016-11, (July 2016).
7) Id.
8) Id.
9) Id.
10) Id.
11) See Department of Energy, Best Practices Guidelines for Residential PACE Financing, Page 5 (July 2016).
12) Id. Page 14.
13) U.S Department of Housing and Urban Development, Statement of Alfred M. Pollard, General Counsel, FHFA, before the California Legislature, Keeping Up with Pace, (June 2016).
14) FHFA Won't Budge on PACE LOANS, Asset-Backed Alert, (July 29, 2016).

Dechert LLP – Patrick D. Dolan, Kira N. Brereton and Noah Tischler

USA August 17 2016

Sun Burn: Solar Tax Credits Scorch State Budgets.

Solar power can burn a hole in a state's budget, but a well-designed plan can bring benefits

When it comes to solar power policy, the line from "Field of Dreams" is worth taking into account: "Build it, and they will come."

Demand for residential or rooftop solar power, spurred in part by state incentives, is growing rapidly. But if incentives are not well-designed, they can overwhelm a state's budget.

Regulators and utility officials in several states have been surprised – not always in a positive way – by the effects of their solar power policies.

Louisiana is one of the more recent, and more dramatic, examples.

In mid-July, Louisiana's Department of Revenue said it was almost $30 million short of funds to pay already submitted claims for rooftop solar systems and that there were no funds to pay future claims, even though the program is not scheduled to end until Dec. 31, 2017.

A 2015 law capped the state's solar tax credit program at $10 million each for 2015-16 and 2016-17 and at $5 million for 2017-18. The state already has $9.3 million in approved credits and $29.6 million in estimated pending claims for 2015-16.

The credit, put in place in 2008, was one of the more generous among state solar tax credits,

covering 50% of system costs and capped at $25,000 for an individual system.

That credit has been one of the drivers of solar power in Louisiana. According to the Solar Energy Industries Association, 32 MW of solar power – almost all of its residential – was installed in Louisiana in 2015, a 3% increase over the previous year, and the trade organization expected another 208 MW of installations over the next five years.

Industry experts say part of the reason Louisiana implemented such a generous 50% tax credit was as an effort to compensate for a residential rate structure that did not make solar power attractive.

Louisiana has a declining block rate structure, meaning that the first increment or tier of power used costs the most, with rates then dropping for customers who use more electricity.

In states like California, which has an inclining block rate structure, customers who use the least electricity pay the lowest rates. That structure creates an incentive for customers in the higher tiers to install solar panels in order to reduce their usage and rates. In states, such as Louisiana, with a declining block rate, that rate reduction strategy is not as compelling.

Louisiana's solar tax credit also had a provision that allowed a cash payment for customers who did not have enough income to use all their credits. The state's incentives were very attractive, but when lawmakers moved to rein them in, they went as far to the other side, reducing the cap while the program was still under way and by making the reduction retroactive.

Those sort of policy decisions, and resulting market disruptions, are becoming increasingly common nationwide.

Tax credits fuel Western solar boom

The sudden removal of Louisiana's tax credits may have made things worse for homeowners there, but it is not the only state where booming solar power is creating problems in the state capital.

New Mexico has also ended its solar tax credit. The state implemented its tax credit in 2008 with a 2016 sunset date. But the state set a $3 million a year cap on the program, and has hit that limit in each of the last four years, according to Mark Gaiser, a clean energy program manager with the state's Energy, Minerals and Natural Resources Department.

"New Mexico's tax credit has been running out of money every year at a faster and faster pace," said Noah Long, western energy project director with the National Resources Defense Council.

There have been two attempts to bring the tax credit back, but both have failed in the legislature. And, with the lower house of the legislature controlled by Republicans and the upper house controlled by Democrats, the chances of passing a new solar tax credit into law are slim, Long said.

In retrospect, it looks like putting a cap on the program "was kind of wise," Gaiser said. "It didn't allow for over reach."

Another western state is facing similar problems, but for now the solar tax credit program is still running in Utah, where solar power is booming.

The state saw 3,000 rooftop solar installations in 2015, and the Governor's Office of Energy Development expects to process 12,000 applications this year. If all those applications turn into installations, it would mean more rooftop solar would be installed in 2016 than in all prior years combined.

The boom has been driven by the falling costs of solar panels, as well as at least three different state solar incentives. In addition to a state solar tax credit, Utah has a net metering program and the state's largest utility, Rocky Mountain Power, until recently offered a rebate on the cost of installing solar power.

The utility rebate was about 1.5 cents per watt of installed rooftop solar. The program was set up as a lottery under a five year program and was very popular. Over four years, the utility provided $40 million in rebates.

But in March the state legislature signed off on Rocky Mountain Power's proposal to end the program in its fourth year and switch it to a broader initiative, the Sustainable Energy and Transport Program, which includes incentives for transportation and energy storage, as well as for solar power.

"We think the solar industry is no longer an unknown quantity," Rocky Mountain Power spokesman Paul Murphy said. "So, we don't think it needs additional incentives. We would rather use the funds for all customers."

Utah also provides a solar tax credit equal to 25% of the cost of a system, capped at $2,000 per system. But the rapid growth of rooftop solar in the state is raising concerns among lawmakers.

When the tax credit was created in 2012, it was a $1 million program, this year it is going to hit $25 million or $40 million, Jeffrey Barrett, deputy director of the Governor's Office of Energy Development, said. "The word 'exponential growth' was created for this sort of thing."

"The legislature is worried as hell about the fiscal impact," Barrett said. "I think new legislation is being drafted right now."

What form that legislation will take is still unknown, he said. It could be a cap or a cap and a phase out, but "in the future, it will be a completely different program."

By law, Utah's the tax credit comes up for review in 2017.

State funding struggles a trend

Overall, the expiration of state solar tax credits has become a national trend.

"I think that it is due in part to budgetary problems, but also due to solar's increasing maturity," Autumn Proudlove, senior policy analyst at NC Clean Energy Technology Center at North Carolina State University, said.

Many of the tax credit programs were put in place to help solar power get off the ground, but with the growing penetration of solar, some states are letting those programs expire.

At the beginning of 2015, 15 states had residential solar tax credits. Now, 11 states have them, and programs are set to expire in Iowa at the end of 2016, in Louisiana and Oregon at the end of 2017, and in Maryland at the end of 2018, according to the Database of State Incentives for Renewables and Efficiency (DSIRE).

In part this a reflection of the natural life span of a tax credit. Tax credits are often put in place to help a technology transit to commercial viability. In some states, legislators are letting them expire because they believe the technology has advanced far enough that tax credits are no longer necessary.

North Carolina is an interesting example, Proudlove said. The state tax credit really helped develop the state's utility-scale solar market, but the residential and commercial solar markets are still small and have really dropped off since the tax credit expired, she said.

According to a survey conducted by the Utah Solar Energy Association, 80% of the respondent said that the tax credit was "important" of "very important" in their decision to install solar panels on their rooves, Ryan Evans, president of the trade group said.

Reducing or capping Utah's solar tax credit "would not send the right message right now," Evans said. "After all, there are only so many Utahans. The boom can't last forever." Eventually everyone who wants solar power will have it or all the roofs will have solar panels, he said.

The other factor that needs to be considered, Evan said, is that tax credits bring in business. "My guess is that the state gets their money back" through increased sales tax and corporate taxes.

According to a report by the North Carolina Sustainable Energy Association, North Carolina energy projects generated $1.54 of state and local government tax revenue for every $1.00 taken in tax credit.

But, as Evans pointed out, "Not all tax credits are created equal." And there is a fair amount of variety when it comes to solar tax incentives. California uses a tax exemption for solar equipment instead of a credit on a tax return. Other states also give an adjustment or deduction on property taxes, but can lead to problems.

Not only do property values change, they are very local, and "it is difficult for developers to know the value," said Sean Gallagher vice president for state affairs at the Solar Energy Industries Association.

Gallagher noted that most tax credits are designed with sunset dates or budget caps. "It is not unusual for them to have a limit,"

In a well-designed system, there needs to be a recognition of the importance of planning, from the perspective of the state, as well as that of the homeowner and the developer. The simplest way to do that is to have a clear expiration date for the tax credit and clear definitions of qualifying factors such as construction start dates.

Other features, such as reserve funds and triggers, can also be helpful tools. They let consumers know when the credits are close to expiration or near capacity.

It's best to design programs with a budget cap or an expiration date, "people need to be able to plan for it," Gallagher said. The worst thing to do, though, is to change the tax credit or lower the cap retroactively. In those situations people stand to lose their investment, Gallagher said.

Utility Dive

By Peter Maloney | August 17, 2016

PACE Guidance from HUD/FHA is an Important Step Forward.

PACENation applauds and strongly supports guidance for residential PACE issued today by the U.S.

Department of Housing and Urban Development (HUD). The guidance clearly shows the Obama Administration's strong commitment to Property Assessed Clean Energy financing, a bipartisan initiative adopted by 18 states thus far that encourages home owners to make energy efficiency and renewable energy upgrades to their properties. To date, over 100,000 households have made their homes more valuable, healthier and comfortable using PACE. The nearly $2.25 billion spent has created 22,000 jobs, many of them in the communities that offer PACE, and will save the equivalent of 12.5 billion kWh's over the life of the measures.

The guidance issued today by HUD's Federal Housing Administration (FHA) sets standards that will allow qualifying homes with PACE assessments to be purchased or refinanced with mortgage products provided by FHA.

"This is another critical step forward to make PACE financing available for more home owners so we can achieve our nation's energy goals", said Jeff Tannenbaum, PACENation's founder.

PACE uses a financing mechanism that state and local governments have relied on for decades to promote improvements to private property that meet a public purpose. With PACE, home owners work with local contractors to decide which measures make sense. Funding is provided by private sector investors and repaid by each participating home owner as a charge on their property tax bill. PACE is completely voluntary and only impacts home owners who choose to participate.

Today's release also includes an update to the U.S. Department of Energy's PACE best practices guidelines. Strong consumer protection policies already adopted by PACENation and its members may make PACE financing the safest way for households to pay for investments they need and want to make in their homes.

David Gabrielson, PACENation's Executive Director, said "We are thrilled by today's announcement and appreciate the hard work that went into producing this guidance. We look forward to continued work with all market stakeholders on solutions that will make PACE available for more homes."

PACENation is a national not-for-profit organization that is supported by foundations and in part by its members: organizations and individuals that recognize the power of PACE financing and seek to make it available as a financing option for all property owners that want to make clean energy (and in many places, water conservation) upgrades to their buildings. To learn more and find out how you can get involved, visit us at www.pacenation.org

PACENation

July 19, 2016

S&P: What Will A Continuing-Disclosure Settlement Mean For Muni Credit?

The Securities and Exchange Commission (SEC) is expected to soon start releasing Municipal Continuing Disclosure Cooperation (MCDC) initiative settlements with governmental entities. The MCDC initiative was offered to issuers and underwriters of municipal debt during a defined period in 2014 as a voluntary way to notify the SEC of potential continuing disclosure violations, in exchange for pre-defined settlements. The violations are related to SEC rule 15c2-12. (More background on the MCDC initiative is available on the SEC's website, www.sec.gov.)

As settlements are announced we expect to consider the potential credit implications of each on a

case-by-case basis. Disclosure practices are an important part of our assessment of management, but we do not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices. Our expectation is that there would be very limited credit impact as ratings determinations would still come down to the individual credit fundamentals.

The MCDC Initiative

The MCDC initiative encouraged issuers and underwriters to report in 2014 violations of 15c2-12 which had occurred over the prior five years. The SEC offered the MCDC initiative as it believed that there were "potentially widespread violations" and that the general attitude toward adherence to the disclosure rules needed to be heightened throughout the market. The SEC has not revealed who self-reported.

Types Of Settlements

Underwriters
The SEC's enforcement division was charged with reviewing each case reported in the MCDC initiative. It has so far made public settlements entered into with underwriters and is now expected to start releasing settlements with issuers. The underwriter settlements did not require the underwriters to admit or deny any findings, but along with other provisions the underwriters would need to hire an independent consultant (approved by the SEC) to review internal practices and then implement any recommendations to further enhance compliance with 15c2-12. The underwriter settlements to date have included civil penalties, referred to as fines by those who have paid. The MCDC initiative included a maximum fine of up to $500,000 for the largest underwriters, and there have been 72 firms paying various-sized civil penalty fines to date. The fines have ranged from $40,000 to the maximum, according to the SEC.

Issuers
As the SEC actions are shifting to the issuer, we expect settlements to address disclosure violations in a different way. The primary difference, per the MCDC guidelines, is that the issuer settlements will not come with civil penalty fines. According to the SEC's standardized settlement terms, the focus of the issuer settlements will be on establishing management practices within the municipal issuer to ensure remediation of past violations and to avoid future violations.

Increased 15c2-12 Compliance Expected

The increased focus by the underwriter on compliance requirements and improved issuer filings per the 15c2-12 rules is expected to improve overall disclosure practices and enhance the quality and quantity of information available to the marketplace. We believe increased transparency is important in order to track and analyze credits, particularly those that do not come to market frequently. Notwithstanding the credit impact of individual settlements, we view the MCDC initiative as positive for the muni market, but we do not believe the initiative, in and of itself, is likely to result in changes to any current credit ratings.

Materiality Or Malfeasance

Even though the settlements are related to SEC securities law (albeit without admitting any violations), they are unlikely in our view to trigger any immediate rating actions. In our analysis of credit, we assess disclosure issues relative to their materiality to credit. Thus, we anticipate looking at each case on its own, taking into consideration the materiality of the violation in relation to the rating, based on the applicable rating criteria. That said, should the violation be malfeasance, then

there could be a more immediate impact on the rating.

Assessment Of Management

We anticipate that, in general, the major credit consideration relating to the MCDC initiative will be around the capabilities of the management team. Management is an important component of our rating criteria in each sector of U.S. public finance. However, we note that management is only one input to the total rating, which underscores why we don't expect significant rating volatility if there are disclosure deficiencies identified, all other factors being equal. Management's plan, however, to remediate any violations would be an important component of our analysis of the capabilities of the management team.

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

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15-Aug-2016

Philadelphia Business Taxes: Incentives and Exemptions.

Like many cities, Philadelphia does not regularly evaluate whether tax breaks achieve their goals

Overview
Philadelphia business tax rates are among the highest of any large city in the nation, and the tax structure is frequently cited as one reason for the city's relatively weak job-creation record over the past several decades. A key element of that structure is the business income and receipts tax (BIRT), which taxes profits and revenue of businesses located in the city. Only 11 of the nation's 30 largest cities impose levies on corporate profits or revenue, and only Philadelphia does so on both.

To make these business taxes less onerous, Philadelphia's leaders have created a large and varied group of tax incentives and exemptions. Known as tax expenditures, they constitute an integral but little-understood aspect of the city's business tax policy. Supporters view the expenditures—which do not appear in the city's budget or financial statements—as investments in growing, maintaining, and attracting businesses, thereby enhancing the tax base. Critics see them as drains on public resources that have little accountability, haphazard goals, and scant proof that they pay off in business growth or future tax revenue.

To help policymakers and the public better understand the role that these measures play in Philadelphia's overall tax policy, The Pew Charitable Trusts sought to quantify the city's tax expenditures and compare them with those of other major cities. In Philadelphia, the analysis looked at two types of tax expenditures: incentives to spur companies to take specific actions, such as hiring more workers or investing in neighborhoods; and industrywide exemptions to support particular business sectors deemed by policymakers to merit special treatment. The study covered two periods, 2001-03 and 2010-12, in order to show change over time; the 2010-12 data were the most recent for which information was complete.

The research found that Philadelphia has 21 city-approved business tax reduction programs or provisions, the most among the nation's 30 largest cities. Eight of those reductions took effect after 2012, too late for their impact to be included in this analysis.

The research also found that from 2010 to 2012, the tax incentive programs resulted in an average of $109.6 million per year in forgone revenue for the city and the school district—a 634 percent increase from 2001- 03, when the average annual inflation-adjusted amount was $14.9 million. This report describes revenue as "forgone" rather than "lost," in part because repealing the tax incentives would not necessarily restore an equivalent amount of money to local coffers; businesses probably would alter their operations to reduce their tax liabilities.

The vast majority of the $109.6 million stemmed from two programs: the 10-year property tax abatement on new construction and building improvements for commercial and industrial property, and the Keystone Opportunity Zone initiative, which exempts businesses within designated areas from state and local business taxation. Like all tax incentives, both of these programs require companies to commit to making new investments in the city and are in effect for limited periods of time.

The other main source of tax expenditures—industrywide exemptions primarily for finance, insurance, utilities, and port-related firms—produced at least $106.2 million in forgone revenue annually from 2010 to 2012. The amount was 18 percent less than in 2001-03, adjusted for inflation. Unlike tax incentives, exceptions are granted to individual companies without any time limits. Companies determine their eligibility in tax filings, which city auditors can challenge. (See Figure 1.)

Figure 1

Forgone Business Tax Revenue in Philadelphia

Annual average, in millions

From 2001-03 to 2010-12, Philadelphia's forgone business taxes grew primarily as the result of expanded use of tax incentives meant to retain and attract businesses and to spur real estate development, hiring, community reinvestment, and other commercial activity. The average annual amount of forgone revenue from tax incentives increased by 634 percent. Industry-specific exemptions declined 18 percent. All figures are inflation-adjusted to 2012 dollars.

Note: See Appendix D for list of credits, abatements, and exceptions.

Source: Pew analysis of Philadelphia Department of Revenue and Office of Property Assessment records

Whether these tax expenditures have paid off for Philadelphia is hard to say. There is no question that there have been benefits, in terms of jobs created and buildings constructed. The issue is whether those benefits outweigh the costs.

Philadelphia reports on some of its smallest tax-expenditure programs but does not conduct comprehensive analyses of how much all the tax expenditures cost or whether they achieve their purposes—and is not required by law to do so. Only a few cities, including New York and Washington, require that kind of reporting. For those reasons, this report does not compare forgone revenue for the city of Philadelphia and the school district with other jurisdictions.

In 2012, the staff of the Pennsylvania Intergovernmental Cooperation Authority (PICA), a state agency that oversees Philadelphia's finances, called on the city to clarify and evaluate specific tax expenditures, concluding: "A lack of detailed accounting prevents a systematic process of evaluating whether the costs of these policies are justified in relation to their benefits."

This study does not attempt to determine whether Philadelphia business tax expenditures have met their goals, but it does look at ways that cities can design programs to include evaluations. According to public finance and policy analysts, measuring the impact of tax benefits and setting clear rules for receiving them are key steps toward an effective and equitable tax system that fosters economic development and generates needed revenue.

Conclusion

For several decades, business leaders and tax experts have called for transformation of the city's entire tax structure in order to improve Philadelphia's competitiveness with its suburbs and other large cities. The recent overhaul of the city's property tax system, the Actual Value Initiative, was viewed as an important first step in laying the groundwork for comprehensive change.

Given the increase in forgone taxes over the past decade, tax expenditures merit a place in Philadelphia's tax policy discussion. Knowing how much these tax exceptions cost, and whether they are meeting their goals, is a key component of a coherent and equitable city tax policy.

Download the full report.

The Pew Charitable Trusts

TAX - ALASKA

Bingman v. City Of Dillingham

Supreme Court of Alaska - August 12, 2016 - P.3d - 2016 WL 4257176

City petitioned for foreclosure of taxpayer's property. Taxpayer intervened.

The Superior Court entered judgment and decree of foreclosure, and taxpayer appealed.

The Supreme Court of Alaska held that:

- City did not accept taxpayer's proposal to redeem his foreclosed property, and
- Taxpayer did not satisfy statutory requirements for repurchasing his foreclosed property.

City did not accept taxpayer's proposal to redeem his foreclosed property by offering city promissory

note for amount due, without interest, that would mature 20 years later, even though proposal stated that silence would be treated as acceptance, and city did not reject offer in manner outlined in taxpayer's proposal, where city sent letter rejecting offer, never recorded taxpayer's redemption, and did not issue certificate indicating that he had redeemed property, but instead published notice of expiration of redemption period, and moved for properties to be transferred by tax deed.

Taxpayer did not satisfy statutory requirements for repurchasing his foreclosed property by offering city promissory note for amount due, without interest, that would mature 20 years later, where offer was made before tax deeds transferred property to city, and failed to meet statutory provisions for calculating purchase price.

CDFA Intro Public-Private Partnership (P3) Finance WebCourse.

September 28-29, 2016
Daily: 12-5pm Eastern

The Intro Public-Private Partnership (P3) Finance Course examines this emerging development finance model with a focus on how development finance agencies can adopt P3 principles to address a variety of projects. This course will cover basic P3 concepts, key players involved in transactions, asset valuation, contract negotiation, risk assessment, revenue stream development, and feasibility analysis. In addition, several P3 projects from across the country will be presented, and P3 experts will analyze the successful elements in each deal.

Interest in P3 financing is growing as state and local governments face tough budget decisions along with declining federal investment in infrastructure. Several state and local agencies have used P3 to finance real estate developments, schools, parking garages, public transit, affordable housing, water facilities, and more. During the Intro P3 Finance Course, industry experts will discuss the common characteristics and drivers of P3 financings throughout the country and explain the various structures of these deals.

To learn more and to register, click here.

GFOA: Your Action Requested on Senate-Side High Quality Liquid Assets Legislation.

On February 1, 2016, the House of Representatives voted unanimously to approve HR 2209, bipartisan legislation that would require federal regulators to classify all investment-grade, liquid, and readily marketable municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, classifying foreign sovereign debt securities as HQLA while excluding investment grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Some members of the Senate Banking Committee are seriously considering the introduction of companion legislation to HR 2209, and GFOA urges our members to send letters to Senate members asking them to sign on as cosponsors of the bill, especially from the following jurisdictions. A draft letter is available here.

Richard Shelby, Chairman (R-AL)
Sherrod Brown, Ranking Member (D-OH)
Tom Cotton (R-AR)
Bob Corker (R-TN)
Mike Crapo (R-ID)
Joe Donnelly (D-IN)
Heidi Heitkamp (D-ND)
Dean Heller (R-NV)
Mark Kirk, (R-IL)
Robert Menendez, (D-NJ)
Jeff Merkley (D-OR)
Jerry Moran (R-KS)
Jack Reed (D-RI)
Mike Rounds, (R-SD)
Ben Sasse (R-NE)
Charles E. Schumer (D-NY)
Tim Scott (R-SC)
Jon Tester (D-MT)
Patrick J. Toomey (R-PA)
David Vitter (R-LA)
Mark R. Warner (D-VA)
Elizabeth Warren (D-MA)

Background
In September 2014, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (OCC) approved a rule establishing minimum liquidity requirements for large banking organizations. The liquidity coverage ratio rule was designed to ensure that large banks maintain liquid assets that can easily be converted to cash during times of national economic crisis. The rule identifies HQLA to meet this requirement, but fails to include municipal securities in any of the acceptable investment categories—despite including foreign sovereign debt.

Following approval of the new rule, GFOA and our state and local association partners have urged the Federal Reserve, FDIC, and OCC to amend the rule to classify investment-grade, liquid, and readily marketable municipal securities as HQLA. On May 21, 2015, the Federal Reserve Board issued a proposed rule that would designate certain investment grade municipal securities as HQLA. While the GFOA is extremely grateful for the Federal Reserve's recognition of the liquidity features of municipal securities, we have some concerns with the proposal, which we raised in our comment letter. Such concerns include the proposal's failure to include revenue bonds as HQLA, and the limit on the total amount of general obligation securities that a financial institution can hold of no more than 5% of the institution's total amount of HQLA.

Meanwhile, the FDIC and OCC refuse to modify the rule for municipal securities. In the absence of cooperation from these agencies, GFOA is working with bipartisan champions in Congress to change the rule through legislation (HR 2209) and preserve low-cost infrastructure financing for state and local governments and public-sector entities.

Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local

governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

GFOA

Wednesday, August 17, 2016

Public Finance Associate

Sherman & Howard L.L.C. seeks an associate attorney to join its busy public finance practice in Denver, Colorado. We are active in Colorado, Nevada, New Mexico, Idaho, Montana, Arizona and other Western States and our firm maintains eleven offices in six states.

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Kennedy & Graven, Chartered, a law firm in Minneapolis that represents local governments, cities, counties, school districts, townships, port authorities, economic development authorities, housing and redevelopment authorities and other public purpose entities, seeks a public finance associate to practice in the areas of general obligation tax-exempt bonds, conduit tax-exempt bonds for 501(c)(3) entities and affordable housing, and economic development and redevelopment.

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To apply: send resume, transcript and cover letter to Neil Simmons, Administrator, Kennedy and Graven, Chartered, at nsimmons@kennedy-graven.com; or mail to 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402.

Please apply by September 30, 2016 to ensure consideration.

Questions can be directed to Neil Simmons by email above or 612-337-9200.

Kennedy & Graven, Chartered gives equal consideration to all qualified applicants, regardless of their race, color, creed, religion, national origin, sex, disability, age, marital status, ancestry, sexual orientation, or status with regard to public assistance.

Firm Offers Issuers Chance to Win a Free Bond Financing.

PHOENIX Public finance startup Neighborly is offering municipal issuers a chance to win a free bond financing.

The San Francisco-based financial services company is launching what it calls the “Neighborly Bond Challenge,” which will offer winning municipalities the opportunity to sell up to $10 million of bonds on Neighborly’s platform free of charge. Orrick, Herrington & Sutcliffe will be bond counsel. Applications will be accepted through Sept. 9, and the winners will be announced Sept. 21 at The Bond Buyer’s California Public Finance Conference.

Neighborly, which has a registered broker-dealer arm, aims to “democratize” the muni market be encouraging local investment from millennials and others who wouldn’t typically invest in muni bonds directly.

“In modernizing public finance, Neighborly is looking forward to financing innovative public projects being conceived right now by governments throughout the United States,” said Jase Wilson, Neighborly’s chief executive officer. “We are extremely excited about the opportunity to work with

municipal finance thought leaders and to have Orrick as bond counsel for the Neighborly Bond Challenge. Neighborly's goal is to reduce complexity and use data to create transparency in the municipal finance industry. Neighborly provides the same market accessibility for a parent buying a $100 muni bond for their child's graduation as the world's
largest bond funds. "

James McIntyre, Neighborly's head of public finance, cited the success of Denver, Colo.'s 2014 "mini-bonds," which were sold in $500 denominations, and said Neighborly is looking to produce more small-investor triumphs like that.

