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Jamie Stewart

Muni Bond Yields Fall as Much as 8 Basis Points.

(Reuters) – U.S. municipal bond yield dropped as much as 8 basis points on Thursday as investors took advantage of the cheapness of tax-exempt debt versus taxable U.S. Treasuries, according to a final market read by Municipal Market Data (MMD).

March 19, 2015 3:14pm EDT

(Reporting by Robin Respaut; Editing by Jeffrey Benkoe)

Key Regulator Shows No Sign on Budging on Muni Bank Rule.

(Reuters) – A key U.S. regulator said on Wednesday it supports banks making prudent investments in the U.S. municipal bond market but showed no indication it would soften its stance on refusing to allow banks to include muni bonds as liquid assets.

Regulators in September issued rules that banks must hold enough easy-to-sell assets in case of a crisis. Municipal bonds, used by U.S. localities to fund infrastructure investments and other spending, were not included in the buffer.

Since then towns and cities have lobbied regulators to change the rules, fearing that exclusion of muni bonds from capital requirements would discourage banks from holding the bonds and drive up their borrowing costs.

“The agency considers bank investments in municipal securities a prudent activity when part of a safe and sound investment strategy,” the Office of the Comptroller of the Currency (OCC) said in a statement.

The OCC issued the statement after a Bloomberg report said the OCC and the Federal Deposit Insurance Corporation (FDIC) were refusing to budge on the issue. The Fed has publicly said it wants to amend the rule to include munis.

A rule change, however, would require agreement of the other two bank regulators, the OCC and the FDIC. While the Fed is open to a change, the OCC is most opposed to amending the rule, while the FDIC holds a middle ground, with more of a “wait-and-see” approach, a regulatory source said.

The OCC and the Federal Reserve declined to comment. The FDIC did not immediately return a request for comment.

The OCC pointed out that bank ownership of muni bonds had increased since the so-called Liquidity Coverage Ratio Rule became final in October of last year.

Retail investors are the largest holders in the $3.7 trillion municipal bond market. In the second quarter, households held 40 percent of all outstanding municipal bonds, $1.5 trillion, while banks held $458 billion, or around 12 percent according to Federal Reserve data.

U.S. states and cities wrote a letter urging regulators to allow banks to treat municipal bonds as liquid assets in October, arguing that munis are among the safest investments and "highly tradeable".

The letter was signed by the National Governors Association, National Conference of State Legislators, Council of State Governments, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association and the Government Finance Officers Association.

BY EDWARD KRUDY

NEW YORK, March 18, 2015

(Additional reporting by Douwe Miedema; editing by Gunna Dickson)

Preston Hollow Capital Hires Municipal Finance Veteran to Build Origination Team.

DALLAS–(BUSINESS WIRE)–Preston Hollow Capital, LLC announced today the addition of a seasoned municipal finance professional to lead its origination efforts. Ramiro Albarran was named Managing Director and Head of Origination for the Dallas-based merchant bank. "Ramiro brings 26+ years of municipal finance experience with unique and on-point capabilities to PHC," says Jim Thompson, the Chairman and CEO of Preston Hollow Capital.

"Ramiro brings 26+ years of municipal finance experience with unique and on-point capabilities to PHC"

"As the Head of Origination, Ramiro will oversee asset origination for PHC and build out a team dedicated to working collaboratively with the broker-dealer and financial advisor communities, borrowers and investors," Thompson added. "We're confident that Ramiro's skills and relationships will help establish Preston Hollow Capital as the premier solutions provider in municipal specialty finance."

Mr. Albarran's entire career has been focused on complex municipal, infrastructure and real estate related asset classes, including unique financings for 7 World Trade Center, the Bank of America Tower in New York, and the Harbor Point project in Stamford, Connecticut, the latter having been one of the largest tax increment financings completed since the recession. Mr. Albarran joins from Guggenheim Securities where served as Head of the Municipal and Infrastructure Finance Group. His prior experience includes various senior roles at Bank of America including heading the public finance department as well as various specialty banking groups including real estate. He also served as a principal at Starwood Infrastructure LLC and as a partner at Stone & Youngberg LLC. Mr. Albarran received a B.A. in Economics and Engineering from Dartmouth College.

About Preston Hollow Capital and Jim Thompson

Preston Hollow Capital is a diversified merchant bank launched in January 2014 by Jim Thompson, the former President and Chief Executive Officer of ORIX USA. The PHC team, comprised of former ORIX USA senior executives and employees, seeks to produce superior risk-adjusted returns across a broad spectrum of investment strategies. Mr. Thompson, along with his wife Angela, supports Dallas-area non-profits through the Jim & Angela Thompson Foundation, and STEM education initiatives through the Blue Sky Educational Foundation. He is a board member of the Dallas Urban Debate Alliance, and is a former board member of Dallas CASA, Angel Flight South Central and the AOPA Foundation.

March 18, 2015 10:00 AM Eastern Daylight Time

Contact Preston Hollow Capital at Admin@PHCLLC.com or 214-389-0800.

Contacts

C. Pharr & Company for PHC
Krystal Morris, 972-931-7576, ext. 355
Krystal@pharrpr.com

Fight Among Regulators Over Municipal Bonds Could Mean No New School for Your Kid.

WASHINGTON • States and cities have griped for months that a rule designed to make big banks safer will prompt a Wall Street exodus from the $3.7 trillion municipal bond market. While the Federal Reserve wants to make changes, two key regulators are standing in the way.

At issue is a measure approved in September that requires banks to hold a chunk of assets that could be easily converted into cash during a crisis. While munis weren't considered liquid enough to make the cut, Fed officials have been convinced after aggressive lobbying by lenders and local governments, said three people with knowledge of the matter.

The problem: The Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency remain unconvinced, the people said. With the largest U.S. banks accounting for about 12 percent of investments in munis, politicians are concerned that unless the rule is revised, it will become more expensive to build bridges, roads and schools.

This will have "real price and yield impacts," James McIntire, the treasurer of Washington state, said in an interview. "To drive up the cost of our debt issuance for no quantifiable reason would be a mistake."

The September rule was among several measures adopted by regulators to prevent a repeat of the 2008 financial meltdown, when markets froze and some banks needed a government bailout to stay afloat. It requires lenders to hold enough assets that are deemed high-quality — such as Treasuries, highly-rated corporate bonds and even the debt of foreign governments — to be able to endure a 30-day squeeze.

Many bonds backing infrastructure projects are bought and sold infrequently. Still, Fed officials have privately advocated that banks shouldn't face restrictions on holding munis that trade more often, said the people who asked not to be named because discussions between the agencies are private.

So far, regulators at the FDIC and OCC say they haven't seen enough evidence to bring them around to the Fed's point of view, according to the people. The rule, which banks must fully comply with by 2017, can't be changed without their consent.

Spokesmen for the Fed, FDIC and OCC declined to comment.

Sen. Charles Schumer, D-New York, has been a vocal critic of the decision regulators made on munis. At a September hearing, he told representatives from the Fed, FDIC and OCC that the rule would undermine "the lifeblood of development in this country." Schumer has since continued to make his case behind the scenes in private conversations with regulators, said a person with knowledge of the discussions.

"Many municipal bonds are highly liquid and they should count as such," Schumer said in a statement. "Creating a disincentive for banks to hold these bonds could slow or even stop major infrastructure projects in their tracks."

While Wall Street generates revenue underwriting munis, banks also have been the biggest purchasers of the bonds in recent years, adding $200 billion to their holdings since 2010, Fed data shows. The buying has boosted prices at a time when some investors are selling because of concerns that as interest rates rise, some issuers may struggle to pay their debt.

One argument in favor of letting banks continue their buying is that borrowers in the muni market typically default less frequently than corporate issuers. Rep. Michael Capuano, D-Mass., made that point to Fed Chair Janet Yellen last month, saying at a hearing that curtailing muni investments was akin to telling lenders that their money would only be safe if it's stuffed under a mattress.

Yellen's response: "It's not a question of safe; it's a question of liquid and how rapidly these assets can be converted into cash."

March 18, 2015 4:00 pm • By JESSE HAMILTON and CHEYENNE HOPKINS

Bloomberg News

With assistance from William Selway in Washington.

[U.S. Bancorp Joins ORIX USA with First Renewable Energy Tax-Credit Syndication.]()

U.S. Bancorp (NYSE:USB) and ORIX USA Corp. announce the closing of U.S. Bancorp's first renewable energy syndication, which is expected to enable SolarCity to install approximately 2,500 solar power systems at homes and businesses in nine states.

U.S. Bancorp led the transaction, introducing of an industry-leading product that will allow both first-time and experienced investors to tap into the renewable-energy tax credit market.

This agreement will help finance the installation of solar arrays in Arizona, California, Colorado, Connecticut, Hawaii, Massachusetts, Maryland, New Jersey and New York, with more to come. The syndication is expected to finance more than $100 million in solar projects.

The 2,500 systems installed by SolarCity are projected to produce enough clean-source electricity in their first year of operation to equal removing 4,250 cars from the roads each year. The fund makes it possible for many home and business owners to install solar panels with no upfront cost, and pay less for solar electricity than they pay for utility power.

“This is a new phase of business development for U.S. Bancorp,” said Zack Boyers, chairman and CEO of U.S. Bancorp Community Development Corporation. “Entering into our first renewable energy syndication agreement allows us to expand SolarCity’s ability to install more energy-saving solar arrays on homes and businesses across the nation that will, as a result, produce more jobs and assist in the country’s economic recovery.”

The syndication is a gain on multiple fronts for U.S. Bancorp: It boosts the capital in the solar market, increases use of clean energy, and diversifies the bank’s ability to serve the needs of a growing market as well as its products and services, Boyers said.

The syndication deal marks ORIX’s entry into the renewable-energy tax credit financing market.

“We welcome the opportunity to help consumers and businesses reduce greenhouse gas emissions by becoming solar energy users,” said Andrew Garvey, managing director and head of ORIX Municipal Finance. “ORIX is a unique platform, and this transaction shows how we can make our capital available in innovative ways to achieve the financing needs of our clients.”

The installations will produce more than 350 construction and installation jobs. They will also generate $76 million in economic impact from salaries, equipment purchases, construction materials and secondary spending by workers on local services and on solar industry vendor supplies and services.

ST. LOUIS (The Associated Press) – Mar 16

About ORIX Municipal Finance ORIX Municipal Finance makes investments of approximately $10 million to $50 million in public, semi-public and private entities. The company’s investment portfolio includes transactions for a wide range of industries, including health care, housing, education, energy and transportation. ORIX Municipal Finance is a subsidiary of ORIX USA, a Dallas-based financial services firm known for providing innovative capital solutions that clients need to propel their business to the next level. ORIX USA and its family of companies have more than 1,400 employees with principal offices in Atlanta; Chicago; Hartford, Conn.; Los Angeles; Minneapolis; New York; San Francisco; Seattle; Washington, D.C.; Frankfurt, Germany; London; and Paris. ORIX USA holds approximately $7 billion of assets and manages an additional $30 billion, approximately. ORIX USA is a wholly owned subsidiary of ORIX Corporation, a Tokyo-based, publicly owned international financial services company with operations in 36 countries and regions worldwide. ORIX Corporation is listed on the Tokyo (8591) and New York Stock Exchanges (IX). For more information on ORIX Municipal Finance, visit www.orix.com.

About U.S. Bancorp Community Development Corporation With nearly $15.8 billion in managed assets as of Dec. 31, 2014, U.S. Bancorp Community Development Corporation, a subsidiary of U.S. Bank, provides innovative financing solutions for community development projects across the country using state and federally sponsored tax credit programs. USBCDC’s commitments provide capital investment to areas that need it the most and have contributed to the creation of new jobs, the rehabilitation of historic buildings, the construction of needed affordable and market-rate homes, the development of renewable energy facilities, and the generation of commercial economic activity in underserved communities. Visit USBCDC on the web at www.usbank.com/cdc.

About U.S. Bank Minneapolis-based U.S. Bancorp (NYSE: USB), with $403 billion in assets as of Dec. 31, 2014, is the parent company of U.S. Bank National Association, the fifth largest commercial bank in the United States. The company operates 3,176 banking offices in 25 states and 5,022 ATMs and provides a comprehensive line of banking, brokerage, insurance, investment, mortgage, trust and payment services products to consumers, businesses and institutions. Visit U.S. Bancorp on the web at www.usbank.com.

CONTACT: U.S. Bank Corporate Communications

Shera Dalin, 314-335-3335

shera.dalin@usbank.com

@usbank_news

San Bernardino has Defaulted on $10 Million in Bond Payments.

(Reuters) – The southern California city of San Bernardino has defaulted on nearly $10 million in payments on its privately placed pension bond debt since it declared bankruptcy in 2012, according to documents seen by Reuters.

In addition, the city has not negotiated with its bondholders since September, according to a person familiar with the stalled negotiations.

The missed payments illustrate the trend among cities in bankruptcy to favor payments to pension funds over bondholder obligations, which has increased the hostility between creditors and municipalities.

San Bernardino declared last year that it intends under its bankruptcy exit plan to fully pay Calpers, its biggest creditor and America’s largest public pension fund with assets of $300 billion.

The city continues to pay its monthly dues to Calpers in full, but has paid nothing to its bondholders for nearly three years, according to the interest payment schedule on roughly $50 million of pension obligation bonds issued by San Bernardino in 2005.

The non-payment of the bond debt and the city’s lack of interest in talks with its pension bondholders just weeks before it must produce a bankruptcy exit plan should serve as a wake-up call to Wall Street issuers of debt to struggling cities, according to Michael Sweet, a bankruptcy attorney with Fox Rothschild in San Francisco.

In January San Bernardino’s city attorney, Gary Saenz, told Reuters the city intended to cut its bondholder debt under its bankruptcy plan.

San Bernardino’s bankruptcy is being closely watched by the $3.6 trillion U.S. municipal bond market.

In the recent municipal bankruptcies of Detroit – the biggest-ever U.S. municipal bankruptcy – and Stockton, California, bondholders were forced to accept big cuts to their debt while pensioners emerged relatively unscathed.

“Bondholders should be realizing that in Chapter 9 cases those who will invariably get better treatment by the cities are former and current employers, who are part of the community, and not the faceless bankers holding commercial paper,” Sweet said.

But Sweet said San Bernardino’s treatment of its bondholders could come back to haunt it. “Down the road, the city may find that the capital market is unavailable to it or that it will be penalized at a very high rate when it seeks to borrow,” he said.

San Bernardino, a city of 205,000 located 65 miles east of Los Angeles, declared bankruptcy in July 2012 with a $45 million deficit.

Bondholders and public employees want to understand how distressed cities handle their debts to Wall Street compared with other creditors such as pension funds.

San Bernardino’s roughly $50 million pension bond debt was used in 2005 to pay off a portion of the city’s obligation to Calpers.

In an unprecedented legal argument for a Chapter 9 municipal bankruptcy, EEPK, the Luxembourg-based bank and holder of the pension bonds, and Ambac Assurance Corp, which insures a portion of the bonds, assert in a January lawsuit against San Bernardino that those bonds are part of a single pension obligation, so that any payment to Calpers by San Bernardino requires equivalent payment to the bondholders.

Next week EEPK attorneys will ask the judge overseeing the bankruptcy to set a schedule to adjudicate the lawsuit. Wells Fargo Bank, the flagship bank of Wells Fargo & Co., is the bond trustee but is not a party to the lawsuit.

On Friday, the city filed court papers to dismiss EEPK and Ambac’s lawsuit. The city said the bondholder argument “transcends novelty.”

Rosanna Westmoreland, a Calpers spokeswoman, said EEPK’s argument was “wrong.”

San Bernardino’s city attorney was not immediately available for comment.

BY TIM REID

LOS ANGELES Tue Mar 17, 2015 5:34pm EDT

(Reporting by Tim Reid; Editing by Leslie Adler)

How to Stop the Stadium Wars.

In 2013 the city of Atlanta lost its baseball team to one of its suburban neighbors, the more prosperous and populous Cobb County. The Braves won’t move for two more years, but in the meantime, one Georgia state senator from Atlanta has come up with a crazy idea: Expand Atlanta’s municipal boundary by nearly 2 miles into unincorporated Cobb County, and annex the 60 acres where the team is building its stadium.

The proposed land grab is about as likely as 81-year-old Hank Aaron starting this season in right field, but it might not be any less reasonable than the proposal from the Braves that Atlanta rejected: Hand over $77 million in real estate and float a $200 million municipal bond issue to rehabilitate a ballpark still in its teenage years.

What happened in Georgia was a lesson in the business of American pro sports. Like the San Francisco 49ers—the ones now playing in Santa Clara—the Braves took advantage of a highly fragmented metropolitan area to pit city and county against each other in a kind of prisoner's dilemma. After more than a year negotiating with both governments, the Braves got what they wanted from Cobb: $397 million in public money for stadium construction.

At the center of such stadium bidding wars are government bonds, which, in Cobb County, will be paid off mostly by homeowners. For a ballpark in their backyard, they'll fork over $8.6 million in property taxes every year for the next three decades. They'd better hope the Braves stick around longer than the 20 years they will have spent in Atlanta's Turner Field.

Or better yet: The next time the Cobb County Braves decide they're ready to spin the Wheel of Taxpayer Subsidy, we should all hope the whole practice has become illegal.

That's what the Obama administration proposed in its budget last month: to end the issuance of tax-free government bonds for professional sports facilities, a practice that has, according to research by Bloomberg, siphoned $17 billion of public money into arenas for NFL, MLB, NBA, and NHL franchises over the last 30 years and cost Americans $4 billion in forgone federal taxes on top of that. It's too late for residents of Cobb County, but Congress might yet save the rest of us some dough.

It's been clear for decades that new stadiums don't bring the business they promise.
Extortion at the hands of our sporting oligarchs is, of course, a popular source of outrage. The U.S. has enough major league sports stadiums built with public money to fill an NCAA bracket. The ascent of stadium costs and the financial myopia of public officials ensure that the contest will stay lively for some time to come.

So how did we wind up in this situation? Local authorities have long used tax-exempt bonds to raise money for certain private uses—whether factories, train stations, or home mortgage loans—in addition to schools, sewers, and other infrastructure projects. In most cases, the ensuing economic growth was at least intended to pay back the municipal investment. Sports stadiums were no different: Governments could raise money in exchange for a share of future revenue.

After an initial attempt in the 1960s to steer government bonds toward true public works, Congress placed a provision in the 1986 Tax Reform Act that seemed sure to kill tax-free, no-limit stadium deals. It had exactly the opposite effect. Essentially, qualifying projects now need either to serve public uses or to rely on public funding. With pro sports facilities, the former is obviously impossible, so the latter, though politically improbable, has become the way billionaire team owners retain access to cheap government financing. Cities and counties wound up borrowing more for their teams than ever before.

It's been clear for decades that new stadiums don't bring the business they promise, let alone enough economic activity to justify the investment. It's a ruse, but it works because public officials are more worried about being blamed for the loss of a team in the short run than, say, for failing public schools in the long run. And it works because the country has more big cities and rich counties than sports teams in each league, so that even if Cincinnati taxpayers wise up, their counterparts in Austin will step in.

The professional sports industry demands consumer loyalty but shows little in return. In Bloomberg, Aaron Kuriloff and Darrell Preston illustrate how smoothly the tax-money merry-go-round spins: "In

March 1984, the Colts left Baltimore one snowy morning for Indianapolis and a new $95 million stadium built partly with public debt. Baltimore lured the Browns from Cleveland after the 1995 season with a $229 million muni-bond-financed structure. To land an expansion team in 1998, Cleveland provided a $315 million publicly financed building."

But with only two intercity moves in the last 17 years of the NFL, MLB, and NHL (NBA teams have been more mobile), it's clear that the era of big moves has largely made way for a period of intra-metropolitan battles. These face-offs don't grab national headlines, require new jerseys, or motivate big fan protests. But they cost just as much money.

Atlanta is just one recent example. When voters on Long Island rejected a $400 million renovation of the Nassau Veterans Memorial Coliseum, New York Islanders owner Charles Wang announced he would move the team across the county line to Brooklyn's new Barclays Center, which was able to pick up hundreds of millions of dollars in subsidies. The 49ers spurned an offer from San Francisco and instead moved some 40 miles down the peninsula to Santa Clara.

Obama's budget isn't the first national political effort to impose federal taxes on stadium deals. New York Sen. Daniel Patrick Moynihan proposed ending the loophole in 1996, and it's been kicked around in committee since. But with groups like the Koch brothers' Americans for Prosperity now opposing stadium deals at the local level, Obama's idea has a chance of gaining bipartisan support.

Still, it wouldn't stop cities from paying for stadiums. The last time Congress made public financing more onerous, in 1986, the result was a disaster: Cities jumped to meet the new, harsher terms, opening a three-decade stadium construction spree.

One solution, instead, could be to change the way teams operate, either by bringing antitrust suits against the leagues (which sports economist Andrew Zimbalist has suggested) or by allowing cities to exert greater control over their brands (as law professor Mitchell Nathanson has imagined). Should names like the Irving Cowboys, the East Rutherford Giants, and the Orchard Park Bills be forced upon suburban squads? In his 2000 book Leveling the Playing Field, Harvard Law professor Paul Weiler fantasizes about a nationwide union of cities that could lock out pro sports teams to obtain a league-imposed "stadium cap" on taxpayer subsidies, which would effectively end bidding wars.

Stadiums may be the brightest stars in our constellation of subsidized businesses, but they are not the biggest. The main event, for subsidy reformers, is the $80 billion per year in tax breaks and incentives that cities, counties, and states use to lure and retain corporations of all stripes. In Camden, New Jersey, the state is providing a $315,000 subsidy per job. If Tesla's growth projections in Nevada fall short—as they so often do in these deals—the state could wind up paying $400,000 per job. It's a destructive cycle for every function of government and a zero-sum game.

That's a crisis that tests the limits of federalism. If we're going to meet it, we might as well warm up with a little baseball.

Slate Magazine

By Henry Grabar

MARCH 17 2015 4:30 PM

- Cities Paying Millions to Get Out of Bad Bank Deals.
- NASACT Responds to GASB's PVs on Leases.
- NASACT Responds to GASB's PVs on Financial Reporting for Fiduciary Responsibilities.
- Dealer Donations to Mayor's Fund in LA Legal, But Raise Eyebrows.
- Supremacy's Claws: How Two Judges are Changing the Pension Debate.
- *City of Topeka v. Imming* – Court of Appeals holds that, because the state law creating STAR bonds – the method chosen by the City to finance its purchase of property to establish a redevelopment district – permitted a referendum election only in cases where a protest petition is filed, citizen was not entitled to a writ of mandamus compelling an election or repeal of the ordinance, as citizen's petition was not a protest petition.
- And finally, appeals court, in a shocking turn of events, declines to order the demolition of newly-constructed 40,000 square-foot grocery store and two additional retail commercial buildings. Next time around, fellas, perhaps request injunctive relief pending appeal? Just a thought. And, although it was surely an innocent mistake, BCB is now soliciting amicus briefs for *Spellcheck v. Foxxxy Ladyz Adult World, Inc.*

MEETINGS - CALIFORNIA

CPR for Skid Row v. City of Los Angeles

United States Court of Appeals, Ninth Circuit - March 10, 2015 - F.3d - 2015 WL 1020059

Advocacy organization and two of its members brought action against city, alleging California statute making it a misdemeanor to disrupt meetings was unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments. The United States District Court granted city's motion. Plaintiffs appealed.

The Court of Appeals held that:

- Statute governing disruption of meetings did not apply to disruptive conduct during public meetings of electors regarding public questions;
- Statute making it a misdemeanor to disrupt meetings was not a content-based restriction on speech; and
- Statute making it a misdemeanor to disrupt meetings was narrowly tailored to substantial state interest.

EMINENT DOMAIN - FLORIDA

Florida Dept. of Transp. v. Mallards Cove, LLP

District Court of Appeal of Florida, Second District - March 6, 2015 - So.3d - 2015 WL 968710

Mallards Cove was a defendant in a 2007 quick-take eminent domain proceeding initiated by the Florida DOT to take a tract of land owned by Mallards Cove.

The circuit court entered an order of taking on August 15, 2007, pursuant to stipulation of the parties. The DOT was required to deposit a good faith estimate of value in the amount of $2,004,320 into the registry of the court. The funds were deposited on August 30, 2007, and released to

Mallards Cove, net of property taxes, on September 13, 2007.

While the funds were on deposit in the court registry, the Clerk elected to invest the funds. The Clerk earned investment interest on the deposit in the amount of $4,396.49, and subsequently transferred ninety percent of that sum to the Department and retained ten percent, as provided by section 74.051(4).

In 2009, Mallards Cove sought a declaration that section 74.051(4) of the quick-take eminent domain statute is unconstitutional in that it directs clerks to pay ninety percent of interest earned on the quick-take deposit funds to the condemning authority and asserting a claim of inverse condemnation against the Clerk and the DOT, resulting from the disbursement of ninety percent of the accumulated interest to the DOT rather than to Mallards Cove.

The circuit court ruled that, as a matter of law, Mallards Cove owned the deposit funds from the moment the DOT deposited the funds into the registry. The circuit court further ruled that Mallards Cove owned the interest that was earned when the Clerk invested the deposit funds and that this investment interest "was property entitled to constitutional protection entirely separate and apart from the real property that was taken by the [DOT] in the underlying quick taking procedure." The circuit court extensively analyzed the requirements of class certification under Florida Rule of Civil Procedure 1.220 and ultimately granted class certification.

The District Court of Appeal reversed. As the condemnee in a quick-take proceeding, Mallards Cove was entitled to be paid full compensation for the real property taken by the DOT. No further taking occurred. Full compensation was determined pursuant to a stipulated final judgment from which no appeal was taken, and an interest award on the monies used to make Mallards Cove whole would be a "double dip." Mallards Cove had failed to establish that a justiciable case or controversy existed between it and the DOT or the Clerk.

MUNICIPAL ORDINANCE - ILLINOIS

Foxxxy Ladyz Adult World, Inc. v. Village of Dix, Ill.

United States Court of Appeals, Seventh Circuit - March 10, 2015 - F.3d - 2015 WL 1020631

Owners of adult entertainment establishment brought action against village, challenging local ordinances that banned public nudity, open containers of alcohol in public, and possession of liquor in public accommodations. The United States District Court for the Southern District of Illinois granted village's motion to dismiss for failure to state claim. Owners appealed.

The Court of Appeals held that:

- Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests;
- Alcohol regulations did not violate Illinois Liquor Control Act (ILCA);
- Prohibition on possession of alcohol in public accommodations was authorized by Illinois Municipal Code;
- Ban on open containers of alcohol was authorized by Illinois Municipal Code;
- Alcohol regulations did not, on their face, target establishments where protected expressive conduct was likely to occur; and
- Village's asserted interests in enacting alcohol regulations were legitimate and reasonably related to regulations.

Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests, i.e., public health, safety, and welfare, in order for such interests to be considered important or substantial, as required for ban to be constitutional under First Amendment.

BONDS - KANSAS

City of Topeka v. Imming

Court of Appeals of Kansas - March 11, 2015 - P.3d - 2015 WL 1042377

Citizen sought a court order compelling the City of Topeka to either repeal Ordinance No. 19915 – an ordinance calling for the City to buy property for the purpose of establishing a STAR bond-financed redevelopment district – or to hold a municipal election and let the voters decide the issue.

The Court of Appeals held that, because the law creating STAR bonds – the method chosen by the City to finance its purchase – permits a referendum election only in cases where a protest petition is filed and citizen's petition was not a protest petition, citizen was not entitled to a writ of mandamus compelling an election or repeal of the ordinance.

ZONING - MISSISSIPPI

Check Into Cash of Mississippi Inc. v. City of Jackson

Court of Appeals of Mississippi - March 10, 2015 - So.3d - 2015 WL 1015746

Check Into Cash of Mississippi Inc. (CICM) appealed the City of Jackson's decision to deny a use permit. The use permit would allow CICM to engage in the title-pledge business at its current payday-loan location.

The Court of Appeals reversed, finding that the City's decision to deny the permit was not supported by substantial evidence, and thus the decision was arbitrary and capricious.

The Court agreed with CICM that its application for a use permit presented the evidence necessary to comply with the requirements for a use permit in section 1701.02–A of the Zoning Ordinance and that the City Council did not make any findings of fact to support of its conclusion that the grant of the use permit "will adversely affect the surrounding properties, or otherwise be detrimental to the public welfare."

ZONING - NEW JERSEY

In re Adoption of N.J.A.C. 5:96

Supreme Court of New Jersey - March 10, 2015 - A.3d - 2015 WL 1015065

Builders' association and affordable housing advocacy organizations, among others, appealed from Council on Affordable Housing's (COAH) adoption of third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, for purposes of municipalities' duty under *Mount Laurel* doctrine to provide for a realistic opportunity for fair share of region's needs for affordable housing.

The Superior Court, Appellate Division, affirmed in part, reversed in part, and remanded. Parties petitioned and cross-petitioned for review. The Supreme Court of New Jersey affirmed as modified. Subsequently, advocacy organization filed motion in aid of litigants' rights.

The Supreme Court of New Jersey held that Court would dissolve exhaustion-of-administrati-e-remedies requirement of Fair Housing Act of 1985 (FHA), as relief for failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs.

Grant of motion in aid of litigants' rights was warranted, as remedy from failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, in action by builders' association and affordable housing advocacy organizations challenging validity of rules. 15 years had passed since statutory deadline for adoption of rules, 18 months had passed since Supreme Court had affirmed Appellate Division's invalidation of rules and ordered COAH to adopt valid rules, and COAH had taken no action to adopt new rules for five months since deadlocked vote on new rules.

ZONING - NEW YORK

Citizens for St. Patrick's v. City of Watervliet City Council

Supreme Court, Appellate Division, Third Department, New York - March 12, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 02034

PCP Watervliet, LLC, a subsidiary of defendant Nigro Companies, purchased a parcel of property in the City of Watervliet from the Roman Catholic Diocese of Albany County. The parcel contained a church, school and rectory that were no longer in use and, as part of its plan to demolish the buildings and replace them with a 40,000 square-foot grocery store and two additional retail commercial buildings, Nigro petitioned the City of Watervliet City Council to rezone the parcel from residential to commercial. After a series of public meetings and an environmental review pursuant to the State Environmental Quality Review Act (SEQRA), the City issued a negative declaration and amended its zoning map as requested.

The individual plaintiffs, who reside in the City, and plaintiff Citizens for St. Patrick's, an unincorporated advocacy group opposed to the demolition of the church buildings, commenced an action challenging the negative declaration and rezoning of the property by alleging that the City failed to comply with SEQRA requirements, engaged in illegal spot zoning and violated the Open Meetings Law.

The trial court denied plaintiffs' motion for a preliminary injunction in and thereafter granted motions by the City and Nigro for summary judgment dismissing the action on the ground that none of the plaintiffs had standing. Plaintiffs appealed.

The appeals court affirmed, holding that plaintiffs' challenges to the SEQRA and rezoning determinations were moot because they did not seek any injunctive relief from the appeals court during the pendency of the appeal. The church buildings had been demolished and the grocery store was fully constructed and operational.

CONTRACTS - NORTH CAROLINA

Khan Bros., Inc. v. City of Charlotte

Superior Court of North Carolina, Mecklenburg County - March 5, 2015 - Not Reported in S.E.2d - 2015 NCBC 23

After City declined to award Khan Bros. a new Taxicab Operating Agreement and granted exclusive Airport Taxicab Operating Agreements to other companies, Khan Bros. sued, alleging that a member of the City Council had accepted bribes from the other taxi companies in exchange for awarding them the exclusive agreements.

The court held that Khan Bros. lacked standing due to the fact that the decision by the Charlotte City Council to award the Taxicab Operating Agreements to the other taxi companies and to decline to award Khan a new Agreement was the result of the independent action of the Charlotte City Council, consistent with its legal authority, and acting within its reasonable discretion, to approve or deny the Agreements.

The alleged injury about which Khan Bros. complained —i.e., the economic losses flowing from the City Council's decision not to award Plaintiff a new Taxicab Operating Agreement — was caused by the independent, legal and valid action of the Charlotte City Council and not by the improper actions of any Defendant.

See also, *Universal Cab Co., Inc. v. City of Charlotte*, Mecklenburg County, Business Court – March 5, 2015 – Not Reported in S.E.2d – 2015 NCBC 22

ZONING - OHIO

State ex rel. Sunset Estate Properties, L.L.C. v. Lodi

Supreme Court of Ohio - March 10, 2015 - N.E.3d - 2015 -Ohio- 790

Mobile home park owners brought action against village, seeking declaratory and injunctive relief and damages, challenging constitutionality of ordinance governing discontinuance or abandonment of a nonconforming use of property. The Court of Common Pleas entered summary judgment in favor of village, and owners appealed. The Court of Appeals reversed and remanded. Village appealed.

The Supreme Court of Ohio held that provision of village zoning ordinance providing that the absence or removal of nonconforming mobile homes from property for a period of six months of more shall constitute discontinuance from the time of absence or removal was unconstitutional.

PENSIONS - RHODE ISLAND

Retirement Bd. of Employees' Retirement System of City of Providence v. Corrente

Supreme Court of Rhode Island - March 9, 2015 - A.3d - 2015 WL 1012257

City retirement board voted to reduce former employee's pension benefits pursuant to Honest Service Ordinance, and then filed a civil action in Superior Court to confirm its decision. City mayor filed a motion to intervene, arguing that the interests of the mayor and the city were not adequately represented in the action, which was granted. The Superior Court granted summary judgment to the board. Intervenors and board cross-appealed.

The Supreme Court of Rhode Island held that:

- Board's action did not properly invoke either equity or declaratory judgment jurisdiction of the Superior Court, but
- Because Superior Court had been vested with subject matter jurisdiction under newly enacted Public Employee Pension Revocation and Reduction Act, Supreme Court would remand the case for further determinations.

City retirement's board's miscellaneous petition, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, did not properly invoke either the equity or declaratory-judgment jurisdiction of the Superior Court. The board, which was not an aggrieved party in the matter, had not sought an injunction or any other variety of known equitable relief but, rather, the petition was brought pursuant to the Honest Service Ordinance in order to obtain the specific relief required by the language of that ordinance.

Statute granting Superior Court jurisdiction to review decisions pursuant to any municipal ordinance providing for the revocation or reduction of pension for dishonorable service did not apply retroactively and, thus, did not remedy Superior Court's lack of subject matter jurisdiction when it adjudicated and issued final judgment on subject miscellaneous motion by city retirement board, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, before statute became effective, and Superior Court's final judgment was, therefore, void. However, statute nevertheless encompassed subject case and conferred jurisdiction on Superior Court to act on remand, where case was pending on appeal to Supreme Court at time of statute's passage, and public law enacting statute stated that statute was to take effect upon passage and to apply to all pending proceedings.

Because Superior Court, under newly enacted Public Employee Pension Revocation and Reduction Act, had been vested with subject matter jurisdiction over city retirement board's request for Superior Court to enter an order confirming the board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, Supreme Court would remand the matter, and, upon remand, the Superior Court could conduct further proceedings based upon the record before it, or, in its discretion, it could simply re-enter its previous judgment.

IMMUNITY - TEXAS

Western Oilfields Supply Company v. City of Anahuac

Court of Appeals of Texas, Houston (1st Dist.) - March 10, 2015 - Not Reported in S.W.3d - 2015 WL 1061130

Western Oilfields Supply Company d/b/a Rain for Rent appealed from the trial court's granting of a plea to the jurisdiction based on governmental immunity. Rain for Rent argued that the City of Anahuac waived its immunity from a suit for breach of contract under their agreement to provide water filtration equipment and services.

The appeals court affirmed, holding that the written contract was not yet prepared when the Anahuac City Council approved going forward with Rain for Rent's proposal due to the missing portion—the rental/sale estimate—containing the pricing terms for installation of the equipment as well as for its operation.

The court noted that the absence of pricing details rendered this an estimate, rather than a final agreement.

Tax Analysts: IRS Addresses Treatment of Qualified Low-Income Building Units.

In program manager technical assistance, the IRS concluded that charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building doesn't change the treatment of the units as facilities reasonably required for the qualified low-income housing project.

Citations: PMTA 2014-022

Read the letter (subscription required).

JUNE 2, 2014

Obama's Proposed Budget Would Bar Tax-Exempt Bonds to Finance Stadiums.

Florida lawmakers last year approved a plan to set aside $7 million in sales-tax dollars to help pay for building or renovating sports stadiums. But last month the Joint Legislative Budget Commission punted on the decision on whether or not to fund the four stadium projects that were before them — EverBank Field in Jacksonville, Daytona International Speedway, Sun Life Stadium in Miami-Dade County and an Orlando soccer stadium.

The issue of whether to give tax breaks to millionaires for such stadiums has been an issue for decades, and in the lead-up to the legislative session, the group Americans for Prosperity has been leading the opposition to it in Tallahassee.

Potentially a bigger threat to those and other stadiums getting funded in the future is a proposal in President Obama's 2016 budget, presented to Congress last month, that would bar the use of tax-exempt bonds to finance professional sports facilities, if more than 10 percent of the facility is used by private businesses. That means it would fall to cities and states to finance stadiums with bonds that aren't tax-exempt.

Numerous blogs and news agencies reported on this development when the president released his budget in February, but it is receiving more attention after a report in today's Wall Street Journal.

Between 1986 and 2012, sports facilities accounted for $17 billion in tax-exempt bond debt. That debt will be paid off 30 years from now and, by that time, the exemption will cost federal taxpayers $4 billion under Obama's plan.

The federal savings would be about $542 million between 2016 and 2025; however, federal tax payers will no longer be responsible for subsidizing stadiums far from their home team.

As Politico reported last month, tax-exempt bonds are not the only way local governments can use taxpayer resources to fund stadium projects, but they are a popular avenue for raising this money.

“Tax-exempt municipal bonds represent the least-expensive source of capital available to most team owners and are the preferred method of financing stadium construction,” according to a 2012 UBS research report.

The owners of the Tampa Bay Rays are expected to look toward public financing of a new ballpark, if and when they ever get the opportunity to search for locations in Hillsborough County. The estimated costs of a retractable dome park to be built in the Tampa Bay area have been estimated to be around $550-600 million. Rays management has said in the past they would consider paying up to a third of those costs.

