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### **IMMUNITY - NEW YORK**

#### **Olenick v. City of New York**

**Supreme Court, Kings County, New York - May 4, 2017 - N.Y.S.3d - 2017 WL 1743179 - 2017 N.Y. Slip Op. 27143**

Cyclist brought action against city to recover for personal injuries allegedly sustained in a collision with a pedestrian on a bridge.

City moved for summary judgment and to dismiss.

The Supreme Court, Kings County, held that:

- City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function;
- City was not entitled to qualified immunity; and
- Issue of material fact existed as to whether city's failure to conduct safety study contributed to collision.

City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function analogous to roadway planning, design, and maintenance, precluding governmental function immunity in cyclist's negligence claim against city arising from collision with pedestrian.

City was not entitled to qualified immunity in negligence claim brought by cyclist to recover damages for injuries sustained during collision with pedestrian while in bike path on bridge based on its development of a plan to update bicycle and pedestrian path markings on bridge to increase visibility, where city had not conducted a study regarding avoidance of collisions between cyclists and pedestrians before creating the plan.

Genuine issue of material fact existed as to whether city's failure to conduct safety study of collisions between pedestrians and bicycles on bridge before developing plan to update bicycle and pedestrian path markings on bridge to increase visibility was proximate cause of cyclist's collision with pedestrian while he was biking in bike path on bridge, precluding summary judgment in favor of city in cyclist's negligence claim.

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### **CONSTRUCTION - PENNSYLVANIA**

#### **United Union of Roofers, Waterproofers, and Allied Workers, Local Union No.**

### **37 v. North Allegheny School District**

**Commonwealth Court of Pennsylvania - April 18, 2017 - Not Reported in A.3d - 2017 WL 1382227 - 208 L.R.R.M. (BNA) 3607**

School Districts appealed an order of the Court of Common Pleas granting a preliminary injunction to United Union of Roofers, Waterproofers, and Allied Workers, Local Union No. 37 (Union). The preliminary injunction enjoined School Districts from conducting background checks mandated by the Public School Code of 19491 (School Code) and the Child Protective Services Law on Union members assigned to roofing projects on School District property because School Districts did not show that the workers will have “direct contact with children.” The trial court further ordered School Districts to take corrective action to permit Union’s members who had been excluded by the unauthorized background checks to have access to the work sites.

School Districts appealed, arguing that the trial court erred in granting the preliminary injunction because Union failed to establish any of the legal prerequisites for injunctive relief.

The Commonwealth Court agreed, reversing the trial court’s order.

“As noted, the trial court granted a preliminary injunction that did two things: (1) allowed previously disqualified Union members access to School Districts’ work sites, and (2) prohibited School Districts from doing background checks on Union members unless the position applied for involved direct contact with children. In doing so, the trial court largely focused on the level of interaction between Union members and children at School Districts’ project sites and determined that Union was likely to succeed on the merits of its declaratory judgment action because its members do not have direct contact with children.”

“We will not address that question. The underlying declaratory judgment proceeding will resolve the legal question of what constitutes “direct contact with children” under the School Code. Likewise, it will resolve the factual question of whether Union members actually have that level of contact with children. Accordingly, we decline to address these matters at this juncture. However, we will reverse the grant of the preliminary injunction because the injunction does not restore the parties to the status quo during the pendency of the underlying complaint.”

“By enjoining School Districts from performing their standard background checks, the trial court disturbed the status quo. As established by the evidence, since at least 2011 School Districts have been doing background checks on employees of independent contractors required by Section 111 of the School Code without ascertaining whether those employees will have direct contact with children. Requiring School Districts ‘to show a causal connection between any criminal offenses and the position for which employees are to work to justify an exclusion’ does not preserve the status quo. Instead, it institutes a new status quo by revising School Districts’ longstanding background check practices.”

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### **GOVERNMENTAL UNITS - TEXAS**

#### **Marino v. Lenoir**

**Supreme Court of Texas - April 28, 2017 - S.W.3d - 2017 WL 1553095 - 60 Tex. Sup. Ct. J. 832**

Patient's mother and father of patient's living child brought medical malpractice suit against resident physician, among others, following the death of patient and her two unborn children.

The District Court granted physician's motion to dismiss under the Tort Claims Act's election-of-remedies provision for employees of governmental units. Mother and father appealed. The Houston Court of Appeals reversed in part and remanded. Physician petitioned for review.

The Supreme Court of Texas held that physician was not an employee of a governmental unit, and thus dismissal under the Act was not warranted.

State university's medical foundation did not have legal right to control resident physician's tasks at clinic, as required for physician to be "employee" of governmental unit, and thus dismissal of medical malpractice action against physician was not warranted under Tort Claims Act's election-of-remedies provision. Even though foundation reserved right to change terms and conditions of employment, clinic's teaching staff and program director assigned responsibility to physician, foundation did not own clinic, and foundation's bylaws stated that it did not control physicians who worked at hospitals it did not own.

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## **TAX - NEW JERSEY**

### **[White Oaks Country Club, Inc. v. Township of Franklin](#)**

**Tax Court of New Jersey - March 7, 2017 - 2017 WL 931393**

State Department of Environmental Protection ("DEP") alleged that its property - on which a for-profit entity operated a golf course and related amenities - was exempt from local property taxes.

The Tax Court concluded that the statutory requirements for an exemption set forth in N.J.S.A. 54:4-3.3 were satisfied for the subject property for tax year 2012.

"The exemption at issue here is established in N.J.S.A. 54:4-3.3, and does not require charitable use of the subject property. It is, instead, a public use, consistent with the statutory mandate of the agency that owns the property, that determines whether an exemption applies. The fact that plaintiff does not engage in charitable activity—indeed, there is no dispute that plaintiff is a for-profit business enterprise—does not defeat the exemption in this case. Plaintiff's use of the property furthers the public purpose of the DEP by providing recreational opportunities to the public on land purchased with Green Acres funds."

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## **[NCPMP Lauds Pioneers of P3 Transportation Infrastructure.](#)**

The National Council for Public-Private Partnerships (NCPMP), the leading association in the field, is proud to announce its inaugural list of the Top 10 P3 Transportation Infrastructure Pioneers.

"Public-private partnerships are as much about the people driving the projects as they are about the projects themselves," said Executive Director Todd Herberghs. "It takes tenacity, creativity and will to incorporate this alternative project delivery method into the traditional financing and procurement model."

A select committee of NCPMP members identified 10 people who have embodied these

characteristics while contributing meaningfully to the public or private sector sides of the field. These individuals have seen partnerships as another path forward to improving our national infrastructure network and have overseen the completion of some of the most significant transportation projects and the passage of some of the most groundbreaking P3 laws in the past three decades.

[Continue reading.](#)

NCPPP

May 17, 2017

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## **[S&P: Stock Market Gains Lift Revenues In California's Revised Budget Plan For Fiscal 2018.](#)**

California's revised budget proposal for fiscal 2018 aims to keep the state's finances on a structurally oriented path while adding to its budget reserves, in S&P Global Ratings' view.

[Continue Reading](#)

May 15, 2017

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## **[Munis in Focus: Guided by Value as the Policy Outlook Brightens.](#)**

*While we think it's too early to shout "all clear," investors now have more information about policies likely to affect the municipal bond markets this year, and relative valuations are looking more attractive than they did a few months ago.*

[PIMCO's 2017 Municipal Market Outlook](#) called for greater caution this year due to uncertainty on a number of fronts: From a macro perspective, rising inflation, the potential for large fiscal expansion following the U.S. Republican election sweep, and fears of an imminent trade war painted a potentially volatile picture. Municipals underperformed other U.S. credit asset classes following the 2016 election as tax reform, near the top of the new administration's agenda, loomed over the market.

But so far this year, flows into municipal bond funds have been positive (if only marginally), and recent trends point to further potential upticks as the policy outlook turns more favorable.

[Continue reading.](#)

BARRON'S

BY DAVID HAMMER AND MATTHEW SINNI

MAY 22, 2017

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## [The Countdown to June 7, 2017..... Are You Ready?](#)

On June 7, 2017, the [Final Issue Price Regulations](#) (the “**Final Regulations**”) become effective. More specifically, the Final Regulations apply to bonds sold on or after June 7, 2017 and without regard to the bonds’ issuance date. Suffice it to say, if you have read our blog or been practicing in the area of municipal finance for any period of time, you know that June 7, 2017 is a date that is YEARS in the making.

[Continue reading.](#)

The Public Finance Tax Blog

By Joel Swearingen on May 19, 2017

**Squire Patton Boggs**

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## [Saudis’ \\$20 Billion Wager With Blackstone Marks Record Bet on U.S. Public Works.](#)

***Trump’s infrastructure push cited by Saudis making huge commitment toward Blackstone’s \$40 billion goal***

Saudi Arabia joined the parade of investors into U.S. public works by pledging a record investment with Blackstone BX 6.73% Group LP.

The country’s Public Investment Fund agreed to commit \$20 billion to Blackstone’s new infrastructure fund in the latest push around the world by large investors to buy up airports, pipelines and other public projects, particularly in the U.S.

Blackstone said Saturday the kingdom’s money would seed an investment fund that the New York private-equity giant hopes will reach \$40 billion and have spending power of up to \$100 billion once debt is added to the mix.

The commitment shows how Blackstone continues to distance itself from Wall Street rivals by raising ever larger sums from investors like sovereign-wealth funds, public pensions and rich families. With assets of \$368.2 billion as of March 31, it manages nearly twice as much as its closest competitor, Apollo Global Management LLC, and each of Blackstone’s four platforms—real estate, private-equity, hedge funds and credit—are among the largest investing businesses of their kind.

Saudi Arabia’s planned \$20 billion investment alone would be about 25% larger than the biggest infrastructure fund ever raised, a \$15.8 billion pool Global Infrastructure Partners completed earlier this year, according to data from industry tracker Prequin. Global Infrastructure Partners, or GIP, is also based in New York and its chief executive, Adebayo Ogunlesi—like Blackstone Chief Executive Stephen Schwarzman—is one of the business leaders President Donald Trump has named to a presidential advisory group.

Last year, investors committed a record of about \$56 billion to private infrastructure funds and fund managers collected another \$29 billion during the first quarter of this year, according to Prequin. The

data provider has said managers of more than 150 other private infrastructure funds are soliciting investors for another \$100 billion or so.

Carlyle Group LP and BlackRock Inc. are among other big investment firms that moved recently to beef up their infrastructure investing businesses.

The Blackstone fund will have a broad mandate to find investments, according to a person familiar with the firm's plans, with the ability to invest in things such as hospitals as well as assets that are more typically considered infrastructure, such as pipelines, roads and utilities. Also, unlike most of the private funds the New York firm manages, which lock up investors' cash for 10 years or so, the infrastructure fund will have no expiration date. That structure gives the firm more time to find investments and reduces the pressure to sell them on a deadline.

Both features could help Blackstone circumvent two big issues infrastructure investors have encountered in the U.S.: limited investment opportunities outside the energy sector, and uncertainty over who will eventually buy some assets, such as roads and municipal utilities.

Saudi officials, who are seeking to diversify the kingdom's economy by investing its oil wealth, on Saturday alluded to Mr. Trump's campaign promises to steer \$1 trillion into U.S. public works. The Public Investment Fund managing director, Yasir Al Rumayyan, said the pact reflects "our positive views around the ambitious infrastructure initiatives being undertaken in the United States as announced by President Trump."

Yet the flood of cash into infrastructure funds can mostly be attributed to fairly reliable returns that sometimes beat the stock market and often outperform private-equity funds that make arguably riskier investments, such as corporate buyouts, according to Preqin. Still, there have been some prominent flops, including a rash of bankrupt toll roads.

Through late last year, the median annualized return after fees from infrastructure funds launched between 2004 and 2013 has ranged from 5.7% for those that began investing in 2007 to 14.4% for funds launched in 2004, according to Preqin.

Blackstone's foray into infrastructure won't be its first as it once struggled to raise a fund in the wake of the financial crisis. The executives who led the effort left the firm and in 2011 launched their own firm, Stonepeak Infrastructure Partners.

Saturday's pact was announced in Riyadh during Mr. Trump's visit to Saudi Arabia. The president has called boosting private investment in U.S. infrastructure a priority of his presidency.

## **The Wall Street Journal**

By Ryan Dezember

Updated May 20, 2017 4:55 p.m. ET

Write to Ryan Dezember at [ryan.dezember@wsj.com](mailto:ryan.dezember@wsj.com)

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## **[Dodd-Frank Rollback Could Hinder Funding of Accounting Standards Board.](#)**

The anticipated rollback of the 2010 Dodd-Frank financial-overhaul law could affect funding the

Government Accounting Standards Board receives, according to the not-for-profit organization that oversees it.

The board, known as the GASB, sets financial accounting and reporting standards for state and local governments in the U.S.. The Financial Accounting Foundation is responsible for the oversight and administration of the activities of both the GASB and the Financial Accounting Standards Board, which is responsible for standards of both public and private companies as well as not-for-profit organizations.

A provision in Dodd-Frank allows the foundation to charge a fee for GASB's services. The fee is paid by broker dealers regulated by the Financial Industry Regulatory Authority, or FINRA, that trade in the municipal bond market.

Before the introduction of the provision, the board was voluntarily funded by organizations that are required to follow the standards the GASB writes, creating a potential conflict of interest, said Matthew Broder, vice president of public affairs at the foundation.

"For the past six years, the GASB has enjoyed reliable and independent funding fees to support operations," he said. The funding could be threatened if the Dodd-Frank Act is pared back, Mr. Broder added.

GASB fees made up 18% of the Financial Accounting Foundation's total revenue in 2016. The organization is also funded by fees for FASB's services, that come from a provision in the 2002 Sarbanes-Oxley corporate-governance law. FASB is funded through fees paid by publicly-listed companies and entities in the U.S.. More than half of the foundation's revenue in 2016 came from such fees.

The scaling back of financial regulations faces opposition. The Council of Institutional Investors, an advocacy group, sent a [letter](#) to the House of Representatives Wednesday asking them to oppose the Financial Choice Act, a bill that aims to roll back both Sarbanes-Oxley and Dodd-Frank.

THE WALL STREET JOURNAL

By RHEAA RAO

May 19, 2017 7:55 am ET

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## **[Senate Environment and Public Works Hearing on Financing Infrastructure.](#)**

On Tuesday, May 16, the Senate Environment and Public Works Committee held a hearing entitled "Leveraging Federal Funding: Innovative Solutions for Infrastructure." The hearing focused on different funding mechanisms for infrastructure projects. Witnesses discussed the advantages and disadvantages of public-private partnerships (P3s) as compared to direct federal spending from the Highway Trust Fund and various Department of Transportation Grants.

[SIFMA Hearing Summary](#)

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## **[Hearing with Secretary Chao Held by Senate Environment and Public Works Committee.](#)**

On Thursday, May 18, the Senate Environment and Public Works Committee held a hearing with Secretary of Transportation Elaine Chao. Senators asked Chao for information about the Trump administration's infrastructure goals, and provided their thoughts on funding mechanisms for infrastructure projects. Chao said that the administration would release core principles for its infrastructure program in May, with a broader legislative package due in Q3 2017.

[SIFMA Hearing Summary](#)

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## **[Supreme Court Rules Municipalities Have Standing To Sue Under The FHA, But Raises The Bar On Showing Proximate Cause.](#)**

On May 2, 2017, the United States Supreme Court held that a municipality has standing to sue for injuries under the Fair Housing Act ("FHA") for discriminatory lending. However, the Court declined to decide whether the municipality's injury was proximately caused by the alleged FHA violation.

### **The Proceedings in the Southern District Court of Florida and Eleventh Circuit**

The City of Miami, Florida, (Miami) filed complaints in the Southern District of Florida (District Court) against two national banks (Banks) alleging violations of the FHA. Miami alleged that the Banks engaged in discriminatory lending by providing minorities with home loans containing less favorable terms than similarly situated nonminority borrowers. Miami also claimed that the Banks failed to extend fair refinancing and loan modification opportunities to minorities. Miami claimed that as result of these alleged FHA violations, minorities were unable to stay current on their mortgages, resulting in increased foreclosures in minority communities. As a result of these foreclosures, property values in the minority communities supposedly decreased, which affected the amount of property taxes Miami claimed that it could collect. Miami also alleged that the foreclosures resulted in blight within these communities, resulting in increased expenditures of municipal services, such as police and fire departments in those communities.

The District Court dismissed Miami's complaints, finding that Miami's injuries were purely economic and not discriminatory and therefore fell outside the zone of interests that the FHA was intended to protect. The District Court also held that Miami failed to show how its injuries were proximately caused by the Banks' lending practices.

Miami appealed the District Court's decision to the Eleventh Circuit which held that Miami's injuries fell within the zone of interests contemplated by the FHA and that Miami adequately alleged its injuries were proximately caused by the Banks' alleged lending practices. In finding that Miami sufficiently pled its alleged injuries were proximately caused by the Banks in order to survive a motion to dismiss, the Eleventh Circuit focused solely on whether Miami's injuries were a foreseeable result of predatory lending.

### **The United States Supreme Court's Majority Opinion**

The Supreme Court was faced with two questions: (1) whether Miami had adequately alleged standing to bring an FHA claim and (2) whether Miami had adequately alleged that the alleged lending misconduct proximately caused Miami to lose property-tax revenue and spend more on

municipal services.

The Supreme Court, in an opinion written by Justice Breyer, conducted its analysis in two parts. First: (1) in a 5-3 vote, the Court agreed with the Eleventh Circuit that Miami had standing to sue under the FHA. In an outcome joined by the entire Court, it decided that alleging “foreseeability alone” is not enough to meet the FHA’s proximate cause requirement. The Supreme Court declined to apply its proximate cause formulation to Miami’s allegations. Instead, the Court tasked the Eleventh Circuit with determining whether Miami’s alleged injuries were proximately caused by the Banks’ actions.

In reaching its conclusion, the Court determined that Miami’s injuries were within the zone of interests the FHA protects. The Supreme Court focused on the definition of “aggrieved person” as defined by the FHA. Under the FHA, an “aggrieved person” has standing to bring an action. The Supreme Court, citing its previous ruling on the definition of “aggrieved persons” under the prior version of the FHA, noted that “aggrieved person” is broadly defined to include any person who claims to have been injured by a discriminatory housing practice or believes that such injury will occur. Adopting the same broad definition of aggrieved persons under the amended FHA, the Court noted that Congress failed to limit the Court’s broad definition of “aggrieved persons” when it amended the FHA and, therefore, acquiesced to the Court’s definition of the term. The Court further compared Miami’s claims to those made by a municipality in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). In *Gladstone*, the Court ruled that the village had standing to sue under the FHA based on alleged injuries due to reduced integration in the community, which resulted in lower tax revenues. The Court noted that Miami’s injuries, reduced property taxes and increases in expenditures for municipal services, were sufficient injuries contemplated by the broad definition of “aggrieved persons.”

In holding foreseeability alone is insufficient to show proximate cause, the Court cited the well-established common law principle that any injury must be proximately caused by the alleged conduct. The Court noted that although it may be foreseeable that a municipality might be injured by the Banks’ alleged practices, the FHA requires a direct relationship between the injury and the alleged violative conduct. Applying common law principles, the Court noted that the injury suffered by Miami must occur within the “first step” of the alleged act. The Court also noted that due to the nature of the housing market and its economic and social implications, nothing in the FHA suggests that Congress intended to allow a suit for injuries merely tangentially related to an alleged violation of the FHA and doing so would result in “massive and complex damages litigation.”

The Court, however, declined to dictate the boundaries of proximate cause under the FHA or to apply its ruling to the allegations of the complaints. Instead, the Court vacated the judgments below and remanded to the Eleventh Circuit for that court to apply the new proximate cause formulation.

### **The Concurrence and Dissent By Justice Thomas**

In his Opinion, Justice Thomas stated that he would have held that (1) Miami’s injuries fell outside of the FHA’s zone of interests and, therefore, Miami lacked standing to bring suit; and (2) that Miami’s injuries were too remote to satisfy the FHA’ proximate cause requirement. However, Justice Thomas concurred with the majority’s decision that foreseeability alone is insufficient to show proximate cause.

In addressing Miami’s standing, Justice Thomas distinguished *Gladstone* and the other FHA cases upon which the majority opinion relied on the basis that those cases “at least arguably” involved discriminatory injuries falling within the zone of interests. Justice Thomas described the “quintessential ‘aggrieved person’” as “a prospective home buyer or lessee discriminated against

during the home-buying or leasing process.” Justice Thomas noted that Supreme Court precedent extended “aggrieved persons” status to those who live in a segregated neighborhood, resulting from discriminatory housing practices, and that these cases illustrate the outer limits of protected interests under the FHA. He also noted that Miami’s interests are purely economic, unlike those claimed in *Gladstone*, which included both economic injury and changes to the “racial composition” of the community resulting from discriminatory practices. Justice Thomas stated that the FHA was not intended to redress purely economic injuries.

In addressing Miami’s lack of proximate cause, Justice Thomas wrote that the causal links between Miami’s injuries and the Banks’ alleged violations were “exceedingly attenuated,” observing that there was a lengthy and “attenuated chain of causation” between the Banks’ alleged actions and Miami’s injury. Pointedly, Justice Thomas predicted the “Court of Appeals will not need to look far to discern other independent events that might well have caused the [Miami’s] injuries.”

### **Practical Impact**

The Supreme Court’s decision establishes a potentially expansive zone of interests for FHA claims brought by municipalities, thereby recognizing standing for plaintiffs situated similarly to Miami, assuming that they can allege the requisite proximate causation. This portion of the opinion may encourage municipalities to bring claims against mortgage lenders and servicers under the Act.

The Supreme Court’s holding that foreseeability alone is insufficient to allege proximate cause raises the bar for alleging proximate cause but does not fully clarify what is required in the FHA claim context. However, Justice Thomas’ delineation of the many causal links between the Banks’ alleged actions and Miami’s injuries shows why it will likely be difficult for Miami and other municipalities to allege proximate cause in attempting to recover lost property taxes and other purely economic damages.

Article by David N. Anthony, Amy Pritchard Williams, Andrew B. Buxbaum and David Long, Jr.

Last Updated: May 12 2017

### **Troutman Sanders LLP**

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

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## **[Green Bonds: Fitch Ratings and Market Overview.](#)**

**Green bonds are debt securities issued to raise capital specifically to support climate related or environmental projects.**

Fitch Ratings provides credit ratings for green bonds based on the underlying credit risk in line with relevant sector criteria. For specific issues, this includes standard credit considerations used to assess credit risk including vulnerability to default and an expectation of relative recovery rates in the event of default. Fitch does not assess the environmental integrity – the “greenness” – of the bond or its stated use of proceeds.

[Continue reading.](#)

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## [Donald Trump Signs Measure Ending Safe Harbor for State-Run Private-Sector Plans.](#)

Legislation removing safe harbors for states to implement private-sector retirement programs was signed Wednesday by President Donald Trump, who signed a similar measure against cities and large political subdivisions on April 13.

Rep. Tim Walberg, R-Mich., chairman of the Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, in a statement called the safe harbors “a misguided regulatory loophole that would discourage small businesses from providing retirement benefits and put the hard-earned savings of workers at risk.”

Mr. Walberg chaired a subcommittee hearing Thursday on regulatory barriers to retirement saving, including what he called the “flawed fiduciary rule” from the Department of Labor that becomes effective June 9. Allowing for more electronic disclosure in retirement accounts and easing federal restrictions on open multiple employer plans, would help improve access to retirement savings programs, Mr. Walberg and several witnesses said at the hearing.

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD · MAY 18, 2017 2:36 PM · UPDATED 4:08 PM

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## [Tax-Exempt Financing For Waste Disposal/Recovery And Wastewater Treatment.](#)

### **Introduction**

Tax-exempt bond financing is available for certain water and sewage, solid waste disposal/recovery project, waste-to-energy projects, and wastewater treatment projects. Bond financing may be available for public, private and public-private partnership projects. Bonds might be issued directly by a city or a county for government-owned project pursuant to Georgia’s Revenue Bond Law. A privately owned and operated project might be financeable through Georgia’s Development Authorities Law. A government-owned project or a public-private partnership project might be financed with Georgia’s Resource Recovery Development Authorities Law or Georgia’s Regional Solid Waste Management Authorities Law. In order for the bonds to be issued to qualify for tax-exemption, additional requirements will apply. This memorandum provides a brief overview.

### **Revenue Bond Law**

The Revenue Bond Law authorizes every city and county to issue revenue bonds for the purpose of financing various government-owned undertakings, including projects for the collection, treatment and distribution of water, the collection, treatment, re-use or disposal of solid waste, and for the collection, treatment and disposal of sewage, waste and storm water. Such projects are to be operated by the city, county or authority on a revenue-producing basis, and bonds issued for such purpose may be secured only by revenues of such a project, or other revenue-producing undertakings of the city, county or authority.

### **Development Authorities Law**

The Development Authorities Law creates a development authority that can be activated for any city or county to issue revenue bonds for projects including water pollution control facilities and solid waste disposal facilities. A water pollution control facility is any property used to abate or control water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, including the necessary pumping, power and other equipment, sewers, holding ponds, lagoons and related facilities, if such facilities are in furtherance of applicable federal, state or local standards for the abatement or control of water pollution or contamination. A solid waste disposal facility is any property used for the collection, storage, treatment, utilization, processing or final disposal of solid waste, including garbage, refuse, or other discarded solid materials, and also solid waste materials resulting from industrial and agricultural operations and from community activities, but excluding domestic sewage.

No project financed under the Development Authorities law may be operated by a development authority or by any city, county or other governmental subdivision, but must be leased or sold to one or more persons, firms or private corporations. The lessee or purchaser must be required to pay all costs of operating and maintaining the lease or purchased property and pay rentals or installments in amounts sufficient to pay the principal and interest and premium, if any, on all bonds and other obligations issued for the project.

### **Resource Recovery Development Authorities Law and Regional Solid Waste Management Authorities Law**

The Resource Recovery Development Authorities Law and the Regional Solid Waste Management Authorities Law are two similar pieces of legislation creating in each city or county authorities denominated either a resource recovery development authority or a solid waste management authority. Such authorities have power to issue revenue bonds to finance projects for the collection, transportation, management, storage, treatment, utilization, processing or final disposal of solid waste, or the conversion of solid waste or resources contained therein into steam, electricity, oil, charcoal, gas or other products or energy sources, including any property used in connection with the facility for the extraction, collection, storage, treatment, processing, utilization or final disposal of resources contained in solid waste. Such authorities also have power to finance any property used in the extraction, collection, storage, treatment, processing or utilization of water resources and the conversion of such resources into any useful form of energy. A resource recovery development authority expressly authorizes projects similar to those described above for the sewage sledge. A solid waste management authority or a resource recovery development authority can be activated jointly or on a regional basis by any number of cities or counties.

Distinctive to resource recovery development authorities and solid waste management authorities are their ability to enter into intergovernmental contracts with cities and counties, and thus engage in contract revenue bond obligation financing. One or more cities and counties and one of these authorities can finance a project and avoid the requirement for the holding of a voter referendum to authorize general obligation bonds and the requirement that city or county revenue bonds be secured only by revenue-producing undertakings by engaging in a contract revenue bond financing. The intergovernmental contracts provision of the Georgia Constitution permits two or more public bodies to contract for a term up to 50 years for the provision of services which the contracting parties are authorized by law to undertake or provide. Consequently, one of these authorities can issue its revenue bonds for a project and enter into a contract to provide the use of the project to the city or county, and the city or county can pledge its full faith and credit to that contract. That contract can be pledged to the payment of the authority's revenue bonds, which are treated in the financial marketplace, in effect, as the general obligations of the city or county.

Resource recovery department authorities also have power to enter into leases of project or contracts with respect to the use of project with private persons, firms and corporation. Thus, all or any part of the use of a project may be transferred to private parties, enabling private-public partnerships for solid waste disposal and reclamation facilities.

### **Governmental Projects versus Private Activity Projects**

If a waste or wastewater project is owned and operated by a government unit, or owned by a government unit and operated by a private company under a qualifying management contract, tax-exempt governmental bonds may be utilized for the financing. For more information on governmental bonds see our "Overview of Governmental Bond Financing." Such financings are not subject to narrow constraints on the types and amounts of property that can be financed, the necessity to obtain an allocation of a limited amount of bond issuing authority (volume cap) available to the State, the need to publish and conduct a public hearing, the limitation on the amount of issuance costs, the applicability of alternative minimum tax to interest earned on the bonds and, in some cases, the tax disadvantages placed on the purchase of such bonds by banks and other financial institutions. However, if the project is to be owned or substantially utilized by private parties, bonds issued will be treated as "private activity bonds" and subject to these restrictions (except that the need to obtain an allocation of volume cap does not apply to a solid waste facility that is government-owned but used by private parties).

If a facility is privately owned, any bonds issued would be treated as private activity bonds. Also, bonds are private activity bonds if the project financed is to be used more than 10%, directly or indirectly, in a private trade or business and if payments from or property of a private business are to secure or repay, directly or indirectly, 10% or more of the bonds. For example, if a government-owned facility is contracted on a long-term basis to process waste from private companies that would utilize more than 10% of the capacity of the facility, this private use satisfies the "use" portion of the test, and the revenues to be paid under the contract probably satisfy the "security" portion of the test, and bonds issued for the project would be private activity bonds.

### **Requirements for Private Activity Solid Waste Projects**

A solid waste facility must comply with several specific requirements to utilize tax-exempt private activity bonds. Such a facility or portion thereof must be used for the collection, storage, treatment, utilization, processing or final disposal of solid waste. "Solid waste" for this purpose is defined as garbage, refuse, and other discarded solid materials including solid waste materials resulting from industrial, commercial and agricultural operations and from communities activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. The solid waste must be useless, unused, unwanted or discarded solid material that has no market or other value at the place where it is located. If a person is willing to remove such property at his own expense, but is not willing to purchase such property at its location at any price, such material is treated as waste. The material may be valuable in the hands of the recycler, but retains its classification as waste if it was valueless in its original location, taking collection and transportation costs in account.

Although any governmental recycling and waste-to-energy project may be financeable with tax-exempt bonds, there are limitation on the types of private activity projects that qualify for tax-exempt financing. A facility that disposes of solid waste by reconstituting, converting or otherwise recycling it into material which is not waste is financeable on a tax-exempt basis as a solid waste disposal facility only so long as the solid waste constitutes at least 65% by weight or volume of the

total materials introduced into the recycling process. A recycling facility will not fail to qualify for tax-exempt financing only because it operates at a profit. However, private activity facilities that further process saleable waste-derived products into finished products are not financeable with tax-exempt solid waste bonds (although they might be financeable as tax-exempt manufacturing bonds — See our “Overview of Private Activity Bonds and Incentives”). If the facility has both a solid waste disposal function and another function, only the portion of the cost of the property allocable to the solid waste disposal function may be financed with tax-exempt solid waste bonds. For example, metals and glass can be separated from solid waste and then further sorted, sized, cleaned and pulverized. The private activity solid waste bonds cannot be used, however, to finance facilities that would further process the saleable metal or glass into a finished product.

If materials or heat are recovered from the solid waste disposal process, the waste disposal function includes processing of such materials or heat into saleable or useable form, but does not include further processing which converts the materials or heat into other products.

### **Financing for Private Activity Wastewater Projects**

A private activity wastewater, pretreatment facility may be financed with tax-exempt bonds only if it is deemed functionally related and subordinate to a government-owned sewage system. Sewage disposal facilities are defined as property used for the collection, storage, treatment, utilization, processing or final disposal of sewage. Facilities tied directly to sewage facilities that pretreat waste, if the waste is required to be treated prior to release into the sewage system, may constitute a functionally related and subordinate facility that is financeable with tax-exempt bonds. Property is not a functionally related and subordinate to a sewage facility if it is not a character size commensurate with the character and size of the sewage facility.

### **Summary**

Georgia law provides a number of issues and methods for issuing tax-exempt bonds for solid waste disposal, recovery, recycling and waste-to-energy projects, and sewage and wastewater treatment and pretreatment projects. However, if the facility is to be privately owned or substantially used in a private trade or business, special federal tax rules come into play to determine whether and to the extent the facility can be financed with tax-exempt bonds. With the proper legal structuring, however, many privately-utilized waste projects, as well as governmental projects, can be financed on a tax-exempt basis.

Article by James P. Monacell

Last Updated: May 4 2017

### **Smith Gambrell & Russell LLP**

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

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## **[Transportation Developments In The Trump Administration's First 100 Days: Holland & Knight](#)**

In January 2017, Holland & Knight Transportation & Infrastructure lawyers and senior advisors prepared [20 posts](#) for the 20 days leading to President Donald Trump’s inauguration regarding what

to expect from the Trump Administration, the first session of the 115th Congress and how business planning could be impacted for those in the industry. In this alert, we have prepared updates, if relevant, on transportation-related developments in the Trump Administration's first 100 days, including issues involving Maritime, Motor Carriers, Rail and Antitrust.

[Continue reading.](#)

Article by Linda Auerbach Alderdice, J. Michael Cavanaugh, Lawrence J. Hamilton II, David C. Kully, Michael T. Maroney, Andrew J. Steif, Eric Lee and Jameson B. Rice

Last Updated: May 9 2017

**Holland & Knight**

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## **[Why June Is Important For Muni Bond Investors.](#)**

While Puerto Rico continues to dominate the muni market headlines, trading in Puerto Rico bonds has totaled less than 3% of muni trading volume so far this quarter (through May 15, according to MSRB data from Bloomberg).

With the bulk of attention focused elsewhere, muni yields have generally moved lower so far this year, lifting most of the muni indices into positive territory. Bond prices rise when yields fall.

[Continue reading.](#)

ETF.COM

PATRICK LUBY

May 18, 2017

*Patrick Luby is the municipals strategist with CreditSights Wealth.*

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## **[U.S. Conference of Mayors to Stress Importance of Tax-Exempt Municipal Bonds During Infrastructure Week.](#)**

WASHINGTON, DC-(Marketwired - May 16, 2017) - On the heels of President Trump reaching 100 days in office, U.S. Conference of Mayors (USCM) President Oklahoma City Mayor Mick Cornett will add his voice to the need for additional infrastructure investment and the preservation of the tax exemption on municipal bonds at events in the nation's capital during Infrastructure Week (May 15-19).

On Wednesday, May 17, Mayor Cornett will join other local as well as state leaders at two events to emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment. In the morning, at 10 am, he will participate in a joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors to discuss infrastructure investment and the pressing need to protect tax-exempt bonds. In the afternoon, at 2 pm, Mayor Cornett will join a "Big 7" state and local government organizations

briefing on Capitol Hill, where he will further emphasize the importance of tax-exempt bonds for cities. See schedule below.

For more than a century, municipal bonds have enjoyed tax-exempt status and have been the primary method by which state and local governments finance public capital improvements, mostly infrastructure. These projects are engines of job creation and economic growth.

Over the last decade, tax-exempt municipal bonds have been used to finance critical infrastructure including the construction of schools, hospitals, airports, affordable housing, water and sewer facilities, public power and gas utilities, roads and public transit. According to USCM data, local and state governments financed nearly \$1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012. In the absence of such financing, it would have cost cities up to \$500 billion more — dramatically increasing the costs borne by taxpayers for critical infrastructure projects.

“As Congress discusses tax reform measures in the coming months, mayors across the country will fight to preserve the tax exemption on municipal bonds so that we can continue to repair crumbling roads, bridges, water systems, and schools,” said Mayor Cornett. “If Congress repeals the exemption, it will strangle infrastructure investment causing economic growth to slow, the elimination of hundreds of thousands of jobs and further deterioration of our national infrastructure. When mayors met with President-elect Trump this past December, he assured us that he supported maintaining the exemption. We were encouraged by that assurance and hope that this successful and irreplaceable financing mechanism remains in place.”

Throughout Infrastructure Week, Mayors will challenge Washington to accept the fact that Mayors work with the private sector and the federal government to build infrastructure projects from start to finish faster, with more cost efficiencies than other governments. To prove the point, The U.S. Conference of Mayors has released its “On Task, On Time, On Budget” report. The report features city infrastructure projects, including transportation, water, energy, ports and public buildings, citing their financial structures and the many benefits that resulted from them.

As a national infrastructure package is developed, this new report is intended to inform Administration and Congressional leaders on why more infrastructure dollars should be directed to mayors and other leaders who ensure that such projects are implemented more efficiently, with greater economic impact and timeliness.

## **Mayors participating in Infrastructure Week Activities in Washington, D.C.:**

### **May 17**

**Oklahoma City Mayor Mick Cornett, USCM President** — “Built to Last: A Discussion on the Importance of Local Infrastructure Investment” | A joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors where USCM President Mayor Mick Cornett will emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment | NACo Conference Center: 660 North Capitol Street, NW, Washington, DC (10:00 - 11:00 am)

**Oklahoma City Mayor Mick Cornett, USCM President** — “State and Local Governments Drive America — A Discussion for the Future of Infrastructure Policy” | A “Big 7” state and local government organizations briefing where USCM President Mayor Mick Cornett will further emphasize the importance of protecting tax-exempt bonds for cities, counties and states | 2154 Rayburn House Office Building, Washington, DC (2:00 - 3:15 pm)

**May 18**

**South Bend Mayor Pete Buttigieg** — House Transportation & Infrastructure Subcommittee on Water and the Environment hearing on “Building a 21st Century Infrastructure for America: Improving Water Quality Through Integrated Planning” | 2167 Rayburn House Office Building | Washington, DC (10:00 am)

The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Like us on Facebook at [facebook.com/usmayors](https://facebook.com/usmayors), or follow us on Twitter at [twitter.com/usmayors](https://twitter.com/usmayors).

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## **[Municipal Debt Crowdfunding Startup Neighborly Quadruples Capital with \\$25M Series A Round.](#)**

***The company's latest investment comes from Emerson Collective, 8VC, Govtech Fund and others.***

[Neighborly](#), a San Francisco startup that helps cities crowdsource their bond financing, more than quadrupled its investment backing in one fell swoop.

Before May 16, the company had raised about \$5.7 million in seed and grant money. Then the company [announced](#) a \$25 million Series A round led by Laurene Powell Jobs' impact investing entity The Emerson Collective along with 8VC. Ron Bouganim's Govtech Fund also participated in the round.

In a [blog post](#), the company cited President Donald Trump's push to cut massive swaths out of the federal budget as one reason cities might be looking to use Neighborly more.

“This comes at a time when the current administration is getting ready to roll out a number of spending cuts that will drastically reduce the amount of funding available to the nation's communities,” the post reads.

While Trump faces a long-standing promise to spend \$1 trillion on infrastructure, he has also proposed budget cuts to many federal programs that work with local government.

Neighborly has financed \$25 million in debt for local government customers across the country since the beginning of the year. The company also pointed to increased borrowing rates and an increase in public works backlogs as reasons to expect a growing demand for its services.

“The current financial system is set up in a way that disadvantages and costs communities much more than needed,” the blog post reads. “Every basis point in the cost of issuance and borrowing means hundreds of millions of dollars per year that go to paying interest or banker bonuses.

Since the cost of borrowing is so high, municipalities often delay important projects or even forego them entirely. Consequently, our nation's communities are unable to attend to some of the most underserved causes: Schools resort to cutting critical educational programs, communities do without recreation centers, utilities and energy infrastructure remain dilapidated.”

The company's solution, as Neighborly pitches it, gives local government access to more capital,

allows them to bypass antiquated technology and helps them avoid fees associated with traditional bonds.

This marks the second gov tech investment from the Emerson Collective of the week, with the organization also leading a [\\$30 million Series C round for OpenGov](#). Neighborly's previous backers have included Tumml, 500 Startups and the Knight Foundation.

GOVTECH

BY NEWS STAFF / MAY 16, 2017

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## **[This Startup Wants to Modernize Public Finance.](#)**

When the city of Lawrence, Kan. wanted to borrow \$650,000 to pay for a new fire truck for its local fire department, it didn't use traditional banks and bonds to borrow money. Instead it turned to Silicon Valley upstart [Neighborly](#), a two-year old marketplace that connects cities with investors to fund civic projects like schools, parks, and bridges.

Each year, U.S. cities borrow hundreds of billions of dollars to finance civic projects. This debt is typically in the form of municipal bonds, which investors buy for the monthly interest and relative security. Neighborly is a service for marketing these municipal bonds, an estimated \$3.8 trillion market.

On Tuesday, Neighborly revealed exclusively to Fortune that it has raised \$25 million in additional funding co-led by Palantir co-founder Joe Lonsdale's firm, 8VC; and Emerson Collective, the philanthropic organization started by the wife of the late Apple CEO Steve Jobs, Laurene Powell Jobs. Existing investors including Ashton Kutcher's Sound Ventures, Maven Ventures, Bee Partners, and Stanford University also participated in the funding round. This investment brings the company's total funding to \$35 million.

"We're modernizing access to public finance," Neighborly CEO Jase Wilson, said about his company's business.

Traditionally, cities use brokers and underwriters to find traditional institutional investors to buy bonds like large banks and financial institutions, explained Wilson. His company, a registered broker itself, has put that search online.

It's not just large banks that buy the bonds on Neighborly. It's also people who live in the cities asking for funds. For example, with a Cambridge, Mass. project, residents who live in all five zip codes in the Massachusetts town bought bonds.

It's worth noting that that for some projects, Neighborly can only round up a relatively small amount of capital. For example, in March the city of Cambridge, Mass. borrowed \$58 million, of which \$2 million came through Neighborly. The rest was raised from investors outside its service.

"There's so many better ways that public finance can work using technology," Lonsdale said, in an interview with *Fortune*. "The old processes are a lot more expensive, and only puts the money in the hands of people on Wall Street."

Neighborly makes money by charging a 1% commission based on the deal size. That compares with

the average 2% charged by other companies for most public finance projects, said Wilson. The other benefit, Wilson says, is that city residents can participate in funding their own neighborhood's projects.

Neighborly declined to reveal its revenue.

Kutcher echoed Lonsdale's belief about Neighborly's opportunity in a statement to *Fortune*. "They are doing the right thing. They are returning the opportunity of bonds back to the people that stand to gain from them the most." He continued that he "can see a world where this is not only the best way to get things done, but the only way."

In addition to the Cambridge deal and the Kansas fire truck, Neighborly has helped find \$5 million for new bike paths in Burlington, VT. Currently, Neighborly is helping finance an affordable housing project in the San Francisco Bay Area.

However, some financial tech startups that are trying to upend Wall Street have stumbled. Lending marketplace Lending Club was roiled by news last year that the former CEO violated internal lending rules and that it would lay off staff. Meanwhile, LendUp, a payday lending company, was forced to pay fines for allegedly deceptive and misleading practices, including charging incorrect fees and interest rates.

Wilson said that working with regulators and complying with all rules is extremely important to Neighborly. The company's challenge is competition from brokers and underwriters that have handled public financing for decades and have a tight grip on the market.

Neighborly also has its [fair share of critics](#), who don't view the bond market as a place that needs or requires change. But Wilson remains optimistic.

"We see ourselves as being more neighborly with your city's capital," said Wilson.

## **Fortune**

by Leena Rao

May 16, 2017

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### **[Municipal Bond Market: A Tech Tipping Point Is Here.](#)**

The municipal bond market is reaching a tipping point. E-trading is going to push it over.

When I started in this business back when dinosaurs roamed the earth, all you needed to trade bonds was a phone, the Blue List and a Monroe-Trader bond calculator. For those of you already lost, the Blue List was a booklet, printed on blue paper and stapled together, with the municipal bond offerings of Wall Street dealers and, roughly, at the offering price. To determine what you wanted to bid, you punched the various bond attributes like coupon, maturity, call and so forth into your Monroe-Trader. That was about as high tech as it got.

There were no ubiquitous Bloomberg terminals on every desk. You got on the phone and haggled out a price for a bond based on very limited information. No one knew what anyone else was bidding or asking—the phrase 'price transparency' hadn't been invented. It was a truly an over-the-counter

market.

Fast forward to today. Technology is radically changing the financial markets. Goldman Sachs is hiring more computer programmers than traders and BlackRock is replacing portfolio managers with computers. In the municipal bond market we're seeing some similar changes. The transition is a bit slow—this is the muni market after all—but it is coming and it's going to come a lot faster than some might realize.

Currently, there are seven electronic trading platforms currently dedicated to municipals: Tradeweb, MarketAxess, MuniAxis, Bloomberg, MuniBrokers, TheMuniCenter and ClarityBidRate. Some have been around since the inception, others are new entrants. I've either spoken with each firm in detail or used them in live trading. Having seen their interfaces and been taken step-by-step through their features, it's really remarkable how these firms have, each in their own unique way, captured, digitized and electronified the municipal bond trading process. It's akin to video poker in Las Vegas—if they just added an animated graphic of a trader to interact with, you'd swear you were dealing with a real person.

These are very powerful tools each with some very distinct benefits. If you're a municipal bond market professional who hasn't had a demonstration of these yet, you are strongly encouraged to absolutely do that.

The overall impact of these platforms is more important than their specific features and functions. Electronic trading platforms are bringing the municipal bond market to a 'tipping point.' This is having immediate consequences and longer-term effects.

### **Three Drivers**

There are three drivers pushing this forward. The first is basic economics. Currently, the markets are in what seems to be a sustained low-rate environment. Combine that with the fact that asset management is a mature industry oversaturated with mutual funds, ETFs and SMAs (separately managed accounts). That means every basis point counts, either to cut costs or add to profitability or preferably both, from management's point of view. E-trading offers efficiencies both in the trading process and in better price discovery in the trade itself.

Second is the trend toward index investing in the market. The MUB, which is a BlackRock-managed ETF that seeks to track the S&P National AMT-Free Municipal Bond Index, now has just a smidge over \$8 billion in assets under management. In fact, if you totaled up all the muni ETFs that are managed to track an index, it's more than \$25 billion. Add to that mutual funds that either are explicitly or implicitly managed to an index, the number more than quadruples.

Indexing means more standardization in the market, more categorization and ease of automation. Every portfolio manager and muni trader knows that a bond in the index trades better, is more liquid and has tighter spreads. Index bonds are a clearly established category with fairly standardized characteristics. In other words, perfectly suited for an e-trading platform. Where better to get economies of scale for index bonds?

The third driver is regulatory guidance. I covered this in some detail in the companion piece to this article, [Muni-Tech And E-Trading: Opportunities And Considerations For Investors](#). Each is a designated alternative trading system (ATS) under SEC Rule 600(b)(23). But that just meets the legal requirement. There are market rules bringing e-trading into the fore. For example, MSRB Rule G-18 and the SEC Rule 15c3-5 discuss best execution and management controls, respectively. There are others, such as the Volker Rule 619 and a host of SEC liquidity rules for mutual funds and other

pooled investment managers. Between capital requirements, best execution, liquidity and trade transparency, suddenly electronic trading platforms, which can address all of those in one fashion or another, become a lot more attractive.

Those are the big three drivers—economics, indexing and regulations—pushing e-trading forward and also pushing the market closer to a tipping point. These are not meant to be the only factors. There are also market factors such as declining new issue supply and the dramatic increase in SMA asset growth.

### **Detractors and Skeptics**

As with anything new, there are detractors and skeptics, as there always have been during periods of great change. People fear change. Some detractors of e-trading—and fight the tide all you want, but it's here and it's growing—detractors say the muni market defies standardization and automation because it is so variegated and compartmentalized. There are retail markets and institutional markets, bank qualified markets, AMT markets, specialty state markets, high yield markets, discrete sector markets, regional markets, specialty credit-name markets. Then there are the almost mind-numbing variables and attributes differentiating each bond—coupon, maturity, call provisions, sinking funds, security features are just a few.

All that is true—for now. What indexing and e-trading are going to do are organize and standardize the market. That's a big forward looking statement. Even Nobel Prize winning Physicist Neils Bohr warned that “predictions are very difficult, particularly about the future.”

But as Shakespeare noted, “What's past is prologue.” This automating-organizing-standardizing transformation is exactly what happened in other markets—and not just financial markets—that suddenly found technology disruptors changing how they transacted. The muni market will be no exception.

Others point out, with some legitimacy, that none of these platforms have been through a market meltdown like we saw in 2007 -2008. Can the platforms handle it? For those of us who lived through that period, I can tell you first hand, having people on the trading desks didn't function very well either. Nothing does well in a free fall. There's the old adage that it's only when the tide goes out when you see who's wearing a bathing suit and who isn't. The first time the platforms get hit with a wave of selling, we'll find out who is and who ain't.

### **The Biggest Impediment**

The advisor or Wall Street firm thinking about linking up an e-trading platform is caught in a conundrum. No one wants to be the one installing a platform that doesn't become the market standard. It is a big spend when a firm commits to a trading platform. Putting a new system in place takes a lot of resources—the data feeds for uploading inventory, correct pricing, the trade information capture and storage—there is a lot of middle-office work that requires integrating and testing. Staff have to be trained, from front office trading desk staff to the middle office operations and tech staff. It's great to be on the “cutting edge” so long as you don't get cut.

On the other hand, while no one wants to be the first in the pool, no one wants to be last to the party either. If you don't have it and your worthy competitor does, you better get it or risk falling behind. Call it technological peer pressure.