"We just want to build upon their success and get people thinking about muni bonds," he said.

Issuance of the five winning selections is targeted for between the fourth quarter of this year and the fourth quarter of 2017. Interested municipalities can apply on Neighborly's website, where they are invited to fill out information about their proposed financing including how the bonds would be used, what their current ratings are, and who is on their finance team. Neighborly says ideal projects for the challenge would be those with a direct positive impact on the issuer's local community.

"Ideal financings include those that support schools, create microgrids, tackle water scarcity, create resiliency, or benefit those in need," the company's website reads. "Think sustainable or green projects that would benefit from our technological economies of scale."

Burlington, Vt. Mayor Miro Weinberger said he is strongly considering applying to the challenge as the city is planning some financings to improve its infrastructure.

"We are regular participants in the municipal bond market," Weinberger said. "I think there's a quite good chance we're going to put in an application."

Weinberger said he is often struck by the cost of a bond issuance, and feels that what Neighborly is offering could offer significant savings. He said he also likes the idea of the company's mission of fostering more direct and local muni investment.

"It would be great if more of the public would get to participate," he said.

The Bond Buyer

By Kyle Glazier

August 11, 2016

Why a Judge Allowed a Challenge to a Private Activity Bond Allocation.

BRADENTON, Fla. — Two Florida counties can move forward with the first lawsuits ever to challenge a private activity bond allocation from the U.S. Department of Transportation.

In a 39-page ruling late Tuesday, U.S. District Judge Christopher R. Cooper sided with Martin and Indian River counties, both of which objected to the USDOT's award of $1.75 billion in private activity bonds for the All Aboard Florida passenger train project.

The planned passenger trains would pass through the two counties on their route between Miami

and Orlando.

Cooper said that the counties proved that the bond allocation should have been considered in a federal environmental review process. He denied motions to dismiss the case by the USDOT and All Aboard Florida.

“Martin County is very pleased with the decision and believes that the public will have more information as a result of the court action than they’ve ever had before about the project,” said Stephen Ryan, a partner with McDermott Will & Emery LLP, which represents Martin County.

Cooper said that the counties had legal standing to proceed with their challenges because they demonstrated that the $3.5 billion train project likely will not be built without tax-exempt financing — a reversal from a decision in June 2015.

Cooper said information produced during discovery raised “legitimate questions” about All Aboard Florida’s commitment to completing the second phase of its project, from West Palm Beach to Orlando, without the use of private activity bonds.

“First of all, PAB-based financing is not just the ‘current financing plan’ for the project – it appears to be the only financing plan,” Cooper wrote. “This strikes the court as unusual given the uncertainty surrounding the PAB issue, particularly for a company that has expressed its concern” about keeping the project on schedule and avoiding losses due to delays.

Cooper said the issue “casts some doubt as to whether AAF is truly serious about moving forward with phase 2 of the project regardless of the outcome of this lawsuit.”

“It also indicates that AAF may have simply assumed that alternative financing would be available,” he said.

The ruling is a “really significant victory,” said Indian River County Attorney Dylan Reingold.

He said that information the counties produced in discovery convinced the judge to change his mind about whether AAF needed bond financing for Phase 2 of the project.

“The judge told us we have standing, and we met that burden,” he said.

USDOT referred questions to the U.S. Department of Justice, which did not immediately respond to requests for comment.

All Aboard Florida did not immediately respond to requests for comment.

AAF, which is owned by Fortress Investments Group, is attempting to create a privately funded and operated passenger train service, the nation’s first in decades.

Private financing is in place for its first phase, linking Miami, Fort Lauderdale and West Palm Beach, where stations are under construction, according to court documents.

In Phase 2, Martin and Indian River counties have cited potential harm to public services and archaeological sites from 32 planned high-speed trains daily in separate suits filed in the District of Columbia.

Both cases contended that USDOT’s December 2014 allocation of bonds should have been considered as part of federal agency reviews under the National Environmental Policy Act.

USDOT and All Aboard Florida argued that the approval of private activity bonds was not a major federal action that would trigger a NEPA review.

The judge disagreed.

Cooper compared the benefits of the $1.75 billion PAB allocation with a $1.6 billion low-interest loan that All Aboard Florida applied for from the Railroad Rehabilitation and Improvement Financing program.

Under federal rules, the RRIF loan is considered a major federal action that triggered a NEPA review, although AAF has not completed the loan process.

“In the court’s view, then, if the amount of federal assistance conferred by the RRIF loan can support a finding of major federal action, so too can the amount of federal assistance conferred by the PAB-allocation decision,” Cooper said.

Cooper also said the fact that USDOT, as a condition of receiving the PAB financing, required All Aboard Florida to comply with an “extensive” list of mitigation measures imposed by the final environmental impact statement indicated that USDOT had “the requisite degree of control called for by NEPA and related statutes so as to implicate major federal action.”

Cooper refused to dismiss claims by the counties that the bond allocation violated NEPA, the National Historic Preservation Act and the Department of Transportation Act.

“I see this as a big game changer as to where this case proceeds,” Reingold said.

Ryan and Reingold said they would confer on the next stage of the litigation, which could be a trial or a ruling on summary judgment.

All Aboard Florida has said it plans to begin the first phase of train service – which it has branded as “Brightline” — next year.

The company tried and failed to privately place the unrated, uninsured bonds after the Florida Development Finance Corp. agreed to be the conduit issuer last year.

The company blamed the tight bond market, as volatility increased and high-yield investor demand dried up in the months before the Fed increased the borrowing rate 25 basis points in December.

The delayed sale led the USDOT in December to grant AAF an extension of time to issue the bonds and agree to allow the debt to be sold in multiple offerings, rather than issuing all $1.75 billion at one time.

In Tuesday’s ruling, Cooper examined difficulties AAF had issuing the PABs as part of his analysis about whether the company could avail itself of other types of financing.

AAF’s first tried to sell the PABs in August at an interest rate of 6% for a single tranche of up to $1.75 billion, Cooper said, adding, “AAF found that it could not sell all its PABs at that rate on the terms it wanted.”

In September, deal was structured at a higher 7.5% interest rate with bonds in two tranches, one for $1.35 billion and the other for $400 million.

“Again, there was insufficient interest from investors for AAF to close on the sales on AAF’s terms,”

Cooper said.

In November, after issuing a third supplement to the offering memorandum, AAF kept the projected interest rate at 7.5% but added additional terms "that were arguably more favorable to investors," he wrote.

"Each time [AAF] was either unable to conclude a deal or chose not to do so, depending on whose framing of the issue one prefers," Cooper said. "Either way, the fact remains that the AAF project repeatedly did not generate sufficient interest to result in a sale of all bonds at the 7.5% rate."

All Aboard has argued that it would use other forms of financing for the project, including taxable bonds, but the judge was skeptical of its ability to do so.

"It strikes the court as reasonable that a full sale of the PABs would require an interest rate of at least 8% in the present market, which would bump the interest rate for taxable bonds into the range that AAF acknowledged is unacceptable."

A banker familiar with the PAB deal, who asked not to be identified, said he was told that AAF decided to postpone the offering until all legal issues were cleared up.

All Aboard Florida has until Jan. 1 to issue the bonds, according to the USDOT.

In a statement Wednesday, CARE FL, a local anti-train organization, said that although AAF claims that it is a privately funded project the court ruling proves that AAF is dependent on public support from the tax benefit provided by allowing tax-exemption on its bonds.

The group's steering committee chairman, Brent Hanlon said AAF would travel through heavily populated Treasure Coast areas and require residents to bear additional financial burdens and safety risks.

"We especially applaud the Martin County and Indian River Board of County Commissioners and legal teams for their leadership and steadfast commitment in the fight against AAF," Hanlon said.

The Bond Buyer

By Shelly Sigo

August 17, 2016

Issuers Structure Deals to Meet Retail Demand for Lower Coupons.

Municipal issuers have retail buyers in mind when they take a trip to the primary market to sell their tax-exempt bonds.

They say they have recently been delivering the 4%-or-less coupons that are in high demand by traditional buy-and-hold investors who have a growing appetite for cost-efficiency in the current low yield climate.

"We are giving investors the coupons they are looking for, hoping to increase the number of buyers interested and hoping to improve the pricing," Tim Rosnick, deputy controller of the Los Angeles, Calif., Unified School District told The Bond Buyer in an interview on Wednesday.

He said the district incorporated the preferred 4% coupons into two bond issues totaling $1.2 billion it sold earlier this month as a means of being flexible and accommodating of buyers' growing demand for sub-5% coupons.

The greater the demand, the lower the yields, which enhances cost savings, Rosnick said, as the district prepared to return to market with a competitive sale of $455 million refunding of GO dedicated unlimited ad valorem property tax bonds on Thursday.

While the deal is restricted from having zero coupon bonds or coupons higher than 6%, Rosnick said the structure will be at the discretion of the winning bidder.

"Other than the minimums and maximums, they have a great deal of flexibility in terms of coupons," he said. However, he said he expects 4% coupons to surface on some of maturities given the recent trend for the lower coupon product.

Retail demand for sub-5% couponing is increasing, other issuers and financial advisors confirmed.

"We are aware of retail demand and routinely look at alternative couponing structures," Jorge Rodriquez, managing director and head of public finance at Coastal Securities, said in an interview on Thursday.

As a co-financial advisor for the city of San Antonio earlier this month, Rodriguez said it made sense to structure some of the general improvement and refunding bonds and combination tax and revenue certificates of obligation from a $306.44 million sale with 4% coupons to benefit the hearty investor demand.

At the same time, that structure was advantageous for the city as some of the maturities with 4% coupons were oversubscribed – even though they were priced at a premium.

For instance, 4% coupons were structured in 2034, 2035, and 2036, to yield 2.43%, 2.48%, and 2.53% at the pricing.

Final decisions, according to Rodriguez, are often determined by a series of criteria, including investor demand, credit, size of the maturity, and yield to maturity calculations.

"All of those drive how you have to coupon it," he said.

Rodriguez said his firm consults with the underwriters to get price indications by maturity on a variety of coupon levels, including 3%, 4%, and 5%, and then chooses the coupons that will grab the most investor attention.

"You have to be able to move the bonds and also want to price them at the lowest possible kick to the issuers," he said.

Using lower coupons typically means a lower yield to maturity, which results in a lower cost to the issuer, Rodriguez said. For instance, structuring a maturity with a 4% coupon versus a 5% coupon may translate into 10 basis points of yield to maturity savings. That is very attractive for issuers selling a large transaction, Rodriguez said. On the city's recent deal, 5% coupon bonds due in 2033 had a yield to maturity of 2.996%, versus the 4% coupons due in 2034, which had a yield to maturity of 2.981%, according to Municipal Market Data.

New York City is also among issuers around the country aiming to please retail buyers with preferred couponing to meet their investment needs.

As a large and frequent issuer of municipal debt, New York City wants to keep abreast of the changing patterns of investor demand and try to meet that demand, according to the New York City Comptroller's office.

"Individual investors – who often live or work in our city – have always been important to the success of our bond sales," New York City Comptroller Scott M. Stringer told The Bond Buyer in a prepared statement.

"We will continue to make a concerted effort to give individuals a fair chance to purchase bonds and invest in New York City's success."

The city recently drew substantial demand for 4% coupons that were included in its Aug. 2 GO sale of tax-exempt bonds totaling $800 million, according to data provided by the New York City comptroller's office.

The 4% coupons generated 51% of the $215 million taken during the two-day retail order period, while 37% were for the 5% coupons, and 12% were for the sub-4% coupons.

The strong demand for 4% coupons comes in response to the absolute low level of interest rates, the comptroller's office said. There is a particular effort by professional retail investors, such as money managers, financial advisors, and trust departments acting on behalf of individuals, to avoid the higher dollar prices associated with 5% coupons, which was the dominant coupon structure up until three to four months ago, the comptroller's office said.

On the city's GO sale, retail investors veered from recent buying patterns and participated in longer maturities in order to get higher yields – even if it meant accepting lower than the 5% coupons they previously favored, an underwriter involved in the deal said after the pricing.

The retail crowd chased the 3% and 4% "handles" available in 2029 with a 2.07% yield and 2036 with a 2.78% yield. They even participated in the 2039 maturity, which had a split 3% and 4% coupon yielding 2.90% and 2.71%, respectively, he said.

"The market acceptability of sub 5% is becoming more and more prevalent," the underwriter added. "With absolute yields as low as they are people are sacrificing a little less coupon to pick up a little more yield to the call."

Since 5% coupons once dominated the market, retail investors also have an increased need for coupon diversify away from the previous market standard, the comptroller's office noted.

At the same time, the city benefits from having lower coupons, such as 4% coupons, which are priced as premiums to a call date with a slightly higher yield, and act as a natural hedge against rising interest rates versus the 5% coupons, the comptroller's office said.

Other issuers around the country are also tailoring their coupon structures for retail, while also achieving some cost savings of their own.

"The Connecticut State Treasurer's Office structures its bond sales to meet the preferences of a variety of investors and to strike a balance between current and future debt service costs for the general obligation program," Deputy State Treasurer Lawrence A. Wilson said in an email on Wednesday.

"We also are mindful that many retail customers prefer to purchase bonds with coupons of 4% or lower in order to avoid the higher prices associated with 5% coupons," he said. "Some institutional

customers also prefer to purchase bonds with lower coupons," he added. "We structure our bond sales with a variety of coupons accordingly."

For instance, he said Connecticut's recent new issues have been structured with lower coupons to both accommodate retail investors' cost efficient strategy, as well as to manage the state's future debt costs.

"The lower coupons also allow us to balance current and future debt service costs, particularly for our general obligation bond program, for which premium must be used to cover near-term interest costs," Wilson explained. "Because of this, the budget impact of selling 5% coupon bonds at a premium is lower debt service in the short-term, but higher debt service in the future."

Therefore, selling lower coupon bonds for the GO program helps the state manage future debt costs, Wilson added.

For example, of the $250 million in tax-exempt GO bonds the state sold earlier this month via competitive bid at record low rates, he said $100 million, or 40%, of the bonds were assigned coupons of 4% or less by the winning bidder.

Additionally, when the state sold GOs back in May, of the $57 million in orders from retail investors during the retail order period, $29.1 million, or 51%, of those orders were for 4% or lower coupon structures, according to Wilson.

Of the total $501.4 million of bonds sold, $114.6 million, or 23%, of the bonds were sold with 4% or lower coupons to both retail and institutional investors, he added.

Wilson noted that Connecticut two decades ago was one of the first states to pioneer the now widely-used retail order period as a marketing technique and still gives its in-state residents priority status on bond issues.

Like Connecticut, New York City makes frequent use of retail order periods and makes an effort to offer a variety of coupons to their loyal, mom and pop investors, while also giving their orders preference over institutional orders when it comes to new issues, the comptroller's office said.

The Bond Buyer

By Christine Albano

August 18, 2016

USDOT Constructs Build America Bureau.

The U.S. Department of Transportation (USDOT) announced the establishment of the Build America Bureau, "which will drive transportation infrastructure development projects in the United States by streamlining credit and grant opportunities while providing technical assistance and encouraging innovative best practices in project planning, financing, delivery and monitoring."

"The Build America Bureau will be a one-stop shop to help develop projects and provide financing in a single streamlined, effective and comprehensive manner," said U.S. Transportation Secretary

Anthony Foxx. “It will allow USDOT to be responsive to America’s changing transportation needs and opportunities, so we can deliver real, tangible infrastructure development for local, regional and national population centers.”

The Build America Bureau combines the following USDOT programs: the Transportation Infrastructure Finance and Innovation Act (TIFIA), the Railroad Rehabilitation & Improvement Financing (RRIF), the private activity bond (PAB), the Build America Transportation Investment Center (BATIC) and the new $800 million Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grant program.

The bureau will utilize the full resources of all the modes within USDOT and continue to promote a culture of innovation and customer service. To the customer, there will be a single entity in charge of USDOT credit, large scale and intermodal project development and a single point of contact for working with USDOT on infrastructure finance and development.

The Bureau Outreach and Development team, continuing the work of the BATIC, will work with the project sponsors to support them on how they can best combine credit, funding and innovative project delivery approaches, such as public-private partnerships (P3s) and then offer project-level technical assistance to get them ready to pursue it.

The department’s credit team will be able to underwrite loans from multiple sources together, so that the customer is no longer getting a TIFIA loan or a RRIF loan, but instead a single credit package from USDOT to help them build the infrastructure they need. Also, the bureau will manage the application and evaluation process for the FASTLANE grant program, which funds high-impact projects that address key challenges affecting the movement of people and freight.

BATIC, which was announced in 2014, has expanded the department’s ability to meet the needs of the nation’s transportation system. BATIC serves as a single point of contact and coordination for states, municipalities and project sponsors looking to utilize federal transportation expertise, apply for federal transportation credit programs and explore ways to access private capital in P3s. Since BATIC’s formation, USDOT has closed more than $10 billion in financing to support $26 billion in projects.

Railway Age

Thursday, July 21, 2016

To Subsidize Development or Not?

Often-uninformed city leaders struggle with the decision, and taxpayers pay the price for their lack of financial knowledge.

These days it’s not hard to convince people to live downtown, or, for that matter, to get developers to build places for them to live. Increasingly, both millennials and baby boomers want urban amenities. They want to live close to work, parks and restaurants, and they want to be able to walk or bike to them. As a result, downtown populations have soared: 65,000 people now live in downtown Seattle, downtown Los Angeles — traditionally not a residential area — is home to 52,000 people, downtown Philadelphia has 57,000, and Boston has 17,000 (a 50 percent increase since 2000).

Needless to say, these cities aren't subsidizing downtown development. In some cases, they've actually started to extract fees and concessions from developers to build downtown. But that's not the case everywhere.

In Houston, where I live, 150,000 people work downtown, but fewer than 5,000 people live there. Clearly, it has room to grow — and there are takers. Several thousand luxury units are currently under construction. Rentals can go for close to $5,000 per month, while condominiums can go for as little as $300,000 or as much as $1 million or more. But the market for downtown living isn't as robust as in other cities. So Houston is paying developers $15,000 a unit to build there.

Which raises some pretty basic questions: How much should cities spend to buy downtown residents? And when should they stop?

Yes, I said "buy" residents. When city leaders provide a financial subsidy for a development, that's what they are doing — paying money to acquire residents or stores or offices that wouldn't otherwise be built in a certain place.

The obvious answer to when a city should stop buying residents is when developers stop asking for subsidies. But we know all too well that this never happens. Urban real estate developers always ask for subsidies whether they need them or not, and cities often provide them even when they're not needed. Why else would cities subsidize billion-dollar sports stadiums to house teams that are worth billions and that are owned by sports tycoons worth billions?

That's why cities need to know a lot about the economics of private real estate development deals, specifically when and why projects pencil out or don't. It's something that, amazingly, cities know little about. If you're going to subsidize a developer, for example, you should only do it when you know you can't get the project you want done any other way. Alternatively, if you're going to soak a developer for impact fees or other community benefits, you should do so only when you know it won't kill a project you otherwise want. That's why cities should have a lot of financial analysis capacity — not just to balance their own budgets, but to understand whether developers are balancing their own budgets on the backs of the taxpayers.

So perhaps the real question is: How do cities ensure they have the financial IQ to decide when and when not to subsidize development?

GOVERNING.COM

BY WILLIAM FULTON | AUGUST 2016

Puerto Rico's Rescue Plan Represents a Troublesome Trend, Economists Say.

It's the latest government to rewrite the rules for getting out of fiscal distress.

While many in Puerto Rico are no doubt relieved that Congress struck a deal to save the U.S. territory from total financial breakdown, economists are worried that recent rescue plans are creating a potentially troublesome precedent.

PROMESA, the Puerto Rico Oversight, Management and Economic Stability Act that President Obama signed last month, is the latest debt restructuring that takes unprecedented measures to get out of fiscal distress. For one, it calls for the creation of a control board to oversee the restructuring

— something that's never occured beyond the municipal level. It also offers a layer of protection that technically shouldn't be available to a state or territory, many economists say, because neither is legally allowed to file for bankruptcy.

"One of my concerns as a credit analyst is I rely on the structure of a contract," said Steve Winterstein, chief municipal strategist at Wilmington Trust, an investment management firm. With PROMESA, he said, "all of a sudden the rules of the game can get changed."

But Puerto Rico isn't the only government to recently take unconventional steps to get out of financial trouble.

Detroit, the largest U.S. municipality ever to file for bankruptcy, created a restructuring plan that prioritized pension holders over general obligation bondholders. Those bondholders received about 80 cents on their dollar, but pensioners averaged around a 90 percent recovery rate.

San Bernardino and Stockton, Calif., which both filed for Chapter 9 in recent years, followed a similar trend. The cities opted to improve their finances by cutting retiree health benefits instead of pensions — an untraditional move in bankruptcy filings.

These unconventional restructurings worry creditors because they may set a new precedent in future cases: If other states and territories are given bankruptcy protection, that would negatively impact bondholders. Bondholders had hoped to sue the island for the $2 billion in bond payments they were owed, but PROMESA protects Puerto Rico — at least for now.

Economists say it's become unpredictable what states are able to do to avoid and recover from financial insolvency. Illinois, for example, has more than $7 billion in unpaid bills. It recently saw its credit rating downgraded to the lowest level of any state since 1992, and it has one of the least-funded pension plans in the country.

In the months and years to come, Puerto Rico hopes to model itself after Detroit's recovery, according to Gov. Alejandro García Padilla. Just a few years after filing for bankruptcy, the Motor City has started to see a revitalization. Up to 1,400 apartments are set to open in the heart of the city this year and more businesses — including dozens of start-ups — have opened downtown.

Puerto Rico's recovery may be tougher, Padilla admits. The fiscal downturn has caused many residents to leave the island — the population of children under five is half of what it was in 2000. And the Zika virus, which has been declared a public health emergency in Puerto Rico, offers a new challenge.

"It's going to take some time to reverse the drain that's been ongoing," said Padilla.

GOVERNING.COM

BY MATTIE QUINN | AUGUST 17, 2016

Why Companies Are Moving Back Downtown.

Tax incentives aren't always the best way to lure businesses. Many are simply going where the talent is.

Ryan Woodings owns a 15-person tech startup in Boise, Idaho.

His company, MetaGeek, specializes in helping businesses fix and maintain their Wi-Fi systems. Or, as the website puts it, “making Wi-Fi more awesome for more people.” A decade ago, MetaGeek was a side project out of Woodings’ house. His mom was his first hire. Eventually, the company grew and moved into an actual office in a suburban neighborhood on the outskirts of Boise.

The location posed some problems. Foremost among them was what might be termed the “intern dilemma.” Each semester, MetaGeek seeks the help of a handful of student interns from Boise State University. “Being 20 minutes away from campus,” Woodings says, “we could only get students who had a car and had certain class schedules.”

So MetaGeek did what a lot of companies are doing these days. It moved downtown. The student interns are now able to bike over to the office between classes. In the afternoons, MetaGeek employees can take walks on the nearby greenbelt that runs through town along the Boise River. If they want to bike home, the city runs a bicycle rental program and has an expanding network of dedicated bike lanes. “Downtown Boise is where everything is,” Woodings says. “When you have a lunch meeting, or get coffee with a client, it’s always downtown.”

MetaGeek is one of several tech companies that have put down roots recently in the center of Boise. Last summer, Boise State moved its computer science department downtown so that it could be closer to students’ potential employers. And Boise isn’t unusual. In cities across the country, businesses are trying to capitalize on the increasing density of tech talent clustered in the heart of cities. In Massachusetts, General Electric is setting up its new headquarters along the central Boston waterfront. In Rhode Island, Hasbro has moved 350 jobs to downtown Providence. In Illinois, nearly 50 companies, from Kraft Heinz to Motorola Solutions, have reestablished their headquarters in or near Chicago’s loop. According to the U.S. Census Bureau, the number of metro area jobs located within three miles of downtowns increased seven percentage points between 1996 and 2013. The suburbs still have about three-quarters of metro area jobs, but downtowns are luring quite a few employers back.

Much of that has to do with the tastes of the millennial generation, adults 34 and younger, many of whom continue to express a preference for walkable neighborhoods with bike lanes, public transit and a mix of recreational amenities. Last year, millennials became the largest component of the American workforce. For many companies, attracting and retaining millennial workers seems to require having a downtown office. “Probably for the first time in history, instead of people moving where jobs are,” says Tom Murphy, a senior fellow at the Urban Land Institute, “jobs are moving where the talent is.”

The most talked about move of this kind in recent years is GE’s decision to move from Fairfield, Conn., in the suburbs of New York City, to its new location in the center of Boston. A mix of $145 million in tax breaks from the city and the state of Massachusetts made the relocation cost-neutral, but that wasn’t the main reason for the switch. If it had been, GE would have moved to New York, where Gov. Andrew Cuomo had brokered a deal offering more in tax incentives.

At the time of the announcement, Jeffrey Immelt, the CEO of GE, explained the move in terms of the company’s changing identity. He pointed out that the global industrial conglomerate is getting into software, and its location in the Seaport District of downtown Boston puts GE employees in the same neighborhood as dozens of venture capital firms and tech startups. Immelt noted that GE should have no problem finding and hiring local talent, as the Boston metro area is home to 55 colleges and universities and Massachusetts spends more on research and development than any other region in the world.

But the company's decision to move was also based on a desire to be in an environment with sidewalks, ample transit and other amenities that would appeal to younger employees. GE executives boasted about the industrial feel of the site, which includes two historic brick warehouses overlooking the Fort Point Channel.

The reasons why GE moved are the reasons a lot of companies are moving back downtown. "Municipalities used to offer the lowest tax rates and the biggest subsidies to attract companies. That's no longer the case," says Murphy, who was mayor of Pittsburgh for 12 years before joining the Urban Land Institute. "People want a sense of place with good public transit and a good mix of activities. Cities that are making those kinds of investments are probably going to be the winners."

Last year, the urbanist advocacy group Smart Growth America studied nearly 500 companies that added jobs downtown between 2010 and 2015. About half moved in from the suburbs; others were moving from another downtown location, or expanding their existing downtown presence. What they had in common was a relocation of jobs to areas that were more bikeable, walkable and transit-accessible.

That's what happened with Red Hat, a software company in North Carolina. In 2011, Red Hat had outgrown its headquarters in a research park in southwest Raleigh. When management surveyed workers about what they were looking for in a new location, "the pretty much unanimous feedback was that [they] wanted to be in a more urban environment," says Simon George, a senior director at Red Hat. "That factored heavily into our decision-making." Ultimately, the company took over a former Duke Energy building in downtown Raleigh, adding more than 250 jobs to the downtown core. "The expectations of employees have changed," George says. "They want to be able to walk from home to work. They want to be able to walk to restaurants. They don't want to be driving everywhere."