In the fall of 2012, a [report by the Baseball Stadium Financing Caucus] listed the potential sources of revenue in the Tampa Bay area to fund a new stadium. In Hillsborough that included using tax-increment financing (TIF) from the city of Tampa’s downtown Community Redevelopment Agency; redirecting part of the Community Tax (CIT) to improvements for a stadium; adding a new 5 percent surcharge on car rentals, and a new 6th cent added to the tourist/bed tax. In Pinellas some of the measures include redirecting using the bonds going to pay for Tropicana Field, which will expire at the end of this year, as well as redirecting a part of the Penny for Pinellas tax.

SaintPetersBlog

By Mitch Perry on March 9, 2015

GFOA Survey May Provide MCDC Information.

WASHINGTON — The muni market may learn more about how issuers fared under the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative after they respond next month to a survey from the Government Finance Officers Association.

The GFOA launched the survey last month in an effort to find out how issuers responded to the MCDC, which allowed both them and underwriters to report to the SEC any instances in the last five years in which they sold bonds and were not truthful in official statements about whether they were in compliance with their continuing disclosure agreements. The MCDC reporting deadline was Sept. 10 last year for underwriters, but issuers had until Dec. 1.

Bond lawyers and other market watchers have been clamoring for months for the SEC to release data about the MCDC submissions, but commission officials have played it close to the vest and declined to give any details. The GFOA survey, which first went live on the group’s website late last month, could provide some information straight from issuer officials.

The survey features 19 questions, some of which are multiple choice and others in a short answer format. It asks issuers not only whether they participated in the MCDC, but also for information about their size, the frequency with which they issue debt, and how much time and money they put into deciding whether or not to take part in the initiative.

Issuer officials were also asked how they interacted with their underwriters under the program. The MCDC placed issuers and underwriters into what SEC enforcement division officials repeatedly called a “modified prisoner’s dilemma” because they effectively report each other when self-reporting. The survey asks, for example “Were you contacted by an underwriter regarding your continuing disclosure compliance?" and "If an underwriter contacted you indicating you failed to comply with continuing disclosure obligations, were you able to resolve all alleged instances of non-compliance without either your entity or underwriter reporting under the MCDC initiative?"

The survey also asks issuers whether the program was truly "voluntary." SEC officials have repeatedly said that participation in the MCDC was completely voluntary, though some issuer officials have said they felt forced to at least conduct a thorough review of their compliance histories.

About 200 GFOA members have responded to the survey so far, a GFOA official. The SEC said earlier this month that it will release settlements with dealer firms first because they were the first to report, but that enforcement attorneys are still working on verifying many of the self-reports that the commission received. The GFOA survey closes April 3.

THE BOND BUYER

BY KYLE GLAZIER

MAR 16, 2015 2:34pm ET

Congressman's Interest in Munis Comes from Experience.

WASHINGTON – Rep. Randy Hultgren, R-Ill. got a first-hand look at how municipal bonds can be beneficial when he visited Freedman Seating Company in Chicago.

The company has been in business for more than 100 years. It originally made cushions for carriages and is now one of the largest manufacturers of seating for commercial vehicles such as busses.

FSC has done several new-money bond financings during the last 17 years and has used the bond proceeds to purchase and renovate property in a blighted area in Chicago's west side, as well as to purchase equipment for the facilities, said its president, Craig Freedman.

The bonds allowed FSC to purchase over half a million square feet of manufacturing space and over $10 million of equipment and facilities. When the company did its first bond deal in 1998, it had fewer than 200 employees, Freedman said. Now it has more than three times that, about 750.

Hultgren, whose district includes some Chicago suburbs and is not far from FSC, said the company is "very impressive, but they absolutely would not have been able to hire as many people as they have or produce as much product as they produce but for access to manufacturing bonds."

He visited the company in September, not long after he introduced the Modernizing American Manufacturing Bonds Act. The bill would increase the maximum size of an industrial development bond issue and would expand the types of projects that could be financed with IDBs.

"We're certainly supportive of what congressman Hultgren has put forth in the bill," Freedman said.

And that's not all Hultgren has done on the muni bond front since joining Congress in 2011. The 49-year-old has been one of the most vocal supporters of municipal bonds in the House and a leading co-sponsor of legislation on bank-qualified bonds. He serves on the House Financial Services Committee, which has jurisdiction over munis and other securities.

In an interview with The Bond Buyer from his Capitol Hill office, Hultgren said he has developed an appreciation for bonds as a result of his past experiences in both the public and private sectors. He has held local and state government positions and has also worked for an investment advisory firm.

"The early public service work and then also … my career work has sparked an interest in bonds and their value," he said.

Hultgren's Background

Hultgren's first publicly elected post was on the board of DuPage County, Ill., where he served from 1994 to 1998. During this time, he saw how "we, as the county or townships within the county, could get things done so much more effectively and efficiently and transparently and accountably than even [the] state government or federal government."

County board members were also on the forest preserve commission, which was involved in bond-financed projects for land acquisition.

Hultgren then served in the Illinois General Assembly, first in the state House from 1999 to 2007 and then in the state Senate from 2007 to 2011. The state had several infrastructure programs that were bond-financed, and state legislators could work with local governments to help them fund projects, he said.

"I've been a strong supporter of infrastructure and making sure that we've got safe roads, safe bridges, that we're able to move people safely to and from work and school," Hultgren said.

In the state House, Hultgren was in the minority, and in the state Senate, he was in a minority so small that it could not block legislation the majority wanted to move. As a result, he learned that it is important to build bipartisan support for legislation. He took this lesson with him to the U.S. Congress.

"That has really been the focus we've taken with any new bills that we've had, is getting good, strong Democratic co-sponsors, people … we're not going to agree with every day, but that we can work together on important issues," he said.

Hultgren has also learned from his time in state and local government "to be realistic, that it takes some time to get things done."

"Ultimately, we want to work towards good laws, good strategy, good plans," and achieving that takes time, he said.

His time in Congress has reaffirmed his belief that "the best things happen locally, and the very best happen when we can work together at different levels of government — federal, state, local government — working together ultimately to serve people."

For part of the time he was in the state Senate, Hultgren also was employed part-time as vice president at Performance Trust Investment Advisors in Chicago. He worked to find investors for bond funds created by the firm, which is now called PT Asset Management. Hultgren said he got interested in the value of bonds in people's portfolios and the predictability and security they provide to investors.

Munis are important to Hultgren's constituents, he said, because with interest rates very low right now, it's hard for people, especially retirees, to find investments with returns that are high enough to live on, but not too risky.

And people tend to invest in bonds issued in their state, “so there is an accountability on the side of the person purchasing the bond also being able to follow the progress or the need for the project that’s being done,” Hultgren said.

“I think people benefit, because good work gets done and it gets done pretty quickly,” he said.

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said Hultgren’s state and local government and financial services background gives him a unique perspective on muni issues.

“We love working with him,” Decker said. “He’s a great representative of his district and a strong bond supporter.”

Legislation

Hultgren said he hopes to reintroduce the bills on IDBs and bank-qualified bonds in the current Congress “as soon as possible and as makes sense to increase likelihood of success. His office is trying to get support for the legislation in the Senate and is trying to figure out when the bills have the best chance of being considered by a House committee and ultimately by members on the House floor.

The bill on IDBs would increase the maximum size of an industrial development bond issue to $30 million from $10 million. It would also allow facilities that produce intangible property, such as software, and facilities that are functionally related to and subordinate to the production of property, such as warehouses, to be financed with IDB proceeds.

IDBs have not only benefited Freedman Seating Company, but they have also benefited other companies in Illinois. Bison Gear & Engineering Corp., a company in Hultgren’s district that he’s visited several times, has also taken advantage of IDBs.

The Council of Development Finance Agencies has worked with Hultgren on the IDB bill.

“Congressman Hultgren has been a bold and courageous supporter of tax-exempt bonds, exemplified by his introduction of the Modernizing American Manufacturing Bonds Act last year,” said Toby Rittner, CDFA president and chief executive officer.

SIFMA also supports expanding the use of IDBs, which many of its members underwrite, Decker said.

The bill on bank-qualified bonds, called the Municipal Bond Market Support Act of 2014, would increase the annual issuance limit for issuers of bank-qualified bonds to $30 million from $10 million and would apply the limit to nonprofit borrowers rather than to the issuers through which they borrow.

SIFMA also supports raising the bank-qualified bond limit. A temporary increase in the issuance limit under the American Recovery and Reinvestment Act, which has since expired, was successful, Decker said.

“We think it’s a smart idea to raise the limit,” he said.

Hultgren also wants munis to be added to the definition of high-quality liquid assets in a new federal banking liquidity rule. He is trying to figure out the right timing to do something in this area.

The current surface transportation funding law expires May 31, and Hultgren thinks Congress needs to debate how to fund transportation in a new bill. He would not support a gas tax increase, in part because it is becoming less effective as more cars use alternative power sources. He has encouraged and will continue to encourage the use of public-private partnerships, he said, but acknowledged that not every project is a good fit to be developed as a P3.

Congress will need to look at a number of different options to determine the fairest way to fund infrastructure, Hultgren said.

“I think the worst possibility is to make our kids pay for it,” he said. “So we have to be responsible and do the right thing now, find a way to live within our means, and find funding sources that really are impacting people who are using the roads.” Congress needs to find “something again that won’t immediately be cutting ourselves off to not be able to finish the work that we need to do,” he added.

Pro-Muni Letters

In addition to working on legislation relating to specific types of bonds, Hultgren is also pushing for preservation of the tax exemption for munis.

Currently, he and Rep. Dutch Ruppersberger, D-Md., are circulating a letter for their colleagues to sign that urges House leaders to support the tax exemption for municipal bonds. The two Congressmen authored a similar letter in 2013, and it had the support of more than 100 other members of Congress.

The signatories of the 2013 letter were split roughly evenly between Democrats and Republicans, Hultgren said.

“That’s encouraging that there is still bipartisan support for this,” he said.

Hultgren said he hopes that the new letter will have similar bipartisan support and about the same number of signers.

The letter will hopefully educate members of Congress about the importance of tax-exempt bonds so that there isn’t “a late night surprise of some treatment of municipal bonds getting thrown into legislation at the last minute,” Hultgren said.

The congressman said he would be surprised if Congress passes comprehensive tax reform this year and that if there are changes to the tax code this year they would be more likely to be targeted, particularly on the international tax system.

Last year, former House Ways and Means Committee chairman Dave Camp released a comprehensive tax-reform proposal that would have imposed a surtax on muni interest for high earners and would have prevented new private-activity bonds from being issued as tax-exempt.

Hultgren said he disagreed with significant parts of the proposal and saw the former Michigan Republican congressman’s plan as an opportunity to talk about parts of the current tax code that work.

“Hopefully they will have heard enough from us, from others, of the value here to not do something that further hinders us,” he said.

In addition to circulating the letter, Hultgren said he’s encouraging issuers and borrowers in the muni market to talk to other members of Congress “about how this is a valuable tool for them that needs to be preserved." Issuer officials should explain that if the exemption goes away to increase revenues, there will be a long-term cost, since it will be harder for them to do good projects, he said.

The Municipal Bonds for America coalition has also had dealings with Hultgren. When the 2013 letter was being circulated, MBFA made its members aware of it. Groups then brought up the letter in meetings with Congress members, said Jessica Giroux, general counsel and managing director of the Bond Dealers of America.

Also, ahead of MBFA's educational seminar for Capitol Hill staff last July, Hultgren, Ruppersberger, Rep. Richard Neal, D-Mass., and Rep. Tom Reed, R-N.Y., wrote a "dear colleague" letter asking their fellow Congress members to send staff to the event, Giroux said.

Hultgren is an "advocate for munis," she said.

THE BOND BUYER

BY NAOMI JAGODA

MAR 16, 2015 1:14pm ET

Fitch: Positive Rating Drift Returns to U.S. Public Finance.

Positive rating activity has returned to Fitch Ratings' U.S. public finance rating activity, coinciding with improved U.S. economic conditions following a protracted recovery. Downgrades trailed upgrades in 2014, by a margin of 0.7 to 1, compared with the 2 to 1 ratio recorded in 2013, according to a new Fitch report.
The share of municipal ratings downgraded and upgraded was relatively low at 3.4% and 4.9% in 2014, respectively, with rating activity volume at similar levels to 2013. The overall majority of ratings – 86.9% – remained unchanged year over year.

The tax-supported sector represents the majority (57%) of Fitch public finance security ratings and thus led rating activity with largely even results of 3.9% downgraded versus 4.1% upgraded. Rating activity was generally positive across the other public finance sectors.

Fitch-rated U.S. public finance security ratings recorded no defaults in 2014. Over the long-term period of 1999 to 2014, the U.S. public finance average annual long-term security default rate was 0.04%.

Fitch's new study provides data and analysis on the performance of its U.S. public finance ratings in 2014 and over the long term, capturing the period 1999-2014. The report provides summary statistics on the year's key rating trends.
The full report is titled 'U.S. Public Finance 2014 Transition and Default Study' and is available on Fitch's website.

Additional information is available at 'www.fitchratings.com'.

Applicable Criteria and Related Research: Fitch Ratings U.S. Public Finance 2014 Transition and Default Study

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Contact:

Fitch Ratings, Inc.
Charlotte Needham
Senior Director
+1-212-908-0794
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

or

Media Relations
Elizabeth Fogerty, +1-212-908-0526
elizabeth.fogerty@fitchratings.com

Business Wire

Press Release: Fitch Ratings – Mon, Mar 16, 2015 18:18 GMT

Detroit Seeks Statutory Lien on $275M Barclays Deal.

CHICAGO – A bill designed to ease Detroit's first appearance in the public debt markets since its bankruptcy sailed through a Michigan legislative committee this week.

Senate Bill 160 passed the Committee on Banking and Financial Institutions by a 7-0 vote on March 3.

The legislation is now on the Senate floor and could be taken up as early as next week, according to Patrick Tiedt, chief of staff for Sen. Darwin Booher, R-Evart, one of the sponsors.

The bill would give a statutory lien to city income tax revenue backing Detroit's financial recovery bonds.

The measure essentially applies to only one of the city's bond deals: a $275 million deal that Detroit privately placed with Barclays on December 10, 2014, the city's final day in bankruptcy.

The borrowing marks the only time the city has tapped its income tax revenue to secure bonds.

The bonds, now in a variable-rate mode, are to be resold on the public market in a fixed-rate mode within 150 days of the Dec. 10 placement date, unless Barclays grants an extension.

The one-day secondary market sale, coming as soon as April, will be similar to a primary offering. Ratings from at least two agencies will be sought, according to the terms of the deal.

Detroit officials hope that the statutory lien might win an investment-grade rating from at least one rating agency.

Supporters believe SB 160 will boost investor confidence in the bonds with a statutory lien that is expected to make the bond revenue fully protected in the event of another bankruptcy or default by Detroit.

"Even though I am from a small town in northern Michigan, I recognize how important the recovery of Detroit is to the entire state of Michigan," Booher, R-Evart, said in an email to The Bond Buyer. "I sponsored SB 160 because I believe this is common sense legislation and we should be encouraging ways to save the taxpayers money."

Detroit, which filed for Chapter 9 bankruptcy in July 2013, floated $1.28 billion of new debt in December as it exited the bankruptcy, but none of that debt was sold in the public debt markets.

Fiscal analyst Elizabeth Pratt with the Senate Fiscal Agency said in a fiscal note that the city could see debt-service savings of $2 million to $3 million a year with the lien. The estimates come from the city's own figures. The city's documents also note that the Legislature passed a similar bill in 2011 to help the city of Ecorse access the bond market, although in that case the enhancement was an intercept feature, not a statutory lien.

"Bond rating agencies have stated that a statutory lien on the income-tax revenue pledged to repay the bonds would improve the bond rating and result in lower interest costs," Pratt wrote in the fiscal note.

"What it effectively does is make the security a lot more airtight than it would be otherwise because there's a lien on the revenue," said Jeff Mann, a legislative analyst with the Senate Fiscal Agency who is following the bill.

The bill would apply only to Michigan cities with a population of more than 600,000, a category that includes only Detroit.

It would apply only to financial recovery bonds with a pledge of income tax revenue and only with the approval of the state treasurer.

The revenue would enjoy the lien and be held in a trust for the benefit of the bondholders regardless of whether the city directly collects the revenue, a third party collects it, or anyone else, according to the legislation.

"The lien would be superior to all other liens and interests of any kind, and would be perfected without delivery, recording or notice," Mann's analysis says. "The revenue held in trust would be exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the city other than those expressly specified in the agreement."

Detroit Mayor Mike Duggan testified in favor of the bill before the banking committee. No one spoke against it.

THE BOND BUYER

BY CAITLIN DEVITT

MAR 5, 2015

Munis Now a Better Value, Says BlackRock.

Municipal bond investors should use the volatility that kicked off in February as a buying opportunity, advises investment management firm BlackRock.

“One of our themes is living with volatility,” says Peter Hayes, who runs the municipal bonds group at BlackRock, which has $116 billion in assets under management. “We recommend taking advantage of any selloff to lock in a better entry point.”

March has provided one such entry point after a rough February in which the S&P Municipal Bond Index returned -0.92%. For the 13 months prior, munis did well, says Hayes, so he wasn’t surprised there was a correction. He says the decline wasn’t due to a dramatic change in investor sentiment, but was partly due to increased supply.

That’s because the decline in yields over the course of 2014 inspired local governments to refinance their debt at the new lower rates. “It took a market adjustment to absorb,” says Hayes.

The new supply isn’t going away anytime soon. “As long as rates stay low, we will see more refundings,” says Hayes, although he thinks the rush to lock in the low rates will cool somewhat by year end.

The Federal Reserve is likely to raise rates later this year, but Hayes doesn’t expect a dramatic rise in muni yields in 2015.

He concludes a research note this week on muni market performance:

> Muni-to-Treasury ratios remain historically compelling, and recent market action has left munis attractive vs. corporate bonds as well.

Barron’s

By Amey Stone

March 13, 2015, 3:10 P.M. ET

Muni Market Grows in Final Quarter of 2014.

WASHINGTON — The total amount of outstanding municipal securities and loans in the market rose 0.6% to $3.65 trillion in the fourth quarter of last year, as U.S. bank muni holdings increased 2.5% and mutual fund muni holdings rose to a record high of $658 billion.

The Federal Reserve Board released the data this week in its quarterly Flow of Funds report. The total size of the muni market was up from $3.63 trillion in the third quarter of 2014, but the muni market still experienced an overall year-over year decline from $3.67 trillion at the end of 2013. The size of the muni market has generally been declining for the past several years.

Michael Decker, a managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said that the quarterly uptick in the market size could mean that the slide is ending, though it might be too early to draw any conclusions.

“The total outstanding is creeping back up,” Decker said. “Maybe the trend of the market is starting to reverse.”

Bank holdings have risen sharply in recent years, totaling $452 billion at the end of 2014 compared to $419 billion the previous year and only $255 billion in 2010. Decker said banks would probably continue to increase their holdings of state and local obligations.

“Banks have clearly discovered that this product fits in their portfolios,” he said.

Matt Fabian, a partner at Municipal Market Analytics, said the rising bank holdings could actually signal that economic conditions aren’t good enough for banks to trust riskier and more lucrative investments.

“That’s a bit of an indictment that economic growth is not as strong as people would like,” Fabian said.

Fabian said the strong growth in mutual fund muni holdings, and a corresponding drop of $15 billion in household muni holdings from the third quarter of last year, is probably due in part to brokers and their firms directing retail customers into more managed products and away from direct investments. Mutual fund muni holdings were as low as $500 billion as recently as the first quarter of 2010. Regulatory requirements that apply to broker-dealers for retail investors in the fixed-income market are creating an incentive for the firms to move to mutual funds, Fabian said.

“From a compliance perspective, it’s just easier,” he said, but added that the household holdings category is a catch-all that can fluctuate depending on how the Fed decides to evaluate the data.

Money market mutual fund muni holdings ticked up 1.1% to $281.7 billion in the fourth quarter, the only quarterly increase of the year. The category has dropped sharply since it was $386.7 billion at the end of 2010 and $509.5 billion at the end of 2008.

Decker pointed to the relatively low holdings of broker-dealers as a significant sign of market conditions. Dealers held $18.9 billion of munis at the end of 2014, a $2.7 billion increase over the previous quarter but a steep decline from the $40 billion dealers accounted for in 2010.

“Clearly broker-dealers are holding less inventory,” Decker said. “That suggests overall that the market is less liquid than it was five years ago.”

State and local government holdings of munis have remained stable, rising slightly quarter-ove--quarter to $13.6 billion at the end of last year.

State and local governments accounted for $2.9 trillion of muni debt, with nonprofit organizations and industrial revenue bonds making up the balance. $2.87 trillion of those munis are long-term obligations, the Fed data shows.

The Fed funds data is next scheduled for release on June 11.

THE BOND BUYER

BY KYLE GLAZIER

MAR 13, 2015 2:46pm ET

NABL: More from the SEC.

The SEC Commissioners again this week gave muni market participants a great deal to think about. First was a speech by Commissioner Daniel Gallagher which revisited some of the themes he raised in a speech last May concerning how liabilities, particularly pension liabilities, should be disclosed. Later in the week, SEC Chair Mary Jo White gave a speech concerning disqualifications, exemptions and waivers under the securities laws, subjects which are of interest to broker-dealers who may enter into consent decrees under MCDC. While Chair White's speech did not specifically talk about the muni market or MCDC, her remarks were enlightening not only about disqualifications and waivers but also about what she thinks is the best approach to enforcement.

Commissioner Gallagher noted "growing calls for changes to the bond disclosure regime, particularly in the muni space." In particular, he said

> The failure by municipal issuers to provide adequate disclosures of underfunded pension plans is an unpardonable sin. Politically-powerful state workers' unions, and state constitutional protections for benefits, make the reduction of these liabilities extremely difficult. The failure to set aside adequate funds to cover these liabilities creates a material risk that future payments to bondholders would need to be sacrificed. This risk is not merely theoretical; we have seen it play out already in Detroit's bankruptcy.

He goes on to say that "municipalities have taken advantage of heretofore lax governmental accounting standards to hide the yawning chasm in their balance sheets." He acknowledged that the new GASB standards regarding pensions were an improvement and can result in better disclosure of pension liabilities but he called for GASB to bring back the Annual Required Contribution, which he described as "an easy point of reference to help investors and voters compare the contribution that would be required to steadily chip away at these accumulated liabilities with that which was actually appropriated." (The definition of Annual Required Contribution and other pension-related terms can be found in the appendix to NABL's Considerations in Preparing Disclosure in Official Statements Regarding an Issuer's Pension Funding Obligations(Public Defined Benefit Pension Plans).)

However, as beneficial as Commissioner Gallagher finds the GASB rules, their use is voluntary. Commissioner Gallagher's solution is "a legislative fix to mandate the use of GASB standards for municipal issuers." That mandate could take the form either a grant of authority for the SEC to recognize GASB standards as it recognizes FASB or – and this is what got some attention – conditioning the exemption of municipal securities under the securities laws on the use of GASB standards.

One could read the text of the speech to mean that he was talking about the exemption of interest on municipal securities from federal income tax, but a footnote makes it clear he was talking about securities laws. Conditioning tax exemption on providing certain pension disclosures, though, has been proposed by Congressman Devin Nunes (R-CA) (H.R. 1628 in the 113th Congress). Congressman Nunes is a senior member of the House Ways and Means Committee and an original co-sponsored of his bill was Rep. Paul Ryan (R-WI), now chair of that committee and a representative from a state whose governor and legislature have been involved in disputes with unions, particularly public employee unions, that have gotten national attention. Congressman Nunes' proposal should not be discounted.

Chair White's speech dealt generally with the automatic disqualifications under the securities laws and the process by which the Commission grants waivers from those disqualifications. Whether waivers will be granted in MCDC cases has become a concern among some broker dealers.

Chair White also discussed her view of what incentives are most effective in inducing compliance with the securities laws and she was very clear:

> In my experience, in the enforcement arena, the most effective deterrent is strong enforcement against responsible individuals, especially senior executives. In the end, it is people, not institutions, who engage in unlawful conduct. And the greatest disincentive for wrongdoing occurs when people believe that their own liberty, reputations and livelihoods are on the line and they recognize that real, personal consequences will follow from their misconduct. "It isn't worth the price" becomes the equation, an equation that is harder to have internalized by an impersonalized institution. (Emphasis added).

We could well see more enforcement actions against issuer officials.

National Association of Bond Lawyers

The Weekly Wrap – March 13, 2015

Few Clues Detected on Fate of Illinois Pension Overhaul.

CHICAGO – Legal observers aren't placing any bets on the outcome after watching the oral arguments in the Illinois Supreme Court case that will decide the fate of the state's overhaul of most of its employee pensions.

Only the three Republican justices on the seven-member court posed questions to the state's lead attorney, Solicitor General Carolyn Shapiro, and the two private attorneys representing the unions, retirees, and employees challenging the legislation.

The four Democratic justices remained silent during the nearly one-hour session Wednesday in which attorneys argued their sides in the dispute over whether the 2013 legislation that cut benefits for four of the state's five pension funds violates the state constitution.

The court is expected to rule sometime this spring.

"I think it was fully and fairly presented by both the state and plaintiffs," said municipal law and restructuring veteran James Spiotto, who is co-publisher of MuniNet Guide. "It's always very hard to judge from the questions what the result will be based on the questions because it's only guessing."

Silence among justices is also a hard read. "Sometimes, certain justices may take the lead on questioning on some issues and others allow them to do that," Spiotto said.

"I'm not a gambler so I wouldn't put a bet on it, but I think there's a chance it may go down to the lower court for an argument on the merits," said Ty Fahner, a partner at Mayer Brown and a former Illinois attorney general who heads up the Civic Committee of the Commercial Club of Chicago, which has lobbied for pension reforms.

If sent back to the lower court, "I think there's a lot of work to be done to convince the court that the state has met the standard," Fahner said.

A delay could aid the state's argument that it faces a fiscal emergency as it budgetary situation is not easing.

The Supreme Court is considering the case on an expedited basis.

It could uphold a lower court ruling from November voiding the legislative package as a violation of the state constitution's pension clause, siding with union attorneys who argue the guarantee is absolute.

Or, it could decide the protections are on par with other state contracts and subject to modification in the case of a fiscal emergency as the state argued. Under that scenario, the case would likely be sent back to the Sangamon County Circuit Court where the argument over whether the state met strict standards for altering a contract would be vetted.

The court could issue a more sweeping ruling upholding the legislation, but it was not asked by the state to do so as there was no debate over whether conditions existed for the state to tap its police powers when the case was before the lower court.

Fahner also did not read too much into the silence of the majority of justices but said the probing questions and demeanor of Justice Robert R. Thomas are not a good sign for the state.

The state senator who sponsored the pension legislation offered a foreboding assessment after attending the arguments.

"I think the indications are that we'll be back to the negotiation table," said state Sen. Kwame Raoul, D-Chicago, adding he hoped the court's eventual ruling provides some guidance for lawmakers on what could withstand a legal challenge. "That may or may not happen, hopefully it will."

The questioning led by Thomas was primarily aimed at the state's arguments about its police powers, the centerpiece of its argument that it needs to override language in the state constitution protecting pensions.

Shapiro, the solicitor general, told the judges the plaintiffs' position that pensions can never be cut "remarkable."

"If the state's bond rating collapsed rendering borrowing prohibitively expensive, pensions would be entirely off limits regardless of the essential state services that might have to be eliminated," she said.

But Thomas pressed her on whether granting the use of police powers would give the state too much future license.

"If the court holds that the state can invoke its police powers to violate core constitutional guarantees to respond to an emergency that at least arguably the state itself created, then aren't we giving the state the power to modify its contractual obligations whenever it wants? For instance, the state could simply fail to fund the pension systems and then claim an emergency," the justice asked.

Shapiro stressed that the state constitution provides only a few exceptions for such modifications. "The lower court will conclude whether the circumstances justify the state's actions," she said.

Justice Thomas also questioned how much of the state's fiscal woes are due to the General Assembly's failure to extend the 2011 income tax hike. The higher rates partially expired and lawmakers have not acted to make up the lost revenue. Shapiro acknowledged that the state's budget situation remains unresolved.

Justice Lloyd A. Karmeier pressed Shapiro further on the role of sovereign power in the constitution.

"If sovereign power resides in the people, and the people adopt a constitution which specifically provided for a pension clause having different wording than the contract clause," does that not indicate the how the public has directed the state to act, he asked.

Shapiro answered that the state and federal constitution prohibit the state from entering into a contract that would limit its ability to act to "protect the public welfare in extreme situations."

Chief Justice Rita Garman asked union attorney Gino DiVito whether the state's police powers could ever be used to impair pensions. DiVito did not directly answer, instead saying "not under these circumstances."

Union attorney Aaron Maduff then addressed the question pointedly.

The state constitution lays out situations where the state can act and "those limitations are not in the pension clause," Maduff said.

The Illinois constitution states that membership in any Illinois pension system "shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

Shapiro argued that questions over the extent and cause of the state's fiscal emergency and pension woes should be made at the lower court level.

Justices questioned why, if the state is mired in such a fiscal emergency, they were not asked to rule on whether the standard for invoking police powers was met, since further debate at the lower court level would simply delay a final decision.

Shapiro said the state believed there is enough time for the state to act on its budget.

The state contends its fiscal solvency is under threat and argues that position is underscored by its unfunded pension tab of $111 billion in a system that is just 39% funded. Rising payments are crowding out funding for essential services and infrastructure, the state argues, and the state's bond rating has been pummeled, driving up its borrowing costs. The state is saddled with a backlog of unpaid bills of at least $5 billion and faces a $6 billion budget deficit.

THE BOND BUYER

BY YVETTE SHIELDS

MAR 12, 2015 5:04pm ET

Could Obama Budget Kill Arenas in Milwaukee and Seattle?

Planned arenas in Milwaukee and Seattle could face a new hurdle that could potentially prove insurmountable. This coming, of all places, from Washington, D.C. President Obama has his sights on public subsidies for sports stadiums and arenas.

As chief executive of the U.S. federal government, one of the duties of the president is to present an annual operating budget. The feds operate on a fiscal year that starts on October 1st and ends on September 30th, and for the government to function in a given year, an approved budget must be in place. The president typically submits his budget proposal in February to begin the long, rigorous congressional approval process.

Reports came out this weekend about a proposed amendment to federal tax law buried within the 2016 proposed budget that could have significant and lasting impacts on the business of sports in the United States for years to come. That amendment, if approved, could prevent cities, counties, and states from participating financially in arena projects.

For decades, the various sports leagues have relied on public monies to make palaces for their teams a reality. What has frequently been sold as a show of community support of a team has often become outright ransom to keep teams from leaving. According to the Wall Street Journal, in just the past 30 years, about $17 billion have been raised through government bonds for sports facilities.

Milwaukee is currently fielding a proposal by Governor Scott Walker for his state’s biennial budget to issue $220 million in bonds toward supporting the arena effort to keep the Bucks. Seattle, of course, has a potential deal that, if approved, could provide $120-$200 million toward an arena in the SoDo district.

Just how could the federal government affect a city, county, or state from borrowing money through the bond process, you ask.

Municipal bonds are issued through these local entities as a means to both support and improve infrastructure. Infrastructure is, of course, publicly owned lands, buildings, and services vital to the proper function of a city. Roads, schools, sewer, utility, and police services all fall under the infrastructure category.

Bonds are technically only supposed to be issued for these purposes.

Long ago, cities began issuing municipal bonds to participate in private stadium and arena projects in the hopes that they would bolster economic development. Arguments have been waged on both sides of the issue for decades, with the sports leagues and politicians generally touting the cultural importance and economists decrying any sort of substantive economic improvement.

Cities don’t want to lose their teams, and team owners prefer to make use of municipal bonding capacity because it is federally tax-exempt. This was to make it easier for municipalities to borrow to lessen the cost of infrastructure projects over time.

With no federal tax to worry about, municipal bonds are generally issued with significantly lower interest rates than private borrowers are going to find through channels. Thus, the appeal.

But there’s the rub.

The Obama administration’s proposal is that, because of that federal tax exemption, the government should enforce the intended use of these bonds. The U.S. Treasury Department estimates that enforcement will save the federal government $542 million over the next ten years.

If passed into law, this wouldn't be the first time the federal government has imposed restrictions against using municipal bonds for sports facilities. According to Stateline from the Pew Charitable Trusts (via USA Today):

> *Over the life of the $17 billion of exempt debt issued to build stadiums since 1986, Bloomberg said, taxpayer subsidies to bondholders will total $4 billion.*
>
> *The tax-free bond provision dates to the 1986 Tax Reform Act. The authors of the bill actually sought to restrict the use of public subsidies for sports teams. The law said that no more than 10% of tax-exempt bonds' debt could be repaid by ticket sales or concession — a provision its authors thought would deter using them to finance stadiums because cities and states wouldn't want to obligate taxpayers to pay off the rest of the financing.*

The intent of the change didn't work because municipalities started to get creative in ways to work around the restriction. This is why increases in hotel, rental car, food, and beverage taxes, as well as securing debt with things like potential parking revenues, have become the common methods for repayment of bonds for sports projects.

Needless to say, this has the potential of drastically altering the sports business landscape as we know it, if passed into law. Could it, in effect, kill potential arena projects in Milwaukee and Seattle?

Not to don the tin foil hat, but there is a strong possibility.

The federal budget will go through its approval process over the next few months. There is a school of thought that any bonds issued prior to the start of Fiscal Year 2016 in October could be grandfathered into tax-exempt status.

If Wisconsin approves some level of municipal bonding through its state budget this year, it's quite possible they wouldn't have to worry about such a restriction.

The earliest Wisconsin's budget can be signed into law is August 6, 2015. If bonding for the Milwaukee arena is approved, however, it's not clear that the bonds could be issued prior to October 1st. That raises some question about grandfathering on the federal tax exemption.

As for Seattle's arena effort, we're likely a year away from the city council and the King County Council even being able to vote to agree to participate in the SoDo project. That could potentially push bond issuance to mid-to-late 2016, and then only if a team is acquired. If the federal tax amendment goes through, this would be too late.

Before anyone ties weights to their feet and picks out the keen spot on the bridge, President Obama's budget proposal still has to go through committee, has to be voted on by both houses of Congress, and then has to be signed into law by the president.

That's a long process over the next few months, and it's by no means a guarantee that this restriction will make it to the final budget.

Still, it's worth keeping an eye on.

By Matt Tucker @TuckeratSR on Mar 16, 2015, 2:01p 41

TAX - FLORIDA

[Russell v. Southeast Housing, LLC]

District Court of Appeal of Florida, Third District - March 11, 2015 - So.3d - 2015 WL 1044315

County Property Appraiser appealed a judgment holding that certain properties were not subject to ad valorem taxes for the years 2008 through 2013. The properties are five military housing complexes serving the Naval Air Station at Key West. The housing complexes are being improved and operated pursuant to a public-private partnership between the United States Navy and a private developer. The terms of the public partnership are set forth in the ground lease, operating agreement, and management agreement.

The court held that a review of these three documents revealed that the Navy retained equitable and beneficial ownership of the properties. Because property owned by the United States is immune from state taxation, the properties were immune from Florida ad valorem taxes.

ZONING - ILLINOIS

[Joan Dachs Bais Yaakov Elementary School - Yeshivas Tigeres Tzvi v. City of Evanston]

Appellate Court of Illinois, First District, Sixth Division - March 6, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 131809-U

The City Council of the City of Evanston to denied a zoning application by Joan Dachs Bais Yaakov Elementary School (JDBY) to rezone a parcel of industrial property in Evanston so that JDBY could use the site for a parochial elementary school. Citing the burden of removing the property from the tax rolls, the City Council denied the application. After the denial of its application, JDBY sued Evanston, asserting claims under the “equal terms” and “nondiscrimination” provisions of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

The Appeals Court found no violation of the RLUIPA.

As to JDBY’s as-applied equal terms challenge – requiring that no government shall implement a land use regulation in a manner treating a religious assembly or institution “on less than equal terms” with a non-religious assembly or institution – under the RLUIPA, the court held that JDBY argument failed, due to its failure to offer any similar nonreligious comparators for purposes of the RLUIPA.

The court found that every one of those nonreligious comparators presented by JDBY was a taxable use which would continue to pay property taxes under the accepted zoning criterion, whereas JDBY’s proposed use of a parochial elementary school would result in the removal of one of the largest industrial parcels left in Evanston from the property tax rolls.

[Dealer Donations to Mayor’s Fund in LA Legal, But Raise Eyebrows.]

WASHINGTON – Three dealer firms have donated more than $1 million to a Los Angeles nonprofit closely associated with the city’s mayor, gifts some market participants say create an appearance of impropriety even though the donations didn't violate any rules.

Goldman Sachs Gives, JP Morgan Chase & Co., and Citi Community Development made the donations last year to The Mayor's Fund, which has collected more than $5 million since its creation last June. A registered 501(c)(3) organization with no formal tie to Los Angeles Mayor Eric Garcetti, the fund is similar to other programs in New York and elsewhere. But the fund is nonetheless headquartered at city hall and Garcetti speaks to the fund about his goals for the city and helps facilitate its fundraising efforts.

Lawyers, issuer officials, and others consulted about it agreed that the three firms did not violate the rules when they gave the money to the fund, which is governed by a board independent of the city leadership and which does nothing to politically support Garcetti or any other political interest.

The Municipal Securities Rulemaking board's Rule G-37 on political contributions prohibits dealers from engaging in negotiated muni business with state or local governments for two years after making political contributions to issuer officials who can influence the award of bond business. The MSRB has published guidance that explicitly allows gifts to charitable organizations.

Also, there is no indication that the dealers have received any benefit as a result of their donations to the fund.

Los Angeles has historically done the majority of its deals competitively, but has turned to more negotiated deals in recent years. The city's chief administrative officer recommends potential debt issuances to both Garcetti and the city council and both must approve all financings. All three dealers are current members of Los Angeles' underwriter pool for both long and short-term debt.

A Goldman spokesman said the firm's $250,000 donation was targeted to a fund-backed program dedicated to providing summer jobs to at-risk Los Angeles youth, while a JP Morgan spokesman said the same of that company's $500,000 gift. Citi officials did provide any comments. All three dealer firms who gave to the fund have, in fact, gone on record as supporting strengthening pay-to-play protections by including bond ballot campaign donations as gifts that would trigger the two-year business ban.