### **And Winner Is...**

To mis-paraphrase Pogo, we have met the winner and it is us. E-trading means better access,

liquidity and transparency for all market participants. There is more visibility to find bonds, better price discovery, and more bids on selling bonds. Where better to find offerings than on e-trading platforms where dozens—heck, hundreds—of dealers, institutions, advisors are all listing bonds? Where you can screen for bonds by specific attributes in only a few clicks?

Focusing on liquidity, if you sum up all the trading volume each platform claims, apparently more than 180% of all muni trades clear over e-trading platforms. That's a bit of chest thumping bravado; the real number is closer to 20%. They can't be faulted for a bit of braggadocio—no clear winner has emerged just yet and each wants to claim an early lead. However, the overall point is taken: e-trading improves liquidity.

Another prospective winner is the borrower. E-trading may up-end the entire underwriting process. If you're a big borrower, a high grade borrower issuing into a standardized market with transparent components, do you really need investment bankers to the degree you do now? Research has shown, again and again, that the competitive bidding process for new issues is more efficient for borrowers. Now with an algorithmized (is that even a word?) and electrified market, a forward-looking borrower with even a modicum of tech-savvy can bypass the middleman and go straight to investors in an open-auction process. Those that can, will. They have already. Look at the initial work of Neighborly. That's just one model. Others are coming.

Plus, the more e-trading gets adopted and integrated, the more borrowers in the market—and some municipalities are getting pretty sophisticated in tech—will be advised by their bankers and advisors to conform their structures to market standards set by e-trading and indexing. It is entirely possible the rating agencies will contribute to creating some conforming rules as well.

Last, but hardly least, is the data collection and artificial intelligence applications emerging from e-trading. Data is dollars and big data is big dollars. Yes, big data is everyone's shiny new toy these days. However, as we've seen, big data and statistical analysis can find patterns and relationships that we mere humans with our intrinsic biases just can't see or just don't want to. Using that information to create algorithms to trade or set risk levels or any other number of things is where artificial intelligence comes to the muni market.

One market participant made the snarky comment that this may be the first time "intelligence" and "muni market" were used in the same sentence. He can crack wise all he wants, but it's widely known that at least one top-bracket firm has been collecting retail trade data since the late 1990s. Now their muni retail trading process is fully algorithmic. Every trade in a certain band size gets bid or offered based on the data and the algorithm. No need for a retail desk. It's all done through AI.

## **The Tipping Point**

E-trading and indexing are going to be the drivers that tip the municipal bond market from the old over-the-counter model to what other markets already are and have been—an exchange-based model. No, the municipal bond market is not changing into the New York Municipal Bond Exchange, nor will it become fully automated with everything traded by AI driven bots. The muni market is and always will be a credit risk market. At some level, there will always be a need for a banker, a salesman, a research analyst, a trader and a portfolio manager. But as large parts of the market are going to become far more exchange driven, it's just not likely to need as many of them.

Make no mistake, the tipping point is here: the traditional, over-the-counter market with liquidity by appointment-only simply cannot be maintained in the faster, tech driven investing world we are in.

**Forbes**

by Barnet Sherman, Contributor

May 16, 2017

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*My thanks to Cathleen M. Rittereiser founder/Uncorrelated, LLC, Richard Brassler, CEO/RFactr and Meera Balakumar director/Sterling Analytics for their insights and tech-savvy guidance in the preparation of this article. They were invaluable.*

*Barnet Sherman is the Senior Managing Partner of The Tenbar Group, a financial services consulting firm advising on successful strategies to manage the credit risk in municipal bond portfolios.*

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## **[Fitch: Seventy-Four Percent of Public Finance Issuers Affirmed Under New Criteria.](#)**

Fitch Ratings-New York-19 May 2017: Fitch has concluded its review of all credits covered by the new U.S. tax-supported criteria, resulting in 74% affirmations, 18% upgrades, and 8% downgrades, according to a new Fitch Ratings report.

“The high level of affirmation was expected. The criteria revision was focused on communicating Fitch’s opinions more clearly, providing tools that facilitate a more forward-looking approach to ratings, and clearly expressing expectations for financial performance throughout the economic cycle,” said Laura Porter, Managing Director. “Fitch’s ratings continue to be based on the judgement of a team of experienced analysts rather than model-based outcomes.”

The most common reason for upgrades was the more focused consideration of the economic base and financial resilience in the revised criteria.

About half of the downgrades were to school districts, most commonly in California and Ohio. The revised criteria highlight the significance of the state school funding and policy framework to the financial prospects and position of school districts in the state.

None of the eight state ratings changed were the result of criteria alone.

Ninety-five percent of rating changes were one or two notches, less than a full rating category.

For more information, a special report titled “US Tax-Supported Criteria Implementation Results” is available on the Fitch Ratings web site at [www.fitchratings.com](http://www.fitchratings.com) or by clicking on the link.

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## **[Puerto Rico's Bankruptcy: Template For Other Troubled Cities.](#)**

“What-Me Worry?” are famous words from the fictitious Alfred E. Newman. It’s great to have a positive attitude in life. But there are times when investors need to observe and grasp the gravity of situations. That’s where we are with Puerto Rico.

Puerto Rico will soon become a legal catfight. It will be a lulu: General obligation bondholders versus sales tax revenue (Cofina) bondholders; AMBAC versus MBIA versus Assured Guaranty. This brawl won’t be a heavy weight fight. It will be a cage match because the hedge funds are vicious, wily beasts.

Even if you don’t invest in municipal bonds, as a taxpayer there are multiple lessons to be learned. First off, remember when we were taught that a state or territory cannot file for bankruptcy? Until it does. Puerto Rico, with help from Congress, filed for Title III, which is an in-court restructuring mechanism modeled after Chapter 9. No matter what you call it, it’s still bankruptcy.

I project this bankruptcy will become the template for all the cities, counties and a few states whose budgets, unfunded pension and health care liabilities are out of control. As a matter of fact, many of us in Bondland have a new word: Illi-Rico.

That’s right. Illinois, the state that is \$14 billion in arrears paying its bills, two years without a budget, with under funded pensions like you wouldn’t believe. The Illinois Policy Institute estimates \$203 billion total debt for state and local retirement benefits and oh—as the Institute points out, “the \$203 billion includes only the unfunded liabilities of the state’s five retirement systems, which ignores bonds issued to tide over the pension funds and debt taken on to provide retired government workers with generous health insurance.” And this doesn’t include all the bonds outstanding that the poor taxpayers are responsible for.

Certainly Illinois, Alaska, Hawaii, New Jersey, Connecticut et al are not carbon copies of Puerto Rico. Yet their crushing debt and liabilities look eerily similar.

So all you conservative municipal bond investors dig into your municipal open-end, closed-end or exchange-traded funds. Study the composition of your portfolio. If it’s too laden with general obligation bonds from states and cities that will one day have to actually deal with their problems—get out. Investors had years to get out of Puerto Rico bonds. Bond fund managers did too—yet many of them held on. After all, it was your money, not theirs.

It’s true, the worst offenders must pay significantly higher interest on their new bonds but it hasn’t yet reached the frenetic levels that concern or scare investors. If they keep up their incompetent bad behavior it will. Then we’ll be staring another Puerto Rico in the face. As we learned from the recent bankruptcies like Detroit, bondholders lose to pensioners who vote. Puerto Rico will be a carbon

copy.

So reassess your portfolio. Make certain the percent of good quality revenue municipal bonds far outweighs your general obligation holdings. The old rule of a GO issuer having the unlimited ability to tax its electorate no longer holds. We have learned issuers lose their ability and willingness to pay us bond investors. Just watch the Puerto Rico bond carnage to come.

Load up with airport revenue bonds from major hubs, the senior liens only. Names like Atlanta International Airport, Los Angeles, Dallas/Ft. Worth, JFK, San Francisco, Denver, Charlotte Douglas, McCarran International and Miami, to name a few. Stay away from the majority of small regionals. Invest in issues whose revenue stream is easily understood and underfunded pensions are not a consideration.

Keep it simple, keep it safe. Stay on top of the Puerto Rico news. It will matter.

## **Forbes**

by Marilyn Cohen, Contributor

MAY 22, 2017 @ 01:23 PM

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

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## **[Fitch: US States Taking on Transportation Funding Gap](#)**

Fitch Ratings-New York-16 May 2017: States will continue to increase transportation taxes and fees and seek alternative financing mechanisms to meet infrastructure challenges as federal investment remains uncertain, Fitch Ratings says. However, hurdles to realizing the full benefit of such measures include political risk, lower gas consumption, and resistance to creating and raising tolls.

Federal grants play an important role in building and maintaining highways and other transportation projects. However, federal policy inertia on transportation (and infrastructure in general) has been augmented by recent uncertainty about the current administration's funding plans.

States are likely to increase their direct investments in transportation projects by leveraging recent revenue increases. Six states (CA, MT, IN, TN, SC, WY) have raised gas taxes and fees to fund transportation projects in 2017. Six others are considering bills that would increase gas taxes to raise transportation revenues (CO, WV, MN, OR, WI, ME). Most states are only catching up as gas tax revenues have grown more slowly than inflation for decades, according to the U.S. Census Bureau Annual Survey of State Government Tax Collections. Most recently, South Carolina's House voted last week to override the governor's veto of a bill that includes a gas tax hike and some fee increases. This is the first increase in gas taxes in the state in 26 years. The state's inflation-adjusted gas tax revenues have risen by just 4.1% since 2000.

Higher gas taxes and fees could face risk from higher fuel efficiency. The Corporate Average Fuel Economy (CAFE) standards are set to raise the national fleetwide average mpg to 54.5 in 2025 from 35.5 in 2016. The current administration has called for a midterm review of the standards. However, regardless of how the regulations evolve technological advances will likely raise average MPG over the next several years.

Some states are also discussing adding tolls or raising existing tolls to meet capital demands. For example, last month Indiana approved funding to direct \$1.2 billion to state roads by 2024 from higher gas taxes and fees. The bill also requires the state to apply to the federal government for a waiver to toll currently un-tolled interstates within. Fitch expects to see other states take similar approaches as tolling the interstates is a viable option.

Tolling and other user fees could be a viable and meaningful component of highway funding if they are carefully implemented. Tolls can be adjusted with inflation with minimal adverse economic or political implications, provided the system is well operated and maintained. For example, the “first-mover disadvantage” can be limited by implementation across the system as raising tolls on one highway near an untolled road can hurt toll revenues.

In addition, PPP-enabling legislation is rising and could be another financing alternative in certain situations. In 2016 three states (KY, TN and NH) enacted PPP legislation, according to the National Conference of State Legislatures. PPPs used in the right circumstances allow governments to effectively transfer many project risks to the private sector and provide certainty in forecast costs, though they aren't a panacea for all funding shortfalls. In addition, issues of public perception, including a perceived loss of public control and a lack of understanding of potential long-term benefits, can make implementation of PPPs challenging.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at [www.fitchratings.com](http://www.fitchratings.com). All opinions expressed are those of Fitch Ratings.

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**[The Week in Public Finance: Recalculating Pension Debt, Hartford Discusses the 'B' Word and Prudent Rainy Day Policies.](#)**

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

GOVERNING.COM

## **Fresh Off Another Downgrade, Connecticut Has a Plan to Lower Borrowing Costs.**

### ***But observers disagree about whether it will work.***

Besieged by budget shortfalls, Connecticut's credit rating was downgraded in recent days by Fitch Ratings and Moody's Investors Service. The downgrades were the state's fourth and fifth in the past year alone. But if State Treasurer Denise Nappier gets her way, that credit hit might not matter the next time Connecticut goes to sell bonds.

Nappier wants the state to start offering investors revenue bonds that are paid back directly from the state's income tax revenues. Called tax-secured revenue bonds, these new bonds would be offered in place of general obligation bonds, which are backed by the state's general revenue collections. Nappier's office believes the dedicated income stream would mean the bonds would fetch ratings as high as AAA, resulting in a better interest rate and lower debt service costs.

The idea has received mixed reviews. While some observers call it a product that will offer comfort to bondholders wary of Connecticut's troubles, others say it's a "financial engineering gamble" designed to game the market. "To create something out of nothing — they're not being more fiscally responsible by doing it this way," says Municipal Market Analytics' Lisa Washburn.

In the past year, Fitch has downgraded the state's credit rating twice, and Kroll, Moody's and S&P Global Ratings have each downgraded it once. The latest action puts the credit rating at A+. It is the result, in part, of the state's third straight budget shortfall. Currently, Connecticut is facing a \$2 billion hole over the next two fiscal years. The deficits, caused mainly by weak income tax revenues and burdensome debt costs, have all but drained the state's rainy day reserve and made it difficult to keep up with its mounting pension obligations.

Deputy Treasurer Lawrence A. Wilson says the tax-secured bonds will insulate investors from the budget and pension concerns they have expressed. Instead, the bonds are "focusing on one of our highest credit positives, which is the high wealth of our state."

If approved by the General Assembly, the state would issue about \$2 billion in revenue bonds a year. Any interest rate savings would be directed into the state's rainy day fund. Wilson says he expects those savings to total \$980 million in fund deposits over 12 years.

When asked if state lawmakers would be tempted to keep raiding the rainy day fund, given the state's deficit struggles, Wilson acknowledged that was a possibility. "This is the part we can control," he says. "It's still a positive contribution."

Revenue bonds are common with lower levels of government and with housing and transit authorities, but are rarer at the state level. In 2001, New York state created a revenue bond program for streamlining purposes. Rather than having a handful of state authorities individually issuing tax-backed debt, New York's program created sales and income tax-backed bonds for them.

When it comes to assuring investors they'll be paid back, most states tend to opt for statutory or constitutional pledges. Illinois, for example, hasn't passed a budget in two years and has also suffered multiple ratings downgrades. But its constitution contains a "non-impairment" clause that

prohibits action by the General Assembly that would damage the state's ability to pay back bondholders. State law also allows bondholders to sue the state to compel payment.

Belle Haven Investments' Tamara Lowin says Nappier's proposal is simply another way to assure investors they'll get their money back with interest. "This market loves the transparency of being able to see a direct revenue stream," she says. "It's a way to offer a credit designed with the ratings agencies in mind."

But Washburn isn't so sure that potential investors will be reassured by the new bonds and be willing to take a lower interest rate on the debt. "The likelihood that Connecticut will ever default and be in a situation where you have to test the structural provisions is really, really low," she says. "But would I want to give it a pricing benefit as an investor? It's definitely questionable."

GOVERNING.COM

BY LIZ FARMER | MAY 17, 2017

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## **[Hidden Debt, Hidden Deficits: 2017 Edition.](#)**

A new analysis by Josh Rauh at Stanford University's Hoover Institution - [Hidden Debt, Hidden Deficits: 2017 Edition](#) - says state and local governments' collective unfunded pension liabilities are actually about three times the amount they claim. Rauh, a finance professor who has long been a critic of public pension accounting, arrived at his figure by assigning pension plans a much lower assumed investment rate of return.

Pension plans in 2015 collectively reported about \$1.3 trillion in unfunded liabilities. In other words, they have about 72 percent of the assets they need to meet their estimated total liabilities. That figure assumes plans will earn an average of 7.4 percent each year on their investments.

Rauh, pointing to the wild swings of the stock market and the fact that pensions are putting more of their assets into volatile, alternative investments, says that assumption is too risky. He argues it's more responsible to consider a rate of return closer to what long-term bonds earn: slightly less than 3 percent. Under those assumptions, Rauh says unfunded U.S. public pension liabilities would roughly triple to \$3.8 trillion, or less than half-funded.

*The Takeaway:* Rauh is arguing for accounting responsibility. And to be sure, the underwhelming returns of pension plans over the last two years bolster his case. Several pension plans have already acknowledged that their investment return assumptions likely won't hold up in the long term and have lowered their assumed rates of return to 7 or 6.5 percent. But to drastically lower return assumptions would be devastating for governments and impair their ability to provide services to constituents.

Rauh even cites those consequences in his research. In the worst example, Illinois in 2015 put a whopping 11 percent of its own revenue into its pension plan. Even though that's a far higher share than other states, Illinois' payment was still short — it actually needed to contribute more than 16 percent. Under Rauh's approach, Illinois would have to contribute more than 23 percent of its revenue to avoid a rise in liabilities. That would dwarf education spending and make pensions second only to Medicaid as the state's highest single expense.

GOVERNING.COM

## **[Stanford Researchers Create “Living Map” of Out-of-the-Box Water Financing Ideas.](#)**

***Financing for water projects and aging infrastructure is critically needed but hard to come by. Stanford researchers highlight innovative approaches with a “Living Map” of case studies around the country.***

Last month, the American Society of Civil Engineers gave the nation’s infrastructure a near failing grade and estimated that the country will need to spend \$4.59 trillion by 2025 to bring its infrastructure back up to even a B- level. Water infrastructure is in particular need of renewed investment due to the combined pressures of population growth, urbanization and impacts from climate change.

The problem is finding the money to carry out these critical but expensive projects that include innovative distributed water systems. Now a team of researchers at Stanford has created a [“Living Map”](#) of innovative ways to finance water projects in the United States that they hope will help regions finance upgrades.

“We need a new playbook that embraces a holistic view of our water system and offers new ideas and solutions for our aging infrastructure,” said Newsha Ajami, director of urban water policy at Stanford’s Water in the West program and leader of the map project. “Integrating distributed water projects such as green infrastructure, wastewater recycling and storm- and graywater reuse into our current infrastructure network can enhance the flexibility and reliability of our water systems.”

Federal and state funding for these types of projects is limited, and local entities are usually too cash-strapped to meet current maintenance costs, let alone the costs involved with new projects. Private funding can also be difficult to acquire given the small return on investment and perceived risks of many of these projects.

The Living Map shows case studies of successful innovative water financing efforts around the country designed to be implemented at various scales. The case studies feature a wide variety of mechanisms; for example, some are market-based systems like credit and permit trading used to implement “green infrastructure” projects built to manage stormwater runoff.

### **Case studies**

One example looks at the Stormwater Retention Credit Trading Program in Washington, D.C. The program enables property owners who install green infrastructure to generate credits that can be bought and sold on an open market and used to meet regulatory requirements. This ultimately helps capture stormwater and prevent pollutants from entering the Chesapeake Bay and local waterways.

The map builds on work in a 2016 Water in the West report that created a framework for water project financing with lessons from the electricity sector.

“We wanted to show that not only are these options available and possible in the electricity sector as they were laid out in our 2016 innovative financing report, but that various water utilities are already employing them,” said Ajami.

The map will be updated as more case studies of new and different ways of looking at water infrastructure needs come to light, hence the name “Living Map.” Ajami encourages stakeholders, researchers and decision-makers throughout the United States working on inventive water financing efforts to partner with her and the team to add projects to the map.

“The fact that it’s hard to access funding for distributed and unconventional water projects is not an excuse not to act,” Ajami said. “The Living Map gives a visual understanding of what is happening throughout the country and how grants, rebates, fees and other innovative governance structures are used to fund alternative water projects. It supports the view that there is not a one-size fits all approach to funding infrastructure and we as a community need a portfolio of financing tools and options for the water sector.”

## **Stanford News**

By Devon Ryan

May 18, 2017

*Newsha Ajami also co-leads the Urban Water Systems & Institutions Thrust at the NSF-ReNUWIt Engineering Research Center, and is a member of the Bay Area Regional Water Quality Control Board.*

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## **[How Historic Would a \\$1 trillion Infrastructure Program Be?](#)**

“We’re going to rebuild our infrastructure, which will become, by the way, second to none. And we will put millions of our people to work as we rebuild it.” From the very first night of his election win, President Trump was clear about his intention to usher in a new era in American infrastructure. Since assuming office, the president and his cabinet continue to use the figure of \$1 trillion over ten years to demonstrate the scale of their vision.

By any measure, one trillion dollars is a lot of money. Given the well-documented maintenance and modernization backlogs in a range of infrastructure sectors, federal attention is welcome. Infrastructure spending has the added benefit of helping to support millions of good-paying jobs.

[Continue reading.](#)

## **The Brookings Institute**

by Adie Tomer, Joseph Kane, and Robert Puentes

Friday, May 12, 2017

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## **[SIFMA: All Bonds Used for Publicly Accessible Infrastructure Should be Treated as GOs.](#)**

WASHINGTON - Preserving the tax exemption for municipal bonds, treating private activity bonds more like governmental bonds without restrictions for publicly accessible projects, and reviving direct pay bonds are some of the infrastructure funding recommendations that the Securities

Industry and Financial Markets Association has made to administration officials and members of Congress.

The group also has recommended using tax credits as incentives for equity investors, promoting design-build strategies for public projects, and making infrastructure assets and liabilities more transparent in state and local government financial statements, Michael Decker, SIFMA managing director and co-head of the municipal securities division, said in a recent podcast with The Bond Buyer.

The recommendations were developed by a SIFMA task force led by Chris Hamel, head of U.S. municipal finance at RBC Capital Markets, and Suzanne Shank, CEO and chair of Siebert Cisneros Shank & Co.

“At the top of our list is preserving the tax exemption,” said Decker. “Tax exemption for municipal bonds is the single most important tool that public sector infrastructure developers have. Bonds have financed 75% of the infrastructure in this country and there is a real threat, a real risk that in the context of tax reform or through some other legislative vehicle on Capitol Hill Congress could curtail or eliminate the tax exemption. [That] would drive up the cost of infrastructure finance and we’d end up with less, not more, new project investment.”

A second recommendation is to expand the use of tax-exempt private activity bonds for public-private partnerships. Most P3s involve layers of capital, Decker said. One approach might be to have some equity as a base-level of investment, then some debt financing, and then perhaps some capital from the public sector partner. But under current tax law, tax-exempt PABs can only be used for certain specified categories of projects and are typically subject to volume cap limitations and private use restrictions. In addition, the interest from PABs is subject to the alternative minimum tax.

“Under our proposal, bonds issued for infrastructure, regardless of whether it is a purely public project or a P3, would be treated as governmental tax-exempt bonds without volume restrictions, no AMT, no private use restrictions, as long as the project being financed falls under the definition of publicly accessible infrastructure,” Decker said.

SIFMA wants to revive direct-pay bonds structured similarly to Build America Bonds, which were issued as taxable bonds in 2009 and 2010, where issuers receive subsidy payments from the Treasury Department in lieu of investors receiving tax-free interest. These bonds broaden the universe to corporate investors for munis.

The group suggested tax credits or some other type of incentives to attract equity investors in P3s. “If you look at the story of equity investment in other sectors like renewable energy or low-income housing, tax credit programs in those areas have been very successful in driving capital to those sectors and we think the same could be true for infrastructure,” Decker said.

SIFMA also wants to promote the use of a design-build approach for public projects, where one entity – a design-build team – works under a single contract with the project owner to provide design and construction services.

“That’s a successful procurement strategy in the public-private arena and we think that there are some efficiencies to be gained by using a design-build approach in the public sector development area,” Decker said.

SIFMA also would like some accounting issues addressed so that the full cost and value of

developing infrastructure is shown on a state or local government's annual financial statement to demonstrate the value of infrastructure to the community as well as any accumulated maintenance or expenses the government may be carrying.

"It would help identify, just from a transparency perspective, the true cost of the asset," Decker said. "From a management perspective, it might help identify the assets or areas of investment at the state or local level that the government might not view as a priority where they might be interested in re-deploying capital that's invested in one area into new infrastructure."

It is somewhat ironic that infrastructure advocates are pushing for eased restrictions for the use of PABs in infrastructure or more restrictions for tax-exempt bonds. A few years ago and still today, critics decry the use of tax-exempt PABs to finance professional sports stadiums. Former House Ways and Means Committee chairman Rep. Dave Camp, R-Mich., proposed a tax plan that would have halted issuance of PABs. Former President Obama proposed capping the value of tax exemption for munis.

"Our message on this to policymakers is, 'You're digging a hole for yourselves. Why curtail or eliminate an existing successful tool that's already resulted in trillions of dollars of infrastructure investment when you're trying to promote infrastructure, not constrain it,'" Decker said.

"I think the current administration thinks infrastructure is, at least in part, part of a broader industrial or economic policy," Decker said. "You've heard the president talk about reviving the manufacturing sector, returning American jobs to this country, getting companies to invest here rather than abroad. So if they're trying to promote industrial development in a particular area, one way to do that is to ensure there's infrastructure with sufficient capacity to support the economic development that will arise."

Asked about critics who complain that the president only seems to be interested in big, shiny, costly P3 projects that may take years to develop, Decker said, "There are needs at so many levels."

"We do need help with big transformational kind of cutting-edge infrastructure projects," he said, pointing to proposals to further develop LaGuardia Airport as an example. "Then there's street light repairs or replacing an on-ramp to a freeway, projects that are much smaller in scope that have a much more local impact," he said, adding, "I would urge the administration to think about providing funding or enhancing funding for all levels of infrastructure development."

Asked about projects that don't have revenue streams, Decker said, "in terms of P3s there's an emerging model that provides at least one approach to those kinds of projects and that is availability payments."

"The way this works is, for a project that's non-revenue generating, the state or local government would solicit bids from private sector developers under a standard kind of P3 arrangement - finance, build, own, operate, maintain - the full range of turnkey service that P3 infrastructure operators provide," Decker said. "But rather than the developer being paid from revenues derived from the project, the developer is paid directly by the governmental partner-sponsor in the project through availability payments."

The payments would depend on the project continuing to meet operational specifications that were decided at the time the P3 agreement was reached, he said.

"So that means the private developer is responsible for ensuring that the project is operating at capacity and that, in terms of maintenance and repairs, it's in sound condition," he continued. "The

developer doesn't get paid unless the project is performing to spec."

"It's an interesting approach," Decker said. "It could potentially reduce the cost to the state or local government, but there are other elements in play too. For example ... it allows that local government to lay off some risk of maintaining and operating the project at capacity. It also gives the local government leverage over the developer and avoids the risk that the government might defer operation and maintenance costs in a tight budget situation."

Asked if he can crystal ball the timing for an infrastructure plan and the interplay between it and tax reform or even health care, Decker said: "They're somewhat related in terms of process. Congress' time is somewhat limited."

[Members] can only take on so many very large legislature issues in a given year because they're so time consuming."

"In the discussions we've had with key members of the administration, infrastructure continues to be at the top of their list," he said. "I think the administration wants to be able to point to some legislative wins going into the 2018 congressional election. But I can't tell you in terms of timing how all of this is going to play out."

Asked about the prospects for infrastructure being wrapped into tax reform, Decker said, "It depends on what the infrastructure proposal looks like."

He noted that virtually all of SIFMA's recommendations deal with changes to the federal tax code and said, "I think it's most efficient to deal with tax proposals in a single legislative vehicle, but that may not be how it ends up."

## **The Bond Buyer**

By Lynn Hume

Published May 15 2017, 6:22pm EDT

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### **[Pick-Up In Municipal Bond Market Hinges On Government Support.](#)**

Two years after the Securities and Exchange Board of India (SEBI) cleared a new set of rules for issuing municipal bonds, India may finally see some activity in this segment with a couple of cities now ready to hit the market. Don't expect a booming municipal bond market yet, though, as the pick-up in municipal bonds is still linked to government support.

Both Pune and Ahmedabad are ready to go to market, Varsha Purandare, managing director and chief executive officer of SBI Capital Markets, told BloombergQuint, while adding that some regulatory clarifications are awaited. The cities have approached SEBI, asking the regulator to allow them to file their prospectus based on financials that have been audited by an external statutory auditor rather than wait for audited financials from the Comptroller and Auditor General (CAG).

While Pune and Ahmedabad are at an advanced stage of preparedness, a number of other municipal corporations are also hoping to raise money through bond issues as a way to fund their smart city projects.

In the past, most municipal corporations have depended on state or central government grants for infrastructure development. However, there is now a perceptible feeling that the government wants municipal corporations to have ownership of projects being undertaken. In particular, for smart city projects, municipal corporations have to bring in 40-50 percent of investment upfront.

**Varsha Purandare, MD & CEO, SBI Capital Markets**

To be able to meet this funding requirement, a number of municipal corporations will need to try and tap the markets, Purandare added.

The first step to this is to get rated. A total of 94 municipal corporations have been rated so far, Subodh Rai, senior director at rating agency Crisil, told BloombergQuint in a phone conversation. The rating profile, however, differs widely.

According to data provided by Crisil, of these 94 rated municipal corporations, only 10 are rated AA or above. About 14 are rated in the A category, while the rest are rated BBB or below.

The AA rated firms can access the market directly but the A and BBB rated firms may need some structured mechanism, said Rai. He added that A rated firms can look at securitising future cash flows or a structure where property taxes are put in an escrow account which is set aside for interest payments.

For municipal corporations rated BBB or below, accessing the market would be tougher and some sort of pooling mechanism or partial guarantee may be required, said Rai.

### **Subsidised Borrowing Cost**

Given the rating profile of municipal corporations, the true market borrowing cost for most of them (in the BBB category) would be close to 10 percent, said Purandare of SBI Caps. However, borrowing at that interest rate may not be a viable way to fund infrastructure development, she added.

That's where government support will need to come in.

While the government has rejected a demand for tax-free status for these bonds, the urban development ministry has set aside Rs 400 crore to provide interest subsidy for these bonds, the Economic Times reported on May 15.

Both Rai and Purandare said that such a subsidy would make it more viable to fund city infrastructure development through bonds. The difference between tax-free and taxed bonds is almost 2 percentage points, Rai pointed out, while adding that the interest subsidy may help in bridging that gap. The subsidy will help bring down the cost of funds to near 7 percent, which is affordable, said Purandare.

### **Is There Investor Appetite?**

The story of municipal bonds in India has been one of numerous stops and starts. The earliest such bond dates back to 1998 when Ahmedabad raised Rs 100 crore. Others like Hyderabad, Nasik and Visakhapatnam have also tested the market with small issues.

Municipal corporations coming to the market now will also likely start with smaller issues in the 5-7 year tenure bucket, said Purandare, adding that once the market becomes more comfortable with the product, demand may pick up leading to a decline in interest rates. This would allow for larger-

sized issues to come to market.

According to Rai, the key issue for investors remains the quality of financials reported by the municipal corporations. Delayed reporting of financials and lack of transparency may concern investors, he said. At present, municipal corporations do not report quarterly or half yearly financials. The issues that come to market in fiscal 2018 will be based on fiscal 2016 financials.

On the flip side, volatility in municipal finances is typically low and expected loss would be low for this category of issuers which may attract investors, said Rai.

## **BloombergQuint**

BY Ira Dugal

May 18, 2017, 10:31 pm

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### **[Infrastructure Week: Should Cities Be at the Center of Infrastructure Discourse?](#)**

***Local government leaders discussed the current administration's trend toward financing infrastructure projects through public-private partnerships and eliminating tax-exempt municipal bonds.***

As Infrastructure Week, held May 15-19 in Washington, D.C., began to wind down, local government leaders remained hopeful that the pressure for a renewed interest in rebuilding America's roads, bridges and the rest of the system would persist.

The initiative — a national week of education and advocacy that brought together American businesses, workers, elected leaders and everyday citizens around one message: It's time to build — sponsored several events held in conjunction with local and state government groups that represent shared interests in the federal government. The National League of Cities (NLC) hosted a panel discussing infrastructure financing, successful projects and tools local governments need to maintain and develop infrastructure nationwide.

While the idea of investing resources in infrastructure garner widespread bipartisan support, recent revelations that the Trump administration and Congress' tax reform may scrap the tax-exempt status of municipal bonds has been met with resistance.

"You can't be for infrastructure, if not for tax-exempt municipal bonds," said Oklahoma City Mayor Mick Cornett, who also serves as president of the U.S. Conference of Mayors.

Speaking passionately about the necessity of tax-exempt bonds, all members of the panel expressed their disapproval over the idea of cutting the provision. "The need has never been greater for infrastructure investment," said Cleveland Council Member and NCL President Matt Zone.

In a [joint statement](#) released in late April by the National Governors Association, National Association of Counties, NLC, U.S. Conference of Mayors, International City/County Management Association, National Conference of State Legislatures and the Council of State Governments, the organizations urged Congress to preserve the tax-free municipal bonds.

“Tax-exempt municipal bonds were part of the original tax code in 1913 and have long served to meet critical needs in our communities,” reads the statement. “These essential components of the tax code support vital investments in infrastructure, public safety and education, encourage economic growth and provide states and local governments with the flexibility to deliver essential services to our residents.”

The panel also pushed back on the idea that private investment could help fill the void if local governments would have to spend part of the funding on taxes. The current administration has given several indications that rather than finance most projects through direct federal financing, municipalities are encouraged to utilize a public-private partnership model wherever possible.

While testifying in front of the Senate Environment and Public Works Committee, U.S. Secretary of Transportation Elaine Chao mentioned that the administration is hoping to release by the end of the month a set of principles for the oft-talked-about infrastructure package. The list is heavily anticipated by state and local leaders across the country.

“The proposal will likely include \$200 billion in direct federal funds, which will be used to leverage \$1 trillion in infrastructure investment over the next 10 years,” Chao told senators. She also acknowledged that “not every project ... is a candidate for private investment.”

Zone still had concerns over the possible reliance on P3s. “Over last two decades, about 93 percent of projects that have been funded would not have been eligible for P3 partnership,” he said, adding that focusing on public-private partnerships as a uniform strategy “doesn’t really work.”

In order for P3s to work, Cornett explained, the conditions have to be just right. The best environment for successful partnerships takes are highly dense cities with extremely busy areas. Private partners are not interested in building rural roads, which are needed in Oklahoma, he explained.

There is also a danger that relying on private partners could leave behind traditionally underserved populations. As local leaders, Zone said, we have “an ethical and moral obligation to make sure that we look out for every citizen we represent.” All projects should be looked at with an “equity lens” to make sure the most vulnerable and marginalized populations are provided for.

Although there is a lot of focus on what’s happening at the federal level, it is important to keep in mind the role local and state governments play in not only financing transportation projects, but also operating expenses. More than 75 percent of all public roads and 50 percent of bridges are owned by local governments, which also operate 93.7 percent of all public transit agencies.

“Real action is happening outside of Washington in cities, states and metropolitan areas across the country,” said Eno Center for Transportation President and CEO Robert Puentes, who moderated the panel.

FUTURESTRUCTURE

BY RYAN MCCAULEY / MAY 19, 2017

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**[Kotok: High-Quality 4% Long-Term Munis Are a ‘Gift’ to Investors.](#)**

***David Kotok of Cumberland Advisors is finding high-quality, long-term munis with***

## ***attractive yields.***

David Kotok of Cumberland Advisors wrote an interesting essay Friday titled “Obstruction of Justice and Markets.” It’s mostly about market reaction to all the uncertainty in Washington.

But there is a nugget near the end where he lays out his investment strategy in this environment that is of particular interest to muni investors. He writes:

The 4%, high credit quality, tax-free bond is a gift to an investor in any higher tax bracket, whether at its present or future level.

It seems Kotok is talking about buying a muni with a 4% coupon — which would be about a 7% tax-equivalent yield for an investor in the highest tax bracket — a gift indeed.

Truth is, those bonds are hard to find and he isn’t saying which ones he has located. The yield for a 10-year A-rated Muni averages 2.5%, points out Thomas Byrne of Wealth Strategies & Management. Go out 30-years gets you to 3.5%, although he doesn’t recommend buying longer than 15-year bonds.

But there are higher coupon bonds out there. Byrne writes:

It makes sense to look for higher coupon bonds, relatively speaking, as they provide some cushion versus rising rates, particularly callable bonds.

Munis have risen as turmoil in Washington has led investors to seek safety in high quality bonds. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) rose to \$110 in May from trading between \$108 and \$109 for about the three months prior. Friday at 10:30 a.m., it was at \$110.10.

## **Barron’s**

By Amey Stone

May 19, 2017 10:57 a.m. ET

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## **[Illinois Punished by Market as Deadline Nears Amid Fighting.](#)**

- **State’s yields rise to record over benchmark amid gridlock**
- **Less than two weeks remain in regular legislative session**

With less than two weeks left in the regular legislative session, Illinois lawmakers and Governor Bruce Rauner are still divided on how to end the worst-rated state’s nearly three-year budget impasse. Investors aren’t pleased.

Bondholders are demanding yields of 4.49 percent on Illinois’s 10-year bonds, some 2.45 percentage points more than those of benchmark tax-exempt debt. That’s the biggest gap since the Bloomberg indexes began in January 2013.

After May 31, a three-fifths majority will be required to pass anything, making a deal even more

difficult to reach. Senate Democrats advanced several bills that had been considered part of a bipartisan compromise on Wednesday, but they were unable to pass a spending plan for lack of Republican support.

“We’re two weeks away from the 31st and that’s the deadline that’s set,” said Dennis Derby, a money manager in Menomonee Falls, Wisconsin, at Wells Fargo Asset Management, which holds Illinois bonds among its \$40 billion of municipal debt. “They’ve had substantial time to work on this. So far we haven’t seen any substantial progress.”

Lawmakers are continuing to push forward legislation in an effort to resolve the stalemate by the end of the month. The unprecedented impasse has left the state without a full-year spending plan since July 2015 as Rauner, the first Republican to lead the state since 2003, and the Democrat-led legislature can’t agree on how to plug chronic budget deficits. The gap worsened after temporary income tax hikes expired in January 2015. The gridlock has sunk Illinois’s credit rating and forced state-supported entities like public universities and social service providers to slash programs and furlough workers.

Moody’s Investors Service and S&P Global Ratings have warned that the state’s credit could deteriorate further if it enters a third year without a budget. The rating companies rate Illinois Baa2 and BBB, respectively, which is two levels above junk. Both have a negative outlook on Illinois.

Rauner has called for any spending plan to be tied to structural changes like a property tax-freeze and an overhaul of workers-compensation practices. Without a budget in place, the state is still spending money through consent decrees, court orders and continuing appropriations. Its current-year operating deficit is about \$6 billion, Moody’s said in a March report, citing the governor’s office of management and budget.

“We should never give up in getting a balanced budget,” Rauner told reporters in Chicago on Thursday. He said he was encouraging lawmakers to keep working on a deal.

On Wednesday, Senate Democrats approved a plan to allow the state to borrow as much as \$7 billion to pay down the state’s record \$14.5 billion of unpaid bills. Legislation to allow local government consolidation and expand gambling were approved and received some Republican votes. Measures that would change the state’s procurement practices and pension system won bipartisan approval. They still need to be approved by the House.

Democrats also passed an overhaul of school funding practices, including giving \$215 million to the cash-strapped Chicago school system. The measure received no Republican votes and was immediately rejected by Rauner who called it a “bailout at the expense of every other school district in the state.”

## **Bloomberg Markets**

by Elizabeth Campbell

May 18, 2017, 8:49 AM PDT May 18, 2017, 2:51 PM PDT

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### **[Forget Trump. Muni Bond Rally About to Be Driven by Cash Tsunami.](#)**

- **Over the summer, supply of cash is projected to outpace sales**

- **‘We are bullish on munis’ through summer: Citigroup analyst**

Municipal bonds got a lift this week as turmoil surrounding President Donald Trump’s administration sparked a flight to safe assets. An even bigger boost will come this summer as investors will receive a flood of cash that will outstrip the sale of new securities, strategists said.

The state and local government debt market will shrink by \$39.5 billion over June, July and August as bonds mature faster than they’re issued. At the same time, investors will receive \$44 billion of interest payments, according to Citigroup Inc. — resulting in nearly \$84 billion available to be reinvested.

“At least over the next three, four months, we are bullish on munis,” said Vikram Rai, head of municipal strategy for Citigroup.

Yields on benchmark 10-year municipal bonds tumbled this week to the lowest since November after reports that Trump disclosed highly-sensitive intelligence to the Russians and suggested then-FBI Director James Comey drop an investigation of former national security adviser Michael Flynn. The revelations caused stock prices to drop on Wednesday on speculation that Trump’s economic policies will be derailed.

While some investors speculated that the developments dampened the prospects that Trump’s tax cuts will advance in Congress, some bond strategists said that reaction is premature.

“People were too aggressive in their time-line of President Trump’s agenda,” said Mikhail Foux, head of municipal strategy at Barclays Plc.

Investors that want to put cash to work will find the most value on the long-end of the muni curve, where the difference between 10- and 30-year yields are close to 12-month highs, said Foux. By contrast, 5-year municipals are more expensive compared with Treasuries than they have been since the end of August 2016.

Investors have shifted heavily into shorter-maturity debt because of concerns about whether the tax break given to bondholders will be rolled back and the prospect of corporate tax cuts, which could cause banks and property and casualty insurers to stop buying long-duration debt, he said.

Those concerns may be overblown. Trump’s push to slash corporate and individual income-tax rates won’t have a dramatic impact on the market. Cutting the top-rate to 35 percent from 39.6 percent would be too small to sap demand, analysts said, while eliminating the Alternative Minimum Tax and state and local tax deduction could actually strengthen demand for tax-exempt securities.

Cutting corporate taxes to 15 percent would markedly crimp demand from insurance companies and banks, but it’s more likely the corporate tax cut will be in the 20 to 25 percent range, said Foux.

In the long run, though, changes to the tax code won’t be the main driver of municipal returns, said Lyle Fitterer, who oversees \$40 billion as head of tax-exempt debt for Wells Capital Management. What’s more important is supply-demand trends, the absolute level of rates and the difference between short and long term yields — which is driven by forecasts about the trajectory of the economy.

“Right now, supply is down, foreign demand is up, U.S. demand is strong because rates have been rallying, so people are more comfortable in fixed income again, so you’ve seen the market outperform,” he said.

## **Bloomberg Markets**

by Martin Z Braun

May 19, 2017, 2:00 AM PDT

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### **[Bloomberg Brief Weekly Video - 05/18](#)**

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

[Watch video.](#)

## **Bloomberg**

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### **[Trump Budget Said to Include \\$200 Billion for Infrastructure.](#)**

- **Budget first step in Trump's \$1 trillion infrastructure plan**
- **Federal funds aim to spark state, local and private investment**

President Donald Trump will propose spending \$200 billion in federal funds over 10 years to spur investment in the nation's infrastructure, a senior Office of Management and Budget official said.

The administration's aim for the funds, which will be part of the budget proposal Trump plans to release on May 23, is to provide incentives for at least \$800 billion of infrastructure investment by the private sector and state and local governments, said the official, who spoke on condition of anonymity because the plans were not yet public.

Administration officials are examining the use of federal grants and loans as well as other vehicles to spur the investment, much as the existing Transportation Infrastructure Finance and Innovation Act loan program leverages federal funding for state and local spending, the official said.

One option likely to be part of the plan is asset recycling, in which the federal government offers an incentive to encourage a state or municipality to lease a public asset to the private sector in return for an upfront payment that can be used for other projects that lack funding, according to the official.

Most U.S. infrastructure is owned and controlled by states, localities and private entities. Trump's plan, the official said, will be designed to encourage them to secure their own funding and financing rather than relying on the federal government.

Trump promised throughout the campaign and since taking office to invest \$1 trillion over 10 years to upgrade roads, bridges, airports and other assets. The \$200 billion in the budget being released next week would be mostly spent between years two through six in the 10-year budget window, the official said, adding that it would be offset to avoid adding to the deficit. The official didn't specify how.

The administration also has convened a task force of 16 federal agencies to identify rules,

regulations and statutes that could be changed to streamline the environmental review and permitting process to accelerate projects.

U.S. Transportation Secretary Elaine Chao has said the administration is providing principles for its infrastructure plan this month, with a complete legislative package expected by the third quarter.

Officials are using a broad definition of infrastructure that includes veterans' hospitals, energy and broadband, Chao said during testimony on Wednesday at the Senate Environment and Public Works Committee. Administration officials also have said the plan will encourage public-private partnerships as a way to tap the estimated trillions of dollars in available private capital worldwide.

Democrats and even some Republicans have said such deals don't work in rural areas that can't support tolls or a revenue stream needed to secure private investment, and Chao said during her Senate testimony that the administration is committed to meeting both rural and urban infrastructure needs.

Chao has said Trump's plan could involve consideration for "special projects" that are not candidates for private investment and need to be funded directly, though the plan probably won't include a list of specific projects, she said.

## **Bloomberg**

by Mark Niquette

May 18, 2017, 6:00 PM PDT

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### **[BDA Submits Comment Letter: SEC Proposed Amendments to 15c2-12.](#)**

On May 15, 2017, BDA submitted a comment letter in response to the [SEC's proposed amendments to Exchange Act Rule 15c2-12](#) which proposes to add two items to the list of event notices to be included in continuing disclosure undertakings. You can find our final letter [HERE](#).

#### **Letter Overview:**

- The BDA generally supports the concept of the Proposed Amendments, but offers suggestions to streamline the proposal
- The BDA believes that the definition of financial obligations and the new listed event (16) need to be redrafted more narrowly around bondholder concerns related to competing bank debt
- The BDA believes that something more than just the use of "material" is necessary if the Proposed Amendments will actually result in widespread compliance within the municipal securities market
- The BDA believes that the SEC needs to provide interpretative guidance concerning how dealers should due diligence compliance with the Proposed Amendments to ensure that event filings are material for dealers reporting the related event filings under their MSRB Rule G-47 time of trade responsibilities

#### **Additional Links:**

- BDA outside counsel Nixon Peabody has created an alert on the proposed amendments that be read [here](#).
- The SEC's press release and Fact Sheet on the proposed amendments can be found [here](#).

### [Mayors See Infrastructure Investment As Key To Future As U.S. Metros Lead Nation's Job Growth, But Many Still Lag Behind.](#)

Washington, D.C. — While the nation's metropolitan areas are economically strong with more than 300 metros experiencing job growth in 2016 and accounting for 95% of all the U.S. job gains last year, growth continues to remain uneven, with nearly one-third of metro cities (121) still not having recovered their lost jobs from the Great Recession, according to a report released today by the U.S. Conference of Mayors.

These metros are predominantly older Midwestern communities suffering from the loss of heavy manufacturing jobs and an aging population and infrastructure.

The report further forecasts that by the end of the decade (2020) nearly one in four U.S. metros (88) will have employment levels below their 2008 levels, representing a decade of lost jobs. For some metros, the loss of jobs has been even more prolonged, with 23 cities having fewer jobs today than in 1990. A large number of metros (140 or nearly 37%) for the same period experienced annual job growth of less than 1%.

Issued during Infrastructure Week in Washington, D.C., the mayors' report also points to infrastructure spending as an economic tool that holds the promise of generating job growth across these metros. Such investment, if funneled directly to metro regions, can create jobs faster, relieve congestion, decrease costs to businesses and increase productivity—all of which further accelerates growth. The entire report and its key findings can be found [here](#).

"Some of the oldest infrastructure is in the Rust Belt metros, which our data show have lagged the national recovery and expansion. And while infrastructure investment is not a cure-all, it can provide cities a "shot in the arm" to help jumpstart their local economies," said U.S. Conference of Mayors President Oklahoma City Mayor Mick Cornett.

But increased infrastructure spending is also needed in high growth areas. The report's findings project that over the next 30 years, the U.S. metro population will grow by 66.7 million people, almost all of the nation's total population growth. By 2047, 72 metros will have population exceeding 1 million, compared to only 53 in 2016. In addition, five metros will have over 10 million people by 2047 - whereas only 2 currently meet that benchmark. And as the metro areas grow, so will traffic congestion.

U.S. metros are already the most congested areas in the country. In fact, from 2013 to 2014, 95 of the nation's largest 100 metros saw increased traffic congestion, up from 61 from 2012 to 2013. The price tag associated with this congestion, which is the value of wasted time and fuel, is estimated at \$160 billion in 2014 for U.S. urban areas, or \$960 per commuter.

Mayors maintain that infrastructure investment in roads, rails, bridges and other forms of transportation will help relieve the bottlenecks impeding economic expansion, noting for example, the 4.8 billion hours of travel delay Americans experienced in 2014.

"Infrastructure dollars should also be directed where the potential returns are greatest. Clearly, population and economic projections indicate that growth in the United States in the coming years will largely be in cities and their metropolitan areas," said Louisville, KY Mayor Greg Fischer, Chair

of the Conference's Council on Metro Economies which produced the report. "If we ignore these trends without preparing for future growth, we will face unnecessary challenges to human, environmental, and economic health."

Mayors consistently tout the strength of U.S. Metros that contribute 91% of the production of goods and services that make up the nation's total gross domestic product (GDP). In fact, since January 2009, 315 metros, 83% of all metros, gained jobs. And twelve of those metros, led by Provo at 29% and Austin at 27%, exceeded a 20% growth rate over the 2009-2016 period.

"We need the Administration and Congress to fulfill their pledge to put real dollars directly into the nation's metro cities, which are the engines of our national economy and have the best track record in delivering infrastructure on time and on budget," said U.S. Conference of Mayors CEO and Executive Director Tom Cochran. "As we look toward the release of the federal budget, mayors are hopeful, as the President promised, that an infusion of federal infrastructure dollars to our cities and metro areas is forthcoming. Anything less will be wholly insufficient to meet the infrastructure needs of the country."