All across the country, suburban office parks are less economically competitive than they once were, says Stephen Friedman, a development adviser and urban planner in the Chicago area. "The times have changed and the attitudes have changed," he says. It isn't just that millennials want to work downtown. It's that so many of them want to live there.

In 2013, the Urban Land Institute found that 62 percent of millennials preferred a home close to shops, restaurants and offices. In another survey by the institute, millennials in the Boston metro area were more concerned with the ease of their commute and the proximity of public transit than the quality of schools or public safety. Nearly 80 percent said it was very important to be near public transit while only 30 percent said it was very important to have free or discounted parking.

As recently as a decade ago, "the sheer amount of space available in the suburbs might have been a positive attribute," says Bethany Schneider, an analyst with the commercial real estate firm Newmark Grubb Knight Frank (NGKF). "Now, more companies aren't looking for room to grow. If anything they're looking to be more efficient."

Schneider was part of a team at NGKF that last year studied suburban office parks near five major cities: Chicago, Denver, New York, San Francisco and Washington, D.C. They found that between 14 percent and 22 percent of the suburban office inventory was "obsolete." It didn't meet at least two of six common features that prospective tenants said they wanted, especially proximity to transit. Tenants in obsolete suburban office parks "are facing a losing battle to retain their best workers," the study's authors concluded, and "owners of such spaces are facing an even greater challenge — how to keep their investments attractive to tenants."

In June, Friedman gave a presentation about the growth of downtown jobs to a group of Chicago

area real estate professionals. He noted that the retail and office vacancy rates were lower in the city than the suburbs, and he named some of the big companies everyone knew were setting up shop in downtown Chicago. (That very week, McDonald's was the latest to announce a new central Chicago headquarters.) Midway through his presentation, however, Friedman got to an important slide. At the top it said, "The Suburbs Are Hardly Dead!"

"The companies that need the young millennial labor force have moved some functions downtown," Friedman says. "But it's not like everything is lost in the suburbs."

Indeed, the flight from suburban office sites can be overstated. When companies move downtown, they get press. When they change locations within the suburbs, they don't draw the same attention. Right now in the Chicago area, about two-thirds of total regional employment is in the suburbs, where rent is about half of what it is in the city. Downtown vacancy rates are trending downward, but that's true in the suburbs as well. The rate of employment growth is expected to be faster in the city, but the total number of added jobs will be higher in the suburbs.

Still, suburban communities worried about long-term trends are looking for ways to adapt and become more competitive with urban downtowns. The optimal solution, according to Friedman and his colleague Ranadip Bose, is to "sub-urbanize" — to provide enough urban-style amenities to be able to compete for city-minded millennials.

One place attempting such a reinvention is Research Triangle Park (RTP) in the Raleigh-Durham area. The campus is half the size of Manhattan, and boasts several global science and tech companies, notably IBM and Cisco Systems, but it's also an artifact of 1950s community planning. The fact that tech companies like Red Hat are choosing downtown Raleigh over nearby research parks illustrates the problem RTP currently faces: It has no housing, no light rail, and no main street with cafes, restaurants and shops. The RTP's layout inhibits the kind of informal socialization and networking between tech workers that is increasingly common in urban innovation districts.

That will soon change. With $50 million in public and private investment, the Research Triangle Foundation has plans to redevelop a 50-acre site, adding apartment buildings, a central marketplace and public gathering spaces, including an amphitheater, dog park and sculpture garden. Like many downtowns, the redrawn Research Triangle Park will have a bike rental program and a circulator bus to get around campus. The foundation's CEO, Bob Geolas, is also hoping for a regional dedicated rail system, with the park as the central hub, so that RTP's 40,000 workers don't have to commute by car.

Geolas says that about eight years ago, the park's tenants started to express anxiety that the campus was a liability in recruiting talent. "The suburban park model really isolates and separates out what the companies are doing from the general public," Geolas says. "When you visit a traditional urban center, there's an energy there. Downtowns have a sort of personality that does not exist in a suburban research park like ours. A big part of what we're doing is building a personality that people can relate to and be inspired by."

The foundation calls the redevelopment a "park center," but it does envision many of the trappings of a traditional downtown: pedestrian walkways, transit, housing, coffee shops and lunch spots. The difference would be the natural ambience, with plots of grass and rows of trees woven throughout the campus. "What we really want," Geolas says, "is the most urban park experience that you can imagine."

Such an extensive overhaul might be out of reach for the typical suburban community, but villages outside Chicago are already contemplating small ways that they can become more urban. The village

of Schaumburg, which lost the Motorola Solutions headquarters last year, is looking to update that site by breaking up so-called “superblocks” into smaller 600-foot-long blocks with more foot paths. The village is getting its first new apartment complex in more than 15 years, a 180-unit building catering to young professionals working in town. And the village is adding bike trails that connect Schaumburg to a nearby community college and forest preserve.

Of course, some places don’t see a need to change, and won’t. Last year, when Kraft Heinz opened a new headquarters in Chicago, it closed its offices in the village of Northfield. “We were disappointed to see them leave. We weren’t worried economically,” says Stacy Sigman, the village manager. “We have a great campus. Immediately we were inundated with calls to take over the space.” Technically, the office Kraft left behind was vacant for 15 days, but a medical supplies company, Medline Industries, had already secured the lease, adding 1,800 jobs — more than the number that had left.

Northfield has an array of advantages. It’s an inner-ring suburb with about 6,000 residents, less than 30 minutes’ driving time from downtown Chicago on a light traffic day. It has some of the best public schools in Illinois. Sigman says Northfield doesn’t have plans to adopt urban-like features. “It’s contrary to who we are,” she says. “We like the small quaintness. I think that’s what makes us special.”

Some places don’t have a choice. They have to change. Geolas, the Research Triangle CEO, would like to see suburban research parks evolve into something more attractive to millennial workers, and he finds a source for optimism in the history of downtowns. “I’m old enough to remember when [magazines] ran stories about how downtowns were dead,” he says. Eventually developers and city planners found a formula to reinvigorate urban business districts with density and a diversity of uses. Now the same process needs to happen in the suburbs, he says. “We have to reimagine what those places can be.”

GOVERNING.COM

BY J.B. WOGAN | AUGUST 2016

Measuring Success in Pay for Success: Randomized Controlled Trials as the Starting Point.

Abstract

Evaluations are a key feature of pay for success (PFS) projects, and rigorous evaluation designs are important for building the evidence base of effective programs by determining whether a project’s outcomes can be attributed to the program. Randomized controlled trials (RCTs) are considered the most rigorous evaluation design and give us the best approximation for what would have happened without the program. However, PFS stakeholders often don’t know about RCTs or consider them too expensive, difficult, or controversial. This brief outlines RCTs, their advantages, and solutions to overcoming perceived and real challenges to their use in the context of PFS.

Download the full report.

The Urban Institute

by Justin Milner and Kelly Walsh

August 10, 2016

Managing Investors' Risk in Pay for Success Projects.

Abstract

Pay for success (PFS) projects offer governments opportunities to invest in outcomes and employ new capital to meet the needs of their communities. But PFS projects also carry risks. For investors, the risks relate to the project failing to meet its outcomes or the government reneging on its commitment to pay. Investors' perceptions of risk matter. Projects with high or unclear risk may discourage investors and prevent the project from launching. This brief helps project partners understand the risks investors perceive when entering PFS contracts and familiarize themselves with measures that have been used or proposed to manage this risk.

Download the full report.

The Urban Institute

by Rebecca TeKolste, Matthew Eldridge, and Rayanne Hawkins

August 18, 2016

Impact of Pay-to-Play Rules in the 2016 Election Cycle: K&L Gates

The federal Pay-to-Play Rules may impact campaign contributions in the 2016 election and, in particular, campaign contributions to a major party's presidential campaign. Financial institutions that do business with, or seek to do business with, state or local pension plans should be aware of the business consequences that a political contribution in the 2016 election cycle may trigger.

In particular, vice presidential candidate Mike Pence's authority over the Indiana Public Retirement System ("INPRS") and the Indiana Education Savings Authority ("IESA") as Governor of Indiana may limit political contributions from a wide spectrum of financial institutions and their associates to the Donald Trump presidential campaign. Investment advisers, brokers, dealers, municipal securities dealers, municipal advisors, swap dealers and security-based-swap ("SBS") dealers (collectively, the "Covered Institutions"), and their associates are all potentially impacted.

Governor Pence is an "official" of INPRS and IESA under the Pay-to-Play Rules because he appoints members of their boards of trustees. As a result, direct or indirect contributions to the Trump campaign could trigger a two-year "time-out" that would prevent Covered Institutions from collecting fees from, or engaging in certain activities with, INPRS and the Indiana CollegeChoice 529 Savings Plans or the Indiana CollegeChoice CD 529 Savings Plan, of which IESA serves as the governing board.

This article summarizes the four principal federal Pay-to-Play Rules currently in effect: Securities and Exchange Commission Rule 206(4)-5 (the "SEC Rule"); Municipal Securities Rule Making Board Rule G-37 (the "MSRB Rule"); Commodity Futures Trading Commission Regulation 23.451 (the "CFTC Rule"); and SEC Rule 15Fh-6 applicable to SBS dealers and major securities-based swap

participants.

In addition, the Pay-to-Play Rules broadly prohibit a person from doing indirectly what the person would have been prohibited from doing directly. Accordingly, a payment to a political action committee ("PAC") or political party that is soliciting funds for the purpose of supporting an official of an issuer could be treated as a contribution made directly to such official.

SEC Pay-to-Play Rule

The SEC Rule was adopted in 2010 and modeled on the MSRB Rule. [1] It prohibits "Covered Advisers" [2] from receiving compensation for providing advisory services to a government entity client (such as INPRS) for two years after the adviser or a Covered Associate (as defined below) has made a contribution to an "official" of the government entity, or has solicited from others or coordinated contributions to an "official" of the government entity. The SEC Rule defines "Covered Associate" as: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any PAC controlled by the investment adviser or by any person described in parts (i) or (ii).

In addition, a contribution to a political party, PAC, or other committee or organization may trigger the two-year "time-out" if the contribution is, for example, earmarked for or known to be provided for the benefit of a particular political "official." [3] An "official" means any individual (including any election committee of the individual) who was, at the time of a contribution, a candidate (whether or not successful) for elective office or holds the office of a government entity, if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

Accordingly, a candidate for federal office may be an "official" as a result of holding a state or local office. For example, the SEC Rule covers contributions to Trump's presidential campaign because his running mate, Governor Pence, is an "official" under the SEC Rule given his current office of Governor of Indiana.

Under the SEC Rule, Covered Associates (but not Covered Advisers) may make a contribution up to the de minimis amount per election without triggering the two-year "time-out" on advisory fees. This de minimis amount is $150 in an election where a Covered Associate may not vote for the candidate and $350 in an election where a Covered Associate may vote for the candidate.

MSRB Pay-to-Play Rule

The MSRB Rule prohibits brokers, dealers and municipal securities dealers (each, a "Covered Municipal Dealer") from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with municipal entities if certain political contributions have been made to officials of such municipal entities.

Under the MSRB Rule, a Covered Municipal Dealer is prohibited from engaging in municipal securities business with a municipal entity for two years after the Covered Municipal Dealer, a municipal finance professional of the Covered Municipal Dealer or any of their controlled PACs makes a contribution to any official of the municipal entity who can influence the selection of the Covered Municipal Dealer.

In addition, effective August 17, 2016, municipal advisors are prohibited from engaging in municipal advisory business with a municipal entity for two years after the municipal advisor, a professional of

the municipal advisor or any of their controlled PACs makes a contribution to an official of the municipal entity who can influence the selection of the municipal advisor.

The MSRB Rule also prohibits Covered Municipal Dealers and municipal advisors, and their professionals, from soliciting or coordinating contributions from any person (including an affiliated entity) or PAC to an official of a municipal entity with the ability to select a Covered Municipal Dealer or municipal advisor with whom the Covered Municipal Dealer or municipal advisor does or is seeking to do business.

The MSRB Rule permits a municipal finance professional or a municipal advisor professional (but not Covered Municipal Dealers or municipal advisors) to make a contribution up to $250 in an election where the individual may vote for the candidate without triggering the "time-out." There is no de minimis exception if the municipal finance professional or municipal advisor professional is not eligible to vote for the candidate.

Other Pay-to-Play Rules

The CFTC Rule restricts swap dealers from offering to enter into or from entering into a swap or a trading strategy involving a swap with a governmental special entity, if the swap dealer (or a covered associate of the swap dealer) made or solicited contributions to an official of that governmental special entity during the preceding two years, with limited exceptions. When proposing the rule, the Commodity Futures Trading Commission stated an objective of harmonizing the CFTC Rule with the MSRB Rule and the SEC Rule that already covered many swap dealers. Accordingly, the application and terms of the CFTC Rule to swap dealers are very similar to the MSRB Rule and the SEC Rule described above.

SEC Rule 15Fh-6 restricts SBS dealers from engaging in certain activities with a municipal entity, if the SBS dealer (or a covered associate of the SBS dealer) made or solicited contributions to an official of that municipal entity during the preceding two years, with limited exceptions. [4] The SEC stated that Rule 15Fh-6 was designed to subject the SBS dealers to the same types of restrictions as the CFTC Rule.

FINRA has proposed a similar rule that would apply to executives of broker-dealers.

In addition, many states and localities have also adopted pay-to-play rules that are applicable to persons who contract with their governmental agencies.

Contributions to the Trump/Pence Campaign

The Governor of Indiana appoints members of the boards of INPRS and IESA. This power to appoint board members, who make the decisions whether to hire or terminate service providers, makes Governor Pence an "official" of INPRS and IESA for purposes of the Pay-to-Play Rules.

Because the presidential and vice presidential candidates of a political party run on a single ticket, a contribution to the Trump presidential campaign would be subject to the Pay-to-Play Rules. In addition, contributions to the Republican Party or to a PAC supporting the Trump presidential campaign may trigger a "time-out" as well because the Pay-to-Play Rules apply to contributions that the donor knows will benefit a particular official.

Other Campaigns

In addition to the Trump/Pence campaign, Covered Institutions should be mindful of the ramifications of the Pay-to-Play Rules with respect to other donations this election cycle. As both Hillary Clinton and Tim Kaine are not "officials" for purposes of the Pay-to-Play Rules, a contribution to the Clinton/Kaine campaign would not be subject to the Pay-to-Play Rules. There are, however,

other candidates for whom a campaign contribution may trigger the Pay-to-Play Rules.

Financial institutions should assess whether the Pay-to-Play Rules present a business risk in the 2016 election campaign, not just with respect to firm contributions but also those of their associates and related PACs, given their current or potential investors or clients. If so, they should review their compliance policies and procedures accordingly.

Notes:
[1] "Political Contributions by Certain Investment Advisers," SEC Release No. IA-3043, www.sec.gov/rules/final/2010/ia-3043.pdf.

[2] The SEC Rule applies to investment advisers registered or required to be registered with the SEC, "foreign private advisers" not registered in reliance on Section 203(b)(3) of the Investment Advisers Act, and "exempt reporting advisers."

[3] "Staff Responses to Questions About the Pay to Play Rule," www.sec.gov/divisions/investment/pay-to-play-faq.htm.

[4] SEC Rule 15Fh-6 was adopted in April 2016 and became effective on July 12, 2016.

K&L Gates

by Clifford J. Alexander, Ruth E. Delaney, Sonia R. Gioseffi

18 August 2016

Why Pensions Beat Bonds in Bankruptcy Court.

Detroit left a bitter aftertaste for bondholders.

Under the city's plan to shed $7 billion in debt, Detroit reached settlements with its pensioners that left intact public safety monthly checks and cut 4.5% for general employees. Their cost-of-living increases were reduced or eliminated. They did see a big cut in the form of retiree health-care benefits, which were trimmed by nearly 90%, allowing the city to shed a $4 billion obligation.

Unlimited-tax general obligation bondholders, meanwhile, agreed to a 26% cut – with the money going to pensioners – and limited-tax GO holders took a 66% cut. Holders of $1.5 billion of certificates of participation saw a 14% cash recovery as well as a groundbreaking package of vacant land, asset leases, and development deals.

Former U.S. Bankruptcy Judge Steven Rhodes who oversaw Detroit's historic Chapter 9 called the city's plan of adjustment reasonable, fair and equitable, key benchmarks under federal bankruptcy law. The decision to treat its pensioners more favorably than other creditors was fair and justified in part because of state constitutional protections of the retirement obligation, Rhodes said.

The treatment Detroit's bondholders relative to pensioners was typical, as pension funds have flexed

political muscle in bankruptcy cases across the nation. As bankruptcy specialist David Dubrow of Arent Fox LLP put it in a published piece:

“While bondholders, pensioners and workers can all be impaired in a bankruptcy as a general matter, public policy and politics determine outcome more than any other factor given the limited legal precedents in Chapter 9.”

In California, the Vallejo, Stockton and San Bernardino bankruptcies all pitted the bond investors – whether they held pension bonds or other bonds – against the nation’s largest pension fund, the mammoth California Public Employees’ Retirement System.

While California’s pension funds received a 100% recovery in the trio of bankruptcies, bondholders did not fare as well. In California, bondholders received anywhere from a 40% to 60% recovery, though San Bernardino’s bankruptcy plan has yet to be approved.

In Detroit, the pension funds received an 82% recovery, according to a 2015 Moody’s Investors Service report, while bondholders received only 25% on a “weighted-average basis” that factored in the impact on LTGO, ULTGO, and COP holders.

Behind the protections built into Detroit’s exit plan for pensioners was the city’s so-called “grand bargain.” A philanthropic consortium collectively pledged $366 million to offset the city’s massive pension burden and avert any move to sell off the assets of the city-owned Detroit Art Institute museum.

The funds leveraged support from corporations and the state to bring the package to more than $800 million and in turn brought the city’s public unions to the table to agree to concessions. The funds are to be set aside over a 20-year period and handled by special entity that will direct them to pay benefits.

Under the plan, the state also agreed to provide $195 million to Detroit pensioners in exchange for pensioners dropping the right to sue the state to recover the unfunded pension debt that the city cannot pay. That debt could have been as high as $3 billion. The pension restructuring is central to the city’s recovery plan, as it was freed of the need to make pension payments for 10 years as well as the liability for other post-employment benefits, or OPEB.

“The most emphatic message of the Detroit and Stockton plans of adjustment is their intent to protect work force sustainability at the expense of bondholder repayment,” Fitch wrote in a special report on those bankruptcy outcomes.

“In each case, the bankruptcy judge agreed that this goal was more important than repaying investors. The issue then becomes one of public policy rather than legal constraint, and it appears likely that many governments would similarly favor retaining pensions over the good faith of bondholders.”

Detroit’s bankruptcy contributed to the burgeoning debate over the potential cracks in general obligation pledges and the use of statutory liens for GO bonds to strengthen bondholders’ positions in a municipal workout.

But the politics behind cutting a public employee’s benefits remain a strong deterrent for elected officials and courts. At the same time, there’s also been a growing discussion of the use of a bankruptcy threat to get labor unions to the table as a distressed municipality looks to cut.

“The standing of bondholders versus pensioners in a municipal bankruptcy can be ambiguous

because pensioners may have additional legal and political protections that are superior to bondholders. A municipal government wrestling with politically difficult pension funding or reform may therefore have an incentive to accelerate bankruptcy primarily to reduce its debt," Moody's Investors Service said in the municipal bankruptcy report last year.

Steps taken by California in the wake of its trio of Chapter 9 bankruptcies over the past several years have given bondholders some reassurance when it comes to general obligation bonds issued by cities, but left investors wary about pension obligation bonds.

Pension liabilities – and pension obligation bonds issued to deal with that liability — were issues in the trio of California bankruptcies and in Detroit as well.

In Stockton, Franklin Templeton continued to fight the city for a better recovery even after the bankruptcy judge approved the city's exit from bankruptcy. The company said in its court filings that the bankruptcy court that confirmed Stockton's plan erred in approving a plan that was "discriminatory and punitive" to Franklin, paying it roughly 1% on $35 million of bonds while leaving pensions untouched and paying other creditors who had settled with the city earlier between 52% and 100%.

Stockton's attorneys said in their own filing that Franklin's total recovery rate on secured and unsecured claims is roughly 17.5%. The city countered that any further relief awarded to Franklin would fall squarely on the city's residents in the form of "reduced services, infrastructure investment, and essential reserves."

Franklin finally announced in December 2015 that it would not pursue further appeals in Stockton's bankruptcy.

In San Bernardino, City Attorney Gary Saenz said in April of the agreement with pension obligation bondholders that the city was able to give the bondholders 40% of what is owed, rather than the more severe 1% originally proposed, because the agreement allowed them to stretch out payments 20 years.

The city has drafted a 20-year business plan that found it would be able to feasibly make those payments without the city ending up in bankruptcy again down the road, he said.

"One thing Judge Meredith Jury will look at is the feasibility of the confirmation plan," he said. "We believe we found a model that is dependable."

The pension obligation bond agreement continues a trend of bonds faring worse than pensions in Chapter 9 cases.

Under the settlement, COMMERZBANK Finance & Covered Bond S.A., formerly Erste Europäische Pfandbrief-Und Kommunalkreditbank AG, and municipal bond insurer Ambac Assurance Corporation, agreed to drop their opposition to the city's bankruptcy plan.

The holders of $50 million in pension obligation bonds will receive payments equal to 40% of their debt on a present value basis, discounted using the existing coupon rate, according to city officials.

Though San Bernardino reached an agreement with bondholders earlier this year in its bankruptcy, its bankruptcy exit plan is slated to be voted on in September by creditors. The current hope is that the city could exit bankruptcy by October – if creditors approve the plan and the bankruptcy judge deems the plan good enough to prevent the city from returning to bankruptcy court down the road.

The Bond Buyer

By Yvette Shields and Keeley Webster

August 17, 2016

U.S. Municipal Bond Issuances Drop by 30% in July.

CUSIP Global Services reported that the 30% drop in July marks the end of five consecutive months of growth. The number of municipal bond CUSIP orders that were handled was 1,218. This was the second-lowest order count of the year.

According to CUSIP Global Services, this was likely due to states beginning a new fiscal year last month, rather than a softening in demand.

However, thanks to strong activity in the bond market in the first half of the year, overall municipal bond CUSIP requests are still up 1% on a year-by-year basis.

Most municipal requests were reported in Texas with 1,211 so far in 2016, followed by New York with 960, and California with 734.

Gerard Faulkner, director of operations for CUSIP Global Services said that recent issuance data suggested that capital markets activity was still solid, “despite a lot of uncertainty”.

“Based on July’s data, the second half of the year is off to a good start,” he said.

Also, the report showed that requests for international debt and equity dipped in July. Requests for international equity fell from 188 in June to 168 in July. Meanwhile, international debt requests dropped from 241 to 213. Year-on-year, equity requests were down 60% and debt requests were down 27%.

Richard Peterson, senior director, S&P Global Market Intelligence, said: “With ongoing economic and political instability, particularly in Europe, it makes sense this pre-capital markets activity would continue to show softness, in comparison to the US.”

“Given that governments have a ways to go before settling on solutions, we expect issuance to remain weak for the foreseeable future,” he added.

Public Finance International

By: James Richards

17 Aug 16

Coming Soon: New MSRB Continuing Education Courses.

Later this month, the MSRB will launch MuniEdPro, a suite of high-quality e-learning courses designed specifically for municipal finance professionals. The courses provide relevant and up-t-

-date educational content for professionals actively engaged in municipal market activities. Each MuniEdPro course allows the learner to apply MSRB rules to real-world scenarios. The interactive courses help municipal finance professionals reinforce their understanding of municipal market activities and the associated regulations.

Read more about MuniEdPro.

See the course catalogue.

SIFMA Municipal Bank Loans and Direct Placements Seminar.

October 25, 2016 | 12:30 PM – 6:00 PM
SIFMA Conference Center, NYC

Recently, there has been an increase in state and local governments turning to banks as a source of debt finance – instead of using a traditional public markets debt offering. However, with limited legal and regulatory guidance, this trend has raised important questions about transparency, regulation and whether bond investors have access to all the information they need to assess risks.

The lack of guidance compels each financial firm to establish its own standards for legal and accounting purposes. Regulators have begun to focus on the issue of municipal bank loans, but key questions remain unanswered. The scarcity of legal and regulatory guidance on this topic has led to fundamental changes in our industry.

During this event, our speakers will discuss the legal, regulatory, accounting and compliance questions that have arisen from this uncertainty including:

- What is the effect of the convergence on the public and private debt markets?
- Should accounting treatment of a debt instrument determine how it is treated for regulatory purposes?
- What are the regulatory implications of treating a debt instrument as a loan or security?
- What can we expect from regulators on these questions in the future?

Click here to register.

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC's approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer's discretion. Read details of the rule change in the regulatory notice.

"Market support for this rule change reflects the extent to which dealers are committed to

improving efficiencies in the municipal market," said MSRB Executive Director Lynnette Kelly. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

Acceleration of the MSRB's close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Kansas Board of Regents May Increase Oversight of University P3s.

The Kansas Board of Regents may expand its oversight and control over building projects state universities pursue through P3s in response to legislators' objections to the University of Kansas's unorthodox way of obtaining financing for a mixed-use project.

The project in question is the Central District development — consisting of a science building, student housing, a student union, a dining hall, a utility plant and parking — which will be built on its sprawling main campus in Lawrence. A team headed by Edgemoor Infrastructure & Real Estate reached an agreement with the university to develop, finance, build, operate and maintain the project, which is scheduled for completion by summer 2018.

The university agreed to lease the property to the corporation for up to 40 years. Once construction is complete, the corporation will sublease the facilities back to the university, which will make an annual sublease payment of about $21.5 million plus operating costs, reported the Lawrence Journal-World last year.

However, the university decided not to go through the state's bonding agency to obtain its portion of the financing, which would have required legislative approval. Instead, the school formed a private, nonprofit corporation, which issued $320 million in bonds through a Wisconsin public financing agency, the Journal-World reported Aug. 14.

Legislators criticized this move, expressing concern over the lack of legislative oversight and arguing that, because the project is being built on state property, taxpayers would be on the hook if it fails financially. Some lawmakers also expressed concern that the university might raise student tuition fees to pay for the debt the university has incurred, reported The Wichita Eagle.