Ernie Lanza, a partner at Greenberg Traurig in Washington and former MSRB deputy executive director said that the question of whether firms should be able to give money to charities associated with political figures is well-established, and was part of the debate during G-37's development in the early to mid-1990s. A 1997 letter written to then-Securities and Exchange Commission chairman Arthur Levitt by then-Goldman Sachs partner David Clapp and preserved by the SEC Historical Society reflected that debate. Clapp, who chaired the MSRB during G-37's development in 1993 and 1994 wrote that the MSRB's attorneys told the board that writing the rule broadly to include contributions to bond ballot campaigns and charities with close ties to politicians could be too restrictive of First Amendment rights and might be overturned by federal courts.

"From the very start of G-37 the question was there," Lanza said. "From time to time it does pop up, and people raise questions about it."

Some bond lawyers have said the rule, which withstood a First Amendment challenge some 20 years ago, could face yet another in the near future. A very similar rule for investment advisers is under attack in a lawsuit brought in the U.S. Court of Appeals for the District of Columbia Circuit by two state Republican parties and its outcome could have implications for another challenge of G-37.

Glenn Byers, assistant treasurer and tax collector for Los Angeles County, acknowledged that the fund might look questionable to some people but said that it doesn't bother him.

"On the surface, this may not sound the best," Byers said. "But because this is a 501(c)(3) non-profit that is directed by a board independent, in theory at least, from the mayor and spending money on public projects, I'm OK with it."

Craig Holman, government affairs lobbyist for the advocacy group Public Citizen in Washington, said that as long as the board governing the fund is independent of the mayor and the fund takes no part in supporting the mayor, it is within the boundaries of the rules. But Holman said the fund's name alone could cause some to be concerned.

"It does raise red flags," he said. "I would automatically assume that it was associated with the mayor."

But some industry sources said the appearance of potential impropriety created by these kinds of donations should be captured by G-37.

"This is what the pay-to-play rules need to catch," said one executive of a dealer who did not want to be named. "The appearance just casts a negative light on the industry. The optics don't look good."

The MSRB did not respond to a request to comment.

THE BOND BUYER

BY KYLE GLAZIER

MAR 12, 2015 1:26pm ET

Senate Finance Panel Leaders Solicit Tax Reform Recommendations.

WASHINGTON — Leaders of the Senate Finance Committee are soliciting ideas from stakeholders and members of the public on how best to overhaul the nation's "broken" tax code to make it simpler, fairer and more efficient.

Committee chair Orrin Hatch, R-Utah and top Democrat Ron Wyden, D-Ore., made their pitch on Wednesday, saying they want to provide additional information and data to the committee's five bipartisan tax reform working groups.

The working groups, which are currently examining the existing tax law as well as possible policy trade-offs and reform options, are to submit reports with recommendations to the committee leaders by the end of May.

Recommendations and comments submitted to the committee by stakeholders and the public will be accepted through April 15 and will be made public at a later date, according to a release issued by the committee.

"By opening up our bipartisan working groups to public input, we hope to gain a greater understanding of how tax policy affects individuals, businesses, and civic groups across our nation," Hatch and Wyden said. "In doing so, we will also equip our working groups with valuable input, and we hope these suggestions will help guide the groups through the arduous task of putting forth substantive ideas to reform the tax code in each of their areas."

The five working groups are: Individual Income Tax, which is co-chaired by Sens. Chuck Grassley, R-Iowa, and Mike Enzi, R-Wyo., and can be reached at individual@finance.senate.gov; Business Income Tax, which is headed by Sens. John Thune, R-SD, and Ben Cardin, D-Md., and can be reached at Business@finance.senate.gov; Savings & Investment, led by Sens. Mike Crapo, R-Idaho and Sherrod Brown, D-Ohio, at Savings@finance.senate.gov; International Tax, co-chaired by Sens. Rob Portman, R-Ohio, and Chuck Schumer, D-NY at International@finance.senate.gov; and Community Development & Infrastructure, chaired by Sens. Dean Heller, R-Nev., and Michael Bennet, D-Colo. at CommunityDevelopment@finance.senate.gov.

All recommendations and comments must be submitted as a pdf attachment, which is saved using the name of the organization or individual submitting the recommendations, the committee said in its release.

Those submitting recommendations should list the name of the tax working group they want to contact. They would also include a contact name, the organization (if the submission is being made on behalf of a group), phone number, and email address in the body of the email.

If technical issues arise, parties can contact the committee at (202) 224-4515, according to the release.

The committee said it reserves the right, if these directions are not followed, to exclude the submissions from consideration.

THE BOND BUYER

BY LYNN HUME

MAR 11, 2015 12:45pm ET

Tax Analysts: Latest 'Begin Construction' Guidance Resolves Financing Issue.

The IRS released guidance March 11 that extends the deadline for beginning construction on qualified facilities for purposes of the renewable electricity production and the energy investment tax credits, resolving what many in the renewable energy industry considered an important open question that was hurting project financing.

Continue Reading (subscription required).

MARCH 12, 2015

Matthew R. Madara

IRS N-2015-26: Empowerment Zone Designation Extension.

Notice 2015-26 explains how a State or local government amends the nomination of an empowerment zone to provide for a new termination date of December 31, 2014.

It will appear in IRB 2015-11 dated March 16, 2015.

NABL Fundamentals of Municipal Bond Law Seminar: Helping Your Associates Succeed.

Each year, NABL's Seminar helps young associates gain an understanding of the key components of a municipal bond practice, and helps to connect them with their peers and industry leaders. With its three Basic Training General Sessions and 16 training session all designed to provide in-depth information on tax, securities, and state law issues pertaining to municipal finance, the Seminar is the best industry specific event your associates can attend. Need more convincing on why you should send your associate to Fundamentals? Then read some feedback from Seminar alumni.

> "Incredibly helpful to those of us with little or no real experience in this field, and need to pull together foundational blocks."
>
> "I thought the seminar was organized and provided ample opportunities to meet other bond professionals from across the country."
>
> "I thought the conference was very well organized. I enjoyed each presentation. I found the information very helpful."
>
> "Best CLE I have ever been to."
>
> "The Seminar was extremely helpful and well done. I am very happy I attended."
>
> "It was a great seminar overall. I established some new friendships that I think will last beyond the end of the seminar."

The Seminar is being held at the Hyatt Regency Grand Cypress in Orlando, FL on April 22-24. The deadline to reserve a room at the hotel is March 26.

To learn more about the sessions offered at the Seminar, click here.

For online registration, click here.

For information on the hotel, click here.

Gallagher: Mandate GASB Standards, Possibly By Linking to Tax-Exempts.

WASHINGTON – Securities and Exchange Commission member Daniel Gallagher is calling for Congress to mandate that municipal issuers use Governmental Accounting Standards Board standards, possibly as a condition for their bonds to be tax-exempt.

Gallagher issued the call at the Financial Industry Regulatory Authority's Fixed Income Conference in New York City on Tuesday, continuing to build on his track record as the SEC's most outspoken voice on munis.

He also said Congress could grant the SEC authority to recognize GASB standards, as it does for FASB benchmarks, as an alternative to requiring issuers use them as a condition of their bonds' tax-exempt status.

The Republican commissioner said that too many issuers are not adhering to GASB standards for accounting for pension liabilities, leading some to be able to “hide the yawning chasm in their balance sheets” created by overly ambitious projections of pension investment returns.

“According to the most recent information I could locate, just over two-thirds of the 30,000 or so largest state and local municipal issuers use GASB standards,” Gallagher said. “Data were not available for the extent to which an additional 20,000 smaller municipal issuers use GASB standards, but I would hazard a guess that their rate of compliance with GASB is lower than the larger issuers.”

Issuers are not currently required to adhere to GASB standards, but must do so in order to get a “clean audit” from their auditors. Also if the say they are using GASB standards, they must do so. “We need a legislative fix to mandate the use of GASB standards for municipal issuers — whether it is a grant of authority to the Commission to recognize GASB standards as they do the [Financial Accounting Standards Board’s] or as a condition placed on the bonds’ exempt status,” Gallagher continued. “This should help drive better transparency for investors in the muni market.”

Gallagher has said repeatedly that he is worried about bond exposure to muni pension and other post-employment benefit (OPEB) liabilities. The SEC’s enforcement division has also taken action on this front. Most recently, the commission charged Kansas for understating bond exposure to its pension liabilities, the third state the commission has charged for pension reporting problems.

He also said he is pleased that a number of firms have been meeting with SEC to discuss ways to facilitate electronic trading, after he called on SEC last year to engage with market participants and other interested parties to “develop creative solutions to increase liquidity in the secondary fixed income markets.”

Gallagher also touched on other issues in the muni market, repeating some of his past passionate calls for improved transparency for retail investors in the secondary market. Gallagher applauded FINRA and the Municipal Securities Rulemaking Board for their introduction late last year of joint proposals to require dealers acting in a principal capacity to disclose to investors a “reference price” of the same security traded that same day. He said in a December interview that he would have liked the rule to be more similar to a true disclosure of the dealer’s markup, but added on Tuesday that the proposals are a positive step.

He also praised the enforcement division’s work in the muni space, pointing to the SEC’s enforcement action in Harvey, Ill. and saying he supports SEC efforts to bar access to the market for muni officials or cities that don’t follow the rules. Last summer, the SEC secured an emergency order to stop a bond offering by the city based on evidence that the proceeds were to be fraudulently diverted with some of those sums directed to pay the city’s comptroller and muni adviser, Joseph Letke. In December, the city agreed to a settlement in which it agreed to stay out of the markets for as many as three years. The SEC also won a judgment against Letke, along with a bar against participating in future muni offerings.

“This case was an outstanding use of agency resources, and I fully support prohibiting municipalities that cannot or will not comply with the law from accessing the securities markets, as well as pursuing the culpable officials who perpetrate the fraud,” Gallagher said.

THE BOND BUYER

BY KYLE GLAZIER

MAR 10, 2015 5:24pm ET

IRS RP-2015-21: ACA - Correction and Disclosure Procedures for Charitable Hospitals.

Revenue Procedure 2015-21 provides correction and disclosure procedures under which failures to meet the additional requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010 will be excused. This revenue procedure affects charitable hospital organizations.

Revenue Procedure 2015-21 will be published in Internal Revenue Bulletin 2015-13 on March 30, 2015.

McDermott: United States Renewable Energy Tax Update.

Renewable energy continues to be an active area for tax planning following the legislative extension in late 2014 of the federal tax credits for wind, solar and other renewable projects. Since 2013, there has also been increased interest in the securitization of revenue streams from solar portfolios. Although the future availability of these tax incentives remains uncertain, there are still many tax-planning opportunities in the renewables market for developers and investors.

Impact of 2014 Extenders Bill on Wind Projects

After several failed attempts to enact a two-year extension package, on December 16, 2014, Congress settled on a bill that retroactively extended for one year most of the federal tax code provisions that were otherwise set to expire. The final extenders bill, H.R. 5771, included one-year extensions for the Section 45 production tax credit (PTC) and the Section 48 elective investment tax credit (ITC) for wind and other renewable projects, including biomass, geothermal, solid waste, hydropower, and marine and hydrokinetic renewable energy. Prior to the extension, the PTC and ITC were available to wind projects for which construction had begun prior to January 1, 2014. H.R. 5771 thus gave taxpayers an additional one-year window during which they can satisfy the requirement for beginning construction on wind projects through the end of 2014.

Because this extension occurred so late in the year, it did not provide wind industry participants with much time to begin construction on new projects. Generally, taxpayers can satisfy the beginning of construction requirement by either commencing physical work of a significant nature on the facility (Physical Work Test) or incurring at least 5 percent of the total cost of the facility (Safe Harbor). Thus, taxpayers had just over two weeks to either begin constructing a project or to purchase equipment that could meet the Safe Harbor. Notwithstanding the short timeframe to begin construction, some wind industry participants did enter into turbine supply agreements intended to meet the Safe Harbor in the last week or two of 2014.

One positive consequence of the one-year extension was that it potentially revived projects that had begun construction in 2013 but arguably failed to meet the additional Internal Revenue Service (IRS) requirements of maintaining continuous construction or continuous efforts on the project after 2013. These projects may have encountered delays where it is unclear under the IRS guidance whether or for how long such a delay would be excusable for purposes of satisfying the continuous construction and efforts requirement. With the enactment of the extension, the potential failure to meet the continuous construction and efforts tests in 2014 became moot to the extent progress could be made on those projects by the end of 2014 that satisfied either the Physical Work Test or the Safe Harbor. If those projects could show that they had performed activities by the end of 2014 that would themselves qualify as beginning construction, the clock could restart on the continuous construction and efforts tests in 2015.

While the one-year extension of the ITC and PTC was more helpful to wind and other renewable energy projects than no extension, a longer extension of such credits would have permitted the continued development of projects. Since the ITC and PTC are again expired code provisions for 2015, it seems unlikely that new wind projects will begin construction this year unless such projects have the ability to incorporate equipment that qualified for the Safe Harbor prior to 2015.

Securitizations of Solar Portfolios

Another hot topic in the renewable energy world is the recent securitization of a number of solar portfolios. Since the first securitization of such a portfolio in 2013, solar developers and tax equity investors have shown continued interest in securitizing the revenue streams from host customers (either residential or commercial and industrial) that have solar equipment installed at their homes or sites.

While these securitizations do not necessarily present tax issues, some tax consequences should be considered, such as the potential for recapture of the ITC. The recapture rules broadly provide for recapture of ITCs previously taken if ownership of the solar project changes hands or, in lease transactions where the ITC is passed through to the lessee, the lease is terminated. As a result, any potential securitization generally must retain the original tax equity structure. Nonetheless, there is some flexibility to change the ownership of a lessor in a lease pass-through structure or to change the ownership of a partnership owning solar equipment to the extent no partner transfers more than 33.33 percent of its interest. This is an exciting area likely to see continued growth.

The Renewable Landscape

Unless there is a further extension of the PTC and ITC for wind in the near future, wind projects in 2015 will dwindle without the tax credits to spur new projects. Tax equity investors and other industry participants continue to make investments in solar and other renewable projects, because the ITC for solar, fuel cell, microturbine and geothermal heat pumps, among others, does not expire until January 1, 2017. The potential for extension or modification of the ITC for solar and other renewable energy beyond 2017 remains uncertain.

Last Updated: March 5 2015

Article by Madeline M. Chiampou Tully and Heather Cooper

McDermott Will & Emery

Foley: MassDEP — A Voice of Reason in the Stormwater Permitting Debate.

EPA has been working to craft a general permit for small Municipal Separate Storm Sewer Systems for quite some time. The most recent draft permit, published last September, has received significant comment, most recently from the Massachusetts Department of Environmental Protection. While emphasizing cooperation and appreciate for EPA's efforts at collaboration, it is difficult to read MassDEP's comments as anything other than as a sign of significant concern about overreach by EPA.

What's the problem with the draft permit? Nothing that a modicum of attention to cost – and cost-effectiveness – couldn't solve. Indeed it's telling that MassDEP led its comments with concerns about costs, noting that EPA's owns estimates show that, for three small communities in the Charles River watershed, annual compliance costs would range from $865,000 to $1.7M annually.

MassDEP also requested that EPA "harmonize" the permit requirements with the Commonwealth's 2008 stormwater rules, stating that EPA should use:

> the Massachusetts Stormwater Standards as the basis for its successor MS4 permit, rather than requiring a second federal-only layer of permit requirements on top of the existing Massachusetts Stormwater Standards.

Substantively, MassDEP's most significant concern was that the draft MS4 permit reflects:

> a significant shift in approach from the BMP-based program envisioned in the 2003 permit to the current draft which includes additional provision to ensure that the discharges from small MS4s do not cause or contribute to an exceedance of water quality standards.

Hear, hear. There's a reason that stormwater standards have always been focused on attaining reductions to the "maximum extent practicable" based on best management practices. As MassDEP also noted, it is this shift that significantly drives the increase in costs. I would have thought that it went without saying, but stormwater discharges aren't like manufacturing discharges that are far more predictable and easy to control and predict.

There are a number of other important points in the MassDEP comments, including support for pollution credit trading programs, but this is the heart of the issue. If the MS4 general permit is going to succeed in obtaining cost-effective reductions in stormwater pollution, EPA is going to have to be responsive to these concerns.

To view Foley Hoag's Law and the Environment Blog please click [here](#).

Last Updated: March 9 2015

Article by Seth D. Jaffe

Foley Hoag LLP

NASACT Responds to GASB's PVs on Leases.

Read the NASACT Response.

GASB's PVs on Leases are available here.

Jones Day: Ohio Supreme Court Strikes Down a Municipality's Efforts to

Regulate Oil and Gas Production.

The rise of oil and gas production in the Utica and Marcellus shale plays, encouraged by state policies, has led many municipalities to seek to exert some control over oil and gas drilling within their borders. In the past two years, the highest courts in Pennsylvania and New York have sided with municipalities and have upheld municipal zoning ordinances against challenges that such ordinances were preempted by state regulation.

The Ohio Supreme Court has weighed into this controversy, striking down a municipality's zoning and oil and gas ordinances on preemption grounds. The case produced five opinions, including a lead opinion signed by only three justices and concurred in by another. Because of the breadth of the ordinance at issue and the limited holding by the majority of justices, the Ohio court's decision leaves open the possibility that more traditional zoning approaches limiting drilling could be upheld.

In State ex rel. Morrison v. Beck Energy Corp., Slip Op. No. 2015-Ohio-485 (Feb. 17, 2015)

On February 17, 2015, the Supreme Court of Ohio issued its opinion in In State ex rel. Morrison v. Beck Energy Corp,1 holding that several municipal ordinances were preempted by Ohio's oil and gas wells and production operations statute, Chapter 1509 of the Ohio Revised Code. The decision was split, with four of seven justices in favor of striking the ordinances. Three justices joined in the lead opinion. The concurring opinion agreed with the result because the ordinances at issue set up a parallel licensing and permitting scheme that conflicted with the licensing and permitting scheme set forth in Chapter 1509. Notably, however, the concurring justice, drawing on recent decisions in New York and Pennsylvania, appeared to favor allowing municipal ordinances reflecting traditional zoning concerns that would indirectly prohibit oil and gas drilling. Thus, the Beck decision leaves open the possibility that municipal zoning ordinances that have the effect of prohibiting oil and gas drilling could be upheld.

Relevant Facts and Procedural History

Beck Energy Corporation ("Beck Energy"), an Ohio oil and gas driller, entered into a lease agreement with a landowner who owned several acres of property within the corporate limits of the City of Munroe Falls (the "City").2 Pursuant to that agreement, Beck Energy acquired the right to produce any natural gas under the landowner's property.3 In 2011, Beck Energy obtained a permit from the Ohio Department of Natural Resources ("ODNR") to begin drilling operations.4 The permit was issued pursuant to Section 1509.02 of the Ohio Revised Code.5

Amended in 2004 to provide "uniform statewide regulation"6 of oil and gas well operations, Section 1509.02 provides that the ODNR "has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state…with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state…"7 Further, "Nothing in this section affects the authority granted to…local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter."8

After Beck Energy began surface activities related to drilling, the City served Beck Energy with a stop-work order and filed a complaint for injunctive relief.9 The complaint alleged that Beck Energy violated several municipal ordinances related to oil and gas drilling and zoning. The oil and gas ordinances established a local permitting process, including a public hearing requirement, with fines and penalties attached for failure to comply.10 The zoning ordinances required the issuance of general and conditional use zoning certificates prior to the commencement of drilling and incorporated the permitting process set forth in the oil and gas ordinances.11 On May 3, 2011, the trial court granted the City's request for injunctive relief until Beck Energy complied with the City's ordinances.12 On appeal, the appellate court reversed and held that the ordinances at issue could not be enforced because they were "in direct conflict" with Section 1509.02.13

Lead Opinion

In its lead opinion written by Justice Judith French and joined by two other justices, the Court held that the Home Rule Amendment to the Ohio Constitution did not grant the City the power to enforce the ordinances under review. The Home Rule Amendment provides that "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."14 Ordinances in conflict with a state law, however, are preempted. Specifically, a "municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute."15

The lead opinion observed that the ordinances constituted an "exercise of police power," stating that the "[ordinances] prohibit—even criminalize—the act of drilling for oil and gas without a municipal permit."16 The lead opinion also stated that Section 1509.02 was a general law that operated uniformly throughout the State because it "imposes the same obligations and grants the same privileges to anyone seeking to engage in oil and gas drilling" anywhere in Ohio.17

Justice French reasoned that the ordinances conflicted with Section 1509.02 in two ways. First, the ordinances prohibited what the statute permitted: "state-licensed oil and gas production within Munroe Falls."18 She said: "This is a classic licensing conflict under our home-rule precedent. We have consistently held that a municipal-licensing ordinance conflicts with a state licensing ordinance if the 'local ordinance restricts an activity which a state license permits'."19

Second, the lead opinion observed that the ordinances conflicted with Section 1509.02 because the language of the statute demonstrated that "the General Assembly intended to preempt local regulation on the subject."20 The lead opinion noted that by designating ODNR as the "sole and exclusive authority to regulate the permitting, location and spacing of oil and gas wells" and by reserving to the State "all aspects" including "permitting" relating to the location, drilling and operation of oil and gas wells, the General Assembly intended to preempt any local regulation of the same.21 In concluding that such a "double licensing" scheme was impermissible, the lead opinion cautioned, however, that its review was "limited to the five municipal ordinances at issue in this case."22

The City had argued that no conflict existed "because the statute and the ordinances regulate two different things," i.e., the ordinances supposedly addressed "traditional concerns of zoning" while the statute related to "technical safety and correlative rights topics."23 This argument drew on recent decisions in New York and Pennsylvania for support. In Wallach v. Dryden,24 the Court of Appeals of New York held that local zoning ordinances that in effect prohibited "all oil and gas exploration, extraction and storage activities" within a municipality's corporate limits were not preempted by New York's oil and gas statute.25 As that Court further held, New York's oil and gas statute preempted "only local laws that purport to regulate the actual operations of oil and gas activities, not zoning ordinances that restrict or prohibit certain land uses within town boundaries."26 The zoning ordinances at issue did not run afoul of this distinction because they were "directed at regulating land use generally and do not attempt to govern the details, procedures or operations of the oil and gas industries."27

Similarly, in Huntley & Huntley v. Borough of Oakmont28, the Supreme Court of Pennsylvania held that a local zoning ordinance which had the effect of restricting the site selection of oil and gas wells was not preempted by Pennsylvania's Oil and Gas Act.29 The Huntley court noted that the intent behind the ordinance was to promote "the safety and welfare of [the Borough's] citizens, encouraging the most appropriate use of land throughout the borough [and] conserving the value of property."30 The Huntley court also reasoned that while government interests regarding oil and gas development and land-use control may on occasion overlap, those interests are at base distinct.31 The state's interest in oil and gas development seeks to further the efficient use of natural resources while a municipality's interest in "land-use control … is one of orderly development and use of land in a manner consistent with local demographic and environmental concerns."32

Justice French derided the City's argument and the notion that zoning ordinances could survive a preemption challenge because they dealt with an area that was different than the subject addressed by oil and gas statutes and regulations. Specifically, she called this alleged distinction "fanciful":33 "The ordinances and R.C. 1509.02 unambiguously regulate the same subject matter—oil and gas drilling—and they conflict in doing so."34

Concurring Opinion

In a separate opinion concurring in the judgment only, Justice Terrence O'Donnell agreed that the City had created a "parallel municipal permitting process for oil and gas wells" that conflicted with Section 1509.02, a general law, whereby the City's oil and gas and zoning ordinances were preempted.35 The concurring opinion, however, emphasized "the limited scope of our decision,"36 i.e., to wit:

This appeal does not present the question whether R.C. 1509.02 conflicts with local land use ordinances that address only the traditional concerns of zoning laws, such as ensuring compatibility with local neighborhoods, preserving property values, or effectuating a municipality's long-term plan for development.37 [Further] "it remains to be decided whether the General Assembly intended to wholly supplant all local ordinances limiting land uses to certain zoning districts" that did not regulate the "details of oil and gas drilling expressly addressed" by Section 1509.02.38

The concurring opinion noted that under Ohio law "municipalities have…authority to regulate land uses within zoning districts to promote the public health, safety convenience, comfort, prosperity and general welfare"39 and the zoning ordinances enjoy a "strong presumption … of … validity."40 Justice O'Donnell stated that while the statute vests ODNR with "sole and exclusive authority" regarding the location and spacing of oil and gas wells, the lead opinion purportedly ignores the fact that "'location' and 'spacing' have specialized, technical meanings in oil and gas law."41 "Scientific expertise" is thus required for the proper placement of oil and gas wells, thereby requiring special regulations directed to their location and spacing.42 "In contrast, that same scientific and regulatory expertise is not required to determine whether an oil and gas well is compatible with the character and aesthetics of a particular zoning district, such as a residential neighborhood, and we generally presume that zoning authorities are far more familiar with local conditions and therefore are better able to make land use decisions."43

In contrast to the lead opinion, the concurring opinion relied on Dryden and Huntley to support the proposition that "Courts of last resort in other jurisdictions have declined to view preemptive language in oil and gas statutes that preclude all local regulation of oil and gas drilling as irreconcilable with local zoning laws."44 The concurring opinion further observed that the Ohio legislature enacted Chapter 1509 to "preempt the inconsistent patchwork of local health and safety regulations governing the technical aspects of drilling…."45 Unlike other Ohio statues which expressly preempt local zoning ordinances, such as laws dealing with hazardous waste facilities, casinos, or public utilities, Chapter 1509 does not do so. "Nothing in R.C. Chapter 1509 expressly addresses zoning or requires ODNR to regulate the location of oil and gas wells to ensure compatibility with local land use, preserve property values, effectuate a municipality's long-term plan for development, or uphold any of the other traditional goals of zoning."46

Conclusion

Municipal ordinances that directly attempt to regulate the means or manner of oil and gas drilling are now not permitted in Ohio. Given the limited nature of the majority holding, however, Beck expressly leaves open the question of whether a zoning ordinance that bans or limits oil and gas drilling using more traditional zoning concepts would be permitted.

Footnotes

1 Slip Op. No. 2015-Ohio-485 (Feb. 17, 2015).

2 Appellees' Merit Br. at 2 (Oct. 23, 2013).

3 Id.

4 Beck Energy at 2, ¶3.

5 Id.

6 Id. citing Legislative Service Commission Bill Analysis, Sub H.B. No. 278 (2004).

7 R.C. 1509.02.

8 .Id. Section 723.01 grants municipalities "special power" to regulate public rights of way and Section 4513.34 vests municipalities with the authority to grant permits regarding the operation of heavy vehicles on local highways.

9 Beck Energy at 4, ¶7.

10 Id. at ¶9.

11 Id. at¶¶8; 37.

12 The State of Ohio ex. rel. Jack Morrison, Jr., Law Director of Munroe Falls, Ohio v. Beck Energy Corp., Case No. 2011-04-1897 at 3-4 (Summit Cty. C.P. May 3, 2011).

13 The State of Ohio ex. rel. Jack Morrison, Jr., Law Director of Munroe Falls, Ohio v. Beck Energy Corp., Case No. 25953 at 2 (Summit Cty. Ct. App. Feb. 6, 2013).

14 Ohio Const., Article XVIII, Section 3.

15 Beck Energy at 6, ¶15, citing Mendenhall v. Akron, 117 Ohio St.3d 33, 2008-Ohio-270, ¶17.

16 Id. at ¶18.

17 Id. at 8, ¶23.

18 Id. at 9, ¶25.

19 ¶26 citing Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted, 65 Ohio St.3d 242, 245 (1992); Anderson v. Brown, 13 Ohio St.2d 53, 58 (1968).

20 Id. at 11, ¶29 citing Westlake v. Mascot Petroleum Co., 61 Ohio St.3d 161, 164 (1991).

21 Id. at ¶¶29-30.

22 Id. at 12-13, ¶33.

23 Id. at 10, ¶28.

24 23 N.Y. 3d 728 (2014).

25 Id. at 739.

26 Id. at 746.

27 Id.

28 600 Pa. 207 (2009).

29 Id. at 217; 224.

30 Id. at 224.

31 Id.

32 Id. at 225. The Huntley court, however, affirmed the appellate court's holding that the Borough had improperly denied the driller a conditional use certificate. See id. at 226-230.

33 Id.

34 Id.

35 Id. at 13-14, ¶36.

36 Id. at 14, ¶38.

37 Id.

38 Id. at 15, ¶39.

39 Id. at ¶41.

40 Id. at 16, ¶42.

41 Id. at ¶43.

42 Id. at 17, ¶44.

43 Id.

44 Beck Energy at 17-18, ¶45.

45 Id. at 18, ¶46.

46 Id. at 19, ¶47.

Last Updated: March 6 2015

Article by Michael R. Gladman, David A. Kutik, Roy A. Powell, Todd S. Swatsler, Jeffery D. Ubersax and Martin T. Harvey

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NASACT Responds to GASB's PVs on Financial Reporting for Fiduciary Responsibilities.

Read the NASACT Response.

GASB's PVs on Financial Reporting for Fiduciary Responsibilities are available here.

A New Buzzword?

In his outlook report this week, Municipal Market Analytics' Matt Fabian coined a new acronym: MPR. It stands for Mythical Pension Reform, a term that just might catch on as two states are attempting to overhaul their flailing pension systems. The reform is imaginary; politicians like to include the expected savings in proposed budgets before the reform actually passes. This is a mistake, Fabian says. In his analysis this week on Illinois Gov. Rauner's proposed 2016 budget, Fabian says that any reliance on MPR in the budget should only be applied to future years as the state's courts "have not shown much sympathy for state budget concerns or timeliness when considering the legality of past pension reforms." (New Jersey is the other state this year attempting a major reform.)

Rauner is seeking to slash current employees' retirement benefits in an effort to close his state's continual budget gaps, including one in 2016. A previous pension reform, which cuts benefits already accrued by employees, is tied up in a legal battle. Rauner's proposal would allow current employees to keep the pensions they've already earned but future employees would get less generous benefits. The governor estimated the move would save $2.2 billion in 2016 alone.

GOVERNING.COM

LIZ FARMER | MARCH 13, 2015

Managing Volatile Tax Collections in State Revenue Forecasts.

This report, a joint initiative of The Pew Charitable Trusts and the Nelson A. Rockefeller Institute of Government, will help policymakers better understand how volatile state taxes affect the accuracy of revenue projections. It examines data from 1987 through 2013 and reveals that predicting how much money state governments will raise has become more difficult than ever. The increase in revenue forecast errors is due largely to the growing volatility of tax collections across the states. From 2000 to 2013, the size of fluctuations in tax revenue rose in 42 states. And although no state can entirely eliminate forecasting errors, this study identifies three ways to help them manage volatility.

[Download the full report.]

March 10, 2015

[Texas Upcoming Bond Election Roundup.]

Election day is May 9, 2015, and many Texas communities are proposing new debt through local bond elections. Because there is no known centralized public resource of local bond elections, information about these elections and the amount of debt being proposed in taxpayers' names is often difficult to find.

The Upcoming Bond Election Roundup attempts to solve this problem by providing you with easy access to upcoming bond propositions in Texas.

We also provide debt totals and trends for Texas cities, counties, school districts and community college districts, as well as Texas in the Debt at a Glance feature on TexasTransparency.org. If any of the entities listed in the roundup appear in Debt at a Glance, we'll link to that page for additional debt context.

Upcoming Bond Elections Across the State (Alphabetical by Entity) as of March 09, 2015.

Election Date	Entity	Type	County	Proposed Amount	Prop	Purpose	Tax-Supported Debt (as of 8/31/13)
5/2015	Abilene	City	Jones, Taylor	$43,975,000	1	Streets & Roads	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$2,810,000	2	Civic Center	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$3,820,000	3	Sidewalks	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$12,865,000	4	Police & Fire	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$1,030,000	5	Zoo	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$6,000,000	6	Aquatic Facilities	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$2,500,000	7	Splash Pads	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$1,490,000	8	Parks & Rec	$97,265,000
5/2015	Abilene	City	Jones, Taylor	$6,200,000	9	Airport Improvements	$97,265,000
5/2015	Alief ISD	ISD	Harris	$341,000,000	1	New Construction, Safety & Security, Transportation	$184,719,790
5/2015	Bullard ISD	ISD	Cherokee, Smith	$40,000,000	1	School Additions & Renovations	$36,160,986
5/2015	Canyon ISD	ISD	Randall	$34,800,000	1	School Building	$76,548,602
5/2015	Carthage ISD	ISD	Panola	$8,370,000	1	School Building & Buses	$22,729,955
5/2015	Carthage ISD	ISD	Panola	$19,750,000	2	Auditorium	$22,729,955
5/2015	Carthage ISD	ISD	Panola	$905,000	3	Athletic Field	$22,729,955
5/2015	Chico ISD	ISD	Wise	$7,000,000	1	Building Upgrades	$18,146,409
5/2015	Cleburne ISD	ISD	Johnson	$150,000,000	1	School Building	$47,452,102
5/2015	Comal ISD	ISD	Bexar, Comal, Guadalupe,	$147,400,000	1	New Schools, Renovations	$492,921,213
5/2015	Decatur ISD	ISD	Wise	$9,988,500	1	Transportation, Security, Technology, Facilities	$65,587,612
5/2015	Decatur ISD	ISD	Wise	$3,500,000	2	Multi-Purpose Center	$65,587,612
5/2015	Eanes ISD	ISD	Travis	$52,500,000	1	School Building & Technology	$136,275,000
5/2015	El Campo	City	Wharton	$10,500,000	1	Public Safety Facility	$11,730,000
5/2015	Fredericksburg ISD	ISD	Blanco, Gillespie, Kendall	$16,000,000	1	School Renovations	$15,760,000
5/2015	Frisco	City	Collin, Denton	$41,500,000	1	Public Safety Projects	$539,865,000
5/2015	Frisco	City	Collin, Denton	$123,000,000	2	Streets & Roads	$539,865,000
5/2015	Frisco	City	Collin, Denton	$3,325,000	3	Fleet Center Improvement	$539,865,000
5/2015	Frisco	City	Collin, Denton	$37,000,000	4	Municipal Center	$539,865,000
5/2015	Frisco	City	Collin, Denton	$9,000,000	5	Senior Citizen Center	$539,865,000
5/2015	Frisco	City	Collin, Denton	$32,000,000	6	Parks & Rec	$539,865,000
5/2015	Frisco	City	Collin, Denton	$10,000,000	7	Performing Arts	$539,865,000
5/2015	Frisco	City	Collin, Denton	$10,000,000	8	Parks	$539,865,000
5/2015	Georgetown	City	Williamson	$105,000,000	1	Roads	$125,830,000
5/2015	Gilmer ISD	ISD	Upshur	$28,500,000	1	New High School Building	$19,895,000
5/2015	Harlandale ISD	ISD	Bexar	$64,900,000	1	School Building & Security	$188,639,437
5/2015	Joshua ISD	ISD	Johnson	$50,000,000	1	Future Growth, Security & Technology	$72,443,390
5/2015	Kerr County	County	Kerr	$15,000,000	1	Jail Expansion	$9,650,000
5/2015	Klein ISD	ISD	Harris	$498,100,000	1	Growth, Safety & Security, School Buses, Renovations, and Technology	$761,990,000
5/2015	LaPoynor ISD	ISD	Anderson, Henderson	$4,120,000	1	New School	$680,000
5/2015	LaPoynor ISD	ISD	Anderson, Henderson	$4,870,000	2	Gymnasium	$680,000
5/2015	Liberty ISD	ISD	Liberty	$33,500,000	1	School Building	$14,522,903
5/2015	Marshall ISD	ISD	Harrison	$109,210,000	1	New Schools, Renovations	$0
5/2015	McAllen ISD	ISD	Hidalgo	$297,000,000	1	School Upgrades	$114,971,000
5/2015	Mesquite ISD	ISD	Dallas	$280,000,000	1	New School Construction, Renovations, Purchasing Sites, & Technology	$364,819,854
5/2015	Montgomery County	County	Montgomery	$350,000,000	1	Roads	$406,395,000
5/2015	Montgomery ISD	ISD	Montgomery	$256,750,000	1	Growth, Renovations, Safety, Security Upgrades	$127,239,690
5/2015	New Caney ISD	ISD	Harris, Montgomery	$173,000,000	1	New Campuses, Renovations, Purchase of Land for Future Growth	$276,909,358
5/2015	Pecos County	County	Pecos	$35,000,000	1	Hospital Upgrades	$4,890,000
5/2015	Pettus ISD	ISD	Bee, Karnes	$32,300,000	1	New Schools, Renovations, Athletics	$0
5/2015	Pleasanton ISD	ISD	Atascosa	$63,000,000	1	New School Building	$19,685,000
5/2015	Post ISD	ISD	Garza, Kent, Lynn	$18,000,000	1	New School Building	$27,360,000
5/2015	Rowlett	City	Dallas, Rockwall	$18,932,360	1	Streets	$85,385,000
5/2015	Rowlett	City	Dallas, Rockwall	$4,206,110	2	Parks	$85,385,000
5/2015	Rowlett	City	Dallas, Rockwall	$2,635,050	3	Public Safety Projects	$85,385,000
5/2015	Selma	City	Bexar, Comal, Guadalupe	$9,000,000	1	Roads	$12,375,000
5/2015	Slaton ISD	ISD	Lubbock, Lynn	$14,400,000	1	School Buildings	$3,690,000
5/2015	Thrall ISD	ISD	Williamson	$15,000,000	1	School Building & Technology	$1,965,000
5/2015	Waxahachie ISD	ISD	Ellis	$125,000,000	1	Growth & Facility Improvements	$116,749,295
5/2015	Weatherford ISD	ISD	Parker	$18,800,000	1	Renovations	$70,654,007
5/2015	Weatherford ISD	ISD	Parker	$69,500,000	2	Growth	$70,654,007
5/2015	Weatherford ISD	ISD	Parker	$6,600,000	3	Safety & Security	$70,654,007
5/2015	Whitney ISD	ISD	Hill	$11,000,000	1	Athletic Facilities	$28,335,000
5/2015	Wylie ISD (Taylor County)	ISD	Taylor	$15,000,000	1	School Building & Security	$0
5/2015	Ysleta ISD	ISD	El Paso	$431,000,000	1	Repurposing, Consolidating & Rebuilding Schools	$217,300,000

[Suspension of a Treasury Facility Seen Slowing Municipal Refunding.]

(Reuters) – The U.S. Treasury confirmed on Friday that it had indefinitely shuttered a key facility used to refinance debt in the $3.7 trillion municipal bond market in a move set to slow a surge of new bond issuance that has inundated the market this year.