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## **[U.S. Conference Of Mayors To Stress Importance Of Tax-Exempt Municipal Bonds During Infrastructure Week.](#)**

Washington, D.C. - On the heels of President Trump reaching 100 days in office, U.S. Conference of Mayors (USCM) President Oklahoma City Mayor Mick Cornett will add his voice to the need for additional infrastructure investment and the preservation of the tax exemption on municipal bonds at events in the nation's capital during Infrastructure Week (May 15-19).

On Wednesday, May 17, Mayor Cornett will join other local as well as state leaders at two events to emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment. In the morning, at 10 am, he will participate in a joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors to discuss infrastructure investment and the pressing need to protect tax-exempt bonds. In the afternoon, at 2 pm, Mayor Cornett will join a "Big 7" state and local government organizations briefing on Capitol Hill, where he will further emphasize the importance of tax-exempt bonds for cities. See schedule below.

For more than a century, municipal bonds have enjoyed tax-exempt status and have been the primary method by which state and local governments finance public capital improvements, mostly infrastructure. These projects are engines of job creation and economic growth.

Over the last decade, tax-exempt municipal bonds have been used to finance critical infrastructure including the construction of schools, hospitals, airports, affordable housing, water and sewer facilities, public power and gas utilities, roads and public transit. According to USCM data, local and state governments financed nearly \$1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012. In the absence of such financing, it would have cost cities up to \$500 billion more—dramatically increasing the costs borne by taxpayers for critical infrastructure projects.

"As Congress discusses tax reform measures in the coming months, mayors across the country will fight to preserve the tax exemption on municipal bonds so that we can continue to repair crumbling roads, bridges, water systems, and schools," said Mayor Cornett. "If Congress repeals the

exemption, it will strangle infrastructure investment causing economic growth to slow, the elimination of hundreds of thousands of jobs and further deterioration of our national infrastructure. When mayors met with President-elect Trump this past December, he assured us that he supported maintaining the exemption. We were encouraged by that assurance and hope that this successful and irreplaceable financing mechanism remains in place.”

Throughout Infrastructure Week, Mayors will challenge Washington to accept the fact that Mayors work with the private sector and the federal government to build infrastructure projects from start to finish faster, with more cost efficiencies than other governments. To prove the point, The U.S. Conference of Mayors has released its “On Task, On Time, On Budget” report. The report features city infrastructure projects, including transportation, water, energy, ports and public buildings, citing their financial structures and the many benefits that resulted from them.

As a national infrastructure package is developed, this new report is intended to inform Administration and Congressional leaders on why more infrastructure dollars should be directed to mayors and other leaders who ensure that such projects are implemented more efficiently, with greater economic impact and timeliness.

Mayors participating in Infrastructure Week Activities in Washington, D.C.:

May 17

*Oklahoma City Mayor Mick Cornett, USCM President* - “Built to Last: A Discussion on the Importance of Local Infrastructure Investment” | A joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors where USCM President Mayor Mick Cornett will emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment | NACo Conference Center: 660 North Capitol Street, NW, Washington, DC (10:00 - 11:00 am)

*Oklahoma City Mayor Mick Cornett, USCM President* - “State and Local Governments Drive America - A Discussion for the Future of Infrastructure Policy” | A “Big 7” state and local government organizations briefing where USCM President Mayor Mick Cornett will further emphasize the importance of protecting tax-exempt bonds for cities, counties and states | 2154 Rayburn House Office Building, Washington, DC (2:00 - 3:15 pm)

May 18

*South Bend Mayor Pete Buttigieg* - House Transportation & Infrastructure Subcommittee on Water and the Environment hearing on “Building a 21st Century Infrastructure for America: Improving Water Quality Through Integrated Planning” | 2167 Rayburn House Office Building | Washington, DC (10:00 am)

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## **[Wells Fargo Suffers Slump in Muni Bond Underwriting.](#)**

CHICAGO/SAN FRANCISCO — Wells Fargo & Co is paying a price in the U.S. municipal bond market for the bogus customer accounts scandal that hit the bank last year and led to bans by some cities and states, an analysis of Thomson Reuters data shows.

So far in 2017, Wells Fargo is in sixth place among senior underwriters of municipal bonds with 85 deals totaling nearly \$8.13 billion, according to the data. During the same period in 2016, the bank

ranked fourth with 134 issues totaling \$12.74 billion.

In September, Wells Fargo agreed to pay a \$190 million settlement over its staff opening as many as 2 million accounts without customers' knowledge.

California, along with Massachusetts, Chicago, and Ohio, suspended Wells Fargo last fall from pricing their negotiated bond sales due to the scandal.

Municipal issuers typically sell their debt either by hiring underwriters to price their bonds or by setting a date and time for underwriters to bid on the debt, and then choose the lowest bid.

Wells Fargo's ranking for negotiated deals slid to eighth place between Jan. 1 and May 17 from fourth place during the same period in 2016. The bank was the bookrunning underwriter on 45 deals totaling \$5.2 billion so far this year, compared to 79 deals totaling \$9.25 billion in 2016.

The bank's ranking drop for winning competitively bid issues was not as steep, falling to fifth place with 40 deals totaling \$2.92 billion so far this year from third place with 55 deals totaling \$3.48 billion last year.

"Public Finance is an important business for Wells Fargo with many opportunities for growth," Philip Smith, head of government and institutional banking at Wells Fargo, said in a statement to Reuters.

"We are continuing to invest in the business. Despite current political challenges affecting league tables, our strong relationships and diversified municipal business model have us growing (revenue) 15 percent year over year," Smith said.

#### CALIFORNIA DEAL

California sanctioned Wells Fargo over the accounts scandal last year. In April, however, it beat out eight other banks to win a \$635 million competitive deal in the state with a 2.811 percent interest rate, according to the California Treasurer's Office.

"We had no choice," said California State Treasurer spokesman Marc Lifsher. California law requires the state to award competitive sales of general obligation bonds to the bidder with the lowest interest cost, Lifsher said.

He added that the state plans to review the sanctions this fall, but as of Monday, the bank was "still in our dog house."

"We're continuing to pressure them to show us that they've cleaned up their act," Lifsher said.

By REUTERS

MAY 19, 2017, 4:54 P.M. E.D.T.

(Reporting By Karen Pierog in Chicago and Robin Respaut in San Francisco; Editing by Daniel Bases and Tom Brown)

## **Decisions.”**

**Norwalk, CT—May 18, 2017** — The Financial Accounting Foundation (FAF) today posted its [2016 Annual Report](#) to the FAF website. The report is available in print, [PDF](#), and [interactive digital](#) versions.

The theme of the 2016 Annual Report is “Better standards. Better-informed decisions.” It highlights the standard-setting activities of the FASB and the GASB in 2016—and how they contribute to better-informed decisions by investors, lenders, citizens, and others who rely on high-quality financial reporting. The report also looks at what the FAF did to support the Boards’ efforts and to ensure a robust, inclusive standard- setting process.

The 2016 Annual Report also features:

- Letters from FASB, GASB, and FAF leaders
- A special “How We’re Funded” section that provides a broad overview of FASB, GASB, and FAF funding sources, and
- Complete 2016 management’s discussion and analysis and audited financial statements (previously posted on the FAF website in April 2017).

The interactive, tablet-friendly version of the annual report also showcases a new video , “The Importance of GAAP,” aimed at non-technical audiences. It also includes listings of all FAF, FASB, and GASB advisory groups and their members, including the Private Company Council and the Emerging Issues Task Force.

Those interested in receiving a print copy of the report may request one by emailing Christine Klimek [cklimek@f-a-f.org](mailto:cklimek@f-a-f.org). Print copies are available in limited quantities and will be distributed on a first-come, first-served basis.

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## **SIFMA US Research Quarterly, First Quarter 2017**

### **About the Report**

A quarterly report containing brief commentary and statistics on the U.S. capital markets, including but not limited to: municipal debt, U.S. Treasury and agency debt, short-term funding and money market debt, mortgage-related, asset-backed and CDO debt; corporate bonds, equity and other, derivatives, and the primary loan market.

### **Summary**

Total Issuance Increases in 3Q’16 Quarter-Over-Quarter and Year-over-Year

Long-term securities issuance totaled \$1.90 trillion in 1Q’17, a 18.7 percent increase from \$1.60 trillion in 4Q’16 and a 13.1 percent increase year-over-year (y-o-y) from \$1.68 trillion. Issuance increased quarter-over-quarter (q-o-q) across all asset classes but municipal, mortgage-related and asset-backed securities; y-o-y, growth was positive in all asset classes except municipal debt.

Long-term public municipal issuance volume including private placements for 1Q’17 was \$90.5 billion, down 13.7 percent from \$104.9 billion in 4Q’16 and down 9.4 percent from 1Q’16.

The U.S. Treasury issued \$654.1 billion in coupons, FRNs and TIPS in 1Q'17, up 44.8 percent from \$451.6 billion in the prior quarter and 13.1 percent above \$578.2 billion issued in 1Q'16.

Issuance of mortgage-related securities, including agency and non-agency passthroughs and collateralized mortgage obligations, totaled \$406.5 billion in the first quarter, a 27.3 percent decline from 4Q'16 (\$558.9 billion) but a 12.3 percent increase y-o-y (\$361.9 billion).

Corporate bond issuance totaled \$468.7 billion in 1Q'17, up 79.0 percent from \$261.8 billion issued in 4Q'16 and up 17.9 percent from 1Q'16's issuance of \$397.4 billion. Of all 1Q'17 corporate bond issuance, investment grade issuance was \$381.0 billion (81.3 per-cent of total) while high yield issuance was \$87.7 billion (18.7 percent).

Long-term federal agency debt issuance was \$151.2 billion in the first quarter, a 49.1 per-cent increase from \$101.4 billion in 4Q'16 and a 2.5 percent increase from \$147.4 billion issued in 1Q'16.

Asset-backed securities issuance totaled \$75.8 billion in the first quarter, a decline of 3.5 percent q-o-q but an 37.5 percent increase y-o-y.

Equity underwriting increased by 23.4 percent to \$57.7 billion in the first quarter from \$46.8 billion in 4Q'16 and up 29.4 percent from \$44.6 billion issued in 1Q'16. Of the total, "true" initial public accounted for \$10.7 billion, up 144.8 percent from \$4.4 billion in 4Q'16 and up tenfold from \$1.2 billion in 1Q'16.

[View the Report.](#)

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## **[SIFMA Submits Comments to the SEC on Proposed Amendments to Rule 15c2-12.](#)**

The Securities and Exchange Commission has proposed rule amendments Rule 15c2-12 with the goal of improving investor protection and enhancing transparency in the municipal securities market. The amendments to Rule 15c2-12 add two event notices to Continuing Disclosure Agreements. First, issuers and obligated persons must disclose information on the incurrence of alternative financings, including bank loans, direct placements, and similar obligations, and terms of such financings. Second, issuers and obligated persons must disclose any default or termination events with regard to those alternative financings.

[View Comments.](#)

### **See also:**

- [Press Release: SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures](#)
- [Federal Register Notice](#)

May 15, 2017

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## **[GFOA: Infrastructure Week](#)**

GFOA is participating in Infrastructure Week in Washington DC and will be continuing the focus

during the Annual Conference.

[More](#)

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## **[MSRB to Establish Continuing Education Requirements for Municipal Advisors.](#)**

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to establish continuing education (CE) requirements for municipal advisor firms to ensure that individuals providing municipal advisory services to municipal entities and obligated persons remain current in their industry knowledge. [Read the approval notice.](#)

The requirements, which are part of the MSRB's regulatory framework for municipal advisors, will be implemented on January 1, 2018. Municipal advisor firms will have until December 31, 2018 to complete a needs analysis, develop a written training plan and deliver training to comply with the annual CE requirements that will be codified in amendments to [MSRB Rule G-3](#), on professional qualification requirements, and [MSRB Rule G-8](#), on recordkeeping. The MSRB plans to provide implementation guidance on how to conduct a needs analysis and develop a training plan and provide other resources to assist municipal advisor firms in developing a CE program. [Access resources for municipal advisors.](#)

"Ensuring that municipal advisor professionals are regularly receiving training on current regulations and market activities is in the best interests of the state and local government issuers relying on their advice," said MSRB Executive Director Lynnette Kelly. "The new CE requirements are an important piece of the MSRB's comprehensive regulatory framework for municipal advisors."

The new requirements fulfill the MSRB's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop professional qualification standards and CE requirements for municipal advisors. The CE requirements for municipal advisors align with existing CE requirements for municipal securities dealers and seek to reduce regulatory overlap for municipal advisors who may also act as dealers.

The MSRB will host an educational webinar on the CE requirements for municipal advisors on Thursday, October 5, 2017 at 3:00 p.m. to 4:00 p.m. ET. [Register for the webinar.](#)

The implementation of CE program requirements by municipal advisors complements the baseline examination of competency for municipal advisor professionals, the Municipal Advisor Representative Qualification Examination ([Series 50 exam](#)), which municipal advisor professionals must take and pass by September 12, 2017 to continue to engage in municipal advisory activities.

Date: May 17, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer  
202-838-1500  
[jgalloway@msrb.org](mailto:jgalloway@msrb.org)

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## **[The Future of Economic Development: Using Health Care as an Economic Driver, Public-Private Partnerships as a Platform to Further Development, and Minority Participation as a Path Forward in a More Diverse Mississippi.](#)**

[The Future of Economic Development: Using Health Care as an Economic Driver, Public-Private Partnerships as a Platform to Further Development, and Minority Participation as a Path Forward in a More Diverse Mississippi.](#)

by Tray Hairston | Butler Snow

Mississippi College Law Review

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### **[New York Town Official Convicted in Landmark Bond Fraud Case.](#)**

NEW YORK — An elected official of a New York City suburb was convicted on Friday of what authorities have called the first criminal securities charges brought over municipal bonds, a spokesman for federal prosecutors said.

Christopher St. Lawrence, the elected supervisor of Ramapo, New York, was convicted by jurors in federal court in White Plains, New York, of 20 counts including securities fraud, wire fraud and conspiracy. The charges stemmed from actions aimed at securing financing for a stadium in the town.

A lawyer for St. Lawrence could not immediately be reached for comment.

New York federal prosecutors charged St. Lawrence in April 2016 along with Aaron Troodler, former executive director of the town-owned Ramapo Local Development Corp. Prosecutors said the two men defrauded investors who helped finance a controversial minor league baseball stadium.

Troodler pleaded guilty in March under an agreement with prosecutors and testified against St. Lawrence at the trial.

The case followed U.S. regulators' push in recent years to bring civil actions against those accused of misconduct in the \$3.7 trillion U.S. municipal bond market.

Prosecutors said Ramapo and the development corporation sold more than \$150 million of bonds while Troodler and St. Lawrence concealed the town's deteriorating finances.

The town's financial woes were largely due to a \$58 million minor league ballpark project, prosecutors said. The park is home to the Rockland Boulders.

Ramapo residents rejected a plan to guarantee bonds used to finance the park in a 2010 referendum, and St. Lawrence told residents that no public money would be used to pay for the project. But Ramapo ended up paying more than half the cost, according to prosecutors.

St. Lawrence and Troodler falsified the town's finances to help sell the bonds, including by putting millions in fake receivables on its books, prosecutors said.

St. Lawrence is also facing civil claims by the U.S. Securities and Exchange Commission.

In May 2016, after the charges were filed, Moody's Investors Service downgraded the town's outstanding bonds two notches to A3, still in the investment grade category. In February, Moody's withdrew its rating altogether because the town did not file audited financial statements.

The town, which is 28 miles northwest of New York City and had 126,595 residents as of the 2010 census, has said it significantly reduced its debt and cut its exposure to the development corporation by 62 percent as of Dec. 31.

By REUTERS

MAY 19, 2017, 4:00 P.M. E.D.T.

(Reporting By Brendan Pierson in New York; Editing by Cynthia Osterman)

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## **Santander Becomes Target of Puerto Rican Anger Over Bond Losses.**

Carlos Burgos Alvarado sank the \$50,000 he inherited from his father into "bonos." He believed they were safe, high-yielding, tax-exempt bonds issued by Puerto Rico.

He was wrong.

According to Burgos, the Santander Securities LLC broker who sold him the investment in April 2013 didn't tell him its credit rating had been downgraded the previous December, making it riskier to own. She didn't tell him that Santander had underwritten the debt, sharing \$15.6 million in fees. She didn't tell him that the bank was in the process of selling its own inventory of the bonds.

Burgos said he didn't discover any of this until late last year, when he hired a lawyer, who's trying to figure out whether what Burgos bought came from Santander's own portfolio. Santander Holdings USA Inc. said it was common for broker-dealers to both underwrite and sell the bonds and the bank obeyed all laws and regulations.

"Very bad, very bad," Burgos said in an interview. "It made me very angry."

Puerto Rico's \$74 billion debt crisis has been cast as a wrestling match between the government and the hedge funds that bought distressed debt on the cheap. But tens of thousands of bondholders are people like Burgos, Puerto Rico residents who invested a total of \$7 billion in bonds, much of them low-rated, to fund their retirements.

"A lot of the stuff that went on in Puerto Rico would not have been allowed on the mainland," said Craig McCann, founder of Securities Litigation & Consulting Group in Fairfax, Virginia, and a former economist at the Securities and Exchange Commission.

### **Closed-End Funds**

McCann points to the absence in Puerto Rico of what investors in the 50 states take for granted: a conflict-of-interest prohibition for banks. Democratic Representative Nydia Velazquez of New York called this discrepancy "unconscionable treatment of Puerto Ricans as second-class citizens." She sponsored legislation, which passed the House this month, to close the loophole. Senate approval would make it law.

Unlike Burgos, who owned the bonds directly, many locals bought government debt through closed-

end funds — products similar to mutual funds which were purchased by locals who wanted to own government debt. Santander and UBS Group AG's Puerto Rico unit, among the island's biggest brokerages, sold closed-end funds. Unlike most mutual funds, however, the funds used as much as 50 percent borrowed money, meaning a downturn would cause amplified losses.

Santander's funds "complied with all applicable laws, regulations and requirements, including those established by Puerto Rico's securities regulator, and these requirements were fully disclosed in the funds' prospectuses," Ann Davis, a bank spokeswoman, said in a statement. "Each fund's prospectus also included an extensive discussion of risk factors associated with investing in the fund."

Peter Stack, a UBS spokesman, said in a statement that despite the island's economic woes, "these funds have to date paid out over \$4 billion in dividends to Puerto Rico investors."

As much as the island's situation differs from the mainland's, there are parallels, too. There's the timing of ratings companies' downgrades and the role of retail investors, whose sleep-at-night money fueled a profit machine that benefited everyone — until the island's dismal economic condition ground it to a halt.

On the island, the May 3 municipal bankruptcy filing, the biggest in American history, pits a half-dozen or so investor classes against Puerto Rico and against one another for a piece of a pie that's too small to satisfy everyone. The commonwealth says it can only cover about \$8 billion of \$33.4 billion in bond payments due through 2026.

### **Bad Advice**

There are two types of local bond investors, said Sergio Marxuach, policy director at the Center for the New Economy in San Juan. "There's a group of people that got bad advice from their financial adviser or their broker," he said. And then there are those who "decided to go all in on Puerto Rico bonds just to reduce significantly their tax liabilities," he said. Those people "knew that was a very risky strategy."

For local bond investors, the wheels began to come off in 2013, soon after Burgos invested the money, which was more than he'd ever made in a year. In August, a Barron's cover story on the risks of the island's securities sent prices tumbling. By the end of that year, many of UBS's closed-end funds lost half or nearly half their value, according to research conducted by McCann.

### **Something Wrong**

Burgos said his broker told him not to worry even as his principal shrank, that he would get his investment back when the bonds matured. According to McCann, Santander should have known the bonds were effectively junk when it sold them to Burgos.

"By the time you get to the end of 2012, sophisticated market professionals, including the ones at Santander, knew that Puerto Rican municipal bonds should be considered junk," he said. "Even though they hadn't been downgraded to junk status yet, they were trading at credit spreads consistent with them being junk bonds."

Between late 2012 and October 2013, Santander marketed more than \$280 million in Puerto Rico municipal bonds and its closed-end funds to clients while unloading its holdings of the securities, according to Financial Industry Regulatory Authority documents. UBS and Santander would eventually agree to pay fines through settlements with Finra for inadequately monitoring the risks of closed-end funds. Santander's Davis had no comment on the settlements.

## **'Protected Themselves'**

"They protected themselves and sold their positions but left their clients holding the bag," said Peter Mougey, a Florida-based attorney at Levin Papantonio who represents local investors filing Finra claims against the banks.

Arbitration claims are mounting. More than 1,870 have been filed, according to Securities Litigation & Consulting Group, and more than \$200 million doled out as awards. McCann said he expects that the number of claims will rise now that the island has begun a bankruptcy proceeding. Mougey's law firm says it's set to represent 400 clients.

One of them is Burgos, now 65. After the bonds he held stopped paying interest, he said he's had to turn to his partner's children to help pay medical bills.

"I'm always paying the bills late," Burgos said. "We take it day by day, and we're always behind on things each month."

He said he's seen his Santander broker when she appears in newspaper society pages. The bank settled eight arbitration claims filed against her for fraud and breach of fiduciary duty, Finra data show. At least 14 other claims are pending.

"Call me a cynic, but the firms had to find a home for the bonds they were underwriting," said Mougey, the plaintiffs' attorney. "They had to move them out the back door and the funds and the clients were the mechanisms to do that."

## **Bloomberg Quint**

by Rebecca Spalding and Michelle Kaske

May 17, 2017, 6:37 am

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## **[Puerto Rico Strikes Second Restructuring Deal with Bondholders.](#)**

Puerto Rico reached a restructuring agreement with bondholders invested in the commonwealth's Government Development Bank, officials announced Monday in San Juan.

Parties to the agreement include the Ad Hoc Group of Bondholders, whose members are funds managed or advised by Avenue Capital Management II, Brigade Capital Management, Fir Tree Partners and Solus Alternative Asset Management. The group's financial adviser, Bradley Meyer of Ducera Partners in New York, said in a statement that the agreement "is fair to all parties."

Puerto Rico's Federal Affairs Administration said in that statement that GDB creditors "have agreed to substantial discounts to the principal," but did not provide further details on the agreement, which calls for bondholders to exchange claims for one of three tranches of bonds issued by a new municipal entity. The new bonds will have varying principal amounts, interest rates, collateral priority, and other payment terms.

Restructuring agreements must be approved by the Financial Oversight Management Board and the U.S. District Court in San Juan. Mr. Rosello said in the statement that the agreement "is an example that the government is regaining the credibility it had lost over the past few years."

## **[Puerto Rico's Bankruptcy Hearing Marks Reset of Asset Scramble.](#)**

NEW YORK — Puerto Rico is due to embark on a bankruptcy process on Wednesday that could take years to resolve, as investors scramble to get the highest recovery on their bonds.

The debt is still trading at elevated levels versus what the government has set aside for payment under its financial recovery plan, and creditors worry about whether they will be able to recoup at those prices.

Whether they get that level of recovery is debatable, according to investors and analysts, as the U.S. territory seeks to restructure more than \$70 billion in debt, from multiple agencies, and another near \$45 billion in underfunded pension liabilities.

“The 25 percent may be what the Commonwealth identified as available to cover debt service but it doesn’t necessarily mean that will be the ultimate recovery,” said Shaun Burgess, portfolio manager and lead trader for Puerto Rico strategy at Sarasota, Florida-based Cumberland Advisors.

Puerto Rico, with 3.5 million U.S. citizens, has spent the last ten years in recession with debt piling up to pay for basic services. The poverty rate is at 45 percent, unemployment is at 11 percent and the population is shrinking as islanders emigrate to the mainland United States in search of a better life.

Burgess, who owns insured Puerto Rican debt, did not want to speculate on the final recovery prices, or the potential losses for major mutual funds, but said negotiations could include lowering the coupon rates, reducing principal and extending maturity dates.

“There isn’t enough information, especially as it relates to time frame and potential recoveries,” he said.

Yet to be worked out is how an \$800 million pot of money set aside in the government’s certified 10-year fiscal recovery plan will be apportioned between competing claims including those of constitutionally backed general obligation debt (GO) and sales-tax backed bonds known as COFINA.

That pot of money represents less than a quarter of what is needed to service debt annually.

That question will ultimately be settled by U.S. District Judge Laura Taylor Swain of the Southern District of New York when the bankruptcy-like proceeding begins in a San Juan courtroom on Wednesday.

Swain, appointed by U.S. Chief Justice John Roberts on May 5th, is operating under the authority granted by the U.S. Congress, which passed a law last year known as PROMESA (Puerto Rico Oversight, Management, and Economic Stability Act).

PROMESA established a federal oversight board with the authority to negotiate the restructuring of the island’s debt. It includes a provision known as Title III that establishes a legal pathway, previously unavailable, for Puerto Rico to settle its obligations through a bankruptcy-like process.

Normally, GO debt is the most senior in a municipality's capital structure and the first to be paid. COFINA creditors are fighting to ensure its revenue stream doesn't get diverted to pay other debt.

"Clearly we don't know what to expect, but it is going to be a lengthy and tortuous process. This is going to take longer than Detroit," said Mikhail Foux, municipal research director at Barclays Capital in New York. Detroit's case took 18 months.

"I would assume the final solution should also address the pensions because if you are bondholder why would you take a haircut knowing the pension liability question could just send you back to square one again," he said.

## UNPRECEDENTED

Puerto Rico's bankruptcy dwarfs Detroit's, the previous record holder for municipal bankruptcy at \$18 billion in debt and obligations that was ultimately reduced by \$7 billion.

"The main take-away I have from the experience of Detroit or GM (General Motors) is that politics trumps contracts. I expect the final result to involve big haircuts, low coupons and long maturities for bondholders, and it probably doesn't matter if its GO's or COFINAS," said Robert Rauch, senior partner and portfolio manager at emerging market asset manager Gramercy.

Currently Puerto Rico's benchmark general obligation debt, an 8 percent coupon bond maturing in 2035, last traded at a bid price of 60, according to Thomson Reuters data. <74514LE86=MSRB>

"Current prices reflect the fact that the muni market doesn't permit shorting. As long as the current core of bondholders is supporting the market it won't go down to a level that reflects realistic recoveries," said Rauch, whose firm specializes in emerging markets and distressed debt.

COFINA bondholders were the first to sue the government after the freeze on creditor litigation under PROMESA expired at Midnight May 1st. They accuse Puerto Rico, Governor Ricardo Rossello and other officials of angling to repurpose the tax revenue earmarked to pay COFINA debt.

"If COFINA is pierced, many people would say it is one-off situation and not precedent setting. But it could have some effect on other municipal credits," Foux said.

Senior COFINA debt carrying a 5.25 percent coupon maturing in 2057 was bid at 57 with a yield of 9.39 percent on Tuesday. <74529JAR6=MSRB>

The 6 percent 2042 subordinated COFINA bond has steadied, last bid at 23.71 with a yield rising to 25.5 percent <74529JHN8=MSRB>. This bond has dropped by more than 50 percent since the board certified the government's fiscal plan in March.

"The fiscal plan only allows for a certain amount of money for debt servicing and it isn't enough. Why are market prices still implying higher recoveries? One factor to remember is there are competing claims between GO and COFINA. They can't both be right. Therefore, in aggregate prices to need to go lower," said David Hammer, head of municipal bond portfolio management at Pimco in New York.

By REUTERS

MAY 17, 2017, 5:30 A.M. E.D.T.

(Reporting By Daniel Bases; editing by Diane Craft)

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## **[Puerto Rico Retirees Will Get Bankruptcy Committee: U.S. Trustee.](#)**

NEW YORK — The U.S. Department of Justice’s bankruptcy watchdog said on Friday it plans to appoint a committee of retirees in Puerto Rico’s bankruptcy to negotiate for pensioners facing benefit cuts as part of the island’s debt restructuring.

Puerto Rico, carrying some \$50 billion in unfunded pension liabilities, “clearly needs a retiree committee and sooner rather than later,” the office of the U.S. Trustee said in a filing in federal court in San Juan.

Puerto Rico filed the biggest municipal bankruptcy in U.S. history earlier this month. In addition to its pension debt, the U.S. territory has around \$70 billion in bond debt it cannot pay.

While retiree committees are common in bankruptcies with big pension debts, the Trustee in Puerto Rico’s case took the rare step of announcing intentions to appoint a committee without waiting for a blessing from the judge in the case, U.S. District Judge Laura Taylor Swain.

“The Trustee typically will refrain from exercising his discretion ... to appoint an additional committee until the court has an opportunity to rule,” the filing said. “But this case is not like most cases.”

Puerto Rico’s biggest public pensions are almost 100 percent underfunded, a gap thought to be the largest state-level pension hole in U.S. history.

The federally-appointed board overseeing the island’s finances has called for cuts to pension benefits, saying they are necessary to pull the island out of a crisis marked by a 45 percent poverty rate, unemployment more than twice the U.S. average, and near-insolvent public health systems.

The Trustee said it expects to complete the solicitation process for the committee by June 16.

At the island’s first bankruptcy hearing this week in San Juan, Robert Gordon, an attorney for an informal group comprising 91,000 retirees, argued “they have earned the right to participate in this process.”

The Trustee, however, stressed in its filing that Judge Swain should not grant Gordon’s group the right to serve as the official committee. Appointing the committee is the job of the Trustee, the filing argued.

Gordon could not be immediately reached for comment.

By REUTERS

MAY 19, 2017, 4:09 P.M. E.D.T.

(Reporting by Nick Brown; editing by Grant McCool)

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- [BDA / Nixon Peabody Issue Price Summary Document.](#)
  - [NFMA Comments on Proposed Amendments to SEC Exchange Act Rule 15c2-12.](#)

- [A Requiem for Reasonable Expectations: Squire Patton Bogs](#)
- [New IRS Arbitrage Publication and TEB Training Texts Now Available.](#)
- [Amid Divestment Protests, More Cities Explore Public Banks.](#)
- [Commentary: Advances in Advance Refunding.](#)
- [Municipal Bonds 201: A Breakfast Seminar Presented by Municipal Bonds for America \(MBFA\)](#)
- Any tax nerds out there might want to take a gander at [County of Douglas v. Nebraska Tax Equalization and Review Commission](#). (The qualifier “might” is deployed due to the fact that we didn’t understand a word of it.)
- And finally, the Supreme Court of Connecticut wonders exactly how it got dragged into a landlord/tenant dispute about a dog named “Mellow” this week in [Presidential Village, LLC v. Phillips](#). Please note that the Phillips were fighting to remain in the “Presidential Village.” Having reported from the front lines of New Haven, we can assure you that naming a New Haven apartment complex the “Presidential Village” is the cruelest of ironies. Then again, perhaps the slightly more accurate “Rat-Infested Hellhole” was already taken.

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## **COSTS - CALIFORNIA**

### **[Save Our Heritage Organisation v. City of San Diego](#)**

**Court of Appeal, Fourth District, Division 1, California - April 27, 2017 - Cal.Rptr.3d - 2017 WL 1505923 - 17 Cal. Daily Op. Serv. 4000**

Project opponents brought action for writ of mandamus, seeking to contest city’s approval of revitalization project for historic park area which involved converting park to pedestrian only use and re-routing traffic on new bridge bypass.

The Superior Court issued writ. City committee appealed, and opponents cross-appealed, and the Court of Appeal reversed in part. City committee filed motion for attorney’s fees under the private attorney general statute. The Superior Court denied the motion, and city committee appealed.

The Court of Appeal held that:

- City committee’s status as a project proponent did not categorically bar it from obtaining award of attorney’s fees under the private attorney general doctrine, and
- Action was not detrimental to the public interest and thus did not warrant award of attorney’s fees under the private attorney general doctrine.

City committee’s status as a proponent of revitalization project for historic park area did not categorically bar it from obtaining award of attorney’s fees from project opponents under the private attorney general statute as a “successful party” if it otherwise satisfied the requirements for such an award.

Project opponents’ action contesting city’s approval of revitalization project for historic park area, which involved converting park to pedestrian only use and re-routing traffic on new bridge bypass, was not detrimental to the public interest and thus did not warrant award of attorney’s fees, under the private attorney general doctrine, to city committee as the successful party. Litigation did not seek to curtail or compromise important public rights or exonerate a violation of such rights, but sought to correct perceived violations of state and local environmental, historic preservation, and land use laws, and was precisely the type of enforcement action the doctrine sought to promote.

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## **HOUSING - CONNECTICUT**

### **[Presidential Village, LLC v. Phillips](#)**

**Supreme Court of Connecticut - May 9, 2017 - A.3d - 325 Conn. 394 - 2017 WL 1719185**

Landlord brought summary process action against tenant of federally subsidized apartment, based on tenant's keeping of "emotional support dog" in violation of pet restriction clause of lease.

The trial court entered judgment in favor of tenant, based on equity. Landlord appealed. Appeal was transferred to Supreme Court.

The Supreme Court of Connecticut held that:

- Appeal was not rendered moot by landlord's commencement of second summary process action against tenant, which was dismissed;
- Trial court could not rely on "spirit" of Department of Housing and Urban Development in exercising equitable discretion to enter judgment in favor of tenant;
- Trial court abused its discretion in applying doctrine of equitable nonforfeiture; and
- Summary process action was "civil action" to which medical treatment report exception to hearsay rule could be applied to allow for admission of letter from physician and social worker of tenant's niece concerning dog's benefit to niece.

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## **HIGHWAYS - KENTUCKY**

### **[Collins v. Commonwealth, Transportation Cabinet, Department of Highways](#)**

**Supreme Court of Kentucky - April 27, 2017 - S.W.3d - 2017 WL 1538165**

Widow of school bus driver killed in collision with oversized vehicle on "non-designated" highway sought review of decision of the Board of Claims, denying claim alleging that the Department of Highways was negligent in its failure to enforce length and width restrictions applicable to commercial vehicles.

The Circuit Court reversed and remanded. The Department of Highways appealed. The Court of Appeals reversed. Widow appealed.

The Supreme Court of Kentucky held that:

- Department of Highways was not charged with a statutory or regulatory duty to enforce vehicle size restrictions, and
- The common law duty of Department of Highways to keep highways in a reasonably safe condition did not extend to ensuring compliance with size restrictions.

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## **DEVELOPMENT IMPACT FEES - MARYLAND**

### **[Dabbs v. Anne Arundel County](#)**

**Court of Special Appeals of Maryland - March 30, 2017 - A.3d - 2017 WL 1180542**

Property owners brought class action against county, seeking to recover development impact fees.

The Circuit Court entered take-nothing declaratory judgment in favor of county. Property owners appealed.

The Court of Special Appeals held that:

- County council bill codifying procedures for counting impact fee expenditures and encumbrances, for purposes of determining impact fee refunds, could be applied retroactively to calculation of whether impact fee refunds were due to property owners who had paid such fees;
- State laws allowing for imposition of impact fees and defining state rated capacity, for purposes of educational funding, did not preempt ordinance authorizing county to use impact fees for temporary classroom structures provided they expanded capacity of schools to serve new development; and
- Property owners had no vested rights that would preclude prospective repeal of impact fee refund provisions previously set forth in county code.

County was not required to provide actual accounting of development impact fees, without the new accounting procedures of retroactive county legislation, to property owners who sought refund of fees in action against county; discovery was a fully effective means for property owners to obtain information sought in motion for accounting, and county provided property owners with the documents necessary to determine whether impact fees were available for refund.

Property owners had no vested rights that would preclude prospective repeal of impact fee refund provisions previously set forth in county code, which had required county to refund fees that had not been expended or encumbered within six fiscal years following the fiscal year of collection, where effective repeal date was prior to expiry of that six year period.

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## **AUCTION RATE SECURITIES - NEW YORK**

### **[Presbyterian Healthcare Servs. v. Goldman Sachs and Co.](#)**

**United States District Court, S.D. New York - March 17, 2017 - Slip Copy - 2017 WL 1048088**

Plaintiffs Presbyterian Healthcare Services and the New Mexico Hospital Equipment Loan Council sued their financial advisor and the broker-dealer for their Auction Rate Securities - Goldman Sachs and Co., - alleging that Goldman Sachs wrongfully failed to disclose material facts about the stability of the ARS market, resulting in the loss of over \$10,000,000 when the ARS market crashed in 2008.

Goldman Sachs moved to dismiss and the District Court granted the motion.

“Because the Second Circuit Court of Appeals has repeatedly rejected claims materially identical to the claims here, and because some of Plaintiffs’ causes of action are barred by the statute of limitations, the Court grants Goldman Sachs’s motion to dismiss.”

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## **ECONOMIC DEVELOPMENT LOANS - NORTH CAROLINA**

### **[Woods v. City of Greensboro](#)**

**United States Court of Appeals, Fourth Circuit - May 5, 2017 - F.3d - 2017 WL 1754898**

Minority-owned business, which operated television network, brought action against city, asserting

claim for race discrimination under § 1981 arising out of city's denial of economic development loan.

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

The Court of Appeals, Davis held that:

- Business was not required to allege that it was certified as minority business enterprise under state law in order to establish imputed racial identity, and
- Business stated race discrimination claim against city.

Business was not required to allege that it was certified as minority business enterprise under state law in order to establish imputed racial identity, as required for business to have standing to assert racial discrimination claim under § 1981 against city, which denied business's application for economic development loan; business alleged that it was entirely owned and led by protected minority group and represented itself as minority business enterprise.

Minority-owned business, which sought economic development loan from city, stated race discrimination claim against city under § 1981. Business alleged that study found that less than 0.2% of economic development loans were distributed to minority businesses despite fact that city was over 40% African-American, that it had sufficient equity to secure the loan, that city was more willing to afford accommodating treatment to non-minority companies, that city had backed out of commitments to other minority companies, and that although it was initially approved for loan under one set of terms and subsequently denied loan under second set of terms, it would have been approved under both sets of terms if it had been a non-minority company.

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## **[CUSIP Requests Pull Back in April Signaling Possible Slowdown in Corporate and Muni Bond Issuance Volume.](#)**

NEW YORK, NY, MAY 10, 2017 - CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for April 2017. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, found a slowdown in the pre-trade market for corporate and municipal bonds in April. This reduced demand for new CUSIP IDs for corporate and municipal bonds is suggestive of a possible slowdown in new security issuance volume over the coming weeks.

[Read Report.](#)

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## **[NFMA Comments on Proposed Amendments to SEC Exchange Act Rule 15c2-12.](#)**

The National Federation of Municipal Analysts commented to the SEC on proposed amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17).

To view the letter, [click here.](#)

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## **[BDA / Nixon Peabody Issue Price Summary Document.](#)**

BDA and Nixon Peabody have released an [Issue Price Summary Document](#) to assist BDA members in engaging issuer clients in conversations about the new issue price rules, which are effective on June 7th.

The BDA / Nixon Peabody document is designed to provide an overview of the new issue price rules, including important new definitions and requirements related to competitive and negotiated deals.

### **BDA Next Steps on Issue Price**

BDA and Nixon Peabody will host an in-depth conference call on issue price during the week of May 22nd. That call will include a more detailed overview of how the obligations and requirements of underwriters will differ for negotiated and competitive deals. It will also provide an opportunity for BDA members to ask questions and discuss priority compliance issues.

Please expect a scheduling email for that call shortly. In the interim, please email [jvahey@bdamerica.org](mailto:jvahey@bdamerica.org) with any issue price questions so we can be sure to address common questions on the upcoming call.

### **Additional Information**

The final IRS issue price rule is [here](#).

The SIFMA model issue price documents are [here](#).

The NABL model issue price certificates are [here](#).

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## **[Fitch: Not-for-Profit Children's Hospitals Medians High; Medicaid Exposure Presents Risk.](#)**

**Fitch Ratings-Chicago-10 May 2017:** Children's hospitals' strong 'AA-' median rating reflects their unique credit profile characterized by robust liquidity, solid operating profitability, unique market positions, strong philanthropic support, and specialized clinical services, according to a new Fitch Ratings report. However, operating pressures have resulted in some mild profitability contraction in fiscal 2016.

"Children's hospitals' high exposure to Medicaid and supplemental funding, and their inherent vulnerability to governmental funding cuts, constitutes the primary credit concern for this sub-sector of the industry," said Emily Wadhvani, Director.

"Proposed reductions to Medicaid and other supplemental healthcare funding cuts currently contemplated in Congress are likely to pressure these hospital providers over the longer term if enacted."

Median operating EBITDA margin was 12.6 percent against 14.1 percent the prior year. Median debt service coverage by EBITDA also declined to 6.5x against a more robust 7.8x the prior year.

The year-over-year fluctuation is due to a tapering off of volume and funding growth following Medicaid expansion, weaker investment returns in fiscal 2016 and continued capital outlays that

have generally outpaced the broader acute care sector.

Despite tightening cash flow, median days cash on hand improved for the fourth consecutive year to 334 days in fiscal 2016, as did median cash to debt, to 269%. Both remain substantially stronger than the respective median ratios for Fitch's general not-for-profit hospitals.

For more information, a special report titled "2017 Median Ratios for Not-for-Profit Children's Hospitals" is available on the Fitch Ratings web site at [www.fitchratings.com](http://www.fitchratings.com).

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Additional information is available on [www.fitchratings.com](http://www.fitchratings.com)

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## **TAX - LOUISIANA**

### **[Jazz Casino Company, L.L.C. v. Bridges](#)**

**Supreme Court of Louisiana - May 3, 2017 - So.3d - 2017 WL 1787821 - 2016-1663 (La. 5/3/17)**

Taxpayer, a casino, petitioned for a writ of mandamus to the Secretary of the state Department of Revenue to compel satisfaction of a judgment by the state Board of Tax Appeals granting it a refund for hotel occupancy taxes paid.

The District Court granted writ. Department appealed. The Court of Appeal reversed and recalled writ. Taxpayer appealed.

The Supreme Court of Louisiana held that:

- Duty of the Secretary of the state Department of Revenue to refund the overpaid taxes was ministerial;
- Taxpayer did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; and
- Writ of mandamus ordering the Secretary to use current collections of hotel occupancy taxes to refund taxpayer did not violate the constitutional prohibition of seizing public funds.

Duty of the Secretary of the state Department of Revenue to refund overpaid hotel taxes to taxpayer in accordance with a judgment of the state Board of Tax Appeals was ministerial, and thus a writ of

mandamus ordering the Secretary to refund the taxes was proper. The refund of overpaid taxes was mandatory, and state law expressly authorized the use of mandamus relief to compel the Secretary to promptly make the refund.

Taxpayer, a casino, that was seeking a writ of mandamus to order the Secretary of the state Department of Revenue to refund overpaid hotel occupancy taxes in accordance with a judgment of the state Board of Tax Appeals did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; state law afforded the judiciary authority to issue a writ of mandamus in such a case, and when a writ of mandamus was specifically provided as a remedy by statute, the general rules for a mandamus action did not apply.

The issuance of a writ of mandamus ordering the Secretary of the state Department of Revenue to use current collections of hotel occupancy taxes to refund taxpayer, a casino, for overpaid hotel occupancy taxes in accordance with judgment of the Board of Tax Appeals did not violate the constitutional prohibition of seizing public funds; the legislature specifically authorized a refund procedure out of the current tax collections to provide for the satisfaction of a final judgment against the Secretary to effect the return of money belonging to a taxpayer, and to hold otherwise would have rendered meaningless the constitutional guarantee of a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

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## **TAX - NEBRASKA**

### **[County of Douglas v. Nebraska Tax Equalization and Review Commission](#)**

**Supreme Court of Nebraska - April 27, 2017 - N.W.2d - 296 Neb. 501 - 2017 WL 1532713**

County sought review of the decision of the Tax Equalization and Review Commission (TERC) that adjusted the valuation of three areas of residential real property in the county and denied county's motion for reconsideration.

The Supreme Court of Nebraska held that:

- Reappraisal, and not an 8% decrease in area's valuation, was the proper remedy to the lack of uniformity and regressive vertical inequity in one area's property value assessments;
- Sufficient evidence supported TERC's order of a 7% increase in valuations of other two areas;
- As matter of apparent first impression, the abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body; and
- TERC did not abuse its discretion by denying county's motion to reconsider.

Reappraisal, rather than Tax Equalization and Review Commission's (TERC) order of an 8% decrease in valuation, was the proper remedy for the lack of uniformity and regressive vertical inequity in property value assessments in valuation area, and thus TERC's order was arbitrary, capricious, and unreasonable. The median assessment-to-sales ratio for the area of 104.82% and the coefficient of dispersion of 48.43%, which was outside the acceptable range of 15%, meant that a blanket equalization order would not solve the area's lack of assessment uniformity, but would only shift the problem, and the price-related differential of 1.22 showed that the lower-value properties in the area were significantly overassessed while higher-value properties were significantly under-assessed.

Sufficient evidence supported Tax Equalization and Review Commission's (TERC) order of a 7% increase to valuations of areas with median assessment-to-sales ratios of 89.77% and 90.08%, which fell outside the statutory range of 92% to 100%. The quality statistics showed that the median was a

reliable indicator of central tendency, the coefficients of dispersion of 15.27% and 12.49% for the areas were within or at the top of the acceptable range of 15%, the price-related differentials for the areas of 1.0571 and 1.0347 were at or slightly above the top of the acceptable range of 0.98 to 1.03, and minor regressive vertical inequity was minimal.

The abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body.

Tax Equalization and Review Commission (TERC) did not abuse its discretion by denying county's motion to reconsider TERC's decision to order the adjustment of three valuation areas of residential real property, despite argument that state Property Tax Administrator's report improperly included sales that county categorized as non-arm's-length transactions and matched sales data to the wrong areas, where county did not allege that the Administrator's report improperly included sales that the county designated in the sales worksheets as non-usable, county could have raised allegations in the show-cause hearing that sales data was matched to the wrong areas, and county provided no information as to the impact of the alleged errors with the mismatched data.

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## **[Bloomberg Brief Weekly Video - 05/11](#)**

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

[Watch video.](#)

### **Bloomberg**

May 11, 2017

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## **[New P3s May Finally Bridge the Digital Divide.](#)**

***Many municipalities are forming public-private partnerships to bring high-speed Internet to long-neglected places. Their approaches, however, vary widely.***

**Andrew Dean remembers** counting down to "Ting Day." That was the day in December 2014 when Dean's Maryland software business was getting hooked up to the kind of high-speed Internet that most Americans only dream about. Ting, the company that would replace Comcast as the office's Internet service provider, offered a new fiber-optic connection that promised to be incredibly fast: a gigabit per second. That's about 26 times faster than the average U.S. Internet connection. Gigabit fiber is so fast that users can download a full-length, high-definition movie file in two minutes and can watch five video streams at the same time. A user can upload a file to the cloud faster than she can save it to a thumb drive attached to her computer. For Dean and his co-workers, Ting Day couldn't come soon enough.

At first blush, Dean's software company might not seem like the kind of business that would attract

such a coveted asset. Open Professional Group, where Dean is the president, employs 19 people and is located in Westminster, Md., a quaint town of about 18,000 people half an hour north of Baltimore. The area was largely rural and blue-collar when Dean grew up there, but these days it's better known as a bedroom community for commuters to Baltimore or Washington, D.C. In other words, it doesn't have the kinds of institutions, like a major university or a big corporate headquarters, that would require fiber-optic networks.

But the city of Westminster has struck a deal with Ting that, it hopes, will result in a citywide network of fiber-optic connections to every home and business. Under the terms of their public-private partnership, the city is laying all the fiber itself, which Ting is then paying to lease for customers, whom it is responsible for signing up and serving. The more fiber the city installs, the more customers Ting can reach. The more customers Ting signs up, the more the company pays the city. Eventually, other service providers will be allowed to compete with Ting on the network as well. "We may not be curing cancer," Dean says, "but the technology provides us with a tool that allows us to do what we do faster, to do what we do better and to be able to do more of it. That means I get to hire more people and we get to grow."

Right now, the Westminster project is perhaps the nation's most closely watched public-private partnership trying to deliver high-speed Internet access. Many other local governments are also looking to public-private partnerships for broadband to spur development in places where the private company won't provide it on their own. The approaches vary widely, and many are still in their early stages. But if they're successful, these P3s could finally crack the code of how to bring next-generation Internet to people in rural communities and other long-neglected places on the wrong side of the digital divide.

Ever since browsing the Web has required more than a modem and a dial-up connection, vast swaths of the United States have struggled to get the state-of-the-art infrastructure they need to keep up with new technology. While utilities in many big cities offered higher speeds, small towns and rural areas were left behind. The phone and cable companies were reluctant to upgrade existing lines in those areas because they typically can't turn a profit. The low-density development, low subscriber rates and long distances between customers mean higher upfront installation costs.

As a result, some cities decided to build out their own fiber-optic systems. More than 400 municipalities, mostly ones that already owned their own electric utilities, started offering broadband services. Lots of those efforts were successful, but the most prominent was Chattanooga, Tenn. It became the first city to offer a gigabit Internet connection in 2010, despite legal challenges from Comcast and AT&T. The lightning-fast service helped revive its fortunes, spurred the creation of an "innovation district" downtown and attracted companies like Amazon, OpenTable and Volkswagen to open or expand operations there. Meanwhile, the Obama administration tried to spur the building of "middle mile" networks in its 2009 stimulus package, with the hope that building high-speed networks that connect schools, government buildings and other major institutions would make it easier for private providers to extend those networks to homes and businesses.