These concerns led Rep. Mark Hutton to introduce a bill (HB 2703) that would have prohibited state universities and agencies from borrowing or entering into a range of agreements without legislative approval or a hearing. Although the bill died in committee, the legislature attached a proviso to the university's 2016 budget limiting the amount it can spend from previously unrestricted fee funds.

The university dismissed the legislators' concerns, pointing out that the corporation had assumed responsibility for paying the bond debt over a 30-year period using lease payments it will receive from the university. The school also noted that it has been told by the governor and other policymakers over the past few years to act more like a business than it has in the past, in view of the tight budgets the state is confronting.

"We were creative. We operated like a business and we did what institutions across the nation have done: partnered with a private entity and bundled projects together to get a great deal for the families and students of the University of Kansas and for the state of Kansas," said Tim Caboni, the university's vice chancellor for public affairs.

The Board of Regents responded to the controversy by stating it would consider classifying P3 projects as capital improvement projects and as part of each institution's capital projects plan, both of which require board approval, and by requiring universities to obtain board approval when they lease property from an outside entity.

NCPPP

August 19, 2016

Nuveen, OppenheimerFunds Lose Gamble on Sonoma County Casino.

Nuveen Asset Management and OppenheimerFunds Inc., among the municipal-bond market's biggest high-yield fund managers, gambled on a casino 80 miles from San Francisco, and lost.

In 2013, two years after the money managers acquired more than $50 million in bonds following a debt restructuring by the River Rock Casino's owners, the Dry Creek Rancheria Band of Pomo Indians, another tribe opened a gambling resort 30 miles (48 kilometers) closer to the city. River Rock suffered a 50 percent decline in revenue and defaulted in 2014.

Native American tribes, sovereign nations under federal law, have issued about $4.5 billion of municipal bonds, more than half of it in the 2000s, according to data compiled by Bloomberg. About $1.5 billion defaulted, including more than $1 billion issued by the Mashantucket Western Pequot Tribe in Connecticut to finance the construction of the Foxwoods Casino.

Earlier this month, the tribe offered the firms 30 cents on the dollar for their debt plus an unspecified amount of cash. If bondholders agree to the terms, River Rock plans to borrow $50 million from Benefit Street Partners, the credit arm of Providence Equity Partners, to pay off bondholders.

"If you rely on San Francisco traffic to feed your business and you have a bigger, newer casino that opens up halfway between you and where the population is, that will certainly hurt you," said Alex Bumazhny, a Fitch Ratings analyst.

As a sovereign, Native American governments can't file for bankruptcy. Chapter 9 of the U.S. Bankruptcy code is reserved for municipalities.

With bankruptcy unavailable, tribes typically restructure their obligations by issuing new debt to existing creditors in a debt exchange. In this case, River Rock found a new creditor, Benefit Street, and the tribe will use loans proceeds to pay off existing creditors, which isn't typical, said

Bumazhny.

“It’s unique to see a cash payment,” said Bumazhny. “In these situations where there’s stress, it’s typically difficult to find a lender to lend quite a bit of money in a distressed situation.”

Recovery Rates

A 2015 Fitch analysis of defaults by seven tribes involving corporate and municipal bonds found a par weighted recovery rate of 54 percent. Given the small sample size, the variance in recoveries is high.
John Miller, co-head of fixed income for Nuveen in Chicago, declined to comment. Meredith Richard, a spokeswoman for OppenheimerFunds, declined to comment.

OppenheimerFunds’s $5.6 billion Rochester High Yield Municipal Fund is the best-performing high-yield open-end municipal fund this year, returning 9.35 percent, according to data compiled by Bloomberg. Nuveen’s $14.6 billion high-yield municipal bond fund is third-best, returning 8.2 percent.

David Fendrick, chief executive officer of the Geyserville, California-based River Rock Entertainment Authority, which issued the bonds, didn’t respond to a request for comment. Chris Wright, chairman of the board of the Dry Creek Rancheria Band of Pomo Indians, didn’t respond to a request for comment.

Terms of New York-based Benefit Street’s loan to the tribe couldn’t be determined. Benefit Street declined to comment, according to Kelsey Markovich, an outside spokeswoman.

Prior Exchange

The Dry Creek Rancheria Band of Pomo Indians, federally recognized in 1915, live on a 75-acre reservation in Sonoma County, California. The casino, which opened in 2002 and is located in the Alexander Valley, has 1,100 slot machines and 114 tables, according to its website.

In 2003, the River Rock Entertainment Authority issued $200 million of 9.75 percent corporate notes maturing in 2011 to fund the construction of three parking garages, reservation and casino infrastructure improvements and to fund a settlement with a former developer.

The tribe was unable to refinance the notes before they matured and restructured them in a debt exchange.
In November 2011, River Rock offered existing noteholders the option to exchange old notes for either new 9 percent corporate notes due 2018, new 8 percent tax-exempt bonds due 2018 or a combination, according to Fitch.

Bondholders holding $196.4 million tendered their securities and received $190 million in new notes — $97 million in 9 percent senior notes, $93 million of 8 percent tax-exempt bonds and $18.6 million in cash, according to Fitch.

The tribe filed a notice Aug. 12 saying that they plan on making a $479,000 distribution to bondholders on Aug. 26. Since defaulting May 2014, bondholders have received $17.3 million in distributions, according to the notice.

Listed Holdings

Nuveen reported holding $41.5 million of the tax-exempt bonds in the first quarter of 2012,

according to data compiled by Bloomberg. OppenheimerFunds reported holding $29.6 million.

At the end the second quarter 2016, Nuveen reported holding $32 million and OppenheimerFunds $21.7 million.
While a 30 percent recovery rate is on the “low end,” it seems reasonable given River Rock’s new competition, Bumazhny said.

“It’s not a bad thing for existing creditors, because obviously cash is a lot safer than new securities,” he said.

Bloomberg Business

by Martin Z Braun

August 16, 2016 — 2:00 AM PDT Updated on August 16, 2016 — 5:35 AM PDT

Anthony Bourdain Culinary Alma Mater Serves Up Municipal Bonds.

The Culinary Institute of America is betting that the country’s food obsession is here to stay, and that investors want seats at the table.

The school that trained famed chefs such as Anthony Bourdain and Cat Cora is selling $15 million of tax-exempt municipal bonds Tuesday to raise cash for renovations at its California facilities, one of which it bought late last year. In September, the non-profit educator will sell $42 million for improvements to its Hyde Park, New York, headquarters and, in a bit of fiscal housecleaning, retire more expensive debt and finance payments to end derivative contracts.

As more traditional universities struggle to attract students amid rising costs, the Culinary Institute, which calls itself the “world’s premier culinary college,” has seen steady enrollment. The school says it wants to expand its programs to all facets of the food business as its almost 50,000 alumni have helped create a landscape where even chain restaurants cite the provenance of their ingredients.

“The CIA’s reputation and market-driven program offerings will continue to support stable enrollment,” Moody’s Investors Service analysts Susan Shaffer and Dennis Gephardt wrote in a report. Still, it is in a niche market and is highly reliant on student charges’ for revenue, said the credit arbiter, which ranks the bonds Baa2, two steps above speculative grade.

The institute’s sale through the California Statewide Communities Development Authority will finance construction at a downtown Napa center that will open next month. The school is also expanding its St. Helena, California, campus called Greystone.

“We’re looking to provide more than just great chefs,” said Maria Krupin, the college’s vice president for finance. “We’re looking to encompass and advance the industry in health and wellness, sustainability, food ethics and food policy– this is all coming to the forefront now. ”

Next month’s sale through New York’s Dutchess County Local Development Corporation will fund renovations in Hyde Park, where the college moved in 1972 after it outgrew the Connecticut site that in 1946 was the first institute of its kind. School officials will also refund existing bonds and terminate one of four swap agreements at a cost of around $4 million. That helps reduce the risks to the non-profit, which is on the losing end of the transactions and has to post collateral to the banks

as a result.

Budding chefs this year pay $40,690 a year in tuition and housing fees. During the previous academic year, 2,940 students enrolled compared with 2,785 five years ago, when fees totaled $35,965, documents circulated among investors show. The institute also has campuses in Texas and Singapore.

The school's reputation and programs help it compete among both traditional four-year universities and hospitality centers, Moody's said in the report.

Krupin said the school is selective with applicants to maintain its prestige and doesn't try to boost admissions for revenue. "We're growing at a pace in which we can maintain quality education that we're known for," she said.

Bloomberg Business

by Romy Varghese

August 15, 2016 — 2:00 AM PDT

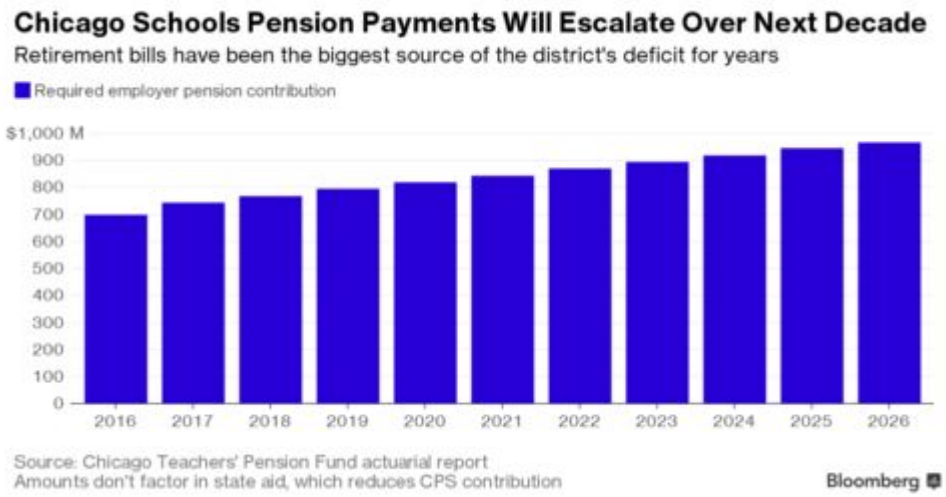
Chicago Schools Step Back From Brink Ahead of Bond-Market Return.

A year after being cut to junk by all three major bond-rating companies, Chicago's school system has won an influx of state aid, secured extra tax money for its pensions and quieted speculation that the crisis is so severe that bankruptcy is inevitable. Its bonds have rallied.

But as the Chicago Board of Education seeks permission to borrow as much $945 million, the nation's third-largest district is far from in the clear. This year's budget will only balance if teachers agree to pay more into their retirement plan and the gridlocked Illinois legislature passes an overhaul of the state pension system. School officials are still trying to secure needed credit lines to help pay bills and borrowing costs have ballooned after repeated downgrades, adding to the financial squeeze.

"They've put together a credible budget, although there's some significant risk factors," said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including some Chicago Board of Education securities. "They enter fiscal year 2017 with few, if any, reserves. They don't have a line of credit in place, and they have uncertain market access."

The system with almost 400,000 students is struggling to address one of the biggest crises in the $3.7 trillion municipal market, one that's been decades in the making. For years, officials borrowed to pay bills, skipped pension payments and drew down savings, leaving the schools with nearly $10 billion of unfunded retirement liabilities and $7.6 billion of debt. The interest and principal alone will consume more than 10 percent of the budget.



“The financial position of the district is precarious,” said Mark Lazarus, who follows the Chicago schools for Moody’s Investors Service, which rates the board B2, five steps below investment grade. “There are a lot of uncertainties that are built into the budget that we’re going to be watching to see how they play out.”

The proposed spending plan counts on savings from phasing out the district’s practice of paying the bulk of the annual retirement-fund contributions that teachers are supposed to make. That cost $130 million last year, but the union has called rolling it back a pay cut and threatened to strike to stop that from happening.

Moody’s has a negative outlook on the board, signaling more downgrades are possible. That could raise interest costs in the future.

On Aug. 16, the board posted a notice for a public hearing to discuss the sale of as much as $945 million of general-obligation bonds for school-improvement projects. The board plans to vote on the budget and bond authorization at its Aug. 24 meeting.

“CPS is making great strides in improving the district’s financial stability, and we have a path forward to fiscal soundness in the years to come,” Emily Bittner, a district spokeswoman, said in an e-mailed statement.

That school district may benefit from rising demand for high-yield municipal bonds, which has buoyed the returns on debt issued by financially struggling governments including Puerto Rico.

When the Chicago school district last publicly sold bonds in February, it paid yields of as much a 8.5 percent, or three times the rate of a top-rated issuer, after Governor Bruce Rauner repeatedly called for allowing it to file for bankruptcy, which currently isn’t permitted under state law.

The bonds have since rallied. A portion of the federally tax-exempt bonds maturing in 2044 traded at an average of 106 cents on Aug. 17 to yield 6.1 percent, according to data compiled by Bloomberg. That’s up from 84 cents in February.

While the proposed budget doesn’t completely solve the district’s structural budget gap, it’s a “big step forward,” said Molly Shellhorn, vice president and senior research analyst at Nuveen Asset Management, which owns about $410 million of the bonds issued in February. The firm will look at future offerings, said John Miller, Nuveen’s co-head of fixed-income.

“It’s an essential service,” Miller said. “It has to stay open. The security, the essential service, and the credit spread within the context of a — we think — improving single B credit does make us feel fairly optimistic.”

As part of a six-month, stopgap budget reached in June, Rauner and lawmakers authorized a $250 million property-tax levy for the Chicago teachers’ pension and provided $131 million of additional state aid. The district gets another $215 million if Illinois passes a pension fix. That may prod both sides to work toward an agreement, said Eric Friedland, director of municipal research in Jersey City, New Jersey, for Lord Abbett & Co.

“Where in the past, there’s been a deadlock, now at least we’re reaching sort of a breaking point,” said Friedland whose firm holds $20 billion of municipal debt, including some of the board of education’s. “That’s certainly a better spot to be in than last year, when there was no momentum at all.”

Bloomberg Business

by Elizabeth Campbell

August 19, 2016 — 2:00 AM PDT Updated on August 19, 2016 — 6:52 AM PDT

Bloomberg Brief Weekly Video - 08/18

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

Watch the video.

Bloomberg Business

August 18, 2016

Fitch Updates Rating Criteria for Solid Waste Revenue Bonds.

Fitch Ratings-New York-12 August 2016: Fitch Ratings has updated its rating criteria for solid waste revenue bonds. The updated report replaces the existing criteria published on Aug. 4, 2015.

No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

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Additional information is available at ‘www.fitchratings.com’.

BDA Submits Comment Letter to the SEC on FINRA’s U.S. Treasury Transaction Reporting Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA’s proposed rule to require reporting of U.S. Treasury security transactions to TRACE.

BDA’s comment letter expresses general support for the proposal. However, BDA urges regulators to not implement fees or pursue public dissemination of Treasury transaction information in the future. In addition, BDA urges FINRA and federal banking regulators to work to adopt a rule that would require non-FINRA member financial institutions to also report Treasury transactions to a central repository.

Proposal Summary:

FINRA has filed proposed rule with the SEC to require the reporting of certain transactions in U.S. Treasury securities to TRACE. The proposal has been published in the Federal Register and it has a 21-day comment period. Comment letters are due by Monday, August

Scope of Transactions to be Reported: Bills, Notes, Bonds, STRIPS

Timing of Reporting: FINRA has proposed end-of-day reporting within current TRACE hours.

Modifiers: FINRA has proposed two different modifiers for reporting purposes.

> **Modifier S:** FINRA has proposed a modifier for reporting spread trades between on-the-run and off-the-run Treasuries where transaction prices entered into the reporting fields for the

spread trade could be different from the current market price for the given Treasury.

Modifier B: FINRA has proposed a second modifier for a Treasury trade executed in connection with a Treasury futures contract.

Fees: FINRA does not propose charging trade-reporting fees for Treasury trades to FINRA members.

Timing of the Rule's Effective Date: Once the rule is approved by the Commission, FINRA will issue an effective date notice within 90 days. The rule will go into effect no later than 365 days from Commission approval.

08-15-16

An Under-the-Radar Tax Benefit in Muni-Bond Funds.

Funds treated differently from individual munis, allowing investors to claim a tax loss

It's common knowledge among many investors that interest from municipal-bond funds are generally free of income taxes. What is not such common knowledge is that, if used right, muni-bond funds may have a negative tax rate.

That is to say, in addition to tax-free income, investors may be able to take a tax loss without actually incurring an economic loss. Because muni investors are typically in a high tax bracket, this strategy may have broad appeal.

The idea revolves around the fact that interest rates have declined and muni-bond coupon payments are higher than the so-called SEC yield. The SEC yield, created by the Securities and Exchange Commission to help comparisons among bond funds, represents the fund's true income and carves out any return of capital that is included in the distribution yield. This creates a potential opportunity, according to Joel Dickson, global head of investment research and development at Vanguard Group.

How the Strategy Works

Muni bonds are typically issued at a premium in excess of the face amount of the bond. Because rates have declined, the premiums are now even greater. For example, if you bought a muni bond (not a fund) at $110 that would mature at $100 in five years, roughly $2 a year is just return of your own principal, though the regulator, the Municipal Securities Rulemaking Board, allows it to be called income. After a year, your $110 cost basis would be adjusted to about $108, and you would see that adjusted cost basis on your brokerage statement. Because the cost basis is adjusted down—something known as amortization of premium—you can't sell it a year later at a loss because you were paid back that principal and have no economic loss.

Bond funds, however, are treated differently than owning the bond directly. The amortization of premium doesn't impact the cost basis and thus losses can be claimed even though none were incurred.

Here's how it can work for you or your client, using the example of a muni fund from Mr. Dickson's firm:

Say the Vanguard Intermediate-Term Tax-Exempt Admiral fund has an SEC yield of 1.35%. Though this is the true income, the total distribution yield is 2.79%, meaning 1.44 percentage points is return of principal from an economic perspective. If this continued for a year, an estimated loss of the net asset value of 1.44 percentage points could occur.

The Tax Benefits

For a $100,000 investment over a year under this scenario, the investor would have been paid $2,790 in cash, with $1,350 of that in income and $1,440 in return of principal. You could then sell the fund to recognize the $1,440 tax loss and buy a different low-cost muni-bond fund. This capital loss can be used up to the Internal Revenue Service limit of $3,000 a year or an unlimited amount to the extent you have capital gains this loss could offset.

If you have short-term capital gains , you save at an ordinary income-tax rate. Yet even if a long-term capital gain, you may save 25% or more after taking into account the alternative minimum tax and the Medicare tax that affect so many of the higher-taxed investors who typically own munis.

So the tax loss of 1.44 percentage points on a $100,000 investment at a 25% marginal tax rate translates to a 0.36% tax benefit, or a $360 savings. This may not seem like much, but frame the extra 0.36% with the 1.35% SEC yield to give you a 1.71% tax-free benefit.

Pitfalls to Ponder

Tax laws are complex and Mike Piper, author of “Taxes Made Simple,” points out that the fund must be held for six months or the losses could be disallowed according to IRS rules. 852(b)(4)(B).

Also, the actual loss is going to vary based on other factors, such as the direction of interest rates, what investor perceptions are of muni-bond risks, and the muni-bond fund used to execute the strategy.

While these factors will result in the loss being either more or less than estimated, the same factors are also likely to be present if an investor owned the muni bonds directly rather than through a fund. And, of course, muni bonds also have risks of real losses whether owned directly or through a fund. But if you decide munis are right for part of a portfolio, the low-cost muni-bond fund can be superior to bonds from a tax perspective.

And beyond a tax perspective, there are 5 other reasons bond funds are superior to owning the bonds directly. When it comes to muni bonds, there are now 6 reasons funds are superior.

THE WALL STREET JOURNAL

By ALLAN S. ROTH

Aug. 19, 2016 10:54 a.m. ET

—Allan S. Roth is the founder of Wealth Logic, an hourly-based financial-planning firm in Colorado Springs, Colo. His contributions aren’t meant to convey specific investment advice.

S&P Releases MCDC Settlement Commentary.

On August 15, 2016, S&P released commentary discussing the potential affects a continuing-disclosure settlement would have on muni credit from. The commentary explains that the credit rating agency does “not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices.” The second-round issuer settlements will be focused on management practices and the capabilities of the management team, as opposed to the underwriter settlements issued in the first round which required external oversight and civil penalties. As management practices are a part of the broader rating criteria, S&P acknowledged that the issuer settlement will be taken as a part of the credit analysis and thus do not expect significant volatility if there are disclosure deficiencies identified. See the commentary below.

Download:

MCDC Settlement Commentary

Wednesday, August 17, 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC’s approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer’s discretion. Read details of the rule change in the regulatory notice.

“Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market,” said MSRB Executive Director Lynnette Kelly. “Dealers share the MSRB’s desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers.”

Acceleration of the MSRB’s close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- BDA and Others Submit Comments to the SEC on CDAs.
- Why Market Groups Want SEC Disclosure Guidance.
- MSRB Provides Guidance on Trade Reporting Rule.
- NFMA Issues Comment Letter on Primary and Secondary Market Disclosure in the Municipal Market.
- Issuers: Watch a Step-By-Step Video on Customizing EMMA Issuer Homepages.
- Taming Premium Bonds.
- SIFMA Issues U.S. Municipal Credit Report, Second Quarter 2016
- Ignore the Rules (If They Don't Apply): Squire Patton Boggs
- CDFA Intro Energy & Water Finance Course.
- GFOA 21st Annual Governmental GAAP Update.
- *Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority* – Court of Appeals holds that hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation, as revenue bond validation proceedings had conclusively established that the retirement facility furthered a legitimate function of the hospital authority.
- And finally, this week's BCB Travel Alert (aka Tiptoeing Through the Minefield) is brought to you by *Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, in which the Court of Appeals upheld the constitutionality of a Sandy Springs municipal ordinance prohibiting the sale, rental, or lease of obscene material, including "any device designed or marketed as useful primarily for the stimulation of human genital organs." (I think we can all agree on the prohibition of rentals and leases.) The court held that consenting adults had no fundamental right to engage in private sexual intimacy. Never mind the *right*, certain of us would settle for the fundamental *opportunity*. We must leave you now before we say something that results in the cancellation of our sole remaining subscription.

IMMUNITY - CALIFORNIA

Findleton v. Coyote Valley Band of Pomo Indians

Court of Appeal, First District, Division 2, California - July 29, 2016 - Cal.Rptr.3d - 2016 WL 4120780 - 16 Cal. Daily Op. Serv. 8123

Contractor filed petition to compel mediation and arbitration against Indian tribe, seeking to enforce the mediation and arbitration clauses in agreements pertaining to project to construct new gaming facility on tribe's reservation, stemming from tribe's failure to pay contractor for work completed on project.

The Superior Court granted tribe's motion to quash service of summons and to dismiss for lack of subject matter jurisdiction on grounds that tribe had not waived its sovereign immunity. Contractor appealed.

The Court of Appeal held that:

- Evidence was sufficient to establish that general council resolution delegating authority to waive sovereign immunity to tribal council was authentic and adopted;
- Tribe's constitution allowed general council to delegate authority to tribal council to waive immunity by adopting resolution; and
- Tribal council waived tribe's sovereign immunity by enacting resolution that included limited

waiver of immunity.

WATER LAW - CALIFORNIA

Santa Clarita Organization for Planning and the Environment v. Castaic Lake Water Agency

Court of Appeal, Second District, Division 2, California - July 28, 2016 - Cal.Rptr.3d - 2016 WL 4045243 - 16 Cal. Daily Op. Serv. 8150

Objector brought action against water agency, water purveyor, their boards of directors, the company that sold the purveyor to the water agency, and an affiliate of that company for inverse validation, writ of mandate, violations of the California Environmental Quality Act (CEQA), illegal expenditure of taxpayer funds, and conflict of interest.

The Superior Court sustained demurrer with leave to amend on objector's CEQA claim, denied objector's claims for invalidation and for a writ of mandate, and rejected objector's claim based on the improper use of taxpayer funds. Objector appealed.

The Court of Appeal held that:

- Objector's pleading of validation statutes did not judicially estop objector from arguing that the validation statutes' shorter deadline to file a notice of appeal did not apply;
- Purveyor did not become agency's alter ego such that the agency was improperly engaged in the retail sale of water; and
- Agency's acquisition of purveyor's stock did not violate the constitutional provision limiting agency ownership of company stock.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the uncodified provision of the water agency's enabling act authorizing validation proceedings for "any bonds, warrants, promissory notes, contracts, or other evidences of indebtedness" of the kinds authorized by provisions dealing with issuing bonds and borrowing money.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the uncodified provision of the water agency's enabling act providing that retail sale of water within an area that had been serviced by another water district until the agency absorbed that district was governed by the Water Code provision making validation proceedings applicable "to determine the validity of an assessment, or of warrants, contracts, obligations, or evidence of indebtedness," since the purveyor operated outside the boundaries of the district that had been absorbed.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the statute making validation proceedings available to determine the validity of a local agency's "bonds, warrants, contracts, obligations or evidences of indebtedness," where the agency purchased purveyor's stock using cash on hand, and the agency's settlement contract to acquire purveyor's stock did not deal with bonds, warrants, or other evidence of indebtedness, and was not inextricably bound up with other contracts that did.

Objector's invocation of the validation statutes by pleading them in its inverse validation complaint

challenging water agency's acquisition of water purveyor, seeking the trial court's permission to publish the requisite constructive notice required by the validation statutes, and by informing the court that it gave that notice, did not judicially estop objector from arguing on appeal that the validation statutes' shorter deadline to file a notice of appeal did not apply, since objector's contest to the applicability of the validation statutes amounted to a dispute over the court's subject matter jurisdiction.

Trial court's finding that water agency's acquisition of retail water purveyor did not cause the purveyor to become agency's alter ego, in concluding that the purveyor's retail sales of water did not violate a provision of the water agency's enabling act requiring it to sell water at wholesale only, was supported by substantial evidence, including evidence that only three of the purveyor's five directors were agency employees, and that the acquisition agreement addressed a merger between the agency and the purveyor as at most a possible contingency.

Water agency's acquisition of all of retail water purveyor's stock did not violate the constitutional provision limiting agency ownership of company stock, where the purveyor was a corporation, and the water agency held purveyor's stock for the purpose of furnishing a supply of water for public purposes.

IMMUNITY - FLORIDA

Bair v. City of Clearwater

District Court of Appeal of Florida, Second District - August 5, 2016 - So.3d - 2016 WL 4150220

Homeowners brought action against city asserting claims of equitable estoppel and relief pursuant to the Bert Harris Act after city issued stop-work order relating to work being done on their home.