The suspension of the issuance of State and Local Government Series (SLGS) securities, known as the "slugs window", as of noon on Friday was ordered by the Treasury as a temporary extension to the U.S. government's borrowing limit expires on Sunday with little sign Congress will act to extend it promptly.

“Protecting the full faith and credit of the United States is the responsibility of Congress,” Treasury Secretary Jacob Lew said in a letter to the legislature on Friday, informing it of the suspension and other extraordinary measures.

Issuing Treasury slugs counts against the debt limit.

Closure of a facility used by municipal governments in debt refinancing transactions is likely to slow refunding operations that have contributed the bulk of new municipal bonds issuance so far this year, analysts say.

“Suspension of slugs sales could disrupt advance refunding activity as the only main alternative is acquiring open-market Treasuries through a competitive bidding process,” Oppenheimer said in a research note this week.

Municipal governments purchase slugs in advanced refinancing deals when the bonds they are refinancing are not immediately callable. The municipality puts the slugs in an escrow account and the cash flow is used to repay the debt.

Municipalities prefer to use slugs for advanced refinancing deals rather than Treasuries purchased in the open market because the Treasury tailors coupons and terms of slugs to match the refinanced debt.

Municipal bond issuance has been surprisingly strong so far this year. Refinancing deals have made up the bulk of the deals. New issuance totaled $58.8 billion in the first two months of the year, nearly double the same period last year.

Of that total, refunding deals amounted to $39.8 billion, or over two thirds of the total muni bond issuance, according to data compiled by Thomson Reuters.

“Suspending slug purchases will slow that, limiting debt service savings opportunities for state and local budgets,” Moody’s Investors Service wrote in a report.

Fri Mar 13, 2015 2:39pm EDT

By Edward Krudy

(Reporting by Edward Krudy; Editing by Leslie Adler and Jonathan Oatis)

Ballard Spahr: SEC Muni Enforcement Chief Offers Her Views on MCDC.

The Securities and Exchange Commission’s (SEC’s) year-old Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative or MCDC) has encouraged municipal securities issuers, borrowers, and underwriters to self-report possible securities law violations related to inaccurate representations in offering documents concerning an issuer’s prior compliance with its continuing disclosure obligations. At the National Association of Bond Lawyers’ Tax & Securities Law Institute (TSLI) last week, members of the SEC enforcement staff appeared on a panel to provide additional MCDC details, including that underwriter MCDC cease-and-desist orders will be announced in the “coming months” and that issuers will not be named in these enforcement actions.

LeeAnn G. Gaunt, chief of the SEC’s Municipal Securities and Public Pensions Unit, told the TSLI audience that there was broad market participation in the MCDC Initiative. The SEC, however, does not plan to announce the precise number of MCDC self-reports it received or the percentage that result in a cease-and-desist order. The SEC will announce its MCDC orders against underwriters before it announces any MCDC settlements with issuers or obligated persons. Ms. Gaunt declined to assure underwriters that the SEC will waive certain statutory disqualifications that could be triggered by MCDC settlements, but indicated such waivers eventually should be obtainable.

In July 2014, the SEC announced its first MCDC cease-and-desist order against Kings Canyon Joint Unified School District of California (District). The order was noted by securities lawyers for its lack of detail about the underlying facts and legal analysis supporting the SEC's conclusion of a securities law violation. In response, Ms. Gaunt stated at TSLI that, in each underwriter order, there will be a few detailed examples of the types of continuing disclosure failures upon which the order is based. Ms. Gaunt believes that these examples will provide the municipal market with a representative and diverse set of facts that can illustrate circumstances that may prompt an SEC enforcement action. The examples will not identify a municipal securities issuer or borrower or the name of the issue.

One of the MCDC settlement terms requires underwriters to retain an independent consultant to conduct a compliance review and provide recommendations to the underwriter on its due diligence process and procedures. Ms. Gaunt indicated that the SEC will not alter its "independence" standard for purposes of MCDC. This means underwriters will have to retain a consultant who has not worked with the underwriter for a two-year period before or after the MCDC settlement.

Upon receipt of a settlement offer, the SEC is setting a tight deadline of two weeks to respond and negotiate the terms. The SEC plans to follow up with all MCDC self-reporters, including entities that will not face a cease-and-desist order. Ms. Gaunt stated that an MCDC enforcement action against an underwriter for a particular transaction will not automatically result in a related action against the issuer or other obligated person involved in the transaction.

The SEC is likely to follow up soon with issuers and other obligated persons who self-reported and/or who were reported by an underwriter. If you receive a call from the SEC, remember:

- **Extensive discussions may not serve your interests.** You should politely listen, ask the SEC staff member for his or her contact information, and let the staff member know that your counsel will call him or her back.
- **Contact your counsel.** The issuer or obligated person should contact its MCDC counsel as soon as possible. Keep in mind that the internal notes and e-mails of issuer and obligated person officers and employees are discoverable. By contrast, communications with your lawyer are protected by attorney-client privilege.
- **Retain records.** Do not destroy any potentially relevant documents.

Please refer to our webinar recording for more information on what to expect following MCDC self-reporting or a decision not to report, how the SEC may determine the materiality of any reported misstatement, and the process of SEC investigations.

March 13, 2015

by M. Norman Goldberger, John C. Grugan, Bradley D. Patterson, William C. Rhodes, and Tesia N. Stanley

Ballard Spahr's Municipal Securities Regulation and Enforcement Group helps municipal market participants navigate a rapidly evolving regulatory, investigative, and enforcement environment, enabling them to anticipate and address compliance issues and respond effectively to investigations when necessary. For more information, please contact M. Norman Goldberger at 215.864.8850 or goldbergerm@ballardspahr.com, John C. Grugan at 215.864.8226 or gruganj@ballardspahr.com, Bradley D. Patterson at 801.531.3033 or patterson@ballardspahr.com, William C. Rhodes at 215.864.8534 or rhodes@ballardspahr.com, or Tesia N. Stanley at 801.517.6825 or stanleyt@ballardspahr.com.

Price Set for Rapid Bridge Replacement Bonds.

Two of the lead partners on the Pennsylvania Rapid Bridge Replacement Project have priced $800 million in private activity bonds (PABs) to help finance the effort.

The bonds, issued by Plenary and Walsh and priced by JP Morgan and Wells Fargo, will complement $60 million in equity from Plenary and Walsh and $225 million in milestone payments, some of which will pay down the shorter-dated PABs. The bonds carry a rating of BBB from Standard & Poor's, reported IJ Global.

The bonds will mature between 2018 and 2047, have yields of between 1.5 percent and 4.3 percent, and have an all-in interest cost of 4.1 percent.

In January, the Pennsylvania Department of Transportation finalized all terms for the $899 million Rapid Bridge Replacement P3 and signed a contract with the Plenary Walsh Keystone Partners, clearing the way for the replacement of 558 bridges throughout the state. The project is made possible by a state P3 law enacted in 2012 and approved by the state Public-Private Transportation Partnership Board in September 2013.

The project will allow the state to replace structurally deficient bridges throughout the state in a more cost effective manor than traditional procurement. In addition, the Plenary Walsh Keystone Partners will be responsible for maintenance on the bridges for 25 years after they are built.

NCPPP

By Editor March 5, 2015

[Plug-and-Play Residential PACE Financing Grows in California.]

Property-assessed clean energy (PACE) loan programs for homes rebounded in a big way in 2014, with residential PACE projects eclipsing the commercial PACE market.

California leads the way going into 2015, with more than $500 million in completed residential projects. The majority of that money came through the Home Energy Renovation Opportunity (HERO) program.

PACE programs allow investments in water- and energy-efficiency retrofits and distributed renewable generation to be paid back through property taxes, which lowers the risk for both lenders and owners and can potentially open up a far larger swath of the energy-efficiency market.

Already a leader, the HERO program has expanded substantially in California in the last few months. In December, the HERO program was approved by the city of San Francisco, making it the first large city in California to return to residential PACE financing since it was halted a few years back because of conflicts with federal housing regulators.

Not to be outdone by its neighbors to the north, Los Angeles County voted to adopt HERO PACE programs for the 85 cities that make up the county, including Los Angeles.

"It's good to see the LA County Board of Supervisors helping to conserve energy by approving the Residential PACE program that will help Angelenos conserve water, use less electricity, and harness renewable energy at home," Los Angeles Mayor Eric Garcetti said in a statement. Some of HERO's most popular products in California include water-saving technologies, solar panels, HVAC upgrades, energy-efficient windows and doors and roofing and insulation.

HERO is not the only PACE administrator scooping up partnerships across California. In January, Ygrene Energy Fund made its residential PACE program Ygrene Works available to every California city and county through a partnership with Golden State Finance Authority, formerly known as California Home Finance Authority.

The competition in residential PACE financing means that cities and counties can adopt PACE for homes and businesses quicker and easier than in the past. The major administrators, like HERO and Ygrene, promise no cost to taxpayers and no staff time required. By choosing more than one provider, municipalities can offer an array of financing options. California is also pushing the envelope on residential PACE with a pilot for using the loans for multi-family housing.

Although California is far in the lead on residential PACE, others are trying to ramp up. South Florida was one of the first places to get back into the residential PACE game when Ygrene launched a $230 million bond in 2013 that was available for homes and businesses.

But Ygrene and other administrators, like EcoCity Partners, have largely been on the sideline as PACE programs for homes across Florida are tied up in a court battle.

It's not PACE programs themselves that are being challenged; instead, the Florida Bankers Association is contesting the validations on the bonds that back the PACE loans, according to the Sun Sentinel. The bankers don't want PACE loans to be paid before mortgages if there are outstanding property obligations.

But it's not just the bankers. In late February, the Florida Supreme Court dismissed the appeal of the Florida Green Energy Works bond validation that was filed by a taxpayer. The court dismissed the case because the appellant, James Gowen, “has no interest in this case,” the court stated. The court noted in the ruling this was the third PACE bond validation case where an appellant has appeared in the eleventh hour but has no direct interest in the case.

“[Florida Green Energy Works] program was structured as a statewide commercial PACE program initially, but the dismissal of this appeal allows the program to now scale up on the residential side statewide as well,” EcoCity Partners declared on social media.

Florida isn’t in the clear just yet, but the court’s most recent ruling gives PACE advocates confidence that other similar appeals will also be dismissed. Florida’s residential PACE market might not rival California’s by year’s end, but if the legal hurdles continue to fall, it could make a strong start.

greentechmedia.com

Katherine Tweed

March 6, 2015

Municipal Issuer Brief: Tough Week for Municipal Bond Issuers.

Municipal Market Analytics | Mar. 10

Read the Brief.

PACE Financing an Option for More Extensive Energy Efficiency Projects.

For more extensive, longer-term energy efficiency projects, owners may consider property-assessed clean energy (PACE) financing — a financing vehicle that allows owners to borrow money from a local government and pay it back over time on the building’s property tax bill. PACE is now available in 31 states covering about 80 percent of the population in the U.S. “We’ve seen a definite uptake in the commercial market (for PACE), despite the rocky regulatory landscape,” says ACEEE’s Bell.

NAESCO’s Gilligan agrees. “We see a lot of potential in PACE,” he says. “It’s a little more complicated than other financing, and it requires a state law plus a local law plus a program to enable it. But if you can do PACE, you’ve got lower-cost money. PACE makes it easier for comprehensive retrofits.”

A recent PACE project in Los Angeles illustrates PACE’s potential — in 2013 the Hilton Los Angeles/Universal City completed $7 million in upgrades using PACE financing and $1 million in utility rebates. The 500,000-square-foot hotel replaced HVAC, elevators, controls, lighting, and restroom fixtures. The project has a return on investment of 78 percent and owners have calculated an increase in the value of the building of more than $30 million.

“It was an aging property that needed all kinds of upgrades,” says Marky Moore, CEO of the Capital Review Group, which participated in the project. “They had big buy-in from their financial officer, and it turned out to be a stunning project. In the grand scheme of things a property is improved and value is better using a PACE program.”

More Lenders

One of the reasons PACE, as well as other financing programs, including increasingly specialized loan programs on a city-by-city or state-by-state basis, are becoming more prevalent is that “we are seeing a lot more lenders looking to participate in the energy market than we did five to 10 years ago,” says Goulding. “I believe this is a testament to the fact that lenders are realizing that many energy projects are excellent projects where the ROI can be accurately calculated.”

That’s all good news for facility managers — both in terms of the fact that there are more options for inexpensive money for energy efficiency, and also because it raises facility managers’ profile in any organization as their expertise is appreciated and relied upon. In many organizations, it won’t be the facility managers making the ultimate decision about the type of financing — but being well-versed in the options and knowing which will meet the organization’s needs can be the main catalyst to getting an energy project funded. “Facility managers need to be involved in the discussion regarding layering in incentives and financing projects efficiently,” says Moore. “It’s the facility manager who really knows the property.”

FACILITIESNET

By Greg Zimmerman, Executive Editor – March 2015 – Energy Efficiency

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Cities Paying Millions to Get Out of Bad Bank Deals.

When the Great Recession delivered the biggest blow to government budgets this side of World War II, it wasn’t just slashing revenue streams — it also made certain financing agreements more costly in the long run.

The agreements are called interest rate swaps, a holdover from the years leading up to 2008 when the booming market made even risky investments seem like a good idea. But in reality, these financing agreements with banks have come back to haunt governments following the financial markets crash and severe drop in interest rates. Last week, Chicago became the latest example when a credit rating downgrade by Moody’s Investors Service triggered a potential $58 million penalty for the fiscally beleaguered city.

Penalties related to ratings downgrades are common in swaps, says Municipal Market Analytics Partner Matt Fabian. But typically, the ratings floor is well below the government’s rating at the time of the deal.

“Remember, Chicago was super-downgraded back in 2013 — that kind of rating action is almost never expected,” Fabian says. “This latest downgrade is a result of the city’s huge pension liability, the complete lack of momentum in coming up with any sort of solution and a shifting [emphasis] by Moody’s on outstanding liabilities.”

Still, Chicago is not alone. Dozens of cities and states across the country still have swaps deals on the books. These deals were meant to save taxpayer money but are in fact doing just the opposite.

In an interest rate swap, a government wants to alter debt it has sold that must be paid back with a varying interest rate that periodically resets, depending on the market. Buying that type of debt is appealing to investors, who believe that interest rates will grow and they will get a higher return on their investment. But governments need to plan out their budgets and it is difficult for budgeters to project debt payments that will vary versus payments that are based on a fixed interest rate. So, the government makes a deal on that debt with a bank: The bank agrees to pay out the investors at the variable interest rate and the government pays the bank a fixed rate that they negotiate. It's a way for the government to hedge against skyrocketing interest rates.

These types of deals were very common in the early to mid-2000s, particularly among larger issuers like major cities, some states and public agencies like housing or airport authorities. Many thought that they were saving taxpayer money: that the interest rate they were paying banks was lower than if they sold that debt and paid out a fixed, market rate of return to investors. But swaps fell largely out of favor after interest rates plummeted — and stayed rock-bottom-low. Governments found themselves stuck paying an interest rate far above the market while the banks pocketed the profits.

Some question the legality of such deals. The Roosevelt Institute's Saqib Bhatti argued some cities could take legal actions against the banks to recoup some of their losses. Bhatti, director of the institute's ReFund America Project that advocates for better Wall Street accountability, noted Chicago Public Schools is potentially leaving millions of dollars on the table with inaction. Last November the Chicago Tribune published a series that found banks knew the risky auction-rate bond market was in trouble during the summer of 2007, yet they turned around and sold the school district $263 million in auction-rate debt anyway.

"There's been a number of organizations in the city calling for legal action to recover past payments on these swaps," says Bhatti. "And thus far, the city has not pursued that option."

All told, the Tribune estimated that Chicago's school district issued $1 billion worth of auction-rate securities between 2003 and 2007, nearly all of it paired with interest rate swaps. The city of Chicago holds nearly $3 billion in debt tied up in swaps, an amount nearly equal to its operating budget. The city is likely renegotiating with banks to reset the terms of the four swaps tied to last week's ratings downgrade instead of paying the $58 million termination fee, although the current administration has unwound some deals by paying tens of millions in fees. If the city wanted to terminate all of its swaps, it would cost north of $300 million, according to its most recent Comprehensive Annual Financial Report. The termination fee represents the amount the debt is underwater, similar to when a homeowner owes more on a house than it's worth.

GOVERNING.COM

BY LIZ FARMER | MARCH 6, 2015

California Completes $1.9 Billion Bond Sale With $198 Million in Taxpayer Savings.

SACRAMENTO – State Treasurer John Chiang today announced successfully completing the sale of $1.9 billion in State general obligation bonds, which included the refinancing of more than $1 billion in previously-issued bonds.

"Despite investors' concerns over future interest rates, this week's sale showed a healthy appetite for California paper," Chiang said. "Recent credit upgrades have increased the market's confidence in the State's credit worthiness and individual and institutional investors alike eagerly got behind California."

The yield for 30-year 5 percent coupon bonds, 3.27 percent, was the lowest paid by the State since at least 1989. The spread between the yield on the State's 30-year bond and the yield on the most commonly-used market index was 35 basis points. This was the State's lowest credit spread on this index for 30-year bonds since June 2007. The yield on five year bonds was 1.43 percent and the yield on 10-year bonds was 2.38 percent.

The Treasurer's decision to take advantage of the current interest rate environment by re-financing $1 billion in previously-issued, higher interest rate bonds is expected to save taxpayers more than $198 million in debt service costs over the life of the refunded bonds.

This week's sale also included $931 million in new borrowing for critical infrastructure needs, including transportation, education, and children's hospitals.

Here are some key statistics associated with this sale:

- Final size: $1.935 billion
- True interest cost: 3.06 percent
- Final re-offering yields ranged from a low of 0.17 percent for a 2016 maturity to a high of 3.27 percent (5 percent coupon)/3.68 percent (4 percent coupon) for a 30-year maturity.
- Retail orders represented more than 30 percent of bonds sold.

The next State general obligation bond sale is expected to occur in April 2015. A list of other scheduled sales can be found on the Treasurer's website.

The State Treasurer has broad responsibilities and authority in the areas of public investment and finance. In particular, he oversees the issuance of State debt and is responsible for crafting best practices for the sale of debt and the investment of public funds for California's more than 4,000 local bond issuers, including the State, school districts, cities, counties, and special districts.

March 5, 2015

Transparency Could Save Governments Billions in Borrowing.

Transparency is a divisive issue in the state and local financial market. The main sticking point is time. Governments, the argument goes, cannot be expected to operate at the speed or with the savviness that corporate markets do. But for those dragging their feet on the issue, keep this in mind: States and localities are potentially leaving billions of dollars on the table by not having financial transparency on par with the corporate world.

A new study from the University of Oregon supports this idea. Looking at the municipal bond market, researchers found that timelier information can reduce transaction fees on trades by up to 30 percent. This is particularly true for individual investors, who make up the bulk of the $3.6 trillion U.S. municipal bond market. The report, co-authored by finance professor John Chalmers, looked at the difference in municipal bond trading before and after the Municipal Securities Rulemaking Board's (MSRB) Real-Time Transaction Reporting System kicked off at the start of 2006. The system required trades to be reported in 15 minutes instead of at the end of the day. It allowed for much better price comparison by buyers.

Although Chalmers is studying trades on municipal bonds by dealers or individuals after the issuer initially sells them, he said transparency still could lead to lower costs for issuers. "The lower these trading costs, it ultimately should affect the [interest rate] you need to set on your bonds to get them sold," he said. "An investor is going to look at their return after costs and taxes. If those costs are lower, they'd be willing to settle for less."

The idea builds on work published in 2006 by Lawrence Harris and Michael Piowar, which found that poor market quality was the primary reason that municipal bond trades were significantly more expensive than similarly sized trades in the corporate market. Additional research by Andrew Ang and Richard C. Green for the Brookings Institution in 2011 concluded that state and local governments might be paying billions of dollars each year in unnecessary fees, transactions costs, and interest expense due to the lack of both transparency and liquidity in the municipal bond market.

Ang and Green estimated that the liquidity cost alone represents approximately $30 billion per year on the current $2.9 trillion stock of outstanding bonds. "When the market is liquid and transparent, both borrowers and investors incur fewer fees and lower costs," wrote Ang and Green. "All of these factors contribute to reduced interest expense for issuers."

Massachusetts has adopted this concept and is taking a cue from the way the corporate world interacts with its investors. It launched a new investor website that has 40,000 downloadable documents on things like bond authorizations, revenue reports, budgets, audits, official statements, economic reports and pension valuations. Free software is also available so that investors can download and manipulate data.

A year ago this March, the state launched its MassDirect Notes program in which the state sells its bonds directly to investors for a two-week period each month, allowing individual investors to buy the state's bonds directly. This is akin to buying NFL tickets directly from the team versus paying more on secondary markets like StubHub. More recently, Massachusetts became the first U.S. government to launch a smartphone app for investors.

Assistant State Treasurer for Debt Management Colin MacNaught said this effort will save taxpayers millions in borrowing costs over the long term. "Whether the credit news for Massachusetts is good or bad, investors know that they'll always get good and current disclosure from the state," he said. "We think that gives them an added measure of confidence in our bonds, thus enhancing the liquidity of our paper. And every dollar we save on our borrowing is one more dollar we can redirect elsewhere to other budget areas."

What Massachusetts is doing is potentially groundbreaking. But despite the data on investor costs, there's no concrete proof that issuers can lower their borrowing costs via transparency, said Lynnette Kelly, MSRB's executive director. The Bay State is providing the market a test case in this theory.

That is reason enough to keep an eye on Massachusetts' success in this arena but here's one more: The Securities and Exchange Commission is getting tough on the municipal market and disclosures is a big part of the picture. In this respect, the more governments can take this responsibility on themselves, the better.

To that end, the MSRB is telling smaller governments, which tend to be less savvy about financial disclosures because they issue few, how they can increase transparency on their own. Most governments post their Comprehensive Annual Financial Reports online, said Kelly. But they could also make available such relevant information as meeting minutes, budgets and a list of top local employers. "This stuff is pretty easily accessible," she said. "So we're trying to make sure smaller issuers know that it should be top-of-mind and it's very, very easy to do."

GOVERNING.COM

BY LIZ FARMER | MARCH 12, 2015

For-Profit Companies Play a Big Role In Texas Water Planning.

Until recently, Texas' state water plan wasn't much to look at.

Essentially a catalog of more than 3,000 water supply projects across the state that some government or another hoped to build, it was seen as nothing more than a wish list, compiled from the work of 16 regional planning groups every five years.

That changed in 2013 when lawmakers — with Texas voters' approval — put $2 billion from the state's savings account toward actually building some of the projects. That also put a spotlight on the Texas Water Development Board, a once-obscure agency charged with state water planning.

But the water plan's new prominence is also highlighting how involved private engineering and consulting firms are in deciding what the state needs. The state water board paid such firms a total of $13.7 million for their work in putting together the most recent state water plan, with close to half of that going to the decades-old company Freese & Nichols.

The private hand has advantages and disadvantages, observers and experts say. Some worry that paying private firms to do water planning creates an inherent conflict.

"Critics would suggest that these folks operate out of 'enlightened self-interest,'" said Ron Kaiser, a professor of water policy at Texas A&M University. "They're going to push projects that have big infrastructure. … They might then have staff that could bid on these projects."

The potential for conflict is bigger now that private consultants are also in charge of scoring the water projects and giving them a ranking in the plan, said Mary Kelly, an Austin-based water lawyer. The Legislature called for the ranking in 2013.

"It's really punting a pretty important decision to a contractor" to let private firms do the ranking, Kelly said. She worries that firms used to working on reservoir projects, for instance, won't give as good of a score to a brackish water desalination plant, or a conservation initiative.

But Jody Puckett, director of Dallas Water Utilities, said the role of private firms is smaller than critics think. "It's kind of like when you make pasta, you have to run it through the mill to make spaghetti. That's their role."

Puckett is chair of the Dallas Fort-Worth region's water planning group, and said it's the group that makes final decisions about what projects end up in the water plan — not the consultants. And there's no guarantee those same consultants will get design contracts or any other work for those same projects, because they have to go through competitive bidding to get that work.

"I can see how someone might want to connect the dots, but I don't think they're necessarily connected at all," Puckett said.

Whether or not they like the system, few involved in Texas water planning think there's a better way to run it. There's not enough staff in state or local governments to do the work private firms perform.

“There’s a level of expertise with firms like ours,” said Preston Dillard, who is a contractor in Dallas-area water planning with the firm Alan Plummer Associates. “The advantages are, you’re involving the professionals that have experience in working with water systems.”

And as the drought has reached a new level in Texans’ consciousness, firms that used to always recommend new reservoirs, water treatment plants or big pipeline projects are starting to think differently, said Ken Kramer, water resources chairman of the Sierra Club’s Lone Star Chapter.

For instance, he said, both firms that do consulting work for the Dallas area — Freese & Nichols and Alan Plummer Associates — now do work on conservation and water reuse projects, something that may have been unthinkable a few decades earlier.

“You’re seeing a little bit of an evolution,” Kramer said. “But it’s definitely a slow evolution. It’s not a revolution yet.”

Still, concern about the private sector’s role exists at the state level, too. After the Legislature slashed the state budget in 2011, the water development board lost most of its funding dedicated to helping model groundwater across the state.

That forced individual groundwater conservation districts to contract out the modeling work to engineering and consulting firms. And the data they collect is important: It often serves as the basis for deciding how much water can be sustainably pumped from an aquifer.

In a recent report, the Legislative Budget Board recommended against such a system. Districts need to use a more “standard approach” in getting their data, the report said. Otherwise, they risk “non-uniform data collection practices and methodologies … compromising the accuracy of this process.”

BY THE TEXAS TRIBUNE | MARCH 13, 2015

By Neena Satija

Should States Use Bonds to Pay for Breakthrough Drugs?

That’s what a new report proposes as states limit potentially life-saving but expensive new drugs. But some say that would be surrendering to drug makers.

When the maker of a breakthrough hepatitis C drug Sovaldi set the price at $1,000-a-pill but promised a cure that could lower costs in the long term, states scrambled last year to limit treatment to patients with the most severe cases, anticipating billions in near-term costs. A new report argues a good solution might be to use an approach that state governments already prefer with infrastructure and some social programs — taking out bonds.

The idea comes from the California-based RAND Corporation, a research organization that specifically drew on the case of Sovaldi, which earned $10 billion in sales last year for its maker, Gilead Sciences. The company boasted that its clinical trials proved the drug effectively cures the slow-moving liver disease in more than 90 percent of patients at a cost of about $84,000 for a 12-week treatment, far better than a liver transplant, which costs about $600,000.

But critics in Congress, state governments and elsewhere alleged price-gouging, noting Gilead charges other markets at a fraction of the U.S. In addition, critics say, the drug's effectiveness outside of controlled clinical settings is unclear, and hepatitis C moves so slowly that restricting Sovaldi until cheaper alternatives enter the market is the most sensible option. Express Scripts, the pharmacy benefit management company, estimated covering all of the 750,000 hepatitis C patients in state programs would cost governments more than $55 billion.

RAND is suggesting a way to make the drug more affordable, though some critics question its strategy. With more specialty drugs and breakthrough vaccinations expected to hit the market in the coming years, insurers — including state Medicaid agencies — should consider a strategy that promotes long-term investment, argued Soeren Mattke, an author of the report.

Mattke recommended that insurers issue debt instruments like bonds or mortgages directly with manufacturers. If the insurer issued a bond, it could pay interest to the manufacturer until the maturity date followed by a larger balance payment. Or they could offer fixed monthly payments, or credit lines with payments at pre-established points.

What those agreements should also include, RAND argued, are performance agreements that set payments according to proven outcomes. Scotland already has such an arrangement over Olysio, another hepatitis C treatment, according to RAND. To reduce the administrative cost of tracking patients, RAND recommended letting an impartial outside group study a sample group that represents the population.

Mattke said he had Medicaid agencies in mind specifically when he developed the idea, along with middle-income nations like Brazil and less cash-rich countries — southern Europe, for instance — that face short-term budgetary constraints. "I think Medicaid is actually the only situation where it would work in the U.S.," he said. Rather than limiting treatment to, say, 10 percent of patients, agencies should think long-term, he added. "It's a bad financial decision, because those 90 percent will continue to accrue medical costs while they're waiting for Sovaldi."

But the key problem with RAND's proposal is that it concedes the policy fight over the steep cost of drugs like Sovaldi, countered Matt Salo, executive director of the National Association of Medicaid Directors. The paper's approach "completely throws the white flag of surrender on drug prices," he said by email. "It says, 'We're okay with the price of Sovaldi being $84,000 or even $200,000, because if we can spread the actual costs out over 20 years or so, nobody will actually notice or feel the pain.'"

But additionally, Salo argued, reports from the Institute for Clinical and Economic Review call into question cost-effectiveness over the long windows envisioned under a debt agreement. If RAND's idea extends into areas like Alzheimer's, which pharmaceutical companies argue costs society trillions of dollars, manufacturers could continue charging staggering sums under questionable assumptions, he said.

Jeff Myers, who heads the trade group for private Medicaid plans, didn't dismiss the idea of debt-financing outright, but he argued that pharmaceutical companies will have to bear substantially more risk before insurers should agree to bond deals, and introductory costs do need to go down. That means accounting for actual outcomes outside of clinical settings and potentially finding ways to help patients adhere to their medications, he said.

"With hepatitis C, Gilead says [it's a] 90 percent [cure rate], but it turns out in the real world it's a lot less," he said. "That percentage has a true cost in the health system, yet Gilead bears no risk when it doesn't actually work as well as they say it does."

Chris Koller, a former insurance commissioner who runs the Milbank Memorial Fund, said he thinks the RAND idea does take cost-effectiveness into consideration. But he does question whether manufacturers that are already raking in profits would be interested in revenue streams that grant them less control, and unlike other countries, the U.S. system of public and private payers for different populations and different age groups poses logistical challenges and questions about who actually receives the financial reward of breakthrough medications.

Still, he said, he's seen arrangements in which different payers pool their money for things like vaccines in Rhode Island, where he served as a health insurance commissioner. "This is, by its design, meant to trigger discussion," he said. "We shouldn't shoot it down just because it's hard to implement."

GOVERNING.COM

Chris Kardish | Staff Writer

March 12, 2015

University of California Sells Into Falling Market: Muni Credit

(Bloomberg) — The biggest risk to the University of California's sale of $2.8 billion of bonds this week, the most it's offered at once, isn't a battle over tuition increases and taxpayer subsidies. It's the stumbling municipal market.

The 10-campus system, which educates 242,000 students, wants to use $2.3 billion of the proceeds for refunding as rising interest rates threaten the finances behind such deals.

Economic strength and accelerating sales of munis have the $3.5 trillion market on pace for its first back-to-back losses since 2013. Benchmark 10-year munis yield 2.17 percent, the highest since December, after Labor Department data last week showed the U.S. jobless rate fell to an almost seven-year low of 5.5 percent.

"Depending on what rate it takes them to issue the debt, to entice enough buyers to buy the debt, the refunding may not work for them," said John Bonnell, who oversees about $3.8 billion as assistant vice president of mutual funds at USAA Investment Management Co. in San Antonio. "They may choose not to refund as much if that happens."

Tuition Clash

Governor Jerry Brown and University President Janet Napolitano, the former U.S. Secretary of Homeland Security, are clashing over Napolitano's plan to raise tuition as much as 28 percent if Brown won't boost state funding. The Board of Regents voted in November to raise tuition 5 percent annually for five years. Brown, a board member, opposed the increase and is engaged in talks with Napolitano to end the impasse.

Yields have risen from close to five-decade lows since the start of February. Helping fuel the increase, localities offered a combined $62 billion of debt in January and February, almost double the 2014 pace, data compiled by Bloomberg show. About 68 percent of deals this year have been for refinancing, Bank of America Merrill Lynch data show.

“The Regents’ upcoming revenue-bond transactions are looking to take advantage of historically low interest rates in order to refinance existing debt and lock in low interest rates for new money needs,” Dianne Klein, spokeswoman for the university’s Office of the President, said in a statement.

Tuesday’s Business

The system leads governments issuing at least $5.9 billion of refinancing bonds this week, out of a $12.2 billion long-term sales slate, the most since December.

It’s set to begin offering $1.14 billion of general-revenue bonds Tuesday and $1.66 billion of limited-project revenue debt Wednesday. The combined amount is the most it’s sold at one time, according to data from the state treasurer’s website dating to 1996. About $1 billion of the refunding is to convert general-revenue bonds into limited-project revenue debt.

When the University of California regents borrowed in April 2014, they priced 10-year bonds to yield 2.74 percent, or about 0.17 percentage point above top-rated debt, Bloomberg data show. Standard & Poor’s rates the general-revenue debt AA, the third-highest level.

Those bonds are repaid from student fees and tuition, state subsidies, as well as grants, contracts and income from university-owned enterprises. The limited-project revenue bonds are paid from funds generated by infrastructure they finance, such as parking garages, athletic fields and student and faculty housing.
Nathan Brostrom, the system’s chief financial officer, declined to answer questions about the financing.

Funding Need

The university system also operates five medical schools and medical centers and four law schools. It’s involved in running nuclear-weapons laboratories and research facilities for the Energy Department. Its faculty and researchers have won 62 Nobel Prizes, more than any other U.S. public university system.

“The tuition controversy is short-term in nature,” said Michael Ginestro, director of muni research at Bel Air Investment Advisors, which manages $2.7 billion of munis. “If you look at the revenue, the endowment fund, the number of campuses they have and the product they deliver, it overwhelms any concerns.”

Napolitano has said additional funding is needed to stabilize revenue for a system that’s an incubator of leaders for government, industry and Silicon Valley in California’s economy, the world’s seventh-largest.
Brown, 76, who graduated from the flagship campus in Berkeley, says the system needs to rely less on taxpayer subsidies.

Tax Increases

In 2012, the Democrat won voter approval for higher sales-and income-taxes. He pledged to use the increased revenue to add more than $500 million to university funding over four years if the regents froze tuition. Lawmakers paid the first $125 million installment last fiscal year.

The tax increases he championed have spurred demand for the tax-exempt debt of California issuers. The state’s own borrowing costs have shrunk to the lowest since 2007.

“Any time the Regents issues debt it’s well-received,” Bonnell said. “I don’t think this one will be any different."

Beginning in 2013, the state shifted some debt service for bonds it issued for the university from its books onto the system's accounts.

Brown's budget for the fiscal year beginning in July would boost spending for the system by 4 percent to $3.05 billion, including $200 million for debt service. The move is intended to force the university system to factor debt costs into its fiscal outlook.

Napolitano said March 3 that unless Brown boosts aid, she'd freeze enrollment of California students while admitting more out-of-state students because they pay higher tuition and fees.

Even after climbing for weeks, yields are hovering above generational lows, so issuers can still reap savings from refinancing. A Bond Buyer index of 20-year general obligations yields about 3.7 percent, compared with the 5.8 percent average since 1961.

"Even if rates start to back up a little bit, you as an issuer are still going to get pricing that is at your advantage," said Ginestro at Bel Air.

by Michael B Marois

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To contact the reporter on this story: Michael B. Marois in Sacramento at mmarois@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Jeffrey Taylor

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Illinois Pension Bout Tests Nation Grappling With Shortfalls.

(Bloomberg) — Illinois's remedy for the state's worst-in-the-nation $111 billion pension-funding shortfall was disliked by lawmakers who voted for it, the new governor who inherited it and public employee unions who sued to void it.

Attorney General Lisa Madigan on Wednesday asked the state's Supreme Court to resurrect it.

The 2013 measure to cut cost-of-living increases and boost the retirement age was struck down last year by an Illinois judge who found it violated the state constitution's ban on reducing public worker retirement benefits. The dispute is being watched around the country as state and local governments faced total pension shortfalls of more than $1 trillion in 2013.

Illinois Solicitor General Carolyn Shapiro argued Wednesday that the state should be able to invoke its "police powers" in a time of fiscal crisis.

"Invoking police powers is not something the state could do willy nilly," Shapiro said responding to a question from Justice Robert Thomas. "Raising taxes cannot always be the answer to a fiscal crisis."

Few Questions

The state Supreme Court's seven-judge panel asked few questions during Wednesday's hearing and gave no timeframe for a ruling. To win a reversal, Madigan must convince at least four of the court's seven justices that the constitutional provision — which says a public worker's pension membership is a contract "the benefits of which shall not be diminished or impaired" — is something less than absolute.

Thomas pressed Shapiro on whether the drafters of the provision intended to protect those benefits in difficult economic times. When Shapiro replied she didn't believe that was the entirety of the intent, Thomas asked if it would be "problematic" if the court believed it was.

The state cannot be forced to surrender its sovereign power to protect the general welfare of the people, Shapiro responded.

Gino DiVito, an attorney for the suing unions, countered that the provision was "explicit, clear and unambiguous" regardless of the state's argument for recognition of a possible "doomsday scenario."

Illinois has the lowest credit among the 50 U.S. states. Last month, Governor Bruce Rauner, who defeated Democrat Pat Quinn in November, proposed an array of spending cuts to close a $6.2 billion budget shortfall.

Pension Repair

If the pension fix is upheld, Illinois will save about $1 billion on its $7.5 billion contribution requirement for 2015, which means that money can be spent elsewhere, said Laurence Msall, president of the Civic Federation, a Chicago-based independent budget watchdog group.

As a candidate, Rauner criticized the pension-repair bill, under which lawmakers planned to save about $145 billion over 30 years.

Before the legislators voted on it, Rauner said the plan "barely scratches the surface of the problem." The Republican, a former venture capitalist, has called for shifting some public employees to a defined-contribution plan, similar to a 401(k).

Illinois pension changes were attained in 2013 following years of legislative gridlock and an unsuccessful attempt by Quinn to dock lawmakers' pay to force a resolution.

Public worker unions, banding together as a coalition called We Are One Illinois, sued to block the measure in January 2014, arguing its members' benefit plans are inviolable. Springfield Judge John Belz put the plan on hold in May and declared it void in November.

Health Plans

His ruling came just four months after the state Supreme Court rejected Illinois' attempt to reduce its contributions for government retiree health-insurance plans. The justices, in a 6-1 decision, relied on the same constitutional provision.

"We believe the language of the pension clause is very clear," said Anders Lindall, a spokesman for the American Federation of State County and Municipal Employees Council 31, which has more than 75,000 members.
The provision was added to the state constitution to protect public workers from lawmakers making "irresponsible choices" and then looking to retirees' life savings for a remedy, Lindall said.