But the real game-changer turned out to be Google. The tech giant made a big splash in 2010 when it announced it would provide one city with gigabit fiber service to homes and businesses. It was a bold goal, because it depended on installing a whole new layer of infrastructure on the city grid. For Internet access, most of America still depends on electric signals that travel down copper wires laid decades ago by telephone and cable companies. But Google wanted to build its Internet network with fiber-optic cables, which use laser flashes that race through thin glass wires to convey information at nearly the speed of light. The wires can carry virtually unlimited information, and they can be upgraded as technology improves. Enthusiasts say that makes fiber-optic networks "future proof."

Google was by no means the first carrier to use fiber-optic networks, which already make up the backbone of the Internet and are used by many big institutions. For example, some Verizon home customers have fiber-to-the-home through the company's Fios (fiber-optic service) product, but Verizon largely stopped expanding the areas where it offered Fios in 2010.

Still, the Google competition made it seem possible for almost anywhere in the country to make the jump to high speeds. Even better, customers would initially only have to pay \$120 a month for Internet and TV service, about the same rates most customers pay for connections a fraction of the speed. Roughly 1,100 cities entered Google's competition. Many took drastic steps to stand out from the crowd. Topeka, Kan., renamed itself "Google" for a month. The Duluth, Minn., mayor jumped into Lake Superior in February wearing only shorts and a T-shirt. University of Missouri fans waved Google signs during a nationally televised basketball game. In the end, Google chose Kansas City, Kan.

Google Fiber, which is now officially called Alphabet Access, has since expanded across the state line to Kansas City, Mo. It has also added another eight cities and plans to build networks in two more. But last year, the company put all other expansion plans on hold. It hired a new CEO and laid off hundreds of workers, leading some watchers to speculate that Google might be getting out of the fiber business altogether.

Still, nearly everyone agrees that the introduction of Google Fiber was a turning point. It made local officials all around the country think seriously about the benefits of installing super-fast Internet connections in their cities. Municipal leaders quickly realized that broadband could be the backbone for smart cities and connected vehicles, the foundation for advanced telemedicine, or the means for schoolchildren to explore the world far beyond their classrooms. In competing for Google, cities realized they wanted a fiber-optic network, regardless of whether Google provided it. "People got all excited about Google Fiber, which was very useful, because it opened people's eyes to the country's need for world-class, cheap data. But Google Fiber was never going to reach every city in America, because it's not in their company's interest to build basic infrastructure," says Susan Crawford, a Harvard University law professor who specializes in Internet and communications law. "It is in the interest of every local government to ensure economic growth and social justice for its citizens. And the only way to do that is for the city or the local government to take matters into its own hands."

**While cities' appetite for gig fiber grew**, they were confronted with a conundrum. On the one hand, building and running a city-owned network is extremely difficult. Those cities that don't already operate a utility, like a local power company, often don't have employees with the technological expertise to run an Internet service, says Jim Baller, president of the Coalition for Local Internet Choice. City employees, Baller says, often are "not on a day-by-day basis versed in the industry changes in technology, finance and services that you provide in the communications world." Another limitation: Thanks in part to intense efforts from telecom lobbyists and lawyers, at least 19 states have laws that restrict or prohibit cities from offering municipal broadband services.

On the other hand, as the experiences with cable and phone companies showed, cities had learned they couldn't rely solely on the private sector to provide high-speed connections. And even if private companies brought gigabit speeds to every big city in the country, they'd never be a viable solution for getting faster Internet to the small towns and rural communities that need upgrades the most. That's why so many cities have turned to public-private partnerships, using a mix of public resources and private know-how to achieve what neither sector could do on its own.

So far, the approaches vary markedly. "We are in such early stages of innovation that every project is developing its own model," says Joanne Hovis, the president of CTC Technology and Energy, a consulting firm that has helped states and cities, including Westminster, develop public-private

partnerships for broadband. "I think many of them will become models and be replicated by other communities. But there is not yet a standard way of doing this, as there is in, for example, P3s for toll roads, where there's 20 years of experience and lots of data."

At one end of the spectrum are the cities in Mississippi that lured fiber networks built by C Spire, a regional wireless carrier based in the state. C Spire started offering fiber to communities because it was inspired by the example of Google Fiber. It even initially modeled its selection process after Google's by hosting a competition among cities. Like Google, it stressed the importance of streamlining the regulatory process in cities it chose, so it could build its networks with minimum hassle. "We found pretty quickly that was the easy part," says Jared Baumann, a manager who led C Spire's efforts to develop franchise agreements with cities and towns for the fiber networks. "It was far more important to have the city and volunteers within the cities really taking this to the next level."

The mayor of Ridgeland, for example, organized a "Tour de Fiber," with dozens of cyclists riding through neighborhoods to encourage residents to sign up for C Spire's service. The mayor of Quitman, a town of fewer than 2,300 people, went door to door to encourage residents to get the fiber connection. In the town of Clinton, a group of two dozen residents "made it their goal in life" for several years to promote the new service, Baumann says. "In many ways, the mayors of our towns, and their staff members and their volunteers, were more of a sales force for us than our own sales force was. That was key," he says. "Mayors were knocking on doors just like campaign season, saying this is only coming to town or your area if you sign up."

Other states have used more traditional P3 approaches. Kentucky is installing 3,000 miles of fiber-optic lines through a public-private partnership. The new network will link every county in the state to faster Internet connections, although it will be up to local Internet providers to link end users to the new "middle mile" network. Macquarie, an Australian bank, will build and operate the network for 30 years. It will recoup its costs by selling access to universities and state government over the course of the deal, but Kentucky will own the network when the deal is over.

In Minnesota, local governments in two counties are using an old model to deliver new technology. Seventeen townships and 10 cities have formed a co-op to build fiber and wireless Internet connections over a 700-square-mile area, much as rural areas used co-ops to bring electricity to farms during the Great Depression. The co-op RS Fiber got its initial funding when the 10 cities issued bonds for half the cost of the first phase of its project. The co-op built wireless towers to cover farms in the area while it constructs a fiber network in the towns. With the money the co-op generates from providing service in town, it will then start building fiber to the farms. A local Internet provider runs the day-to-day services.

**But it's the public-private partnership** between Ting and Westminster that experts are watching most closely these days.

The effort to bring higher-quality Internet access to the Maryland city started more than a decade ago, and the city considered all options, even the idea of installing and offering broadband on its own. Ultimately, it decided to partner with a private provider. Westminster had a few advantages that helped make it more attractive. For one, the city had enough cash on hand to fund a small pilot project. And Westminster found that businesses in town were very excited about getting the service. More than 90 percent of companies signed up when it became available to them. One of the things that distinguishes Westminster's approach is that the city is building and keeping control over the physical fiber network. The strategy, says Councilman Robert Wack, who has worked extensively on the issue, is "perfect for municipalities. We are in the long time-horizon business," he says. "We build water treatment plants that have a useful life of 40 years. We dump millions of dollars into

pavement and nobody bats an eye because everybody understands how important good roads are for economic development. Why would building fiber be any different? We're basically building a road for data."

For Ting, selecting cities to work with comes down to both objective measures, like demographic data, and subjective judgments, like how easy a city is to work with. One thing that stood out about Westminster, says Monica Webb, the company's director of government relations, was that the town was not just eager for service but also willing to do most of the hard work of financing and then installing the fiber all the way up to buildings.

But Webb cautions that there are not enough private companies like Ting to partner with all the cities that want high-speed Internet. After the Westminster deal went through, Ting received more than 2,000 requests from residents or public officials to come to other communities. Currently, Ting serves just five cities, with a few more in the works. "Sometimes, the best thing cities can do is to do it themselves," she says. "There needs to be a plan B."

Wack says communities like his don't have a choice. They have to find a way to build better data connections. "This is the barebones, basic infrastructure of the 21st-century economy," he says. "Communities that have this infrastructure will thrive, and those that don't will wither and die. It's just that stark."

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BY DANIEL C. VOCK | MAY 2017

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## **[Without More Census Funding, Disadvantaged Communities Risk Being Overlooked Most.](#)**

***Many predict severe, long-term consequences for the 2020 count and all the programs that rely on it.***

Several events in recent months have hinted that the 2020 Census could be in serious trouble.

The latest funding proposals fall far short of what many contend is needed to prepare for the decennial count. In February, the Government Accountability Office added the program to its "high risk" list. And just last week, Director John Thompson surprised Census observers when he announced that he would resign at the end of next month.

Former agency officials and Census advocates are worried that inadequate preparation could potentially spell significant problems for the accuracy of the count. Given that congressional redistricting and funding for hundreds of federal programs all rely on the decennial Census, the reliability of the numbers carry far-reaching consequences.

**[Continue reading.](#)**

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BY MIKE MACIAG | MAY 15, 2017

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## **Why Few Cities Will Take the Supreme Court Up on Their Right to Sue Banks.**

***Last week's ruling leaves open a key legal question that could make cities unlikely to file suit.***

After losing billions in property tax revenue during the foreclosure crisis, local governments notched a win last week when the U.S. Supreme Court affirmed the city of Miami's right to sue big banks under the Fair Housing Act.

But don't expect a flood of lawsuits to follow any time soon. The ruling leaves open a key legal question about the burden of proof cities must present to show they were financially harmed.

In the 5-3 ruling, the court sided with Miami, agreeing that the 1968 act, which prohibits racial discrimination in the lease, sale and financing of property, applied to cities as well as people. But the ruling didn't agree that Miami had provided enough direct evidence linking discriminatory lending practices by Wells Fargo and Bank of America to the financial harms incurred by the city. It also stopped short of saying what a city must do to prove economic harm and remanded the case back to the lower court to answer that question.

"So what it leaves open right now is, can cities who brought this kind of case establish the kind of proximate cause the court has flagged in this decision?" says Joe Rich, a fair housing expert for the Lawyers' Committee for Civil Rights Under Law.

Proximate cause is essentially an event that sets in motion a sequence of events that result in a foreseeable effect, such as an injury, which would not otherwise have occurred. Last week's ruling said Miami would have to prove the banks' practices had a "direct" effect on its finances.

In its complaint, Miami had alleged that Wells Fargo and Bank of America intentionally targeted African-American and Latino neighborhoods for predatory practices by lending to them on worse terms than non-minority borrowers. The banks also failed to extend fair refinancing and loan modifications to those borrowers, the city said, which resulted in a high rate of defaults.

The conduct, according to Miami's complaint, led to a disproportionate number of foreclosures and vacancies in majority-minority neighborhoods. By late 2013, when the suit was filed, Miami had the highest foreclosure rate among the 20 largest metro areas in the country. According to the complaint, loans in majority-minority neighborhoods were nearly six times as likely to result in foreclosure as loans in majority white neighborhoods.

The ensuing crisis not only cut the city's property tax revenue, it strained Miami's limited resources by creating an increased demand for public safety services in those neighborhoods. An amicus brief filed by the Miami Fraternal Order of the Police (FOP) listed dozens of horrors that played out in these semi-abandoned neighborhoods. Foreclosed homes were used to hide dead bodies and to advertise child sex trafficking, for instance. In one heartbreaking case, a toddler drowned in the swimming pool of his neighbor's vacant house. The FOP even alleged that untended pools in foreclosed homes became breeding grounds for swarms of mosquitos and "created the epicenter for America's first Zika outbreak."

It will be up to the federal appeals court in Atlanta to decide if Miami has shown proximate cause. But the ambiguity of the High Court's ruling, plus the three-year statute of limitations on fair housing lawsuits, makes it unlikely that a slew of localities will use the decision as a license to start suing big banks. There are, however, a number of open cases in places like Los Angeles; Oakland,

Calif.; and Providence, R.I., that benefit from the ruling.

Civil rights advocates say the decision is an important win in terms of enforcing the Fair Housing Act. Individuals have been successful at bringing cases against lenders following the foreclosure crisis. But governments have struggled: No case has gone to trial and there has just been one major settlement — a \$175 million payment by Wells Fargo to several cities and borrowers across the country.

Ajmel Quereshi, senior counsel for the NAACP Legal Defense and Educational Fund, hopes the ruling will “act as a future deterrent to banks that are thinking about these practices in the future.”

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BY LIZ FARMER | MAY 11, 2017

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## **[The Week in Public Finance: Revenue Relief in 2018, Good GDP News and the Debt-Shy.](#)**

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

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BY LIZ FARMER | MAY 12, 2017

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## **[The Growing Threat to Municipal Bonds.](#)**

***Proposals to cap or eliminate their tax deductibility would be a serious blow to efforts to improve our infrastructure.***

Buildings, roads and bridges: These are the Legos that, when snapped together, create the communities we all call home. President Donald Trump has promised to make improving our infrastructure a centerpiece of his administration, and we are eager to work with him to promote infrastructure investment, job growth and community prosperity. This includes defending a key financing tool that for the past several years has faced growing uncertainty.

For more than a century, tax-exempt municipal bonds have been the single most important means for financing new roads, bridges, schools and hospitals. These are a lifeline without which state and local municipalities would find it far more expensive to finance capital improvements and other infrastructure that benefit everyone.

In Maryland’s Baltimore County, for example, municipal bonds have financed capital projects ranging from the restoration of a library after a fire to the expansion of several public parks. In Illinois’ Will County, the future of a new courthouse and law-enforcement complex hinges on the bonds’ tax-exempt status. Nationwide, the National League of Cities estimates that municipal bonds have financed more than four million miles of roads, 500,000 bridges, 16,000 airports and 900,000 miles of water pipes. In all, municipal bonds support more than 1.5 million civic projects.

But in recent years this bipartisan tool has been under attack, with proposals being floated in

Washington to cap the bonds' tax deductibility or eliminate it entirely. Then-President Barack Obama's fiscal 2017 budget proposal would have capped the tax deduction at 28 percent. We believe this would devastate municipalities that rely on the tax exemption, especially amid uncertain state budgeting. Reducing the tax benefits of these bonds would be bad for jobs and for taxpayers; higher project costs would shift to taxpayers through increased property taxes, fees and other means.

The American Society of Civil Engineers estimates that state and local governments have about \$3.6 trillion in unmet infrastructure needs through the year 2020. In Illinois, a cap like the one proposed by Obama would have cost the state \$6.2 billion if it had been implemented in 2012; for Maryland, the figure would have been \$2 billion. For states facing steep budget deficits and rising costs, we can't afford to let precious funding go to waste.

The city of St. Charles, Ill., is a prime example. St. Charles' annual interest payment for its debt currently exceeds \$3 million, but it could be far more without the tax exemption for municipal bonds, which has saved the city 25 percent, including \$619,000 in interest costs when it built the Red Gate Bridge over the Fox River in 2011. This is real money that makes a real difference to local taxpayers — money that could be used to maintain basic services and programs otherwise on the verge of shuttering.

With tax reform and infrastructure legislation now on the table in Washington, the debate over how to best restore our country's aging infrastructure is in full swing. State and local governments' ability to issue tax-exempt debt is now more important than ever. That is why we have [sent a letter to the House leadership](#) asking them to reject any proposal to cap or eliminate the deduction on tax-exempt municipal bonds. More than 150 of our colleagues from both sides of the aisle have joined us. We urge President Trump to similarly reject any such proposal.

We have also launched the bipartisan Municipal Finance Caucus to continue promoting the importance of this tax exemption with our colleagues in Congress. The caucus is a valuable platform that ensures any discussion of comprehensive tax reform includes the needs of municipalities throughout this nation. Answering the call for reliable, proven infrastructure financing means we must protect this vital tool for job growth and economic development in our communities.

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BY RANDY HULTGREN, DUTCH RUPPERSBERGER | MAY 11, 2017

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## **[Why Tax Credit Bonds Should Be A Key Part Of Any Federal Infrastructure Policy Initiative.](#)**

Major infrastructure investments—especially projects and programs of regional and national significance—can generate major “spillover” benefits to the general public—some, like locks and dams, literally so. This article explains why tax credit bonds should be in the mix of federal infrastructure policy initiatives. Previous generations of tax credit bonds, such as Build America Bonds, were highly successful in broadening the market for infrastructure debt but their authority has expired. We propose creating a new generation of qualified tax credit bonds. A separate article in this issue of Public Works Financing outlines a specific proposal to create “Infrastructure Credit Bonds” (page 12).

While some proposals have focused on the role that equity capital can play in advancing

infrastructure projects, it is worth noting that P3 projects have represented just a small fraction of total investment in public infrastructure. For example, CBO reports that in 2014, federal, state and local capital outlays for public infrastructure totalled \$181 billion. That same year, according to Public Works Financing, P3 project outlays totalled just \$4.2 billion—about 2 percent of the market.

Within the P3 sector, financial equity represents, on average, about 15 percent of the capital sources for P3 projects. Debt capital, on the other hand, represents 60 percent of sources on P3 deals—and for governmental projects debt may fund 90 percent or more of the “capital stack.” So clearly, the cost of borrowing has a major impact on project feasibility and financial capacity.

Historically, infrastructure project sponsors have raised debt capital from the following sources:

- Tax-exempt financing (both “governmental” and “private activity” bonds);
- Federal credit assistance (such as TIFIA, RRIF and WIFIA, with loans generally made at the U.S. Treasury rate);
- Bank and other taxable rate debt (especially suitable for P3 project financings);
- State-capitalized loan funds (such as Water Revolving Loan Funds and State Infrastructure Banks)

In more recent years, federal legislation has authorized other forms of tax-advantaged debt:

- Partially-subsidized taxable rate bonds (Build America Bonds) designed to replicate the tax-exempt borrowing rate by offsetting a portion of the interest cost (recently proposed to be 28%) through a refundable (cash) tax credit for the issuer (“direct-pay” tax credit bonds); and
- Fully-subsidized taxable rate bonds designed to have most or all of the annual interest return provided through an annual (non refundable) tax credit for the investor, which can apply the credit against other tax liability (“investor pay” tax credit bonds).

These programs have been either time-limited (Build America Bonds issuable only in 2009 and 2010) or volume-capped (five separate classes of “qualified tax-credit bonds” totaling about \$35 billion for specific purposes such as school construction, energy conservation and clean renewable energy projects.)

Of all the existing and proposed debt instruments, the qualified tax credit bonds offer the greatest present value benefit to the project sponsor per dollar of “scored” federal budgetary cost.

This is not to suggest that other debt instruments aren’t helpful. PABs level the playing field between P3 and governmental projects, but their purpose is simply to match the municipal bond market rates available to governmental sponsors. Similarly, “direct pay” tax credit bond programs like Build America Bonds can broaden the market by attracting taxable fixed-income investors, but are designed to replicate (but not beat) tax-exempt rates. Federal credit can provide greater structuring flexibility in terms of deferrals and prepayments, but may only reduce the effective borrowing cost by ½% or so for investment grade issuers—a savings to be sure, but not enough to dramatically increase a project’s debt capacity. And SRF and SIB loans, while potentially offering very low rates, are severely size-constrained by limits on state capitalization grants.

In contrast, qualified tax credit bonds can more than double an issuer’s debt capacity. Stated differently, a given local revenue stream pledged for debt service can support twice the amount of tax credit bond principal as tax-exempt financing or federal credit.

From a federal policy viewpoint, tax credit bonds offer additional advantages. Unlike federal grant spending or credit assistance, tax code measures do not require growing the size of the federal government to administer them. Tax incentives also have the advantage over grants of harnessing

the market discipline of private capital (bond investors) to ensure that the project's repayment plan is feasible. Unlike federal credit, a tax credit bond does not require the federal government to take any credit exposure on the borrower or the project.

Tax credits attached to bonds can be simpler and more efficient to market than equity-based investment tax credits, provided liquidity concerns are meaningfully addressed (as discussed in the follow-on article on "Investment Credit Bonds"). And tax credits attached to bonds are "budget-efficient," since they stretch out the fiscal impact over a longer period of time more commensurate with the economic lives of the assets being financed. The scored cost of the program (effectively the first 10 years of tax expenditures under budget rules) relative to the financial benefit to the project sponsor offers the highest "return on fiscal investment."

For these reasons, a tax credit bond proposal should be a key component of any new federal policy initiative.

Article by Elaine Buckberg

Last Updated: May 11 2017

**The Brattle Group, Inc.**

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

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## **[S&P: Poised To Strengthen In Fiscal 2018, U.S. State Budget Conditions Remain Under Longer Term Pressure.](#)**

Continued slow revenue growth against a backdrop of rising expenditures in a range of less discretionary areas is exerting fiscal pressure across the U.S. state sector. According to S&P Global Ratings' survey of state fiscal conditions, 43 states have projected operating deficits for either fiscal 2017 or 2018 in recent months.

[Continue reading.](#)

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## **[Amid Divestment Protests, More Cities Explore Public Banks.](#)**

Philadelphia City Council Member Cindy Bass was already thinking about how to cut the city's ties with Wells Fargo when bank CEO John Stumpf testified last September before the U.S. Senate. Questioning Stumpf about the bank's fraudulent accounts scandal, Senator Elizabeth Warren said, "So you haven't resigned, you haven't returned a single nickel of your personal earnings, you haven't fired a single senior executive. Instead, your definition of accountable is to push the blame to your low-level employees who don't have the money for a fancy PR firm to defend themselves."

Search the U.S. Department of Justice website for "Wells Fargo" and "settlement" and you'll get a litany of results: a \$25 billion settlement for foreclosure abuse (a record), \$1.2 billion for improper mortgage lending practices, and \$184.3 million in compensation for steering black and Latino borrowers into predatory subprime mortgages. The 2016 hearing was the moment when the wheels

fell off the stagecoach.

[Continue reading.](#)

NEXT CITY

BY OSCAR PERRY ABELLO | MAY 10, 2017

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## **Why the Road to Trump's \$1 Trillion Infrastructure Investment is Marked with Potholes.**

- The \$1 trillion that President Trump wants to invest in U.S. infrastructure by way of public-private partnerships may not be a slam-dunk for investors.
- Amid a patchwork of decaying U.S. roads, bridges, schools and water systems, an increasing share of municipal debt is being devoted to shoring up these structures.
- Yet experts warn that, for a variety of reasons, most infrastructure projects lack the revenue stream and return on equity needed to attract private investors.

For a variety of reasons, the mixed track record of rebuilding projects suggests that the \$1 trillion that President Donald Trump wants to invest in U.S. infrastructure by way of public-private partnerships may not be a slam-dunk for investors.

As several PPPs have demonstrated recently — such as the Chicago Skyway's \$2.83 billion sale in 2015 and Westinghouse Electric's high-profile bankruptcy declaration in March — infrastructure funding can swing from success story to cautionary tale.

Amid a patchwork of decaying U.S. roads, bridges, schools and water systems, an increasing share of municipal debt is being devoted to shoring up these structures. According to data from investment management firm PIMCO, about 58 percent of the outstanding tax-exempt municipal debt in the Barclays Muni IG Index is issued for infrastructure purposes.

Yet experts warn that, for a variety of reasons, most infrastructure projects lack the revenue stream and return on equity needed to attract private investors.

"We see a lot of need for infrastructure investment, but the areas where [it's needed] are not necessarily aligned with what public-private partnerships may target, or with what the state and local governments might be willing to turn over to a private operator," David Hammer, executive vice president and head of municipal bond portfolio management at PIMCO, told CNBC in a recent interview.

In view of past experiences, "it's unlikely that you'd see state and local governments use public-private partnerships to address water and sewer needs," for example, Hammer added.

That's true even for cash-strapped cities like Detroit, whose water and sewer system is one of its more valuable assets — making officials reluctant to fully privatize the system, he added.

To be certain, there's still a healthy appetite for public-private investment for massive projects such as New York's \$4 billion overhaul of a major terminal at LaGuardia Airport. Meanwhile, a more than \$1 billion revamp of John F. Kennedy International's Terminal 8 was considered a success for private investors.

However, Westinghouse's cost overruns for its nuclear power plants show how hard it's become for private entities to ensure an appropriate rate of return when the political or regulatory winds shift against them. Given the long timetable required to birth such projects, roadblocks can be hard to predict.

"These are often generational projects. The idea is that the requirements surrounding those projects, for the safety of all of us, will change as our knowledge base changes," said Nick Venditti, a portfolio manager at Thornburg Investment Management.

With the exception of toll roads and some airports — where forecasting traffic patterns and revenue streams can be easier — Venditti doesn't see the public-private partnership model in municipalities as sustainable over the long term, largely because of how hard it is to project an attractive revenue stream for most infrastructure projects.

George Friedlander, a veteran muni analyst with Court Street Group Research, said that while PPPs don't have a strong track record as a viable financing method, technology may alter the landscape. "Technology drives the case for getting the whole package designed and having a private entity involved earlier in the game than has been the case historically," he said.

'Default rates relatively low'

Meanwhile, a potential wildcard could be the Federal Reserve, which is expected to raise borrowing costs through rate hikes, and tax reform that may dim the benefits of muni bonds, many of which are tax exempt.

PIMCO's Hammer thinks the risks are fairly low given that the asset class historically outperforms other fixed-income asset classes when the Fed hikes rates. He also argued they're less risky than corporate debt.

Lower-rated investment grade munis "actually default less frequently than [higher-rated] corporate bonds despite all the headlines of the last five years, with Puerto Rico, Detroit, [and] Jefferson County, Alabama, all going through bankruptcies," Hammer said, citing data from Moody's Investors Service.

"The cumulative bankruptcy percentage hasn't gone up for the asset class, so we still see default rates as relatively low," he added.

Friedlander noted that rating agencies have made it clear that more states have weakened in credit quality recently, due largely to public pension pressures and slower tax revenue growth. However, the number of actual defaults on rated municipal debt remains low, and he doesn't expect that to change.

David Bogoslaw, special to CNBC.com

Saturday, 13 May 2017 | 9:00 AM ET

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## **[Los Angeles School District Is Top U.S. Municipal Bond Sales Next Week.](#)**

NEW YORK (Reuters) - The Los Angeles Unified School District, California's largest school district, plans to sell nearly \$1.1 billion of general obligation refunding bonds in the biggest U.S. municipal

bond offering next week.

The debt, backed by county property taxes, will refund 2007 bonds that have July 1 call dates. Through lead underwriter Morgan Stanley, the district will hold a one-day retail order period on Monday, with institutional pricing on Tuesday, according to a presentation for prospective bondholders.

The second biggest school district in the United States, Los Angeles had 625,434 students enrolled in kindergarten through 12th grade in fiscal 2017 and \$10 billion of general obligation bonds outstanding.

It is in the midst of a \$25.6 billion to upgrade buildings and construct new schools.

Altogether, issuers plan to offer an estimated \$9.4 billion of U.S. municipal bond and note sales next week as investors have maintained a steady interest in the muni market.

Investors have put money into muni funds for the last five weeks straight. Funds had \$605 million of inflows for the week that ended May 10, the second-biggest week of inflows since January, according to Lipper, a Thomson Reuters unit.

Other issuers coming to market next week with big deals include the Dormitory Authority of New York, for New York University taxable bonds, and the District of Columbia.

## **Reuters**

By Hilary Russ

May 12, 2017, at 5:41 p.m.

(Reporting by Hilary Russ; Editing by Leslie Adler)

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## **[Taxing Muni Bonds: Excuses, Excuses, and More Excuses.](#)**

In politics and policy there are reasons and there are excuses.

The American Public Power Association and other stakeholders have been fighting for several years now to explain the reasons why an unprecedented tax on municipal bonds would be bad. There is ample evidence to indicate that:

- The tax exclusion of municipal bonds is far more efficient than opponents suggest;
- Taxing municipal bonds would be hugely harmful to U.S. infrastructure investment; and
- Proposed alternatives to tax-exempt municipal bond financing would increase the cost of financing core infrastructure investments — and state and local residents will pay the price

I also believe a federal tax on municipal bond interest would be unconstitutional.

What we've spent less time discussing are the excuses - implicit and explicit - for imposing a new tax on municipal bonds. These include dire warnings of tidal waves of municipal bankruptcies, breathless tales of state and local financial struggles, hoary anecdotes implying endless abuses, and pat solutions that fail to address the problems.

I discuss the excuses in a recent article for Tax Notes magazine, [Logical Fallacies in the Debate of Municipal Bonds](#).

For example, in Washington, it's common to cite a handful of municipal bankruptcies to imply that many more have happened or are about to. This alleged symptom of fiscal negligence is taken as an excuse to "rein in" state and local spending by imposing a federal tax on infrastructure investments.

As the article explains, though, in the last three decades there have been just 47 municipal bankruptcies or attempted bankruptcies – from a population of 39,000 municipal governments. In the early nineties the rate averaged roughly one per year, and in the last two decades it has averaged roughly two per year. That's not "nothing," but it's also not a tsunami, and it certainly doesn't justify upending more than a century of tax policy by repealing the federal tax exclusion for municipal bond interest.

If anything, economic data shows that state and local governments are doing a far better job of tackling fiscal challenges than the federal government. There are exceptions — again, two bankruptcies a year is not nothing. However, headlines screaming of budget wars may actually be a good sign that state and local governments are actually fighting to make tough budget choices, rather than simply fiddling while their fiscal houses burn down.

My article also debunks the idea that debate over tax-exempt bonds is somehow a debate over tax-exempt bond financing of sports stadiums (or that the debate over private activity bonds has something to do with private activity bond financing of a Corvette museum).

**By John Godfrey, Senior Government Relations Director, American Public Power Association**

Posted on May 11, 2017 by John Godfrey

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## **[Commentary: Advances in Advance Refunding.](#)**

An advance refunding is a complex transaction. There are several moving parts, and it is easy to lose track of where the value is. Two recent papers on this topic are [Don't Waste a Free Lunch: Managing the Advance Refunding Option](#) in the Journal of Applied Corporate Finance, and [Advance Refundings of Municipal Bonds](#), forthcoming in the Journal of Finance.

As some may recall, the authors of the latter paper made the stunning assertion in their 2013 draft (still posted on the [SSRN website](#)) that advance refunding always destroys value. In other words, this widely used transaction can never be optimal. If true, the practitioner community has been universally wasteful. In a Bond Buyer commentary ([Advance Refunding: A Misguided View from the Ivory Tower](#), Sept. 10, 2013), I pointed out the faulty logic of this claim — the authors relied on general economic principles, without understanding the actual mechanics of the transaction.

Fast forward to 2017. After seeing that the paper was accepted by the Journal of Finance, I wondered how the authors handled the flaw of their central claim in 2013. It turns out they made a complete U-turn; the central claim has vanished. In fact, they inserted a counterexample showing that advance refunding can be optimal. Better late than never! However, without the (flawed) original claim, it is unclear that what remains is particularly new or insightful. The paper also displays a lack of familiarity with the muni market in its failure to recognize the dominance of 5% non-call 10 bonds, which are tailor-made for advance refunding. A discussion of what went wrong in

2013 would have been a service to the academic community.

In the “Free Lunch” article Lori Raineri and I examine the value of the advanced refunding option (ARO). To begin with, the ARO is free to issuers — for well-known reasons, investors actually prefer advance-refundable bonds. Quantifying its value is challenging, due to the imperfect correlation between the issuer’s funding cost and Treasury rates; the former determines the refunding rate, and the latter the escrow yield. At the historically low Treasury rates prevailing today, the value of the ARO of a new 20-year 5% NC-10 bond is roughly 1% of face amount. The figure below puts this in perspective – the value of the call option is roughly 5% of face value, with the total optionality being 6%. The option values increase with higher coupons, as expected. But let’s keep in mind that although higher coupons provide more option value (as a percent of par), they also reduce the size of the issue.



The key point of our paper is that an ARO should not be wasted by advance refunding near the call date. The “free lunch” to consider here is the ARO of the replacement issue. Advance refunding is permitted only once in a funding’s lifecycle. Thus the replacement of an advance refunded issue is ineligible for advance refunding, but if an issue is called (current refunded), the ARO remains alive.

The efficiency of refunding is quantified by the percentage of the option value captured by transacting. The figure below shows the effect of including the ARO of the replacement issue. As the darker blue line indicates, it is considerably lower than when the ARO is ignored, signaling that advance refunding close to the call date wastes a free lunch. A preferable alternative is to construct a hedge which locks in savings, while retaining the ARO.

Issuers and their advisors can use these findings to make better advance refunding decisions. Specifically, recognize that you lose advance refunding option of the replacement issue when you pull the trigger close to the call date. And instead of obsessing over negative arbitrage, use refunding efficiency as your signal to transact.

## **The Bond Buyer**

By Andrew Kalotay

May 09 2017, 10:27am EDT

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## **[Munis: Downgrades Rise a Percentage of Rating Actions in Q1.](#)**

***Fitch bumped up its negative rating watch listings, but didn’t issue any positive rating watches in Q1.***

While the first quarter was the 12th consecutive quarter where upgrades outpaced downgrades, it outpaced them by a smaller percentage than last quarter, according to a new report from Fitch Ratings.

In the fourth quarter of 2016, downgrades were just 25% of all rating actions. In the first quarter of

this year, downgrades were 40% (37 of 151 ratings actions).

Jessalynn Moro of Fitch's U.S. Public Finance group also notes that the downgrades were bigger in terms of dollar value this quarter — mostly due to the downgrade of Illinois.

While upgrades outpaced downgrades, we saw a higher par value on the downgrades this quarter due to the Illinois downgrade of nearly \$30 billion. This one downgrade accounted for 68 percent of all downgrades this quarter.

Fitch downgraded Illinois from triple-B-plus to triple B in February. That's the second lowest investment grade rating.

Fitch also notes in its report that there was a pretty big bump in "rating watch negative" listings — to 28 from 20. The average for the last four quarters is 21.75. No securities were listed as "rating watch positive."

Positive rating outlooks (a longer-term measure than a ratings "watch") decreased to 86 from 91 in 4Q16, and negative rating outlooks decreased to 109 from 118.

## **Barron's**

By Amey Stone

Updated May 8, 2017 12:07 p.m. ET

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## **[A Requiem for Reasonable Expectations: Squire Patton Bogs](#)**

The "reasonable expectations" approach to determining the issue price of a tax-advantaged bond[1] has been the law since 1989. On [June 7](#), it is scheduled to join Betamax tapes and parachute pants as another relic of that bygone decade. Barring intervention ([either Divine or as part of the President's executive order to undo recent regulations that "add undue complexity to the Federal tax laws"](#)), the new issue price regulations will take effect for tax-advantaged bonds sold on or after June 7. Though we don't often have to rely on reasonable expectations because underwriters usually actually sell at least 10% of each bond maturity at the initial offering price to the public on the sale date, the reasonable expectations rule has been a useful tool and a dear friend. As it prepares to ride off into the sunset,[2] a eulogy is in order. And bittersweet that eulogy shall be, for the death of the reasonable expectations standard seems senseless.

[Continue reading.](#)

By Johnny Hutchinson on May 11, 2017

The Public Finance Tax Blog

**Squire Patton Boggs**

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## **[New IRS Arbitrage Publication and TEB Training Texts Now Available.](#)**

### **[Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds](#)**

This new publication is a basic guide to the yield restriction and rebate requirements (arbitrage requirements) of Internal Revenue Code Section 148 and related regulations. Information in the guide can help issuers and conduit borrowers comply with their obligations and prevent violations of the arbitrage requirements.

### **[Tax Exempt Bonds Phase I Training Text](#)**

Basic lessons that examine the rules applicable to tax-advantaged bonds, discuss the appropriate use of bond proceeds and introduce the arbitrage, yield restriction and rebate concepts.

### **[Tax Exempt Bonds Phase II Training Text](#)**

Intermediate lessons supplement the basic lessons in Phase I, including advanced topics in arbitrage and rebate.

### **[Tax Exempt Bonds Phase III Training Text](#)**

Advanced lessons that examine the rules applicable to refundings, reissuances, pooled financing issues and IRC Section 6700 penalties.

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## **[Municipal Bonds 201: A Breakfast Seminar Presented by Municipal Bonds for America \(MBFA\)](#)**

### **Municipal Bonds 201**

*An Educational, Breakfast Seminar on Tax-Exempt Municipal Bonds*

Bonds are the Original Public Private Partnership (P3): A Deeper Dive into Federal Policy Issues

- The day-to-day impact of the municipal tax-exemption
- The economic efficiency of municipal bond financing
- The role of qualified private activity bonds (PABs) in infrastructure, housing, health and education

#### **Date & Time:**

Wednesday, June 7, 2017

8:45 am - Guest arrival and Breakfast

9:00 am - Program Begins

10:00 am - Program Ends

#### **Location:**

Capitol Visitor Center

Congressional Meeting Room North

To RSVP or learn more, contact Rebecca Cooke-Rodriguez at [rcrodriguez@bdamerica.org](mailto:rcrodriguez@bdamerica.org). We encourage you to send someone from your office if you cannot personally attend.

#### **Panel:**

*Stephen Benjamin*, Mayor - Columbia, SC and Chair, MBFA Coalition

*Jane Campbell*, Director, Washington Office - National Development Council and Former Mayor of Cleveland, Ohio

*Annie Russo*, Vice President of Government and Political Affairs - Airports Council International - North America

*Stephen Winterstein*, Chief Municipal Strategist - Wilmington Trust

Breakfast will be served (first-come, first-served)

This event is compliant with Congressional Ethics Rules

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## **[KBRA Releases Surveillance Report: San Diego Unified School District GO Bonds.](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the AA+ long-term rating and Stable Outlook assigned to the San Diego Unified School District's (CA) (SDUSD or "the District"):

- 2016 General Obligation Bonds (Dedicated Unlimited Ad Valorem Property Tax Bonds) (Election of 2008, Series J-2),
- 2016 General Obligation Refunding Bonds (Dedicated Unlimited Ad Valorem Property Tax Bonds) Series SR-1 and R-5,
- 2016 General Obligation Bonds (Dedicated Unlimited Ad Valorem Property Tax Bonds) (Election of 2008, Series I), and
- 2016 General Obligation Bonds (Dedicated Unlimited Ad Valorem Property Tax Bonds) (Election of 2012, Series F and Series G Bonds) (together "the Rated Bonds").

Please click on the link below to access the report:

[San Diego Unified School District GO Bonds](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[KBRA Releases Surveillance Report: MICLA Lease Revenue Refunding Bonds, Series 2016-A and Series 2016-B.](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA- with a Stable outlook on the Municipal Improvement Corporation of Los Angeles (MICLA or "the Corporation") Lease Revenue Refunding Bonds, Series 2016-A (Capital Equipment) and Lease Revenue Refunding Bonds, Series 2016-B (Real Property). This rating is based on the City of Los Angeles' long-term general obligation rating and evaluation of the factors discussed in KBRA's [U.S. State and Local Government Abatement Lease Methodology](#). Generally, ratings assigned to the majority of the U.S. state and local abatement lease obligations by KBRA will be one to two notches below the government lessee's general obligation rating.

KBRA has also affirmed the long-term rating of AA with a Stable outlook on the general obligation debt of the City of Los Angeles, California (L.A. or "the City"). This rating applies to all of the City's outstanding general obligation bonds except for bonds backed by a letter of credit or liquidity

facility. As of November 1, 2016, the City has approximately \$703.8 million of general obligation bonds outstanding. The rating of the City's general obligation bonds is based on KBRA's [U.S. Local General Obligation Rating Methodology](#).

Please click on the link below to access the report:

[MICLA Lease Revenue Refunding Bonds, Series 2016-A and Series 2016-B](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[KBRA Releases Surveillance Report: City of Los Angeles Solid Waste Resources Revenue Bonds.](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA with a Stable outlook on the City of Los Angeles Solid Waste Resources Revenue Bonds. As of June 30, 2016, the city has approximately \$209.3 million in Solid Waste Resources Revenue Bonds outstanding.

This rating is based on KBRA's [U.S. Special Tax Rating Methodology](#), which identifies special tax revenues as taxes or fees levied on the sale of goods and services or other specifically defined activities. The City of Los Angeles Solid Waste Resources Revenue Bonds are secured by a solid waste resource fee, which is collected from certain residential properties in the city of Los Angeles and used by the Los Angeles Bureau of Sanitation to fund portions of the city's solid waste program. The fee is not considered to be a tax.

Please click on the link below to access the report:

[City of Los Angeles Solid Waste Resources Revenue Bonds](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[U.S. Virgin Islands Utility to Test Bond Market.](#)**

### ***Island's power monopoly seeks private bond sale***

The U.S. Virgin Islands' public utility is asking Wall Street to help finance an upgrade of its energy infrastructure as unpaid bills pile up and conflict with its regulator escalates.

The Virgin Islands Water & Power Authority, or WAPA, expects to privately sell up to \$85 million in debt by next month, according to people familiar with the matter. The sale, managed by Atlanta-based broker-dealer IFS Securities Inc., is open to select investors and won't carry a rating from the major credit rating firms, these people said.

A WAPA spokesman didn't return requests for comment. A spokeswoman for WAPA's regulator, the Virgin Islands Public Services Commission, also declined to comment.

A successful sale would signal that credit markets aren't closed to WAPA despite dwindling cash

balances, large capital needs and rocky relations with its regulator. Credit ratings firms have hammered the utility with downgrades into junk status over the past year.

The Virgin Islands has never defaulted on its debt obligations, but its financial standing is top-of-mind for investors in the U.S. municipal bond market following the financial collapse of Puerto Rico, a Caribbean neighbor 80 miles away. The U.S. territories share common fiscal problems including high debt levels, mounting pension costs, outdated infrastructures and shrinking tax bases.

Those troubles extend to WAPA, the power monopoly serving the Virgin Islands' roughly 105,000 inhabitants. The PSC has refused since January to approve a requested rate increase, prompting a public war of words with WAPA, and with cash flows under pressure the utility is behind on its supplier bills. The utility relies on the PSC to approve customer rates that cover the cost of generating and distributing power.

WAPA was forced over the weekend to switch to burning oil at its generation plants after Vitol Group suspended shipments of liquefied petroleum gas, their usual fuel source. After the announcement, the PSC said WAPA had failed to explain why the invoices had gone unpaid when the rates charged to customers should cover the cost of fuel deliveries.

"Those costs are not surprises, and are included in WAPA's rates, but not being paid," the regulator said.

Oil supplier Glencore Ltd. also cut off shipments temporarily in January, according to the PSC. Trafigura Trading LLC, another vendor, recently won a \$24 million court judgment against WAPA over unpaid bills.

Proceeds from WAPA's planned bond sale would cover costs associated with the conversion of its generating units to liquefied propane, a cleaner-burning fuel than oil. Yields on the proposed sale have risen during the marketing process to placate prospective investors, and terms may change further before the deal is completed, a person familiar with the matter said.

WAPA owes \$253 million in bond debt, according to its financial disclosures.

Twice in the past six months, the Virgin Islands has tried and failed to sell debt amid fears it could wind up under a restructuring proceeding similar to what Congress designed for Puerto Rico. A federal rescue law passed last year allows Puerto Rico to restructure its debts outside the U.S. bankruptcy system, which the U.S. territories can't access.

"It certainly casts a heavy shadow on our approach to the market," said Valdamier Collens, commissioner of the Virgin Islands Department of Finance. "We're very aware of the contagion effects."

Like Puerto Rico, the Virgin Islands isn't funded on an equal basis with U.S. states in federal health-care, highway and tax programs, Mr. Collens said. A five-year plan adopted by the Virgin Islands in December calls for raising property tax levies, timeshare fees and "sin taxes" on cigarettes and alcohol while improving revenue collection and cracking down on past-due taxes.

The Virgin Islands has relied increasingly on bond proceeds to pay operating costs while contributing less to pension plans. That borrowing has increased its debt to a level similar to that of Puerto Rico, on a per capita basis.

Meanwhile, Puerto Rico's creditors are bracing for a potentially lengthy legal fight over how to restructure a \$73 billion mountain of debt.

The federal oversight board that placed Puerto Rico under court protection is pushing a fiscal plan that pays creditors less than a quarter of the \$35 billion they are owed over the next decade. Creditors are scheduled to face the board in court for the first time on May 17 as its benchmark general obligations tumble to all-time lows in the wake of the oversight board's action.

## **The Wall Street Journal**

By Andrew Scurria

Updated May 11, 2017 10:40 a.m. ET

Write to Andrew Scurria at [Andrew.Scurria@wsj.com](mailto:Andrew.Scurria@wsj.com)

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### **[California Leads U.S. Economy, Away From Trump.](#)**

***Whatever the president says, this state does the opposite. It's working.***

To justify his executive orders nullifying policies protecting people from climate change, hazardous working conditions and persecution because of their religion or citizenship status, President Donald Trump during a Feb. 16 press conference said: "To be honest, I inherited a mess. It's a mess. Jobs are pouring out of the country." He later told the Conservative Political Action Conference that regulations are "crushing our economy."

That's a claim worth exploring. Look at California, which is one-eighth of the U.S. population with 39 million people and one-seventh of the nation's gross domestic product of \$2.3 trillion. Far from being a mess, California's economy is bigger than ever, rivaling the U.K. as No. 5 in the world, when figures for 2016 are officially tabulated.

California is the chief reason America is the only developed economy to achieve record GDP growth since the financial crisis of 2008 and ensuing global recession, according to data compiled by Bloomberg. Much of the U.S. growth can be traced to California laws promoting clean energy, government accountability and protections for undocumented people. Governor Jerry Brown, now in his fourth term, considers immigrants a major reason for the state's success: "39 percent of us are Latino and the majority are from Mexico," he said in a March 2 interview in his Sacramento office.

In the stock and bond markets, where investors show no allegiance to political parties, California has outperformed the rest of the U.S. the past five years, especially since the Nov. 9 election, when Trump became the fifth person to win the Electoral College and lose the popular vote. California's creditworthiness keeps getting better, measured by the declining premium global investors must pay to ensure against depreciation of the state's debt obligations. That premium has diminished more than for any other state since 2012, according to data compiled by Bloomberg. California, whose voters favored Hillary Clinton two to one, outperformed Treasury bonds since the November election. Texas, which is the second-largest state in population and which supported Trump, became cheaper compared to Treasuries and California in the market for state and local debt since the November election. Investors see security in the state with more protections for immigrants and more regulations.

California's borrowing cost is 0.15 percentage points lower than the average for states and municipalities and has declined to just 0.24 percentage points more than the U.S. pays on its debt, down from 1.97 percentage points in 2013.

At the same time, bonds sold by California's municipalities produced a total return of 2.3 percent since November, outperforming the benchmark for the U.S., according to data compiled by Bloomberg. The growing popularity of bonds sold by California issuers is a consequence of the state's more rigorous regulation of the market, specifically legislation signed by Brown last year, creating greater transparency and accountability for issuers of California debt.

No state or country has created as many laws discouraging fossil fuels and carbon while promoting clean energy. That convergence of policy and voter preference is paying off in the stock market.

California is home to 20 of the 130 companies in North America and South America that meet the standard classification of clean energy. These 20 companies produced a total return of 45 percent during the past 12 months, beating the clean energy benchmark's 13 percent, the S&P 500's 19 percent and the S&P 500 Energy Index's 6 percent.

California clean energy companies reported annual revenue growth of 26 percent, almost three times the benchmark, and they turned more revenue into profit with an average gross margin of 46 percent, compared to 41 percent for the benchmark. California companies also spent 13 percent of their revenue on research and development compared to 8 percent for the benchmark. Jobs at clean energy companies in California increased 14 percent last year, double the average rate for the industry. Analysts surveyed by Bloomberg say these 20 stocks will gain only 1 percent during the next 12 months, because they achieved their target valuations much sooner than predicted. Tesla Inc., the Palo Alto-based manufacturer of electric vehicles, appreciated 60 percent since Trump's election and is now worth more than \$50 billion, greater than Ford Motor Co.'s \$45 billion market capitalization and almost as much as General Motors Co.

"We have a goal of a million and a half electric vehicles by 2025 and that's quite a steep curve to get there," Brown said in the interview in March. "No matter what Trump says, China, the world, the academies of science and all the major countries have all recognized climate change. Certainly, businesses acknowledge they have to make these investments. California is well on its way."

Technology driving the clean energy boom is the reason California companies lead most of their peers in U.S. The 467 California-based firms in the Russell 3000 Index produced a total return of 185 percent since 2012, easily surpassing the 94 percent for the index, according to data compiled by Bloomberg. Analysts also are more bullish on companies in California than the rest of the U.S., predicting a 12-month average total return 12 percent (income plus appreciation) versus 9 percent, according to data compiled by Bloomberg.

Behind such a favorable outlook is the diversity of the California economy, which grew \$42.3 billion during the first three quarters last year. That's almost as much as the next two fastest-growing states, New York and Florida, combined.

California's revenue from agriculture, forestry, fishing and hunting totaled \$39 billion in 2015, plus \$279 billion from manufacturing. The trailing 12-month revenue from California technology companies is \$720 billion, or 54 percent of the U.S. industry, according to data compiled by Bloomberg.

The capitalist juggernaut that is California helps explain why the state's per capita income increased 9.5 percent since 2015, the most of any state and the most since 2012, according to data compiled by Bloomberg. Far from losing jobs overseas, California keeps creating them with an unemployment rate declining to 4.9 percent from 5.7 percent in 2016, faster than the national average.