The Circuit Court dismissed estoppel claim and granted summary judgment for city on Bert Harris Act claim, and homeowners appealed.

The District Court of Appeal held that:

- Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order;
- Bert Harris Act's waiver of sovereign immunity did not apply to city's reliance on Federal Emergency Management Agency (FEMA) guidelines;
- Even if city had applied regulations from FEMA, homeowners had no cause of action under Bert Harris act;
- Homeowners did not have a cause of action under Bert Harris Act based on city's reliance on flood insurance maps and studies;
- Legislature intended Bert Harris Act to bar claims based on the application of grandfathered legislation; and
- Homeowners' equitable estoppel claim was waived on appeal.

Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order against homeowner's demolition and reconstruction of home, where city did not apply a law, rule, regulation, or ordinance, but merely requested additional information regarding the project, and requested revisions to plans.

Bert Harris Act's waiver of sovereign immunity did not apply to city's alleged reliance on Federal Emergency Management Agency (FEMA) guidelines in issuing stop-work order for work being done

on homeowners' property, where city never argued it had the authority to administer or apply FEMA regulations.

Even if city had been delegated authority by Federal Emergency Management Agency (FEMA) to administer and apply FEMA regulations when it issued stop-work order against homeowners, such application did not give rise to cause of action under Bert Harris Act. Actions that inordinately burden real property under the Act did not include a municipality that independently exercised governmental authority when exercising the powers of the United States or any of its agencies.

Homeowners did not have a cause of action under Bert Harris Act based on city's use of flood insurance maps and studies from after Act's enactment in determining that homeowner's property was in a flood zone, and requiring improvements to meet city's flood resistance standards; any reliance on post-enactment portions of the flood standards did not inordinately burden homeowners' property.

Bert Harris Act was not only intended to bar claims of application of an ordinance that occurred prior to Act's enactment date, but was intended to bar claims based on the application of grandfathered legislation after its effective date, and to only allow claims based on newly imposed requirements that were the result of an amendment after Act's enactment date and that inordinately burdened real property.

Whether homeowners were bound by their stipulation that they were asserting a stand-alone equitable estoppel claim against city was waived on appeal, where homeowners failed to argue at trial or in a motion for rehearing that the trial court was precluded from considering stipulation and brought the issue up for the first time on appeal.

MUNICIPAL ORDINANCE - GEORGIA

Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia

United States Court of Appeals, Eleventh Circuit - August 2, 2016 - F.3d - 2016 WL 4088731

Adult bookstore brought action against city, asserting Fourteenth Amendment Due Process Clause challenge to city's municipal ordinance that prohibited the sale, rental, or lease of obscene material, including "[a]ny device designed or marketed as useful primarily for the stimulation of human genital organs."

Individuals who sought to purchase sexual devices for their private sexual activity and for use in artwork intervened.

The United States District Court granted city's motion for judgment on pleadings. Plaintiffs appealed.

The Court of Appeals held that consenting adults had no fundamental right to engage in private sexual intimacy, including by the use of sexual devices in the privacy of the home.

Consenting adults had no fundamental right to engage in private sexual intimacy, such as the use of sexual devices in the privacy of the home, and thus a city municipal ordinance did not violate the Due Process clause by prohibiting the sale, rental, or lease of obscene material, including "[a]ny device designed or marketed as useful primarily for the stimulation of human genital organs."

EMINENT DOMAIN - ILLINOIS

Illinois State Toll Highway Authority v. South Barrington Office Center

Appellate Court of Illinois, First District, Sixth Division - June 30, 2016 - N.E.3d - 2016 IL App (1st) 150960 - 2016 WL 3569556

State Toll Highway Authority brought condemnation action against property owner and other entities with interests in the property.

The Circuit Court, entered order finding that Authority was authorized to condemn owner's property and awarding preliminary compensation. Owner filed interlocutory appeal.

The Appellate Court held that resolution authorizing condemnation contained sufficiently reasonable description of property to permit Authority to proceed with condemnation.

Resolution authorizing State Toll Highway Authority to condemn property in connection with highway construction project contained reasonable description of parcels, as required for Authority to proceed with condemnation of the property. Resolution specifically identified property index numbers (PIN) in which parcels were contained, specifically provided for acquisition of the types of property interests sought by Authority, including fee title, permanent easement, and access control, and specifically authorized condemnation proceeding when no agreement could be made with respect to all or part of each parcel identified.

SPECIAL ASSESSMENTS - MINNESOTA

McCullough and Sons, Inc. v. City of Vadnais Heights

Supreme Court of Minnesota - August 10, 2016 - N.W.2d - 2016 WL 4211972

Landowner appealed city's imposition of a special assessment on its real property.

The District Court denied city's motion for summary judgment. City appealed. The Court of Appeals reversed. Landowner's petition for review was granted.

The Supreme Court of Minnesota held that:

- District court's order, which denied city's summary judgment motion seeking dismissal based on landowner's failure to file written objections to proposed assessment, was not final, appealable judgment;
- District court's order was reviewable on appeal from final judgment, and thus was not immediately appealable under the collateral-order doctrine;
- Written-objection requirement set forth in special assessment procedure statute was claim-processing rule, rather than jurisdictional requirement, that did not give rise to city's right to immediately appeal order; and
- Written-objection requirement set forth in special assessment procedure statute was not analogous to claim of immunity, and thus, did not give rise to city's right to immediately appeal order.

IMMUNITY - MINNESOTA

Hoff v. Surman

Court of Appeals of Minnesota - August 8, 2016 - N.W.2d - 2016 WL 4162949

Motorist brought action against metropolitan council and driver of council's transit bus for personal injuries and related damages after bus rear-ended motorist's van.

The District Court denied defendants' motion for summary judgment. Defendants appealed.

The Court of Appeals held that statutory snow-and-ice immunity does not extend to bar claims based solely on allegations of negligent driving.

EMINENT DOMAIN - NEVADA

Fritz v. Washoe County

Supreme Court of Nevada - August 4, 2016 - P.3d - 2016 WL 4140940 - 132 Nev. Adv. Op. 57

Property owners brought inverse condemnation claim against county after development of drainage system resulted in downstream flooding.

The District Court granted summary judgment in favor of county, and property owners appealed.

The Supreme Court of Nevada held that:

- A genuine issue of material fact as to whether or not downstream property owners had standing to assert claims against county based on plat maps it approved before property owners acquired their property precluded summary judgment, and
- In a matter of first impression, a genuine issue of material fact as to the level of county's involvement in private drainage system sufficient to deem it a public use precluded summary judgment.

LIABILITY - NEW YORK

Chang v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 4, 2016 - N.Y.S.3d - 2016 WL 4131815 - 2016 N.Y. Slip Op. 05728

Motorist commenced action against municipality, alleging negligence because intersection lacked "stop here on red sign" and stop bar, and against companies responsible for maintenance of foliage in center median at intersection, alleging negligence in maintenance of foliage.

The Supreme Court, New York County, granted summary judgment for defendants. Motorist appealed.

The Supreme Court, Appellate Division, held that:

- Municipality breached its nondelegable duty to maintain roadway in safe condition;
- Factual issue existed as to whether motorist had all the notice of danger that a stop sign would have afforded and as to whether municipality's failure to install required "stop here on red" signs at intersection was proximate cause of accident; and

- Companies responsible for maintenance of foliage were not proximate cause of motorist's collision.

Installation of a traffic control signal, where it had not previously existed, is a discretionary governmental function that does not give rise to state liability; however, liability is imposed where there is a failure to properly maintain an already established traffic control and where that failure was a proximate cause of the accident.

Municipality breached its nondelegable duty to maintain roadway in safe condition by failing to reinstall previously established traffic control.

Genuine issues of material fact existed as to whether motorist had all notice of danger that stop sign would have afforded, and as to whether municipality's failure to install required "stop here on red" signs at intersection was proximate cause of accident, even if motorist's conduct also was negligent and proximate cause of accident, precluding summary judgment in motorist's negligence action against municipality.

Companies responsible for maintenance of foliage in center median at subject intersection were not proximate cause of motorist's collision at intersection even if foliage was overgrown, since motorist was able to see one block down avenue before he entered intersection.

REFERENDA - OKLAHOMA

Steele v. Pruitt

Supreme Court of Oklahoma - August 8, 2016 - P.3d - 2016 WL 4189723 - 2016 OK 87

Petitioners filed application for Supreme Court to assume its original jurisdiction over challenge to sufficiency of Attorney General's rewritten ballot titles on two proposed measures.

The Supreme Court held that mandatory language in ballot title asking voters for "yes" or "no" vote on proposed measures was not included in 200-word limitation.

Mandatory language in ballot title, asking voters for "yes" or "no" vote on proposed measure to amend statutes concerning criminal sentences, was not included in 200-word limitation for ballot petitions. Mandatory language was boilerplate and did not reflect character and purpose of proposed measure.

CDFA Intro Energy & Water Finance Course.

September 13-14, 2016
New York, NY

Energy development & water finance are the fastest growing areas of development finance nationwide. From new production facilities and renewable energy source development to the retrofitting and renovation of existing infrastructure to support efficient energy & water projects, this finance has become a driving force in the economic development community.

CDFA's Intro Energy & Water Finance Course explores the wide range of tools available for financing energy & water projects, including bonds, tax credits, revolving loan funds, grant

programs, and more. This course will cover how new energy production/generation, energy efficiency, retrofitting and support programs are used throughout the country to encourage investment in large and small projects alike.

The Intro Energy & Water Finance Course begins with an overview of the complex energy development industry and introduces attendees to the terminology and technology driving this movement. We'll then examine the entire spectrum of energy financing solutions from bonds to revolving loan funds and innovative incentive programs available to businesses, home owners, development professionals, investors, and government entities.

Day two of the Intro Energy & Water Finance Course will focus on financing water infrastructure development. Because water financing has become one of the critical financing needs in the development finance industry, speakers will explore programs and resources available through the federal government to support water infrastructure development. This course is essential for public leaders, economic development professionals, financial experts, and anyone working to address energy development challenges.

To learn more and to register, click here.

GFOA 21st Annual Governmental GAAP Update.

Training Type: Web-Streaming
Course Status: New Course
Date and Time: Nov 3 2016 – 1:00pm to 5:00pm EST
Region: Eastern
Level: Intermediate
Field of Study: Accounting – Governmental
CPE Credits: 4
Member Price: $180.00
Non-Member Price: $195.00
Prerequisite: Intermediate Governmental Accounting (or equivalent = basic understanding of GAAP for state and local governments)

To learn more and to register, click here.

The Benefits of Helping Struggling Cities.

For financially distressed municipalities, it's good to be in a state that intervenes, according to a new study.

Earlier this month, New Jersey stopped Atlantic City from defaulting on its debt with a $74 million bridge loan. While there was plenty of bluster and several hollow threats from legislators that they would not step in to help the financially beleaguered gambling town, it didn't surprise anyone when they finally did.

That's because New Jersey has a reputation in the credit market for going to any lengths to prevent one of its municipalities from entering Chapter 9 bankruptcy. In fact, no New Jersey municipality has

defaulted on debt since the Great Depression. This extra layer of protection is not only comforting to local officials in struggling cities like Camden or Trenton, it's viewed as a big plus by those who invest in New Jersey municipal debt.

Now, preliminary research affirms the benefits of being a municipality in a more proactive state. Scholars at the University of Notre Dame and University of Illinois at Chicago have found that creditors tend to give municipalities in these states a slightly lower borrowing rate than they do municipalities in states without any kind of bankruptcy intervention program.

All other things being equal, the research found that municipalities in proactive states tend to get an initial interest rate on their bonds that is 1.4 basis points or 0.014 percentage points lower than those in states that don't have restrictions on entering bankruptcy. It may not seem like much but the difference in borrowing rates amounts to real cash. According to the researchers, it means that total local borrowing costs in an unrestrictive state were at least $105 million higher over the 12 years studied than in a proactive state.

The findings provide new information in an ongoing debate about the appropriate role of a state in its distressed localities. "I think what this answers is that getting a second set of eyes and additional input can help when you compare that against the municipalities who are authorized to file for Chapter 9 without conditions," said James Spiotto, an attorney and municipal restructuring expert.

Only about half of U.S. states even allow their municipalities to file for bankruptcy. Of those, the authors identified Maine, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio and Pennsylvania as states with proactive policies designed to intervene before bankruptcy. These interventions are characterized by programs that allow the state to restructure a distressed locality's finances and often feature emergency loans and revenue transfers.

It's worth noting of course that proactive states do not always succeed in keeping a municipality from default or bankruptcy. One of the primary factors in whether an intervention is successful is the economy. After all, economic conditions are generally out of a state's control. A 2013 Pew Charitable Trusts study found this to be the case in Michigan, where Detroit filed for bankruptcy and five other cities were under emergency managers, and Pennsylvania, where Harrisburg was at the time was run by a receiver. The effects of the Great Recession in these cities continue to make it harder to rebound.

The Pew study recommended that states consider establishing an early warning system for localities and designing a program that includes all stakeholders when possible.

The research from Notre Dame and the University of Illinois offers an additional insight: an active intervention program comes at a cost. Proactive states tend to have a slightly higher interest rate on their general obligation bonds than states with unrestrictive policies.

Still, noted Spiotto, all states pay a price when a municipality — particularly a major one — defaults on debt. "It's the perception of risk," he said. "If a major municipality is having a problem, investors assume the state has a problem. Rightfully or wrongfully, it reflects poorly on the state."

States that allow bankruptcy but generally don't step in to try and avoid municipal Chapter 9 filings include Alabama, Arkansas, Arizona, California, Idaho, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, and Washington.

GOVERNING.COM

BY LIZ FARMER | AUGUST 11, 2016

The China Factor in America's State and Local Economies.

As the world's second-largest economy falters, pensions and tax revenues here are feeling the pinch.

Earlier this summer, New York state's pension fund announced a mediocre year. Investment earnings were essentially flat, and as a result the fund lost $5 billion because its other receipts — contributions from government and from current employees — didn't cover retiree payouts.

The New York pension system was the victim of a global event that began halfway across the world a year ago this month. In August 2015, the world's second-largest economy officially began to stumble. China's central bank stunned investors by devaluing the yuan, lending credence to what outsiders had long been suspecting: China's years of astounding annual economic growth — at times cresting at double digits — was slowing down.

Toward the end of that month, China's stock market endured its biggest one-day fall since 2007. The state media dubbed it "Black Monday" and the result shocked the world. Emerging market currencies slumped, commodity prices fell and Western financial markets reeled. At one point, General Electric's stock was down by more than 20 percent. The markets seemed to recover just in time for a January report from China that the country's growth rate for 2015 — 6.9 percent — was the weakest in a quarter-century. Although robust by U.S. standards — GDP growth in the United States last year was 2.4 percent — the bad news from Beijing once again sparked market volatility here and abroad.

In short, China has made it a difficult year for institutional investors, public pension plans prominent among them. But financial markets aren't the only way China's economy can impact states and localities.

For the last decade, with China a reliable engine for economic growth, other countries around the world have been feeding off it. China is the leading destination for a handful of states' exports and accounts for more than $115 billion in goods shipped annually from the U.S. The country is a key consumer of U.S.-made airplanes, cars and medical equipment. Meanwhile, Chinese companies have stepped up their investment in U.S. cities and industries, building auto plants, investing in oil fields and buying real estate — a Beijing-based company now owns the Waldorf-Astoria hotel in New York. There is essentially no region in the U.S. without some connection to China, and at least some vulnerability to a downdraft.

U.S. economists and state development officials are familiar with the ways negative economic events in Europe, such as Britain's recent vote to leave the European Union, can have an effect here at home. And for the near future, events in Western Europe and some other developed powers, such as Japan, will continue to have the greatest impact on states and localities. But if things in China worsen, the economic pain for governments in this country could be severe.

Even before China's crisis rattled the U.S. stock market, state and local pension plans were struggling. Last year, annual investment returns were meager. Because of the 2015 market plunge in China, most pension plans in the United States will likely report even worse returns for 2016. The two-year hit, says a Moody's Investors Service analysis, will effectively wipe out the funding improvements seen in 2013 and 2014.

Under Moody's most optimistic scenario, according to which U.S. investment returns average 5 percent for this year, overall pension plan liabilities will increase by 10 percent. Under the credit rating agency's most pessimistic outlook, where investment losses are 10 percent for the year,

Moody's sees liabilities growing by more than half. In that case, governments would be faced with demands to put significantly more general fund money into pension plans than was previously forecast.

Market volatility doesn't just affect pension plans. A number of state governments find their tax base is significantly exposed when investment income — capital gains revenue — has a bad year. California, Connecticut and New York all tend to "get clobbered" when financial markets have a down year, says Donald Boyd, the Rockefeller Institute of Government's fiscal studies director. These three states and Oregon (which banks heavily on personal income tax payments in general), have the highest reliance in the nation on capital gains revenue. "If you have a lot of rich people and you tax them relatively heavily," Boyd says, "then you're going to be most affected by this kind of scenario."

While there's unlikely to be anything like the 20 percent revenue drops seen during the U.S. financial crisis in 2008 and 2009, states are already starting to feel the revenue impact of the past year's stock market reactions to China's slowdown. Income tax collections make up about one-third of the average state's total revenue. In April, the single biggest income tax collection month for states, the average state's income tax revenue was down nearly 10 percent from the previous year, according to a Reuters analysis.

It's a taste of what could happen if China falters further. California had to trim its overall income tax revenue expectations for the 2016 fiscal year by nearly $2 billion, thanks to an April shortage of about $1 billion in collections. Connecticut, Massachusetts, New Jersey and Pennsylvania also announced declines in actual or projected income tax receipts after April.

What made this issue doubly challenging was that the news came in around the time state lawmakers were in the midst of the tricky business of drawing up the next year's budgets. "This throws a monkey wrench into it," Boyd says, noting that it creates future problems as well. "When you're dealing with a budget shortfall with only a few weeks to go in the fiscal year, there's a good chance lawmakers aren't going to find some kind of [permanent] solution. So that sets them up a year down the road for more trouble."

Over the past decade, states and localities have jumped at chances to increase their business with fast-growing China. U.S. merchandise exports to China increased by 177 percent between 2005 and 2015. Chinese investment in U.S. companies and properties went up exponentially over the same time period, from $2.5 billion in total investment across 24 states to nearly $63 billion spread over all but three states.

Admittedly, the growth represents only a tiny slice of overall U.S international business. Exports to China account for less than 8 percent of overall outbound U.S. shipments. Chinese foreign direct investment totals less than 1 percent of all foreign investment here.

Some regions, however, have more established business ties. When it comes to exports, Washington state-based businesses are by far the most exposed to fluctuations in China. Last year, Washington businesses exported $19.4 billion in goods to the Asian nation — about one-fifth of all the state's exports. Over the past year, Washington's dealings with China have been ratcheting down. Last year saw a 5 percent drop in exports to China; data through May of this year shows exports to China down by about 25 percent. Robert Hamilton, Gov. Jay Inslee's trade adviser, says trade activity is being driven down from weak economies "everywhere — not just China." Indeed, overall U.S. exports fell 5 percent last year, the largest decrease since the recession.

Still, Washington state's exposure creates some concerns. Trade directly and indirectly accounts for

one out of every four jobs in the state. Last year, Moody's flagged it for being an at-risk state thanks to a slower China. This year, Moody's has been careful not to sound apocalyptic about Washington state's situation. "They're pretty well insulated," says Moody's Washington analyst Kenneth Kurtz. But China-watchers in the state remain nervous.

Other regions in the U.S. will see an impact if China's demand for consumer products wanes significantly. Computer equipment, for example, is a top export to China. Companies based in San Jose, Calif.; Boise, Idaho; and Austin, Texas, are the nation's top producers of those products, and will feel a pinch if Chinese shoppers stop buying. Detroit and other regions reliant on auto manufacturing could also see a dip in business if China's high demand for U.S.-made cars slows.

Chinese investment in the United States has grown rapidly over the past decade, although it has been concentrated on a limited number of targets. The vast majority of the investments from China have been in mergers and acquisitions. These ownership changes tend to grab headlines — like when Chinese insurance giant Anbang bought the Waldorf from the Hilton hotel chain for nearly $2 bllion last year. In most cases, new Chinese ownership does not change a company's economic footprint. Hilton, for example, remains the Waldorf's operator.

One other area where Chinese investment has had an impact is in so-called greenfield purchases. Those are investments where the parent company builds its operations here from the ground up, such as Yuhuang Chemical's $1.85 billion methanol plant in Louisiana or Tranlin Paper's $2 billion paper plant in Virginia, both of which broke ground last year. In the San Francisco Bay Area, which has long been a favorite of Chinese companies, more than one-quarter of greenfield investment value in the region comes from China, according to the Brookings Institution's Joseph Parilla. Other top areas in the country for greenfield purchases are Chicago, New York City, San Jose and Seattle.

Most greenfield investments are typically made with a long-term view, so a Chinese slowdown like the current one might not have much immediate effect on them. It's possible that a slower economy at home could cause Chinese companies to direct more new investment toward stable economies like the United States and away from riskier markets in emerging countries. But it's also possible that a weaker economy at home could force Chinese investors to pull back in all world markets as foreign development becomes a more expensive proposition than the country's corporations want to make.

From time to time, there are fears about a local real estate market in the United States "being gobbled up" by the Chinese and other private global investors. "If they all pull back, then all of a sudden, you've got this glut of really high-end real estate built for folks who are not necessarily in your metro area," Parilla says, adding that this is something to watch in New York City and San Francisco, and to a lesser extent Chicago and Seattle.

For now, China is a lesson in perspective. Long isolated from the rest of the world, it has taken advantage of its rapid growth and fast-growing connections to other countries to become a major force in global markets. As state and local governments in the United States have become more enmeshed with the Chinese economy, opening offices in China to attract more direct development, they have increased their exposure. Fears about the effects of a prolonged Chinese downturn played a big role in the psychological contagion that roiled U.S. financial markets last year.

So far, most of the negative fallout in this country has been confined to a limited number of regions and economic sectors. But if the Chinese economy remains sluggish for a long period, the effects will be felt much more broadly by American investors and state and local governments. That is why even governments that haven't felt the effects so far may want to train a wary eye on the fiscal picture in Beijing.

GOVERNING.COM

BY LIZ FARMER | AUGUST 2016

IL Taxpayers Can Sue to Block Business Tax Credit Program Costing the State Too Much: Panel

An Illinois appeals panel in Springfield, in overturning a lower court decision, has ruled taxpayers have the right to try to block a state commerce agency from administering a business development tax credit program the group of taxpayers has argued is actually an alleged illegal state tax improperly eating up public funds.

The Aug. 2 opinion was penned by Justice Thomas Appleton, of the Illinois Fourth District Appellate Court in Springfield, with concurrence from justices Thomas Harris and Robert Steigmann. The decision upset a ruling by Sangamon County Circuit Court Judge John Madonia, who had tossed a suit by 10 taxpayers against the Illinois Department of Commerce and Economic Opportunity. The case was sent back to circuit court for further proceedings.

The taxpayers brought the action in January 2015, alleging the department overstepped the boundaries of a state law, called the Economic Development for a Growing Economy Tax Credit Act. The Act gives tax breaks to businesses that create new jobs, by giving a tax credit in the amount of the income tax withheld from new employees' paychecks. However, plaintiffs alleged the department is allowing credits in the amount withheld for both new and retained employees.

Plaintiffs argued that as a result, these overindulgent tax credits could diminish the public treasury, with taxpayers having to make up the difference. Apart from that alleged damage, plaintiffs contended they are harmed by the department's misapplication of their tax dollars to administer an illegal regulation. They sought an injunction to halt the tax breaks.

Circuit Judge Madonia ruled plaintiffs lacked standing to pursue the case, because the state had the only interest in the matter and taxpayers suffered no harm. Madonia said the only way plaintiffs could have a stake was for them to claim the tax statute was unconstitutional, not to challenge how the statute was interpreted or how funds were spent. Plaintiffs appealed.

Justice Appleton was not impressed with plaintiffs' contention taxpayers might have to make good the deficiency in tax revenue caused by the excessive tax credits, saying the argument was "speculative and simplistic."

"Can one really predict the legislature will probably raise taxes because of the excessively generous tax credits that defendant will grant?" Appleton asked.

However, Appleton was persuaded by plaintiffs' other argument that "collecting it (an illegal tax) will be a misuse of taxpayer-funded salaries and offices and, as such, a misuse of public funds."

The state maintained, as it did in circuit court, that the suit was improper, because plaintiffs were trying to exercise a right that belonged to the state alone. The state pointed to federal rulings to bolster its position, but Appleton noted Illinois courts are "more generous" in granting legitimacy to citizens bringing tax suits.

"Unless the administration of an illegal regulation is cost-free (and it is difficult to see how it ever

would be), the taxpayer has standing to seek an injunction, regardless of whether the regulation would bring a net profit to the state and regardless of whether the cost of administration is small," Appleton observed. "It will always cost something to administer a regulation, including an illegal one. The machinery of the State never runs cost-free."

Appleton cautioned that although taxpayers can challenge the legality of a regulation in court, they cannot attack the regulation on the ground it is "unwise," "inefficient" or "improvident."

Plaintiffs are represented by lawyer Jacob Huebert, of the Liberty Justice Center in Chicago, which says its mission is to "revitalize constitutional restraints on government power." The Illinois Department of Commerce and Economic Opportunity is defended by Illinois Attorney General Lisa Madigan's office.

The Cook County Record

by Dan Churney

Aug. 8, 2016, 4:42pm

Taming Premium Bonds.

What sort of bonds should a municipality offer to the market? A generation ago, simple par bonds were the answer. Today, callable premium bonds are extremely popular, though they also impose burdens on both issuers and to the market in general. While there is something wild about these bonds, fortunately there may be a way to tame them.

Callable premium bonds now dominate the new issue markets. Coupons are set as high as 5% against much lower market yields. The bonds sell at a premium because they pay more interest than the market requires for a par bond. But will the high interest payments stop on the call date (price-to-call), or continue to maturity (price-to-maturity)? Fortunately for premium bond buyers, the price-to-worst rule means that they typically pay only the price-to-call, often much lower than the price-t--maturity.

The call option takes on a different character when it applies to a premium bond instead of a par bond. In either case, there is the "time value" of a possible, but not guaranteed, decline in future rates. However, options on premium bonds also have "intrinsic value" built into them from the outset. Callable premium bonds become immediate candidates for excellent savings from an advance refunding, or at least they would be, if not for negative arbitrage on escrow securities. Although immediate refunding after issuance is impractical, premium callable bonds are likely to be advance refunded well ahead of their call date to lock in savings.