Super-Contracts

Madigan maintains that interpreting the constitution that way would create super-contracts and nullify the state’s power to act for the greater good.

“If the pension clause really bars the state’s exercise of its police powers under every possible circumstance, no matter how dire, then the ‘contractual relationship’ the clause creates is unlike any other contractual relationship recognized in American law,” she said in court papers.

Illinois House Speaker Michael Madigan, the attorney general’s father, won’t comment on the issue, his spokesman Steve Brown said. State Senate President John Cullerton believes the law violates the Illinois constitution, spokeswoman Rikeesha Phelon said.

“He supported last year’s pension reform so that it could advance as a test case,” Phelon in a March 9 e-mail. Both legislative leaders are Democrats.

Nationally, state and local government pension plans in 2013 had about 72 percent of the money needed to meet retirement obligations, according to a study released in June by the Center for Retirement Research at Boston College.

State constitutions have been invoked elsewhere to try to prevent cuts to public pensions. In Rhode Island, unions settled with the state over pension cuts before their constitutional challenge could be put to the test. In municipal bankruptcy cases in Detroit and California, judges ruled that federal law overrode state bans on cutting pensions.

With the Supreme Court arguments looming, two lawsuits involving changes to Chicago employee benefits have been put on hold because their fate might hinge on what the justices decide.

“The governor’s office will take appropriate action depending on how the Illinois Supreme Court rules,” said Rauner’s press secretary, Catherine Kelly. “The current pension system is unaffordable and is choking the state’s budget.”

The case is In re Pension Reform Litigation, 118585, Illinois Supreme Court (Springfield).

by Andrew M Harris

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To contact the reporter on this story: Andrew Harris in federal court in Chicago at aharris16@bloomberg.net

To contact the editors responsible for this story: Michael Hytha at mhytha@bloomberg.net Sophia Pearson, David Glovin

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Pennsylvania Overhaul Plan Boosts Taxes for Schools: Muni Credit

(Bloomberg) — Tom Wolf, the only Democrat to beat an incumbent Republican governor in November, wants to extend his disruptive streak by upending Pennsylvania’s taxes.

Wolf, a businessman in his first elected office, proposed a new tax on natural-gas drilling, the state’s first sales-levy increase in almost a half-century and a boost in the income tax to a record. The plan, released March 3 as part of his budget, would generate $4.7 billion, enough to close a projected deficit, reduce property taxes and fulfill a campaign pledge to raise education funding.

The 66-year-old took the helm as the state deals with mounting pension costs. Pennsylvania had its credit grade cut by each of the three biggest rating companies last year, to two steps below the average for U.S. states. Credit analysts pointed to one-time fixes used to balance this year's budget.

The latest proposal differs from previous plans that were "piecing things together with duct tape," said Chris Borick, director of the Muhlenberg College Institute of Public Opinion in Allentown. "His shooting for a big move is pretty important because we haven't seen it in a while."

'More Palatable'

Wolf joins about 10 governors considering tax increases, according to the National Association of State Budget Officers. The levies often are tied to particular needs, such as infrastructure or education, said Norton Francis, senior research associate at the Tax Policy Center in Washington.

"It makes it more palatable when you can say we're raising taxes for this express purpose," Francis said.
Wolf beat Tom Corbett, the first Pennsylvania governor to lose re-election since 1968, even as Republican victories gave the party 31 governorships, the most since 1999.

Corbett kept residents' taxes flat, lowered some business levies and cut funding for education and other programs. He failed to push through changes to public pensions, which are consuming a growing portion of the general fund, and a sale of the state's wholesale and retail alcohol operations.

Pennsylvania ranked last in job growth from January 2011, when Corbett took office, to December 2014, according to data compiled by Bloomberg. As expenses swelled, lawmakers balanced the $29 billion budget for the year through June with $2 billion of one-time measures.

Buyers' Demand

Investors have taken note, demanding 0.41 percentage point of extra yield to own 10-year Pennsylvania securities instead of benchmark municipal debt, data compiled by Bloomberg show. The difference is the most since at least January 2013 and is greater than the spread on California bonds, which carry a Standard & Poor's grade one step lower, at A+.

S&P, Moody's Investors Service and Fitch Ratings give Pennsylvania their fourth-highest marks. Wolf's use of tax increases is a "clear departure" from his predecessor, said Eric Kim, Fitch's director of U.S. public finance in New York.

Wolf, who was chairman of a family-owned business that supplies kitchen cabinets, told voters he'd boost education funding through a severance tax on natural-gas production, a move that Corbett opposed. Jobs in the industry almost doubled in the four years through June 2014, according to the Department of Labor and Industry.

Wolf's campaign received money from Michael Bloomberg, founder and majority owner of Bloomberg News parent Bloomberg LP.

Wolf's Shift

The governor's $29.9 billion budget would also shift education funding from property taxes to the sales and income levies. He'd increase the sales tax to 6.6 percent from 6 percent, where it's been since 1968, and the income tax to 3.7 percent from 3.07 percent, while reducing a business-income levy. Average homeowners' property-tax bills would drop by half, or $1,000.

“To create jobs that pay, schools that teach and government that works, we have to do things differently,” Wolf said in his budget address.

Jeff Sheridan, a Wolf spokesman, said previous Republican bills to reduce property taxes form the basis for the governor’s proposal.

The governor also called for raising the minimum wage and creating incentives for manufacturing jobs, highlighting national Democratic goals in a state that will host the party’s 2016 presidential convention.

‘Bad Plan’

Republicans, who control both legislative chambers, still expressed skepticism.

“It really is a very, very bad plan, put very simply, for all of Pennsylvania,” Senate President Pro Tempore Joe Scarnati told reporters after Wolf’s speech.

Republicans, and even some Democrats, would find it difficult to vote for tax increases because of the risk of primary challenges, said Ryan Shafik, founder of Rockwood Strategies, a Harrisburg consulting firm that works with Republican candidates.

Yet Wolf’s victory by 10 percentage points showed voters consider schools a priority, said Thomas Baldino, who teaches politics at Wilkes University in Wilkes-Barre.

“If Republicans want to demonstrate that they are hearing what the public wants, they need to work with Wolf on things like education funding,” he said.

Bloomberg Muni Credit

by Romy Varghese

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To contact the reporter on this story: Romy Varghese in Philadelphia at rvarghese8@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Stacie Sherman, Mark Tannenbaum

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Bloomberg Brief: Municipal Market Weekly Video.

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

Watch.

March 12, 2015

Puerto Rico Agency’s Note Sale Shows Climbing Debt Expenses.

(Bloomberg) — A Puerto Rico agency plans to sell notes maturing in May 2017 with an interest rate of 8.25 percent, underscoring the rising borrowing costs for the junk-rated commonwealth.

The Infrastructure Financing Authority, called Prifa, plans to issue the notes, which would be paid off with proceeds of a later bond sale, according to a filing with the Municipal Securities Rulemaking Board. Prifa also expects to sell as much as $2.9 billion of bonds backed by petroleum-tax revenue.

Proceeds of that deal would repay the two-year notes, according to a person with knowledge of the transactions who requested anonymity because they’re not final.

Puerto Rico and its agencies tend to borrow through the capital markets to balance operating budgets. That practice and the island’s struggling economy prompted the three largest rating companies to drop the commonwealth to speculative grade in 2014.

The borrowing costs reflect the island’s fiscal stress. The interest rate on the notes is about 7.6 percentage points more than the 0.6 percent yield on benchmark debt, data compiled by Bloomberg show.
It would be the first borrowing from the commonwealth since the Government Development Bank in October sold notes maturing in June 2015 at a yield of 7.75 percent.

Repayment Plan

Funds from the fuel-tax bond are intended to repay money the Highways & Transportation Authority owes the GDB. The bank needs the cash. It said it had $1.2 billion of net liquidity as of Feb. 28, down from $2 billion in October.

The funding in Puerto Rico’s budget for the fiscal year that began July 1 is also uncertain. The island’s revenue through February is $121.7 million below budgeted estimates, according to Treasury Department data. That shortfall has grown from $18.8 million at the end of January.

As of Friday afternoon, the development bank hadn’t provided a comment or additional details about the note sale through its New York-based spokesman, David Millar. The bank handles debt transactions for the commonwealth.

Puerto Rico bonds rallied this week after the legislature on March 10 approved changes to the Prifa oil-tax bond sale to attract buyers. Debt from the island is tax-free nationwide, so it’s widely held by individuals and mutual funds.

General obligations maturing in July 2035 traded Friday at an average price of 85.4 cents on the dollar, the highest since Jan. 28, data compiled by Bloomberg show. The average yield was about 9.7 percent.

by Michelle Kaske

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To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net
Alan Goldstein, William Selway

Mutual Fund Holdings Set Record as Households Wane: Muni Credit

(Bloomberg) — U.S. mutual funds' holdings of municipal debt grew to a record $658 billion in 2014 as individuals shunned direct purchases in favor of managed money amid Puerto Rico's woes and the loss of top-rated bond insurance.

The funds increased their stake by almost 40 percent in the past five years, solidifying their position as the second-biggest category of muni buyers, according to Federal Reserve data released Thursday.

Even as regulators seek to promote transparency in the market for state and city debt, the shift underscores the diminishing role of individuals who buy bonds for their own account. Households, while still the largest muni holders, reduced ownership to the lowest in almost a decade as Detroit's historic bankruptcy and junk-rated Puerto Rico's struggle to repay $73 billion of debt steer them toward more diversified investments.

"Credit concerns, especially Detroit and Puerto Rico, have caused a lot of individuals to want professional credit advice," said Phil Fischer, head of muni research at Bank of America Merrill Lynch in New York.

Growing Influence

Mutual funds are expanding their influence as the supply of munis is shrinking. The tax-exempt market, which localities use to finance roads, bridges, public schools and water systems, dwindled for the fourth straight year, to $3.65 trillion as of Dec. 31 as officials hesitate to take on borrowing for new projects.

It's the longest stretch of declines in data going back to 1945, and the market is still contracting: Local-government obligations tallied $3.5 trillion as of Wednesday, data compiled by Bloomberg show.

The declining amount of debt and buying by funds helped munis advance 9.8 percent in 2014, the most since 2011, according to Bank of America Merrill Lynch data.

With the top federal income-tax rate the highest since 2000, the appetite for munis' tax-free interest isn't waning. Investors are just reconsidering how they buy the securities.

Holdings of households have dropped every quarter since March 2013, to $1.54 trillion at the end of 2014, the least since March 2005, Fed data show. Their ownership has dropped to 42 percent of the market, from 50 percent at the end of 2010.

Insurance Crutch

The transition gained momentum after the companies that insure munis lost their top credit ratings in the wake of the financial crisis. Unable to rely on the guarantee, buyers had to take a closer look at the creditworthiness of specific holdings, said Alan Schankel, a managing director of fixed-income strategy at Janney Capital Markets in Philadelphia.

"It's tough for individual investors," he said. "If they have 20 different positions in their portfolio, it may be difficult for them to keep on top of all of them."

The concerns of individual buyers have grown as Puerto Rico's fiscal challenges mount. The debt load of the island and its agencies is greater than all states but California and New York, even though it has about 3.5 million people. Because the territory's bonds are tax-exempt nationwide, they're widely held by both individuals and mutual funds.

Puerto Rico lost its investment grades last year as officials struggle to revive the commonwealth's economy. Its Electric Power Authority is negotiating with creditors to potentially reduce $8.6 billion of obligations, in what may become the largest muni restructuring.

Stress Push

Reports of financial stress and failures "have pushed a growing amount of investors towards some kind of managed solution," Schankel said.

Professional money managers can also help investors deal with a potential increase in interest rates, which can reduce prices on muni holdings, said Fischer at Bank of America. The consensus on Wall Street is that the Federal Reserve will raise its target interest rate from near zero this year as the economy strengthens.
Benchmark 10-year munis yield about 2.2 percent, close to the highest since November.

"They're willing to buy more assistance when they're anxious," Fischer said. "They can have a variety of anxieties, and certainly one of them is credit and another one of them deals with interest rates."

Bloomberg Muni Credit

by Michelle Kaske

March 12, 2015

To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net
Mark Tannenbaum, William Selway

Moody's: Detroit Emerges from Bankruptcy Stronger, But Economic Hurdles Persist.

New York, March 11, 2015 — While the City of Detroit (B3 stable) has made important strides in its credit fundamentals as it emerges from Chapter 9 bankruptcy, it continues to face a number of fiscal and economic headwinds that limit its future growth, Moody's Investor Service says in a new report, "Detroit Emerges from Bankruptcy Stronger, but Economic Hurdles Persist."

Revitalizing Detroit's economy and improving its city operations are crucial to its long term success, Moody's says. In addition, Detroit's ability to balance budgets amid the ongoing economic challenges burdens the credit in the intermediate term.

"The city achieved three main successes during its Chapter 9 filing, including substantially reducing long-term debt and retirement liabilities, but it also has a robust plan to reinvest in its tax base and services and a strong new management team that will benefit from ongoing state support," says

Moody's Vice President — Senior Analyst Genevieve Nolan, and author of the report.

Positively, Detroit is dedicating resources to revitalize and strengthen its tax base through a proposed $1.4 billion reinvestment plan focusing on Detroit Police, Detroit Fire, Finance Department, General Services and blight removal. The projects will be funded with proceeds from a $120 million quality of life note issued during bankruptcy, and as well as some funds from the city's $275 million post-petition financing issued as it exited bankruptcy.

Detroit was also able to significantly reduce its long-term liabilities in bankruptcy, with its net direct debt outstanding dropping to $1.8 billion from $2.5 billion. The city's new management team will also benefit from ongoing state oversight and support.

However, Detroit's economy and tax base continues to suffer amid valuation declines, weak demographic statistics, and a dwindling population. Unemployment is still high 13.0% as of November 2014, and its decline from a peak of 25% in 2009 is partly attributable to a persistently shrinking labor force.

The city also expects assessed valuation declines to persist through 2020 as the State of Michigan and city management reviews its assessment process. While income tax receipts are estimated to rise 2.1% annually, key revenues from property taxes are projected to drop by 1.3% annually through the same period. By the end of 2023, expenses and revenue projections estimate an ending cash balance of $65.8 million, a positive yet still narrow liquidity position. Negative variations from these projections could jeopardize the city's financial plans.

While fixed costs, including annual debt service and retiree benefit contributions, were reduced during bankruptcy, they will grow after 2023 when the city is required to begin making pension contributions again.

"The city's challenges are largely ones that bankruptcy could not immediately fix and may still result in weaker credit quality over the near to medium term," said Nolan.

Moody's research subscribers can access the report here.

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Genevieve Nolan
Vice President – Senior Analyst
Public Finance Group
Moody's Investors Service, Inc.
100 N Riverside Plaza
Suite 2220
Chicago, IL 60606
U.S.A.

JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

John Dorer
MD – Public Finance
Public Finance Group
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Releasing Office:
Moody’s Investors Service, Inc.
250 Greenwich Street
New York, NY 10007
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Moody's: Colorado's Pension Costs and Funding Gaps Keep Growing Despite Benefit Reforms.

New York, March 12, 2015 — Even after substantial pension reform that was upheld by the state’s highest court, pension contributions by the State of Colorado and its local governments continue to trail actuarial recommendations, driving up future costs and increasing unfunded liabilities, says Moody’s Investors Service. Moody’s places Colorado’s FY 2013 adjusted net pension liabilities at $17.3 billion, equal to 93% of state revenues and 16th highest among US states.

Overall, Moody’s assesses fiscal pressures from Colorado’s state and local pension funds as moderate, with funding challenges caused by prior contribution shortfalls somewhat offset by the state’s established flexibility to enact substantial reform. Moody’s explores this assessment in detail in the latest report in its Public Pension Landscape series, called “Colorado’s Pension Costs and Funding Gaps Still Growing Despite Reforms.”

In Colorado, where pension liabilities are concentrated in plans administered by the Public Employees’ Retirement Association (PERA), the law requires participating governments to increase their contributions through 2018. Even with these additional contributions, however, costs are continuing to be deferred to later years and unfunded liabilities continue to rise.

There is some clarity and flexibility in terms of controlling costs, however, after the state’s Supreme Court ruled in October 2014 that the pension reform law the state passed in 2010 was legal. The law gave Colorado the authority to change a number of benefit provisions, including cost-of-living adjustments for retirees.

“The reforms substantially reduced PERA’s aggregate unfunded liability, first reflected in the actuarial valuation for fiscal-year ended 2009. But in subsequent years, unfunded liabilities have generally continued to grow,” says Moody’s AVP-Analyst Thomas Aaron.

Legislation signed by the governor in 2014 that calls for studying alternate retirement system options and private sector comparisons, however, signals there could be additional state action.

Moody’s also notes that the ratios of active workers to retirees are near-to-above national norms.

Having more active employees currently provides Colorado with time to address funding gaps before liabilities grow considerably larger relative to government budgets In Colorado, however, the ratio of actives to retirees has been decreasing over the past decade.

For more information, Moody's research subscribers can access this report here.

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Thomas Aaron
Asst Vice President – Analyst
Public Finance Group
Moody's Investors Service, Inc.
100 N Riverside Plaza
Suite 2220
Chicago, IL 60606
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Timothy F Blake
MD – Public Finance
Structured Finance Group
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Releasing Office:
Moody's Investors Service, Inc.
250 Greenwich Street
New York, NY 10007
U.S.A.

JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Fitch: US Solar Power PPP Models Need Focus on Fundamentals.

Fitch Ratings-New York-10 March 2015: The settlement of the Morris Model highlights the need for local government obligors to assess whether construction contractors have the technical and financial capacity to assume the risks of the project's completion including the potential for cost overruns, schedule slippage, and equipment underperformance, Fitch Ratings says. It also

underscores that solar power project development is among the lowest risk asset classes of the power sector, but not risk free.
In our view, in addition to managing the construction contractor risks, government obligors should also assess the stability of revenue generation including whether debt repayment is supported by an assumption of a certain level of energy delivery and/or dependent on volatile regulated renewable energy credits.

The project was designed to support the development of multiple solar power installations on school and county government buildings in a single financing. The initiative was financed by the Morris County Improvement Authority (NJ) and Somerset County Improvement Authority and the debt was guaranteed by the counties. Morris, Somerset, and Sussex Counties, involved in the transaction, recently agreed to a settlement with the contractor that will complete the installations after cost overruns and delays, according to The Bond Buyer.

The events around this transaction have been a jolt to the financial community. However, investor demand for renewable power development remains high. More robust structures that minimize the likelihood that local governments will be called on to support debt repayment are required to maintain their continued interest in participating.

Contact:

Yvette Dennis
Senior Director
Global Infrastructure & Project Finance Group
+1 212 908-0668
33 Whitehall Street
New York, NY

Rob Rowan
Senior Director
Fitch Wire
+1 212 908-9159

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com.

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article, which may include hyperlinks to companies and current ratings, can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

FOR RATINGS FOR WHICH THE LEAD ANALYST IS BASED IN AN EU-REGISTERED ENTITY CAN BE FOUND ON THE ENTITY SUMMARY PAGE FOR THIS ISSUER ON THE FITCH WEBSITE.

Fitch: TX Tax Cap Bill Could Put Some Local Governments on Edge.

Fitch Ratings-New York-09 March 2015: The proposal to lower the annual property tax levy increase threshold could limit local governments' revenue-raising capability and restrict flexibility, Fitch Ratings says. Texas' State Senator Paul Bettencourt of Harris County proposed the change in a bill filed last week.

The proposal would lower the state's threshold of the annual property tax levy increase that subjects local governments to rollback petitions from 8% to 4%. It also expands the list of entities that must hold a tax ratification election if their levy increases beyond the rollback level. Texas law currently requires such election only of school districts but under SB 182 would include all local taxing agencies.

Statutory restrictions can constrain local governments' revenue-raising capabilities. However, compared with many other states, the current 8% rollback limit is generous, and the proposed 4% limit is not draconian. We believe the tax ratification election requirement may discourage boards and councils from seeking to increase levies beyond the threshold, given the cost and risk of voter disapproval.

In our view, most local government entities will likely not feel constrained by the 4% cap in most years. However, population growth creates demands for additional services, which could result in tax rate pressures that eclipse the 4% cap in a given year. According to the Census Bureau, seven of the fastest growing U.S. cities in 2013 were in Texas. Also, the 4% cap could seem insufficient if there were a notable increase in the rate of inflation.

Contact:

Steve Murray
Senior Director
U.S. Public Finance
+1 512 215-3729
111 Congress Avenue
Austin, TX

Rob Rowan
Senior Director
Fitch Wire
+1 212 908-9159
33 Whitehall Street
New York, NY

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com.

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BDA Announces New Due Diligence Webinar Training Series for Municipal Market Bankers.

The Bond Dealers of America and Nixon Peabody have announced a new series of training webinars–exclusive to BDA member firms–focused on providing specialized due diligence training to public finance bankers. This series will be led by BDA retained counsel, Nixon Peabody and feature commentary and analysis from BDA member firm counsel and public finance bankers.

The agenda for this new series is available here.

CBO: Public Spending on Transportation and Water Infrastructure, 1956 to 2014.

Public spending—spending by federal, state, and local governments—on transportation and water infrastructure totaled $416 billion in 2014. Most of that spending came from state and local governments: They provided $320 billion, and the federal government accounted for $96 billion.

This report provides information on spending for six types of transportation and water infrastructure:

- Highways,
- Mass transit and rail,
- Aviation,
- Water transportation,
- Water resources, and
- Water utilities.

Such spending can also be divided into two broad categories—spending to purchase physical capital related to infrastructure (as well as the labor and other inputs necessary for improving and rehabilitating structures and equipment already in place) and spending to operate and maintain infrastructure. In 2014, spending for capital accounted for 43 percent of total public spending on transportation and water infrastructure, and spending for operation and maintenance for 57 percent.

Read the Report.

Maine Considers a Property Tax on Some Nonprofits.

AUGUSTA, Me. — Nonprofit organizations across the country are closely watching Maine as it considers becoming the first state to impose property taxes on hospitals, private colleges and summer camps under a plan put forth by Gov. Paul LePage.

Mr. LePage’s proposal has sparked a fiery debate over what impact nonprofits have on their communities and whether they should have to cover the costs for municipal services they receive.

David L. Thompson, vice president of public policy for the National Council of Nonprofits, said all states exempted nonprofits from property taxes, either through laws or their constitutions.

Mr. LePage, a Republican, has called nonprofits “takers, not givers,” and argues that they need to contribute for services like the police, firefighters and snow removal. His proposal, which is part of his $6.3 billion budget plan, would require organizations to pay taxes to municipalities if their properties were worth more than $500,000. They would pay taxes only on the property value over that threshold and get a 50 percent discount on the rate.

In Maine, hospitals, colleges and other groups that are lobbying heavily against the proposal warn that it would force them to raise costs or eliminate jobs.

The Good Shepherd Food Bank estimates it would owe $24,500 annually to the City of Auburn under the governor’s plan. A spokeswoman, Clara Whitney, said it also would mean providing 100,000 fewer meals every year.

Some nonprofits already provide payments to Maine municipalities in lieu of taxes, but those payments fall well short of covering the services those organizations receive, said Jonathan LaBonte, director of the governor’s Office of Policy and Management.

“The governor put this in the budget to start the conversation,” said Mr. LaBonte, who also is the mayor of Auburn. “If municipalities have another approach, the governor has kept that door open.”

By THE ASSOCIATED PRESS

MARCH 7, 2015

California Pension Reform Measure to Target Calpers.

LOS ANGELES — A ballot measure campaign to cut California’s public pensions will be launched in May by a coalition of politicians and business people led by former San Jose Mayor Chuck Reed, with the state’s largest retirement system a prime target.

The measure would take aim at California’s $300 billion giant Calpers, which has a near-iron grip on the state’s pensions. Calpers, America’s largest public pension fund and administrator of pensions for more than 3,000 state and local agencies, has long argued that pensions cannot be touched or renegotiated, even in bankruptcy.

“Calpers has dedicated itself to preserving the status quo and making it difficult for anybody to reform pensions,” Reed said in an interview. “This is one way to take on Calpers, and yes, Calpers will push back.”

Calpers spokeswoman Rosanna Westmoreland said: “Pensions are an integral part of deferred compensation for public employees and a valuable recruitment and retention tool for employers.”

The measure will be closely watched by reformers and their union opponents in other states, in an ongoing national battle between those who say public pensions are putting intolerable strains on budgets and those who argue pension cuts unfairly penalize retirees and workers.

For most California cities, their largest debt is pension liability, a significant factor in the recent bankruptcies of Vallejo, Stockton and San Bernardino. Calpers has said it will increase pension contributions for most cities by up to 50 percent in the coming years.

Reed, a Democrat, abandoned a similar statewide ballot initiative in 2014, claiming that Kamala Harris, California’s Democratic attorney general, had approved wording of the initiative that was biased and union-friendly.

But he vowed to fight on after leaving office in December, and in an interview with Reuters confirmed for the first time the launch of the initiative and its timing, while noting that a major motive was to challenge Calpers’ grip.

Reed says the push will seek to place a simpler, more legally watertight pension reform measure on California’s November 2016 ballot, giving mayors and other local government executives the authority to renegotiate contracts.

To win a place on the 2016 ballot, backers of the initiative will have to obtain the signatures of 585,000 registered voters, or 8 percent of the number of voters in California’s last gubernatorial election, in this case 2014.

Reed and his allies have been huddling with legal advisers for months to devise a voter initiative that is simpler and less vulnerable to court challenges than last year’s effort.

They have also been buoyed by a ruling in the recent municipal bankruptcy of Stockton, whose judge said California’s public pensions are not inviolate.

As San Jose mayor, Reed helped pass a pension reform measure for his city, parts of which have been struck down after union lawsuits.

Reed is working with other pension reform advocates, including former San Diego Republican council member Carl DeMaio, the primary backer of a pension reform initiative in San Diego that was approved by voters in 2012; and the Ventura County Taxpayers Association’s David Grau.

“We have done a lot of legal work to make sure this initiative is bulletproof,” DeMaio said. “Because the unions are going to throw the kitchen sink at us.”

The group is talking to potential financial backers, Reed said. Last year Reed took $200,000 from a group funded by Texas hedge fund billionaire John Arnold and they could partner again this time round, he said.

Karol Denniston, a public finance attorney and pension expert at Squire Patton Boggs in San Francisco, said voters should be working for legal change to provide more options than municipal bankruptcy: “Right now Calpers has no program for financially distressed cities,” Denniston said.

Dave Low, executive director of the California School Employees Association, said the group would campaign to defeat the measure and was “confident we can defeat it.”

By REUTERS

MARCH 11, 2015

(Reporting by Tim Reid; Editing by Megan Davies and Steve Orlofsky)

Chicago Mayor Seeks to Phase in Higher Pension Payments.

CHICAGO — Chicago Mayor Rahm Emanuel on Friday called for phasing in higher, state-mandated payments to city pension funds to avoid a shock to the city’s budget and a big property tax hike.

The move, which would require state legislation, was part of a plan released by Emanuel’s re-election campaign ahead of an April 7 runoff election against Cook County Commissioner Jesus “Chuy” Garcia, who also released his fiscal plan on Friday.

Under an Illinois law, Chicago’s contributions to its police and fire pension funds will increase by about $550 million next year. Another state law allowing cost-saving pension cuts to shore up Chicago’s municipal and laborers’ retirement funds is at risk of being voided as unconstitutional in state court.

Still, the mayor’s plan advocated measures that labor unions and others are challenging in court. These include slowing cost-of-living increases for pensions and gradually increasing workers’ contributions to ease costs.

Emanuel also called for closing Illinois tax loopholes to gain money for the third-biggest U.S. city, along with obtaining state approval for a publicly owned casino.

Garcia’s plan seeks cost savings through intergovernmental collaboration and creates a committee to examine revenue options. It does not address possible funding sources for Garcia’s campaign pledges to hire 1,000 new police officers and to replace traffic ticket revenue generated by red-light cameras he wants removed.

“It is too early to tell residents in the city of Chicago that we’re going to give them bad medicine without stepping back and taking a comprehensive look and approach to how city finances will be met,” Garcia told reporters.

He also said he opposes reducing pension benefits for current and retired city workers.

Emanuel received about 45 percent of the vote last month, short of the 50 percent level needed to avoid a runoff. He leads Garcia by 51-37 percent according to a Chicago Tribune voter poll released on Friday.

Mounting pension pressures led Moody’s Investors Service to lower Chicago’s credit rating by five notches since July 2013, with the last downgrade to Baa2 occurring on Feb. 27.

Garcia said Chicago could save as much as $350 million by consolidating purchasing and some services with other governmental bodies under the mayor's control, including the Chicago Public Schools. He also said Chicago's budget could receive a $150 million boost from reforming tax increment financing districts meant to spur economic development within certain geographic boundaries.

By REUTERS

MARCH 13, 2015

(Reporting by Karen Pierog; editing by Matthew Lewis)

U.S. Municipal Bond Market Grows to $3.652 trln in 4th Quarter.

(Reuters) – The U.S. municipal bond market grew to $3.652 trillion during the fourth quarter, Federal Reserve data released Thursday showed.

The fourth-quarter increase followed a decline to $3.631 trillion in the third quarter, according to the central bank's quarterly report.

Retail buyers shed a total of $31.9 billion of municipal bonds, marking the 16th consecutive quarter of declines in bonds held by households, the biggest buyers in the municipal bond market.

The size of the municipal bond market peaked in the fourth quarter of 2010 at $3.77 trillion, as municipalities rushed to sell Build America Bonds, which carried special tax credits. Low interest rates have kept cities, counties and states hungry to borrow and refinance, and the market has held steady at around $3.7 trillion.

Institutional investors ramped up their buying, as banks picked up $41.1 billion municipal bonds in the fourth quarter, up from the prior quarter's $34.5 billion.

Mutual funds gained $60.8 billion in the fourth quarter, compared with $51.1 billion in the third quarter, the Federal Reserve said. Property casualty-insurance companies shed $200 million and life-insurance companies picked up $5.1 billion in municipal bonds.

By Elvina Nawaguna

Thu Mar 12, 2015

(Reporting by Elvina Nawaguna; Editing by Andrea Ricci)

Connecticut Town Opts for Novel Finance Plan to Build 3.6 MW Municipal Project.

Maryland-based Standard Solar Inc. will design and install a 3.6 MW solar power system for the Town of Stafford, Conn., as part of a program to make the town's municipal load completely satisfied by renewable energy.

The project will feature three arrays: two 1.3 MW arrays located at Stafford Middle School and a 954 kW array at the town's landfill. The town is also installing a geothermal heat pump system that will replace four oil burners in the town's four largest public buildings. Replacing oil with geothermal will actually increase the electrical load; however, this will be compensated for by the output of the three solar arrays, which are expected to produce approximately 4.6 GWh of electricity per year.

Rather than follow a typical financing route for a municipality – which cannot avail itself of the federal investment tax credit (ITC) – by financing the solar project through a power purchase agreement (PPA) or lease, the town elected to purchase the systems through a tax-exempt lease purchase (TELP). This option is available to public, nonprofit and other tax-exempt organizations and enables the buyer to spread the purchase cost over the period of the lease.

"There's been a lot of talk about TELPs for municipal purchases in the U.S., but they haven't really been used for solar in my experience," says Tony Clifford, CEO of Standard Solar. "This really is pretty novel."

One of the reasons for the scarcity of TELPs in municipal solar deals is the combination of factors that move the Stafford solar project forward. Richard Shuck, Stafford's first selectman, says the town has a very active energy committee with excellent engineering support that was willing and able to take on the task of owning a solar array large enough to meet the town's needs.

"We looked at our consumption and wanted to know the most cost-effective way we could reduce energy costs," Shuck says. "The town has recognized the value of energy independence and formulated a plan to get the town to a net zero energy goal."

According to Dennis Milanovich, Stafford's town engineer, the conventional wisdom is that because municipalities cannot take advantage of the 30% ITC, they typically finance solar projects through PPAs or lease agreements. However, if the town was prepared to take on the complexities of issuing a request for proposals and assuming financial responsibility for the project, it was able to eliminate the overhead of having a third-party developer involved.

"The reality was that because we were willing to buy in such large quantity and buy it as a construction project, we got our dollars per kilowatt down to about $2.50," Milanovich says.

As currently configured, the solar project will consist of approximately 11,780 Canadian Solar CS6X 310 W modules. The two arrays at the school will be fixed-tilt ground mounts, while the landfill will have a ballasted system that won't penetrate the cap. The inverter type has yet to be determined.

Key to the viability of this approach was Connecticut's Zero-Emission Renewable Energy Credit (ZREC) program combined with the state's virtual net-metering policy. The ZRECs provide the financial returns that the town can use to pay for the system. Virtual net-metering gives the town some flexibility about where it can place the arrays and still get credit for them.

"Our existing expenditures combined with the ZRECs actually more than make up for the lack of any federal tax credit on this project," Shuck says. "Our project – combined with the geothermal – is projected to be cashflow positive right from the start."

Because the town owns the three sites selected for the solar arrays, no lease was required for the land. The two locations for the arrays near the school are also near one of the town's three circuits from the substation. The third site at the landfill where there are no loads, and thus is rendered useful solely due to virtual net metering, is on a separate circuit. This is expected to balance the project from an interconnection standpoint and facilitate utility approval.

“We couldn’t have done this without the ZRECs and the virtual net metering,” says Standard Solar’s Clifford. “If you could only use the power at the place it was being generated, the project wouldn’t be possible.”

The combination of Connecticut policies enabling the Stafford project underscores the importance of a state’s legislative and regulatory climate in promoting the growth of a vibrant solar sector. This importance of state and local policies is going to become even more significant if the ITC expires as scheduled at the end of 2016.

SOLAR INDUSTRY

by Michael Puttre on Tuesday 10 March 2015

Supremacy's Claws: How Two Judges are Changing the Pension Debate.

The billions of dollars in pension obligations faced by cities and states across the country have politicians from many of them calling for some type of reform. A commission appointed by New Jersey Gov. Chris Christie wants to freeze the state’s current pension plan, while in California, Gov. Jerry Brown has signed a bill that increases the retirement age, among other things. In Illinois, Gov. Bruce Rauner wants to eliminate overtime in the determination of pension benefits.

But now rulings by judges in Michigan and California have sparked a debate about another way to deal with pension issues, namely municipalities filing for Chapter 9 protection so that they can break contracts with retirees.

Judge Steven Rhodes of the U.S. Bankruptcy Court for the Eastern District of Michigan in Detroit and, more recently, Judge Christopher Klein in the U.S. Bankruptcy Court for the Eastern District of California in Sacramento, both arrived at a similar conclusion while adjudicating the Chapter 9 filings of the city of Detroit and the city of Stockton, respectively: municipalities can’t be stopped from changing or breaking contracts by state law, even if they involve agreements with their pensioners.

“When Judge Rhodes ruled the city was eligible for bankruptcy in December 2013, his opinion pointed out that the Supremacy Clause [in the U.S. Constitution] meant that pension agreements are subject to compromise in bankruptcy court despite their state constitutional protections,” said Kenneth Buckfire of Miller Buckfire & Co. LLC, which served as Detroit’s financial advisor and investment banker.

Forty-eight states, all but Indiana and Texas, have specific protections for pension accruals. Seven states, including Michigan, put such language in their constitutions.In August 2012, Boston College’s Center for Retirement Research reported that the majority of states protect the benefits as a contract, including California. Others label them as property. Minnesota guarantees protection even if there is not an explicit contract.

For now, the two decisions have limited reach. And the process of filing for bankruptcy isn’t easy. But officials of cash-strapped governments can be forgiven if they see the rulings as a lifeline.

The two judges, at least, weren’t impressed by state protections of something that involves federal law, which governs bankruptcies.

“The state of Michigan itself cannot legally provide for the adjustment of pensions debts or any debts of the city of Detroit,” Rhodes wrote. “It has long been understood that bankruptcy law entails impairment of contracts. For purposes of the Tenth Amendment and state sovereignty, nothing distinguishes pension debt in a municipal bankruptcy case from any other debt. e eligibility decision. The state constitutional provisions prohibiting the impairment of contracts and pensions impose no constraint on the bankruptcy process.”

Just as the language in Michigan’s constitution didn’t cow Rhodes, neither does California’s protections intimidate Klein, who, on Feb. 4, actually called the Golden State’s largest pension fund, the California Public Employees’ Retirement System, or CalPERS, a bully.

“[A]s will be seen, it is doubtful that CalPERS even has standing to defend the City pensions from modification,” Klein opined. “CalPERS has bullied its way about in this case with an iron fist insisting that it and the municipal pensions it services are inviolable.”

The state law forbidding a contract rejection with CalPERS is “constitutionally infirm in the face of the exclusive power of Congress to enact uniform laws on the subject of bankruptcy … the essence of which laws is the impairment of contracts-and the Supremacy Clause,” Klein wrote.

Atlantic City, N.J., could very well become the next battlefield on the pension reform question and whether a bankruptcy filing can help solve it.

Christie on Jan. 22 signed an executive order appointing Kevin Lavin, who previously worked at FTI Consulting Inc., as Atlantic City’s emergency manager and Kevyn Orr, who shepherded Detroit through its bankruptcy, as his special counsel.

The seacoast city’s main problem is its withering casino industry, but its pension obligations also pose issues.

“I think we are definitely going to continue to see pensions be a focus of municipal bankruptcy, even if it’s not the [main] cause of a municipality’s filing,” said Laura Napoli Coordes, a visiting professor of law at the Arizona State University Sandra Day O’Connor College of Law.

Fox Rothschild LLP partners Nicholas Casiello, Jr., and Michael Viscount, in a Feb. 2 analysis of the city’s financial condition, noted that while the emergency manager has said it’s too early to discuss bankruptcy, his background in restructuring and the appointment of Orr as Lavin’s special counsel has “led to speculation that this alternative is clearly on the table.”

For the town once known as The Queen of Resorts to file, the city council would have to approve the step by a two-thirds vote. The state Municipal Finance Commission would also have to clear the move.

According to a 2012 paper from law firm Chapman and Cutler LLP, 12 states have laws expressly allowing one of its political subdivisions to file for bankruptcy, while another 12 states will let a municipality seek court protection upon certain conditions. New Jersey, California and Michigan fall into the latter category. In 21 states, the laws are unclear or do not have specific authorization statutes on the books, while Georgia and Iowa generally prohibit bankruptcy filings.