None of this is lost on the residents of California. They are proudly enacting policies in opposition to

Trump's. The legislature became the first to vote to become a sanctuary state, and supported raising gas taxes and vehicle registration fees to improve infrastructure. While Trump gets the lowest approval of any new president after 100 days and the Republican Congress does worse, the politics of California are the opposite. A recent University of California Berkeley Institute of Government Studies poll found 57 percent of California's registered voters approve of the legislature's job performance. Brown gets 61 percent approval.

If that's a "mess," Trump could only hope for more of it.

## **Bloomberg View**

By Matthew Winkler

May 10, 2017, 2:00 AM PDT

(With assistance from Shin Pei.)

*This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.*

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### **[Fitch: Puerto Rico's Ratings Unchanged by Title III Bankruptcy Filing.](#)**

**Fitch Ratings-New York-05 May 2017:** The Commonwealth of Puerto Rico's ratings are unchanged following the filing on May 3, 2017 by the Puerto Rico Oversight Board of a petition under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), according to Fitch Ratings.

The sales tax bonds of the Puerto Rico Sales Tax Financing Corporation (COFINA) and the pension funding bonds of the Employees Retirement System of the Commonwealth of Puerto Rico (ERS) are currently rated 'C' by Fitch and are on Rating Watch Negative. The 'C' rating indicates Fitch's belief that default of some kind on the COFINA and ERS bonds appears inevitable due to the Commonwealth's previously stated intent to restructure its debt.

Although sales tax revenues pledged to COFINA continue to be set-aside per the flow of funds and debt service has been paid, there is significant uncertainty as to the eventual impact of a broader restructuring of the commonwealth's debt on COFINA bondholder protections.

The ERS has begun to draw on the debt service reserve to make debt service payments. A default on the pension bonds is expected once the debt service reserve is depleted, which is expected as early as this month (May 2017). Under the Commonwealth's debt moratorium, enacted in April 2016, the Commonwealth has suspended transfers of employer contributions to the ERS in an amount equal to the debt service payable by the ERS and suspended the obligation of the ERS to transfer pledged funds to the trustee under the bond resolution.

Fitch rates securities on which the Commonwealth has already failed to make full and timely payment 'D'. These securities include the general obligation (GO) bonds and government facilities revenue and revenue refunding bonds, issued by the PR Building Authority and guaranteed by the Commonwealth.

The Commonwealth's Issuer Default Rating (IDR) remains 'RD', indicating that the issuer has defaulted on a select class of its debt.

Other ratings of Commonwealth entities include:

Puerto Rico Electric Power Authority (PREPA): The current rating of 'C' and the Rating Watch Negative continue to reflect Fitch's view that a payment default or restructuring of PREPA's debt obligations is inevitable. A common component of the PREPA restructuring plans being considered is the reduction of existing debt by means of a proposed distressed debt exchange.

Puerto Rico Aqueduct and Sewer Authority (PRASA): PRASA's rating of 'C' and Negative Watch reflects Fitch's view that a payment default or restructuring appears inevitable. PRASA's fiscal plan recently approved by the Oversight Board projects annual shortfalls over the next 10 years absent significant cuts in debt service costs or sizeable rate increases that may be untenable. To date, PRASA has made all payments related to its rated bonds, although PRASA entered into forbearance agreements related to its state revolving fund and rural development obligations in June 2016 and currently owes more than \$70 million to contractors.

Housing Finance Authority (HFA): Fitch currently rates two of the Authority's outstanding bond issues; both ratings are on Rating Watch Negative:

-Puerto Rico Housing Finance Authority capital fund modernization program subordinate bonds (Puerto Rico Housing Projects), series 2008 (Non-AMT) 'A'. The capital fund bonds are secured by payments from Puerto Rico Public Housing Administration's public housing HUD capital fund annual appropriations;

-Puerto Rico Housing Finance Authority mortgage-backed certificates, 2006 series A 'AAA'. The certificates are limited obligations of the issuer secured by the revenues and assets of a trust indenture portfolio of GNMA and FNMA MBS.

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## **Puerto Rico Strikes Deal With Development Bank's Bondholders.**

- **Bondholders would exchange debts for newly issued securities**
- **Pact needs broader approval of creditors and U.S. court**

Puerto Rico said creditors of the insolvent government development bank agreed to accept losses by exchanging their bonds for new securities, moving the island another step toward escaping from some of its crushing debts.

Governor Ricardo Rossello said Monday that his administration struck a deal with major bondholders of the bank, which borrowed for the U.S. territory until the island's fiscal crisis pushed it to default. If approved by others creditors, the financial oversight board and a U.S. court, the bank would be wound down and investors would receive bonds issued by a new entity that would take over its assets, which are worth some \$5.3 billion.

Under the agreement, bondholders would exchange their debts at 55 percent, 60 percent or 75 percent of face value, depending on whether they elected to receive higher interest payments or the prospect of a greater recovery through debt with less legal claim to the bank's cash, according to terms disclosed in a bond filing.

The deal comes less than two weeks after Puerto Rico initiated bankruptcy-like proceedings, giving it power to have debts dismissed in U.S. court if creditors don't voluntarily agree to accept less than they're owed. Puerto Rico has already reached a similar agreement with creditors of the government electric company and officials have said they intend to continue negotiating with investors who hold securities sold by other arms of the island's government.

"This agreement is an example that the government is regaining the credibility it had lost over the past few years," Rossello said. "We are satisfied with this agreement."

While imposing losses on bondholders, the agreement will allow them to recoup more of their investment than current trading prices suggest. Government Development Bank bonds due in August, for example, traded Monday for an average of 24.3 cents on the dollar.

Rossello said at a press conference Monday that 45 percent of bondholders have so far consented to the restructuring. Under the federal emergency rescue law that allows for Puerto Rico to legally cut its debts, any voluntary agreement must be approved by a two-thirds vote of bondholders.

The agreement included the so-called ad hoc group — comprised of funds managed or advised by

Avenue Capital Management, Brigade Capital Management, Fir Tree Partners and Solus Alternative Asset Management — as well as local bondholders.

“While we are voluntarily accepting to sustain significant losses, up to 45 percent of the savings that Puerto Ricans worked for, it is because we are Puerto Ricans first and we recognize the circumstances in which Puerto Rico is today,” Rafael Rojo, a spokesman for local bondholder group Bonistas del Patio said in a statement.

Under the terms of the deal, the bank’s assets, including municipal loans, real estate and cash, would be transferred to the new entity. The issuer would cover payments on the two senior debt classes first, and holders of subordinate securities wouldn’t receive any principal until those other bonds are paid. If cash isn’t available for interest payments, bondholders would receive more debt instead, according to the term sheet released by the bank.

The bank, which used to borrow for public works, was undermined by the loss of its investment-grade bond rating in 2014, which effectively shut it out of the capital markets. Puerto Rico’s fiscal oversight board, which was installed to help end the island’s crisis, has already approved a fiscal plan that would shut it down.

That plan said the bank had key assets of \$6.5 billion and major liabilities of \$7.4 billion.

## **Bloomberg Markets**

by William Selway and Alexander Lopez

May 15, 2017, 6:38 AM PDT May 15, 2017, 9:10 AM PDT

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## **[Debt Island: How \\$74 Billion in Bonds Bankrupted Puerto Rico.](#)**

- **Billions sunk into grand projects, expenses and bureaucracy**
- **In San Juan, \$2.25 billion bought a money-losing train line**

San Juan’s gleaming commuter train seemed like a coup — the kind of big-ticket item many U.S. cities can only dream of.

More than a decade on, the Tren Urbano is a monument to the folly, bloat and abuse that finally bankrupted Puerto Rico. Despite years of planning, it sells only a third of the rides it needs to, and loses roughly \$50 million a year. The cost so far: \$2.25 billion, \$1 billion more than planned.

That, in a nutshell, is Puerto Rico’s story. With Wall Street’s help, the U.S. commonwealth borrowed tens of billions in the bond markets, only to squander much of it on grand projects, government bureaucracy, everyday expenses and worse. Debts were piled on debts, even as the economy gave way.

[Continue reading.](#)

## **Bloomberg Politics**

by Martin Z Braun and Jonathan Levin

May 15, 2017, 2:00 AM PDT May 15, 2017, 7:22 AM PDT

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## **[Puerto Rico Bonds That Were Bought Up by Hedge Funds Slide to New Low.](#)**

Prices of bonds from Puerto Rico's record \$3.5 billion municipal junk offering in 2014 are tumbling to fresh lows. The general obligations due in 2035, many of which were bought by hedge funds when they were issued at 93 cents on the dollar, changed hands at an average of 61.9 cents Tuesday in trades of more than \$1 million, with smaller lots sold for as little as 58.4 cents. The territory's decision last week to use bankruptcy-like powers granted by Congress has cast doubt on how much of their investment bondholders will recoup.

### **Bloomberg Markets**

by William Selway

May 10, 2017, 7:34 AM PDT

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## **[Hedge Funds Vie With Puerto Rico Workers Over Getting Paid First.](#)**

- **Commonwealth's pension systems set to go broke this year**
- **Island's \$123 billion bankruptcy biggest in municipal history**

The message in Puerto Rico is blunt: pay us, not Wall Street.

Anger over the biggest municipal bankruptcy in U.S. history has centered on the urgent question of public pensions. Puerto Rico has promised its workers and retirees \$49 billion in benefits, but it's guaranteed bondholders even more.

The pension system is scheduled to run out of money as soon as July, and many on the island fear, with benefit cuts already under discussion, that the hedge funds who own one-third of the commonwealth's bonds will wrangle a better deal than ordinary Puerto Ricans.

"The whole situation is unfair," said Maria Rodriguez, a 64-year-old retired employee of the Public Building Administration. "I worked for over 35 years for the government and now it's apparently clear that my pension will be cut by at least 10 percent. This is the result of the actions of multiple administrations from both parties."

It's a no-win situation for Puerto Rico and its 3.5 million people. Schools are being closed, talented residents are leaving and the economy has been contracting for years.

That's the mess confronting U.S. District Judge Laura Taylor Swain as the adversaries face off for the first time in federal court May 17 in San Juan. They'll be tussling over \$123 billion owed to retirees and creditors.

### **'Don't Care'**

In pre-hearing rhetoric, labor groups are painting rich hedge funds as uncaring vultures looking to extract money from less-wealthy public workers. The creditors say there would be more money for everyone if Puerto Rico improved its revenue collections and thinned its hulking government bureaucracy.

“Hedge funds don’t care what happens to the people, they want to get more profits,” said Emilio Nieves, president of Puerto Rico’s National Union of Educators and Education Workers. “They are our oppressors. We will resist and the government of Puerto Rico must decide if they are in favor of the people or the bondholders.”

Average annual pension benefits are \$14,000, according to Puerto Rico’s federal oversight board, and roughly one-third of employees are ineligible for Social Security benefits. Nearly half of island residents live in poverty and the median household income is \$19,350, compared with \$53,889 in the 50 states, according to U.S. Census data.

The commonwealth’s federal oversight board anticipates a 10 percent cut in pension expenses. That’s more generous than what Governor Ricardo Rossello offered bondholders in his latest public proposal. General-obligation bonds, or GOs, which the island’s constitution says must be repaid before other bills, would receive a best-case recovery of 90 cents on the dollar. Since that estimate depends on an improvement in the government’s finances, the recovery could be as low as 70 percent.

### **Divide Payments**

Rossello’s fiscal plan would pay bondholders less than a quarter of what they’re owed in principal and interest through 2026. The government hasn’t said how they would divide those payments, or which group is first in line.

“As much as there were promises made to various stakeholders on the island — pensioners, current government employees or contractors who work for the government — those are all implicit promises,” said David Tawil, president and co-founder of Maglan Capital LP in New York, who bought Puerto Rico bonds in 2013 but has since sold them. “The bondholders have explicit promises whether they be in offering documentation or whether they be pursuant to the constitution.”

The court hearing comes two weeks after Puerto Rico’s federal oversight board filed a form of bankruptcy called Title III to help reduce its \$74 billion of debt and tackle its unfunded pension crisis. It will be the largest restructuring in the history of the \$3.8 trillion municipal-bond market.

Title III, a provision in the Puerto Rico relief law that Congress passed last year, is the only way for the island to force pension recipients to accept benefit cuts in court. Puerto Rico needed to pursue Title III in part because of its pension crisis, the board wrote in its May 3 filing. Another negotiating provision called Title VI didn’t include retirement savings.

### **Official Committee**

The various parties have already begun wrestling over repayment. A coalition of retiree groups has asked Swain to appoint an official committee to represent government pensioners in the court battle. Until now, pensioners have been excluded from talks between bondholders and Puerto Rico because the negotiations took place under Title VI.

A court-recognized committee would give retirees an equal footing with other creditors, said Robert Gordon, a lawyer with Clark Hill PLC, who’s representing more than half the island’s 160,000 public employee retirees.

“We need a voice in the case,” said Gordon, who also represented the retirement systems in Detroit’s bankruptcy case.

In a separate suit, a labor group representing more than 12,300 commonwealth workers and retirees

is asking a court to declare Rossello's fiscal plan unlawful because of its proposed pension cuts, though it doesn't specify the impact on a retiree's monthly check. That lawsuit is on hold while the bankruptcy case goes forward. Other suits directly affecting the restructuring will also likely be put on hold.

### **Detroit's Example**

In Detroit, retired police and firefighters saw no reduction, while general employees got about 95 percent of what they were promised. Cost-of-living increases were cut for police and firefighters and eliminated for general employees. Both groups also saw health benefits cut. The changes were expected to result in a 74 percent reduction in the city's total post-employment benefit costs.

It may be difficult for pensioners to avoid taking losses. Puerto Rico's constitution says that general obligations must be repaid before other bills, and retirement expenses don't have the same repayment pledge, said Ted Hampton, a Moody's Investors Service Inc. analyst in New York.

"Pensions are not up there with GOs," Hampton said. "The judge is going to have to think about what that means."

### **Sales-Tax Bonds**

Another class of creditors, those who own sales-tax bonds, have a dedicated claim on levy revenues. Rossello's plan offers them as much as 58 cents on the dollar, if Puerto Rico's finances improve, and as little as 39 cents on the dollar.

Hedge funds, like public workers, find fault with Rossello's fiscal plan, which estimates annual government expenses, including essential services, will total \$17.9 billion this year and reach \$22.3 billion in 2026. Creditors want to see a breakdown of which services are deemed essential.

Hedge funds holding \$1.4 billion of general-obligation bonds sold in 2014, including Aurelius Capital Management and Monarch Alternative Capital, sued the commonwealth on May 2, seeking overdue payments. Another group of hedge funds holding \$1.9 billion of senior sales-tax bonds, including Whitebox Advisors, Merced Partners and Tilden Park Capital Management, also sued the governor on May 2 to stop his fiscal plan from redirecting sales-tax revenue to the island's general fund and away from bond repayments.

Puerto Rico only has roughly \$1 billion of the \$49 billion promised to current and future retirees. That gap is a result of the commonwealth skipping employer contributions to the system, offering benefits without adequate funding and extending loans to retirement-fund participants.

"Puerto Rico's pensions unfortunately had a history of engaging in practices that were not common elsewhere and that were very threatening to their long-term solvency," Hampton said. "Part of what the court will look at is the legacy of those unusual or ill-advised practices."

### **Bloomberg Markets**

by Michelle Kaske and Steven Church

May 12, 2017, 2:00 AM PDT

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## **Puerto Rico Menaces Mutual Funds That Resisted Market Exodus.**

- **OppenheimerFunds is top mutual fund holder with \$6.3 billion**
- **Mutual funds hold \$15 billion of uninsured Puerto Rico debt**

The biggest restructuring in the history of the U.S. municipal-bond market will fall heavily on hedge funds that wagered Puerto Rico wouldn't go broke. But there's plenty of little guys left holding the bag, too.

More than two-dozen mutual funds hold about \$15 billion of uninsured Puerto Rico bonds, about 20 percent of Puerto Rico's \$74 billion debt, according to the most recent data compiled by Bloomberg. While that's less than what it was more than three years ago — before the island's rating was cut to junk — the figures show that smaller investors who own mutual fund shares still have a significant stake, despite a buying spree by speculators who scooped up about a third of the government's debt when others fled.

OppenheimerFunds Inc., a unit of Massachusetts Mutual Life Insurance Co., is the biggest mutual-fund holder with \$6.3 billion. Franklin Resources Inc., the second-biggest, has about \$3.1 billion. UBS Asset Managers of Puerto Rico funds hold \$1.4 billion, followed by those run by Goldman Sachs Group Inc., which have about \$1.2 billion.

Mutual funds bought the island's debt because it offered high-yields and was exempt from taxes across the nation.

While those investments have been jeopardized by the island's decision Wednesday to turn to a U.S. court to restructure its debt after a series of defaults, those mutual funds will likely see little immediate impact. The Caribbean territory's crisis has been building for two years, giving funds plenty of time to pare their exposure. And the court filing — allowed under emergency legislation enacted by Congress last year — had little impact on bond prices, which had already tumbled. One of the island's most active securities, general-obligation bonds that were first sold for 93 cents on the dollar in 2014, traded for 64 cents Friday.

The variety of bond holders, however, underscores the broad reach of the commonwealth's crisis, which will be sorted out under the supervision of U.S. District Judge Laura Taylor Swain after it proved too vast for the government to do out of court. Puerto Rico has issued many different classes of debt backed by different revenue sources: general revenue, sales taxes, utility fees — even rum-tax money.

While analysts say it's impossible to gauge exactly how much of their money various bondholders will get back, they won't be totally wiped out. Before seeking out court protection, Puerto Rico offered general-obligation bondholders at least 70 cents on the dollar, with the possibility for 20 cents more if the island's finances rebound.

Despite its stake in Puerto Rico, OppenheimerFunds' Rochester High Yield Municipal Fund is the top-performing municipal fund over the last three years, returning 8.3 percent annualized, according to data compiled by Bloomberg. The \$5.8 billion fund is a large holder of junk-rated tobacco bonds, which returned an annual 11.3% in the three years ending March 31, according to the S&P Municipal Bond Tobacco Index.

"Rochester funds have long believed that a negotiated resolution and restructuring without the expensive delay of protracted litigation is the best way forward for all parties," said Kimberly Weinrick an OppenheimerFunds spokeswoman. "In view of the financial oversight board's Title III

filing and its decision to ignore a serious and constructive plan that we put forward in good faith, we are considering all appropriate legal remedies to protect and preserve the rights of fund shareholders.”

Franklin has reduced its exposure to Puerto Rico since 2012 because of the government’s weakening finances, said Stacey Coleman, a spokeswoman for the company. Its mutual-fund investors are also relatively protected against what was retained: None of Franklin’s funds have more than 5 percent of its assets invested in the island, and some have none at all, she said.

“We retained those investments that we believed were in the strongest position and felt had significant legal and constitutional protections by their indentures and the Puerto Rico constitution itself,” she said.

Peter Stack, a UBS spokesman, declined to comment, as did Andrew Williams, a spokesman for Goldman Sachs.

Bloomberg calculated fund holdings as face value for non-zero coupon bonds and at accreted value of zero coupon bonds. Derivatives, fully refunded bonds, insured and tobacco debt weren’t included.

## **Bloomberg Markets**

by Martin Z Braun

May 8, 2017, 2:00 AM PDT May 8, 2017, 7:21 AM PDT

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### **[Puerto Rico’s Bankruptcy Fight Is About to Plunge Into the Unknown.](#)**

- **Bondholders push competing claims but island may void them all**
- **‘This is a government restructuring, not a court one’**

Dealing with Puerto Rico’s crushing debt has started to resemble a circular firing squad.

Simply put, the bankrupt island can’t pay everything it owes, so creditors are taking aim at each other as they squabble over who will get what’s left. But the debt’s size and the tangled process invented to rescue Puerto Rico mean there’s no established rule book to shape what comes next.

Holders of general-obligation debt have declared their right to be paid first, owners of sales-tax bonds are squabbling with one another over who deserves priority, and they’re all up against the commonwealth’s leaders, who want the cash for essential services. Amid this melee, Puerto Rico’s federal overseers will have to choose between paying U.S. hedge funds everything they’re owed or keeping schools, water and electricity running.

“There just isn’t enough money,” said Matt Fabian, a partner with Municipal Market Analytics Inc. in Concord, Massachusetts, who foresees a chaotic brew of lawsuits, federal interventions and politics. “Nobody has any idea what’s going to happen.”

All told, Puerto Rico has about \$74 billion in debt and \$49 billion in pension liabilities. Hedge funds holding \$1.4 billion of general-obligation bonds, including Aurelius Capital Management and Monarch Alternative Capital, have already sued to get overdue principal and interest. On the other side, owners of \$17 billion in sales-tax bonds, including Tilden Park Capital Management and

GoldenTree Asset Management, have entered the fray. They'll meet for the first time in court on May 17 in San Juan.

## **Default Notice**

The dispute over the sales-tax bonds, named Cofinas after the agency that issued them, began in earnest May 4. That's when the trustee, Bank of New York Mellon Corp., sent a notice of default to the authority that sold the bonds. The object was to keep the government from diverting the sales-tax revenue to other purposes before it pays what it owes to investors.

The New York-based bank acted after weeks of pressure from senior bond owners who urged the trustee to safeguard their claims. In the process, junior bondholders were irked because the default notice could mean no payments for them until the senior bondholders are paid in full. The notice sets a 30-day deadline for a response from Puerto Rico, which is supposed to pay about \$256 million of principal and interest on Aug. 1, according to data compiled by Bloomberg.

Puerto Rico's status as a commonwealth means it's not subject to traditional bankruptcy laws. Instead, the island filed for the next best thing to deflect claims, called Title III. It's an in-court restructuring based on the U.S. bankruptcy code that was created under Puerto Rico's Promesa law last year. But it's never been used before, which means any cuts imposed by U.S. District Court Judge Laura Taylor Swain will be more likely to face years of appeals than a typical case.

## **Delayed Filing**

Puerto Rico's initial Title III filing on May 3 didn't include Cofina. If it had, BNY Mellon may have been prohibited from sending its May 4 default notice. But the oversight and management board didn't file its separate Title III action for Cofina until May 5, giving the bank a window to declare the default.

The delay means it's unclear whether the Title III filing voids BNY Mellon's default notice, as well as a separate default notice sent by Ambac Assurance Corp. on May 1. Regardless, BNY Mellon and senior creditors are prepared to contest a court's decision if it's not in their favor, according to a person familiar with the matter, who asked not to be identified discussing private information. The government hasn't said how it will respond.

"As a public policy, legal defense strategies are not discussed until they are presented in judicial forums," Yennifer Alvarez, a spokeswoman for Governor Ricardo Rossello, wrote in an emailed comment.

The senior bondholder group, which controls about one-third of the senior Cofina bonds, is led by hedge funds Whitebox Advisors, Tilden Park Capital Management, GoldenTree Asset Management and Merced Capital, according to Susheel Kirpalani, a lawyer at Quinn Emanuel Urquhart & Sullivan who represents the group.

## **Debt Due**

For investors, there's a lot at stake. Cofina holders are owed more than \$8 billion in debt service through 2026, with \$704 million in payments due in the next fiscal year, which starts in July, according to the commonwealth's fiscal plan.

The territory owes all bondholders \$33.4 billion in debt payments between now and 2026, according to the plan, but it proposes to pay only about \$8 billion. The government hasn't said how bondholders should divide those payments, or which group is first in line.

“This is a government restructuring, not a court one, so the government will be in the driver’s seat,” Fabian said. “Creditors will not be heard to the extent they’re saying, ‘let’s do it a different way.’ Those arguments won’t have any standing in a court.”

Owners of junior Cofinas could be left vulnerable. BNY Mellon holds a trustee reserve fund of sales-tax revenue with about \$400 million, more than enough to handle the upcoming August payment, according to people familiar with the matter.

But because of the default notice, junior bondholders are unlikely to be paid, in order to safeguard claims of the senior Cofinas, said the people, who asked not to be identified discussing private transactions. Given the limited funds available for debt repayment, there’s a chance the subordinated holders could get little or no recovery. A representative for BNY Mellon declined to comment.

What’s more, general-obligation bondholders claim that the entire Cofina structure violates the island’s constitution, and all the sales-tax revenue is owed to them. If the general-obligation claims are supported in court, all of the Cofina debt could be ruled invalid and investors could receive nothing at all.

## **Bloomberg Markets**

by Emma Orr, Steven Church, and Michelle Kaske

May 11, 2017, 2:00 AM PDT May 11, 2017, 6:25 AM PDT

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### **[Puerto Rico Debt Recoveries May Lag Trading Prices, Pimco Says.](#)**

- **Restructuring may leave less than market expects, analyst says**
- **Some general-obligations trading around 60-cents on the dollar**

Puerto Rico’s record-setting restructuring may leave bondholders with larger-than-expected losses, according to according Pacific Investment Management Co.

The investment firm, which oversees \$40 billion of municipal debt and has steered clear of the Caribbean island’s government bonds, said Tuesday that recoveries on some Puerto Rico securities may be less than what the current trading prices suggest. The U.S. territory, which resorted to bankruptcy-like proceedings last week, projects it can cover less than a fourth of what’s owed to investors in the next 10 years, even after taking sweeping steps to steady its finances. A federal oversight board approved that plan in March.

“We would have expected a larger drop in bond prices year-to-date considering the Promesa Financial Oversight and Management Board announced a ‘once-and-done’ approach to addressing Puerto Rico’s fiscal difficulties,” Sean McCarthy, Pimco’s head of municipal credit research, wrote in a report Tuesday.

The investment firm isn’t entirely spurning Puerto Rico. “We do see pockets of opportunity in select revenue bonds and have added a small amount of Puerto Rico enterprise debt to municipal high yield portfolios (but remain void of Puerto Rico primary government debt),” McCarthy wrote.

Before it filed for court protection, Puerto Rico’s last public offer gave general-obligation

bondholders as much as 90-cents on the dollar, although some of that repayment depended on an improvement in the government's finances.

That offer is higher than where the bonds are trading now. General obligations with an 8 percent coupon and maturing in 2035 traded Tuesday at an average 59.7 cents on the dollar, according to data compiled by Bloomberg.

## **Bloomberg Markets**

by Michelle Kaske

May 9, 2017, 8:33 AM PDT

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### **[Bond Insurer Stocks Hit in Puerto Rico Proceedings.](#)**

Shares of firms that insure some of Puerto Rico's municipal bonds took a hit Wednesday after the island commonwealth was placed under bankruptcy protection.

Shares of Ambac Financial Group, which guarantees \$10 billion in Puerto Rican debt, including the full value of the bonds at maturity, dropped 1.9% Wednesday, bringing its fall this week to 5.2% and its 2017 losses to 18%. The stock has been down for five straight sessions.

MBIA fell 0.9% and Assured Guaranty slipped 0.2%, underperforming the S&P 500's 0.1% drop.

"Right now, Puerto Rico is the primary driver of these stock prices," said Mark Palmer, an equity research analyst at BTIG, who believes a "dire scenario" is already baked into their prices.

About \$12 billion of the island's \$73 billion in debt is insured, according to insurers' filings on the par value of the bonds. On Tuesday, ahead of the decision by federal officials to place Puerto Rico under bankruptcy protection, Ambac challenged the commonwealth's debt restructuring plan in federal court.

The stocks have long followed the twists and turns of the Puerto Rico case. Ambac's stock jumped 22% in the final two months of 2016 as Puerto Rico's new governor, Ricardo Rosselló, was seen to favor repaying the island's debts.

Creditors had fought with the previous governor, Alejandro Garcia Padilla, but thought Gov. Rosselló, would be on their side when he took office earlier this year. Wall Street's relationship with the governor has since deteriorated.

THE WALL STREET JOURNAL

By BEN EISEN

May 3, 2017 5:05 pm ET

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### **[Puerto Rico's First Bankruptcy Hearing Set for May 17.](#)**

WILMINGTON, Del. — Puerto Rico will begin its bankruptcy proceedings on May 17 in San Juan with a series of requests for managing the case as the commonwealth begins the process of restructuring its \$70 billion in debt, according to court filing on Tuesday.

Puerto Rico's federally appointed financial oversight board on May 3 filed the debt restructuring petition under Title III of last year's U.S. Congressional rescue law known as PROMESA. While the initial filing was limited to obligations of the central government, it was still the largest-ever U.S. municipal bankruptcy, dwarfing that of Detroit.

Two days later, the oversight board sought bankruptcy protection for debt backed by sales tax revenues, known as COFINA.

The bankruptcy will be overseen by U.S. District Judge Laura Taylor Swain of the Southern District of New York, who was appointed by U.S. Chief Justice John Roberts.

The commonwealth has asked Swain to issue orders for case management, such as notifying its creditors and hiring a firm to manage claims, according to court filings.

Bankruptcy may not immediately change the day-to-day lives of Puerto Rico's people, 45 percent of whom live in poverty, but it could lead to cuts in pensions and worker benefits and a reduction in health and education services.

The island's economy has been in recession for nearly a decade, and has a current unemployment rate of about 11 percent.

The bankruptcy process will also give Puerto Rico the legal ability to impose drastic discounts on creditor recoveries, but could also spook investors and prolong the island's lack of access to debt markets.

Prices for the commonwealth's benchmark general obligation bonds fell to a record low on Tuesday of 58.45.

By REUTERS

MAY 10, 2017, 10:57 A.M. E.D.T.

(Reporting by Tom Hals in Wilmington, Delaware; Editing by Meredith Mazzilli)

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- [SIFMA Finalizes Muni Issue Price Model Documents.](#)
  - [MSRB Holds Quarterly Board Meeting.](#)
  - [GASB Implementation Guidance Update No. 2017-1](#)
  - [IRS Teeing Up More Flexible Rules for Public Approval of PABs.](#)
  - [Munis Could Be Hurt by Plan to Slash Corporate Tax Rates.](#)
  - [Demys'TIF'ying Tax Incentives.](#)
  - [IRS Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds.](#)
  - [S&P 2017 U.S. Public Finance Credit Forum.](#)
  - [BLX Post-Issuance Compliance Workshop.](#)
  - [KBRA NE Municipal Finance Summit.](#)
  - [Long v. City of Helen](#) - Supreme Court of Georgia holds that fact that city's attorney fees and

litigation expenses were principally borne by city's insurer did not preclude city from recovering fees and expenses.

- [City and County of Denver v. Expedia, Inc.](#) - Supreme Court of Colorado holds that online travel companies were "vendors" with responsibility to collect lodger's tax and remit it to city, and that companies' markup for selling reservations to lodgers, which companies retained, was subject to tax.
- And finally, Adventures in Assessments is brought to us this week by [City of North Little Rock v. Pfeifer](#), in which "The City's attorney appeared before the Board, explained the uses of its properties within the proposed district, and requested a reassessment. The Board then raised the assessed value of the City's larger parcel from \$530 to \$82,850 and lowered the assessment of its smaller parcel from \$8200 to \$8196." While first revaluation is genuinely stunning, the second is just plain gobsmacking. (I'd love to tell you that I did a violent double take when I saw the numbers, but it took me a minute or so to do the math.) What conceivable factor(s) could possibly result in a \$4 reduction? Once again, we welcome your conjectures.

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## **MUNICIPAL IMPROVEMENT DISTRICTS - ARKANSAS**

### **[City of North Little Rock v. Pfeifer](#)**

**Supreme Court of Arkansas - April 6, 2017 - S.W.3d - 2017 Ark. 113 - 2017 WL 1288314**

Landowner petitioned for a writ of mandamus to order city to enact an ordinance to establish landowner's proposed municipal improvement district that, in addition to what landowner held, contained two city-owned parcels.

The Circuit Court granted writ. City appealed.

The Supreme Court of Arkansas held that:

- Trial court had subject-matter jurisdiction, and
- City failed to perform its duty to make the requisite findings regarding proposed municipal improvement district.

Trial court had subject-matter jurisdiction to hear landowner's petition for a writ of mandamus to order city to enact an ordinance to establish landowner's proposed municipal improvement district. Landowner sought to compel the city to follow the proper statutory scheme set forth in statute on the creation of municipal improvement districts, and state law allowed for mandamus in an improvement-district action.

City failed to perform its duty to make the requisite findings regarding landowner's proposed municipal improvement district, and thus a writ of mandamus was proper to order the city to make the required findings pursuant to the particular statute on landowner's proposed municipal improvement district. Statute on the creation of municipal improvement districts required the city to make a finding as to whether the petition to create a municipal improvement district was signed by a majority in assessed value of the property owners, that finding was to be expressed in an ordinance, and the city council voted against the petition.

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## **ZONING & PLANNING - COLORADO**

## **[Rocky Mountain Retail Management, LLC v. City of Northglenn](#)**

**Supreme Court of Colorado - April 24, 2017 - P.3d - 2017 WL 1450103 - 2017 CO 33**

Applicant sought judicial review of city's denial of application for license to operate medical marijuana center.

The District Court ruled that provision of city code setting forth factors to be considered by licensing authority before approving or denying a medical marijuana center license was unconstitutionally vague, and that city's denial of license in reliance on that invalid provision was arbitrary and capricious. City appealed. The Court of Appeals referred the case to the Supreme Court, which accepted jurisdiction.

The Supreme Court of Colorado held that:

- City ordinance permitting local licensing authority to consider "number, type, and availability" of existing medical marijuana facilities before approving or denying application for local license was not void for vagueness, and
- Substantial evidence supported city's decision to deny applicant's request for license to operate medical marijuana center.

City ordinance permitting local licensing authority to consider "number, type, and availability" of existing medical marijuana facilities before approving or denying an application for a local license provided sufficient notice to applicants regarding what information license authority would consider, and reasonably constrained exercise of city's discretion and, thus, ordinance was not void for vagueness, in violation of due process, even though ordinance used permissive language of "may consider."

Substantial evidence supported city's decision to deny applicant's request for license to operate medical marijuana center; although city council used term "need" in discussions and written findings, evidence it considered at hearings and discussed in findings reflected that decision was grounded in factors expressly outlined in city ordinance, including "number, type, and availability" of existing facilities in city, with reference made to fact that four medical marijuana business licensees existed in city, as well as to type of products offered by other facilities in comparison to those applicant intended to sell, and wait times at existing facilities, and regardless, ordinance allowed for consideration of other pertinent facts, under which "need" could fall.

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## **ATTORNEYS' FEES - GEORGIA**

### **[Long v. City of Helen](#)**

**Supreme Court of Georgia - May 1, 2017 - S.E.2d - 2017 WL 1548561**

Property owner brought action against city stemming from land-use permitting dispute. After property owner dismissed action with prejudice, the Superior Court awarded more than \$17,000 to city for attorney fees and litigation expenses. Property owner appealed.

The Supreme Court of Georgia held that fact that city's attorney fees and litigation expenses were principally borne by city's insurer did not preclude city from recovering fees and expenses.

Fact that city's attorney fees and litigation expenses were principally borne by city's insurer did not preclude city from recovering fees and expenses pursuant to statute governing frivolous litigation in action brought by property owners stemming from land-use permitting dispute. Statute stated that

fees and expenses were limited to those amounts which were reasonable and necessary for defending or asserting the rights of a party, and nothing in statute stated that fees and expenses were required to be principally borne by the party itself.

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## **PLANNING & ZONING - ILLINOIS**

### **[Whipple v. Village of North Utica](#)**

**Appellate Court of Illinois, Third District - April 25, 2017 - N.E.3d - 2017 IL App (3d) 150547 - 2017 WL 1506057**

Property owners brought action against village and mining company for declaratory and injunctive relief, seeking to invalidate ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit.

The Circuit Court dismissed action. Property owners appealed.

The Appellate Court held that:

- Property owners stated cause of action for violation of their substantive due process rights;
- Annexation agreement which provided that the lawful, normal operation of a silica sand mine was not a nuisance under village ordinances, along with special use permit allowing operation of mine, did not single out owners of property near to mine for disparate treatment and thus did not violate equal protection; and
- Property owners alleged harm in sufficient specific detail to state cause of action for prospective nuisance.

Property owners stated cause of action for violation of their substantive due process rights, in action for declaratory and injunctive relief against village and mining company, seeking to invalidate ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit, where property owners alleged that development and operation of mine near owners' homes and farms would adversely affect values of their properties, that owners would suffer harm to their health, water supply, and land, compared with any harm to company from denial of special use being inability to profit from proposed mine, that ordinances were not in harmony with community's comprehensive plan, and that community's need for use was minimal.

Annexation agreement which provided that the lawful, normal operation of a silica sand mine was not a nuisance under village ordinances, along with special use permit allowing operation of mine, did not single out owners of property near mine for disparate treatment and thus did not violate equal protection. Agreement and permit did not dispense with protection of nuisance laws and did not prohibit village from taking action if mine were operated in manner contrary to the ordinance, and legislation at issue operated in same way as to each resident of township.

Property owners alleged harm in sufficient specific detail to state cause of action for prospective nuisance, in action for injunctive relief against village and mining company challenging ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit, even though mine was not yet in operation, where property owners alleged that there would be continuous lights and noise of up to 133 decibels, that 146 trailer loads of sand exiting operation each day would increase traffic, that operation would discharge up to 1.25 million gallons of effluent per day into local creek, and that mining would add particulate silica dust to air around site.

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## **PUBLIC HEARINGS - MINNESOTA**

### **[834 VOICE v. Independent School District No. 834, Stillwater](#)**

**Court of Appeals of Minnesota - April 3, 2017 - N.W.2d - 2017 WL 1210108**

Association filed writ of certiorari challenging school board's decision to close three elementary schools.

The Court of Appeals held that:

- Hearing procedures established by school board for a public hearing on proposed school closings were reasonable and allowed a meaningful opportunity for public testimony, and thus procedures did not violate statute governing public hearings on proposed schoolhouse closings, and
- School board's finding that closure of schools was necessary and practicable was supported by substantial evidence.

Hearing procedures established by school board for a public hearing on the necessity and practicability of proposed closings of three elementary schools were reasonable and allowed a meaningful opportunity for public testimony, and thus procedures did not violate statute governing public hearings on proposed schoolhouse closings, even though each commenter was limited to speaking for only three minutes and persons making comments were not permitted to merge their time. Board allowed 45 commenters and did not exclude anyone, and a proffered 305-page report objecting to closures was received into the record.

School board's finding that closure of three elementary schools was necessary and practicable was supported by substantial evidence; there was evidence that school district's enrollment was decreasing, that schools were operating below capacity based on a district enrollment study, that per-student spending varied between schools by as much as \$1,600 per student and that average class sizes were significantly different at different schools, and that closing schools would save a projected \$1.2 million per year and help alleviate budget problems.

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## **PREEMPTION - PENNSYLVANIA**

### **[Southeastern Pennsylvania Transportation Authority v. City of Philadelphia](#)**

**Supreme Court of Pennsylvania - April 26, 2017 - A.3d - 2017 WL 1489043**

Southeastern Pennsylvania Transportation Authority (SEPTA) brought action against city and city commission on human relations, seeking injunctive and declaratory relief, alleging that commission was prohibited from exercising jurisdiction over SEPTA under city's fair practices ordinance.

The Court of Common Pleas sustained city and commission's preliminary objections. SEPTA appealed. The Commonwealth Court reversed. City and commission appealed. The Supreme Court vacated and remanded. The Commonwealth Court reversed. City and commission appealed.

The Supreme Court of Pennsylvania held that SEPTA was exempt from provisions of city's fair practices ordinance.

State Human Relations Commission had exclusive jurisdiction over Commonwealth agencies in anti-discrimination matters.

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## **PROMESA - PUERTO RICO**

### **[Lex Claims, LLC v. Financial Oversight and Management Board](#)**

**United States Court of Appeals, First Circuit - April 4, 2017 - 853 F.3d 548**

Bondholders filed suit against governor of Puerto Rico, seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety.

Governor moved to stay. Various entities moved to intervene. The United States District Court entered orders determining, inter alia, that four of bondholders' claims were not subject to PROMESA's automatic stay provision. Appeal was taken.

The Court of Appeals held that:

- The subject counts of the complaint, which, if successful, would have led the Commonwealth to default on a large tranche of its debt while preserving the corresponding funds for a rival class of bonds, exercised "control" over the Commonwealth's property within meaning of PROMESA's automatic stay provision, and
- PROMESA's stay applies to litigation seeking declaratory and injunctive relief, at least where the express purpose of the lawsuit is to preclude the Commonwealth from using its own funds as it sees fit.

Litigation against governor of Puerto Rico and others by which bondholders attempted to alter the Commonwealth's allocation of its own revenues, in particular, by leading the Commonwealth to default on a large tranche of its debt to one group of bondholders while preserving the corresponding funds for a rival class of bonds, exercised "control" over the Commonwealth's property within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which stayed, among other things, any act "to exercise control over property of the Government of Puerto Rico."

Automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), in staying, among other things, any act "to exercise control over property of the Government of Puerto Rico," encompasses more than possession and constructive possession of Commonwealth property.

Term "control," as used in the section of the Bankruptcy Code staying conduct that exercises control over property belonging to the bankruptcy estate, is defined quite broadly to encompass conduct above and beyond obtaining possession of an asset.

Automatic stay provision of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) applies to litigation seeking declaratory and injunctive relief, at least where the express purpose of the lawsuit is to preclude the Commonwealth from using its own funds as it sees fit.

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## **INVERSE CONDEMNATION - TEXAS**

### **[Guadalupe County v. Woodlake Partners, Inc.](#)**

**Court of Appeals of Texas, San Antonio - April 12, 2017 - Not Reported in S.W.3d - 2017 WL 1337650**

County appealed the trial court's order denying the motion for summary judgment filed by County asserting governmental immunity.

The County contended that the trial court erred in denying the motion because the evidence established as a matter of law that any damage to the value of developer's property was proximately caused by the Federal Emergency Management Administration's (FEMA) revision of its 100-year flood plain maps and federal regulations governing development in flood plains and floodways, not by the County's adoption of its Flood Damage Prevention Court Order.

The Court of Appeals reversed, granting County's motion for summary judgment and dismissing developer's inverse condemnation claim for lack of subject matter jurisdiction.

The court found that the summary judgment evidence conclusively established as a matter of law that the County's inclusion of the provisions in the Flood Damage Prevention Court Order which formed the basis of developer's inverse condemnation claim did not cause developer any damages because developer would be required to comply with those same provisions to develop the lots based on the federal regulations. This negated the causation element of developer's takings claim as a matter of law.

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## **[MSRB to Pull its Proposed Minimum Denomination Rule from the SEC.](#)**

WASHINGTON - The Municipal Securities Rulemaking Board is pulling its proposed standalone minimum denomination rule from the Securities and Exchange Commission after dealers argued it is overly complex and would hamper liquidity.

The SEC must approve the rule for it to take effect. But the board decided to pull the rule back during its quarterly board meeting here last week where it discussed comments market participants had submitted to the SEC.

The board also decided to seek a second round of comments on its controversial proposal to require CUSIP numbers for private placements and publish guidance for so-called solicitor municipal advisors, an MA that solicits issuers or others borrowers for business on behalf of certain other professionals.

The board is instructing its staff to have more discussions with stakeholders as it further considers the future form of the stand-alone minimum denomination rule, according to MSRB executive director Lynnette Kelly. The current minimum denomination requirements under MSRB Rule G15 will remain in place as the discussions continue, she said.

"The feedback [on the proposal] was very specific and quite negative," Kelly said. "Given that feedback, the board decided it wanted to obtain more information regarding any proposed amendment and, in order to allow for this because of an upcoming statutory deadline for the SEC to act, the board agreed to withdraw its current rule proposal with the SEC and ... conduct additional outreach to a diverse, broad group of municipal market participants."

Kelly added that the MSRB specifically will be soliciting feedback from issuers, which did not submit comments to the SEC on the proposal.

The standalone Rule G49, as it was proposed, would have contained current requirements from MSRB Rule G15 that prohibit dealers from engaging in transactions with customers in amounts

below the minimum denominations of municipal securities set by issuers. It also would have included two current exceptions to the prohibition as well as one more exception first proposed in April 2016. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

The standalone rule also would have eliminated the current requirement in G15 that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't its customer but rather the party from which the dealer purchased the securities. The current rule requires the liquidation statement to be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

By taking away the liquidation statement, the MSRB felt that another safeguard was needed for an existing exception under G15 that says a dealer can sell a below-minimum amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

It proposed a new "safeguard" that would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum positions, the MSRB said.

Dealer groups complained that the proposed new safeguard would have limited interdealer transactions and thus liquidity.

Tom Dannenberg, Bond Dealers of America's chair, said the proposed rule was complex and that the board had lost sight of the original intent of the regulations, protecting small investors.

The MSRB is going out for a second round of comments on the CUSIP rule proposal after participants said the change would have negative repercussions for the muni market in part because banks looking for loans would be dissuaded from buying municipal securities. Many market groups refer to the proposal as a change, but the MSRB has held that it is more of a clarification of its longstanding interpretation of its rule. The proposal additionally requires non-dealer MAs acting as financial advisors in a competitive sale to get CUSIPs.

Kelly said the first proposal "was quite proscriptive" and that the proposal underlying the next request for comment will be designed to provide dealers flexibility when they are acting as placement agents. It "will be more principles-based, which will give dealers more flexibility but require that dealers establish certain policies or procedures or conversations internally about whether or not a particular transaction needs a CUSIP," Kelly said.

The MSRB, responding to other criticisms, is also holding off for the time being on an SEC filing about its proposed advertising rules designed to harmonize advertising regulations for dealers and MAs. An advisors' group complained the proposal did not do enough to distinguish between dealers and MAs. The board instructed its staff to continue working on that proposal.

The board will be publishing regulatory guidance for solicitor municipal advisors some time in May, Kelly said, to provide more clarity and promote understanding of the MSRB rules that apply to those participants. The guidance will cover, among other things, registration, professional qualifications, supervisory responsibilities, and conflicts of interest.

There were also discussions on future staff work to study the way MSRB rules have affected municipal advisors and the current state of primary offering practices in the market.

## **The Bond Buyer**

By Jack Casey

Published May 01 2017, 11:40am EDT

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### **[Municipal Bonds Attractive Again as Trump Euphoria Wanes: Pimco](#)**

#### ***Policy stumbles can be bullish for munis***

Municipal bonds are starting to draw investor interest as investors take in President Donald Trump's early pro-growth-agenda stumbles, said David Hammer and Matthew Sinni, credit strategists at bond giant Pimco.

"While we think it's too early to shout 'all clear,' investors now have more information about policies likely to affect the municipal bond markets this year, and relative valuations are looking more attractive than they did a few months ago," they said in a note.

After Trump's election, munis were pummeled by fears that his agenda of large fiscal stimulus measures, including tax cuts, could pare demand for municipal securities. The prospect of tax changes could dull the attraction of those securities, which depend on investors looking to benefit from the income-tax exemption munis offer.

However, a failure to repeal and replace Obamacare, along with a lack of specifics on Trump's tax plans, have cast doubt on the president's ability to easily implement his policies. Trump's troubles, which comes despite Republican control of the Senate and House, has contributed to a bullish environment—at least for the moment—for muni bonds, the Pimco strategists said.

"Slower-than-expected policy progress and a Republican majority that lacks a unified vision for health care or tax reform make it more likely that an eventual fiscal boost won't occur until 2018 (and may be smaller than initially expected)," they said.

"The upshot is a tax reform backdrop for municipals that, while not without risk, has modestly improved since the beginning of the year and (if realized) would not fundamentally alter the long-term valuation paradigm for tax-efficient investors," they said.

Also, the relative value of munis versus Treasuries is also compelling, they said. The municipal/Treasury yield ratio, a measure comparing Treasury TMUBMUSD10Y, -0.27% and municipal bond yields, is at 92%. Any number above the historical average of 80% is considered a sign municipal bonds are oversold and cheap compared with Treasuries.

Hammer and Sinni point out that high-yield municipals NHMAX, +0.00% for example, appear more attractive than high-yield corporate bonds HYG, +0.05% In 2017, the spread between high-yield municipal bonds and Treasuries surpassed that of high-yield credit, mainly because of a scramble for income against a backdrop of meager interest rates, with the 10-year Treasury benchmark offering a yield of 2.32%.

Funds focusing on municipal debt have notched a five-week streak of net inflows, according to data from EPFR Global.

Falling inflation expectations from lower energy prices also has helped spur appetite because lower consumer prices help to mitigate the corrosive effect of inflation on a bond's fixed payments. Signs of slack in hiring, which suggest that wages are holding lower, can also contribute to weaker inflation expectations.

So-called break-even levels for Treasury inflation-protected securities, that is, the bond market's estimation of expected inflation, have fallen. The five-year break-even rate, or average expectations over a five-year period, fell as low as 1.65% on April 18 from the two-year peak of 1.97% on Jan. 27, a week after Donald Trump had entered the White House, data from the Federal Reserve Bank of St. Louis shows.

To be sure, others argue different employment indicators could show an economy at full employment and that energy prices have only a fleeting impact on inflation. The jobless rate continues to stay at 4.5%, matching prefinancial crisis levels, and the Bureau of Labor Statistics reported wages had grown 0.8% in March.

## **MarketWatch**

By Sunny Oh

May 3, 2017 5:35 p.m. ET

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### **[MSRB Provides Guidance on Application of Rules to Solicitor Municipal Advisors.](#)**

Washington, DC - To promote understanding of the regulatory framework for municipal advisors acting as solicitors, the Municipal Securities Rulemaking Board (MSRB) today published guidance summarizing MSRB rules applicable to this category of municipal advisory activity. Solicitor municipal advisors, for compensation, solicit municipal entities, including public pension plans, and obligated persons for business on behalf of certain other financial professionals.