Callable premium bonds are popular. The professionals involved in issuing bonds enjoy two rounds of fees. The high coupon protects investors against the danger that the price could fall through the "de minimis" threshold for market discount tax treatment. A callable bond can be an attractive (and higher yielding) substitute for a noncallable bond that matures on the callable bond's call date. Savvy investors also expect a ratings upgrade from the eventual backing of a Treasury escrow.

The Case Against Callable Premium Bonds

When an issuer sells a callable premium bond, it receives the price-to-call instead of the higher

price-tomaturity. The difference between these prices constitutes “lost proceeds” – the issuer cannot spend this value on a project. It is instead stored as intrinsic value in the call option. The call option can be liquidated later with a refunding for “savings” even if interest rates never drop.

While it is certainly pleasant to find savings, illusory savings do not serve an issuer’s constituents. The callable premium bonds make it virtually certain that the issuer will pay issuance expenses twice.

Certainty in the long-term funding costs for long-term assets is important for some issuers. Par bonds provide that certainty, while callable premium bonds place only a loose cap on costs. The ultimate debt service is only known when the bonds are refunded.

Callable premium bonds may have helped to drive out individual investors, who now comprise only a tiny part of the market. The bonds make it harder for investors to evaluate the fairness of quotes from their brokers. It no longer suffices to compare similar bonds of similar maturities. Benchmark yields near the call date can be more relevant to fair pricing than those near the stated maturity date. And it does not help that redemption information is often buried in the back pages of documents or on the secondary screens of electronic systems.

If callable premium bonds are driving out individual investors, support for the tax exemption could erode.

There may be regulatory risks. Given their fiduciary responsibility, municipal advisors should take care that a structure that practically requires the issuer to double their issuance costs is truly in their clients’ best interest. Regulators might also question whether these bonds confuse investors or inflate the supply of outstanding tax-exempt bonds.

In summary, the problems with callable premium bonds include that they:

- lead issuers to incur additional issuance costs;
- distort the meaning of refunding savings;
- deprive issuers of committed long-term funding at current market rates;
- may be driving individuals out of the market, thereby weakening support for the federal tax exemption;
- are making the market more opaque and less liquid; and
- may draw increased regulatory scrutiny.

A Solution

One way to mitigate the side effects of callable premium bonds is for issuers to diminish the importance of the options. For traditional par bonds, call options had time value – they were used only if interest rates fell, or if the issuer needed to restructure – but they had no intrinsic value at the time of issuance. Though options were important to bond pricing, they did not cause wild adjustments to prices.

Issuers can continue to sell callable premium bonds to meet the demand for premium bonds (to reduce the chance of triggering the market discount rule), while also preserving the traditional structural benefits of the call option. Rather than bury the intrinsic value in an option, only to extract it through a later refunding, the issuer can take the intrinsic value as immediate proceeds.

The key is to change the par call prices to premium calls in a way that equates the price-to-call and the price-to-maturity. This is possible because the price-to-call includes the present value of any call premium. To find a “breakeven” call price, set the premium on each call date to the amortized

premium (as if the bond runs to maturity). This new call price matches the price-to-maturity at the original yield, with the call date replacing the settlement date.

Now return to the issuance date. The price to the premium call matches the price-to-maturity. The price-toworst rule has no effect if all call prices are set to their breakeven levels (the chart shows how the call prices will decline toward par for longer call dates). Now the issuer is fully paid for its entire debt service schedule.

A premium bond with a par call has complex dynamics, like the motion of a hinged pendulum. A premium bond with a premium call can behave more simply, like a par bond with par call. Where premium bonds with par calls are intermediate-term bonds disguised as long-term bonds, premium bonds with premium calls are true long-term debt. In today's low rate environment, issuers would be wise to secure true long-term funding.

Premium bonds with breakeven premium calls offer the following benefits to the issuer:

- The issuer is fully compensated if the bonds run to maturity.
- The issuer obtains long-term committed funding at the current market rate.
- The issuer only pays to refinance the bonds if interest rates fall or there is a structural need.
- The issuer's bonds will be easier for investors to value and understand, leading to better liquidity and pricing for issuers.
- High coupons continue to shield investors from market discount treatment.

Of course, there are always potential downsides and unintended consequences to new methods. One of these is that the market may not welcome bonds with large call premiums. As a first step, issuers could set call prices that begin at a modest premium and then decline to par.

Industry groups and leading issuers should consider this proposal. With time, premium call prices could become an accepted way to make premium bonds behave more like par bonds and to bring some clarity to the market.

The Bond Buyer

By Winthrop T. Smith

August 10, 2016

Winthrop Smith is the president of Win Analytics LLC, an independent research and consulting firm.

Why Dealers and Academics Are Clashing Over MSRB Trade Data Proposal.

WASHINGTON – While dealer groups are pushing the Municipal Securities Rulemaking Board to place more restrictions on its proposal to share trade data with academics, researchers say the ones the MSRB has already floated threaten to render the data hard to use or even useless.

"It's not going to get as much use as we would like it to because of all the legal rules that it looks like are going to be imposed," said Bart Hildreth, a professor in the Andrew Young School of Policy at Georgia State University and former MSRB board member.

The Securities and Exchange Commission and Financial Industry and Regulatory Authority already

get the full scope of MSRB trade data, with the identities of dealers, for audit and enforcement purposes.

The academic trade data product, which the MSRB first proposed in July 2015 after academics periodically asked for data for studies, has drawn support from market participants for its potential to increase transparency, but dealer groups like Bond Dealers of America and the Securities Industry and Financial Markets Association are still concerned that the introduction of anonymous identifiers could open their members up to the detrimental effects of reverse engineering. An anonymous identifier would allow the MSRB to show all of the trades of a dealer without identifying the firm.

Under the proposal, the data would be made available only to researchers associated with a higher education institution who subscribe and pay a fee. The data would be that gathered from required reports dealers make to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available now, but none of it currently contains dealer identifiers.

The dealer groups' concerns led the MSRB to make several changes to the proposed product before submitting it for approval with the SEC earlier this year, including lengthening the wait time before data can be released to three years from two and bolstering the steps the self-regulator said it would take to combat the threat of reverse engineering.

The MSRB also agreed with a dealer suggestion to exclude primary trades from the product's data sets by not including list offering price and takedown transactions. But BDA and SIFMA both asked for further changes in recent comment letters to the SEC.

Leslie Norwood, managing director and associate general counsel with SIFMA, and Sean Davy, SIFMA's capital markets division managing director, said the three-year timeframe before data would be released was still too short and asked for it to be released after four instead of three years.

Mattia Landoni, an assistant professor of finance at Southern Methodist University, said, in response to the proposed longer delay, that it is important that researchers are able to write about topics that people are interested in at the time that the researcher releases his or her findings.

"With a three-year delay, that means I would be able to write [a] paper in the best case, three years later and in the worst case [even] later because [I] will have moved onto something else," he said.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA "remains extremely concerned" with the risks associated with the proposal and added it is "simply inappropriate" to give higher education institutions the dealer-specific transaction information that dealers are required to submit to the MSRB.

"Because of the interconnected nature of our markets, it would only take one large dealer working in collaboration with a researcher at an institution of higher education to completely identify the dealer names that match MSRB's 'dealer identifier' and then have full visibility and transparency into the business strategy and transactions of every dealer," Nicholas wrote.

He added that the dealer-specific transaction data that the product would provide could easily be exposed to hacking attempts or a freedom of information act request if the data is being held by an academic at a public university.

Landoni said academics would not be opposed to agreeing to the MSRB rules designed to prevent misuse of the product.

“None of us would have a problem with promising not to reverse engineer individual dealer strategies,” he said. “That’s just not what we do.”

Hildreth said that many universities, especially state schools, are going to have “real difficulty” in agreeing to the liability restrictions the MSRB would tie to reverse engineering that would have to be agreed to if academics wanted to access the product. He also said it is unclear how confidentiality rules tied to the data would transfer if for example a PhD candidate started a dissertation at one school but then moved schools during the several years it took to get the dissertation published.

Both BDA and SIFMA urged the MSRB to group similar dealers together and use the groups instead of the anonymous identifiers. However, SIFMA added that it would like to see the MSRB widen the eventual product’s availability to any not-for-profit organization that has a separately identifiable research department and regularly publishes research reports instead of just academics with higher education institutions.

Hildreth and other academics said the dealer identifiers are important.

“Without dealer identifiers [the research process] is going to be less rigorous,” he said. “The delay in the data [release] just adds to that.”

“It’s not going to be as used as the research community would like it to be used out of the gate,” Hildreth said. “But then again, I respect MSRB’s concern about what the market is telling them.”

The Bond Buyer

By Jack Casey

August 11, 2016

Why Market Groups Want SEC Disclosure Guidance.

WASHINGTON – Five municipal market groups are asking the Securities and Exchange Commission for guidance that would help create a streamlined process for issuers to amend their continuing disclosure agreements without running afoul of Rule 15c2-12 on disclosure.

The groups, which include the Government Finance Officers Association, Bond Dealers of America, and the Securities Industry and Financial Markets Association, made their request in a letter to Jessica Kane, director of the SEC’s office of municipal securities. The National Association of Bond Lawyers and the National Association of State Auditors, Comptrollers and Treasurers also signed the letter.

An SEC spokesman declined to comment on the letter.

The groups said their request stems from discoveries that issuers and underwriters made while reviewing continuing disclosure agreements (CDAs) as part of the SEC’s Municipalities Continuing Disclosure Cooperation initiative. The issuers and underwriters found that many of the issuers’ agreements had ambiguities and inconsistencies that often resulted in overlapping, varying, and outdated information in the required disclosures.

The groups attributed these problems to the SEC’s allowing issuers, in its 1994 amendments to Rule

15c2-12, to be flexible in drafting CDAs. As a result of this flexibility, there has not been a uniform CDA that everyone has used over the last 20 years and disclosure obligations have differed depending on the specifics of the issuance, according to the groups.

“In some cases, a CDA may require information that may be no longer relevant, available or able to be produced without significant burden or cost,” the groups wrote. “Under current guidance … there is no simple way to amend and fix such CDAs.”

For example, an issuer that has been active in the market for a number of years may have one previous CDA for a water utility issuance that said it will continue to provide investors with specific tables from rate reports on the water utility. That issuer might then embark on a new bond issue for capital improvements to the water system ten years later and include internally prepared financial information and operating data for the water system that excludes rate tables because they are less applicable and harder to obtain. Unless the issuer can amend its ten-year-old CDA, it will be contractually obligated to bondholders to produce the old tables until the bonds are paid or redeemed while still providing the annual updates to the information promised in the most recent CDA.

“We think that if the amendments that an issuer wants to make to an outstanding [CDA] are in keeping with that issuer’s current practice and are consistent with what an issuer would commit to if they were issuing the bonds today and they don’t have any material adverse effect on outstanding bondholders, that should be a reasonable set of guidelines for making amendments to outstanding continuing disclosure agreements,” said Michael Decker, managing director and co-head of munis with SIFMA.

Jessica Giroux, general counsel and managing director for Bond Dealers of America, said the organizations sent the letter with the hope of getting “some commonsense changes … based upon what the practitioners in the field see as something that might streamline the system and not burden any one individual player.”

The SEC’s current requirements for amending CDAs include that the amendments only be made in connection with a change in circumstances that arises from a modification in: legal requirements; law; or the identity, nature, or status of the obligated person, or type of business conducted. The amended disclosure undertaking also must have complied with the requirements of 15c2-12 at the time of the primary offering after taking into account any amendments or interpretations of the rule as well as any change in circumstances. Finally, the amended CDA must also not impair the interests of bondholders.

The groups are asking the SEC to provide interpretive language that classifies a change in issuer disclosure practices as fitting into the “change in circumstances that arises from a change in legal requirements” guidance. They also are asking the SEC to agree that it would fit with current guidance to have the information required in the amended CDA be consistent with the disclosure that would be included in a primary market offering document if the bonds were issued today.

Additionally, they want the commission to sign off on the idea that a CDA change is acceptable if both the amendment to the CDA does not materially impair the interests of the bondholder and the notice through the Municipal Securities Rulemaking Board’s EMMA system is an appropriate way to notify bondholders of the changes.

The letter is the product a subset of the many municipal market organizations that began discussing ways to improve disclosure after the SEC began its MCDC initiative. MCDC was first announced in March 2014 and 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 has already led to settlements totaling $18 million with 72 underwriters representing 96% of the market by underwriting volume. The SEC has been contacting issuers that self-disclosed violations, but it is unclear when issuer settlements will be released.

Some groups see the collaboration as a way to preempt any SEC action to further regulate disclosure in the market.

Several representatives of the organizations that signed the letter said the larger group of organizations will continue to share ideas on improving disclosure, but could not point to any specific initiatives or future letter they have planned.

The Bond Buyer

By Jack Casey

August 9, 2016

Behind California's Effort Targeting Bond Measure 'Pay-to-Play'.

LOS ANGELES — California Treasurer John Chiang's efforts to combat "pay-to-play" activities among local bond issuers received mixed reviews from municipal bond industry participants.

Chiang announced policies July 27 designed to limit what he called questionable municipal bond industry bankrolling of local bond election campaigns.

He has asked all finance firms that wish to participate in the sale of state issued bonds to sign certificates by the end of August pledging to not engage in what Chiang describes as pay-to-play practices related to bond measure campaign funding.

Chiang's program asks that the 105 financial and law firms in the state's pools, made up of 13 advisory firms, 26 law firms, and 66 underwriters, take the pledge. But he has gone a step further by extending it to any financial firms that do state business, Schaefer said.

"There are any number of state agencies that want to hire bond counsel for non-transactional work, who look to the state's pool," said Tim Schaefer, California's deputy treasurer for public finance. "That is why we wanted to up the ante."

The idea is that "if you want to do business in Sacramento, we want you to take the pledge that you will not engage in this activity, because we think this activity is corrosive for California issuers," he said. "The idea is not to humiliate anyone, or put them in the penalty box, because we are not a regulator; it is to change this behavior that is bad for California taxpayers."

Chiang's efforts continue the work of former treasurer Bill Lockyer and former Los Angeles County Treasurer and Tax Collector Mark Saladino, who both criticized what they saw as a pay-to-play environment in the state's municipal bond market.

Lockyer announced in 2012 that the state would no longer work with financial firms that engaged in pay-to-play or that had been involved in the sale of what he considered to be egregious capital

appreciation bond deals.

“We certainly salute and applaud what Lockyer did, but if we thought it was sufficient, we would not be taking it to the next level,” Schaefer said. “We are not deeming Lockyer’s efforts a failure, but we will just have to wait and see if we get a better effect – and I think we will get a better effect.”

Municipal bond firms are already charging lower fees, said Adam Bauer, president and chief executive officer of Fieldman, Rolapp & Associates.

“We have already seen the costs come down when we negotiate the underwriters’ discount,” Bauer said. “That has come down from years’ past.”

Bauer said he did not know if previous efforts by Lockyer or enforcement efforts by the Municipal Securities Rulemaking Board and U.S. Securities & Exchange Commission are responsible for the decline; or what part increasing competition among municipal finance firms has played.

Issuers are free to set their own standards and requirements above and beyond those set by the MSRB and other regulators, said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. But SIFMA does advocate that such requirements are clear and effective to achieve their stated goals, she said.

Twelve of SIFMA’s biggest dealer firms signed a letter in July 2013 asking the MSRB to adopt further restrictions on bond ballot contributions by broker-dealers, and each of those firms pledged a two-year moratorium on making any such contributions related to bonds they sought to underwrite.

Chiang’s program is another step in the right direction, Bauer said, because firms that engage in such activities make it harder for ethical firms to compete.

“I think it is great they are doing something like this,” Bauer said. “But the firms in the pool are not the firms I understand to be doing this type of thing.”

The financial advisory firms engaged in “pay-to-play” bond measure activities do not have the resources to go after the state’s business, Bauer said.

He believes the activities the treasurer is targeting are more prevalent in smaller districts that don’t have the resources to pay for campaign services.

“The steps that Lockyer took set the tone and it is not now taking place in the areas in which I work, but I think it is good to formalize it so there is more pressure to conform by firms who operate outside of the norm,” he said.

A Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

Some underwriting firms in the state pool that used to provide free bond campaign services to school districts have discontinued the practice, Bauer said. He knows of one firm where the person who had that role split off from the company to form her own firm to avoid the conflict.

Another area where Chiang has expanded Lockyer’s efforts is by including bond counsel in the mix.

Restrictions placed under Rule G-37 by the MSRB and the U.S. Securities & Exchange Commission

do not apply to bond counsel, because those entities only regulate broker-dealers, said Lisa Greer Quateman, a partner with Polsinelli, one of the law firms in the state's pool.

"We personally do little school bond work, so we have happily executed the certification and are unaffected by it," Quateman said. "Polsinelli was very comfortable signing the certification."

Though school district general obligation bond referendums have been the focus of previous efforts, Schaefer said Chiang's efforts are aimed at all local bonds.

Quateman said some lawyers would actually like to have Rule G-37 apply to law firms. But she said there are others who are concerned about how such restrictions would impact their First Amendment rights to participate in the political process.

"I am very happy that I am able to participate in the political process and help worthy candidates get their messages out," Quateman said. "I am glad I am free to do that. I think the MSRB was very careful in the way it shaped Rule G-37."

Quateman also thinks the treasurer was careful in how he structured his certificate so that it only asks participants to certify that they will not make campaign contributions toward bond transactions on which they plan to bid.

But Benjamin Keane, a managing associate at law firm Dentons and a member of its ethics & disclosure team, thinks there may be reason for concern.

The treasurer's certificate is more all-encompassing than MSRB and SEC restrictions, Keane said in an interview.

"While the addition of a few basic certifications statements may seem minor to the untrained eye, requiring affirmative statements such as these will also almost certainly heighten the compliance risk borne by the regulated community," Keane wrote in a blog post he co-authored with Dentons partner Stefan Passantino. "After all, the "inadvertent non-compliance" defense is dramatically more difficult to assert, and a "false statement" indictment is dramatically more easy to obtain, when affirmative certifications are a compliance obligation."

Firms that wish to be included in the state's bond pool have to make an affirmative statement that neither the firm, or any officer, director, partner, co-partner, shareholder, owner, or employee will make any cash or in-kind service contribution.

That differs from MSRB and SEC regulations where the restrictions are directed at the companies or directors of the company, Keane said.

He will be watching to see if some of the larger companies in the pool are removed if a shareholder or employee violates this rule, he said.

"It doesn't just include contributions to ballot measures, but to any campaign in the state," Keane said. "It is harder for an underwriter in the pool to tell its employees that they cannot donate to any ballot measures in the state than to restrict them from any activities that involve bond campaign services."

The treasurer's office not only wants to impact the way financial firms operate in California, but hopes to set an example for the entire $3.7 trillion municipal bond industry.

"We are hoping this will bend the discussion similarly to what Lockyer's efforts did," Schaefer said.

“It has already attracted more attention than what Lockyer did, because this one has more teeth to it.”

The treasurer’s office did not act capriciously, Schaefer said, adding that it has been meeting for a year to line up support. Supporters include the California Association of County Treasurers and Tax Collectors.

“You would be startled by the number of people at financial firms who reached out and said ‘Thank you for doing this,'” Schaefer said. “Now they feel like they won’t get undo pressure to do what the fringe players are doing.”

Schaefer said Lockyer laid the groundwork for Chiang’s efforts.

“It increased awareness of the phenomenon, because this situation we are trying to address lives in the shadows,” Schaefer said.

No contracts are signed outlining what occurs in pay-to-play arrangements.

“Pay-to-play cases even in white collar cases can be hard to prove, because they are often quid pro quo,” Keane said.

School districts or municipalities that later hire financial firms who donated to a bond measure campaigns or provide free campaign services don’t sign contracts agreeing to pay higher fees on the transaction.

California Attorney General Kamala Harris had an opinion earlier this year that school district officials could be subject to penalties if they hired someone who had contributed to a bond campaign, Keane said.

“But you run into a situation of how do you prove that quid pro quo is going on?” Keane said. “It is difficult to show unless there is smoking gun evidence.”

The Bond Buyer

By Keeley Webster

August 11, 2016

Kyle Glazier contributed to this article.

TAX - GEORGIA

Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority

Court of Appeals of Georgia - July 7, 2016 - S.E.2d - 2016 WL 3654495

Hospital authority filed action against board of tax assessors, city, and county tax commissioner, seeking a declaration that its leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation.

The Superior Court granted summary judgment for the authority. Tax board appealed.

The Court of Appeals held that hospital authority's leasehold interest was public property exempt from ad valorem taxation.

Hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation. Revenue bond validation proceedings had conclusively established that the retirement facility furthered a legitimate function of the hospital authority.

Under state constitution, a judgment in a revenue bond validation proceeding is conclusive as to all questions which could and should have been asserted and adjudicated during the bond validation proceedings.

Assessing Claims About Public-Private Partnerships.

The United States faces a growing backlog of infrastructure repair and expansion projects. Many of the assets that propelled rapid economic growth and household wealth formation following the end of World War II have come to the end of their useful lives. In order to remain economically productive in the 21st century, government at all levels must increase infrastructure investment. The American Society of Civil Engineers estimates that, across all sectors, the United States needs to invest more than $3 trillion in the coming years. In the absence of a sustained commitment to rebuilding and expanding critical facilities, the United States will face an infrastructure drag that reduces economic productivity and access to opportunity for millions of Americans.

Historically, state and local governments have carried out public infrastructure finance through the issuance of municipal bonds. In recent years, a less traditional actor has entered the picture: Wall Street.
Specifically, investment managers have opened up funds dedicated to investing private capital in U.S.
infrastructure projects through public-private partnerships, or P3s. Public-private partnerships are an alternative form of infrastructure procurement that may include equity financing and a long-term maintenance and operations contract for the private concessionaire.

Liquidity

Public-private partnership supporters make two fundamental assertions about infrastructure finance in the United States that deserve scrutiny. The first is that one of the reasons why governments have been unable to invest sufficiently across sectors is a lack of liquidity. The term liquidity has several meanings. In the context of infrastructure finance, liquidity simply refers to access to financial capital. When lamenting the current state of infrastructure disrepair and promoting P3s as the solution, financiers frequently talk about the vast amount of private equity capital 'sitting on the sidelines' waiting to be invested in infrastructure. The implication is that if only state and local governments would undertake more P3 projects, this money would flow into the system and solve the infrastructure backlog.

Yet there is a reason why P3s with an equity component have been slow to emerge in the United States: Equity capital is a substantially more expensive source of project financing than municipal bonds. The cost of funds for equity capital can exceed highly rated municipal debt by a factor of five. Currently, there is more than $3.7 trillion in outstanding municipal debt. While not all of this debt was issued to build infrastructure, the volume of debt indicates that nonfederal borrowers have no problem accessing project financing; the municipal bond market is robust.

The single most important factor constraining overall government investment in infrastructure is not access to credit but rather insufficient government revenues. The problem is fundamentally political: The public has a finite willingness to pay the taxes and fees necessary to service project debts.

The borrowing behavior of state and local governments over the past 15 years demonstrates that tax revenues constrain indebtedness not a lack of investor demand. Between 2000 and 2008, total outstanding municipal debt increased by more than $2 trillion, or 138 percent. This number is significant for two reasons. First, the growth in municipal debt outpaced overall economic growth as measured by gross domestic product, or GDP. This reveals the tendency of governments to leverage even modest upward trends in tax revenues to borrow more through the bond market.

Second, the economy experienced a brief recession in 2001, losing 0.6 percent in economic output before returning to growth. Because the downturn was relatively short-lived, state and local governments chose to borrow money through the bond market to cover operating and capital needs as opposed to eliminating projects and substantially reducing services or raising taxes. From 2003 to 2004, total municipal indebtedness increased by $921 billion. In other words, the shallowness of the downturn combined with the expectation that growth and tax revenues would soon rebound fueled borrowing.

By comparison, the Great Recession demonstrated that a steep decline in tax revenues combined with indications that the recovery would be slow produced a significantly different borrowing behavior. Again, the issue was a dramatic drop in tax revenue as opposed to a shortage of market liquidity. The Great Recession resulted in a GDP contraction that was more than seven times greater than the downturn in 2001.

According to research from the Pew Charitable Trusts, state tax revenues declined by 13 percent in 2009 compared with baseline collections prior to the start of the Great Recession. As a result, between 2008 and 2015, total municipal debt increased by only $198 billion, or 6 percent. State and local governments understood that they would not have the revenues necessary to support another major round of borrowing and therefore held off on significantly increasing their overall indebtedness.

Importantly, investor demand for municipal debt held strong through both cycles. In fact, the demand for low-risk public debt continues to be so overwhelming that real interest rates on securities from the U.S. Department of the Treasury are currently negative over a seven-year period and less than 1 percent over a 30-year period; investors are paying the federal government to hold their money. The municipal bond market—as well as the Treasury securities market—does not have a liquidity problem.

This is not a claim about the soundness of buying and selling municipal debt as an investment strategy. The salient point is that the governments that build infrastructure projects have no trouble accessing capital markets. The reason that some observers see equity capital as sitting on the sidelines is that governments do not need equity debt to build their projects. What they need is revenue.

Understanding finance terminology

The claims that P3 supporters makes about liquidity raise an important point about terminology. Specifically, what does it mean to say that private capital is sitting on the sidelines ready to invest? For starters, this statement implies that traditional project financing involves something other than private capital. In reality, every dollar used to purchase municipal debt tied to a project is private capital being put to use to build America’s infrastructure.

This is not to say that municipal debt and equity are the same. In the finance world, the term equity typically refers to ownership in a company. When it comes to infrastructure, the government project sponsor retains ownership of the completed facility. Instead, project equity refers to a legal claim on a stream of revenues. For example, in the case of a toll highway project, an equity investor would have the right to a share of the stream of toll revenues over and above what is needed to repay senior project debts. Large infrastructure projects almost always involve multiple sources of debt financing. These may include debt from the TIFIA loan program, private activity bonds, or traditional municipal bonds. Once these senior debt holders have been repaid, the equity investors receive their share of toll revenues.