Not everyone believes that the Rhodes and Klein decisions about pensions being alterable in bankruptcy will firmly take root. Bill Brandt, president and CEO of turnaround consulting firm Development Specialists Inc. and the current chair of the Illinois Finance Authority, said there is “ample debate” as to whether the decisions by Rhodes and Klein would pass muster while under consideration in other courts.

Some in the bankruptcy community may say that retirement benefits can be impaired in bankruptcy court, said Brandt, who has been active in the restructuring world for decades. But, he added, there are “substantial and incredibly important political concerns attached to that.”

To be sure, the Stockton and Detroit decisions aren’t binding on other municipal bankruptcy cases, said ASU’s Coordes.

“[A]s far as the rulings’ precedential value, the basic rule is that bankruptcy judges are not bound by decisions of other bankruptcy judges,” she explained. “This is true even when the bankruptcy judges are in the same district.”

The same holds true for U.S. District Courts.

“But, in general, district court rulings that are not directly related to a bankruptcy court appeal are not binding on the bankruptcy courts,” she said.

But district court rulings on bankruptcy appeals are binding, Coordes said.

Stockton’s and Detroit’s treatment of pensions in those cities’ debt-cutting plans were largely left intact. Healthcare benefits took the hit in both plans of adjustment; the coverage was essentially eliminated for both cities’ retirees.

Stockton didn’t impair its pensions directly, said John H. Knox, the city’s debtor counsel from Orrick, Herrington & Sutcliffe LLP.

He said the municipality impaired pensions indirectly by renegotiating contracts and eliminating most medical benefits.

The Stockton plan divides retirees into two categories. The first group received an average of $24,000 in pension benefits per year with no medical benefits. The second group, which receives $51,000 annually from CalPERS and $26,000 in medical benefits, will lose the medical benefit contribution but could pay for the benefits out of their own pockets.

Employees hired before Jan. 1, 2013, will no longer receive free medical benefits but could pay for the insurance out of their own pockets. Employees now pay a portion of the CalPERS contribution, which is 7% for all non-safety employees and 9% for safety employees or sworn police and fire personnel.

The city decided not to change its pension system, in part, to maintain its ability to attract quality employees. Under California law, municipalities are not required to participate in CalPERS, but doing so allows workers the benefit of portability, or taking benefits earned at one CalPERS job to another CalPERS job. Losing that, Knox said, would put the city at an “extreme disadvantage of hiring people.”

Stockton also eliminated retiree medical benefits for some, but the city allowed them to participate in its group health plans so they could get lower rates, Knox said.

Detroit, meanwhile, reduced retirement benefits and cost-of-living adjustments slightly for its pensioners.

Under the plan of adjustment, non-uniformed workers participated in the general retirement system and agreed to a 4.5% cut in pension benefits in addition to a loss of future cost-of-living adjustments. Uniformed employees received benefits from in the police and fire Retirement System participants will have no reduction in pension payments, but cost-of-living escalators will be reduced 55%. When it comes the city's underfunded pension plans, Detroit will pay off 60% of it, or $1.88 billion, over a 40-year period.

Almost all the experts interviewed for this story agreed that a Chapter 9 filing is not the ideal choice, but sometimes there are no alternatives. "I'm fond of saying it's a terrible option until it's the only option," Orrick Herrington's Knox said.

Development Specialists' Brandt said municipal financial turmoil that requires seeking bankruptcy court protection is "a failure of public policy."

Brandt also noted that the Chapter 9 process is more arduous than a Chapter 11. After a company files a Chapter 11 petition, it's in bankruptcy. A municipality, though, must be deemed eligible for bankruptcy by meeting several requirements, including express approval from its state and fulfilling the definition of insolvency under the Bankruptcy Code.

Coordes noted that even though Stockton and Detroit received rulings allowing changes to retirement benefits, the cities took some steps to protect the pensioners. She pointed to Stockton's decision to not reduce current beneficiary payments and Detroit's efforts to bring in private money to help ease pension cuts.

Detroit's debtor counsel, Heather Lennox of Jones Day, said when Motown's professionals began to look the city's finances, the parties did not approach it with a "preordained idea."

"Everyone was going to have to make some sacrifices as a part of this case if the city was going restructure," she said.

Perhaps the most widely discussed aspect of the Detroit case was the so-called "Grand Bargain," which entailed private foundations, the state of Michigan, and the Detroit Institute of Arts each chipping in various amounts of money that eventually amounted to around $816 million in an attempt to blunt the axing of pensions.

"Consequently, the pension reductions for retirees on account of the [unfunded actuarial accrued liability] are now significantly less than the City had originally concluded would be necessary," Rhodes wrote of the global settlement.

"In many ways this is unique," Lennox said, explaining that Detroit retained "good, solid hardworking people and key industries." She added that history aided them in putting together the joint effort to help shore up the retirement benefits, as the municipality was "kind of a shining city at one time."

Such deals are not likely not to become fixtures in Chapter 9 cases, however.

"There's not enough philanthropic money in the world to bail out all the municipal pensions in this country," she said.

Buckfire said that, while it is true that pension fund benefits only suffered "nominal reductions" under Detroit's plan of adjustment, those were also ultimately achieved through settlements with the unions.

Pursuant to those deals, cost-of-living adjustments to pensions were either cut out completely or reduced by more than half, depending on the pension plan, and retirees gave up health care coverage in exchange for coverage under Affordable Care Act. This resulted in net reductions of $6 billion out of $7 billion in debt cut under the plan, he said.

Little more than seven years ago, the idea of touching pensions in bankruptcy "was treated as a little short of crazy," said bankruptcy historian David Skeel, currently a visiting professor at Harvard Law School.

But the Detroit and Stockton cases were not the first time cities flirted with impairing pensions, Skeel wrpte in an October 2013 paper for The Federalist Society's White Paper Series. Most prominently, Central Falls, R.I., which filed a Chapter 9 petition on Aug. 1, 2011, cut its pensions by roughly half and the city's retirees and employees agreed to it.

"One thing we now know, with significant confidence, is that pensions can be restructured in bankruptcy," Skeel noted.

Indeed, as the nation's cities battle financial issues and increasing pension obligations, filing for Chapter 9 protection will loom as a true alternative. And if that's the case, retirees in those cities under distress yet to come had better hope that they can get as good a result as those in Detroit and Stockton, even with the strict rulings of the bankruptcy judges in those cases.

THE DEAL PIPELINE

by contributor Andrew Hedlund | Published March 11, 2015 at 1:17 PM

FINRA Arbitration Claim Filed on Behalf of Retired Couple for Losses in Puerto Rico Municipal Bonds.

FINRA Arbitration Claim Filed by the Securities Arbitration Law Firm of Klayman & Toskes, P.A. and Carlo Law Offices Against UBS on Behalf of Retired Couple for Losses in Puerto Rico Municipal Bonds and UBS Proprietary Closed-End Funds.

SAN JUAN, Puerto Rico, Mar 11, 2015 (GLOBE NEWSWIRE via COMTEX) —

The securities arbitration law firm of Klayman & Toskes, P.A., and the Carlo Law Offices, P.S.C., located in Puerto Rico, recently filed a securities arbitration claim with the Financial Industry Regulatory Authority (FINRA), on behalf of a retired couple against UBS Financial Services Incorporated of Puerto Rico and UBS Financial Services, Inc. UBS, +1.32% (collectively "UBS"). The securities arbitration claim alleges financial damages that were the result of FINRA sales practices violations, including unsuitable investment advice, that resulted in concentrated investments in Puerto Rico municipal bonds and UBS' proprietary closed-end bond funds due to the failure to supervise its financial advisor's investment recommendations.

The FINRA arbitration claim alleges UBS and its financial advisor failed to disclose the risks associated with the recommended investment strategy. Furthermore, the undisclosed risks included increased default risks of Puerto Rico municipal securities and increased risks from the use of leverage in UBS' proprietary closed-end bond funds that were the result of material misrepresentations and omission of facts that Claimants were entitled to have disclosed. According to securities attorney, Steven D. Toskes, "In light of the retired couple's lack of investment sophistication, they relied upon UBS to devise an investment strategy that was consistent with my clients' risk tolerance and need for retirement income. UBS failed to do so and, as a result, my clients suffered damages."

The securities arbitration law firm of Klayman & Toskes, P.A., and Carlo Law Offices, P.S.C., are committed to the protection of Puerto Rico investor rights. It is our belief and conviction in the FINRA dispute resolution process and the legitimacy of Puerto Rico investor rights that governs our current investigations. The sole purpose of this release is to investigate, on behalf of our clients, the sales practices of UBS in connection with investment recommendations provided to their customers. Current and former customers of UBS who have information concerning UBS' sales practices related to investments in UBS proprietary closed-end bond funds and Puerto Rico municipal bonds are encouraged to contact Steven D. Toskes of Klayman & Toskes, P.A. or Lcdo. Osvaldo Carlo of Carlo Law Offices, at (787) 919-7325, or visit our website at www.sueubspuertorico.com.

About Klayman & Toskes

Klayman & Toskes, a leading securities and litigation law firm, practices exclusively in the field of securities arbitration and litigation, on behalf of retail and institutional investors. The firm represents investors throughout the world in securities arbitration and litigation matters against major Wall Street brokerage firms.

CONTACT: Klayman & Toskes, P.A. Steven D. Toskes, 787-919-7325 stoskes@nasd-law.com
www.nasd-law.com

[Muni Bonds WIll Survive Rate Hikes, Investment Managers Say.]

Even though the price of money will increase sometime this year, municipal bonds should still have decent, if unspectacular, returns, investment managers said Tuesday.

"We feel that, despite rising interest rates, that we will still be able to have for municipal investors a low- to middle-single-digit return," Greg Gizzi, senior portfolio manager for municipal fixed income at Delaware Investments said at a conference hosted by the firm in Manhattan.

Income, not appreciating price, is the key to obtaining good numbers in municipal bonds, he said.

The recent 10-year return on municipal bonds was 4.69 percent, according to the S&P Municipal Bond Index.

Gizzi's prediction is based on his belief that income from the portfolio will offset any price drop due to the Federal Reserve increasing interest rates.

The modest interest rate increase will be accompanied by a flattening of the yield curve, he added.

The Fed, another Delaware manager said, now has the justification to increase rates.

"They have the cover to do so. The employment picture is clearly pretty strong," said Brian McDonnell, senior portfolio manager, senior structured products analyst, Delaware Investments.

"If you look at a lot of the measures of inflation, while they don't look like they are high enough or close enough to the Fed's target to raise rates, one of the things they like to look at is inflation expectations," he added.

McDonnell said that the expected inflation rate is 2.7 percent over the next year and about the same rate over five years.

McDonnell said the Fed increase comes at a time when most other central banks continue to ease money supply, which means the dollar will likely strengthen. So Delaware Investments is looking for bonds that can perform well in a deflationary environment.

But so far, Gizzi added, with the market already counting on the Fed rate hike, the environment has been good for muni bonds. That's because many cities, towns and states have been cleaning up their balance sheets.

Delaware Investments has steered clear of problem spots, he said. It has no Illinois munis, noting that the effort of the new governor to correct its spending problems was recently nullified in court, although the state is appealing. Delaware Investments also has only one bond position in Puerto Rico, a hospital with a strong balance sheet, he said.

Gizzi also said that because the rate hike has been talked about for so long, it will already have been discounted by the market by the time it happens, possibly in June.

What could happen to interrupt his scenario?

Unexpected events, he added, are the greatest potential problem. It depends, Gizzi said, on the way in which interest rates are increased by the Fed.

"Are we going to see a gradual rate rise where the curve shift is flatter," Gizzi asked, "where income is going to drive the day? Or are we going to see a severe spike in rates and the long end of the curve steepen out?"

Gizzi doesn't expect the latter.

What about tax reform changing the climate for municipal bonds or bonds in general, such as inversions or corporate tax reforms?

Substantial tax changes, Gizzi said, won't happen until the next administration takes office in January 2017.

FINANCIAL ADVISOR

MARCH 11, 2015 • GREG BRESIGER

SEC Turns Up the Heat on Issuer Officials.

Two recent SEC enforcement actions demonstrate that the Securities and Exchange Commission remains intently focused on the municipal market and, in particular, on officials participating in financings that fail to accurately and completely disclose material information. In an action arising from defaulted bonds sold by a Michigan city to develop a soundstage, the SEC successfully brought fraud charges against the former mayor of the City of Allen Park, Gary Burtka, and, for the first time, charged a municipal official with "control person" liability, thereby barring him from participating in any future municipal bond offerings. In another case involving a proposed bond issue, the SEC obtained a court order halting the City of Harvey, Illinois from issuing bonds for an economic development project and brought charges against the City's comptroller, Joseph Letke.

The SEC's enforcement actions over the past several years, read together, comprise a line of cases clarifying the SEC's views of the scope of securities fraud in the municipal markets and, increasingly, the personal liability of officers of the issuers or borrowers. Although the facts in each of these cases are relatively clear and often damning, the lessons that the SEC's enforcement actions teach are important for officers of health care institutions that are borrowers in the municipal market to take to heart.

The SEC is clearly sending a message to the municipal market that inadequate, incomplete or misleading disclosure relating to municipal bonds is not only unacceptable, it is a violation of the federal securities fraud statutes and will not be tolerated. Thus, officers of borrowers of tax exempt bonds must ensure that the disclosure contained in the Official Statement regarding the borrower, as well as in the on-going annual and event disclosure, is accurate and complete. Failure to meet this obligation can lead to significant penalties, including fines and a bar from involvement with the issuance of municipal bonds, potentially threatening the ability of such officers to continue to serve in their existing positions.

What can officers of health care borrowers do to protect themselves from such liability?

1. Understand the scope of the borrower's disclosure responsibilities.
2. Assemble a strong team of internal staff and external experts to assist in preparing disclosure, both for the primary offering and for continuing disclosure.
3. Ensure that you obtain input from those persons in your organization that are knowledgeable about the various areas that are addressed in the disclosure document – it is unlikely that any single person will have all of the necessary information to prepare accurate and complete disclosure.
4. Do not completely rely on others. Read the draft disclosure and test the statements, ask questions of those preparing the materials and be certain that any inaccuracies that come to light are corrected. Do not assume that someone else will catch an inaccurate statement; ultimately, the document is the issuer or borrower's responsibility.

The National Law Review

Tuesday, March 10, 2015

Foley & Lardner LLP

David Y. Bannard

Partner

David Y. Bannard is a partner and business lawyer with Foley & Lardner LLP. He focuses his practice on representing airports in a wide variety of matters, including regulatory compliance, leasing, rate-setting and concessions agreements, and public finance matters. Mr. Bannard is an experienced bond lawyer, having served as bond counsel to airports and other issuers, and counsel to borrowers and underwriters, as well as in-house issuer's counsel, in many transactions. He is a member of the firm's Finance & Financial Institutions, Public Finance,…

dbannard@foley.com
617.342.4033
www.foley.com

SEC Commish Praises Muni Bond Fraud Enforcement Push.

Law360, New York (March 10, 2015, 3:31 PM ET) — A top Republican on the U.S. Securities and Exchange Commission on Tuesday backed the agency's increased use of enforcement powers to clamp down on municipal bond fraud, and delivered a tough message to municipalities when he called a failure to adequately disclose pension shortfalls "an unpardonable sin."

In a speech before a Financial Industry Regulatory Authority conference in New York, SEC Commissioner Daniel Gallagher heaped praise on the efforts of the agency's specialized enforcement unit for municipal bonds and public pensions. He noted in particular the unit's emergency action last year to stop a bond offering by a Chicago suburb after finding evidence that some of its proceeds were going to be illegally diverted to the city's comptroller and bond adviser, Joseph Letke.

The city of Harvey in December reached a settlement with the SEC that imposed certain conditions on it for three years, while the agency also secured a default judgment against Letke himself.

"This case was an outstanding use of agency resources, and I fully support prohibiting municipalities that cannot or will not comply with the law from accessing the securities markets, as well as pursuing the culpable officials who perpetrate the fraud," Gallagher said.

His remarks come as the SEC continues to turn away from a historical reticence to bring enforcement actions against municipalities and government workers over alleged bond frauds and misconduct, even though its powers over the market are limited. For example, the so-called Tower Amendment prevents the SEC from requiring issuers to file offering documents ahead of an issuance, and the agency has no authority to directly regulate the content and form of municipal disclosures, Gallagher said.

However, the SEC's enforcement efforts appear to be improving transparency within the municipal bond market, he said.

For one, its Municipalities Continuing Disclosure Cooperation initiative, an effort the agency launched last year to get issuers and underwriters to come forward about possible disclosure violations in exchange for leniency, is perhaps the reason for a 40 percent bump in the number of financial and operating disclosures made publicly available last year compared to the previous year before, Gallagher noted.

The commissioner did not signal any new enforcement initiatives targeting failures to disclose unfunded pension liabilities, but it is an area in which the SEC has previously taken action in settlements with New Jersey, Illinois and, most recently, Kansas.

In addition to poor disclosure of pension shortfalls being an "unpardonable sin," Gallagher also said these liabilities amount to "a true systemic risk," particularly given recent changes to accounting for pension liabilities that has forced plan administrators to disclose a more realistic assessment of their shortfalls than they had before.

"But don't hold your breath waiting for FSOC to address it," Gallagher quipped, referring to the Financial Stability Oversight Council. "They are probably too busy with Level III assessments of lemonade stands anyway."

Separately, Gallagher urged the bond industry to lead its own migration toward electronic or exchange-based trading of corporate bonds, saying it otherwise may face the prospect of Congress imposing its own solution on the industry if rising interest rates spark a liquidity crisis.

In his speech, the commissioner repeated warnings about storm clouds brewing over the corporate debt market, as dealer bond inventories shrink to record low levels and rising rates could force investors to flee riskier assets. Put together, these could put a freeze on the market's liquidity, Gallagher said, a particular problem considering the degree to which mutual fund complexes and insurance companies have bulked up their reserves of these assets.

To address this, Gallagher repeated calls he made in the fall for the SEC to help spur electronic or exchange trading of corporate debt, which he said could help keep the marketplace flowing for these securities. But, he added, the process should not wait for issuers to start standardizing typically "bespoke" offerings that would be easier to trade.

Instead, it is the market's infrastructure that could adapt to the challenges of trading corporate paper, he continued, noting that options exchanges regularly transact unique contracts.

If the industry doesn't move, then Congress could step in with a "draconian" solution such as forcing all corporate bonds to be traded on an exchange, Gallagher added. "This is exactly what happened in another over-the-counter market, the swaps markets, in the Rube Goldberg invention known as Title VII of Dodd-Frank."

By Ed Beeson

–Editing by John Quinn.

SEC Official Eyes Accounting Mandate for Municipal Issuers.

(Reuters) – Issuers of municipal bonds should be required to adhere to certain accounting standards to enhance transparency in the $3.7 trillion U.S. muni market, U.S. Securities and Exchange Commissioner Dan Gallagher said on Tuesday.

In a speech at a Financial Industry Regulatory Authority conference in New York, the Republican commissioner said that just over two-thirds of the nation's 30,000 biggest state and local government bond issuers incorporate practices recommended by the Governmental Accounting Standards Board (GASB). He added that the 20,000 remaining smaller issuers probably have a lower rate of compliance.

"We need a legislative fix to mandate the use of GASB standards for municipal issuers, whether it is a grant of authority to the commission to recognize GASB standards as they do the (Financial Accounting Standards Board's), or as a condition placed on the bonds' (tax) exempt status," Gallagher said.

Past attempts in the U.S. Congress to beef up transparency through accounting practices, particularly with regard to growing public pension costs, have fizzled under opposition from labor unions and others.

While new GASB standards for pension liabilities "are a step in the right direction," Gallagher said, they are not the complete answer.

"By permitting partial use of the rate of return on assets for funded liabilities, the new GASB standards allow for some political gamesmanship, such as legislation asserting that lawmakers in the future will make back-loaded, catch-up contributions to fully fund the liability," Gallagher said.

Disclosure of annual required contributions (ARC) by the governments, which was eliminated by GASB, should be resurrected, he added.

"Bringing back the ARC can help hold accountable governments whose contributions are insufficient to make good on their pension promises," he said.

March 10, 2015 4:44pm EDT

(Reporting By Karen Pierog; Editing by Steve Orlofsky)

- GASB Issues Final Statement on Fair Value Measurement and Application.
- Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements.
- SEC Gives Dealers 2 Week Window on MCDC Settlements.
- Lawyers Question Rating Disclosure Requirements.
- MSRB: Financial Disclosures Way Up, Bank Loans Not so Much.
- MSRB Seen Requiring ATS Pre-Trade Price Disclosures.
- SLGS Window to Close.
- Webinar on MSRB Rule G-45 on 529 Plan Data Collection.
- MSRB Supervision Webinar.
- And finally, Great Moments in Pedagogy is brought to you this week by *Nassar v. Jackson*, in which all you need to know about the interpersonal dynamics of the school board can be summarized by this quote from the opinion, "The hostility devolved into a profanity-laced exchange." School board of Hughes, Arkansas. Keepin' it classy.

UTILITIES - TENNESSEE

City of Memphis v. Shelby County

Court of Appeals of Tennessee, at Jackson - February 20, 2015 - Slip Copy - 2015 WL 739849

The ultimate issue in this lawsuit was how much of the electric and gas tax equivalent payments made by the Memphis Light, Gas and Water Division (MLGW) to the City of Memphis must be shared with Shelby County. The City claimed that it overpaid Shelby County in electric tax equivalents in recent years, while Shelby County claimed that it was underpaid in gas tax equivalents. The trial court found that the City paid the correct amount of electric tax equivalent payments for the years in question and rejected the City's claim for damages for alleged overpayment.

The trial court found that Shelby County was not entitled to a share of the gas tax equivalent payments for the years in dispute and rejected its claim for alleged underpayment. Accordingly, the trial court denied both parties' claims for monetary damages. The trial court resolved the parties' requests for declaratory and injunctive relief by declaring the manner and method of payment of the tax equivalents in the future. Both parties raise issues on appeal.

The Court of Appeals held that:

- The City was not entitled to subtract the dividend based payment required by subsection 693(6) of the City Charter from the total tax equivalent payment made by MLGW prior to calculating Shelby County's share;
- Subsection 693(4) of the City Charter calculated tax equivalents on a basis inconsistent with what is dictated under the Electric Law and was therefore repealed by the Electric Law to the extent that the Charter provision applies to the calculation of electric tax equivalent payments;
- The 0.225 multiplier shall be applied to the total tax equivalent payment calculated under Tennessee Code Annotated § 7–52–304 when determining the electric PILOTs due to Shelby County under Tennessee Code Annotated § 7–52–307; and
- Payments due to Shelby County under both the electric and gas tax equivalency laws shall be paid directly to Shelby County by MLGW in accordance with the state statutes."

MUNICIPALITIES - ALABAMA

Bynum v. City of Oneonta

Supreme Court of Alabama - February 27, 2015 - So.3d - 2015 WL 836700

City residents brought action against city, seeking declaratory and injunctive relief, challenging city's right to hold referendum election on whether to allow sale of alcohol in city. The Circuit Court entered order granting declaratory relief in favor of city and denying residents' request for injunctive relief. Residents appealed.

The Supreme Court of Alabama held that:

- Statute allowing municipalities of over 1,000 to hold referendum elections on sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, and
- Unconstitutional portion of statute was not severable.

Statute allowing municipalities with populations of 1,000 or more to hold referendum elections on whether to allow sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, since there was no rational basis to distinguish between the three excluded counties and the other 64 counties in the state.

Unconstitutional portion of statute governing whether municipalities with populations of 1,000 or more could hold referendum elections on whether to allow sale of alcohol, violating equal protection by excluding municipalities in three specific counties from holding such elections, could not be severed from portion of the statute allowing such elections for municipalities in remaining 64 counties. Statute did not contain a severability clause, legislature excluded the three counties for no rational reason, and severing language excluding the three counties would be to undermine the clear intent of the legislature.

TAX INCREMENT FINANCING - ALABAMA

Pate Flagship, LLC v. Cypress Equities Southeast, LLC

United States District Court, N.D. Alabama, Western Division - February 26, 2015 - F.Supp.3d - 2015 WL 816547

Pate Flagship, LLC entered into a Purchase Agreement with Cypress Equities Southeast, LLC for 35 acres of real property in Tuscaloosa, Alabama.

The Purchase Agreement included the following provision:

(e) Enhancement Interest. As additional part of the purchase price[,][Cypress Equities] agrees to pay [Pate Flagship] a sum equivalent to one-half of the Enhancement Interest created on the Property as and when received by [Cypress Equities]. For all purposes of this Agreement, “Enhancement Interest” shall be all TIFF money or any other funds received by [Cypress Equities] from any governmental entity or agency for, or TIFF money or any other funds spent by any governmental entity or agency (in lieu of the receipt by [Cypress Equities] of TIFF money or any such other funds from any governmental entity or agency), directly or indirectly on, the proposed development, or the construction of any infrastructure, landscaping or improvements of any kind whatsoever, during the proposed development of the Property.

Pate sued Cypress for anticipatory breach of contract after Cypress took the position that the interest savings from the authorization of GO Zone Bonds, as well as certain cash payments or services in kind from the City of Tuscaloosa, were not Enhancement Interests as defined by the Purchase Agreement.

The District Court held that:

- Any interest savings from GO Zone Bonds were not Enhancement Interests under the terms of the Purchase Agreement; and
- Pate’s mere conclusory allegations that certain benefits received from the City were Enhancement Interests were not sufficient to state a claim of for breach of contract regarding the same.

EMPLOYMENT - ARKANSAS

Nassar v. Jackson

United States Court of Appeals, Eighth Circuit - March 3, 2015 - F.3d - 2015 WL 871766

Caucasian public school district employees brought action against public school district employer and school board members, alleging that they were discharged on account of their race, asserting violation of their due process rights, and asserting a state-law defamation claim. The District Court entered judgment, upon a jury verdict, in favor of employees, denied defendants’ motion for judgment as a matter of law, and awarded attorney fees. Defendants appealed.

The Court of Appeals held that:

- Defendants waived argument on appeal that evidence was insufficient to support race discrimination claim;
- Damages award of $340,000 for due process violation was excessive;
- Defendants did not waive argument on appeal that damages award was excessive;
- Proper hourly attorney fees rate for employee’s lead counsel was $375; and
- Fees award would not be reduced because some of the attorney’s time entries were block-billed.

District Court did not improperly award school district employee’s lead counsel $375 per hour, rather than his usual rate of $250 per hour, solely because counsel worked on contingency, after employee prevailed in his due process claim against school district; Court explained that it awarded enhanced rate because of lead counsel’s experience and his superior legal and advocacy skills.

LIABILITY - CALIFORNIA

State ex rel. Dept. of California Highway Patrol v. Superior Court of Orange County

Supreme Court of California - February 26, 2015 - P.3d - 15 Cal. Daily Op. Serv. 1932 - 2015 Daily Journal D.A.R. 2241

Motorist brought personal injury action against California Highway Patrol (CHP) after a collision with a tow truck in CHP's Freeway Service Patrol (FSP) program. The Superior Court denied summary judgment for CHP. CHP petitioned for writ of mandate. The Court of Appeal granted petition.

The Supreme Court of California held that:

- FSP program did not give rise to a special employment relationship between CHP and tow truck driver, but
- FSP statutes do not prohibit CHP from acting as special employer of tow truck drivers.

California Highway Patrol's (CHP) Freeway Service Patrol (FSP) program did not give rise to a special employment relationship between CHP and tow truck driver sufficient to make driver an "employee" of CHP under the vicarious liability provisions of the Government Claims Act, since CHP was not an "employer" of the driver under the FSP statutes, even though the FSP service provider's contract with county transportation authority provided that CHP officers could direct tow truck drivers when an officer was present while roadside assistance was provided, even though FSP tow trucks were required to bear a CHP logo, where CHP did not select drivers or even service providers to participate in an FSP program, and tow truck driver was employed by the service provider.

LABOR - FLORIDA

Dade County Police Benev. Ass'n v. Miami-Dade County Bd. of County Com'rs

District Court of Appeal of Florida, First District - February 26, 2015 - So.3d - 2015 WL 798849

In June 2011, the Dade County Police Benevolent Association (Union) and the Mayor of Miami-Dade County began negotiations for successor collective bargaining agreements (CBAs) for the rank-an--file and supervisory police officers employed by the County. By November 2011, the parties reached agreement on all issues except one: whether the bargaining unit employees would be required to contribute an additional percentage of their base wages towards the cost of health insurance. The parties reached an impasse on this issue because the Mayor wanted an additional 5% contribution and the Union opposed any additional contribution. The parties agreed to submit the impasse directly to the County Commission for "final resolution," waiving their right to a special magistrate proceeding.

On January 5, 2012, the County Commission conducted a public hearing on the impasse and adopted Resolution No. R–02–12, which "ratifie[d] and settle[d] the collective bargaining impasse by determining that there shall be no additional contribution to the County's cost of health care." The Resolution directed the Mayor and the Union to reduce this now-resolved impasse issue to writing along with the other previously agreed-upon issues so the CBAs could be submitted to the Union for ratification. The Resolution also stated that it would "become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by [the County Commission].”

On January 11, 2012, the Mayor vetoed the Resolution pursuant to the authority provided to him by the Home Rule Amendment and Charter for Miami–Dade County (Charter). The Charter states that the Mayor “shall have veto authority over any legislative [or] quasi-judicial … decision of the Commission,” and it authorizes the County Commission to override the Mayor’s veto at its next regular meeting by a 2/3 vote. See Charter, § 2.02.E.

The Public Employees Relations Commission (PERC) concluded that the County did not commit an unfair labor practice when the Mayor vetoed the County Commission’s resolution of an impasse under section 447.403, Florida Statutes (2011). The Union appealed.

The District Court of Appeal ruled in favor of the Union, holding that section 447.403 did not permit a local executive branch official to veto the legislative body’s resolution of an impasse.

BOARD MEMBERSHIP - GEORGIA

Kanitra v. City of Greensboro

Supreme Court of Georgia - March 2, 2015 - S.E.2d - 2015 WL 854196

Holdover member of city planning and zoning board brought action against city, alleging city lacked to the authority to replace him with a successor without regard to cause. The trial court ruled that once member became a holdover member of the board, the city council could appoint a new member at any time without specific cause. Member appealed.

The Supreme Court of Georgia held that:

- City council was permitted to replace holdover member at any time by the appointment of a successor, and the protection of the removal-for-cause provision of city charter was not available to holdover member when the city did so, and
- Holdover member did not have a legitimate claim of entitlement to his position on the board once he became a holdover official, and thus, was not entitled to due process protections before the board appointed his successor.

OPEN MEETINGS - IDAHO

Arnold v. City of Stanley

Supreme Court of Idaho, Boise, February 2015 Term - February 26, 2015 - P.3d - 2015 WL 797971

Citizens filed a complaint seeking to have action taken by city at city council meeting declared null and void, arguing that the meeting violated Idaho’s open meeting law. The District Court granted summary judgment to the city. Citizens appealed.

The Supreme Court of Idaho held that:

- As a matter of first impression, citizens were not adversely affected by the alleged violation of the open meeting law and, therefore, did not have standing to bring the challenge, and
- City was entitled to attorney fees.

Citizens were not affected, as required by statute, by violation of open meeting law, and, therefore, they did not have standing to challenge action taken by city at a city council meeting that the citizens claimed adversely affected their property rights, where citizens had made no attempt to attend the meeting, and had their comments read into the record at the meeting, and the only alleged violation was an early start to the meeting and failure to amend the meeting notice to account for that change.

CONTRACTS - MASSACHUSETTS

Celco Const. Corp. v. Town Of Avon

Appeals Court of Massachusetts, Norfolk - March 2, 2015 - N.E.3d - 2014 WL 7928217

Successful bidder for work on a town water main extension project brought action against town after it refused bidder's request for an equitable adjustment to the contract price to recover its increased costs for rock removal after the amount of rock turned out to exceed the estimate by more than 1,500 cubic yards. The Superior Court Department entered summary judgment in favor of town. Bidder appealed.

The Appeals Court held that bidder was not entitled to an equitable adjustment.

Bid documents expressly disclaimed the accuracy of the stated amount of rock and stated that the amount of rock was indeterminate, and the nature of the rock itself, and the means and cost to remove it, did not differ in any way from what was anticipated in the contract documents.

ELECTIONS - NEW JERSEY

In re December 09, 2014 Special School Election

Superior Court of New Jersey, Appellate Division - March 4, 2015 - A.3d - 2015 WL 893080

County filed declaratory judgment action, requesting determination as to whether municipality or limited purpose regional school district was responsible to bear cost of special school election. The Superior Court concluded that district should bear cost and directed it to make payment to county. District appealed.

The appeals court held, as an issue of first impression, that district, rather than municipality, was required to bear cost of special school election.

Limited purpose regional school district, rather than municipality that initiated request to withdraw from district, was required to bear cost of special school election to determine municipality's proposed withdrawal. Although statute governing withdrawal from limited purpose regional school districts was silent as to who should bear cost, that statute, when read together with statutes governing costs of school elections and definitions of "school election" and "special election," obligated district to bear cost, and legislative history supported that conclusion.

EMPLOYMENT - VIRGINIA

Roop v. Whitt

Supreme Court of Virginia - February 26, 2015 - S.E.2d - 2015 WL 798792

Sheriff's deputy filed a complaint alleging that his termination was impermissible retaliation in violation of state law. The Circuit Court dismissed action, and deputy appealed.

The Supreme Court of Virginia held that sheriff's deputy, who is an employee of the sheriff, is not a "local employee" for purposes of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions on matters of public concern.

Constitutional officers, including sheriffs, are creations of the Constitution itself, and their offices exist, abeyant and unfilled, by virtue of constitutional origination from the moment their county or city is created by the legislature. Their offices and powers exist independent from the local government and they do not derive their existence or their power from it, and their compensation and duties are subject to legislative control, but only by state statute and not local ordinance.

Constitutional officers are elected by the voters for prescribed terms, and they are neither hired nor fired by the locality, and therefore, they are not "local employees" within meaning of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions to state or local elected officials on matters of public concern, nor shall a local employee be subject to acts of retaliation because the employee has expressed such opinions.

TAX - ILLINOIS

Grand Chapter, Order of Eastern Star of State v. Topinka

Supreme Court of Illinois - January 23, 2015 - N.E.3d - 2015 IL 117083

Fraternal organization that operated nursing home brought declaratory judgment action against Department of Public Health alleging that provision of Public Aid Code that taxed licensed beds of nursing home providers violated uniformity clause of state constitution. The Circuit Court granted summary judgment in favor of organization. Department appealed.

The Supreme Court of Illinois held that, as applied, section of Public Aid Code did not violate uniformity clause.

Nonproperty tax classification bore some reasonable relationship to object of legislation or public policy, and therefore, as applied to fraternal organization that was not-for-profit corporation and ran nursing home, section of Illinois Public Aid Code that taxed licensed beds of all Illinois nursing home providers did not violate the uniformity clause of the state constitution. Purpose of tax was to fund Long-Term Care Provider fund, which provided disbursements for seven distinct purposes, nursing home was licensed and operated under various permits issued by Department of Public Health, which received nearly $2 million annually from Long-Term Care Provider Fund, and nursing benefited from operating within regulated industry that was subject to uniform standards of quality and care, enforcement and oversight of which was paid for in part by Long-Term Care Provider Fund.

TAX - CALIFORNIA

Jacks v. City of Santa Barbara

Court of Appeal, Second District, Division 6, California - February 26, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1950 - 2015 Daily Journal D.A.R. 2246

Utility consumers, who incurred 1% surcharge on their electricity bills collected by electric company and remitted to city, filed class action complaint against city, seeking order declaring that surcharge was invalid as a tax imposed without voter approval, enjoining city from further collection of surcharge, and requiring city to repay revenues already collected. The Superior Court granted city summary judgment. Consumers appealed.

The Court of Appeal held that surcharge was a tax subject to voter approval, rather than a franchise fee.

Franchise agreement between city and electric company treated surcharge differently from franchise fee, from the perspective of utility consumer there was no functional difference between surcharge and user utility tax, and surcharge was not being collected for grant of right of way, but rather for revenue purposes.

IRS Publication: Tax Exempt Status for your Organization.

The IRS has released a publication entitled, Tax Exempt Status for your Organization.

SEC Gives Dealers 2 Week Window on MCDC Settlements.

NEW ORLEANS – The Securities and Exchange Commission's enforcement division is contacting dealers who reported their own possible violations of securities laws under a voluntary enforcement program initiated last year, giving them two weeks to decide if they still want to take advantage of the lenient settlement terms.

LeeAnn Gaunt, chief of the enforcement division's municipal securities and public pensions unit, updated bond lawyers on the progress of the Municipalities Continuing Disclosure Cooperation initiative during a panel at the National Association of Bond Lawyers' Tax and Securities Law Institute here.

Much of the discussion in multiple panels focused on the MCDC, a program launched last year to allow both issuers and underwriters to voluntarily report, for any bonds issued during the last five years, any time they misled investors about their compliance with their continuing disclosure obligations. Underwriters had to report by Sept. 10 and issuers by Dec. 1 last year.

While declining to offer a time frame or the number of participants in the program, Gaunt said the market can expect to see a wave of settlements with dealers first because the SEC received their submissions before issuers and has had longer to investigate them. Gaunt asked attorneys in the room to raise their hands if they had clients who self-reported, and many indicated that they did.

"We are confirming for ourselves that all of the violations you all reported are violations in our view," Gaunt said. "We are contacting dealers. Some dealers have been contacted."

Gaunt said that while the SEC is willing to discuss terms with a dealer, it will only offer two weeks for the dealer to decide if it wants to settle under the MCDC program or take its chances with a traditional enforcement action. For now, Gaunt said, the two week decision period has only been applied to dealers and not to issuers.

Gaunt said that the orders coming out of the MCDC will be about real violations and will provide some guidance on the SEC's thinking about what sorts of continuing disclosure failures it considers material. Many bond lawyers were upset after a vague settlement with King's Canyon Joint Unified School District in California last year offered little meat for lawyers to parse through.

Gaunt and Mark Zehner, deputy chief of the unit, also discussed other major recent enforcement actions with bond lawyers at the conference. Dean Pope, a partner at Hunton & Williams in Richmond, Va., who spoke on a panel, said the SEC's case against officials in Allen Park, Mich. has many public officials spooked. In January, the SEC settled with the former mayor and city administrator of the Detroit suburb for fraudulent conduct related to a failed movie studio financing. The case set a precedent by charging the ex-mayor, Gary Burtka, with being liable as a "control person" with authority over the issuer and administrator, even though he had not executed any fraudulent bond documents himself.