Under the MSRB's mandate to protect municipal entities and obligated persons, the MSRB has developed a core regulatory framework for all municipal advisors. Today's guidance comprehensively summarizes that framework and specifically addresses how that framework applies to solicitor municipal advisors. The guidance also compiles and includes links to the numerous resources available from the MSRB and the Securities and Exchange Commission for additional information.

"One component of creating a comprehensive regulatory framework for municipal advisors is addressing the activities of solicitor municipal advisors in their interactions with public pension plans, municipal bond issuers and other municipal entities," said MSRB Executive Director Lynnette Kelly. "Today's guidance furthers the MSRB's efforts to ensure all municipal advisors understand their regulatory obligations."

The MSRB established the core standards of conduct for non-solicitor municipal advisors with the 2015 adoption of MSRB Rule G-42. When developing Rule G-42, the MSRB communicated its intention to undertake separate rulemaking or guidance for solicitor municipal advisors. MSRB

outreach to and questions received from solicitor municipal advisors informed the development of the new guidance.

“While the guidance is directly responsive to requests for information from solicitor municipal advisors, we believe all municipal advisors can benefit from the rule summaries and resources provided,” Kelly said.

[Read the guidance.](#)

[Access additional resources for municipal advisors.](#)

Date: May 4, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer  
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## **[IRS Teeing Up More Flexible Rules for Public Approval of PABs.](#)**

WASHINGTON Rules increasing the flexibility of the public approval process for tax-exempt private activity bonds will probably be the next released for municipal bonds by tax regulators, an Internal Revenue Service official recently told lawyers.

“The 2008 regulations permitted quite a bit of flexibility,” IRS Branch 5 chief Vicky Tsilas said during a conference sponsored by Georgetown University Law Center, according to Tax Notes. “I would argue these regulations - as they get finalized or re-proposed, whatever it is - will permit even greater flexibility in response to comments received over the years.”

“The 2008 regulations permitted quite a bit of flexibility,” IRS Branch 5 chief Vicky Tsilas. “I would argue these regulations - as they get finalized or re-proposed, whatever it is - will permit even greater flexibility in response to comments received over the years.”

On the same panel with Tsilas, Mike Bailey, a lawyer at Foley & Lardner in Chicago, noted that the new issue price rules provide no guidance about whether they are to be applied to many tax requirements that bond lawyers have historically complied with using issue price rules. These include the 2% limitation on issuance costs for private activity bonds, the requirement that at least 95% of the net proceeds of qualified exempt-facility bonds be spent on a project's capital costs, and the 5% limit on private use for 501(c)(3) bonds for nonprofits.

Tsilas told Bailey that those issues will be addressed by another regulatory project, according to Tax Notes.

The public approval requirements for PABs are in the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. The act said that for PABs, including 501(c)(3) bonds for nonprofits, to be tax-exempt the state or local government issuing the bonds or the borrower of the proceeds would have to approve them. The PABs would be treated as approved if either residents voted for them in a referendum or an elected representative approved them after a public hearing was announced and held. The Treasury and IRS published temporary rules in 1983 to implement the TEFRA provisions.

The tax-writing agencies then proposed rules in September 2008 to update, streamline and simplify

those temporary rules. The proposed rules were generally supported at the time and Treasury officials expected them to be quickly finalized. Whereas the existing rules had required a very specific and detailed description of the facility to be bond-financed, the proposed rules would allow a general reference to the type of facility for which bonds were being issued.

The proposed rules also would allow a government or its authority to cancel a hearing if, after timely notice of the hearing, no one had asked to participate in it. They allowed the government to post notice of the hearing on its website. Some community and labor groups claimed the proposed rules claiming they would come close to removing public input from the process of issuing PABs. Nine years later, the proposed rules have still not been finalized.

The National Association of Bond Lawyers in June 2015 submitted recommendations to Treasury and the IRS on ways to further streamline, modernize and clarify the public approval requirements from those proposed in 2008.

“The TEFRA public approval requirement is arguably one of the more burdensome requirements for tax exemption,” NABL said in the letter. “NABL believes that ways in which the requirement may be made less burdensome to issuers and conduit borrowers, while still achieving the underlying objectives of the requirement, should continually be reassessed, with deference given to how state and local governments carry out their day-to-day operations and with recognition of technological advances as tools for implementation.”

NABL made several specific recommendations including that the final rules allow PAB proceeds to be used for working capital without the public notice specifically mentioning that. It also said that the issuer should be allowed to provide a notice of cancellation of a hearing on its website in the same manner that it posts other public notices.

## **The Bond Buyer**

By Lynn Hume

Published May 04 2017, 11:20am EDT

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## **[SIFMA: Capital Markets in the U.S.](#)**

Capital markets are the bedrock foundation of our nation’s economy. Our capital markets recognize and drive capital to the best ideas and enterprises, enabling workers to save for retirement, students to pay for their education, businesses to grow, and communities to finance sustainable development. Explore the companies and municipalities in your state that are accessing the capital markets to drive economic growth.

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## **[Senate Nixes Obama-Era Retirement Rule.](#)**

The Senate nixed an Obama-era regulation Wednesday that made it easier for states to create retirement plans for some workers.

Senators voted 50-49 on the House-passed resolution, rolling back a rule meant to encourage states to create retirement plans for private-sector workers who do not have access to an employer-based retirement plan.

GOP Sens. Bob Corker (Tenn.) and Todd Young (Ind.) voted against repealing the rule. Sen. Dick Durbin (D-Ill.), who had outpatient surgery this week, missed the vote, which allowed the Senate to avoid a tie and pass the measure.

The Obama-era rule, implemented in October 2016, would exempt the state-created plans from the Employee Retirement Income Security Act, or ERISA, a law that outlines rules for workplace savings.

Congress eliminated a similar regulation last month that targeted a state's "political subdivisions" such as cities and counties.

Republicans argue the Labor Department rules are another example of executive overreach under the Obama administration and are overly burdensome for businesses.

"States ... are already using this authority to impose new mandates on both large and small employers, including start-up businesses. Some of the mandates apply regardless of the size of the businesses," said Sen. Orrin Hatch (R-Utah), the chairman of the Finance Committee.

Majority Leader Mitch McConnell (R-Ky.) added that the Obama rule would give "government-run retirement plans with a competitive advantage over private sector workplace plans, while providing fewer basic consumer protections to the workers who would be forced to contribute to them."

But Democrats and outside groups urged their GOP counterparts to buck the resolution, warning that the state-started plans could help prevent a "retirement crisis" for low-income workers.

Senate Minority Leader Charles Schumer (D-N.Y.) and House Minority Leader Nancy Pelosi (D-Calif.) issued a joint statement asking President Trump to veto the resolution and keep the Obama-era rule in place.

"We strongly urge the President to veto the bill if it is passed by the Senate today, which would show he really did mean it when he said he understood the plight of the American worker. If President Trump vetoes this misguided bill, Democrats in Congress will stand by him and ensure the veto is sustained," they said.

The AARP also sent a letter to senators this week urging them to keep the Obama-era rule, noting that tens of millions of Americans don't have access to a workplace savings account.

"AARP urges the Senate to allow state flexibility to support more private retirement savings opportunities, and to vote no on H.J. Res. 66," the group wrote.

Finance officials with roughly two dozen states also sent a letter earlier this week warning that without access to a savings account, workers could retire in poverty.

"States are pursuing a multitude of solutions to address this growing retirement savings crisis," they wrote. "We insist that states be allowed to maintain their constitutional rights to implement such legislation."

GOP lawmakers are using the Congressional Review Act to undo regulations implemented late in former President Barack Obama's tenure by a simple majority.

THE HILL

BY JORDAIN CARNEY - 05/03/17 06:25 PM EDT

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## **[Senate Votes to Repeal Labor Department Rule on State-Run Retirement Plans.](#)**

The U.S. Senate voted narrowly on Wednesday to repeal an exemption from strict federal protections that former President Barack Obama's Labor Department had given to state-sponsored retirement savings plans for lower-income workers.

The exemption, championed by states such as California but opposed by the mutual fund industry, had freed the state-run plans from the strict compliance requirements of the Employee Retirement Income Security Act, or ERISA.

Private-sector workers whose employers do not offer 401(k) or other retirement benefits, and who often have low incomes, are automatically enrolled in plans being launched in some states, such as Illinois. States say the exemption would have let employers pass workers' money into plans without footing ERISA compliance costs.

It stoked fights in Washington, however, over the reach of federal regulation, states' rights and income inequality.

The Republican-led Senate passed the resolution repealing the exemption by a vote of 50-49. The House of Representatives, also controlled by Republicans, previously approved the measure, which President Donald Trump is expected to sign into law.

It was the 14th Obama-era rule killed by Congress under the once-obscure Congressional Review Act, which allows lawmakers to repeal newly minted regulations and forbids agencies from enacting similar rules in the future.

In mid-April, Trump signed a nearly identical resolution affecting city-run retirement plans, which are in the design stages. But the resolution for state-run plans was stuck in limbo for weeks, as Republicans struggled to gather votes and major lobby groups representing retirees and business interests turned up the heat on lawmakers.

Senator Dick Durbin, an Illinois Democrat, missed Wednesday's vote because of minor heart surgery, helping the Senate avoid a tie.

Republican Senator Todd Young of Indiana broke party ranks to oppose the resolution, saying Americans were in a "real and ongoing crisis" to save enough money for retirement.

"While state-based retirement plans are not my first choice, if implemented carefully, they could help close the retirement savings gap," he said in a statement to Reuters.

The California plan's primary champion, Democratic state Senator Kevin de Leon, expressed outrage at the vote, saying taxpayers would ultimately foot the bills of people who retire without adequate savings.

"Wall Street investment firms fear their profits will take a hit ... even though the investment industry

has historically ignored middle- and lower-income workers at medium- and small-sized businesses," he said in a statement.

The mutual fund, insurance and securities industries said the exemption would have denied some workers protections that are guaranteed for others.

"Denying ERISA protections to workers who are automatically enrolled would limit their legal remedies to fight against high fees or mismanagement of the plans," said Paul Schott Stevens, president of the Investment Company Institute, a trade group representing funds holding \$19.3 trillion in assets and that are often used to save for retirement.

## **Reuters**

Wed May 3, 2017 | 8:24pm EDT

By Lisa Lambert and Sarah N. Lynch | WASHINGTON

(Reporting by Lisa Lambert and Sarah N. Lynch; Editing by Peter Cooney)

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### **[Senate Repeals Safe Harbors for State IRA Initiatives.](#)**

The Senate narrowly approved a resolution Wednesday to rescind federal safe harbors for states to set up private-sector retirement programs for small businesses.

The vote was 50 to 49, largely along party lines. It mirrors a resolution passed by the House on Feb. 15.

A similar resolution that rescinded safe harbors for cities and other large political subdivisions was passed by both chambers and signed on April 13 by President Donald Trump, who is expected to sign the state version shortly.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, urged Senate colleagues on the floor to support the resolution against such programs, which he said would impose conflicting and burdensome mandates on private-sector businesses of all sizes and eliminate long-standing federal protections for retirement workers. "The regulation also encourages states to bar private workers' access to their retirement accounts and it would let states invest private workers' retirement assets, ignoring provisions in federal pension law that require prudent pension investment practices and that ban kickbacks and self-dealing," Mr. Hatch said during floor debate.

Sen. Chris Murphy, D-Conn., whose state is implementing one such program, chastised his Senate colleagues for not letting states find innovative ways to increase retirement savings. "This is a crisis and if we're not going to deal with it and the industry is not going to deal with it, let states deal with it," he said.

Sen. Ron Wyden, D-Ore., whose state is launching a pilot phase of its OregonSaves program in July, said state initiatives "are commonsense steps to address a national crisis," and criticized his colleagues for not offering alternatives.

"This legislation puts special interests before working people. It's that simple," Mr. Wyden said on the Senate floor.

Illinois Treasurer Michael Frerichs, whose state is working to have its auto-enrollment, payroll-deducted retirement savings account program ready for enrollment by the end of the year, said in an interview that the vote “just seems very hypocritical. It will take away a protection that we fought very hard for to protect Illinois employers, and it is anti-states’ rights.” With legislation already passed to create the program, “we intend to move forward,” Mr. Frerichs said.

California Treasurer John Chiang echoed that sentiment, saying in a statement that after consulting with legal and legislative experts, “while Congress has dealt Californians a setback, it is not enough to push us off our moral and legal high ground.”

Joshua Gotbaum, chairman of the Maryland Small Business Retirement Savings Program and Trust, said that the state “has been assured by its lawyers that this program is legal and is going to proceed to help provide retirement savings for one million Marylanders.”

## PENSIONS & INVESTMENTS

BY HAZEL BRADFORD | MAY 3, 2017 6:23 PM | UPDATED 3:42 PM

— Contact Hazel Bradford at [hbradford@pionline.com](mailto:hbradford@pionline.com) | [@Bradford\\_PI](#)

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### [SIFMA Statement on Senate Passage of CRA Resolution on State Retirement Plans.](#)

**Washington, DC, May 3, 2017** - SIFMA today issued the following statement from Lisa Bleier, SIFMA managing director and associate general counsel on Senate passage of on H.J. Res. 66 to override the Department of Labor’s (DOL) regulation relating to savings arrangements established by states for non-governmental employees.

“We commend the Senate for passing the resolution to permanently protect private-sector retirement savers from losing access to important retirement savings options and safeguards. The DOL’s regulation could leave workers saving for retirement without important protections including survivors benefits, spousal benefits, children’s benefits and inter-state portability. Under this guidance, states could have created plans that restrict options and limit plan customizability while prohibiting an employer match, which is crucial to maximizing retirement savings.

“While we agree that more must be done to encourage Americans to save for retirement, exempting state plans from providing important protections for workers is not the solution. This resolution ensures that retirement savers have the same high-level protections and options available to workers under private plans. We urge the President to sign this resolution without delay.”

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### [Munis Could Be Hurt by Plan to Slash Corporate Tax Rates.](#)

***Banks and insurance companies own about a quarter of all municipal debt.***

While President Trump’s plans to reform individual income taxes could result in an increase in demand for some munis, his plans to slash the corporate tax rate could be a negative, points out Wells Fargo in a new research report from its Investment Institute.

That's because companies — mostly banks and insurance companies — own a big chunk of munis. Their demand for tax-free income would likely fall if their rates go to 15% from the 35% maximum in place now.

In Q&A form, here's how Wells Fargo puts it:

**What is the potential impact to the municipal market from the proposed cut in business taxes?**

A lower corporate tax rate may impact demand in the municipal market as close to 26 percent of municipal debt ownership has historically come from banks and insurance companies. It is important to keep in mind that we would not expect the demand for municipal bonds to decline dramatically as a result of reduced tax-driven demand from banks or insurance companies, because municipal securities also offer diversification, quality, and yields close to those of Treasury securities.

Muni investors can also take solace because it is unlikely that corporate tax rates will be slashed to the extent Trump has proposed.

John Miller, who runs municipal bond investing at Nuveen Investments, told Barron's Monday that he thought the corporate tax rate would ultimately only be cut to the high-20th percentile, after negotiations with Congress.

Of tax reform in general, he said, "It's going to take longer and be smaller."

So far, munis have shown little reaction to the tax reform proposal. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) has stayed right around \$109 since news of the plan started to trickle out exactly a week ago. It was 109.01 at 1 p.m. ET on Tuesday.

**Barron's**

By Amey Stone May 2, 2017 1:37 p.m. ET

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**[Is This Obscure Bond Key to Rebuilding America's Crumbling Infrastructure?](#)**

***The bond market has room for taxable muni bonds and investing in public-private partnerships***

When the American Society of Civil Engineers slapped a "D+" grade on the nation's infrastructure in a report that identified a \$2 trillion funding gap for repairs and upgrades over the next 10 years, the municipal bond market knew it had a fix.

It just had to retrain investors on how they typically think about munis.

No single source, or even a select few, can carry the financing burden necessary to build bridges, roads, dams, railroad tracks and more, but bond-market participants insist there's a lightly used investment that should get a lot more attention as part of a buffet of financing approaches to fix the nation's bones: taxable municipal bonds.

Those words rarely go together. After all, a muni bond's tax-exempt status is typically its calling card, appealing to higher-net-worth investors.

But not all munis have this traditional feature.

For the issuer, taxable munis are sometimes attached to projects that include private partnerships (think stadiums or investor-led housing developments and, in the current climate for many states, taxable issuance to help underfunded pension systems). For the investor, taxable munis tend to outyield their tax-exempt counterparts because they don't carry as much tax savings (some may still be exempt from certain state income taxes).

They instead entice investors with higher yields (and higher risk) comparably, while still carrying the relative security of government backing, and they could be part of a bond mix in a mutual fund.

Within the huge \$3.8 trillion muni-bond market, there are about 10 times more tax-exempt bonds outstanding than taxable muni bonds. But according to some bond managers, taxable munis may be underappreciated.

To meet infrastructure demands, "there is capacity to increase issuance in the tax-exempt market, where 90% of municipal borrowing occurs, but even greater capacity exists in the taxable municipal market," said Duane McCallister, senior portfolio manager at Baird.

"Academic studies show that for every \$1 spent on infrastructure, local government gets back \$2-\$4 over time," he said.

President Donald Trump has pledged \$1 trillion in infrastructure spending, a proposal that will likely call for public and private funds. So far, the administration is touting tax credits to private investment as an infrastructure financing incentive. On the other side Sen. Chuck Schumer of New York, the Senate's top Democrat, has pitched direct federal investment.

Details remain thin—although Trump this week said he's open to a higher gasoline tax pegged to highway funding—as the administration works to first push a tax overhaul and revive a health-care revamp. By the president's timeline, he'll repair the nation's "badly depleted infrastructure...soon," he said in a mid-April speech in Wisconsin.

Taxable munis' biggest push into the limelight came with the 2009-2010 Build America Bonds program under the Obama administration, part of a \$787 billion economic stimulus bill. After two years, it was left to expire. The outstanding bonds are still knocking around, including in the Nuveen Build America Bond fund NBB, +0.14% and the BlackRock Taxable Municipal Bond Trust BBN, -0.22%

The program's short run "was successful," said McCallister. "It opened the muni market to a broader audience. Institutional investors were looking to buy a large quantity of high-quality munis, and they could."

Jonathan Mondillo, portfolio manager of fixed-income funds at Alpine Funds, agrees that BABs may be back as Trump pushes for infrastructure spending, although they'll likely return under a different name as "all things President Obama seem to be on the chopping block, whether good for bad."

Standard & Poor's took up the topic of infrastructure funding brainstorming earlier this year when it laid out the case for allowing companies to repatriate the more than \$2 trillion parked overseas on a

tax-free basis if they committed 15% of that cash to investments in interest-bearing infrastructure bonds that would be issued by state and local governments.

Bob DiMella, co-head of municipal managers at MacKay Shields, said that so-called Public-Private Partnerships (P3) projects, a popular infrastructure financing structure outside of the U.S., will gain momentum stateside. They'll likely be combined with tax credit incentives.

"While P3 financing may displace some traditional tax-exempt issuance, we believe that the acceptance of P3 projects will be a net positive for additional two-way flow in the municipal market," DiMella said. "P3 projects should introduce a multitude of new entrants including private equity, developers and nontraditional buyers to the municipal market."

"We expect that these entities will be enticed by municipal financing attributes including attractive yields (for both borrower and lender), exposure to long duration, low correlation [to stocks and other bond types], cash flow stability and low default rates," he said.

Fear of the new supply expected to come with the infrastructure push, as well as worries that proposals for lower income-tax brackets would cut demand for tax-favorable munis, sent prices lower in the wake of the election. They've since stabilized as many fund managers smelled a buying opportunity.

DiMella, as part of a late-April Morningstar Investment Conference panel, stressed that the risk of lost tax advantages has seldom hurt the muni market for any sustainable period. The iShares S&P National AMT-Free Municipal Bond Fund MUB, +0.08% was little changed near \$109 in Tuesday trading, about where it stood when the administration in April amped up its tax-reform talk.

Muni-market watchers have also stressed that Trump tax-reform proposals could support muni demand, which could help soak up infrastructure-linked bonds. For instance, the some \$140 billion in outstanding municipal bonds that are subject to the alternative minimum tax, or AMT, which could go away under current proposals, are likely to trade better than non-AMT peers. Investors residing in high-tax states could have even greater need to manage their tax bills by picking munis should the deductibility of state and local taxes from federal income tax be eliminated, as proposed in the administration's tax plan.

DiMella said he has confidence that Treasury Secretary Steven Mnuchin and top White House economic adviser Gary Cohn understand how the muni bond market could fit into an infrastructure plan, but that the odds of that plan moving forward in full yet this year remains a political long shot.

As for investors, there may be too many unknowns for now, but its clear investors are paying attention.

"For the equity or fixed-income market to try get ahead of Washington policy is a little premature," said Mondillo. "I want to sit back and see the whites of their eyes with policy [on infrastructure and taxes] and not get caught over or under allocating in one or both."

## **MarketWatch**

By RACHE KONING BEALS

Published: May 3, 2017 8:15 a.m. ET

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## **How Wall Street 'Innovations' Cost Taxpayers Millions.**

What do the City of Chicago and Jefferson County, Alabama, have in common with Riverside, California, and a school district north of San Diego? These local governments have lost millions of dollars by using creative municipal finance. And if citizens around the country aren't vigilant and outspoken, their city, county or school district may become the next victim of an unnecessarily complex bond deal.

Perhaps the worst victim of municipal financial "innovation" was Jefferson County, Alabama, which filed for bankruptcy after its financing arrangements known as interest rate swaps blew up. With an interest rate swap, a borrower can issue variable rate bonds while still paying a fixed rate of interest — a transformation achieved through an arrangement with a bank. After suffering a series of rating downgrades, the City of Chicago paid \$270 million to close out swaps and convert its variable rate debt to fixed.

Why bother with such complicated deals in the first place? Bankers who promoted interest rate swaps argued that municipal issuers would have lower interest costs overall by borrowing at variable rates. But fees banks collected for arranging the swaps offset these savings. Also, because bankers are more knowledgeable about swaps than politicians and government finance staffers, the terms and conditions of these deals often protected banks at the expense of borrowers.

Here's another example of how innovative finance benefitted the financiers more than taxpayers. One product sold as a way of lowering interest costs was called the Auction Rate Security (ARS). This instrument allows cities to meet long-term financing needs in the money market. Every four weeks the bonds are rolled over to the money market participant willing to receive the lowest interest rate over the next four weeks. Since short-term interest rates are usually lower than long-term rates, the city saves money.

This seemed like a brilliant idea — until it stopped working. Money market funds don't want credit risk because they have to be ready to redeem shareholder funds at any time. Thus, they invest only in AAA-rated securities. Most U.S. local governments aren't rated AAA. The way they could get into the auction rate market was to buy a municipal bond insurance policy from a specialized, "monoline" insurer like Ambac or FGIC.

These insurers were rated AAA, but, by early 2008, investors realized that they were no longer safe because the companies had also insured toxic mortgage-backed securities. Demand for ARS dried up and many auctions had no bidders. But the banks that created ARS and ran the auctions had protected themselves: When auctions failed, they were entitled to receive a penalty rate from the city of as much as 20 percent. To avoid paying this usurious rate month after month, many cities refinanced their ARS with traditional municipal bonds — paying additional origination costs to financial intermediaries in the process. Riverside, a city east of Los Angeles, lost over \$12 million when the ARS market collapsed.

Ultimately, Ambac and FGIC went bankrupt, despite their AAA ratings. Every municipal bond insurer failed or suffered large credit rating downgrades during the financial crisis. In retrospect, we can see that the whole municipal bond insurance industry arose from misaligned credit ratings. The cities had less credit risk than the insurers, yet they had lower ratings. Some observers — most notably Bill Ackman — realized that monoline insurers were overrated well before 2008, so this rating agency error cannot be dismissed as a case of 20/20 hindsight.

The municipal bond insurance industry started in the 1970s and peaked shortly before the financial crisis, when more than half of all new municipal bonds carried insurance. In 2007, government bond issuers paid more than \$1.5 billion in bond insurance premiums — for an insurance product that often proved worthless.

By 2010, only a handful of new bonds were being insured, but then the industry began to recover. Two insurers have achieved AA ratings from S&P and AA+ ratings from Kroll, an industry upstart. In 2015, over 6 percent of new municipal bonds were once again being insured.

For a new Mercatus Research paper, Dr. Kenneth Kriz and I calculated “All-in Total Interest Costs” for general obligation bonds issued by California school districts rated AA and below (All-in TIC is the municipal bond market equivalent of Annual Percentage Rate, considering both upfront origination costs and periodic interest expenses). About half the sample was insured. After adjusting for ratings, deal size, market interest rates and other factors, we found that districts purchasing insurance did not achieve statistically significant cost savings. The insurance premiums paid by the school districts offset the benefits of lower interest rates, so buying insurance was not worthwhile.

Since there is no record of a California school district defaulting on general obligation bonds, I question whether there is any default risk that needs to be insured against. Debt service payments for the bonds are generated from a separate, dedicated property tax levy. If a district gets into financial trouble, it cannot use bond tax revenues to balance its books.

Dr. Kriz and I found one factor that greatly influenced APRs paid by these districts: whether they used Capital Appreciation Bonds (CABs). CABs are zero coupon instruments, meaning there are no annual interest payments, just a balloon payment at maturity. But because these bonds accrue interest on interest, they are more expensive over the long term.

School districts and other borrowers use CABs to lower financing expenses in the years after a bond deal launches, at the cost of much higher payments years in the future. This is not merely a way to kick the can down the road, but a way to maximize the size of bond issuances.

California state law limits the amount of debt service a school district can incur as a percentage of assessed property values. When districts and their financial advisors structure bond issues, they assume that property values will rise rapidly over the life of the deal. Thus, by backloading more debt service toward the end of the bond’s life, they can maximize the amount of money they borrow — violating the spirit but not the letter of debt service limits. In the process, they effectively mortgage the homes of future residents. Poway Unified School District, north of San Diego, is perhaps the worst victim of CABs: A few years ago, the district issued \$179 million of bonds carrying lifetime debt service payments of \$1.27 billion.

When it comes to municipal borrowing, the KISS (Keep It Simple Stupid) principle should normally apply. Plain vanilla structures made up of uninsured, fixed rate, current interest (as opposed to zero coupon) bonds have proven themselves across decades of municipal finance. They are readily understood, have relatively low upfront costs and generally do not produce nasty surprises. As citizens and taxpayers, we should be asking our city council members and school board trustees tough questions whenever they depart from this time-tested model. If they can’t provide convincing answers, it may be time to elect someone else.

## **The Fiscal Times**

By Marc Joffe

May 1, 2017

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## **SIFMA Finalizes Muni Issue Price Model Documents.**

New York, NY, May 1, 2017 - SIFMA today released the final versions of its municipal security issue price model documents. The documents were developed in an effort to aid industry market participants in compliance with the new Treasury Department issue price rules for municipal securities, which become effective on June 7, 2017. SIFMA issued the documents for industry comment in March 2017 and is pleased to provide the final versions for broad industry use today.

“We appreciate the industry’s valuable input on the exposure draft of the model documents, said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA’s Municipal Securities Division. “Industry feedback was essential to making the documents as useful as possible, given that they are designed to make it easier for our members to assist their issuer clients in complying with the issue price rules, in understanding the expectations of market participants while promoting transparency of sales terms for both issuers and underwriters, and to help reduce legal costs and regulatory risk while increasing legal certainty, for the benefit of all market participants.”

The model documents include model riders to the Master Agreement Among Underwriters, Master Selling Group Agreement, Retail Distribution Agreement, Model Bond Purchase Agreement and the Notice of Sale.

Major changes to the documents from exposure draft to final versions include refining the definition of a “related party”, clarifications of dealer obligations for those who are members of the selling group and/or party to a retail distribution agreement, and noting that, in the bond purchase agreement, the issue price certificate may require that the Underwriter provide reasonable supporting documentation which is expected to be the pricing wire or wires or equivalent communications. Notice of sale options for competitive sales were clarified and expanded.

The model documents are available [here](#).

Release Date: May 1, 2017

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## **U.S. Muni Bond Sales Next Week Total \$9.6 bln Led by Hawaii.**

May 5 The state of Hawaii is among the top deals scheduled to hit the U.S. municipal bond market next week, when an estimated \$9.6 billion of new bonds and notes are expected to sell, according to preliminary Thomson Reuters data.

Hawaii, which recently received an improved outlook from Fitch Ratings, plans to sell \$856 million of general obligation bonds to fund various public improvement projects for schools, community colleges, universities, libraries and parks.

Fitch in April revised its Hawaii rating outlook to positive from stable, citing improvements to the state’s long-term liabilities, strong financial flexibility as the state implements pension and other

post-employment benefits reforms, and a resilient economy.

Other top deals scheduled to sell next week on the municipal market are \$915 million of hospital revenue bonds from Ohio's Cuyahoga County for the Metrohealth System, and \$838 million of limited tax schoolhouse and refunding bonds from Texas's Houston Independent School District.

Next week's expected total sales of \$9.58 billion compares to the weekly average of \$6.7 billion thus far in 2017. Next week's deals are made up of \$7.9 billion from the negotiated calendar and \$1.7 billion from the competitive calendar, according to preliminary Thomson Reuters data.

## **Reuters**

By Robin Respaut

May 5, 2017 | 12:25pm EDT

(Reporting by Robin Respaut; Editing by James Dalglish)

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## **[Puerto Rico's Bankruptcy a 'Dramatic Reshaping' of Muni Risk.](#)**

Municipal Market Analytics' Matt Fabian expects the muni market's default rate to roughly double thanks to Puerto Rico's bankruptcy.

The muni market hasn't posted much reaction to Puerto Rico's mammoth bankruptcy filing this week. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) stayed right around \$109, roughly where it has been for the past three months.

But that doesn't mean muni investors should be shrugging off the largest bankruptcy filing in U.S. history.

Municipal Market Analytics' Matt Fabian puts it in pretty stark terms in his Default Trends report Friday. Here's his summary of his report:

Assuming all remaining Puerto Rico bonds end up in payment default, as now appears likely, the municipal market's total for bonds in default will have roughly doubled to \$74B, with Puerto Rico issuers accounting for 85% of that total. This would also roughly double the municipal market's current default rate from 1.02% to 1.93% (versus 0.30% excluding Puerto Rico bonds). This is a dramatic reshaping of the industry's overall risk profile and will doubtless drive at least somewhat more conservative investor behavior in the future, in particular as regards large distressed governments like IL, NJ, CT, KY, and Chicagoland credits.

## **Barron's**

By Amey Stone

May 5, 2017 4:49 p.m. ET

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## **6 Things Investors Should Know About Municipal Bond Insurance: Schwab**

### **Key Points**

- Owning an insured municipal bond can help ensure timely interest and principal payments in the rare instance that the issuer defaults.
- The “cost” of municipal bond insurance usually comes in the form of a lower yield.  
If you’re considering investing in insured munis, we believe the underlying rating—and not the insured rating—should fit your risk tolerance.

What’s the case for investing in insured municipal bonds? This isn’t a question many investors have had to ask in recent years.

The financial crisis in 2008 cut down most of the market’s insurers, so the chances of finding a newly issued insured muni have been pretty low in recent years. However, that may be changing now that the industry is showing signs of life again.

To be sure, the share of newly issued munis covered by insurance is still small—only around 6%, according to Bloomberg—but that’s up from just 3% in 2013. Before the crisis, nearly half of all newly issued munis were insured.

So although the market is still a far cry from its pre-crisis days, it is growing again. Here are six things to consider before investing:

[Continue reading.](#)

### **Schwab**

By Cooper J. Howard

May 4, 2017

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## **MSRB Holds Quarterly Board Meeting.**

Washington, DC - The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting April 26-27, 2017 where it discussed the role of solicitor municipal advisors as well as industry feedback on several regulatory topics related to protecting investors and municipal entities, and promoting a fair and efficient municipal securities market. The Board also met with Securities and Exchange Commission (SEC) Acting Chairman Michael Piwowar.

Consistent with the MSRB’s federal mandate to develop a comprehensive regulatory framework for municipal advisors, the Board discussed the role of the category of municipal advisors that, for compensation, solicit municipal entities and obligated persons for business on behalf of certain other financial professionals. To directly address the application of MSRB rules to these “solicitor” municipal advisors, the Board agreed to publish guidance designed to promote understanding of the regulatory framework that applies to solicitor municipal advisory activities. The MSRB also expects that, more generally, all municipal advisors may benefit from the forthcoming guidance.

The MSRB has been implementing its municipal advisor regulatory framework for several years.

When the developing regulatory framework is more fully in place, the MSRB plans to assess retrospectively the impact and effectiveness of the municipal advisory framework. At its recent meeting, the Board discussed the importance of this future analysis to understanding the benefits and costs of the municipal advisory regulatory regime.

### **Advertising Rules**

The Board also discussed comments received on the [MSRB's proposal to update and harmonize certain provisions of its municipal securities dealer advertising rule with those of other financial regulators](#), and to create similar advertising standards for municipal advisors. The MSRB received substantive input on both aspects of its proposal and will continue to consider that input as it develops enhancements to the regulatory framework for advertising by municipal market professionals.

### **Primary Offering Practices**

The MSRB is currently engaged in a multi-year review of primary offering practices to identify any necessary revisions to existing rules or the need for guidance to support existing protections for municipal securities investors and issuers. At its meeting, the Board discussed preliminary input from market stakeholders and the MSRB's retail investor advisory group, and policy themes related to syndicate practices. The Board directed staff to continue its review of primary offering practices, with the goal of publishing a concept proposal to solicit formal industry feedback.

In a related discussion, the Board evaluated comments received on [proposed changes to MSRB Rule G-34](#), on CUSIP numbers, new issue and market information requirements, to clarify the rule's definition of "underwriter" and requirements for obtaining CUSIP numbers when dealers act as placement agents in municipal securities transactions, including direct purchases. In response to comments received, the Board agreed to issue a second request for comment to refine the rule's application and provide flexibility to dealers when acting as placement agents.

### **Minimum Denominations**

The Board also discussed comments received by the SEC on the [MSRB's proposal to amend provisions in MSRB Rule G-15](#), on transactions below the minimum denomination of an issue. The Board determined it is desirable to obtain more information and, if possible, greater consensus, regarding any proposed amendments. To provide time for the MSRB to engage in meaningful outreach with stakeholders and obtain additional information, and in light of the upcoming statutory deadline for the SEC to act on the proposal, the Board agreed to withdraw its current proposal. By deferring SEC action, the MSRB can conduct additional outreach to a broad and diverse group of market participants, including issuers that establish minimum denominations for their municipal securities issues, and to the extent appropriate, reach greater consensus on any future amendments that may be considered. In the meantime, below-minimum denomination transactions will continue to be governed by existing Rule G-15(f).

### **Updates to Customer Account Transfers**

As part of the [MSRB's regulatory efficiency initiative](#), the Board discussed comments received on its review of existing MSRB Rule G-26, on customer account transfers, and agreed to seek SEC approval of proposed changes designed to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers and municipal securities dealers.

Date: May 1, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer  
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## **[MSRB Municipal Market Stats.](#)**

Number of muni trades in 1Q 2017 highest in more than three years.

[See MSRB's new Municipal Market stats.](#)

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## **[Last Call for Registration for the NFMA 34th Annual Conference.](#)**

Last call for registration for the National Federation of Municipal Analyst's 34th Annual Conference at the Mandarin Oriental Washington, D.C. on May 16-19, 2017.

To view and download the program, [click here](#).

To register, [click here](#), or go to the Register for Event link under Quick Links.

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## **[U.S. Municipal Credit Report, First Quarter 2017](#)**

The municipal bond credit report is a quarterly report on the trends and statistics of U.S. municipal bond market, both taxable and tax-exempt. Issuance volumes, outstanding, credit spreads, highlights and commentary are included.

### **Summary**

According to Thomson Reuters, long-term public municipal issuance volume totaled \$86.5 billion in the first quarter of 2017, a decline of 13.4 percent from the prior quarter (\$99.9 billion) and a decline of 9.5 percent year-over-year (y-o-y) (\$95.5 billion). Volumes were generally in line with the 10-year average of \$82.6 billion. Including private placements (\$3.0 billion), long-term municipal issuance for 1Q'17 was \$89.4 billion. Refunding volumes dropped sharply in the first quarter to \$33.5 billion, representing 38.7 percent of issuance.

Tax-exempt issuance totaled \$76.8 billion in 1Q'17, a decline of 15.4 percent q-o-q and a decline of 12.9 percent y-o-y. Taxable issuance totaled \$6.9 billion in 1Q'17, a decline of 4.6 percent q-o-q but an increase of 5.0 percent y-o-y. AMT issuance was \$2.8 billion in 1Q'17, a sharp increase of 51.6 percent q-o-q and nearly triple volumes y-o-y.

By use of proceeds, general purpose led issuance totals in 1Q'17 (\$22.3 billion), followed by primary & secondary education (\$18.4 billion) and higher education (\$9.2 billion). Refunding volumes dipped sharply to comprise 38.7 percent of issuance in 1Q'17 from 47.7 percent in the prior quarter and 52.7 percent year-over-year.

[View the Report.](#)

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## **6 Questions Bond Investors Should Be Asking Right Now.**

### ***As interest rates rise, finding the right fixed-income strategy is crucial***

The Federal Reserve is raising interest rates, and there are several questions that savers and bond investors would like answered.

For example, to be blunt: *Is my savings account going to pay any worthwhile interest at some point?!* (The answer: probably not soon. But there are alternatives.)

If this all sounds familiar, it should: Many bond-market strategists had expected bond yields would be a lot higher by this point in the economic recovery, perhaps even making a savings account desirable. But a climb in rates seems to be getting closer.

With inflation ticking higher, the Fed now anticipates lifting short-term rates more rapidly. Officials also are discussing winding down the Fed's huge bond portfolio, accumulated during the recession to damp yields. Such a move would eliminate a major source of demand for government bonds, whose prices fall as yields rise.

And meanwhile, Washington lawmakers are talking about tax cuts and infrastructure spending that could stoke growth and lift inflation.

Amid such developments, "you need to be really careful about how you invest the fixed-income part of your portfolio," says Terri Spath, chief investment officer at Sierra Investment Management in Santa Monica, Calif.

She and others say there are some smarter ways to play this: Avoid putting any cash that might be needed soon into bonds. Keep additional funds around to invest later, at potentially higher rates. Dial back on rate-sensitive holdings, and further limit risk by owning a range of U.S. and foreign bonds.

Here are six questions for savers and those who own bonds or are considering buying them:

#### **1. What risks do rising rates pose for bonds now?**

One threat is to short-maturity bond funds and exchange-traded funds, which some investors may think are immune to rate risk. These commonly have average maturities of around two years and aim to generate 1% to 2% in annualized yield.

After raising rates twice since last fall, Fed officials expect to boost rates another five or six times by the end of 2018, lifting the Federal Reserve's rate target to around 2.25%-2.5% from about 1% now.

Bond yields move the opposite way as prices. Although short-term funds are less affected by yield changes than those that own longer maturities, many have a rate sensitivity of around two. If yields rose by one percentage point, that would result in a 2% decline in principal value—more than an investor would get back in interest paid by such a fund.

"If you are an investor who really can't stomach any losses, you should be in a money-market fund" where principal value would remain steady, says Emory Zink, analyst at fund-trackers Morningstar Inc.

## **2. Where can investors get reasonable returns on cash?**

Although short-term rates are rising, banks—not the market—decide what rate of interest they will pay on savings. The national average rate today is just 0.08%, and banks will raise rates slowly since doing so will boost their profitability.

Some money-market funds yield closer to 1%. Their yields will rise gradually, though lagging behind the Fed's rate increases.

For the best combination of yield and safety, investors might consider putting money into a high-yielding, federally insured bank savings account, says Bankrate.com chief financial analyst Greg McBride. Such accounts are offered by virtual institutions that are courting depositors. Two such banks, Goldman Sachs Group Inc.'s GS Bank and the CIT Bank unit of CIT Group, are advertising rates above 1%.

## **3. Which bonds offer some protection against rising rates?**

One way to diversify against U.S. rate risk is with bonds issued in other countries whose rate cycles aren't in sync with that in the U.S. Raman Srivastava, managing director for global fixed income at Standish Mellon Asset Management Co., cites emerging-markets bonds as among "the more compelling opportunities" after investors fled such bonds several years ago. Yields can top 5%, offering a bigger offset to the impact of rising yields.

Moving lower on the U.S. credit ladder is another solution. High-yield bonds (or junk bonds) issued by companies with weaker credit ratings can yield more than 6%.

But be cautious about loading up on such securities to the exclusion of higher-quality bonds. While higher-yielding bonds are less vulnerable to rising yields, they are very sensitive to worries about defaults and can be volatile, notes Scott Kimball, portfolio manager of BMO TCH Core Plus Bond Fund (BATCX). In 2015, he says, some high-yield bonds issued by energy companies plunged in price during the oil-market swoon.

## **4. How can investors lock in better income as rates rise?**

Traditionally investors did that by building a ladder of bonds having sequential maturities. As the nearest matured, the proceeds were reinvested in a new bond due to mature several years later, when the investor hoped to reinvest at an even higher yield.

Alternatively, an investor could build a ladder with defined-maturity bond ETFs, says David Berman, chief executive of Baltimore-based wealth manager Berman McAleer. Unlike conventional bond ETFs, which periodically buy new bonds to replace maturing ones, defined-maturity ETFs own bonds with closely bunched maturities. After all the bonds mature, the ETF repays principal and interest.

Mr. Berman uses Guggenheim BulletShares ETFs, which are available in either investment-grade or high-yield corporate versions. BlackRock's iShares unit offers defined-maturity ETFs that own taxable corporate bonds or tax-exempt municipal bonds.

## **5. What are the alternatives to fixed-rate bond funds?**

Floating-rate funds—sometimes called senior-loan or bank-loan funds—can be a good defensive play when rates are rising.

Such funds own loans made by banks to companies with lower credit ratings and yield 4% or more.

The rates on the loans periodically adjust up or down, based on changes in a benchmark index such as the London interbank offered rate, or Libor, so a fund's yield moves higher as rates rise.

One concern is that surging demand for such funds is enabling companies now to get much more lenient borrowing terms, says Frank Ossino, who oversees Virtus Senior Floating Rate Fund (PSFRX) at Newfleet Asset Management, in Hartford, Conn. Mr. Ossino cautions that another downturn eventually could spark defaults on lower-grade loans, denting a fund's returns. Funds that yield more than peers may own a larger percentage of such loans, he says.

Among senior loan funds that Morningstar rates highly are Eaton Vance Floating-Rate (EVBLX), Lord Abbett Floating Rate (LFRAX) and Fidelity Floating Rate High Income (FFRHX).

## **6. Are mutual funds or ETFs better at this point in the cycle?**

Active managers can reposition a portfolio to trim rate risk, moving to bonds that are less rate-sensitive. But ETFs may be a good choice because they charge much lower management fees—a benefit at times when bond returns are slim by historic standards.

Still, people who plan to buy an ETF need to understand what they are getting, says Josh Jalinski, an adviser in Toms River, N.J. ETFs that focus on certain narrower sectors, such as iShares 20+ Year Treasury Bond ETF (TLT), can be volatile, posing more risk of mistiming a purchase or sale, he says.

Some ETFs hedge against rising rates. They include WisdomTree Barclays Interest Rate Hedged U.S. Aggregate Bond Fund (AGZD), which yields about 2%, and Deutsche X-trackers Investment Grade Bond Interest Rate Hedged ETF (IGIH), which recently yielded about 3¼%.

Hedged funds outperform when rates rise, but may underperform when rates are falling, says Todd Rosenbluth, director of ETF and mutual-fund research at CFRA, a New York-based provider of investment research. "By hedging, you protect against something, but also you can miss something," he says.

## **The Wall Street Journal**

By Michael A. Pollock

May 7, 2017 10:15 p.m. ET

Mr. Pollock is a writer in Ridgewood, N.J. He can be reached at [reports@wsj.com](mailto:reports@wsj.com).

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## **[Fund Investors Are Betting Big on Infrastructure.](#)**

***The payoff might be years away, and there are risks, but proponents see the trend on their side***

Emboldened by President Donald Trump's campaign promise of a \$1 trillion infrastructure-spending package, investors have plowed more than \$460 million into related U.S. mutual funds and exchange-traded funds so far this year, according to data from Morningstar Inc.

At the end of the first quarter, the amount sitting in such funds stood at \$16.1 billion, up 12% from a year earlier, though the euphoria has eased as the market begins to digest just how much stands in

the way of an infrastructure package—from shifting priorities in the White House to opposition in Congress.

Still, those who focus on infrastructure investing say things are looking up, even if it takes a few years for Washington to deliver a big spending package.

### **Blackstone buys in**

The Fixing America's Surface Transportation (FAST) Act, passed by Congress and signed into law by President Barack Obama at the end of 2015, sets up the next five years of spending for federal transportation projects. Meanwhile, voters approved some \$200 billion of infrastructure-related ballot initiatives during November's election, Mr. Welo says, adding that such projects are as close to a slam dunk as a government-backed project can get.

So while Washington negotiates its spending plans, investors can position themselves to take advantage of these FAST Act-funded efforts, as well as those at the state and local level, the pros say.

Indeed, last month private-equity firm Blackstone Group BX -0.64% LP announced that it was preparing to launch a unit that would invest in toll roads, bridges and other infrastructure projects.

The U.S. isn't the only country getting ready to write fat checks. Sectors associated with infrastructure have seen valuations creep up globally as governments seek to expand airports, bridges and road in response to growing populations. Many infrastructure ETFs are constructed with this global view in mind, says Brandon Rakszawski, a New York-based product manager at Van Eck Global who oversees the firm's hard-assets ETF product lines.

"Most infrastructure ETFs are global in nature, so investors need to realize that if they are choosing that option for their portfolios, they may only be getting 40% or so U.S.-specific names," Mr. Rakszawski says. Taking a global approach can help diversify a portfolio, he says.

Beyond geography, the key to succeeding in this sector is knowing what it means to you, says Mr. Rakszawski.

"It is important for investors to decide what they see as infrastructure—is it energy, transportation, utilities, or some combination of those?" he asks. "Once they decide, they can start to target more specific exposures and products that are going to give them what they want."

As investors weigh specific subsectors, they need to be mindful of risk.

If you invest in engineering and construction companies, for example, "you need to factor in a certain amount of commodities risk," because many of the companies also are heavily tied to volatile oil-and-gas or mining-related capital spending, says Andrew J. Wittmann, a Milwaukee-based senior analyst at Robert W. Baird & Co, which manages \$171 billion in assets.

Another red flag is turnover within mutual funds and ETFs.

Infrastructure projects are large and slow-moving. Once contracts are awarded for projects, it's relatively easy to forecast what the next three to five years will look like. Tayfun Icten, a Chicago-based analyst with Morningstar, says a high level of turnover within a fund could signal a manager or strategy that isn't operating with conviction.

"Investors in infrastructure mutual funds need to be clear about what types of opportunities they are

getting access to," Mr. Icten says.

## **Trillion watch**

So, what of Mr. Trump's trillion? Fidelity's Mr. Welo expects to see a more-nuanced approach emerge from Congress. That could mean several billion dollars in project financing annually over the next 10 years, plus changes in tax policy, he says.

"The gas tax could be a key policy area to watch both at the state and federal level as policy makers start looking at ways to pay for these projects."

Municipal-bond investors may also see a rise in new issuance, as the asset class has historically been the go-to place for project financing. State and local governments have been using low interest rates to refinance existing debt, but issuance isn't keeping up with maintenance needs or expansion plans.

John Miller, co-head of fixed income and head of the municipal-bond investing team at Nuveen Asset Management in Chicago, says the muni market is showing signs of recovery and default risk is lower.

"Investors who have been skewed toward short duration and high quality can benefit from considering longer durations or slightly lower credit quality in this environment," he says.

## **The Wall Street Journal**

By Bailey McCann

May 7, 2017 10:09 p.m. ET

Ms. McCann is a writer in New York. She can be reached at reports@wsj.com.

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## **[State, Local Governments Applaud Introduction of Remote Sales Tax Legislation.](#)**

WASHINGTON - The seven leading organizations that represent state and local governments at the federal level - the National Governors Association, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, National Conference of State Legislatures and The Council of State Governments - today issued the following statement on the introduction of remote sales tax legislation in both chambers of Congress:

"We welcome the introduction of the Marketplace Fairness Act by Senator Mike Enzi and commend Representative Kristi Noem and her co-signers for introducing the Remote Transactions Parity Act. We are pleased to see an appetite on Capitol Hill to address this crucial issue.

"We stand ready to work with the House and Senate to achieve passage of these measures and address any discrepancies during conference.

"Our organizations have long supported remote sales tax legislation that would ensure collection of existing sales and use taxes and level the playing field between online and Main Street businesses.