Equity investments are different from municipal bonds in three ways. First, project equity is not listed on a public exchange. By comparison, a municipal bond is a type of tradable fixed-income security. Second, the return that equity investors receive over time is subject to federal taxation. And third, the rate of return on equity can be variable, depending on the structure of the P3. In the case of a toll highway where the concessionaire assumes revenue risk, the ultimate rate of return on equity will depend on travel demand and overall toll revenues. Thus, while municipal bonds and equity investments have different characteristics, the important point is that both are private dollars financing infrastructure projects.

Simply stated: There are no sidelines.

Public pensions

The second assertion that P3 supporters make is that public-private partnerships have the potential to advance two disparate policy goals: strengthening workers' retirement and building needed infrastructure projects. In reality, the low-volume of P3 transactions with an equity component means that infrastructure deals will not provide meaningful relief to public pensions.

Public pension funds face two significant challenges. First, pension funds are obligated to provide benefits to future retirees, a requirement for which they lack adequate funding. Second, due to the unique tax status of pension funds, investing in municipal debt is simply unattractive.

Unlike individuals and private corporations, pension funds are tax-exempt investors, meaning they have no federal income tax liability. The interest income from municipal bonds is not subject to federal income taxation. As a result of this favorable treatment, municipal bonds offer a lower interest rate than taxable corporate debt. Yet because this tax treatment provides no benefit to pension funds, the low rate of return on municipal debt makes this an untenable asset class.

By comparison, the equity component of a P3 infrastructure project provides a substantially higher return and therefore presents a more attractive vehicle for large institutional investors. While the return on equity varies by project and phase of development, the Federal Highway Administration cites a rate that ranges from 8 percent to 14 percent annually. Simply put, this rate of return dwarfs what is available through municipal bonds. Currently, AAA-rated bonds offer only 2.4 percent annually over a 30-year period.

As for unfunded liabilities, the numbers are daunting. As just one example, the California Public Employees' Retirement System, or CalPERS, is a state agency that manages a large-scale pension fund on behalf of participating state and local public employees. Currently, CalPERS pays an average monthly benefit of $2,627 to 611,000 retirees and manages the contributions of another 1.2 million active and inactive employees.

The total value of the CalPERS fund stands at $293 billion—making it the largest public pension fund

in the United States. While impressive, CalPERS faces a significant shortfall. The agency's most recent financial statement reveals a total unfunded liability—the difference between the value of the fund's assets and the assets necessary to meet future benefits payments—of $93 billion. To put that in perspective, the shortfall is greater than the individual GDP of 15 states, including Mississippi, New Mexico, West Virginia, and New Hampshire.

CalPERS is not the only public pension facing a shortfall. For instance, the California State Teachers' Retirement System, or CalSTRS, estimates its unfunded liability at $72.7 billion. And the Colorado Public Employees' Retirement Association, or Colorado PERA, estimates its unfunded liability at $25.9 billion. The Pew Charitable Trusts estimates that total unfunded public pension liabilities exceed $1 trillion nationally.

Given the magnitude of the shortfall facing public pensions, infrastructure investments—if they are to attract the interest of pension funds—must not only offer an attractive rate of return but also a sufficient volume of transactions to make meaningful progress in addressing outstanding liabilities. Public-private partnerships pass the first test but fail the second. For starters, not all P3 deals involve private equity financing. Second, when equity is used as part of project financing, it tends to account for only a small share of the total because it is so expensive relative to other forms of financing—namely, municipal bond debt and low-cost loans from the federal government.

A review of projects financed through the Transportation Infrastructure Finance and Innovation Act, or TIFIA, loan program at the U.S. Department of Transportation demonstrates the limited role of equity. Congress established the TIFIA loan program in 1998. Since its inception, the program has helped finance only 24 public-private partnership projects involving an equity component. Excluding the Chicago Skyway and Indiana Toll Road projects, which were lease transactions of existing facilities as opposed to new construction or reconstruction, the average equity investment is $183 million as part of a project with a total cost of $1.28 billion.

Using these averages, it is possible to develop an estimate of how many major P3 projects a pension fund such as CalPERS would need to invest in to reduce its unfunded liability by just 5 percent. As with any model, this relies on a number of assumptions, including:

1. The extent to which CalPERS would expose itself to the downside risk that an infrastructure project would fail to perform financially
2. The annual rate of return on the equity investment
3. The length of the concession
4. The discount rate used to calculate a net present value of the anticipated cash flow over time

First, CalPERS would almost certainly try to reduce portfolio risk by taking a limited share of equity in any given project. For example, assume that CalPERS would be willing to take a 20 percent position. Based on the average equity investment of $183 million derived from the TIFIA project list, a 20 percent share would translate to an investment of approximately $36.6 million. Second, investors expect an annual return of between 8 percent and 14 percent on infrastructure projects. Third, P3 concession contracts vary greatly, with some lease agreements stretching as long as 99 years. Assuming a more traditional 30-year term and a 12 percent rate of return, CalPERS would receive a return of $131.7 million. After applying a discount rate of 7.5 percent—which is the long-run rate of return that CalPERS assumes when projecting fund performance and calculating unfunded liabilities—CalPERS would receive a stream of payments with a net present value of $51.8 million. The net present value number is important because the $93 billion unfunded liability CalPERS reports is the amount of additional fund capital in 2016 dollars needed to meet future obligations.

In order for CalPERS to reduce its unfunded liability by just 5 percent, or $4.85 billion, the fund would need to invest in 90 infrastructure projects that offered terms equivalent to those assumed in the hypothetical case. In other words, CalPERS would need an enormous volume of P3 projects in which to invest and then have to take a significant position in every one of them in order to reduce its liabilities by even a small amount. If CalSTRS and Colorado PERA and others attempted to reduce their unfunded liabilities by an equivalent amount, the number of P3 projects would need to grow substantially. In fact, in order to reduce total unfunded public pension liabilities by 5 percent, pension funds—assuming they were able to collectively take a 100 percent position equivalent to the $183 million average equity share on every project—would need 193 projects with a total cost of $246.7 billion. This seems exceedingly unlikely, as TIFIA has provided financing assistance to only 24 P3 projects with an equity component in the past 18 years. While the TIFIA list is by no means exhaustive of the infrastructure sector, it provides a useful measure of the overall pipeline. According to research by Squire Patton Boggs—a global law firm that provides legal and other services to the infrastructure sector—only five P3 projects closed in 2014. Of this total, four were surface transportation projects.

Public-private partnerships are best suited to very large, complex projects for which it is more likely to be cost-beneficial for the state to pay the premium associated with risk transference. Yet, the very nature of infrastructure investment is that most projects do not meet the size and complexity threshold. In order words, the number of P3 projects will remain relatively low not due to regulatory barriers but the fact that the vast majority of small and medium-size projects don’t lend themselves to a P3 procurement model.

Beyond financing

Underlying everything from the smallest repair project to the largest new build is the unglamorous world of procurement—the process by which government buys goods and services. Traditionally, state and local governments have procured transportation facilities such as highways and bridges through a process referred to as design-bid-build. Under this approach, the state separates the procurement process into three distinct phases:

1. Design and engineering
2. Construction
3. Operations and maintenance

The traditional design-bid-build process involves two independent phases of project development that are carried out by separate private firms. First, one firm completes the design and engineering work and then hands this product off to the state. Next, that state uses these specifications to develop a request for proposals for the construction phase. Finally, following construction, the state assumes complete responsibility for the operation and maintenance of the facility. This includes everything from snow removal to reconstruction of deteriorated segments. In this way, a design-bi--build procurement model allows the state to retain control over each stage in the process.

A public-private partnership is an alternative approach to infrastructure procurement for large-scale, complex projects. Under this approach, the private firm exercises greater control and decision-making authority since the procurement stages are bundled together into one contract. From the government’s perspective, one of the key benefits of using a P3 approach is the ability to transfer risk. The nature of P3 contracts allows the public sector to transfer some or all of the project development, design, construction, operational, and revenue risk to a private entity. This is not a small benefit. After all, large infrastructure projects frequently take longer and cost more to complete than initially estimated. This benefit does not come cheaply. In exchange for accepting delivery or revenue risk over time, the private entity will require additional compensation.

In order to determine if the additional cost of transferring risk and working through the complexities of a P3 transaction are economical, state and local governments must engage in value-for-money analyses. For those projects that pencil out, P3s are a valuable alternative procurement strategy.

Conclusion

Public-private partnerships have been fundamentally miscast as a solution to a growing government funding deficit. In reality, P3s are an alternative form of procurement that offers government a way to manage risk. This may be especially appealing if a state or local government is attempting to develop a complex facility for which it has little experience letting contracts and overseeing delivery. Moreover, a long-term concession that locks in a private entity to providing a specified level of service or repair may help insulate a critical infrastructure asset from the vagaries of state budgets and recession. Provided that governments have the skill to negotiate effectively with their private sector counterparts in order to extract maximum value, P3s have a place in the U.S. infrastructure landscape. This will still leave, however, the politically challenging task of building support for the taxes and fees necessary to repay project debts, regardless of their source.

Endnotes and citations are available in the PDF version.

The Center for American Progress

By Kevin DeGood | Wednesday, August 10, 2016

Kevin DeGood is the Director of Infrastructure Policy at the Center for American Progress.

Has The California State Treasurer's Office Gone Underground?

Late last month, the California State Treasurer's Office announced a "move to stop 'Pay-to-Play' school bond campaigns". According to the announcement:

> Municipal finance firms seeking state business will be required to certify that they make no contributions to bond election campaigns. Firms that fail to do so will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The Treasurer's office has sent a letter to prospective underwriters advising them of the imposition of this "new minimum qualification" and requesting that they return a certification form by August 31, 2016.

However well intended, I question whether this action is legal. California's Administrative Procedure Act provides:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Cal. Gov't Code § 11340.5(a). A "regulation" is broadly defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation,

order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Cal. Gov't Code § 11342.600. It cannot be gainsaid that the Treasurer's "new minimum qualification" is a "standard of general application" and hence a "regulation" within the meaning of the APA.

I contacted the Treasurer's office and received the following response:

> The Treasurer's Office has the sole authority to establish a pool of qualified underwriters for State bond work and enter into agreements in connection with State bond sales. (Government Code section 5703.) As a matter of longstanding practice, the Treasurer's Office has established such pools not just for underwriters, but also for bond counsel firms and financial advisors. Generally speaking, the pools are "re-established" every two years via a Request for Qualifications process. Much like any other procurement process initiated by government agencies, the Treasurer's Office issues an RFQ that outlines the types of services the office may contract for, minimum qualifications for both entrance into and on-going membership in the pools, and proposal requirements. Interested firms then submit proposals and those firms that meet the minimum requirements are admitted to the pools. The recently announced requirement for municipal finance firms was introduced in conjunction with this process. It is an on-going requirement for current pool members and will be incorporated into the next round of RFQs, when the pools are re-established in the near future.
>
> Because this is a procurement process relating to this office's need to contract for services with municipal finance firms, the Administrative Procedures [sic] Act does not apply, as it does not apply to other procurement processes utilized by government agencies throughout California. Generally speaking, the requirements and qualifications for procurements are laid out in the procurement documents themselves and not through regulations adopted pursuant to the Administrative Procedures Act.

The Treasurer's office may think it has a good dog, but I don't think it will hunt.

Government Code Section 5703 does not exempt the Treasurer's office from compliance with the APA. As explained in this determination from the California Office of Administrative Law (OAL):

> Provisions of a contract, which are rules of general applicability interpreting a statute (or a regulation), are not shielded from APA challenge. There is no express statutory language which provides that agency rules placed in contract provisions are exempt from the APA. Applying Government Code section 11346, which requires that exemptions be expressly stated in statute, OAL presumes that no such exemption exists.
>
> In addition, it appears the Legislature intended that there be no exemption for contract provisions. Exempting public contracts was – and is – a clear policy alternative. The federal APA first enacted in 1946, exempted "matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts" (emphasis added) from rulemaking requirements. In enacting the California APA in 1947, the Legislature rejected a proposal to exempt "any interpretative rule or any rule relating to public property, public loans, public grants or public contracts" (emphasis added) from APA notice and hearing requirements. It therefore seems that the 1947 Legislature considered and rejected the idea of following the federal example of exempting rules contained in public contracts from notice and comment requirements.

1998 OAL D-30 (footnotes omitted). See also 2000 OAL D-17 ("The fact that a rule or criteria may

have been issued or utilized as part of a bidding and proposal process does not insulate them from scrutiny under the APA.").

Readers with a long memory may recall that in 2009 I challenged a CalPERS' attempt to impose disclosure requirements on placement agents without complying with the APA. After the OAL accepted my petition for review of the requirements, CalPERS backed down and adopted regulations under the APA. See CalPERS' Proposed Placement Agent Disclosure Rule Likely to be Amended.

by Keith Paul Bishop | Allen Matkins Leck Gamble Mallory & Natsis LLP

8/11/2016

S&P: Fiscal Resilience Among U.S. States Varies As Economic Expansion Surpasses Seven-Year Mark.

A majority of the 10 U.S. states with the most tax-supported debt outstanding have only a limited capacity to withstand the effects of a moderate recession, S&P Global Ratings found when it assessed their 2016-2017 budgets. The results of our scenario analysis underscore that fiscal health across the U.S. state sector is subject to the powerful countervailing effects of pro-cyclical revenue trends and countercyclical expenditure pressures. We have previously asserted that from a credit perspective states fare better when they leverage periods of economic growth to restore fiscal alignment and build budgetary reserves. This simulation affirmed our view.

Throughout 2016, we have described state fiscal health as uneven. Several states have yet to fully recover from the recession that ended in 2009 and some remain ill-equipped to withstand unanticipated fiscal stress. Others—because their economic and revenue bases depend on oil extraction—are mired in more acute fiscal stress brought about by the dramatic fall in oil prices. Complicating matters is that since 2000, state tax revenues have, to varying degrees, grown increasingly responsive to changes in economic performance.

Overview

- Fiscal imbalance in the latter stage of economic expansion indicates heightened vulnerability to a recession scenario;
- States with more volatile revenue bases necessitate relatively larger budget reserves to achieve the same budgetary protection from recessionary conditions as states with more stable revenues;
- Countercyclical Medicaid enrollment patterns exacerbate the fiscal pressure on states during economic downturns;
- The magnitude of revenue shortfalls in a recession is a function of baseline forecast assumptions and the sensitivity of the tax base to economic conditions;
- Stress scenario analysis illustrates that aggregate potential revenue shortfall of $27 billion among the 10 states in our study could exceed these states' $21 billion in budget reserves

Continue reading.

09-Aug-2016

S&P Public Finance Podcast (U.S. State Stress Test & Detroit Public Schools)

In this week's episode, Managing Director Gabe Petek provides an overview of our recent report examining how 10 large states would be impacted by a hypothetical recession, and Senior Director Jane Ridley discusses our recent rating action on Detroit Public Schools.

Listen to the podcast.

Aug. 12, 2016

Even the Giants Are Complaining About San Francisco Real Estate.

A prominent tenant with a gorgeous waterfront location in the nation's most expensive city wants a big break on its property tax bill. It may have a case for getting one.

The tenant is the San Francisco Giants, who hold the lease at AT&T Park, where they play baseball. The stadium's location is prime real estate, with stunning bay views and close proximity to downtown, light rail and the Bay Bridge. Home prices have more than doubled in the city since the team built the park 16 years ago. Even though city assessment increases are limited under California law, the land value is expected to rise another 7 percent this year.

Assessor-Recorder Carmen Chu argues that it's only right for the Giants to pay their fair share of the increased worth, just like any homeowner or office building. "At the end of the day," Chu says, "we're talking about real estate values, which fundamentally come down to location. San Francisco and particularly the area of the city that the stadium is in is highly desirable," Chu says. "It's one of the fastest-growing areas."

But the Giants say Chu is asking for way too much. Two years ago, she retroactively doubled the team's property tax bill going back to 2011. The Giants have taken their case to the San Francisco's assessment appeals board. The team argues that its lease on the land is decreasing in value the longer they are tenants. The lease still has 66 years left to go, but the Giants seem to believe the value of the stadium itself is depreciating in the same way a car does.

That argument prevailed a decade ago, when the Giants won an earlier dispute over their property tax bill. But it's a debatable point, says Victor Matheson, a sports economist at College of the Holy Cross. Under income tax rules, the value of a property can depreciate over time. But that's not true under property tax rules. No one could argue that a 100-year-old house in good shape in an upscale neighborhood has no value.

The case for depreciation is undercut by the fact that AT&T Park not only still sparkles but is clearly bringing in lots of money for the team. "It's not like it's now generating half the money that it did when it opened," Matheson says.

The two sides are far apart. But regardless of the appeal's outcome, Chu should take heart from one thing. The Giants may not be paying as much as the assessor thinks is right, but anything at all is more than most sports franchises pay in property taxes. Usually, they're either playing in a municipally owned stadium or they've gotten a break on taxes as part of the initial deal. "They avoid paying taxes almost all over the country," Matheson says.

GOVERNING.COM

BY ALAN GREENBLATT | AUGUST 2016

Puerto Rico's Record Restructuring Seen Surviving Junk Rating.

The fate of the prototype for Puerto Rico's debt-restructuring effort hinges on winning an investment-grade credit rating on new bonds investors have agreed to accept in exchange for providing relief to the island's main electric utility.

While that may appear to be an arduous task for an agency already in technical default, it may not matter in the long run, according to two people involved with the negotiations who declined to be identified because the talks are private. After two years of negotiations, creditors have too much at stake to let the Puerto Rico Electric Power Authority's $9 billion restructuring unravel, they said.

What's giving investors comfort is the structure of the new securities, which will be repaid with dedicated revenue that the agency known as Prepa doesn't have access to and flows straight to the bond trustee. The island's electricity commission approved in June a 3.10 cent per kilowatt hour surcharge that will go toward repaying the bonds.

"You have to be able to trust that the revenue stream is protected and it can't be taken away and manipulated," said Daniel Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of state and local debt, including Prepa bonds. "If that type of structure can be set up, than a lot of things are possible."

Restructuring Template

In what would be the largest restructuring in the $3.7 trillion municipal-bond market, creditors holding about 70 percent of Prepa debt agreed in December to accept 85 cents on the dollar for the securities.

Analysts have pointed to the agreement as a road map for future debt talks once the financial control board being set up for the island by the U.S. takes effect later this year.

A junk rating doesn't necessarily prohibit Prepa from restructuring, said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. The utility would need to amend its creditor agreement, he said.

"Creditors still want to exit and a non-investment grade rating means that the economics are a little bit worse for everyone, but in the absence of any other good ideas, this is all they have," Fabian said.

Prices of the existing securities suggest investors remain wary. Bonds maturing in July 2040, the agency's most-actively traded security in the past three months, changed hands Aug. 5 at an average price of 65 cents on the dollar, 20 cents below the recovery rate, data compiled by Bloomberg show.

It's unlikely that Prepa will receive an investment-grade rating after the commonwealth defaulted in July and August on general-obligation debt that was guaranteed by its constitution, said Dick Larkin, director of credit analysis at Stoever Glass & Co., who spent nearly 26 years assigning municipal credit ratings at S&P Global Ratings and Fitch Ratings.

“I don’t believe any kind of a securitized deal coming out of Puerto Rico can get an investment grade when the sponsor itself is breaking constitutional law,” Larkin said.

S&P has already told Prepa that its restructuring, as of now, wouldn’t garner an investment grade, Caribbean Business reported, quoting Carlos Gallisa, a utility board member who represents residential customers. Prepa said in response that it hasn’t started the formal rating process yet.

Rating Process

“While the outcome of the rating process cannot be predicted at this stage, Prepa maintains that there is a path to obtaining an investment grade rating for the securitization bonds and intends to continue working diligently and collaboratively together with its creditors and other stakeholders to implement the deal agreed as part of the restructuring support agreement,” Lisa Donahue, Prepa’s chief restructuring officer, said in a statement. “Prepa intends to start engaging with Moody’s and also start the formal process with S&P in the near future.”

“We continue to have strong confidence that the securitization bonds are well-positioned to receive an investment-grade rating,” Stephen Spencer, managing director at Houlihan Lokey, adviser to a group of Prepa bondholders, said in a statement.

Getting investors to trust that it won’t default on the new bonds no matter what the rating is still a challenge. Hedge funds and insurance companies are already suing Puerto Rico and its agencies over a local debt-moratorium law and for redirecting certain revenue that the creditors say go against commonwealth or federal laws. That’s even after the federal legislation authorizing the island’s overall debt restructuring included a stay on litigation.

Upgrade Potential

Investors also face the risk that the electricity surcharge may not be enough with a declining population and if customers fail to pay bills on time, Fabian said. Overdue accounts totaled $1.8 billion as of May, the bulk of that from government entities, according to the utility’s website.

Prepa and its creditors have been negotiating since August 2014 on how to improve the utility’s finances after it raided reserve funds to pay for fuel. Creditors agreed to accept losses and wait longer to be repaid to enable the utility to rehabilitate a system that relies on oil to produce electricity. The goal is for Prepa’s operating costs to decrease over time so that it can repay its obligations. That’s a risk that investors appear to be willing to take whether the new debt is rated investment grade or not.

“This is a financing that’s not impossible, and could season itself into an investment-grade security,” Fabian said.

Bloomberg Business

by Michelle Kaske

August 9, 2016 — 2:00 AM PDT

Memphis Ministry’s Conduit Debt Put on Watch by S&P on HUD Probe.

Credit ratings on about $360 million of multifamily-housing bonds issued by Global Ministries Foundation, a Tennessee-based operator of low-rent apartments, were placed under review for possible downgrades by S&P Global Ratings because the U.S. Department of Housing and Urban Development is probing the non-profit.

The placement on CreditWatch with “negative implications” affects 23 municipal-debt issues sold in states including Alabama, Florida, Indiana, Louisiana and Tennessee, the rating company said in a news release.

“In our view, effective ownership and management are essential to an affordable housing program’s economic feasibility and sustainability,” S&P said. “The HUD investigation therefore warrants our review of GMF’s full portfolio and our assessment of the project owner’s overall strategy and management.”

GMF has come under scrutiny after the the U.S. Department of Housing and and Urban Development cut rent subsidies to more than 1,000 residents at GMF apartments in Memphis because the buildings were infested with roaches and had numerous health and safety violations. The loss of the federal funds caused bonds issued for the apartments to default, pushing the price to as little as 21 cents on the dollar.

HUD Section 8 subsidies support 15 of the 23 bond issues. S&P said that if it confirms that any of the Section 8 properties are at risk of losing their subsidies, it could downgrade or withdraw its ratings. Most of the issues carry investment-grade ratings, while four are already considered junk.

S&P said it was reviewing its assessment of GMF’s strategy and management “based on our view of GMF’s lack of strategic planning for the properties’ current state and weak operational effectiveness.”

“GMF is fully cooperating with recent HUD inquiries and requests for documentation, and we will continue to aid HUD and other government representatives should they have additional inquiries,” said GMF spokeswoman Audrey Young in an e-mailed statement. “In the interim, GMF remains focused and committed to its mission to provide housing to some of America’s families most in need of safe, affordable housing.”

Daryl Madden, a spokesman for HUD’s Office of Inspector General, confirmed that search warrants were executed at GMF’s office in Cordova, Tennessee, and a third party based in Dexter, Missouri. The Commercial Appeal of Memphis reported that the third party was the Gill Group, which appraised many of the properties GMF has purchased in Memphis.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 1:16 PM PDT

Treasury Didn’t Tell Puerto Rico to Default, Lawyer Says.

U.S. Treasury officials didn’t tell Puerto Rico to default on general-obligation bond payments, according to a lawyer representing the island in its $70 billion debt restructuring.

“At least in my experience, U.S. Treasury doesn’t say to the commonwealth ‘do x or y,’ ” Richard Cooper, a partner at Cleary Gottlieb Steen & Hamilton LLP, said Tuesday during a Puerto Rico conference at the CUNY Graduate School of Journalism in New York. “That is ultimately, I think fueled, by creditors speculating for their own purposes.”

Puerto Rico skipped paying nearly $1 billion to bondholders on July 1, including $780 million of principal and interest on general obligations. It was the largest default in the $3.7 trillion municipal-bond market and the first time a state-level borrower failed to pay on its direct debt since the 1930s.

Cleary Gottlieb is Puerto Rico’s legal adviser as it seeks to reduce a $70 billion debt load. The firm has been in discussions with U.S. Treasury staff, commonwealth officials and creditors as the parties negotiate on a how to restructure the island’s debt.

“Anyone who is seriously looking at this situation could tell you there wasn’t enough funds on July 1 to make those payments,” Cooper said.

U.S. Senator Orrin Hatch sent a letter in June to the Securities and Exchange Commission, asking the agency to investigate the information shared between some investors, Puerto Rico and U.S. government officials about the island’s fiscal state.

Hatch’s letter asks SEC Chair Mary Jo White to look into “whether information asymmetries, including asymmetries between public investors and government officials of Puerto Rico and the U.S. government have led to acts, actions and activities in violation of laws designed to protect investors and the integrity of the municipal-debt market.”

Bloomberg Business

by Michelle Kaske

August 9, 2016 — 9:12 AM PDT Updated on August 9, 2016 — 9:52 AM PDT

Detroit Schools Split Raises Risk of Default on State-Aid Debt.

Michigan’s plan to bail out the troubled Detroit public schools is putting debt backed by state aid at risk of falling into default if the bonds aren’t refinanced by mid-October.

Ratings have been slashed twice by S&P Global Ratings since late June on the district’s debt by a total of six levels to junk. Michigan’s restructuring of the district’s finances diverts state payments on about $370 million of bonds sold in 2011 and 2012 to a newly created school district that doesn’t have any responsibility for the old debt. The state still lacks a plan to refinance the bonds, and S&P said absent a plan, it would likely consider this a distressed exchange that would merit being labeled as a default.

“S&P was in its rights to downgrade,” said Tamara Lowin, director of research at Rye Brook, New York-based Belle Haven Investments, which oversees $5.3 billion of municipal debt and doesn’t own any district debt. “There was debt outstanding for which the revenue stream has disappeared. That is in itself alarming.”

The restructuring approved by state lawmakers and Governor Rick Snyder was designed to the give Detroit’s schools, reeling from the same population decline that bankrupted the city, a “clean slate,”

Snyder said when he signed the bill June 21. Moody's Investors Service, in a report issued a week later, said the restructuring was "credit positive" for bondholders "given that the district was teetering on bankruptcy and was reportedly unable to make payroll absent an immediate infusion of revenue."