"This is a big case," Pope said. "It's generating, and will continue to generate, a lot of concern."

Zehner said the SEC clumps charges into primary and secondary liability. Secondary liability includes not just a control person, but also things like aiding and abetting, failure to supervise, and others, he said.

"We are fairly comfortable with, and accustomed to, bringing secondary liability claims," Zehner said.

One lawyer asked if the SEC could have chosen to bring secondary liability charges against other Allen Park officials such as the city council and simply chose not to because of the facts and circumstances there. Zehner said that was correct.

Enforcement activities were a major topic in discussions in the continuing disclosure panel at the conference as well. The MCDC was designed to stop issuers from releasing offering documents that inaccurately claim that they that they have been in compliance with their self-imposed disclosure obligations when they have not.

This approach has led to some debate about what information issuers should include in their official statements. Robert Feyer, a partner in Orrick Herrington & Sutcliffe's San Francisco office, said he had a client simply say nothing in its most recent OS because it was confident it has been in compliance for the past five years and the SEC's Rule 15c2-12 does not require an OS to say anything if the issuer is in compliance.

Rebecca Olsen, chief counsel in the SEC's Office of Municipal Securities, said OMS has coordinated closely with enforcement on the MCDC and will use what it learns from the initiative to give the office direction going forward. The Municipal Securities Rulemaking Board revealed earlier this week that continuing disclosures on its EMMA website rose sharply last year, a spike MSRB executive director Lynnette Kelly attributed partly to the MCDC.

"In my mind the MCDC has already been a tremendous success," Olsen said.

The NABL conference continues on Friday.

THE BOND BUYER

BY KYLE GLAZIER

MAR 5, 2015 2:44pm ET

SLGS Window to Close.

The Treasury Department has announced that subscriptions for SLGS will not be accepted after noon Eastern Time next Friday, March 13. The SLGS window will remain closed until further notice. Subscriptions received by noon Eastern Time next Friday will be issued on the date requested. The Treasury Department notice is available here.

Lawyers Question Rating Disclosure Requirements.

NEW ORLEANS — Many bond lawyers feel that, with all municipal rating agencies already or preparing to beam rating changes to EMMA, the Securities and Exchange Commission should amend its rules so that issuers no longer have to worry about filing event notices of their upgrades and downgrades.

Many attendees at the National Association of Bond Lawyers' Tax and Securities Law institute conference here expressed that sentiment over two days in panel discussions and in separate interviews. The conversation is being driven by the Municipal Securities Rulemaking Board's announcement earlier this month that the ratings of Moody's Investors Service would soon begin appearing live on EMMA, joining those of Standard & Poor's, Fitch Ratings, and Kroll Bond Rating Agency.

The SEC's Rule 15c2-12 on disclosure prohibits dealers from underwriting bonds unless they reasonably determine that the issuer has entered into an agreement to disclose via EMMA its audited financial and operating information as well as "material events," including rating changes, when they occur.

During a panel discussion on continuing disclosure Thursday, MSRB executive director Lynnette Kelly said she hoped Moody's would begin providing ratings on EMMA and live updates to those ratings as soon as May. Panelist Bill Hirata, a former general counsel to Digital Assurance Certification who now runs his own firm in North Carolina, asked SEC muni office chief counsel Rebecca Olsen if the commission would drop rating changes from 15c2-12's material events list.

"Right now we're closely monitoring this development," Olsen said.

The conversation continued at a later panel on disclosure policy, where several lawyers were confident that the SEC would soon drop requiring issuers to manually upload notices that their ratings had been changed.

"They have to," one bond lawyer said.

Another attorney said that because of the new technology on EMMA, the SEC would be unlikely to think an issuer materially breached its continuing disclosure agreement by not uploading a notice of the rating change. But a few were less sure and thought the SEC might still think that was a problem.

“They would,” another lawyer said. “The SEC would.”

Ben Watkins, the director of Florida’s division of bond finance and a lawyer himself, said in a separate interview that the current disclosure rule has never worked very well and that it might be time for the SEC to come around to adjusting it.

“Sometimes it’s better to acknowledge that there’s a defect in the system,” Watkins said.

The rule has been the subject of much talk following an SEC Paperwork Reduction Act request made late last year for comments on the burdens associated with complying with the rule. Many market participants submitted comments that went beyond that scope, including NABL, which questioned the efficacy of many parts 15c2-12 in the digital age. The MSRB has called for the commission to take a comprehensive look at the rule.

The NABL conference concluded Friday.

THE BOND BUYER

BY KYLE GLAZIER

MAR 6, 2015 12:38pm ET

Deloitte Power & Utilities Quarterly Accounting Update Webinar – Q1 2015.

Power & Utilities Quarterly Accounting Update webinar – Q1 2015

Wednesday, March 25, 2015
12:00 – 1:30 PM ET

Prepared by Deloitte & Touche LLP’s Energy & Resources Group, this Quarterly Accounting Update webinar will focus on the Power & Utilities sector technical accounting and regulatory issues presented by Deloitte specialists and thought leaders. Webinar participants will be able to gain an understanding of new accounting rules, and other utility accounting matters, and use this knowledge in preparing for quarterly accounting and reporting requirements.

Register now.

Reminder: Register for the Employee or Independent Contractor Webcast.

What: Employee or Independent Contractor?

When: March 12, 2015; 2 p.m. (Eastern)

How: Register for this event. You will use the same link to attend the event.

Learn about:

- Defining “Employee”
- The three control factors
- Key vendor characteristics
- The Voluntary Classification Settlement Program

MSRB Supervision Webinar.

The MSRB will host a free educational webinar on the supervision and compliance obligations of municipal advisors under MSRB Rule G-44 on Thursday, March 19, 2015 at 3:00 p.m. ET.

Register for the webinar.

Rule G-44 and related rule changes are effective April 23, 2015.

Yellen: Fed Eyeballs on Large Firms.

Regulators will continue to scrutinize large financial firms for risk management, internal controls, and governance, Federal Reserve chair Janet Yellen said Tuesday night in New York.

“Large firms still have room for improvement in this area, and supervisors will be watching closely,” Yellen said in her keynote address during the Citizens Budget Commission’s 83rd annual awards dinner at the Pierre Hotel.

“It is unfortunate that I need to underscore this, but we expect the firms we oversee to follow the law and to operate in an ethical manner. Too often in recent years, bankers at large institutions have not done so, sometimes brazenly,” she said. “These incidents, both individually and in their totality, raise legitimate questions of whether there may be pervasive shortcomings in the values of large financial firms that might undermine their safety and soundness.”

Yellen, the first female Federal Reserve chair and a Brooklyn native, received the watchdog organization’s medal for high public service.

According to Yellen, the Fed’s actions since the financial crisis of 2008 helped improve oversight of large financial institutions, which she defined as firms whose financial distress would pose a significant risk to financial stability-“firms that are, in that sense, ‘systemically important.’ ”

She cited the Basel III international agreement, the Dodd-Frank Act, stress testing and a yearly review of how firms are planning future capital needs. The Fed expects to release its latest review within days.

“Capital stress testing for banks is not new but the Federal Reserve has employed it much more extensively since the crisis,” she said.

Yellen added that the Fed itself must share some blame for not having looked more broadly at the financial system.

“In the decades of relative financial stability leading up to the crisis, it is fair to say that the Fed focused too much on individual firms and not enough on their role in the financial system and the implications of those firms’ operations for financial stability,” she said.

Last week, Yellen told the House Financial Services Committee that the Fed is working with other banking agencies to identify municipal securities that could be treated as high-quality liquid assets under rules requiring banks to maintain liquidity coverage ratios.

Yellen, a Brown University graduate and professor emeritus from the University of California, Berkeley, began her four-year term as Fed chair on Feb. 3, 2014. Previously she served four years as vice chair.

“Janet Yellen’s presence says a lot about the importance of the CBC,” said New York Mayor Bill de Blasio. “We certainly have enough checks and balances for offering critiques and ideas. [CBC president] Carol Kellermann is a strong and persistent presence.”

De Blasio presented the commission’s prize for public service innovation to the Mayor’s Office of Data Analytics.

The office creates a citywide data platform and implements the city’s open-data law. A major project last year was its implementation of universal pre-kindergarten, which involved adding 36,321 seats to full-day, pre-K capacity, an expansion of more than 170%.

Other projects included implementation of the city’s first comprehensive business census, which maps all commercial activity and enables the city to target resources to small businesses affected by Hurricane Sandy, and the Fire Department’s risk-based inspections system, which helps the city predict and inspect buildings most at risk of serious fires.

ClaimStat, which operates within city Comptroller Scott Stringer’s office, received honorable mention.

The CBC also honored Douglas Durst and H. Dale Hemmerdinger for their 20 years as trustees.

THE BOND BUYER

BY PAUL BURTON

MAR 4, 2015 9:29am ET

MSRB: Financial Disclosures Way Up, Bank Loans Not so Much.

FORT LAUDERDALE, FLA. – Municipal issuers’ disclosures of financial and operating data have increased dramatically, while disclosures of bank loans have been disappointing, Municipal Securities Rulemaking Board executive director Lynnette Kelly said at a conference.

Speaking at the National Municipal Bond Summit on Monday night, Kelly said there was a 40% increase in the financial and operating documents issuers filed to EMMA between June 2013 and June 2014. That is much higher than the 7% increase the MSRB normally sees year over year, she said.

Some of this increase was probably due to the Securities and Exchange Commission’s Municipalities

Continuing Disclosure Cooperation initiative, Kelly said.

The MCDC, announced last March, allowed both issuers and underwriters to voluntarily report, for any bonds issued in the last five years, any time they misled investors about their compliance with their continuing disclosure obligations. Underwriters had to report by Sept. 10 and issuers by Dec. 1 last year.

SEC was particularly concerned about issuers who maintained in offering documents that they were fully in compliance with their self-imposed obligations to file annual financial and operating information by certain dates, when in actuality they had filed the documents late or not at all. SEC offered lenient settlement terms in exchange for the voluntary reporting under the MCDC program.

“Where we’ve not seen an increase in disclosures and would like to is … bank loans,” Kelly said.

The MSRB began urging muni bond issuers to voluntarily post information about their bank loans on EMMA in 2012. Yet since then it has only received 88 such filings, Kelly said, adding, “That is far too low.”

Issuers have increasingly turned to bank loans to meeting their financing needs, typically because of lower interest and transaction costs, a simpler execution process, the lack of need for a rating, greater structuring flexibility, or the desire to deal to interact with a bank rather than multiple bondholders. A bank loans is a term used broadly to mean a bank’s direct loan to an issuer or the private placement of an issuer’s bonds to a bank. But there are no requirements that these be disclosed.

The MSRB, rating agencies, and some market groups have all said it’s important for issuers to disclose such loans, because they could affect an issuer’s financial condition, its credit or liquidity profile, as well as its outstanding bonds and the holders of those bonds.

The National Federation of Municipal Analysts on Tuesday released a paper detailing what disclosure practices it thinks should be adopted for bank loans. In January, the MSRB’s made its most recent call for disclosure of bank loans well as other alternative debt such as direct loans from hedge fund investors.

Kelly told those attending the conference that the MSRB has urged the SEC to revisit its Rule 15c2-12 on disclosure and that bank loan disclosure is one of the areas the MSRB wants the SEC to address during that effort.

THE BOND BUYER

BY LYNN HUME

MAR 4, 2015 1:28pm ET

OppenheimerFunds Sticks With Struggling Puerto Rico: Muni Credit.

(Bloomberg) — OppenheimerFunds Inc. is maintaining its bets on Puerto Rico as other municipal-bond investors flee, banking on the strategy that’s made it a top performer over the past five years.

Bonds from Puerto Rico accounted for about $5.6 billion of the $26.2 billion invested across the money manager’s 20 muni funds as of Jan. 1, according to data compiled by research firm Municipal Market Analytics. The 21.4 percent allocation compares with about 19 percent a year earlier, before Puerto Rico was cut to junk in February 2014, data compiled by Bloomberg show.

OppenheimerFunds has outperformed many of its peers since 2010 thanks partly to debt of Puerto Rico, which has been a core holding because it’s tax-free nationwide and offers attractive yields. At stake is whether the gains can last as the island’s electric agency moves toward restructuring and as officials struggle to revive an economy with a 13.7 percent jobless rate, more than double the U.S. average.

“The circumstances have changed, but their holdings are static,” said Bob Donahue, a managing director at Concord, Massachusetts-based MMA who testified to a congressional panel last month about the island’s finances. “Shareholders have seen the volatility — they’ve benefited during the good times and suffered during the bad.”

Junk Limit

Kimberly Weinrick, an OppenheimerFunds spokeswoman in New York, declined to comment beyond the company’s published statements on Puerto Rico.

OppenheimerFunds said in February 2014 that it couldn’t add more junk bonds to some funds because Puerto Rico’s rating cuts pushed it over its speculative-grade limit. The company has nine of the 10 highest-yielding muni funds focused on specific states, including those for Maryland and Virginia residents, Bloomberg data show. Those funds had 48 percent and 38 percent stakes in Puerto Rico as of Jan. 31, respectively.

Their managers wrote about the benefits of state funds in November, saying that “because each fund emphasizes in-state securities, your investments also help support projects close to home.” Three paragraphs later, they mention holding Puerto Rico, Guam and the U.S. Virgin Islands.

Last year’s downgrades “did not change Oppenheimer Rochester’s opinion about the credit risk of Puerto Rico and its public authorities,” the company said in its annual overview, released in January. OppenheimerFunds money managers “saw opportunities to ride out the volatility and clip highly favorable coupons.”

Strategy’s Reward

The managers have said they focus on tax-free bonds offering higher yields, such as debt from U.S. territories and securities backed by cigarette shipments. Over the years, higher coupon payments can boost returns.

The strategy has paid off in terms of five-year annualized performance, Bloomberg data show. Excluding dedicated high-yield muni funds, the $2 billion Oppenheimer Rochester AMT-Free Municipal Fund is the best-performing national fund, while the $1.36 billion Oppenheimer Rochester California Municipal Fund tops open-end funds focused on the Golden State.

Among single-state funds outside of California and New York, which are marketed to residents for income excluded from state taxes, the Oppenheimer Rochester Minnesota Municipal Fund and the Oppenheimer Rochester Pennsylvania Municipal Fund have two of the three biggest five-year gains, Bloomberg data show.

The question for OppenheimerFunds is whether Puerto Rico bonds can keep generating outsize returns, said Beth Foos, a senior analyst at Morningstar Inc. in Chicago.

Beware Volatility

"These state-specific funds are achieving that tax-exemption while reaching for yield, which has been rewarded over the last several years," Foos said. "That comes with additional risk going forward with this particular issue in Puerto Rico. They've got very challenging budget issues that aren't going away."

Unlike the broad $3.5 trillion municipal market, Puerto Rico bonds haven't recouped losses suffered in 2013, when state and local debt fell the most in five years, S&P Dow Jones Indices data show. After falling a record 20.5 percent in 2013, commonwealth bonds gained 10.3 percent last year amid demand for high-yield munis.

The $3.5 billion of general obligations Puerto Rico issued a year ago have lost value. The debt priced at 93 cents on the dollar to yield 8.73 percent on March 11, 2014, Bloomberg data show. It traded Friday at about 83 cents, for a 9.93 percent yield.

Holding Rationale

For the Oppenheimer Rochester Maryland Municipal Fund, the company's most heavily concentrated in Puerto Rico, the island is depressing returns. It fell 13.7 percent in 2013, compared with a 1.4 percent slide for the S&P Maryland index. The fund has trailed 98 percent of peers in the past three years.

Even as the fund's net assets shrank to $63.5 million as of Dec. 31 from $67 million a year earlier, Puerto Rico holdings appreciated 1.8 percent to $30.3 million. That means 48 percent of the fund was dedicated to the island, up from about 44 percent.

The fund can invest as much as 25 percent in junk debt, according to its prospectus. It can exceed that limit if managers bought the debt while it was investment grade.

Dan Loughran, who leads the OppenheimerFunds muni group, explained the reasoning for the holdings in a September 2013 article in InvestmentNews: The commonwealth's constitution puts bondholders first in line and the island can't file for bankruptcy.

Investor Defense

Yet there's a growing chance that those rationales may crumble amid attempts by lawmakers to let some island authorities either restructure debt or seek Chapter 9 bankruptcy protection, MMA's Donahue said.

OppenheimerFunds is moving to defend bondholders. Along with investment funds of Franklin Resources Inc., it convinced a federal judge in San Juan to throw out the island's Recovery Act, which would've allowed some agencies to restructure.

Some of the largest muni investors trimmed Puerto Rico holdings since the territory lost its investment grades. Nuveen Asset Management, which oversees about $100 billion in munis, holds almost no commonwealth debt, while Vanguard Group Inc., which manages $140 billion of munis, cut its stake by about half, to $257 million.

Sam Katzman, who advises high-net-worth individuals as chief investment officer at Constellation Wealth Advisors in New York, said Puerto Rico hasn't been worth holding for 15 years.

Yet with interest rates close to generational lows and the top income-tax bracket the highest since

2000, the state funds' yields may lure buyers who haven't kept up with the island's financial struggles, he said.
OppenheimerFunds' holdings are in plain sight: Online fund summaries detail allocations to each state and territory.

"I always worry about what happens to the everyday investor," said Katzman, whose firm oversees $6 billion. "If the yield looks too high, figure out why. There's no free ride – – there's always risk associated with the reward you're getting. You have to pay attention. The information is there."

Bloomberg Muni Credit

by Brian Chappatta and Kate Smith

March 8, 2015

To contact the reporters on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net; Kate Smith in New York at ksmith304@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Alan Goldstein

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Vanguard to Make It Easier to Invest in Munis.

The municipal-bond market isn't always the easiest to navigate. But the simple, cheap choice of investing in muni bonds through ETFs is about to get a boost.

Already, exchange-traded funds that focus on tax-exempt municipals make it possible to get a diversified holding of such bonds with a single trade, at low cost. That is a lot less labor-intensive than creating a portfolio with individual securities.

Still, until now, few people seem to have noticed. Muni ETFs hold only about $15 billion, remaining a niche in the $2 trillion ETF universe.

One possible reason: Unlike stock investments, it doesn't cost that much more to own an active muni bond fund, whose manager can monitor the creditworthiness of issuers, says wealth adviser Vern Sumnicht, in Appleton, Wis.

That may change soon.

A first for Vanguard

This spring, index-fund giant Vanguard Group aims to launch its first tax-exempt muni index fund with an ETF share class. Vanguard says it will charge annual expenses as low as 0.12 percentage point of assets for the funds. That compares with 0.20 to 0.35 point for existing muni ETFs and around 0.50 to 0.90 point for actively managed muni funds.

With yields still near historic lows, a bond ETF with significantly lower expenses could be a strong draw, says Thomas Boccellari, a passive-strategies analyst at Morningstar Inc. "It would put more money in investors' pockets," he says.

Bonds of state and local governments have some attractive features, although their greatest appeal is to investors in higher tax brackets. The interest such bonds pay generally is exempt from federal taxation, and sometimes also from state and local taxes.

And despite some high-profile fiscal meltdowns, such as Detroit's 2013 bankruptcy filing, defaults are significantly lower for munis than for debt of corporations.

Design challenge

Designing muni ETFs was more of a challenge than creating ETFs in other markets, though.

Unlike stocks, many munis don't trade very often. The dilemma for fund companies was how to accurately value a basket of munis underlying an ETF throughout each trading day, says James Colby, senior municipal strategist for Van Eck Global's Market Vectors ETFs unit.

Eventually, ETF sponsors, regulators and firms that track muni prices agreed that the baskets would be valued with the help of algorithms—rules-based mathematical analyses based on historic data and the prices of bonds that have traded. The resulting ETFs deliver tax-exempt income at "a very reasonable price with transparency and liquidity that investors don't get in the underlying muni market," says Mr. Colby.

For people who already own individual munis, an index-based, passively managed approach might provide further diversification, says David Mazza, head of research for SPDR ETFs at State Street Global Advisors.

Experts caution that anyone considering a muni ETF should understand the risks inherent in bond investing generally, as well as the differences between passive and active muni funds.

One ever-present concern is that inflation fears could push up yields. Bond prices move in the opposite direction of yields, so both index and active bond funds can lose value when yields rise.

Moreover, although credit risk is low in municipal bonds, a credit-ratings downgrade or a default can cause individual bonds to lose value—or in the worst case, cause the whole market to sell off.

Spreading the risk

ETF managers don't do credit analysis or sell in anticipation of downgrades, says Matt Tucker, head of Americas Fixed Income Strategy for BlackRock Inc. 's iShares unit.

The trade-off, he says, is that ETF holders get wide diversification, so problems affecting one bond likely would have modest impact. The iShares National AMT-Free Muni Bond (MUB) fund, the largest muni ETF, with more than $4.4 billion in assets, holds around 2,400 individual bonds.

Owning a larger muni ETF could have other benefits, too, says Michael Iachini, managing director of Mutual Fund & ETF Research at Charles Schwab Investment Advisory Inc. The bigger ones trade at significantly narrower bid-ask spreads, or the margins between the price at which market makers are willing to buy and sell. When spreads are wider, that raises costs if an investor periodically trades an ETF, he says.

Vanguard says its new muni funds will invest in investment-grade securities in various maturities. A Vanguard spokesman declined to comment beyond the firm's announcement of the funds, citing restrictions while they are under review by regulators.

Executives at other fund firms wouldn't speculate on the impact of Vanguard's entrance to the sector. But some said it wouldn't hurt if more investors notice that ETFs offer another route to owning munis.

THE WALL STREET JOURNAL

By MICHAEL A. POLLOCK

Updated March 9, 2015 12:03 a.m. ET

Muni Bonds Headed for a Rough Patch.

Turbulence is in store for municipal-bond investors following a record run, as a gathering U.S. economic recovery pushes interest rates higher and issuance grows.

In February, municipal debt posted its first monthly decline in returns since December 2013, bringing an end to a record-tying 13 consecutive months of gains. The market this year is off to its worst start since 2008, returning 0.14%, including price appreciation and interest payments, according to Barclays PLC.

"I think volatility is probably going to be the theme for this year," said Peter Hayes, head of municipal bonds at BlackRock Inc., which has about $116 billion in tax-exempt debt.

Pressuring the $3.6 trillion municipal-bond market is a surge of new issuance by cities, states and other government entities, which sold about $68.5 billion in bonds this year through Friday, according to Thomson Reuters data. That is a record for the period and 88% increase over a year ago.

Many issuers have taken advantage of low yields to refinance outstanding debt, reducing interest payments and shoring up their fiscal health. The flood of new debt is driving municipal-bond prices lower. Yields rise as prices fall.

At the same time, long-term interest rates have begun to pick up following a steep decline, as the U.S. economy gains steam. That has raised prospects that the Federal Reserve may start increasing interest rates as soon as June, undermining the value of outstanding bonds.

The Fed's monetary stimulus following the 2008 financial crisis has been a big factor pushing up prices in global bond markets.

The 10-year U.S. Treasury yield on Friday hit 2.25%, its highest since December, following the latest strong U.S. jobs report. Despite the February wobble in returns, yields on municipal bonds remain near five-decade lows.

The wave of debt issuance and rising rates has some investors worried that the municipal market could stumble as it did during 2013's selloff, which was triggered when the Fed began discussing plans to end its massive bond-buying program.

There are seasonal factors are work as well: Muni-bond prices tend to slump in the spring as investors sell securities to raise money for tax payments, said James Iselin, head of municipal fixed income at Neuberger Berman Group LLC, which manages about $9.5 billion in state and local debt.

If demand wanes amid uncertainty about the Fed's next step, that could put additional pressure on prices.

“My confidence that the market can power through it is less than it was at this time last year,” Mr. Iselin said.

The longest winning streak since 1992 lifted municipal bonds to a 9% return in 2014, outpacing gains in corporate and U.S. government debt.

The broad debt-market rally last year fueled a surge of investor funds into municipal bonds, many of which are considered as safe as Treasurys because they are backed by tax revenue. Investors also like the bonds because they provide tax-exempt income.

Investors are still seeking out such debt, dropping about $7.26 billion into municipal-bond mutual funds in 2015 through February, far ahead of the $1.75 billion that flowed into these types of funds in the same period of 2014, but behind 2013’s $9.3 billion, according to Lipper data. The pace has slowed in recent weeks, however.

BlackRock’s Mr. Hayes said he is taking advantage of recent weakness to buy new bonds from large issuers such as New York, California and Georgia at better yields. Higher yields and lower prices could also mean a buying opportunity for individual investors, he said.

He also said he believed last year’s price rally made many bonds overvalued, contributing to the recent retreat.

Rising rates could also affect the supply of new bonds and slow the “red-hot” issuance seen this year, according to Chris Mauro, head of U.S. municipal strategy at RBC Capital Markets.

“To me, this looks eerily similar to 2013, where you had heavier-than-expected issuance in the first part of the year and then it diminished in the second,” he said.

A Citigroup Inc. report in February predicted about $35.5 billion in March issuance and $380 billion for 2015. Issuance was $27.3 billion last March and $314.9 billion for 2014, according to Thomson Reuters. Sluggish issuance in the beginning of last year helped propel 2014’s rally, with demand for bonds outstripping supply.

Jim Kochan, chief fixed-income strategist at Wells Fargo Asset Management, said bond markets started 2015 priced for weak economic data, and Treasurys attracted buyers from outside the U.S., helping to sustain the rally into January. That created the space for a pullback in February, he said.

“March is going to be volatile,” he said. With U.S. employment growth and wages having picked up in recent months, investors will increasingly have an “eye toward when the Fed is going to start raising the funds rate.”

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated March 8, 2015 6:32 p.m. ET

Webinar on MSRB Rule G-45 on 529 Plan Data Collection.

Date: March 12, 2015

Time: 3:00 p.m. to 4:00 p.m. ET

Description: The MSRB will host a webinar for underwriters of 529 college savings plans about MSRB Rule G-45 effective on February 24, 2015. Also, the webinar will review the electronic submission information requirements and the process for completing Form G-45.

Read the Form G-45 manual and specifications.

Register.

MSRB Seen Requiring ATS Pre-Trade Price Disclosures.

FORT LAUDERDALE, Fla. — The Municipal Securities Rulemaking Board is likely in the future to propose requiring alternative trading systems to disclose to the board pre-trade price information on municipal securities, industry officials said after listening to speakers on a federal regulatory update panel at a conference here on Monday afternoon.

The industry officials said that Cynthia Friedlander, the director of fixed income regulation for the Financial Industry Regulatory Industry, who spoke on the panel at the National Municipal Bond Summit, "telegraphed" the future MSRB action, when she pointed out that FINRA and the MSRB have been working closely and coordinating on pre-trade price transparency initiatives.

FINRA has already proposed two such initiatives for corporate bonds and agency securities. The MSRB has followed by proposing one of those for munis and is likely to propose the other one for munis too, Friedlander indicated.

FINRA last year issued Regulatory Notice 14-52, which proposed requiring a dealer, for a same-day retail-size principal transaction in corporate or agencies securities, to disclose on the confirmation to a customer, the price to that customer, the price to the member firm of a transaction in the same security, and the differential between those two prices. The MSRB issued its own similar proposal for munis at the same time.

More recently FINRA issued Regulatory Notice 15-03, which proposed requiring ATS' to report to FINRA quotation information relating to corporate and agency securities. Under the proposal, dealers would have to identify the party that submitted the quotation information as well as the price of the quotation. ATS' match buyers and sellers for trades. Quotation information would include any offer to buy from or sell to any person or entity at a specified price, yield or spread, including any priced orders that may be displayed on behalf of a customer, according to the notice. FINRA is not proposing to make this information public, but is seeking public comments on that idea.

The MSRB has not yet made any public statements about this initiative. When asked about it by a reporter, Lynnette Kelly, the MSRB's executive director, noted that it was not in the speech she gave at the conference. But industry officials said they expect the board to follow up with its own similar proposal for munis.

Friedlander also said that FINRA, which has responsibility for examining dealer-municipal advisors, examined 80 of them last year and expects to examine a similar number of them this year. The self-regulator is looking at whether MAs are complying with registration, recordkeeping and supervisory rules, among other things, she said. While the Securities and Exchange Commission is responsible for examining non-dealer MAs, it may still question dealer-MA activities in its examinations of dealers, she cautioned those at the conference.

Friedlander said FINRA is trying to identify dealers that are engaging in MA activities without being aware of it. For example, she said, some dealers are not aware that if they recommend issuers invest bond proceeds in Treasuries or certificates of deposit, they become MAs subject to registration and other MA requirements.

When questioned by the moderator of the federal regulatory update panel about reports that some issuers are hiring "paper [independent registered municipal advisors,] or IRMAs, so dealers that advise them on munis don't have to register as MAs, Jessica Kane, deputy director of the SEC's Office of Municipal Securities said the SEC would find that "extremely concerning" and that IRMAs must be meaningfully engaged. Friedlander said, "We'll be looking at whether the MAs are meaningfully engaged."

Friedlander also warned MAs to "be very careful with the documents you create on your fiduciary duty." The Dodd-Frank Act imposed a fiduciary duty on MAs to put their issuer clients' interests first, before their own. But Friedlander said FINRA has seen some dealer-MA documents that take a "mix and match approach" or are a "cut and paste of various documents" that contain provisions that are incompatible with fiduciary obligations. For example, if an MA says it has an arms-length relationship with an issuer for some activities, that would not be in line with its fiduciary duties. Underwriters have arms-length relationships with issuers, not MAs.

Kane warned that MAs that work for both an issuer, to whom they have a fiduciary duty, and a borrower, to whom they have no such duty, "should think very carefully about the disclosure of conflicts."

Similarly, on another panel on the evolving role of the MA, Dan Campbell, managing director of ACA Compliance Group, which helps muni market participants with compliance issues, said, "I can't over-emphasize enough that the concept of conflicts of interest is going to be a major issue for the SEC staff."

"That's something MA's need to think about," he said.

The MSRB is preparing to release a draft of Rule G-42 that would detail the kinds of conflicts of interest an MA should disclose to an issuer to comply with its fiduciary duty to that issuer. The draft will also cover other fiduciary requirements as well, such as the need for an MA to document its relationship with an issuer, and prohibitions on principal transactions, certain kinds of compensation and fees, and other MA activities, Kelly said in her speech at the conference.

During the panel on MAs, Marianne Edmonds, a senior managing director at Public Resources Advisory Group and MSRB board member, said some small issuers can only afford to hire an MA, or IRMA, on a contingent fee basis, under which the MA would get paid only if the transaction is completed. That is less expensive that hiring an MA on a monthly or indefinite basis. Edmonds noted that some people think such fees create a conflict of interest, but said she disagrees.

Those that worry about a conflict contend the fee structure could incentivize an MA to want to make a transaction work even if it's not in the issuer client's best interest.

Edmonds was worried about the fact that the an MA cannot become an IRMA in a transaction if the firm or one of its employees worked for the underwriter in a certain capacity or vice versa and the underwriter or one of its employees worked for the MA.

"We've struggled with that," Edmonds said. "This is something we have to think through and maybe talk to the SEC about. We don't want to discourage cross-pollination. I don't think it's to anyone's benefit to avoid crossing over."

Lourdes Reyes Abadin, an executive vice president at Estrada Hinojosa & Co, pointed out that during the financial crisis in 2008 and 2009, "You had a hard time figuring out who was working for whom."

But Kane, at the later panel, said it is only a two-year look-back. "It's a two-year cooling off process," she said and after that entities and individuals "can be screened off" the prohibition.

The MA rule generally exempts engineers, lawyers and certain other market participants from being MAs, but Edmonds and Campbell were aware of situations in which an engineer and an environmental consultant wrote reports that had recommendations that, had they been given to the issuer, would have forced the engineer or environmental consultant to register as MAs.

Most of the panelists said the market has generally adjusted to the MA rules. "There was a lot of concern that this was going to stop communication in its tracks. We really have not seen that," said Edmonds.

"I think the confusion level has gone down somewhat," said Campbell.

But the rules have led to changes. Abadin said her small dealer firm used to try to gain a "competitive edge" by presenting financing ideas to issuers. "That is no longer an acceptable avenue for us," she said.

Abadin also noted her firm's compliance department has grown from one to three individuals.

THE BOND BUYER

BY LYNN HUME

MAR 3, 2015 11:02am ET

Adding Good Deeds to the Investment Equation.

Every two years, the residents of Richmond, Calif., a city long known for some of the highest rates of violence in the United States, gather to discuss its priorities. For years, the No. 1 concern was crime.

But things have started to look up in Richmond, a city of about 100,000 people in the midst of Bay Area opulence. At the most recent meeting, Richmond residents were more concerned about blight. An obvious — and seemingly fixable — example was the city's 800 or so abandoned homes, which cost it thousands of dollars a year to maintain in their dilapidated state.

Enter a twist on social impact bonds.

Typically, social impact bonds are contracts, not bonds as investors think of them. If the group receiving the proceeds can improve a certain social condition, the investors are paid back with some interest; if it fails, the investors lose. The bonds have been used to reduce recidivism rates for criminals released from prison and to reduce teenage pregnancy rates.

A sale of $3 million in bonds is expected this month, pending final approval by the Richmond City Council. That would pay for the rehabilitation of 20 properties a year over five years. And Mr. Becker believes there is investor interest for another $3 million.

“The challenge right now is these properties don’t turn enough of a profit for a typical real estate investor,” Mr. Becker said. “An investor wants a 30 percent to 40 percent return.” Under Mr. Becker’s plan, investors receive a 2 percent return on the money they put in, and if the project is profitable, up to half of their original investments.

While the bond issue is small, it is an example of increased investor interest in social impact projects, a niche that has long appealed to two types of investors: those who want to avoid companies that clash with their beliefs, and those with a desire to put a small portion of their wealth into an investment that could do some good, whatever the return. What has held social impact investing back is the perception that its returns are lower than those of investments without that social overlay.

One type of social impact investment is green bonds, which focus on projects like wind power, clean water and sustainable agriculture. There is also a range of investing strategies known as environmental, social and governance investing, or E.S.G. Some strategies screen out companies that make certain kinds of products, like alcohol or tobacco; newer strategies look for positive screens, such as seeking companies that work in certain areas or employ best practices in their businesses.

A spate of recent studies and a conference this week worked hard to show that the returns on investments with environmental, social and governance screens were similar to other investments — in both good and bad ways — and in some cases, were better when compared with indexes since the financial crash.

Certain areas are growing rapidly, like green bonds. Since 2007, about $60 billion worth of green bonds have been sold, according to Marilyn Ceci, a managing director and the head of green bonds at JPMorgan Chase. But $37 billion of that came in 2014. One prediction at a U.S. Trust conference on Wednesday put that amount at more than $100 billion this year.

Why do people invest in an area that does good but can be complicated to understand and has a reputation of modest returns? The reasons are varied.

Banks make these investments because they help fulfill the requirements of the Community Reinvestment Act of 1977, which requires them to meet a range of credit needs, “with the added bonus of qualifying for great P.R.,” said Robert T. Esposito, a lawyer at Orrick, Herrington & Sutcliffe. “If you’re a foundation, you can meet your 5 percent distribution” of assets as required by law, he said. “Or if you’re an impact investor, you must be willing to trade off some returns.”

But Andy M. Sieg, head of global wealth and retirement solutions for Bank of America Merrill Lynch, views this as a chance for retail investors to drive the creation of a new investment category. “We’re in the early stages of an innovation cycle,” he said. “Client demand emerges. Advisers become stimulated by this demand. It drives product creation. It’s happened again and again, and it’s taking place in the era of impact investing.”

He said Merrill Lynch now has $9 billion in social impact investments, compared with $6.4 billion last year. (Over all, the firm has more than $2 trillion in assets.)

Of course, the newest thing doesn't always catch on with everyone.

In one study, 71 percent of investors were interested in making investments with an environmental, social and governance screen, and 72 percent thought companies benefited from carrying out those principles. But 54 percent believed they had to give up performance if they made such investments, said Audrey Choi, chief executive of the Morgan Stanley Institute for Sustainable Investing.

Yet in a study not yet released of 10,000 equity mutual funds in the United States over the last seven years, Ms. Choi said, the returns of sustainable funds met or exceeded the median returns of traditional funds 64 percent of the time and had the same or lower volatility.

In essence, sustainable funds could perform just as well or better than traditional funds and also just as badly.

"Manager selection absolutely matters," Ms. Choi said. "I often say just because you add the word sustainable into an investment, the laws of physics aren't suspended. If we want this market to really grow, we have to make sure we go into this in a 'best in class' way."

Cary Krosinsky, an adjunct professor at the Earth Institute at Columbia, found in research on the returns of 850 funds that social impact investments made with positive screens outperformed by more than four percentage points those made with screens that excluded sectors.

While he also argued for the need for expertise in making environmental, social and governance investments, he said a bigger advantage to investors might be to make E.S.G. another factor in their analysis of an investment. "If you don't, you're not doing anything wrong," he said. "But if you do bring it in, you know you're not missing out."

Green bonds, for example, seem to be growing rapidly because they carry the risk of the issuer, say, a utility, and not that of the project they are financing, like a windmill. "The essence of green bond debt is the project," Ms. Ceci said. "The purpose is to transition to a low-carbon economy. But the risk is the credit decision of the issuer — you're not exposed to the project directly."

Last year, when Massachusetts sold $350 million worth of green bonds, $260 million of that was bought by retail investors. "It wasn't just investors from Natick, Newton and Wellesley," Ms. Choi said. "They had investors from California and around the country buying it."

Yet for those tempted to invest, these are still early days, with plenty of pitfalls. If the Richmond project fails, the investors get back whatever money the program still has and the titles to their properties. That is not exactly a double-digit return for tying up an investment for so long.

THE NEW YORK TIMES

by PAUL SULLIVAN

MARCH 6, 2015

Q&A on California's Enhanced Infrastructure Financing Districts.

Earlier this year, Meeting of the Minds hosted a webinar discussion on a new set of infrastructure financing tools that had just become available in the state of California. The audience submitted over 100 questions to our panelists, many of which had to be collected and addressed by the panelists after the webinar. Questions have been consolidated and grouped into categories.

View the Q&A.

PANELISTS

Fred Silva
Senior Fiscal Policy Advisor
California Forward

Mark Pisano
Professor of the Practice of Public Administration
USC Sol Price School of Public Policy

Larry J. Kosmont, CRE®
President and CEO
Kosmont Companies

March 2, 2015

Standard & Poor's Public Finance Podcast (Chicago and Fourth-Quarter Ratings Round-Up).