“Without the ability to enforce existing sales and use taxes on remote purchases, states and local governments lose billions each year, which could be used to reduce other taxes and invest in infrastructure, education, public safety and other services that improve residents’ quality of life.”

THE UNITED STATES CONFERENCE OF MAYORS

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## **Fitch: WIFIA Could Provide Long Overdue Boost to Water Infrastructure Projects.**

Fitch Ratings-New York-04 May 2017: Water and sewer utilities throughout the country are faced with aging infrastructure and a rather large price tag to rectify it, which could pave the way for substantially more investment in the space, according to Fitch Ratings in a new report.

The California drought, the Flint, Michigan toxic water crisis and cases of elevated lead levels in drinking water across the nation have shed light on the effects of persistent underfunding of capex, delayed system upkeep and shortages of quality water. As such, the EPA estimates roughly \$655 billion in capital over the next 20 years is needed for water and wastewater infrastructure. Answering this challenge is the Water Infrastructure Finance and Innovation Act (WIFIA). Modeled after the successful Transportation Infrastructure Finance and Innovation Act of 1998, WIFIA’s overarching goal is to precipitate steady investment in water infrastructure development.

“WIFIA-funded projects can potentially reduce the magnitude of increased costs to end users and temper the need to obtain rate increases related to capital,” said Director Stacey Mawson. “WIFIA can also spur partnerships between the public and private sectors, creating a forum for eliciting innovative proposals and problem solving.” As such, Fitch’s approach to rating WIFIA-funded projects will incorporate perspectives from both its Global Infrastructure and U.S. Public Finance Water and Sewer criteria.

More infrastructure spending brought on by WIFIA means loans will be available at more appealing terms than the financial market, which can help support an investment grade rating on a project that would otherwise be non-investment grade. WIFIA has the potential to fund larger projects for which State Revolving Fund (SRF) loans are hard to procure and smaller municipal utilities that may not have market access. That said, ‘WIFIA’s success will in part depend on timely vetting and executing transactions to leverage the public and private commitment to move projects forward,’ said Senior Director Yvette Dennis.

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## **Fitch: U.S. Munis & Transportation Solid Under New U.S. Interest Rate Outlook.**

Fitch Ratings-New York-04 May 2017: Higher interest rates in the coming years should not exert much downward pressure for U.S. public finance and transportation infrastructure, according to Fitch Ratings in a new report.

Fitch’s Economics team expects interest rates to move higher over the next three to four years by approximately 150-300 basis points. This new scenario also calls for real potential U.S. GDP growth and inflation to remain at roughly 2% per year. The U.S. economy’s expected resilience to withstand higher rates represents a significant buffer against negative credit implications. According to Senior

Director James Batterman, this outlook should by and large extend into public finance and transportation.

“A growing economy with stable employment implies that retail sales volumes as well as taxes on earned income should not be adversely affected,” said Batterman. “The same growth assumption implies that property values and property tax revenues also may not be greatly impacted.”

The same limited ripple effect should hold true for infrastructure. “Revenues and volumes for airports, seaports and toll roads tend to be a function of the general level of economic activity as well as factors specific to the issuer,” said Batterman.

Higher interest rates do increase the hurdle rate for new investments and the cost of financing. As such, Fitch sees this as more of an analytical consideration for issuers carrying higher leverage that need to take on new debt. Nevertheless, most issuers would likely be able to absorb any extra costs stemming from higher interest rates. Further, higher rates imply greater investment returns on cash holdings.

Downside risk is not out of the realm, however. The most likely culprit would be any increase in interest rates that is too rapid to be absorbed by the market, which would stall the housing market and have much broader implications generally.

Fitch’s ‘Higher U.S. Interest Rate Scenario’ for municipalities and transportation infrastructure is available at ‘[www.fitchratings.com](http://www.fitchratings.com)’.

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## **[GASB Implementation Guidance Update No. 2017-1 - Now Available](#)**

[Implementation Guide 2017-1](#)

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### **[Demys’TIF’ing Tax Incentives.](#)**

Data on the world of government tax incentives will be a little richer thanks to a clarification from the Governmental Accounting Standard Board, which sought to clear up ambiguity regarding reporting on tax increment financing projects, or TIFs. Governments wanted to know if the board’s [new rule](#) requiring them to report tax incentives as forgone revenue also applied to TIFs. For the most part, the board said this week that they do.

TIFs help subsidize development by taking the additional property tax revenue the project generates and putting it back into the development. There are three ways to do this: 1) The developer pays the taxes then is awarded a tax rebate by the government; 2) the government incrementally awards the back taxes to the developer after meeting specific development and jobs goals; and 3) the government uses the tax revenue generated by the development to pay back bonds that financed the project.

The first two, [the accounting board said](#), have to be reported as lost property tax revenue. The third does not.

*The Takeaway:* Good Jobs First, which tracks government tax incentives, said the clarification bodes

well for it and other sunshine groups that want more disclosure about what governments give up to woo corporations. Greg LeRoy, the group's executive director, told Governing this week that Midwestern and Western states make heavy use of this type of financing. "Until California canceled [the practice], they were TIF-ing \$6 billion a year in property tax revenue," he said.

Because the clarification applies only to future fiscal years, governments might not include TIFs when they issue their fiscal 2017 reports later this year. "It means we'll see an uneven quality of data," LeRoy says. "But we expected the first year to be bumpy."

GOVERNING.COM

BY LIZ FARMER | MAY 5, 2017

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## [\*\*HSE Municipal Market Update - April 28, 2017\*\*](#)

[Read the Update.](#)

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## [\*\*KPM Financial Weekly Rate Update - May 1, 2017\*\*](#)

[Read the Update.](#)

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## [\*\*S&P 2017 U.S. Public Finance Credit Forum.\*\*](#)

Please join us for our 2017 U.S. Public Finance Credit Forum on **Thursday, June 1st** in Boston.

On hand will be several of our Sector Lead Analysts to review and discuss S&P Global's research related to credit pressures facing U.S. states and local governments, with a focus on pension issues and emerging risks/trends in public finance.

The plight of the U.S. State sector was highlighted in a recent op-ed by Gabe Petek, Managing Director and Sector Lead for States: [\*"It's The Dawn Of A New And Less-Forgiving Era For U.S. States"\*](#). The cause of these pressures and the ripple effects across the municipal finance universe will be a focus of the discussion. We look forward to hearing your views and engaging in a dialogue.

Topics will include:

- A discussion of what lies behind the negative tilt to state rating actions over the course of the past year.
- How does the current state of U.S. States affect the broader public finance universe?
- What does the current federal fiscal and policy uncertainty mean for state and local government issuers?
- Interactive discussion of emerging risks and trends in public finance, including green bonds, cybersecurity, pension and other post-employment benefit liabilities.
- A panel discussion including one of our in-house pension actuaries, providing our perspective on the retirement liability pressures facing governments today.

This interactive seminar will take place at the Metro Meeting Center in Boston, with a networking reception to follow.

[Click here](#) to view the agenda.

Registration is complimentary but required. [Click here](#) to register now.

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## **[IRS Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds.](#)**

This new publication is a basic guide to the yield restriction and rebate requirements (arbitrage requirements) of Internal Revenue Code Section 148 and related regulations. Information in the guide can help issuers and conduit borrowers comply with their obligations and prevent violations of the arbitrage requirements.

[IRS Publication 5271](#)

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## **[MSRB Reminds Municipal Advisors of September 12, 2017 Deadline for Series 50 Exam.](#)**

The Municipal Securities Rulemaking Board (MSRB) is reminding municipal advisor firms of their obligation to ensure that every individual associated with the municipal advisor firm is qualified in accordance with the rules of the MSRB. Pursuant to [MSRB Rule G-3](#), an associated person of a municipal advisor firm who engages in municipal advisory activities on behalf of the municipal advisor firm is required to be qualified as a “municipal advisor representative” by passing the Municipal Advisor Representative Qualification Examination (Series 50). After September 12, 2017, only an associated person of a municipal advisor firm who has passed the Series 50 exam can engage in municipal advisory activities on behalf of the municipal advisor firm.

[Read the full notice.](#)

### **Resources:**

[FAQs about the Series 50 exam](#)

[Content outline for the Series 50 exam](#)

[Additional information on the MSRB’s website](#)

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## **[Munis: Downgrades Rise a Percentage of Rating Actions in Q1.](#)**

***Fitch bumped up its negative rating watch listings, but didn’t issue any positive rating watches in Q1.***

While the first quarter was the 12th consecutive quarter where upgrades outpaced downgrades, it outpaced them by a smaller percentage than last quarter, according to a new report from Fitch Ratings.

In the fourth quarter of 2016, downgrades were just 25% of all rating actions. In the first quarter of this year, downgrades were 40% (37 of 151 ratings actions).

Jessalynn Moro of Fitch's U.S. Public Finance group also notes that the downgrades were bigger in terms of dollar value this quarter — mostly due to the downgrade of Illinois.

While upgrades outpaced downgrades, we saw a higher par value on the downgrades this quarter due to the Illinois downgrade of nearly \$30 billion. This one downgrade accounted for 68 percent of all downgrades this quarter.

Fitch downgraded Illinois from triple-B-plus to triple B in February. That's the second lowest investment grade rating.

Fitch also notes in its report that there was a pretty big bump in "rating watch negative" listings — to 28 from 20. The average for the last four quarters is 21.75. No securities were listed as "rating watch positive."

Positive rating outlooks (a longer-term measure than a ratings "watch") decreased to 86 from 91 in 4Q16, and negative rating outlooks decreased to 109 from 118.

## **Barron's**

By Amey Stone

Updated May 8, 2017 12:07 p.m. ET

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## **[Sometimes the Truth is Stranger than Fiction - Update.](#)**

Not quite a year ago, I wrote a blog post entitled [Sometimes the Truth is Stranger than Fiction](#). There has been a recent development in the relevant case that I think is worthy of a short update.

A very brief summary of what the relevant case involved is as follows. Two former Sprint executives (Mr. LeMay and Mr. Esrey) participated in several tax shelters that had been promoted by Ernst & Young ("EY") in the early 2000s. As a result of its promotion of these tax shelters, EY ended up settling with both the IRS and U.S. Attorney for the Southern District of New York for not quite \$140 million. It appears that EY also paid an undisclosed sum to the two former Sprint executives. However, in LeMay and Esrey's collective opinion, they were not made whole in their failed attempt to defraud the IRS (and thus, the honest, tax-paying U.S. population). Accordingly, LeMay and Esrey sued the IRS for an astounding \$159 million.

[Continue reading.](#)

The Public Finance Tax Blog

By Cynthia Mog on May 5, 2017

**Squire Patton Boggs**

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## **BLX Post-Issuance Compliance Workshop.**

**WHO:** 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing

**WHAT:** Comprehensive Overview of Post-Issuance Compliance - Tax Law and SEC Secondary Market Disclosure

**WHEN:** November 9th and 10th, 2017

**WHERE:** Vdara Hotel & Spa | Las Vegas, Nevada

**RECEIVE:** CPE and CLE Credits

Reserve your place today at the 5th annual BLX/Orrick Post-Issuance Compliance Workshop this November. It's happening again in Las Vegas at the AAA Four Diamond Award winning Vdara Hotel and Spa at City Center.

### **PROGRAM DESCRIPTION AND AGENDA**

This BLX/Orrick Workshop offers timely discussion of topics related to post-issuance compliance and tax law for the public finance and 501(c)(3) tax-exempt communities. With open forums allowing for attendee participation, BLX and Orrick professionals will lead the program and assist participants with identifying and calculating Private Business Use, best practices relating to Post-Issuance Compliance, and complying with IRS Schedule K reporting requirements.

[Click here](#) to learn more and to register.

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## **Don't Shrug Off Puerto Rico Risks.**

***Now that the commonwealth has filed for court protection, investors in other municipal bonds could start to feel the pain.***

When Puerto Rico filed for court protection from creditors—the commonwealth's own bankruptcy-like process created as part of the financial-rescue law passed last year—the market reaction wasn't what you might have expected.

Some of Puerto Rico's municipal bonds actually rose in value, and the broader muni market shrugged. Moody's saw the filing as positive, in that it will simplify the process of negotiating separately with creditors. S&P Global Ratings saw no impact, partly because it already rates many of the bonds D for default, or close to that level.

It's true that in some ways, not much has changed. Puerto Rico still owes a staggering \$74 billion in debt that it can't pay and needs to restructure. "People see Puerto Rico as a one-off, although it is a big one-off," says Mark Taylor, head of municipal research at Alpine Funds. Detroit's 2013 bankruptcy, the second largest, was just \$18 billion in size.

But this isn't the end of the story. A judge will decide how Puerto Rico's many creditors will be treated. As the first bankruptcy under the new law, it could be precedent-setting and may eventually affect broader muni prices.

A key question is whether the general-obligation bonds, backed by Puerto Rico's government, or the Cofina bonds, backed by sales taxes, will get preference in a restructuring. Already, investors have been betting that GO bonds will get preference over Cofinas, causing a downdraft in Cofina pricing. If Cofina's dedicated sales-tax revenue stream isn't validated, it could hurt similar bonds with their own revenue streams.

"If that lockbox system [of dedicated sales tax revenue] doesn't really hold water," says Taylor, "it could make investors more jaded" about this class of bonds.

John Miller, who heads municipal-bond investing at Nuveen Asset Management, believes any signs of favoritism based on earlier negotiations are irrelevant now that a judge will be calling the shots. But he thinks both types of bonds are due for more downside. The long-term financial plan certified by Puerto Rico's financial-control board allows for debt repayment of only 24 cents on the dollar over the next 10 years. Puerto Rico's GO and Cofina bonds trade between 58 and 65 cents on the dollar.

IF PUERTO RICO BONDHOLDERS suffer big losses, says Taylor, it could spill over into the rest of the muni market. He's surprised how well prices have held up. "There is a lot of potentially unwarranted optimism in there," he adds.

It's too soon to know how it will shake out. Jim Murphy, a muni portfolio manager at T. Rowe Price, isn't sure the accounting backing the control board's projections is solid. "All these parties are about to fight over the pie, but we don't even know how big the pie is," he says.

Another question Puerto Rico's bankruptcy is raising: Does it open the door for states to file for bankruptcy? Murphy's view: "It cracks the door a little bit."

That would clearly be a negative for state munis. But, cautions Richard Daskin of RSD Advisors, "the situation is developing and there are a lot of moving parts." He still likes insured Puerto Rico paper—since the insurance companies backing those bonds should be able to continue to pay—but warns that uninsured bonds are more like leveraged stocks than bonds. "They go in your risk bucket," he says.

Taylor thinks it will take two to three years to work through all these issues. The next key decision is for U.S. Supreme Court Chief Justice John Roberts to pick the district court judge who will preside over the case. When that selection is made, investors will try to handicap whether creditors or Puerto Rican citizens are likely to get preferential treatment.

"The judge is going to have a lot of sway because there is no precedent," says Daskin. And muni investors could be looking at a lot of red ink.

BARRON'S

By AMEY STONE

May 6, 2017

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## **[T+2 Settlement Cycle Change Set for September 2017.](#)**

The MSRB recently announced the September 5, 2017 effective date of amendments to MSRB [Rules](#)

[G-12](#), on uniform practice, and [G-15](#), on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle (T+2). The SEC had previously approved these amendments and other technical changes to MSRB rules on April 29, 2016. The migration to a T+2 settlement is expected to provide significant benefits to the financial industry broadly, including the mitigation of counterparty risk and an increase in global settlement harmonization by aligning the U.S. markets with other major markets.

[Read the full regulatory notice.](#)

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## **[House Financial Services Committee Holds a Markup of the Financial CHOICE Act.](#)**

On May 4, the House Financial Services Committee concluded their markup of H.R. 10, the Financial CHOICE Act of 2017. While none of the Democratic amendments offered were agreed to, the manager's amendment offered by Chairman Jeb Hensarling (R-Texas) passed in a voice vote, and the bill was favorably reported to the House in a 34-26 party line vote. The next step will be a vote by the full House of Representatives. The bill includes several provisions of interest to the municipal market, including a repeal of the Volcker Rule - which has disrupted Tender Option Bond programs - and a repeal of the Dodd-Frank Act provision, which has resulted in municipal securities dealers footing the cost of the Governmental Accounting Standards Board, among others.

[SIFMA Hearing Summary](#)

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## **[KBRA NE Municipal Finance Summit.](#)**

Five months into the Trump Administration, it is important that the game-plan you have in place addresses current market issues, answers regulatory questions, meets investment needs and produces sound infrastructure plans.

The [NE Municipal Finance Summit](#) will offer in-depth education about these cutting-edge public finance topics. Attendees have the opportunity to meet face-to-face and network with senior issuers, as well as other deal participants. The audience is the region's most influential public-sector finance officials, investors, bankers, lawyers, financial advisors, rating analysts, insurers and other finance professionals.

**Date:**

June 20, 2017

**Location:**

Boston, MA

**Venue:**

The Harvard Club

[View Agenda.](#)

[Register.](#)

For more information, contact:

Whitney Betts  
(704) 341-2445  
wbetts@frallc.com

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## **[MSRB: First Quarter Municipal Trading Volume Tops Same Period a Year Ago.](#)**

The Municipal Securities Rulemaking Board (MSRB) today released municipal market statistics for the first quarter of 2017 that showed a significant increase in both the number of trades and the par amount traded compared to the first quarter of 2016. The number of municipal securities trades rose 16.2% to 2.63 million trades in the first quarter of 2017 compared to 2.27 million trades during the same period in 2016. That increase puts quarterly trading volume at its highest level since the third quarter of 2013, when 2.93 million trades occurred. The first quarter of 2017 also saw a significant increase in par amount of municipal securities traded compared to the first quarter of 2016, jumping 19% to \$765.5 billion, compared to \$643.3 billion traded during the same period a year ago.

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## **[KBRA Releases Surveillance Report: State of New York's General Obligation Bonds.](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA+ with a Stable outlook on the State of New York's general obligation bonds. This rating applies to all of the state's outstanding general obligation bonds but excludes bonds backed by a letter of credit or liquidity facility.

The state's outstanding general obligation bonds are secured by its full faith, credit, and taxing power. Pursuant to the state's constitution, general obligation debt must be voter approved. The constitution further provides that if the legislature fails to appropriate the funds necessary to make debt service payments, the comptroller must set aside the first available revenues to make such payments. KBRA views the security provisions supporting general obligation debt in New York as very strong.

Please click on the link below to access the report:

[State of New York's General Obligation Bonds](#)

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## **[KBRA Releases Surveillance Report: CTA Rail Fleet Renewal Project \(Series 2016A TIFIA Bonds\)](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA- and stable outlook on the Chicago Transit Authority (CTA) Rail Fleet Renewal Project (Series 2016A TIFIA Bonds) loan from the U.S. Department of Transportation (DOT) and the 2015 Transportation Infrastructure Finance

and Innovation Act (TIFIA) (CTA Your New Blue Improvement Project) Loan.

The TIFIA loans are secured by all CTA farebox revenues on a gross lien basis, which is defined in the legal documents as all transit fare revenues derived from CTA operations. The CTA's TIFIA loans for the 95th Street Station project, the Your Blue Improvement Project, and the Rail Fleet Renewal Project were issued as secured bond obligations under the master trust indenture, dated April 1, 2014.

KBRA views the Chicago Transit Authority (CTA) as an essential public transit system that is critical to the economic and social infrastructure of the greater Chicago metropolitan area. The CTA also provides critical transportation links to the larger regional transportation system. The CTA is the nation's second largest public transit system, after New York City's, in terms of ridership, providing bus and rail service to the City of Chicago and 35 adjacent suburbs, covering 234 square miles and over 3.5 million residents. Rail service extends to both O'Hare and Midway airports. The CTA provides 81% of public transit trips in the Chicago metro area through direct service or through connecting service to Metra and Pace.

Please click on the link below to access the report:

[CTA Rail Fleet Renewal Project \(Series 2016A TIFIA Bonds\)](#)

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## **[KBRA Rates State of Wisconsin's Transportation Revenue Bonds, 2017 Series 1](#)**

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AAA with a stable outlook to the State of Wisconsin's \$286 million Transportation Revenue Bonds, 2017 Series 1 and affirms the rating of AAA with a stable outlook on the State's outstanding first lien transportation revenue bonds (TRB or "the Bonds"). After issuance of the 2017 Series 1 Bonds, the State will have a total of approximately \$2.1 billion in Transportation Revenue Bonds outstanding.

The long-term rating on the state's Transportation Revenue Bonds is based on KBRA U.S. Special Tax Revenue Bonds Rating Methodology. KBRA's evaluation of the long-term credit quality of the Wisconsin Transportation Revenue Bonds focuses on five key rating determinants:

- Legal Framework
- Nature of Pledged Revenue Tax Base
- Economic Base and Demographics
- Revenue Analysis
- Coverage and Bond Structure

Please click on the link below to access the report:

[Wisconsin Transportation Revenue Bonds, 2017 Series 1](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

## **[Appeal of Kadle Properties Revocable Realty Trust](#)**

**Supreme Court of New Hampshire - March 10, 2017 - A.3d - 2017 WL 951768**

Property owner appealed decision of the Board of Tax and Land Appeals (BTLA) concluding that property did not qualify for educational use tax exemption.

The Supreme Court of New Hampshire held that even if tenant of office building that offered computer classes operated a school, property that included the office building did not qualify for educational use property tax exemption, even though property owner and tenant were jointly owned.

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## **TAX - COLORADO**

### **[City and County of Denver v. Expedia, Inc.](#)**

**Supreme Court of Colorado - April 24, 2017 - P.3d - 2017 WL 1449530 - 2017 CO 32**

Online travel companies sought review of hearing officer's determination that they owed lodger's taxes, along with penalties and interest, to city that assessed those taxes in connection with fees charged by companies for facilitating hotel reservations.

The District Court affirmed in part and vacated in part. Companies and city appealed. The Court of Appeals affirmed in part and reversed in part. City petitioned for review.

The Supreme Court of Colorado held that:

- Companies were "vendors" with responsibility to collect lodger's tax and remit it to city, and
- Companies' markup for selling reservations to lodgers, which companies retained, was subject to tax.

Online travel companies were "vendors" with responsibility to collect lodger's tax and remit it to city. Companies set rate they would accept from lodgers, lodgers transacted with companies and prepaid for reservations, and companies retained difference between price paid by lodgers and amount paid to hotels.

Online travel companies' markup for selling reservations to lodgers, which companies retained, was subject to city's lodging tax, which included tax on purchase price paid or charged for lodging. Purchaser had no option to decline markup in making his purchase of lodging from companies, and it was therefore inseparable from selling price of lodging.

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## **[Puerto Rico Bond Insurer Becomes First to Challenge Restructuring Plan.](#)**

### ***Assured Guaranty sues oversight board over debt-cutting plan***

A bond insurer looking to minimize losses on \$5.4 billion in Puerto Rico bond guarantees has fired the first legal volley following the U.S. territory's entry into court protection.

Assured Guaranty Ltd. Thursday sued Puerto Rico's federal oversight board, which one day earlier placed the ailing U.S. territory in what amounts to the largest ever U.S. municipal bankruptcy. The complaint, filed in federal court in San Juan, marks the first legal challenge to Puerto Rico's debt-

cutting plan by creditors following the board's unprecedented action.

The insurer says the board overstepped when it ordered the payment of no more than \$787 million annually in debt service over the next decade. That sum, less than a quarter of the \$3.5 billion creditors are owed on average each year, is at the heart of a board-approved fiscal plan that forms the basis for restructuring negotiations.

Bond payments, education subsidies and pension spending were all cut in the plan, which the board approved last month after ordering more conservative economic assumptions that further diminished the surplus available for creditors.

The proposed financial overhaul, "unless totally recast, cannot possibly be permitted to serve as the basis for any lawful plan of adjustment," Assured said in a statement.

The board's petition under a court-supervised restructuring process known as Title III was meant to put the brakes on creditor litigation—outside of the bankruptcy-like process—seeking redress for past payment defaults. Assured filed its case in the Title III proceeding, which pits Puerto Rico against a number of hedge funds, mutual funds, insurance companies and retail investors holding its \$73 billion in municipal debt.

## **The Wall Street Journal**

By Andrew Scurria

May 4, 2017 9:24 a.m. ET

Write to Andrew Scurria at [Andrew.Scurria@wsj.com](mailto:Andrew.Scurria@wsj.com)

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### **[Bond Insurer Stocks Hit in Puerto Rico Proceedings.](#)**

Shares of firms that insure some of Puerto Rico's municipal bonds took a hit Wednesday after the island commonwealth was placed under bankruptcy protection.

Shares of Ambac Financial Group, which guarantees \$10 billion in Puerto Rican debt, dropped 1.9% Wednesday, bringing its fall this week to 5.2% and its 2017 losses to 18%. The stock has been down for five straight sessions.

MBIA fell 0.9% and Assured Guaranty slipped 0.2%, underperforming the S&P 500's 0.1% drop.

"Right now, Puerto Rico is the primary driver of these stock prices," said Mark Palmer, an equity research analyst at BTIG, who believes a "dire scenario" is already baked into their prices.

About \$12 billion of the island's \$73 billion in debt is insured, insurers' filings show. On Tuesday, ahead of the decision by federal officials to place Puerto Rico under bankruptcy protection, Ambac challenged the commonwealth's debt restructuring plan in federal court.

The stocks have long followed the twists and turns of the Puerto Rico case. Ambac's stock jumped 22% in the final two months of 2016 as Puerto Rico's new governor, Ricardo Rosselló, was seen to favor repaying the island's debts.

Creditors had fought with the previous governor, Alejandro Garcia Padilla, but thought Gov.

Rosselló, would be on their side when he took office earlier this year. Wall Street's relationship with the governor has since deteriorated.

THE WALL STREET JOURNAL

By BEN EISEN

May 3, 2017 5:05 pm ET

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## **[U.S. Chief Justice Taps New York Judge to Handle Puerto Rico Bankruptcy.](#)**

WASHINGTON — U.S. Chief Justice John Roberts on Friday appointed a federal judge based in Manhattan to oversee Puerto Rico's landmark bankruptcy case two days after the island's government filed for protection from creditors.

In a brief statement, Roberts said he had designated U.S. District Judge Laura Taylor Swain of the Southern District of New York to handle the biggest bankruptcy in the history of the U.S. municipal debt market.

Puerto Rico, which has roughly \$70 billion in debt, filed for bankruptcy on Wednesday.. Some of its public agencies are expected to do the same in coming days.

Because the U.S. territory is not eligible for traditional bankruptcy protection, the filing came under Title III of PROMESA, the federal Puerto Rico rescue law passed last year.

"I see the selection as a sign that Chief Justice Roberts knows very well the importance of this case and the need for the case to be perceived as having a fair process," said Melissa Jacoby, bankruptcy expert and professor at UNC Law.

Under PROMESA, the chief justice is tasked with selecting a federal judge to oversee the case, which was filed in federal court in San Juan, Puerto Rico.

Swain played an important role in the revisions to the Federal Rules of Bankruptcy Procedure, which apply to PROMESA Title III, Jacoby said.

A Harvard Law School graduate, Swain served from 1996 to 2000 as a bankruptcy judge for the Eastern District of New York after working in private practice at the law firm Debevoise & Plimpton. She specialized in employee benefits, executive compensation, employment and federal health and pension laws.

Swain has presided over other notable cases since being appointed to the federal bench by President Bill Clinton in June 2000, including trials of associates of Bernard Madoff tied to his multibillion-dollar investment Ponzi scheme.

She presided over several financial crisis related cases over soured mortgage-backed securities against major banks.

Last year, the 2nd U.S. Circuit Court of Appeals in Manhattan voted 3-0 to overturn her decision to dismiss a class-action lawsuit brought by investors. They accused drugmaker Pfizer Inc of causing tens of billions of dollars in shareholder losses by misleading them about the safety of its Celebrex and Bextra pain-relieving drugs.

“ALL BETS ARE OFF”

Puerto Rico is saddled with a 45 percent poverty rate and unemployment about double the U.S. average. While it remains to be seen how much of the \$70 billion in debt will be included in the bankruptcy, its restructuring is sure to be the largest and among the most complex in municipal market history.

Deep-pocketed creditors from myriad public issuers are battling on many fronts, competing for repayment priority while challenging the authority of Puerto Rico’s federal financial oversight board to put the island into bankruptcy in the first place.

Several creditors sued Puerto Rico after Monday’s expiration of protections against lawsuits under PROMESA.

Creditors holding constitutionally-backed general obligation debt argue they should be paid first while creditors holding sales tax-backed bonds, known as COFINA, have said they are entitled to the collected money.

The broader implications for the municipal bond market are not lost on investors.

“In particular as it pertains to securitized debt such as COFINA debt. You have similar debt in places like Illinois. This case could have far reaching implications,” said Sean Burgess, portfolio manager and lead trader for Puerto Rico strategy at Sarasota, Florida-based Cumberland Advisors.

“Investors thought that their revenues were secure and claims and liens were (to be) respected. It could end up that COFINA bondholders get a haircut,” said Burgess. “Once it goes to a judge all bets are off.”

By REUTERS

MAY 5, 2017, 3:39 P.M. E.D.T.

(Reporting by Lawrence Hurley; Additional reporting by Nick Brown and Nathan Layne in New York, Tracy Ricinski in Chicago, Daniel Bases in San Francisco; Editing by James Dalglish and Tom Brown)

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## **[Puerto Rico Somewhat Unique Among U.S. Municipal Bankruptcies.](#)**

***Islanders will feel some cuts and, despite some optimism, a long-term fix is uncertain***

Puerto Rico’s leaders who put the island into a form of bankruptcy on Wednesday have gained access to a powerful tool that has helped a handful of U.S. cities get back on their feet, restructuring experts say.

The island and its agencies owe creditors \$73 billion in what is the largest U.S. municipal bankruptcy. But when Puerto Rico entered the court-supervised restructuring process known as Title III, leaders gained the leverage to impose cuts on Wall Street firms and other investors in the island’s debt, experts say.

“Chapter 9 is always the worst option until it’s the only option,” said Marc Levinson, referring to the section of the U.S. bankruptcy code used by municipalities. Mr. Levinson, a Sacramento bankruptcy

lawyer, helped shepherd the California cities of Vallejo and Stockton through bankruptcy.

While Puerto Rico's bankruptcy will likely result in cuts to public workers' benefits and increased costs for government services, the filing has given some Puerto Rico residents optimism. Charles Cuprill, a bankruptcy lawyer for the island's small businesses, said construction is at a standstill and roads are in disrepair.

"Puerto Rico didn't have any other choice," he said.

As a U.S. territory Puerto Rico wasn't eligible for chapter 9, which is only available to U.S. municipalities. But federal lawmakers who recognized the island's problems passed an oversight law in June that gave it access to a form of bankruptcy that incorporates parts of chapter 9 law. Both forms of bankruptcy give leaders the power to halt lawsuits, the autonomy to govern during the process and the ability to propose a debt-repayment plan to a judge. Unpaid debts at the end of the process would be canceled.

Lawyers and advisers who have helped struggling cities like Detroit and Stockton navigate the bankruptcy process say the island's filing could ultimately improve the quality of life for its residents.

The cities used the process to cut debt and repair their reputation in the borrowing community. Before bankruptcy, "no one in their right mind would have loaned [them] money," said Mr. Levinson. The lawyer isn't involved in the Puerto Rican case but his firm, Orrick, Herrington & Sutcliffe, represents some creditors.

The Caribbean island of roughly 3.4 million people has an unemployment rate that tops 12%, more than twice the U.S. average. The territory has been in a recession for most of the past decade after Congress ended a series of generous tax breaks designed to grow the island's manufacturing sector and steer it away from agriculture after World War II. Global financial troubles in 2008 also hurt growth.

Sprawling bureaucracy and high electricity costs have stunted business investment, while government cuts have closed everything from schools to social-service providers. The departure of some citizens has also sapped the island's tax base, further squeezing budgets. Puerto Rican leaders borrowed money to pay operating expenses. The cost of the mounting debt has kept island officials from providing services to citizens.

Mounting debt and a declining population are problems for many U.S. cities. Detroit officials had also blamed its financial problems on the loss of residents, who fled in large numbers for its safer suburbs. The 680,000-resident city filed for bankruptcy in July 2013 to negotiate cuts to \$18 billion in debt, blaming tax revenue that fell after the real-estate crash.

The judge that presided over Detroit's case said the city's failure to provide basic services that protect residents' health and safety was "inhumane and intolerable, and it must be fixed." Detroit's bankruptcy-exit plan proposed to cut \$7 billion in debt owed to Wall Street firms, city retirees and others. Its plan also called for \$1.7 billion reinvestment in removing blighted buildings and boosting police and fire services in the city.

In Stockton, a city of 300,000 in California's Central Valley that filed for bankruptcy protection in 2012, the response to the city's debt restructuring has been mixed.

"The stigma is starting to fade," said the city manager, Kurt Wilson, who noted that the bankruptcy filing brought financial stability, though the level of public services has yet to bounce back. Stockton

residents, for example, have been disappointed that city staffing levels remain low. Retired city workers also suffered in the long run.

“When we took away their health care, it didn’t come back,” Mr. Wilson said.

Federal judges in charge of Detroit’s and Stockton’s bankruptcies ruled that pensions could indeed be cut. In Detroit, for example, city retirees agreed to take a 4.5% pension cut and lose cost-of-living increases. In San Bernardino, Calif., which filed for bankruptcy in 2012, officials have agreed to make full payments into the pension fund run by the California Public Employees’ Retirement System. The system distributes payments to thousands of retired city workers—often their lone source of income.

Like Stockton, San Bernardino also stopped paying retiree health benefits.

Puerto Rico has more than 300,000 pensioners, and they are facing bigger cuts and possibly harsher consequences because teachers and police officers don’t participate in Social Security, leaving them with no fallback if pensions are reduced. The island’s public pension funds have fewer workers contributing, and the plans are now underfunded by an estimated \$45 billion. The federal financial oversight board wants to finance the plans on a pay-as-you-go basis once they exhaust their assets this year or next while reducing benefits by 10% on average to save \$540 million over a decade.

Widener University law professor Juliet Moringiello pointed out that Puerto Rico’s problem are unique compared to municipalities on the U.S. mainland that used chapter 9 because, once debts are cut, it’s unclear who will be in charge of fixing its broader economic problems.

“The big open question with Puerto Rico...is what gets fixed otherwise and who’s going to do it,” Ms. Moringiello said. “Once the debts are adjusted, is there the political will on the island to fix the structural problems?”

## **The Wall Street Journal**

By Katy Stech

May 4, 2017 7:08 p.m. ET

—Andrew Scurria and Heather Gillers contributed to this article.

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### **[Puerto Rico Bankruptcy Is ‘Beginning of the Story’ for Investors.](#)**

#### ***Hedge funds, bond insurers, mutual funds and other creditors have competing interests***

Puerto Rico’s entry into court protection ends a chaotic period of lawsuits and defaults. But the process likely won’t satisfy everyone.

A federal oversight board created by Congress placed the struggling U.S. territory under a court-supervised restructuring proceeding akin to bankruptcy on Wednesday, creating a single forum to sort out Puerto Rico’s mountain of liabilities to bondholders, pensioners and service providers. The U.S. territory and its agencies owe \$73 billion in municipal bond debt accumulated through years of borrowing to finance deficits against a declining tax base.

Wednesday’s filing, however, is only “the beginning of the story,” said Richard Ravitch, who was

involved in the negotiations that helped New York City avoid bankruptcy in the 1970s as well as the bankruptcy negotiations in Detroit.

The bankruptcy proceeding pits Puerto Rico against its creditors, and its creditors against each other. Puerto Rico's investor base includes mutual funds, bond insurers, hedge funds and individual retail bondholders, who either bought commonwealth debt or agreed to guarantee it. They all acquired exposure at different prices and want different restructuring terms.

Some hedge funds scooped up bonds at cut-rate prices as Puerto Rico lost the confidence of the financial markets and they have placed bets on specific tranches of debt, said Craig Barbarosh, a restructuring attorney at Katten Muchin Rosenman. Meanwhile big mutual-fund managers generally purchase debt closer to par values, meaning they have greater incentive to agitate for the maximum recovery across bond classes.

Bond insurance companies Assured Guaranty Ltd AGO 1.17% , MBIA Inc. MBI -0.12% and Ambac Financial Group AMBC 0.54% have billions of dollars in guarantees on the line that make them jointly liable for Puerto Rico's obligations. But the insurers' interests are not aligned either. Ambac guarantees roughly \$8 billion in sales-tax bonds maturing decades from now, while Assured wraps a different universe of debt comprised mostly of general obligation and utility bonds, according to their financial disclosures.

In addition to its obligations to bondholders, the commonwealth has roughly \$45 billion in pension debt and education and health care costs to cover. Mr. Ravitch said he believes the restructuring proceeding will strengthen Puerto Rico's hand with creditors, who now have the threat of a court-enforced settlement hanging over their head.

An estimated \$13 billion in debt is held by local bondholders and financial institutions, a potential drag on growth if those bonds are restructured and island residents lose income streams they depend on.

Treating local holders preferentially is also problematic because of restructuring principles that call for equal payment among creditors.

Complicating matters, Puerto Rico hasn't yet decided which creditors have priority in a restructuring. Competing groups of hedge funds holding general obligation and sales-tax bonds each have claims to top status, but no court has ever defined their respective payment rights.

"We always talked about the rock fight that would break out between these two and now this is the rock fight," said Rob Amodeo, head of municipals at Western Asset Management, which sold its Puerto Rico debt several years ago.

Advisers to Gov. Ricardo Rossello nearly reached an agreement with general obligation creditors this week, before the board intervened in a late-night conference call to stop negotiations, according to people familiar with the matter.

The fiscal plan that formed the basis for negotiations allocates \$800 million annually for debt service in the next decade, treatment creditors have objected to when they are owed more than four times as much.

The board is also caught between current creditors who say Puerto Rico can't risk alienating credit markets by writing down bonds too deeply, and firms that previously sold out of Puerto Rico debt and now argue for aggressive debt restructuring to revive the island economy and make its debt attractive again.

Puerto Rico was cut off from the credit markets in 2015 after nearly a decade of decline, and restoring market access is a must for the federal oversight board tasked with cleaning up its financial mess.

Dave Hammer, head of municipal bond portfolio management at Pacific Investment Management Co., said bond values should be cut below their current trading values to get investors who have shunned Puerto Rico off the sidelines.

Creditors are also competing with pensioners who the board wants to pay 90% on average for the next 10 years.

## **The Wall Street Journal**

By Andrew Scurria and Heather Gillers

May 4, 2017 6:49 p.m. ET

Write to Andrew Scurria at [Andrew.Scurria@wsj.com](mailto:Andrew.Scurria@wsj.com) and Heather Gillers at [heather.gillers@wsj.com](mailto:heather.gillers@wsj.com)

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### **[Puerto Rico Starts \\$70 billion Bankruptcy Proceeding, Biggest Ever for Municipal Bond Market.](#)**

Puerto Rico has officially requested to enter into a bankruptcy-like proceeding to restructure its massive debt load after talks with its creditors failed.

Puerto Rico's governor, Ricardo Rossello, announced Wednesday that he had requested that the federally appointed oversight board trigger Title III of the Promesa Act, a court-supervised debt restructuring similar to bankruptcy, in order to guarantee the best interests of the Puerto Rican people.

The restructuring of Puerto Rico's roughly \$70 billion in outstanding debt would be the largest in the history of the U.S. municipal bond market and will set the stage for a lengthy legal battle between the island and its creditors, which include multiple hedge funds and mutual funds, as they face off in court where a federally appointed judge could force creditors to accept unfavorable repayment terms.

In a statement issued Wednesday, Rossello said that "after extensive discussions in good faith and the opening of the financial books of the Government of Puerto Rico to the creditors, there has not been sufficient progress in the negotiations."

"While the Government remains willing to continue to pursue good-faith dialogue and negotiations with its creditors, the recent expiration of the Promesa stay imposed against enforcement of creditor liability claims dictates that the best course of action is for the Government to enter into Title III."

Rossello officially notified the oversight board of his decision in a letter dated May 2.

"The Government has made good-faith efforts to reach a consensual restructuring with its creditors," the letter says. "Puerto Rico's creditors have not demonstrated a sufficient willingness to fairly share in such sacrifice through a necessary reduction in their debt to a sustainable level."

## **'Turn Puerto Rico into the next Argentina'**

Following the Title III announcement, the Ad Hoc Group of General Obligation bondholders, which holds approximately \$3 billion of the island's debt, issued a strongly worded statement accusing the oversight board of sabotaging creditor talks in order to push Puerto Rico into bankruptcy.

"Over the past several days, the GO bondholder group and the Commonwealth have been negotiating a consensual deal. Yesterday, just as a deal was within reach, we understand that the Oversight Board intervened to block it, and the Governor acquiesced to the Board," Andrew Rosenberg, the legal advisor to the group, said in the written statement.

"For months, the Oversight Board has made every effort to sabotage consensual negotiations, to flout the requirements of PROMESA and Puerto Rico's constitution, and to force Puerto Rico into bankruptcy," the statement continued. "With that bankruptcy now started, the Governor has forfeited all power over the restructuring, and the economy of Puerto Rico will be put on hold for years. Make no mistake: The Board has chosen to turn Puerto Rico into the next Argentina."

A separate bondholder group, the Cofina Seniors Coalition, had a different take on the Title III decision, calling it "sound public policy" that respects congressional intent and supports an orderly debt restructuring process.

"A Title III filing at this point in time enables Puerto Rico to freeze numerous lawsuits, maintain essential services for its residents, and rely on a court-driven restructuring process to objectively determine respective creditors' rights," said Susheel Kirpalani of law firm Quinn Emanuel Urquhart & Sullivan in the statement. "While it is regrettable that Puerto Rico is facing a bankruptcy-like process to resolve its historic fiscal challenges, this was certainly an option of last resort."

### **80 percent cut to debt service payments**

The governor noted his plans to continue to make payments to the island's creditors of nearly \$800 million per year — an 80 percent cut in the total debt service payments due annually — as the fiscal plan previously certified by the oversight board, details.

A range of \$3.0 billion to \$3.8 billion is due cumulatively every year over the next decade on the 11 issues included in the fiscal plan.

Holders of Puerto Rico's general obligation bonds, one of the highest tier securities that is backed by the island's constitution, are due the most over the decade — with about \$10 billion coming due in the time period.

The announcement comes just a day after the island was hit with multiple creditor lawsuits after a stay on litigation expired. Title III will put that automatic stay back in place, protecting the U.S. territory from further lawsuits.

Moody's Investors Service analyst Ted Hampton believes that overall the decision to invoke Title III is a positive step for bondholders.

Although he notes that "a court proceeding will take considerable time and likely involve losses for all Puerto Rico bondholders, it will be an orderly process that should be better for creditors in the aggregate than a chaotic and uncertain period involving proliferating lawsuits among holders of the commonwealth's numerous debt types."

Rossello closed his note to the oversight board with his hope that Title III will "accelerate the

negotiation process, leading to as much creditor consensus where possible.”

## CNBC

By Dawn Giel

Wednesday, 3 May 2017

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### **Puerto Rico Seeks Bankruptcy Protection.**

Puerto Rico is seeking protection from creditors so it can continue paying bills and address a \$7.6 billion budget deficit, Gov. Ricardo Rossello announced Wednesday at a San Juan press conference.

Detroit, D.C. offer clues to the future of Puerto Rico’s public pension funds

The governor also notified the federal fiscal oversight board created by last year’s PROMESA law, which includes provisions for actions that mirror bankruptcy protection.

Mr. Rossello said he also expects other government entities to seek restructuring agreements under another provision of Title VI of the Puerto Rico Oversight, Management and Economic Stability Act.

That protection complicates efforts by several groups of bondholders to restructure at least \$70 billion in debt, who until May 1 were under a litigation stay created by PROMESA.

“We remain committed to maintaining negotiations in good faith to reach agreements with creditors,” Mr. Rossello said, pointing to a recent restructuring agreement with creditors of the Puerto Rico Electric Power Authority. “However, given the deficit that we have inherited, it is my responsibility to guarantee the best interests of the Puerto Rican people.”

Puerto Rico’s fiscal plan, approved March 13 by the oversight board and expected to be finalized by June 30, calls for it to pay creditors nearly \$800 million per year, 80% less than previous administrations committed to debt service.

Mr. Rossello acknowledged insufficient progress in negotiations with bondholders, and said that Title III of PROMESA will allow a special court to restructure its debt “to a sustainable level,” adding that he hoped that it would accelerate the negotiation process, “leading to as much creditor consensus where possible and achieving where necessary a prompt and efficient judicial resolution of any issues or disputes.”

Ted Hampton, vice president at Moody’s Investors Service, said in a statement that invoking Title III “marks a positive step for bondholders overall” because while it will cost bondholders time and money, “it will be an orderly process that should be better for creditors in the aggregate than a chaotic and uncertain period involving proliferating lawsuits among holders of the commonwealth’s numerous debt types.”

## PENSIONS & INVESTMENTS

BY HAZEL BRADFORD | MAY 3, 2017 1:15 PM | UPDATED 1:24 PM

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

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## **Puerto Rico Skids Into Bankruptcy After Years of Economic Distress.**

Move amounts to the largest-ever U.S. municipal bankruptcy, sets up showdown with Wall Street creditors

Puerto Rico was placed under court protection on Wednesday in what amounts to the largest-ever U.S. municipal bankruptcy, a stark illustration of the depth of the economic crisis afflicting a U.S. territory with more than three million inhabitants.

Puerto Rico and its agencies owe \$73 billion to creditors, dwarfing the roughly \$9 billion in bond debt owed by the city of Detroit when it entered what was previously the largest municipal bankruptcy in 2013.

The move by a federal oversight board installed by Congress is the culmination of years of economic distress and heavy borrowing that more recently has pitted Wall Street creditors, hungry for payments, against the struggling island.

The officials' decision sets up a showdown with Wall Street firms, including mutual-fund giants Franklin Resources Inc. and OppenheimerFunds Inc., hedge funds Aurelius Capital Management LP and Monarch Alternative Capital LP and some bond insurers. The federal action could mean deeper losses on bonds than analysts have anticipated, though some investors purchased bonds at lower prices and Puerto Rico bond prices were largely unchanged on Wednesday.

It also further complicates the island's bid to improve its relationship with Washington lawmakers, which has grown more fraught as Puerto Rico officials sought aid critical to ending a decadelong economic swoon—aid U.S. officials were loath to provide. Analysts said the bankruptcy could provide a forum for the orderly allocation of Puerto Rico's potential resources.

The Puerto Rico Financial Oversight and Management Board, installed last year by Congress, on Wednesday invoked a law that puts the standoff with creditors before a federal judge in San Juan in a restructuring process known as Title III that doesn't involve the U.S. bankruptcy court system.

The maneuver itself is unlikely to immediately change day-to-day life in Puerto Rico—an island already beset by an unemployment rate above 12%—more than twice the national average.

Sprawling bureaucracy and high electricity costs have stunted business investment, while government cutbacks have closed everything from schools to social-service providers. The departure of some citizens has sapped its tax base, further squeezing budgets.

"What I see all around me is uncertainty. People sometimes just leave the key in the house or the car in the airport and just go," said Nancy Madden, founding director of an educational nonprofit in Humacao, Puerto Rico.

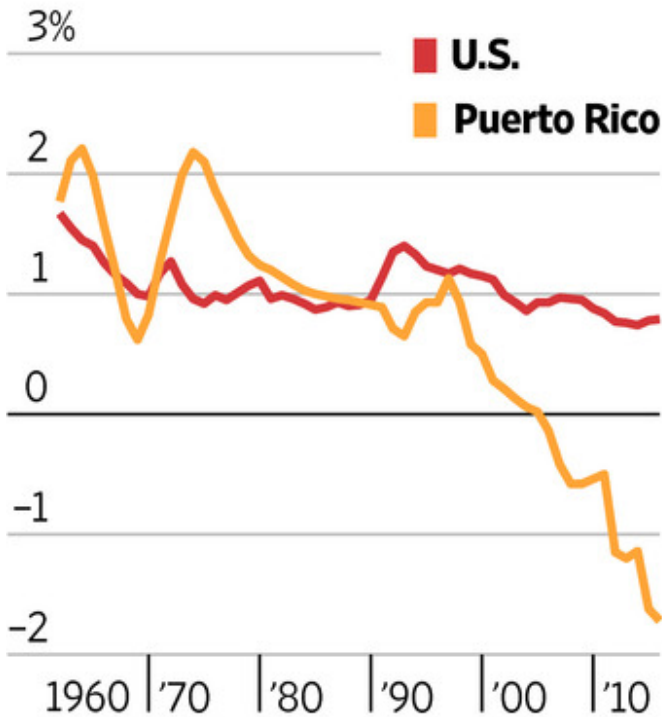
The territory has been in recession for most of the past decade. For years, federal tax credits helped cultivate a robust manufacturing sector and steer the island away from agriculture after World War II. But Congress ended those incentives in 2006, and the economy fell into a recession. Puerto Rico has struggled to create jobs ever since.

# Island Flight

An exodus from Puerto Rico has hurt its growth prospects and shrunk its population to less than 3.5 million.