The restructuring separates the district into two entities, with a new district responsible for the education of about 46,000 students and funded with state aid. The existing district would continue to pay off the district's old debt, including about $2.2 billion of bonds and pension liabilities from property taxes. The state will provide about $467 million to help repay the old debt.

The Michigan Finance Authority, which issued the debt cut by S&P for the district, is putting together a plan to refinance the debt by Oct. 20, said Danelle Gittus, spokeswoman for State Treasurer Nick Khouri. She declined to provide any additional details.

"We're still in the middle of preparing, so there's nothing else we can say," said Gittus.

Negative Outlook

Since the legislation was signed, the dollar price of the 2012 bonds maturing in four years has fallen to par from about 108 cents on the dollar. S&P cut the 2011 bonds to BB from A and the 2012 bonds to BB- from A-. Moody's doesn't rate the bonds S&P cut, but has a Caa1 rating with a negative outlook on the district, seventh in the junk category.

"It's a surprise that it was in the A category, then it's BB," said Bill Bonawitz, director of municipal research at PNC Capital Advisors, which oversees $6.5 billion in municipal bonds. "How do you go from being an A rated bond to a BB rated bond in a matter of five weeks? That's a huge difference."

S&P said it made its assessment based "on the lack of a formal plan regarding bondholder repayment terms" and the elimination of one of the pledged revenue streams in the fiscal year that begins Oct. 1.

The restructuring needs to be in place before Oct. 20, when state aid moves to the new district, leaving the bonds rated with S&P with just the property-tax pledge. Lack of specific details on the plan to refinance the two bond series creates uncertainty for bondholders, S&P said, raising the risk of default.

Eroding Value

"If they don't get it refinanced, the loss of the revenue stream is going to seriously erode bondholder value," said Jane Ridley, an S&P analyst, in a phone interview. "The bondholders will lose security."

S&P, the only firm that rates the 2011 and 2012 bonds, said in an Aug. 3 report that separating the state-aid payments from the bonds creates a more than 50 percent chance the debt could be cut again in the next two months. It warned that it could use its D, or default category, if repayment is less than originally promised. The bonds will keep a property-tax pledge under the new structure once state aid goes to the new district.

"As October approaches and ushers in the new fiscal year, it creates greater uncertainty as to whether bondholders will receive full and timely payment," S&P wrote. "If the actions taken through this process provide bondholders with anything less than the full promise of the original bonds, it is likely to be considered a distressed exchange and therefore a default under our criteria."

It appears the district will end up refinancing its debt, said Lowin, who noted there's questions

about the strength of the security on the bonds.

“It’ll be interesting to see what kind of market access the new debt will have,” she said.

Bloomberg Business

by Darrell Preston

August 10, 2016 — 2:00 AM PDT

Moody's Issues First Muni Green Bond Assessment in U.S.

WASHINGTON — The Upper Mohawk Valley Regional Water Finance Authority received a green bond assessment of GB1 for $8.78 million of water system revenue bonds on Wednesday from Moody’s Investors Service — the first GBA the rating agency has issued in the U.S.

The GBA, which ranges from GB1 for excellent to GB5 for poor, is designed to help investors determine if green bond proceeds are being used to achieve “positive environmental outcomes,” said Henry Shilling, Moody’s senior vice president who has played a key role in the development and use of the GBA.

Moody’s rolled out the final methodology for the GBA, which is not a rating, at the end of March. Since July, the rating agency has assigned four GBAs, the first three of which went to European entities.

The Upper Mohawk Valley Regional Water Finance Authority bonds are to be issued soon to help finance an increase in the water system’s resiliency and the furtherance of its mission to provide safe drinking water to users. The authority is an instrumentality of New York State that serves 130,000 residents through 38,900 service connections in the eastern portions of Oneida and Herkimer counties as well as the city of Utica.

And Moody’s expects to see more green bond issuances in the future.

In a report on the sector issued about two weeks ago, Moody’s said global green bond issuance during the second quarter reached a new quarterly high of $20.3 billion, raising total volume for the first half of the year to $37.2 billion, an 89% increase over the same period a year ago.

The U.S. accounted for about 22.8% of the second quarter issuance and 19.8% of first quarter issuance, Moody’s said. U.S. Issuers in the second quarter were from Massachusetts, New York, California, Maryland, Indiana, Cleveland, Ohio, New Jersey, Rhode Island, and St. Paul, Minn.

“With strong issuance already observable in the first two weeks of the third quarter, the global green market is poised to reach $75 billion in total volume for the year and set a new record for the fifth consecutive year,” Moody’s said in the report.

“The green bond market is gaining traction,” Shilling told The Bond Buyer.

Up until this year, green bonds were rated by Moody’s based on their creditworthiness, Shilling said. But institutional investors that buy them, which include banks, insurance companies and pension funds, wanted the rating agency to begin assessing whether they were actually being used to improve the environment, he said.

Investors want to know, for example, whether bonds issued to finance a project that will reduce a carbon footprint and deter climate change or to improve water quality were really accomplishing those goals.

The GBA is part of a broader strategy at Moody's to address environmental, social and governance risk more systematically and more consistently, Shilling said.

It is based in part on the disclosure practices of the issuer and borrower and how transparent they are. The GBA is determined according to five key factors: organization; use of proceeds; disclosure of the use of proceeds; management of proceeds; and ongoing reporting and disclosure on environmental projects financed or refinanced with the bonds.

In its rationale for giving the Upper Mohawk Valley Regional Water Finance Authority its GBA1 rating, Moody's said the authority is effectively organized and properly staffed with qualified and experienced personnel.

The bonds, which are explicitly designated as green bonds in the draft official statement, are to be issued under the authority's capital improvement plan to improve the water system's infrastructure through increased capacity and dependability, Moody's said.

About $4.05 million of the proceeds will be allocated to raw water transmission upgrades that will improve the authority's ability to draw water from the Hinckley Reservoir during major droughts that lead to below-normal water levels in the reservoir.

Another $650,000 is to be used to design two new water storage facilities in Marcy as well as improvements to a water treatment plan in Prospect and upgrades to pumps and regulating stations.

The final $4.13 million will be used to refinance callable bonds previously issued in 1999 and 2000 for improvements.

The authority has disclosed information on these projects in its annual comprehensive financial reports and on its website in capital projects committee reports.

"The MVWA has committed to track the net proceeds of the 2016 bonds and will confirm that such proceeds were used to finance the projects," Moody's said in its release. "The MVWA is committed to providing disclosures that demonstrate the environmental benefits resulting from the planned expenditures of the 2016 bonds."

The projects are expected to be completed within 12 months after they become available, the rating agency said.

"The first-year initial disclosure will indicate in detail how the proceeds were expended, the contractors performing the work and receiving payments, and the actual work that was completed," Moody's said in the release.

"Annual reporting will also include updates on four key metrics that at the same time link up to base line disclosures that permit comparative analysis," the rating agency added. "These include reservoir water levels versus transmission capacity, conveyance of purified potable water during the year, trihalomethane levels and the total amount of hydroelectric power produced by the turbines within the water treatment facility."

The Bond Buyer

By Lynn Hume

August 10, 2016

MSRB Files Rule Change and Guidance Related to ABLE Programs.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a rule change under MSRB Rule G-45 to delay reporting of information by underwriters to programs established to implement the Achieving a Better Life Experience Act (ABLE). The MSRB's filing also provides guidance under MSRB Rules G-42 and G-44 to municipal advisors to sponsors or trustees of municipal fund securities, including ABLE programs. The amendments are effective immediately.

Read the regulatory notice.

View the SEC filing.

MSRB Provides Guidance on Trade Reporting Rule.

The Municipal Securities Rulemaking Board (MSRB) today published guidance in question-an--answer format to support compliance with MSRB Rule G-14, Reports of Sales or Purchases of Municipal Securities. Rule G-14 requires municipal securities dealers to report all executed transactions in most municipal securities to the MSRB's Real-Time Transaction Reporting System (RTRS) within 15 minutes of the time of trade, with limited exceptions.

Amendments to Rule G-14 to enhance post-trade price transparency became effective on July 18, 2016.

View the new guidance.

N.J. Approves $800 Million Bond Plan to Complete Mega Mall.

New Jersey's Local Finance Board approved a plan to use an out-of-state lending agency that specializes in risky securities to finance an $800 million bond sale to resurrect American Dream, the unfinished mega mall begun more than a decade ago.

The project in East Rutherford, about 10 miles (16 kilometers) west of Manhattan, has failed to fulfill several promised grand-opening dates as developers ran out of cash. It now anticipates opening in mid-2018.

The latest idea calls for public financing of $125 million more than the mall's latest owner, Triple Five Group of Canada, proposed in May. The bonds would be sold by the New Jersey Sports and Exposition Authority to the Wisconsin Public Finance Authority, according to agency documents. The Wisconsin pass-through operation charges a fee to market tax-exempt bonds for out-of-state entities.

Higher Costs

Triple Five expects the debt to be unrated and tax-exempt, and the offering made in September, according to Tony Armlin, vice president of development and construction. The deal swelled to $800 million, he said, because issuance and construction costs have increased.

“We’ve been working with Wisconsin for several years,” Armlin told reporters after Wednesday’s finance-board meeting in Trenton. He called it an “efficient, economical” issuer.

An agreement earlier this year had made the borough of East Rutherford the issuer of the so-called redevelopment-area bonds, a decision that is expected to be rescinded, according to Emike Omogbai, a spokeswoman for the Local Finance Board.

“The new sale structure of the RABs does further insulate the borough and the state, since neither will be involved in the public issuance and sale,” Omogbai said in an e-mail.

Taxpayers Uneasy

East Rutherford Mayor James Cassella said homeowners had been uneasy with the notion of issuing hundreds of millions of dollars in debt. The borough has fewer than 10,000 residents and an annual budget of about $26 million. The sports authority, he said, was the more logical issuer, because it owns the land on which the mall is built.

Scott Carper, a program manager for the Wisconsin issuer, said the agency received details of the New Jersey deal from Triple Five on Tuesday.

“Staff is currently processing the application and in the process of receiving all of the application materials,” he said in an e-mail.

The agency has had no contact with the New Jersey Sports and Exposition Authority, Carper said. That panel also must approve the bond issue.

Repayment Risk

Agencies like the Wisconsin entity sell securities and immediately lend the proceeds to borrowers whose projects qualify for federal tax exemptions for public works. The authorities aren’t on the hook if the money isn’t repaid. That makes the bonds among the riskiest in the municipal market: They make up as much as 30 percent of outstanding debt but account for almost 60 percent of defaults, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics.

The Wisconsin authority has had no payment defaults. Last year, when it was the most active conduit issuer in the U.S., more than half its issues were unrated, according to data compiled by Bloomberg.

“The Public Finance Authority can issue bonds in all 50 States and has assisted many eligible borrowers nationally to access tax exempt financing,” Carper said. “PFA partners with local governments to assist in the financing of public benefit projects that create temporary and permanent jobs, affordable housing, community infrastructure and improve the overall quality of life in local communities.”

A bond summary prepared by Goldman Sachs Group Inc., the underwriter, shows that total debt service would be $1.9 billion assuming a 2049 maturity, according to the application. Average annual debt service would be $59.3 million until August 2049, with $615.9 million due then.

American Dream's multicolored exterior, with an indoor ski slope jutting above East Rutherford's swampy meadowlands, is a garish landmark along the New Jersey Turnpike. Republican Governor Chris Christie called it "the ugliest damn building in New Jersey, and maybe America."

Triple Five, based in Edmonton, Alberta, owns the Mall of America, ranked by Time magazine as the most-attended U.S. attraction with 40 million annual visitors. The New Jersey mall's construction costs have reached almost $5 billion to include a theme park, the first U.S. indoor ski slope, retail and restaurants.

Bloomberg Business

by Elise Young

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IRS Ends Eight-Year Audit of Florida's Villages Without Penalty.

The U.S. Internal Revenue Service has closed an eight-year exam of about $300 million of tax-exempt bonds issued for The Villages, one of the world's largest retirement communities, without imposing a penalty, according to a filing by the development districts that issued the debt.

The Village Center Community Development District and the Sumter Landing Community Development District, located about 60 miles (97 kilometers) northwest of Orlando, said the IRS notified them on July 14.

"We were steadfast in maintaining that the districts had followed the law and that there was no factual basis for the IRS examination," wrote district manager Janet Tutt in a July 18 memo listed Wednesday on the Municipal Securities Rulemaking Board's disclosure website. "To have this examination finally closed without penalty is a tremendous victory for our community and vindication of our supervisors and district staff who do a tremendous job serving our residents."

The districts, created by the late billionaire developer H. Gary Morse, issued the bonds to purchase golf courses, recreational centers and other amenities that Morse build. The IRS said that the bonds shouldn't have received tax-exempt status because the boards were appointed by Morse and the majority of the members worked for him. The IRS also maintained the bonds were issued for private, not public, purposes.

"We have concluded that closing this examination without further IRS action supports sound tax administration," wrote Allyson Belsome, an IRS field operations manager for tax-exempt bonds in a July 11 letter to the development districts.

"Federal law prohibits the IRS from discussing specific taxpayers," said IRS spokesman Dean Patterson.

During the course of the audits the district refinanced the bonds in 2014 with taxable bonds to take advantage of lower interest rates.

Bloomberg Business

by Martin Z Braun

August 10, 2016 — 1:50 PM PDT

Chapin Joins New York's Exclusive Schools in Muni Borrowing Boom.

The Chapin School, the more than 100-year-old private girls' school whose alumnae range from members of the Roosevelt family to fashion designer Vera Wang, is the latest of New York City's elite educators to borrow in the tax-exempt bond market to expand.

Build NYC Resource Corp. sold $75 million in debt on Wednesday for the kindergarten-through-high-school institution to help finance ongoing construction at its 100 East End Ave. location, including a new gymnasium, cafeteria and more classrooms. The three-story expansion will also provide additional space for its performing arts programs, a common area and a studio for the robotics program.

The Chapin sale follows simple municipally financed expansions by other New York preps schools such as the Brearley School and the Ethical Culture Fieldston School. Tuition at Chapin for the 2016-17 academic year is $47,500 for all 769 students across its lower, middle, and upper schools, an increase of 4.7 percent from the previous year, bond documents show. That doesn't cover the cost for uniforms, books, supplies and other extracurricular activities, which families must pay for out of pocket.

In addition to rising tuition and the bonds, Chapin has also raised about two-thirds of its $90 million funding goal for its capital campaign. The school raised about $18.6 million in the most recent fiscal year, according to bond documents.

S&P Global Ratings assigned the offering a rating of AA-, the fourth-highest investment grade rank, with a stable outlook, reflecting the school's "very strong enterprise profile as evidenced by its very selective profile, solid matriculation, high retention and incremental enrollment growth," credit analysts said in a report.

Tax-exempt 10-year securities were priced at a yield of 1.66 percent, or 0.19 percentage point above benchmark debt, data compiled by Bloomberg show. Wednesday's sale also reduced some of Chapin's outstanding debt burden, which now only includes the $75 million of funds raised through the offering, S&P said.

Bloomberg Business

by Molly Smith

August 11, 2016 — 9:28 AM PDT

Barclays Center Owner Prokhorov to Refinance Arena's Debt.

Mikhail Prokhorov, the Russian-born billionaire owner of the Brooklyn Nets and the Barclays Center, is taking advantage of rock-bottom interest rates in the U.S. municipal bond market to refinance about $480 million of debt issued in 2009.

The bonds, which are backed by payments in lieu of taxes, were issued at a top yield of 8 percent and rated BBB- by S&P Global Ratings Inc., and Baa3 by Moody's Investors Service, the lowest investment grade. BBB rated revenue bonds maturing in 30 years yield 3.42 percent, according to data compiled by Bloomberg. The 17,732-seat arena, which is also home to the National Hockey League's New York Islanders, will generate operating profits of $46 million before paying debt service in 2016-2017, according to the preliminary offering statement.

Refinancing the 2009 bonds may reduce debt payments by $6 million annually, according to the statement. Net debt service for the proposed 2016 bonds will peak at an estimated $48 million in 2043.

Prokhorov, who has a net worth of $10 billion, according to the Bloomberg Billionaires Index, completed his acquisition of the National Basketball Association's Nets and the arena from developer Bruce Ratner's Forest City Enterprises Inc. in December 2015. Bloomberg News reported last month that the Islanders were in talks with the owners of Major League Baseball's New York Mets about building a hockey arena in Queens.

Prokhorov and the Islanders have the right following the upcoming NHL season to start talks regarding modifying their 25-year license agreement. If the parties can't reach an agreement by Jan. 1, 2018, either party has the right to terminate the agreement, according to the offering statement.

"Although the loss of the Islanders would result in the immediate availability of a minimum of 44 event dates, arena management could leverage the Advisory Board, its Los Angeles-based office, and other existing relationships to fill a portion of those dates with third party events," according to a consulting report included in the offering statement. The Advisory Board is made up of media, music, live entertainment and artist management "industry leaders" and advises the arena's event booking team.

Past Advisory Board-aided concerts include shows by Rihanna, Justin Bieber, and Ariana Grande. The Los Angeles office of the board has secured shows by Selena Gomez and Kygo.

In addition to the Nets, Islanders, and concerts, Barclays hosts family shows, boxing, college basketball and professional wrestling. Last year, the arena has the second-highest concert ticket sales of any arena in the U.S. and the eighth-highest worldwide, according to the consulting report. Third-party events generated $14.7 million in profits for the arena last year.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 8:14 AM PDT Updated on August 9, 2016 — 10:11 AM PDT

Hedge Funds Press Banco Popular for Puerto Rico Deposits.

Hedge funds that own Puerto Rico bonds are putting pressure on Banco Popular over commonwealth funds deposited at the bank that they say should go to them.

Lawyers representing the Ad Hoc Group of General-Obligation Bondholders sent a letter Thursday to Banco Popular de Puerto Rico in San Juan, notifying the bank of the group's rights and remedies regarding government funds redirected to meet other obligations.

The so-called clawback revenue should be used to help repay general-obligation debt because the island's constitution says those securities must be repaid before other bills, the group said. The commonwealth defaulted on about $1 billion of principal and interest due July 1, including $780 million for general obligations, the largest payment failure in the $3.7 trillion municipal-bond market.

Some members of the bondholder group, including Aurelius Capital Management, Autonomy Capital, Covalent Partners, FCO Advisors, Monarch Alternative Capital and Stone Lion Capital Partners last month sued Governor Alejandro Garcia Padilla, claiming that a federal law enacted on June 30, called Promesa, which means promise in Spanish, prohibits Puerto Rico from redirecting cash or assets that violates its constitution.

Revenue Redistribution

"Our clients reserve all rights and remedies with respect to the clawed back funds referenced in the pending lawsuit and any and all actions Banco Popular may take that are inconsistent with the constitution and laws of the U.S., as well as the constitution and laws of Puerto Rico and the debt obligations issued there under," Andrew Rosenberg, a lawyer at Paul Weiss Rifkind Wharton & Garrison, which is representing the hedge funds, said in the letter.

Teruca Rullan, a spokeswoman for Banco Popular in San Juan, declined to comment.

Garcia Padilla began clawing back agency revenue last year to help pay general obligations due Jan. 1. The administration redirected $289.2 million of revenue from January to June of this year, with $143.2 million deposited at Puerto Rico's Government Development Bank, according to the commonwealth's most recent audit.

Puerto Rico deposited the remaining amount at Banco Popular, according to the investor group.

Bloomberg Business

by Michelle Kaske

August 11, 2016 — 2:00 PM PDT Updated on August 12, 2016 — 6:24 AM PDT

Illinois, New Jersey Among Most Vulnerable in S&P Stress Test.

Municipal-bond investors in Illinois, Pennsylvania, New Jersey, and Connecticut have good reason to be worried.

The states are among those that S&P Global Ratings has deemed to have "only a limited capacity" to withstand the effect of a moderate recession, according to a report published by the credit-ratings company.

The report, titled "Fiscal Resilience Among U.S. States Varies As Economic Expansion Surpasses Seven-Year Mark," found that a majority of the 10 states with the most tax-supported debt outstanding have a limited ability to handle the effects of an economic downturn, judging by stress tests S&P conducted on their 2016-2017 budgets. States are better off by leveraging periods of economic growth to build reserves, S&P concluded.

“The results of our scenario analysis underscore that fiscal health across the U.S. state sector is subject to the powerful countervailing effects of pro-cyclical revenue trends and countercyclical expenditure pressures,” said credit analyst Gabriel Petek.

Of the 10, S&P found that Illinois, Pennsylvania, New Jersey, and Connecticut are the most vulnerable to significant fiscal stress. Washington, Florida and New York are best-positioned should the economy turn south, the report said. California, Massachusetts, and Wisconsin rounded out the list of those states evaluated.

Bloomberg Business

by Molly Smith

August 9, 2016 — 6:35 AM PDT

Memphis Ministry’s Muni-Bond Sales Being Investigated by SEC.

The U.S. Securities and Exchange Commission is investigating a Tennessee ministry that owns two municipal bond financed low-income apartment complexes in Memphis that were infested with roaches, caked with sewage and replete with broken windows and damaged walls.

The SEC’s Atlanta office is conducting an inquiry into Global Ministries Foundation and the 2011 sale of about $12 million of bonds to purchase the Warren and Tulane apartments, according to a letter filed in U.S. court in a case brought by the bondholders’ trustee. The trustee, Bank of New York Mellon Corp., sued GMF in May and won the appointment of a receiver after the bonds defaulted.

“We believe you may possess documents and data that are relevant to an ongoing investigation being conducted by the staff of the United States Securities and Commission,” EC senior counsel Michael Adler wrote in a July 18 letter to the receiver, Donald Shapiro. “Accordingly, we hereby provide notice that such evidence should be reasonably preserved and retained until further notice.”

The letter from the SEC was filed as part of the receiver’s report to the court for the period July 1 through July 31.

“GMF will continue to fully cooperate with the government’s investigation as called upon,” Audrey Young, a spokeswoman for GMF, said in an e-mail statement.

In March, the U.S. Department of Housing and Urban Development cut off rent subsidies for more than 1,000 residents that backed the bonds and said it would relocate them because of numerous health and safety violations. As a result, the Warren and Tulane bonds defaulted.

GMF, which is run by Richard Hamlet, a Baptist minister, has built a 10,500-unit, low-rent real estate empire with money raised in the $3.7 trillion municipal-bond market. In 2011, GMF issued $12 million in bonds through the Memphis Health, Educational and Housing Facility Board, to finance the purchase of Warrant and Tulane in an area where as many as 40 percent of the families live in poverty. A Las Vegas-based environmental consultant concluded that the apartments were in “good to fair” condition at the time and an appraiser valued them at more than $15 million, according to an official statement for the bond issue.

The SEC told the receiver, Shapiro, to preserve documents created on or after June 1, 2010, by Hamlet, and three members of his staff or those related to the 2011 bond issue, HUD, and the GMF Preservation of Affordability Corp., the ministry's housing non-profit arm. The housing unit transferred $7.1 million to the ministry in 2014, according to federal tax filings, subsidizing its missionary work, which includes training pastors, producing a national radio program and undertaking evangelistic crusades overseas.

Bloomberg Business

by Martin Z Braun

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Ignore the Rules (If They Don't Apply): Squire Patton Boggs

We are rather fond (because you are rather fond) of discussing Rev. Proc. 97-13 and related authorities that address private business use from management contracts. Back in 2014, when the IRS amplified Rev. Proc. 97-13 in Notice 2014-67 (collectively, "97-13"), we even made a holiday present of it. Now more than ever, 97-13 is an essential tool that allows issuers and borrowers to use managers in their facilities and still stay within the private business use limitations. But 97-13 is not a panacea, nor do you always need it to avoid private business use. So, to mix things up, we'll now discuss when you can ignore 97-13, either because you don't need it, or because it can't help you anyway. Many people fall into the habit of thinking that the 97-13 rules apply to any arrangement in bond-financed facilities. However, that's not the case.

Let's start with a key definition from 97-13: a "management contract" is "a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility."

From the definition alone, it is clear that some contracts are not "management contracts." Only contracts with "service providers" are included, which means that private parties that have more significant rights to the actual or beneficial use of the bond-financed property (such as lessees of the bond-financed property) will cause private business use of the bond-financed facilities even if the terms of the arrangement technically fall within a safe harbor. In other words, 97-13 cannot help you escape the private business use that may arise from a lease of bond-financed property. (Other exceptions may apply, though, including those in Reg. 1.141-3(d).)

In addition, not all service contracts rise to the level of a "management contract" that must be scrutizined under 97-13. These contracts fall outside of what the regulations and 97-13 say when they refer to a "management contract" that can give rise to private business use. Four notable exceptions from the definition of "management contract" are provided by the Treasury Regulations and referenced in the 97-13. We include these below, along with comments on each:

- Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

The "solely incidental" language allows certain minor contracts to be excluded. If the particular contract you are reviewing is one of those that is contained within the parenthesis, even better. However, those are only examples, which means that other contracts may also qualify. To date,

despite repeated requests from professionals to provide more guidance regarding the scope of "similar services," we have not gotten any.

- The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

Similarly, "mere" admitting privileges do not fall within 97-13. This exception, like the prior exception, focuses on the economically insignificant and incidental nature of such agreements. What about if you aren't considering a contract with a hospital? Don't forget that this exception may also help by analogy to establish an exception from 97-13 based on facts and circumstances, although one should tread lightly in doing so.

- A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in § 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and
- A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

We lumped these two together because they are quite similar. The third and fourth exception each depend on reimbursement consisting only of "actual and direct expenses." Like the prior exceptions, these two also focus on the economic insignificance of such agreements.

The fourth exception is particularly helpful because it is not tied to any particular type of services. An important limit to the exception is that it is limited to actual and direct expenses; therefore, if a contract involves a payment to compensate a service provider for projected expenses, it would not qualify for the fourth exception from being treated as a management contract.

Note that this fourth exception dovetails with the provision of 97-13 that reimbursement of actual and direct expenses is not treated as "compensation" that factors into 97-13's list of safe harbors that link permitted compensation to permitted length. So, even if a contract doesn't meet an exception from the definition of a "management contract," to the extent that compensation involves reimbursement of actual and direct expenses, that compensation is ignored for purposes of the safe harbor. In sum, it may be tempting to treat 97-13 as a one-size-fits-all tool that either fixes (or doesn't) every private business use issue. But remember that 97-13 applies only to "management contracts," and that this term has a specific definition.

Squire Patton Boggs

by Alexios S. Hadji

USA August 11 2016