In this week’s “Extra Credit,” Senior Director Larry Witte discusses the fourth-quarter ratings round-up for U.S. public finance and Director Helen Samuelsson updates us on Chicago.

Listen.

Mar 05, 2015

U.S. Public Finance Finishes the Fourth Quarter With Strong Ratings.

In this CreditMatters TV segment, Standard & Poor’s Senior Director, Larry Witte, discusses his recent report about the rating actions in U.S. Public Finance during the fourth quarter of 2014.

Watch.

Mar 03, 2015

Municipal Issuer Brief: Stability Continues; DC Review.

Read the Brief.

Municipal Market Analytics

March 3, 2015

How to Create a Public Pension Disaster.

By putting off dealing with its retirement-system underfunding problems, New Jersey has dug itself into a ‘draconian’ fiscal hole.

When government discovers a problem, addressing it can be difficult. But if state and local leaders put off dealing with the problem, difficult often becomes disastrous.

New Jersey provides the most recent proof of this simple truth. In the mid-1990s, the state started deferring payments to its pension plan, instead using the money to plug short-term budget holes. Predictably, the state’s public-pension and retiree-health-benefits system is now the fourth most underfunded in the country.

Gov. Chris Christie and state legislators finally tried to address the issue in 2011. They enacted legislation under which the state would increase its pension contribution and state employees would pay more toward both their pensions and health benefits.

But by then the magnitude of the problem had grown exponentially. Last year, almost 20 years after the state began deferring pension payments, a bipartisan state commission pegged New Jersey’s pension and health-care liability at $90 billion — almost three times the annual state budget.

Last summer, just a few weeks before the commission released its estimate, state revenues were well below projections and New Jersey faced a $2.7 billion shortfall. Gov. Christie responded during the final days of the 2014 fiscal year by cutting that year’s pension payment from nearly $1.6 billion to less than $700 million. For fiscal 2015, what was supposed to be a state contribution of almost $2.3 billion was again slashed to less than $700 million. It was exactly what the 2011 law that Christie had signed was designed to prevent.

Public-employee unions sued to reverse both the fiscal 2014 and 2015 pension-payment cuts. Last June, Superior Court Judge Mary Jacobson allowed the 2014 cut to stand, finding that the state’s revenue shortfall created a fiscal emergency. But last month the same judge ruled that the fiscal 2015 cut “substantially impaired” employees’ contractual rights to payments guaranteed under the 2011 reforms.

Unless an appeal is successful, Christie and the legislature will have to find an additional $1.57 billion in a $32.5 billion budget. According to State Assembly Majority Leader Lou Greenwald, the resulting cuts would be “draconian.”

New Jersey’s plight raises many questions, such as why state revenues fell so far short of projections during relatively good economic times. But the headline here is that New Jersey faces a crisis that could easily have been avoided had elected officials acted to address the issue soon after the state started using pension payments to close budget shortfalls. It’s all too easy to let difficult grow into disastrous, and the biggest victims are New Jersey’s taxpayers and its government workers.

GOVERNING.COM

BY CHARLES CHIEPPO | MARCH 3, 2015

Some Cities May Soon Make Contractors Hire Local for Transportation Projects.

Cities and states will be able to require contractors on federally funded transportation projects to hire local workers for those projects, U.S. Transportation Secretary Anthony Foxx announced Tuesday.

The move, hailed by many mayors as a way to help create jobs, would also allow the localities to require the construction companies to hire veterans or low-income workers.

Federal law currently requires that bids be awarded to the lowest bidder, in most cases.

“We are developing a pilot that will help us learn about how having a more robust hire provision at the federal level would actually work and what some of the challenges actually are. It’s been 40 years since this has been tested,” Foxx said.

The changes would give the cities and states that participate in the program “maximum flexibility” to determine who would qualify as local residents, or whether to also include low-income residents or veterans, Foxx said.

But the one-year pilot program only applies to money received from the Federal Highway Administration and the Federal Transit Administration. Federal transportation officials will determine whether the extra requirements “unduly limit competition.” If they find the restrictions do not substantially affect competition for bids, they could further loosen restrictions in the future.

Los Angeles Mayor Eric Garcetti praised the move.

“Out here in L.A., if we had no money in, we could get creative and talk about local hires. But as soon as we had a dollar of federal money in, we could not put in there, ‘You’re going to hire locals,’” he said. “That was taking one of our most important tools away in exchange for a dollar or more from the feds.”

Garcetti’s predecessor, Antonio Villaraigosa, pushed the federal government four years ago to allow municipalities to include workforce requirements when they asked for bids. Villaraigosa had been looking for a way to rekindle the local economy at a period of high unemployment, and he wanted to make sure local residents got a larger share of the estimated 166,000 transportation jobs in the region. Villaraigosa raised the issue when he headed the U.S. Conference of Mayors, and the group later endorsed the concept.

William Bell, the mayor of Birmingham, Ala., said his city launched apprenticeship programs to train new construction workers after the recession.

“It would all be for naught if we did not have the jobs to support those young men and women who go through this training process,” he said. “The changes that have been made in the rules today would allow us to help create those job opportunities for our citizens and to put us on a stronger footing for growth in the future."

Atlanta Mayor Kasim Reed said the new pilot project would help his city be "more bold" in its efforts to employ local residents, especially as the city leads a $6 billion effort to upgrade Hartsfield-Jackson Atlanta International Airport.

"To the extent that we can focus on local residents, low-income individuals and, of course, our veterans, cities are going to thrive and our country is going to do better," Reed said.

GOVERNING.COM

BY DANIEL C. VOCK | MARCH 4, 2015

California's Shrinking Bond Costs Dissuade Buyers: Muni Credit.

(Bloomberg) — California's standing on Wall Street is the strongest since the recession, with revenue surging and cash tucked away for a rainy day. For some investors, the fiscal gains have only diminished the appeal of its debt.

Since Governor Jerry Brown took office in 2011, California has swung to a $5 billion budget surplus from a $25 billion shortfall. The Democrat won approval of higher taxes and a new reserve fund. Fitch Ratings' upgrade last week gave the most-populous state its highest marks from the three biggest rating companies since at least 2009.

As the state begins selling $1.9 billion of general-obligation bonds Tuesday, a rally in its securities has shrunk their extra yield relative to top-rated municipal debt close to the skimpiest since 2007, according to data compiled by Bloomberg.

"I wouldn't expect the yields to be high enough for us, but we will certainly take a look," said Michael Johnson, managing partner at Gurtin Fixed Income Management, which oversees $9.5 billion in Solana Beach, California.

Day One

California's offering will include $1.1 billion for refinancing and $790 million for projects such as water and school improvements, according to offering documents. Individual investors bid the first day and institutional buyers such as mutual funds submit orders Wednesday.

In initial marketing Tuesday, the state offered a preliminary yield of 2.35 percent on 10-year maturities, according to a person with knowledge of the sale who requested anonymity before pricing is complete. That would be about 0.25 percentage point above Bloomberg's index for tax-free benchmark debt.

Investors demanded as little as 0.17 percentage point of extra yield on 10-year California obligations last month, data compiled by Bloomberg show. That's down from a peak of about 1.7 percentage points in 2009, when the state resorted to IOUs to pay bills. In 2006 and 2007, before deficits soared amid the recession, the gap was as little as about 0.1 percentage point.

California munis earned almost 11 percent last year, compared with 9.3 percent for the entire municipal market, S&P Dow Jones Indices show.

The gains have left the debt with spreads resembling those of higher-rated states, such as Massachusetts and Ohio. Connecticut and Pennsylvania, with the same Aa3 Moody's Investors Service grade as California, trade at spreads of 0.3 percentage point or steeper. Given California's position as the largest debtor in the U.S. municipal market, some investors say they need to buy it no matter what.

Index Link

"If you want to have a portfolio that is somewhat linked to the indexes, you have to have it," said Paul Mansour, head of muni research at Conning, which oversees about $11 billion in local-government debt in Hartford. "The question is do you go crazy on it or do you go with a more moderate level, and I think a more moderate level is our view."

Brown, 76, in January proposed a record $113 billion spending plan for the year beginning July 1 that devotes most of a $5 billion surplus to schools, reserves and paying down debt.

In November, after voters agreed to bolster a rainy-day fund for fiscal emergencies, Standard & Poor's boosted California to A+, its fifth-highest mark and the state's best since 2009 from the company. Fitch on Feb. 25 raised California to the same level, also the strongest since 2009, citing a "disciplined approach to achieving and maintaining structural balance in recent budgets."

Moody's Aa3 assessment is the fourth-highest level and the best mark since 2001.

California Treasurer John Chiang, who took office in January, said the Fitch upgrade "is both a validation of California's recently displayed fiscal discipline, as well as a stern warning against returning to business-as-usual."

California's rating sank to the lowest among states in 2009 as lawmakers were locked in a stalemate over how to eliminate a $42 billion shortfall. The state dealt with more than $100 billion of cumulative deficits from 2000 through 2010.

"California has had a dramatic change" in areas such as revenue growth and cost reductions, Mansour said. "You are still getting a decent spread in California."

Bloomberg Muni Credit

by Michael B Marois

March 2, 2015

To contact the reporter on this story: Michael B. Marois in Sacramento at mmarois@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

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Texas Cities Are Worried Republicans Pushed Tax Cuts Too Far.

(Bloomberg) — Texas's Williamson County hired hundreds of workers and ran up debt as it became home to two of the 10 fastest-growing U.S. cities. Now, state tax cuts threaten to crimp the revenue it needs to pay for the expansion.

“It scares the fool out of me,” said Dan Gattis, a judge who helps oversee the budget for the county, an area north of Austin where farms gave way to congested roads as the population almost doubled since 2000.

“It takes so much money to run county government. We’ve got to have some way to pay the bills.”

Energized by an expanded majority in the Texas legislature, Republicans want to slash billions from homeowners’ taxes. That may squeeze funding for local governments that have borrowed $205 billion for roads, schools and infrastructure as Texas added more residents than any other state.

Lieutenant Governor Dan Patrick, who helps to set the legislative agenda, on Feb. 24 unveiled a plan to shave $2.4 billion over two years from homeowners’ levies that pay for schools. One Senate bill would require local elections on whether to roll back property-tax increases if they exceed 4 percent a year. Another would keep officials from marking up assessed values by more than 5 percent.

Money’s Flowing

“As values go up, tax rates never come down,” said Senator Paul Bettencourt, a Houston Republican who introduced the bill with the 4 percent limit. “The money’s flowing too fast into government coffers.”
The conflict is the latest between states and local governments over whether to buffer residents from the effects of rising home values. New Jersey Governor Chris Christie, a Republican, and New York’s Andrew Cuomo, a Democrat, both enacted property-tax limits following complaints about escalating bills. On Tuesday, Pennsylvania Governor Tom Wolf, a Democrat, proposed reducing property taxes that finance schools.

While Texans pay no individual income tax, real-estate taxes were $1,557 per capita in 2011, according to the Washington-based Tax Foundation. That was the 15th highest in the nation, ahead of California.

“At the state level there’s really been a lot of receptivity to the conservative message, and lawmakers to a large degree have embraced the model of low taxes and less government,” said James Quintero, director of the Center for Local Governance at the Texas Public Policy Foundation, an Austin nonprofit that favors smaller government. “At the local level there’s been an absence of conservative ideas.”

Ranked 48th

City and county officials said the revenue is needed to make up for lack of money from the state, which ranks 48th in spending per resident, according to the Henry J. Kaiser Family Foundation.

Localities have borrowed to fill the gap. Of the 10 most-populous states, only New York has more local debt per resident, according to figures from the Texas Bond Review Board. The debt of Texas local governments swelled by 75 percent over the past decade, according to the state’s figures, as officials poured more money into public works.

Williamson County is among them. An influx increased its population by almost 90 percent since 2000 to 471,000. Two of its cities — Cedar Park and Georgetown — were among the 10 fastest growing in 2013, according to the Census Bureau.

Government Grows

Its payroll has swelled 40 percent since 2003 to about 1,500 employees. Jail bookings are up 50 percent. Even the county's miniature train has seen its ridership increase by more than one third since 2007. In 2013, Williamson County voters approved a $315 million bond for roads and parks.

"The state is not appropriating the money," said Gattis, the county judge.

Standard & Poor's and Fitch Ratings both rank the county's bonds AAA, the highest level. Before an April 2014 bond sale, Fitch cited the county's property-tax growth in support of its rating. It said the county's $3.4 billion in debt was elevated compared with the value of assessed property.

"Our debt is high here, I don't try to hide from that at all," Gattis said. "There was no way we could have built the infrastructure we needed to build without going out and leveraging money."

Taxman Tied

While Williamson County's property-tax increases last year wouldn't have exceeded the 4 percent limit lawmakers may impose, its officials are wary of how the proposal would tie their hands in the future.

"It's extremely difficult to keep up with the growth in the demand for services when we have a capped rollback rate," said Larry Gaddes, the county's chief deputy tax assessor.

The property taxes of about one-third of 1,000 Texas cities would have exceeded that limit in 2013, according to the Texas Municipal League in Austin, which lobbies on behalf of local governments. If the cap were in place, it would cost McKinney, a Dallas suburb, $1.4 million, enough to pay salaries and benefits for 11 police officers and firefighters, according to the league. Midland, in the western oil fields, would lose $300,000.

Dallas Mayor Mike Rawlings said the tax-cut plans circulating in Austin would limit cities' growth.

About 61 percent of the city's budget is for public safety, so efforts to limit revenue growth would "be on the backs of our police and firefighters," he said. "But it would also affect quality-of-life issues like parks and libraries."

Local Control

Local governments were anticipating the intrusion from Texas officials. Governor Greg Abbott, a 57-year-old Republican who took office in January, has said cities have gone too far in passing local measures, including bans on plastic bags and cutting trees on private property. He said such developments were threatening to "California-ize" the state with unneeded regulations.

Bennett Sandlin, executive director of the Texas Municipal League, said cities should be left to manage their own money.

"Mayors rub elbows with citizens in grocery stores and churches every day," he said. "They're closer to the pulse of constituents than any other form of government. That's the epitome of conservative government right there."

by Lauren Etter

March 3, 2015

To contact the reporter on this story: Lauren Etter in Austin at letter1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net William Selway, Mark Tannenbaum

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[Chicago Agreement Avoids $20 Million Backfiring Swap Payment.]

(Bloomberg) — Chicago arranged with a bank to avoid paying $20 million to end an interest-rate swap and is working to avert a separate $40 million fee, according to Mayor Rahm Emanuel's office.

The city faced the potential payments after Moody's Investors Service cut its rating last week to Baa2, two levels above junk, because of mounting pension liabilities. The company said the deteriorating grade may trigger the payments to unwind the swaps, which Chicago entered into as a hedge. The city also is closer to ratings that may force an additional $133 million of payments. Fitch Ratings and Standard & Poor's affirmed their grades for the city.

Chicago agreed with BMO Harris Bank N.A. to avoid the $20 million payment and is negotiating the $40 million sum with San Francisco-based Wells Fargo & Co., according to a statement from Emanuel's office. Reuters reported the negotiations earlier.

"While we agree with Moody's that the city continues to face serious fiscal challenges, under Mayor Emanuel's leadership, we will continue to make the right – though difficult – choices and work toward a continued strengthening of the city's finances and securing our city's future," the mayor's office said in a statement.

Trigger Levels

In the case of Chicago, a downgrade below specified rating levels can trigger the swap termination payments. Chicago's grade from Moody's has fallen six levels since August 2010, and the company joins other credit raters in saying more cuts are possible.

Chicago has been addressing its debt since Emanuel took office, according to the city's statement. The efforts include terminating seven swaps and renegotiating 11.

The city has swaps with termination payments of $133 million at lower ratings, according to Moody's. It also is grappling with short-term borrowings of $1.2 billion, including commercial paper and credit lines, that it may need to repay should ratings fall below Baa3.

Municipalities nationwide have entered into swaps contracts, which are agreements to exchange fixed payments for floating ones, to cut borrowing costs. Most were structured to lower expenses when interest rates rose. Yet with the Federal Reserve keeping its benchmark rate at historic lows, some of the agreements backfired, putting borrowers in a position of owing banks money.

Elise Wilkinson, a spokeswoman for Wells Fargo, declined to comment. Jim Kappel at Chicago-based BMO didn't respond to phone calls and e-mails seeking comment.

by Darrell Preston and Tim Jones

March 4, 2015

To contact the reporters on this story: Darrell Preston in Dallas at dpreston@bloomberg.net; Tim Jones in Chicago at tjones58@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Alan Goldstein

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Record ETF Flows Persist Amid Warning '15 Will Hurt: Muni Credit.

(Bloomberg) — Investors are pouring a record amount of money into exchange-traded funds that focus on municipal debt even as the consensus on Wall Street calls for higher interest rates in coming months.

Individuals this year have added about $1 billion to ETFs that purchase state and local bonds, the fastest annual start since the funds started in 2007, according to data compiled by Bloomberg. The investment tools, which typically track indexes and can be bought and sold during the trading day, have taken on a growing role for muni investors, almost doubling in assets since 2010.

With local-government finances improving five years after the recession and the top federal income-tax rates the highest since 2000, investors are increasingly turning to ETFs as a way into the tax-exempt market. The 2015 inflow underscores that investors aren't shying away from munis in the face of projections that the Federal Reserve will lift its benchmark interest rate from near zero, where it's been since 2008.

They "have heard this cry-wolf call for so long," said Vikram Rai, a municipal analyst at Citigroup Inc. in New York. "They've become a little jaded towards it."

2014 Lure

The $3.5 trillion municipal market is coming off its strongest year since 2011, after posting a 9.8 percent return in 2014, according to Bank of America Merrill Lynch data. That performance may be luring investors, said Tom Doe, president of Concord, Massachusetts-based Municipal Market Analytics.

"Individual investors who predominately use the ETFs through their registered investment advisers are chasing last year's phenomenal returns," Doe said.

Munis may not repeat their 2014 earnings as states and localities increase borrowings with interest rates close to 50-year lows, Doe said. Municipal securities have gained about 0.5 percent in 2015, the worst start to a year since 2011, according to Bank of America data.

About a third of the added cash has flowed into the largest muni ETF, the $4.5 billion iShares National AMT-Free Muni Bond ETF, known as MUB. The ETF traded Thursday at about $109.90 per share, close to the lowest since December.

Issuance Swing

Issuers from Washington to New York sold $62 billion of fixed-rate, long-term debt in the first two months of the year, almost double the $32.1 billion tally for the same period in 2014.

Bond investors face another headwind as a growing economy spurs bets that the Fed will increase its target rate as soon as July, according to the median forecast of 39 analysts surveyed by Bloomberg.

Treasury yields may head higher too. Interest rates on 30-year federal debt will probably reach 3.38 percent in the first quarter of 2016, from about 2.7 percent now, a separate poll shows.

That shift in yields may reverse ETF inflows, said Bart Mosley, co-president of Trident Municipal Research in New York. Investors may pull money from muni ETFs depending on how high interest rates rise, he said.

“As soon as they start to see last year’s gains get challenged, people will become a lot more cautious on bonds fairly quickly,” Mosley said.

A reversal may not diminish the role of ETFs in the tax-exempt market.

Investors held $13.4 billion in muni ETFs as of Sept. 30, up from $7.6 billion at the end of 2010, according to Fed data. In comparison, muni mutual fund assets climbed about 23 percent in that period, to $645 billion.

“It’s hard to source bonds,” Citigroup’s Rai said. “So this is a quick way of investing your money into munis.”

Bloomberg Muni Credit

by Michelle Kaske

March 4, 2015

To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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Bloomberg Brief Municipal Market Expert Series.

Taylor Riggs, an editor at Bloomberg Brief Municipal Market, talks with Mark Muller, senior municipal vice president at Loews Corp.

Watch the video.

March 5, 2015

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

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

Watch the video.

March 5, 2015

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

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

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

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

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

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

by Brian Chappatta

March 5, 2015

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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

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

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

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

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

March Slog

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

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

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

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

Tax Shift

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

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

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

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

Bloomberg Muni Credit

by Meenal Vamburkar

March 5, 2015

To contact the reporter on this story: Meenal Vamburkar in New York at mvamburkar@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

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Moody's: Most Large Local Governments Have Low Retiree Healthcare

Outlays, Although Outliers are Present.

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

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

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

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

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

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

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

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

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

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

The report is available here.

GASB Issues Final Statement on Fair Value Measurement and Application.

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

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

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

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

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

A GASB In Focus on fair value is available here.

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

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

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

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

- MSRB Publishes New Fact Book of Municipal Market Data and Invites User Feedback.
- MSRB Creates Professional Qualification Standards for Municipal Advisors.

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

PUBLIC UTILITIES - CALIFORNIA

Wilson v. Southern California Edison Company

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

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

The Court of Appeal held that:

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

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

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

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

LAND USE - CALIFORNIA

Saltonstall v. City of Sacramento

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

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

The Court of Appeal held that:

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

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

CONTRACTS - CONNECTICUT

Bellsite Development, LLC v. Town of Monroe

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

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

The Appellate Court held that:

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

E&O INSURANCE - CONNECTICUT

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

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

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

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

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

"The plaintiff Bellsite's claim alleged in count two arises out of the same facts and circumstances as does the express contract claim of count one. Specifically, Bellsite incorporated all of the paragraphs of count one into count two without alleging any specific representations or statements that were made by the plaintiff outside of the very acts that Bellsite claims constituted the creation of an agreement and which formed the basis for its claim of contractual breach. Because of the way Bellsite presented its complaint, the factual basis for the second count is tied inextricably to the factual basis for the first count. Bellsite relied on the same facts and made the same claims in both counts of its complaint. In the first count, it alleges that the town breached its contractual obligation to compensate it for services related to the development of the cell tower. In the second count, Bellsite alleges that it relied on the contractual representations of the town that it would reimburse

Bellsite for expenses incurred for the development of the cell tower. Based on review of Bellsite's complaint, the court concludes that Bellsite made a claim for breach of an express and or implied contract in count one. In order to overcome any defense by the town that it could not be held liable in the absence of approval by the town council under the town charter, Bellsite restated the same facts and asserted a claim for negligent misrepresentation."

EDUCATION - IDAHO

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

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

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

The Supreme Court of Idaho held that:

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

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

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

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

MUNICIPAL ORDINANCE - IOWA

City of Sioux City v. Jacobsma

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

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

The Supreme Court of Iowa held that:

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

BOND VALIDATION - LOUISIANA

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

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

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

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

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

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

The Court of Appeal held that:

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

ZONING - MASSACHUSETTS

Andersen v. Town of Falmouth

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

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

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

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

IMMUNITY - NEW YORK

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

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

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

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

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

EMINENT DOMAIN - NEW YORK

[National R.R. Passenger Corp. v. McDonald]

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

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

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

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

ZONING - OREGON

Oakleigh-McClure Neighbors v. City of Eugene

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

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

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

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

LIABILITY - WASHINGTON

Binschus v. State, Dept. of Corrections

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

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

The Court of Appeals held that:

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

TAX - MICHIGAN

Hartland Glen Development, LLC v. Township of Hartland

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

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

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

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

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

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

"To provide clarity on remand, we provide the following directives. First, because the focus of the dispute concerns the special assessments and because the related appeal challenges those assessments, remand proceedings here shall await final resolution of that appeal. Thereafter, and as framed by and depending on the result of the other appeal, proceedings are to be conducted to fully explore the question whether outstanding special assessments can and did decrease the property's TCV. The proceedings should entail arguments, testimony, and evidence on the issues and questions raised and highlighted in this opinion, including clarification and elaboration with respect to the township's appraiser's testimony cited in this opinion and possibly the preparation of new appraisals."

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

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

Read the proposed regs (subscription required).

Letter Urges House Leaders to Back Exemption.

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

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

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

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

MBFA Letter to Senate Finance Committee Tax Reform Working Group

February 27, 2015

MSRB Creates Professional Qualification Standards for Municipal Advisors.

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

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

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

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

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

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

Read the regulatory notice.

MSRB Webinar: New Professional Qualification Standards for Municipal Advisors.

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

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Register for the webinar.

NABL Questions BABs Reissuance Memo.

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

The NABL memorandum is available here.

Best-Ex Rule Presents Liquidity, Compliance Challenges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE BOND BUYER

BY LYNN HUME

MAR 2, 2015 12:37pm ET

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

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

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

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

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

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

California Bonds

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

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

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

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

Muni Yields

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

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

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

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

by Kenneth Kohn

March 2, 2015

To contact the reporter on this story: Ken Kohn in New York at kkohn@bloomberg.net

To contact the editors responsible for this story: Ken Kohn at kkohn@bloomberg.net Stacie Sherman, Mark Tannenbaum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN and AARON KURILOFF

Mar 2, 2015

Republicans Skeptical of Puerto Rico Chapter 9 Bill.

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

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

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

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

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

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

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

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

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

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

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

“This is so important,” said Conyers, who represents Detroit.

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

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

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

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

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

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

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

THE BOND BUYER

BY KYLE GLAZIER

FEB 26, 2015 1:17pm ET

Yellen: Fed Working on Identifying Munis as HQLA.

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

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

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

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

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

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

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

THE BOND BUYER

BY LYNN HUME

FEB 26, 2015 12:40pm ET

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

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

Continue Reading (subscription required).

FEBRUARY 27, 2015

Thomas Jaworski

MSRB: Trades Down, Disclosures Up.

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

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

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

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

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

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

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

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

THE BOND BUYER

BY KYLE GLAZIER

FEB 25, 2015 4:47pm ET

Conduit Issuers, Dealers Face Some MA Challenges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"You have to keep digging," she said.

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

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

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

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

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

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

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

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

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

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

THE BOND BUYER

BY KYLE GLAZIER

FEB 25, 2015 2:14pm ET

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

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

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

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

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

Publication date: 12/14

Key findings:

- The top cost drivers of local government health care increases were increased claim costs (64 percent); prescription drugs (57 percent); an aging workforce (46 percent); insurance company price increases (45 percent) and federal health care policy (45 percent).
- Fifty-seven (57) percent of respondents increased cost sharing of premiums paid by employees and nearly half of respondents reported that their local governments changed the way health insurance is provided.
- Nineteen (19) percent of those reporting health plan changes shifted employees to a high-deductible plan with a health savings account and 14 percent established a health reimbursement arrangement.
- Disease management programs, on-site clinics, dependent eligibility audits, and regular review and rebidding of health care vendor contracts have achieved significant savings.
- Respondents reported that providing easy access to health services at work sites not only supports employee wellness, but also reduces employee absenteeism and health care costs.

Download the Report.

Center for State and Local Government Excellence

IRS Private Letter Ruling “Shinin’ Down Like Water” - Squire Patton Boggs

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

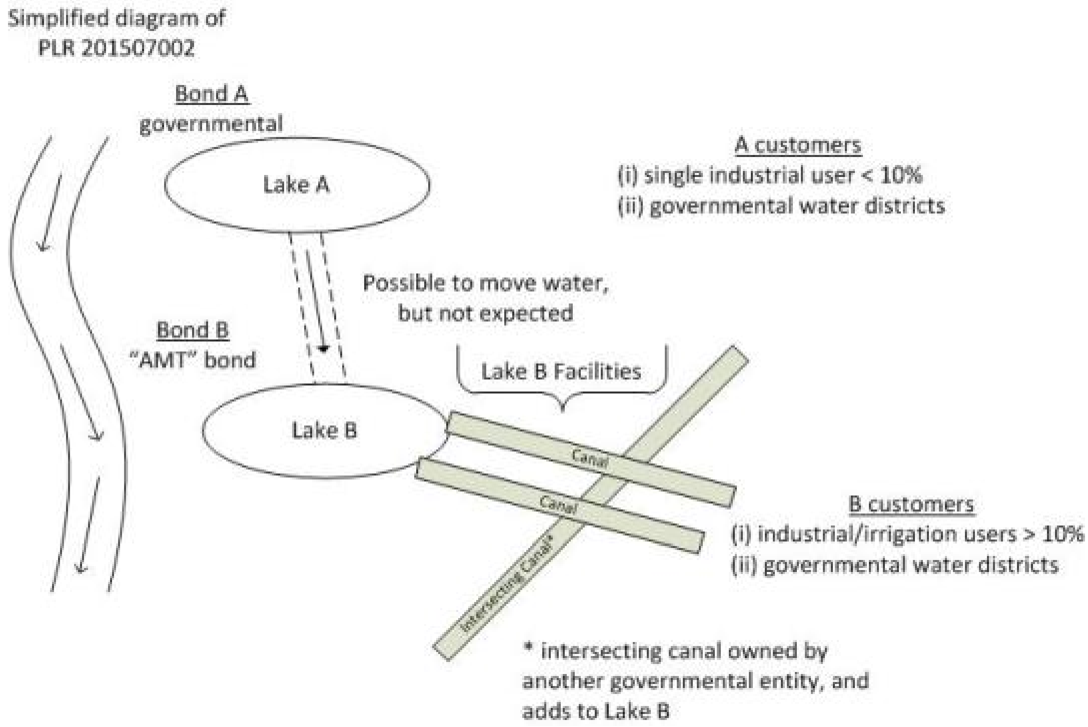
Nonetheless, on October 28, 2014, the IRS issued a private letter ruling, “shinin’ down” about bonds for water projects. PLR 201507002, which was publicly released on February 13, 2015, was a favorable ruling for the issuer that requested it. Whether CCR had anything to do with the favorable treatment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

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

FACTS

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

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



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

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

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

LAW

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

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

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

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

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

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

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

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

CONCLUSION

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

ABOUT THIS AUTHOR

Todd L. Cooper

Partner

Todd Cooper focuses his practice on tax matters related to public finance, primarily the federal taxation aspects of municipal bonds, and tax matters related to tax exempt organizations. He also serves as bond and underwriter’s counsel on public finance transactions. Areas of special focus include the federal tax aspects of transportation, healthcare, student loan, and single and multifamily housing transactions; advance refundings; electric power, natural gas, water and sewer utility debt issues; stadium and convention center financings; private and public…

todd.cooper@squirepb.com
513 361 1239
www.squiresanders.com

TAX - IDAHO

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

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

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

The Supreme Court of Idaho held that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

By JOSH DAWSEY

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

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

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

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

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

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

The term loan arranged by Orrick's client Goldman provided an innovative solution to TJPA's interim financing needs for Phase 1. While TJPA had previously secured a $171 million commitment for long-term financing from the United States Department of Transportation under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") loan program, the TIFIA loan proceeds will only be available to TJPA after certain conditions are met, expected by TJPA to occur in late 2015 or early

2016. Goldman was able to help TJPA address this funding gap by structuring a financing that allows TJPA to optimize the timing of the sale to private developers of certain TJPA real estate assets in the greater project area while at the same time providing TJPA funds needed in the near term to move construction work ahead on schedule. In addition to a pledge of net tax increment revenue generated from escalating property values in and around the project area, the bridge financing is secured by certain real property interests. In addition to structuring and arranging the financing, Goldman Sachs funded just over half of the term loan, with Wells Fargo funding the remaining portion.

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

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

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

02-23-2015

About Orrick

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

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

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

Listen to the Podcast.

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

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

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

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

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

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

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

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

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

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

Under Standard & Poor's policies, only a Rating Committee can determine a Credit Rating Action (including a Credit Rating change, affirmation or withdrawal, Rating Outlook change, or

CreditWatch action). This commentary and its subject matter have not been the subject of Rating Committee action and should not be interpreted as a change to, or affirmation of, a Credit Rating or Rating Outlook.

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

Primary Credit Analyst: Helen Samuelson, Chicago (1) 312-233-7011;
helen.samuelson@standardandpoors.com

Secondary Contacts: Lisa R Schroeer, Charlottesville (1) 434-220-0892;
lisa.schroeer@standardandpoors.com

Jane H Ridley, Chicago (1) 312-233-7012;
jane.ridley@standardandpoors.com

Horacio G Aldrete-Sanchez, Dallas (1) 214-871-1426;
horacio.aldrete@standardandpoors.com

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

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

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

Continue reading.

26-Feb-2015

MMA Issuer Brief: MMA Launches Drive for America.

Read the Brief.

Municipal Market Advisors | Feb. 24

Mixed Reviews on Disclosing Tax Incentives.

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

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

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

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

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

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

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

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

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

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | FEBRUARY 19, 2015

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

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

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

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

Frequently Asked Questions

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

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

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

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

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

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

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

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

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

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

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

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

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

Writer: Robert McNatt

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Primary Credit Analysts:

Geoffrey E Buswick, Boston (1) 617-530-8311;
geoffrey.buswick@standardandpoors.com

James M Breeding, Dallas (1) 214-871-1407;
james.breeding@standardandpoors.com

The ABCs of Cost Accountability.

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

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

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

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

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

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

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

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

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

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

GOVERNING.COM

BY JUSTIN MARLOWE | FEBRUARY 2015

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

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

Why Cities Hit the Brakes on Red Light Cameras.

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

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

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

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

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

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

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

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

GOVERNING.COM

BY DANIEL C. VOCK | MARCH 2015

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

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

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

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

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

Rating Divergence

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

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

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

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

Record Assets

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

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

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

Exit Plan

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

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

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

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

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

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

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

Tax Bump

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

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

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

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

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

by Freeman Klopott

February 22, 2015

To contact the reporter on this story: Freeman Klopott in Albany at fklopott@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

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Philadelphia Schools Find Charters Costly to Budget: Muni Credit

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

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

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

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

Budget Gap

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

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

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

Charter Costs

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

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

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

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

Negative Loop

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

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

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

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

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

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

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

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

by Romy Varghese

February 26, 2015

To contact the reporter on this story: Romy Varghese in Philadelphia at rvarghese8@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Stacie Sherman, Mark Tannenbaum

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Muni Refinancing Gains Momentum Even as Yields Reach 2015 Highs.

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

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

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

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

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

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

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

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

by Meenal Vamburkar

February 23, 2015

To contact the reporter on this story: Meenal Vamburkar in New York at mvamburkar@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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Christie's Downsized Pension Payment Cuts Gap by 2%: Muni Credit

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

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

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

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

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

Freeze Plan

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

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

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

'Big Negative'

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

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

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

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

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

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

by Elise Young & Michelle Kaske

February 24, 2015

To contact the reporters on this story: Elise Young in Trenton at eyoung30@bloomberg.net; Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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Lure of Wall Street Cash Said to Skew Credit Ratings.

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

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

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

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

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

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

Credit Bust

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

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

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

By Committee

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

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

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

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

Largest Discrepancies

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

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

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

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

New Rules

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

John Nester, an SEC spokesman, declined to comment.

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

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

Waiting Period

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

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

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

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

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

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

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

by Matthew Robinson

February 24, 2015

To contact the reporter on this story: Matt Robinson in New York at mrobinson55@bloomberg.net

To contact the editors responsible for this story: Shannon D. Harrington at sharrington6@bloomberg.net Bob Ivry

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Rauner’s Tax-Free Illinois Budget Fix Has Skeptics.

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

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

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

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

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

Tax Rollback

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

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

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

Neighbors’ Levies

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

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

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

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

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

Campaign Talk

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

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

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

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

Negative Outlooks

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

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

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

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

by Elizabeth Campbell & Brian Chappatta

February 25, 2015

To contact the reporters on this story: Elizabeth Campbell in Chicago at ecampbell14@bloomberg.net; Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Stacie Sherman

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

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

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

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

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

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

Refunding Moves

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

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

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

'Big If'

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

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

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

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

by Kate Smith

February 26, 2015

To contact the reporter on this story: Kate Smith in New York at ksmith304@bloomberg.net

To contact the editors responsible for this story: Joseph Mysak Jr. at jmysakjr@bloomberg.net Mark Tannenbaum, Mark Schoifet

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

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

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

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

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

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

Difficulties Ahead

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

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

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

State Action

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

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

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

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

by Brian Chappatta and Elizabeth Campbell

February 27, 2015

To contact the reporters on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net; Elizabeth Campbell in Chicago at ecampbell14@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Stacie Sherman, Mark Tannenbaum

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

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

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

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

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

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

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

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

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

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

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

The report is available to subscribers at https://www.moodys.com/research/US-Public-Finance-Low-Oil-Prices-Hit-a-Few-US–PBC_1002874.

Pipeline Safety Grant Opportunity and New Resources for Counties.

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

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

Search by Funding Opportunity Number DTPH5615SN0002.

The closing date for applications is April 22, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

By KATY STECH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

By AARON KURILOFF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE NEW YORK TIMES

By STEVE LOHR FEBRUARY 27, 2015

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

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

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

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

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

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

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

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

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

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

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

By REUTERS

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

(Reporting by Nick Brown and Megan Davies)

Traditional Pension Plans Cost Less than Defined Contribution, Study Shows.

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

Friday, February 20, 2015

GFOA Issues Survey on SEC MCDC Initiative.

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

The survey will close on March 17, 2015.

Friday, February 20, 2015

GFOA Advanced Government Finance Institute.

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

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

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

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

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

Please submit the application by April 17, 2015.

Application Information

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

Location and Cost

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

For more information, please contact Susan Gaffney.

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

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

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

Other highlights from the 2014 Fact Book:

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

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

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

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

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

Date: February 25, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

WSJ Opinion: Tom Wheeler's Other Web Takeover.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

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

SEC Closes Investigation into Bell, Calif. Bond Debt.

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

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

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

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

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

The SEC investigated $184 million in debt issued by Bell between 2004 and 2007. The bond debt in question, and the conclusion letter from the SEC, were posted by the city on the Municipal Rulemaking Board's EMMA website, a repository for information relating to municipal bonds.

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

BY TIM REID
LOS ANGELES Tue Feb 24, 2015

(Reporting by Tim Reid; Editing by Alan Crosby)

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

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

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

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

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

For starters, he recommended negotiating with their unions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

FEB. 25, 2015

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

BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

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

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

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

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

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

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

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

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

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

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

MUNICIPAL CONTRACTS - CALIFORNIA

[Torres v. City of Montebello]

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

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

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

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

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

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

IMMUNITY - GEORGIA

[Primas v. City of Milledgeville]

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

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

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

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

IMMUNITY - GEORGIA

City of Atlanta v. Mitcham

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

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

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

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

BOND VALIDATION - GEORGIA

In re Woodham

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

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

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

The Supreme Court of Georgia held that:

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

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

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

EMINENT DOMAIN - IDAHO

State, Dept. of Transp. v. Grathol

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

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

The Supreme Court of Idaho held that:

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