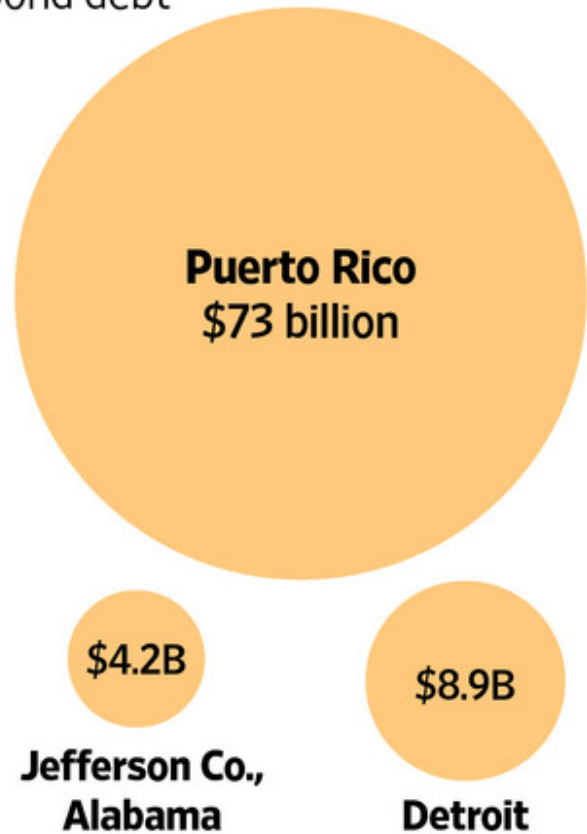
## Population

Change from a year earlier



## Biggest municipal bankruptcies

Bond debt\*



\*Does not include pensions and other obligations

Sources: World Bank (population);

Municipal Market Analytics (bankruptcies)

THE WALL STREET JOURNAL.

As the loss of jobs damped the economy, local leaders strained to cut spending and boost tax collections. Instead, they borrowed to make up for recurring revenue shortfalls.

For over a decade, Puerto Rico's government and its municipal corporations borrowed more to buy time to stave off deeper economic overhauls. With government payrolls down over the past decade, pension funds have fewer workers contributing and the plans are now underfunded by an estimated \$45 billion.

For years, investors overlooked these fiscal and demographic problems because Puerto Rico's bonds offered high yields and because they believed the island's economy would eventually recover. Puerto Rico can issue debt exempt from federal, state and local taxes, unlike U.S. states, which made these bonds attractive to many mutual-fund investors and more recently, hedge funds.

But Puerto Rico began to lose access to the credit markets three years ago, when its ratings were downgraded. The door closed for good in 2015 when the island's governor declared the debts unpayable.

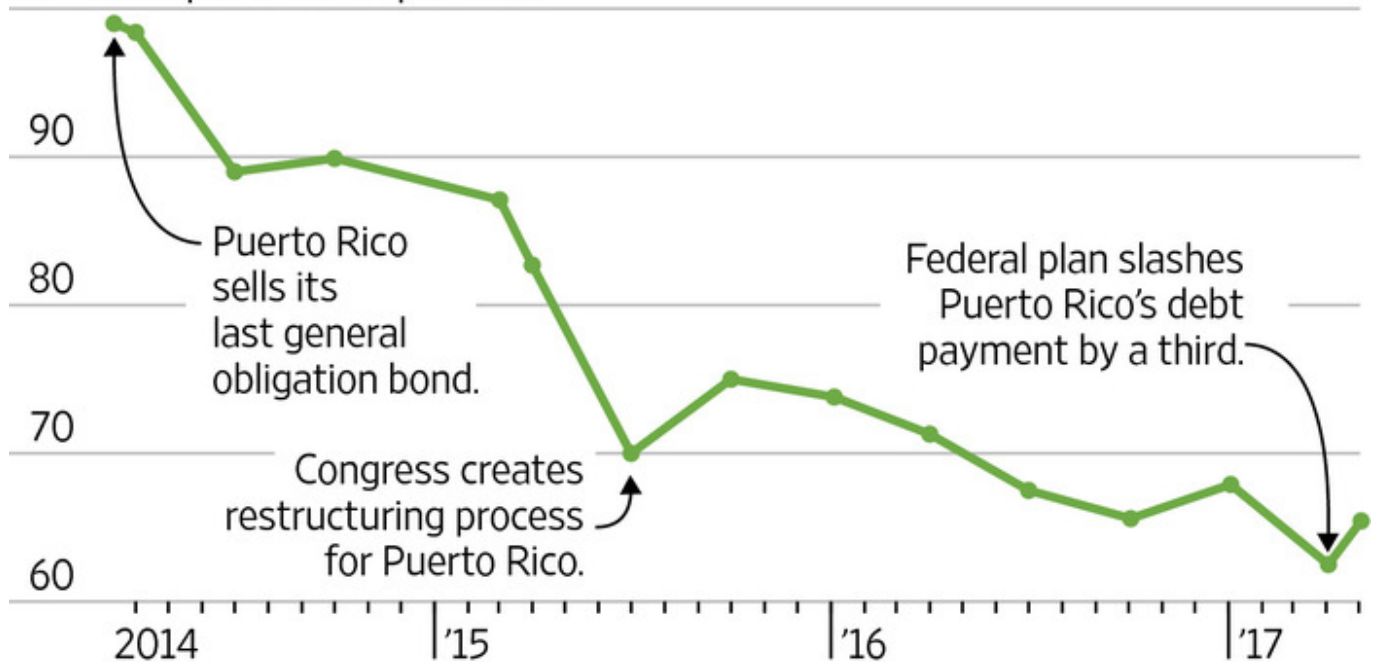
Unrest has been growing on the island over installation of the oversight board and cutbacks by

government. A massive blackout last year left half the island without power at one point. When the Zika virus landed on Puerto Rico last summer, the government had limited funds to fight back. Also last year, the Santa Rosa Hospital in the southern coastal town of Guayama had its power cut off suddenly after failing to pay millions of dollars in utility bills. A court eventually ordered the power to be turned back on.

## Reckoning Approaches

Puerto Rico general-obligation bond prices have tumbled in recent years as the island's fiscal straits grew more dire. Investors are now bracing for a long-awaited restructuring.

100 cents per dollar of par value



Source: Municipal Securities Rulemaking Board

THE WALL STREET JOURNAL.

When the board first convened last year, about 50 demonstrators surrounded the entrance to the Alexander Hamilton U.S. Custom House in downtown Manhattan, where the meeting was held. Several people were later escorted out of the meeting room after shouting "down with colonialism."

Protests continued as recently as Monday, affecting services at Puerto Rico's largest public hospital, paralyzing the bus system and forcing many businesses to close, the Associated Press reported.

Puerto Rico was in marathon closed-door talks this month toward a global deal with various groups of creditors battling for top repayment priority in a restructuring. Hedge-fund creditors holding defaulted general obligation bonds were on the verge of completing an agreement late Tuesday before the oversight board intervened to stop negotiations, a spokesman for those creditors said.

Federal officials last month approved a wide-ranging framework for government spending that would scale back expenditures and allocations to creditors. Wednesday's move represents a step toward implementing the plan.

The plan “imposes pain everywhere,” said Ignacio Alvarez, president and chief operating officer of Banco Popular de Puerto Rico in San Juan. “The cuts to the health system are massive. The cuts to the universities are large.”

The Trump administration has largely embraced the oversight-board framework established by the Obama administration. Following a meeting with Gov. Ricardo Rosselló in February, Treasury Secretary Steven Mnuchin said Puerto Rico should continue to work with the oversight board, and a Treasury spokeswoman on Wednesday said the department supported the board’s decision to invoke its Title III authority.

The decision marks the start to what could be a lengthy legal fight as Wall Street watches closely to see how other indebted municipal governments, including Chicago and Illinois, may fare in confrontations with investors.

Any write-downs also would hit bond insurers Assured Guaranty Ltd. , MBIA Inc. and Ambac Financial Group , which have guaranteed billions of dollars of Puerto Rico’s bonds.

The Title III request, while unprecedented, isn’t unexpected. The board signaled in negotiations this month it wouldn’t consider paying creditors more than the roughly \$800 million in annual sums allocated to debt service, according to people familiar with the matter.

A legal stay protecting Puerto Rico from lawsuits expired Monday night without standstill agreements with creditors in place. Hedge funds holding general obligation and sales-tax bonds filed lawsuits on Tuesday, naming Gov. Rosselló as a defendant.

The slide into bankruptcy marks a new low in Wall Street’s relations with Mr. Rosselló, a political newcomer who pledged as a candidate to repay the territory’s debts, shrink the government and strengthen ties with the U.S. Creditors clashed with the previous administration of Alejandro Garcia Padilla but considered Gov. Rosselló a likely ally, said Chas Tyson, vice president at investment banking firm Keefe, Bruyette & Woods Inc.

Mr. Rosselló on Wednesday said he requested the bankruptcy move.

“Now it seems like the honeymoon’s over,” Mr. Tyson said. “It seems that we’re back where we used to be.”

## **The Wall Street Journal**

By Andrew Scurria and Heather Gillers

Updated May 3, 2017 7:47 p.m. ET

—Kate Davidson contributed to this article.

Write to Andrew Scurria at [Andrew.Scurria@wsj.com](mailto:Andrew.Scurria@wsj.com) and Heather Gillers at [heather.gillers@wsj.com](mailto:heather.gillers@wsj.com)

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## **WashU Expert: Puerto Rico's Bankruptcy and the Municipal Bond Market.**

With pension payouts skyrocketing, tax credits expiring and the inability to pay operating expenses, Puerto Rico filed for bankruptcy protection May 3. The U.S. territory owes an estimated \$73 billion to assorted creditors, including Wall Street firms. This makes the bankruptcy the largest-ever American municipal debt restructuring in history.

A senior lecturer in finance at Washington University in St. Louis's Olin Business School says the situation should serve as a dire wake-up call to the municipal bond market.

"Earlier this year, when the bankruptcy of the fictitious town of Sanidcott became the subject of the hit Showtime series 'Billions', I knew we had reached a new low point in the municipal bond market," said Rich Ryffel, who advised governments, corporations and more about financings and capital structure in his 30-year career in investment banking and asset management. "So common had the once-unheard of notion of municipal bankruptcy become, that it would now be understandable to the television audience and fodder worthy of acting out on the small screen. Well, now the folks in Puerto Rico have given us an even better subject. Reminiscent of CSI Las Vegas, CSI Miami, CSI Whatever, we now have - Municipal Bankruptcy: Puerto Rico.

"Puerto Rico has become the U.S. municipal bond market's own little Greece, seeking from the courts what it could not find the will nor the way to do on its own; change its profligate ways and pay its creditors. Its move to the courts lowers the recovery floor in its negotiations with creditors and gives it remedies heretofore unavailable... . Years of preferential tax and trade treatment failed to create an island economic paradise, so after seeking new assistance from Congress last year, Puerto Rico is now adding itself to the list of those expecting others to suffer the hangover after they they enjoy the bender; think Greece, Argentina, Wall Street. Where does this end?"

Ryffel says the long-held assumption that governments could repay their debt has eroded, and that's changed the playing field for lenders.

"Not that long ago, the municipal bond market used two standards when considering whether to open the lending tap to borrowers — one's ability to pay and one's willingness to pay," Ryffel said. "The first threshold was fairly easy to assess. The second was always more difficult to gauge — being more qualitative in nature — but it was assumed that governments would only borrow what was needed to provide essential public services and would take all necessary means to repay its obligations. Default, let alone bankruptcy, was a remote thought.

"Now, however, we see with growing and concerning frequency borrowers treating repayment as optional, as the redemption provision in their bonds themselves. The problem is that the markets depend on this second lending standard and as it erodes, the availability of municipal credit will both shrink and become more expensive for all market participants."

The Puerto Rico bankruptcy dwarves that of Detroit, which was previously the U.S.'s largest municipal bankruptcy. The city filed for Chapter 9 protection in 2013, with \$18 billion in debt. While studies are underway to assess the impact of Detroit's financial woes, Ryffel says the Puerto Rico situation could send even more shockwaves, not just because of the amount owed, but also for the way it could change laws allowing massive debt forgiveness.

"Puerto Rico may have even larger impacts on the market because they have not only moved to the Doomsday scenario, they successfully had law changed to allow them to do so," Ryffel said. "In essence, they not only started the markets down the slippery slope, they had a slippery slope *built*

for them.

“To be fair, Puerto Rico is only doing what they need to do to protect their citizens, and they have used every tool available to them. One can’t blame their leadership for that. While there may not be enough money to go around, there is plenty of blame to go around. Healthy portions of it go to prior administrations which borrowed without a plan to repay and which borrowed to pay operating expenses rather than invest in the future. Still too, blame must also go to the municipal bond markets, which for years knew of Puerto Rico’s increasing lack of ability to pay, yet still lent it money.”

## The Source

By Erika Ebsworth-Goold May 4, 2017

Ryffel is available for interviews and may be reached at ryffel@wustl.edu

- 
- [Think Trump Tax Cuts Spell Doom for Municipal Bonds? Think Again.](#)
  - [Owners of These Muni Bonds May Reap Windfall From Trump Tax Plan.](#)
  - [States to Battle White House for Tax Deduction, Muni Exemption.](#)
  - [Trump’s Tax Plan And Munis.](#)
  - [The Yield Curve - What It Is and Why It Matters: Squire Patton Boggs](#)
  - [Following the Money 2017: Special Districts](#)
  - [Estermann v. Bose](#) - Supreme Court of Nebraska holds that joint water management entity created by four natural resource districts pursuant to Interlocal Cooperation Act (ICA) was authorized to exercise the power of eminent domain.
  - [Magnolia 8 Properties, LLC v. City of Maple Plain](#) - Court of Appeal holds, as a matter of first impression, that discretionary-acts exception to municipal liability is absolute and shields a municipality’s planning-level decisions from strict-liability claims.
  - And finally, Surreptitious Plumbing, LLC is brought to us this week by [Godfrey v. Upland Borough](#), in which homeowners accused their borough of “surreptitiously” installing storm and sewage-water systems on their property and subsequently engaging in a years-long, elaborate, cover-up in which the raw sewage in their basement was attributed to a crack in their own sewer line, a malicious prosecution for the failure to fix that line, destruction of evidence, etc. etc. Jeez, paranoid much? Wait. What? That’s a thing that actually occurred? Our sincerest apologies to the sewage-spackled Godfreys.

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## CONSTITUTION - CALIFORNIA

### [County of Santa Clara v. Trump](#)

**United States District Court, N.D. California - April 25, 2017 - F.Supp.3d - 2017 WL 1459081**

Counties brought actions against the President and others, challenging constitutionality of enforcement provision of executive order purporting to prevent “sanctuary jurisdictions” from receiving federal grants. Counties moved for preliminary injunctive relief.

The District Court held that:

- Counties demonstrated injury-in-fact traceable to enforcement provision, as required for standing;
- Counties established well-founded fear of enforcement, supporting finding that they had standing;
- Counties' claims were prudentially ripe;
- Enforcement provision violated Constitution's separation of powers principles;
- Enforcement provision violated Spending Clause;
- Enforcement provision violated Tenth Amendment;
- Enforcement provision was void for vagueness in violation of Fifth Amendment;
- Enforcement provision violated Fifth Amendment's procedural due process requirements;
- Counties suffered irreparable harm, as required for preliminary injunction;
- Preliminary injunction would be nationwide; and
- Preliminary injunction would be not be issued personally against the President.

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## **RECLAMATION DISTRICT ASSESSMENTS - CALIFORNIA**

### **[Manteca Unified School District v. Reclamation District No. 17](#)**

**Court of Appeal, Third District, California - April 7, 2017 - Cal.Rptr.3d - 10 Cal.App.5th 730 - 2017 WL 1291330 - 17 Cal. Daily Op. Serv. 3408**

School district brought action against reclamation district and its governing board for declaratory judgment that school district was exempt from paying assessments to reclamation district.

The Superior Court found the assessments levied by reclamation district were invalid but denied recovery of assessment payments made during the pendency of the action and concluded school district's action was not barred by the statute of limitations. Reclamation district appealed and school district cross-appealed.

The Court of Appeal held that Right to Vote on Taxes Act required proof of "no special benefit" for school district to continue to rely on exception from reclamation district's assessment authority.

Under the provision of the Right to Vote on Taxes Act stating that parcels within a district that are owned or used by any agency or the State "shall not be exempted from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit," a school district had the burden to prove "no special benefit" to continue relying on the "school district" exception from the statute granting reclamation districts the authority to assess publicly owned property.

The provision of the Right to Vote on Taxes Act stating that parcels within a district that are owned or used by any agency or the State "shall not be exempted from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit" conditions the continuation of an agency's existing exemption from an existing assessment authority upon a showing of no special benefit, notwithstanding the provision of the Act stating that the Act shall not be interpreted to provide "any new authority" to any agency to impose an assessment.

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## **BALLOT INITIATIVES - CALIFORNIA**

### **[Boling v. Public Employment Relations Board](#)**

**Court of Appeal, Fourth District, Division 1, California - April 11, 2017 - Cal.Rptr.3d - 2017 WL 1326317 - 17 Cal. Daily Op. Serv. 3502**

City filed petition for writ relief from Public Employment Relations Board (PERB) determination that city was obliged to “meet and confer” with union for city employees before citizen-sponsored city pension reform initiative could be placed on ballot.

The Court of Appeal held that:

- City has no obligation to meet and confer before placing a duly qualified citizen-sponsored initiative on the ballot;
- Initiative was not a de facto governing-body-sponsored ballot proposal under “statutory agency” principles;
- Mayor’s support of city pension reform initiative could not be imputed to city council under doctrine of actual authority;
- Mayor did not have apparent authority to act on behalf of city council when proposing and campaigning for city pension reform initiative; and
- City council did not ratify mayor’s acts.

In light of the language of the Meyers-Milias-Brown Act and the clear distinction between voter-sponsored and city-council-generated initiatives, a city has no obligation under the Act to meet and confer before placing a duly qualified citizen-sponsored initiative on the ballot because such an initiative does not involve a proposal by the “governing body” nor could produce an agreement regarding such an initiative that the public agency is authorized to make.

City pension reform initiative was not a de facto governing-body-sponsored ballot proposal under “statutory agency” principles that could have triggered meet-and-confer obligations under the Meyers-Milias-Brown Act, despite role of mayor, who was also city’s lead collective bargaining negotiator, in proposing a similar reform; mayor was not statutorily delegated the power to place a city council-sponsored ballot proposal on the ballot without obtaining approval from the city council, and mayor did not obtain any such approval.

Mayor’s support of city pension reform initiative could not be imputed to city council under doctrine of actual authority, for purposes of rendering citizen-sponsored initiative a city council-sponsored initiative which triggered meet-and-confer obligations under the Meyers-Milias-Brown Act, where city council did not actually authorize mayor to act on its behalf to formulate and campaign for the initiative, nor did mayor believe he was acting or had the authority to act on behalf of the city council when he took those actions.

City mayor did not have apparent authority to act on behalf of city council when proposing and campaigning for city pension reform initiative, and thus initiative, which was actually proposed by private city citizens, was not a city council-sponsored initiative which triggered meet-and-confer obligations under the Meyers-Milias-Brown Act, where city council did not do or say anything that could have caused a reasonable city employee to believe that mayor had been authorized to act on city council’s behalf, and mayor had not committed any wrongful act on behalf of city council.

City council did not ratify mayor’s acts in promulgating and supporting city pension reform initiative, and thus agency theory did not apply and citizen-sponsored initiative was not actually a city council-sponsored initiative which triggered meet-and-confer obligations under the Meyers-Milias-Brown Act; council’s failure to disavow or repudiate mayor’s conduct was meaningless, as mayor’s conduct was not an unfair labor practice and council did not take any formal vote to ratify his conduct, and council was required to place initiative before the voters and could not ignore election result by refusing to accept the benefits once the initiative passed.

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## **ANNEXATION - INDIANA**

### **[Certain Tell City Annexation Territory Landowners v. Tell City](#)**

**Court of Appeals of Indiana - March 30, 2017 - N.E.3d - 2017 WL 1179592**

Landowners filed a remonstrance petition challenging city's proposed annexation of their land.

The Circuit Court dismissed the petition due to noncompliant signatures, and landowners appealed.

The Court of Appeals held that:

- Property tax duplicate need not exactly match the property owner's signature to provide prima facie evidence of ownership, and
- Signature may qualify as proof of ownership even if it deviates insignificantly from the property tax duplicate.

Under statute outlining requirements for remonstrance petitions to contest annexation, a property tax duplicate need not exactly match the property owner's signature to provide prima facie evidence of ownership; rather, the duplicate constitutes prima facie evidence of ownership if it is the same as the petition's statement of the property owner's name in the petition's documentation of the property owner's name as it appears on the property tax duplicate, the owner's printed name, or the owner's signature.

A signature on a remonstrance petition challenging annexation may qualify as proof of ownership and the property owner's intent to sign the remonstrance even if it deviates insignificantly from the property tax duplicate.

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## **PUBLIC RECORDS - KANSAS**

### **[State v. Great Plains of Kiowa County, Inc.](#)**

**Court of Appeals of Kansas - February 10, 2017 - 389 P.3d 984**

County filed petition against non-profit hospital administrator, seeking to enforce Kansas Open Records Act. Both parties moved for summary judgment.

The District Court entered judgment in favor of county. Administrator appealed.

The Court of Appeals held that non-profit hospital administrator's financial records relating to hospital it leased from county board of trustees of hospital fell within statutory definition of public records.

Non-profit hospital administrator's financial records relating to hospital it leased from county board of trustees of hospital fell within statutory definition of "public records" under Kansas Open Records Act. Board was statutorily required to maintain the financial records of the hospital, and, as a result of the lease and fact that board failed to maintain such records, administrator was the custodian of the public financial records.

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## **IMMUNITY - MINNESOTA**

## **Magnolia 8 Properties, LLC v. City of Maple Plain**

**Court of Appeals of Minnesota - April 17, 2017 - N.W.2d - 2017 WL 1375303**

Property owner brought action against city, seeking compensatory and punitive damages for nuisance, trespass, strict liability, and negligence associated with damage caused by a water leak.

City filed motion for summary judgment. The District Court granted the motion with respect to the trespass claim, but otherwise denied it. City appealed.

The Court of Appeals held that:

- City's decision to promptly respond to water-main leaks and conduct repairs as soon as possible was entitled to statutory immunity;
- City's decision to use heavy machinery to repair sewer line was not entitled to statutory immunity; and
- As a matter of first impression, discretionary-acts exception to municipal liability is absolute and shields a municipality's planning-level decisions from strict-liability claims.

City's decision to promptly respond to water-main leaks and conduct repairs as soon as possible involved economic considerations and constituted a planning-level decision entitled to statutory immunity in action brought by property owner after water main cracked and flooded the property. despite receiving grant funding, city could not separately fund water-main reconstruction near Owner's property until it had identified developer for entire project, mere fact that hazardous condition existed did not make city's policy operational conduct, and city supported its statutory-immunity argument with several exhibits that demonstrated that it based its maintenance policy on economic factors.

City's decision to use heavy machinery to repair sewer line was operational in nature, and therefore, was not entitled to statutory immunity with respect to claims by property owner that city's use of heavy machinery caused nearby water main to crack and flood his property.

Discretionary-acts exception to municipal liability is absolute and shields a municipality's planning-level decisions from strict-liability claims.

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## **EMINENT DOMAIN - NEBRASKA**

### **Estermann v. Bose**

**Supreme Court of Nebraska - April 7, 2017 - N.W.2d - 296 Neb. 228 - 2017 WL 1293574**

After joint water management entity filed a petition to condemn, landowner filed a complaint seeking an injunction against board members of the entity. Entity moved for summary judgment.

The District Court granted the motion. Landowner appealed.

The Supreme Court of Nebraska held that:

- Joint water management entity created by four natural resource districts was authorized to exercise the power of eminent domain;
- Joint water management entity was not required to obtain permits from Department of Natural Resources;
- Joint water management entity was not required to obtain permits from two of the natural resource

districts;

- As a matter of first impression, an appellate court reviews de novo an underlying legal conclusion that proposed amendments to a complaint would be futile;
- Joint water management entity was not required to obtain approval from entity administering Republican River Compact; and
- Flowage and right-of-way easement sought by joint water management entity over landowner's property was for a public use.

Joint water management entity created by four natural resource districts pursuant to Interlocal Cooperation Act (ICA) was authorized to exercise the power of eminent domain. Districts that formed entity each individually held the power of eminent domain, and the districts were able to jointly exercise that individually held power through the mechanism of the joint entity they created.

Joint water management entity formed by four natural resource districts was not required to obtain a conduct water permit from Department of Natural Resources prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. Entity was not attempting to guarantee that a certain quantity of water was used for a beneficial use or reached a certain point downstream for a particular use, but rather sought to simply to add water to a river basin in order to offset water depletion.

Joint water management entity formed by four natural resource districts was not required to obtain a ground water transfer permit from Department of Natural Resources prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. While some of the water would eventually reach Kansas, purpose of the project was to increase the amount of water available in a river basin, and it was not the purpose of the project to transport water explicitly for use in Kansas.

Joint water management entity formed by four natural resource districts was not required to obtain permits from two of the districts prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. By voting in favor of project, the two districts concluded that project was in compliance with their rules and regulations and waived the necessity of individual permits, if otherwise required.

An appellate court reviews a district court's denial of a motion for leave to amend a complaint for an abuse of discretion; however, an appellate court reviews de novo an underlying legal conclusion that the proposed amendments would be futile.

Joint water management entity formed by four natural resource districts was not required to obtain approval from entity administering Republican River Compact prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. Project did not constitute an "augmentation plan" under section of settlement that modified the Compact, as an "augmentation plan" under the section set forth the methods for how to calculate the augmentation credit the state wished to receive that would be taken into account when considering whether the state has complied with its allocated percentage of use of the virgin water supply in the Republican River Basin under the Compact.

Flowage and right-of-way easement sought by joint water management entity over landowner's property in condemnation action was for a public use, not a private use. Purpose of easement was to augment flows of creek to offset surface water depletions through a river basin in order to achieve the target flows identified in the Republican River Compact, and any use of the water by private irrigators was incidental to that purpose.

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## IMMUNITY - PENNSYLVANIA

### [Godfrey v. Upland Borough](#)

**United States District Court, E.D. Pennsylvania - March 30, 2017 - F.Supp.3d - 2017 WL 1196635**

Homeowners brought action against county's water control authority, borough, borough employees and officials, and engineering firm, alleging storm and sewage-water systems were surreptitiously installed on their property and destroyed its value, and asserting claims for First Amendment retaliation, fraud, malicious prosecution, due process violations, and Clean Water Act (CWA) violations.

After defendants' motions to dismiss were granted in part and denied in part borough and its individual officers and employees moved to dismiss and for a more definite statement, and firm also filed motion to dismiss. Homeowners moved to amend their complaint.

The District Court held that:

- A more definite statement was not warranted with respect to homeowners' fraud, malicious prosecution, and First Amendment retaliation claims against borough and its employees and officials;
- Homeowners stated fraud claim against borough;
- Homeowners pleaded with sufficient particularity their fraud claim against plumber who worked for borough;
- Homeowner stated malicious prosecution claim against borough and its employees and officials;
- Homeowners' amended complaint asserting fraud claims against individual employees of county's water control authority related back to their original, timely complaint against the authority, for statute of limitations purposes;
- Pennsylvania Tort Claims Act did not provide individual employees of county's water control authority with immunity from their alleged fraudulent conduct;
- *Younger* abstention was not warranted as to homeowners' due process claim against county water authority; but
- CWA's diligent prosecution bar precluded homeowners' citizen suit against county's water control authority.

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## ZONING & PLANNING - WISCONSIN

### [McKee Family I, LLC v. City of Fitchburg](#)

**Supreme Court of Wisconsin - April 12, 2017 - N.W.2d - 2017 WL 1337663 - 2017 WI 34**

Property owner and purchaser of two lots on property brought action seeking declaratory judgment that city's rezoning of lots from planned development district (PDD) to residential-medium (R-M), which limited purchaser to developing 28 dwelling units for proposed apartment complex compared to 132 dwelling units, was unlawful.

The Circuit Court granted summary judgment for city and denied summary judgment for owner and purchaser. Owner appealed. The Court of Appeals affirmed. Owner petitioned for review, which was granted.

The Supreme Court of Wisconsin held that:

- Property owner's rights to do not vest until developer has submitted application for building permit conforming to zoning requirements in effect at time of application, and
  - Planned development district zoning classification does not create contractual expectations upon which developers may rely.
- 

## **[Think Trump Tax Cuts Spell Doom for Municipal Bonds? Think Again.](#)**

- **Top rate cut would be too small to sap demand, analysts say**
- **AMT debt, high-tax states' bonds may benefit from changes**

President Donald Trump's push to slash corporate and individual income-tax rates would appear to pose risks to the \$3.8 trillion municipal-bond market, a haven for individuals seeking interest income that's exempt from federal taxes.

But the brief outline released by administration officials had little impact on the price of state and local government securities — and could even lead some segments of the market to outperform, considering that Trump's proposal to phase out deductions could boost demand in high-tax states.

Here's a look at the major ways it may impact the municipal market if ultimately enacted by Congress, according to Wall Street analysts and investors, who remained skeptical of its prospects.

### **Lower Taxes = Lower Demand?**

Any reduction to tax rates, particularly those on the wealthiest earners, would in theory weaken demand, given that the tax breaks would be less valuable. Yet, the securities have outperformed since Trump's surprise election in November, even with talk that the muni tax-exemption could be done away with by Congress.

Since the vote, municipals have slipped 0.5 percent, one third the decline posted by U.S. Treasuries, according to Bloomberg Barclays indexes. While 10-year municipal bond yields edged up 0.02 percentage point Wednesday to 2.16 percent, those yields remain below those on comparable Treasuries — reflecting the value of the tax exemption.

The proposed cut in the top-rate — from 39.6 percent to 35 percent — is too small to dampen demand for tax-free bonds, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments. "If you go from 39.6 to 35 and your state income tax has been climbing, I don't think you're running away from the muni bond market," Dalton said. "And if I just lost my deductions, how do I minimize taxes? The way to do it is to own tax-free municipal bonds."

### **Buying Opportunity**

Among Trump's proposals was phasing out the Alternative Minimum Tax. That could be a boon to the \$140 billion of outstanding municipal bonds that are covered by that tax. Those securities, which finance airports, housing agencies and non-profits, pay yields that are about half a percentage point more than traditional tax-exempt bonds because the interest is covered by the AMT. If Trump succeeds in eliminating that levy, as his administration proposed, that gap should disappear. Barclays PLC analysts previously wrote that doing away with the AMT would be "extremely positive" for those bonds.

"By eliminating the AMT, those bonds that were issued with or exposed to the AMT, now will trade closer to general market levels," said Jeffrey Lipton, head of municipal research at Oppenheimer &

Co.

## **More Demand, in High-Tax States**

With lower tax rates, the Trump proposal would no longer allow Americans to deduct state and local taxes from their federally taxable income, a major deduction for residents of states with high taxes and property values, such as New York, California and New Jersey. That may actually prove positive for municipal bonds issued by governments in those states, as residents continue to seek out tax shelters.

“The deductions, except for charitable and mortgage are going away, including your state and local tax,” said John Miller, who oversees \$120 billion of municipal bonds at Nuveen Asset Management in Chicago. “Your effective rate could easily migrate up. As your effective tax rate migrates up, your demand for munis — which are still tax free under this plan — would be increased.”

The biggest fear of the municipal market appeared to be averted: the elimination of the tax-exemption.

“Nobody is going after the municipal exemptions from what we know today,” Miller said. “Of course that could change, but I think it’s unlikely that they come up with guiding principles that don’t include municipals and throw municipals in later.”

## **Bloomberg BNA**

by Martin Z Braun, Rebecca Spalding, and Molly Smith

April 26, 2017, 3:06 PM PDT

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## **[Owners of These Muni Bonds May Reap Windfall From Trump Tax Plan.](#)**

- **Repealing the Alternative Minimum Tax would affect some debt**
- **Bonds subject to AMT trade at lower prices, higher yields**

Anyone seeking to profit from President Donald Trump’s tax plan may want to look at a \$140 billion corner of the municipal-bond market.

Those securities, which finance airports, housing agencies and non-profits, pay yields that are about half a percentage point more than traditional tax-exempt bonds because the interest is covered by the Alternative Minimum Tax. If Trump succeeds in eliminating that levy, as his administration proposed Wednesday, that gap should, in theory, disappear.

“With the potential repeal, any muni AMT bond would trade pretty much equivalent to a tax-exempt muni. That’d definitely be a boost in terms of their prices going forward,” said Tommy Chan, a credit analyst at Ziegler Capital Management who has been looking to buy the securities for clients. “With the repeal, yields would come down and prices would go up — those yields for AMT bonds would compress over time.”

The pricing discrepancy was on display this week, when the Port Authority of New York and New Jersey issued debt: 10-year bonds subject to the AMT were priced at a yield of 2.73 percent, 0.46 percentage point above the similarly-dated, tax-exempt debt issued by the agency, data compiled by

Bloomberg show.

## **Bloomberg Markets**

by Molly Smith

April 26, 2017, 12:09 PM PDT

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### **State and Local Governments Express Concern About Trump's Tax Plan.**

The seven largest organizations that represent state and local governments — including the National Governors Association, the National Conference of State Legislatures and the U.S. Conference of Mayors — say they strongly oppose President Donald Trump's plan to eliminate the federal income tax deduction for state and local taxes.

"Eliminating or capping federal deductibility for state and local property, sales and income taxes would represent double taxation, as these taxes are mandatory payments for all taxpayers," the groups said in a statement. "We fundamentally believe that Americans' income, property and purchases should not be taxed twice.

"Elimination could also effectively increase marginal tax rates and shrink disposable income, potentially harming the U.S. economy," they said.

Eliminating the deduction was included in a broad Trump tax plan that would scrap all personal federal tax deductions except for mortgage interest and charitable contributions.

Eliminating the deduction for state and local taxes would give the federal treasury an additional \$1.3 trillion over a decade, according to the Tax Policy Center, a joint think tank of the progressive Urban Institute and the moderate Brookings Institution.

But states argue that getting rid of the deduction would increase taxes, particularly for higher-income residents in higher-income states like California, where 26 percent of taxpayers would see their tax bill rise. In New York, 27 percent of taxpayers would see their bills go up, and nearly 40 percent in Maryland and 35 percent in Connecticut would experience higher tax bills.

The governors, mayors and state lawmakers also warned that altering the deduction would upset "the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago."

Others signing the letter: the National Association of Counties, National League of Cities, the International City-County Management Association and The Council of State Governments.

By Elaine S. Povich

BY STATELINE | APRIL 28, 2017

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### **3 Ways Muni Bonds Could Benefit from Trump Tax Plan.**

Overall, the muni market isn't reacting much — if at all — to President Trump's new tax plan. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) has stayed right around \$9.40 since news of the plan started to trickle out on Tuesday.

Not only is there not a lot of key details in the plan, but investors don't have high hopes for it passing as envisioned.

"One hundred days may not be a fair measure of performance, but given how much this administration has gotten done so far, you'd have to give about a 50-50 shot that nothing gets done on taxes," says Jim Robinson of Robinson Capital.

Still, John R. Mousseau of Cumberland Advisors, took a stab at pointing out some areas of the muni market that could benefit if the plan goes through in some semblance of its current form.

First, he thinks lower marginal rates are already priced into the muni market and now long-term bond yield ratios will come down, making munis a better bet than taxable bonds. He writes:

Tax cuts have been baked into the muni market, thus the current yield levels - particularly in the long-maturity end - should stay around current levels, and yield ratios will most likely DRIFT DOWN over time. There is no current mention of capping municipal interest in this plan.

Second, bonds that are subject to the alternative minimum tax (AMT), which could go away, are likely to trade better than their non-AMT peers. Mousseau explains:

The plan also calls for the elimination of the Alternative Minimum Tax. The AMT was enacted in 1982 to ensure that individuals paid a certain minimum income tax. The tax limited tax benefits from a variety of deductions (think state and local taxes among other things). One aspect of the bill mandated that income from certain private-activity municipal bonds (municipal bonds issued by corporations, housing bonds over certain cap limits, and other municipal issues that have a private end user) be included in the calculation of the AMT. This provision was one of the most poorly designed parts of the AMT, as individuals who would be subject to the AMT would not buy bonds subject to the AMT. The cumulative amount of tax raised from this aspect of the AMT has been negligible. But the provision has come at a cost to these private issuers... This difference should DISAPPEAR over time if the proposed tax plan is passed.

Finally, he thinks munis in high-tax states will see strong demand if the deductibility of state and local taxes from federal income tax is eliminated. He writes:

The demand for in-state tax-exempt bonds in high-tax states will climb, pushing yields down relative to yields for other munis.

He notes, however that it could be harder for those states to raise taxes in the future:

There will be a decided pushback on state and local governments to forgo any tax increases and roll back tax rates if possible, since state taxes effectively increase suddenly and significantly from their current levels (which are partly subsidized by the

federal deduction).

## **Barron's**

By Amey Stone

April 27, 2017, 2:41 P.M. ET

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### **Infrastructure Advocates Disappointed in Trump's Tax Plan.**

DALLAS - Transportation advocates, once hopeful about Trump's promises to go big on infrastructure, are disappointed his tax plan contains no proposals to fund fixes to the nation's crumbling roads and bridges and instead floats a onetime tax on the repatriated overseas earnings of companies as a way to pay for cutting the corporate tax rate.

Repatriation of overseas corporate earnings through a lower income tax rate had been considered as a potential source for the \$200 billion of new direct federal funding that White House officials had said would be part of the president's \$1 trillion, 10year infrastructure plan.

But the one-page outline of the tax plan distributed Wednesday night simply promised a "onetime tax on trillions of dollars held overseas" with no mention of infrastructure, indicating that the repatriated revenue could instead help reduce the government's financial hit from tax cuts in the proposal.

It will be more difficult to find more money for infrastructure investments without the link to corporate tax repatriation, said Carl Davis, research director at the Institute of Taxation and Economic Policy.

"This makes it harder," Davis said, "Tax cuts have been prioritized over infrastructure funding."

Transportation proponents have become accustomed to being disappointed by the level of infrastructure investment coming from the federal government, he said.

"I doubt that most advocates are shocked that infrastructure has been deprioritized yet again," Davis said. "It's telling that states as varied as California, Indiana, Montana, Tennessee, and Utah have passed increases in their fuel tax rates this year. State lawmakers are taking action even when Congress won't."

If President Trump had included infrastructure funding in his plan, it would likely have required paring back the tax cuts, Davis noted.

The proposed tax cuts would significantly reduce federal revenues, further imperiling new transportation funding, he said.

"Federal lawmakers are clearly prioritizing tax cuts at the moment, and that goal is fundamentally inconsistent with investing more in our nation's infrastructure, or in any other public priority," Davis said.

The tax proposal is too vague to get much direction from it, said Marc Goldwein, senior policy director at the Committee for a Responsible Federal Budget.

“It’s the same tradeoff as it’s always been,” he said. “If the administration uses \$200 billion for tax reform, they can’t use it for infrastructure. My main concern with the single-page, double-spaced tax proposal with bullet points is that it would add \$5 trillion to the national debt, and without revenue for infrastructure you’d make the revenue hole even deeper by losing all the economic gains that could be provided.”

Meanwhile, the American Public Transportation Association said President Trump’s budget blueprint for fiscal 2018 jeopardizes \$38 billion in planned transit projects and could result in economic losses totaling \$90 billion.

The ‘skinny’ budget plan released in March would cut off funding next year for a transit grant program that had been expected to help build 53 projects in 23 states, APTA added.

Trump’s 64page budget blueprint for fiscal 2018 would halt grants from the \$2.3 billion per year capital improvement grant program except for those projects already covered by a completed and signed full funding agreement with the Federal Transit Administration.

The budget proposal also would wipe out the \$500 million expected in fiscal 2018 for the Transportation Investment Generating Economic Recovery (TIGER) grant program.

The president’s \$1 trillion infrastructure plan should include \$200 billion for public transportation infrastructure, said Richard White, the acting president of APTA.

It would take nearly \$90 billion just to get transit systems into a state of good repair, White said.

“This additional investment is the key to addressing the nation’s aging public transportation infrastructure,” he said

## **The Bond Buyer**

By Jim Watts

Published April 27 2017, 3:30pm EDT

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## **[Trump Tax Effort Could Boost Muni ETFs.](#)**

Even against the backdrop of rising interest rates, investors have shown some signs of devotion to municipal bond exchange traded funds and that faith could be rewarded. The iShares National AMT-Free Muni Bond ETF (NYSEArca: MUB) is the largest municipal bond ETF.

Munis also help diversify fixed-income portfolios. Investors who typically follow the Barclays U.S. Aggregate Bond Index will not have municipal bond exposure, so a muni bond ETF can complement core fixed-income positions.

Municipal bonds continue to experienced robust demand from U.S. investors as reliable source of yield, especially among taxable accounts due to the debt securities’ favorable tax-exempt status. Recently, Japanese investors have gobbled up U.S. munis as a way of generating income as Japan maintains negative interest rates.

Low and even negative yields on global government bonds have made U.S. assets, including munis, increasingly more appealing relative to other fixed-income assets. For example, foreign investors

have increased the amount of municipal debt they hold by 44% to \$85 billion from 2009 through 2015, according to the Federal Reserve.

President Donald Trump's tax reform efforts, if realized, could be a significant catalyst for municipal bonds and ETFs like MUB.

"If the plan in President Trump's new tax proposal to eliminate the deductibility of state and local taxes from Federal income tax actually becomes law (still a big "if"), municipal bonds could benefit.

Interest income from municipal bonds are still tax-free, according to the Trump administrations tax reform plans outlined Wednesday," reports Amey Stone for Barron's.

Since muni bond interest is exempt from federal taxes, muni ETFs are a good way for investors seeking tax-exempt income, especially those in higher tax brackets. Due to its tax-exempt status, the asset category is also best utilized in taxable accounts. The tax-exempt status also creates high demand for municipal bonds. Consequently, the perceived bond yields are typically lower than their taxable counterparts.

The VanEck Vectors High Yield Municipal Index ETF (NYSEArca: HYD) and SPDR Nuveen S&P High Yield Municipal Bond ETF (NYSEArca: HYMB) can be used for investors looking for some extra yield in their muni ETF allocations.

"Muni prices could get dampened due to the proposal to drop the top tax rate, which in theory should make munis less attractive to high-net worth investors. But even if the tax-equivalent yield falls a bit, munis are still more attractive than other fixed-income options, analysts from Goldman Sachs wrote earlier this month," according to Barron's.

## **ETF Trends**

April 28, 2017 at 10:23 am by Tom Lydon

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### **[Tax-Exempt Bond Market Left Worried by Proposed Trump Tax Plan.](#)**

WASHINGTON - Trump administration officials outlined a sweeping tax reform plan involving cuts in tax rates that would be paid for by economic growth and the elimination of tax deductions and loopholes for the wealthy, leaving municipal market participants in fear of losing the the tax exemption for municipal securities.

Top White House advisor Gary Cohn told reporters that the administration is proposing to save the deductions for mortgage interest and charitable contributions as well as the exclusion for retirement savings. "Other tax benefits will be eliminated," he said, telling one reporter later that includes the deduction for state and local taxes.

Neither Cohn nor Treasury Secretary Steve Mnuchin specifically mentioned the tax exemption for municipal bonds. But market participants raised concerns about the exemption, which is a tax exclusion.

The one-page briefing paper handed out by the administration said, "Eliminate targeted tax breaks that mainly benefit the wealthiest taxpayers."

Critics of tax-exempt munis have said they mostly benefit the wealthy, although municipal market participants contend they are critical for financing infrastructure.

"If accurate, we now know the Administration's opening bid on muni bond tax exemption (unless preserved under infrastructure plan)," Ernie Lanza an attorney with Clark Hill tweeted.

"I think this should give pause to the industry because the tax exemption for municipal securities was not specifically mentioned in today's announcement," said Curt Beaulieu, senior counsel at the Bracewell law firm and former tax counsel for the Senate Finance Committee. "Based upon what we heard, one can deduce that the tax exemption for munis would be eliminated."

"We should assume we are in play," Chuck Samuels, with Mintz Levin, said referring to the muni tax exemption, "It makes no sense for the tax plan to marry tax reform with infrastructure and then restrict municipal bonds, but we should assume the worst."

"The tax-exempt bond community is as organized as it's ever been. We have lots of resources and ammunition and we'll need to use it," he added.

One concern for the muni market should be that tax experts say the Trump plan would be so expensive and administration officials are so unrealistic in thinking it could be partly paid for with strong economic growth, that there will be a huge need for revenue raisers to be used as "pay fors." Historically lawmakers have looked at restricting tax-exempt muni bonds to create revenues. The Tax Reform Act of 1986 included a host of muni bond restrictions.

Tax experts also say the administration would have such a difficult time making this plan revenue neutral, that if it wants to push forward under a reconciliation bill that would need less votes in the Senate, the provisions would have to be temporary and last no more than 10 years.

This is the most significant tax reform legislation and one of the biggest tax cuts since 1986, said Cohn.

The plan, which Mnuchin and Cohn stressed must still be negotiated with the House and Senate, would reduce the seven personal income tax rates to three — 10%, 25% and 35%, while doubling the standard deduction for married couples. The top tax rate for individuals is now 39%.

"We are creating a zero tax rate for the first \$24,000 of a married couples' earnings," said Mnuchin.

The plan would repeal the alternative minimum tax, which applies to most private activity bonds.

It would phase-out of the death tax and eliminate the 3.8% tax on capital gains and dividends that President Obama added under the Affordable Care Act.

The administration will reduce the rate on corporations and pass-throughs to 15% from 35% and wants a one-time tax on the repatriation of overseas earnings, but Mnuchin made it clear there will be an effort to focus on small businesses and prevent big firms from setting up pass-throughs to get the 15% rate.

Cohn and Mnuchin said they plan to hold "listening sessions" on the plan and will work with the House and Senate on legislation.

House and Senate Republican leaders said in a release that the principles released by the Trump administration are "critical guideposts for Congress and the administration as we work together to overhaul the American tax system and ensure middle-class families and job creators are better

positioned for the 21st century economy.”

But Rep. Richard Neal, the top Democrat on the House Ways and Means Committee, said in a release, “President Trump’s tax proposal does not do nearly enough for working families and small businesses in this country. The tax cuts proposed by President Trump would disproportionately favor the wealthy and large corporations at the expense of our nation’s hardworking middle class.”

Rep Lloyd Doggett, D-Texas, ranking minority member of the committee’s tax policy subcommittee, added, “The claim that his multi-trillion dollar tax cut will pay for itself is as incredible as the claim that Mexico will pay for his multi-billion dollar border wall. Dripping in red ink, this proposal validates Trump’s boast that he is ‘the king of debt.’”

## **The Bond Buyer**

By Lynn Hume

April 26 2017, 5:06pm EDT

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### **[Trump's Tax Plan And Munis.](#)**

The Trump administration unveiled their tax plan yesterday, with details to follow. It will take a while to work the plan through Congress but this is our quick take on how the plan affects municipal bonds and municipal finance.

The plan calls for three tax rates - 35%, 25%, and 10%. These are whittled down from the existing seven levels of marginal rates. It eliminates the ObamaCare tax on investment income for families making over \$200,000 and also eliminates the Alternative Minimum Tax (AMT). The result of that is that the *MARGINAL* federal tax rate will decline for the wealthiest individuals from 43.4% (39.6% +3.8%) to 35%. To put this in yield terms, a 3% tax-free municipal yield currently has a taxable equivalent yield of 5.30% (3.0/1-.434), which will fall to 4.61% at a 35% tax rate. While that is a pretty good change at the margin, it is important to realize that the *AVERAGE* federal tax rate paid by municipal bond holders is 25%. In addition, the elimination of a number of loopholes and deductions will keep municipal bonds in demand. For example, the AAA muni-yield-to-US-Treasury-yield ratios are 92% for 10-year levels and 101% for 30-year levels, which means that, for anything less than the most stellar of credits, the yield ratios are significantly higher currently. (Cumberland is still able to purchase some 4% AA-type yields in the long end, which means a 130% yield ratio). Tax cuts have been baked into the muni market, thus the current yield levels - particularly in the long-maturity end - should stay around current levels, and yield ratios will most likely *DRIFT DOWN* over time. There is no current mention of capping municipal interest in this plan.

The plan also calls for the elimination of the Alternative Minimum Tax. The AMT was enacted in 1982 to ensure that individuals paid a certain minimum income tax. The tax limited tax benefits from a variety of deductions (think state and local taxes among other things). One aspect of the bill mandated that income from certain private-activity municipal bonds (municipal bonds issued by corporations, housing bonds over certain cap limits, and other municipal issues that have a private end user) be included in the calculation of the AMT. **This provision was one of the most poorly designed parts of the AMT**, as individuals who would be subject to the AMT would not buy bonds subject to the AMT. The cumulative amount of tax raised from this aspect of the AMT has been negligible. But the provision has come at a cost to these private issuers. Attached is a Bloomberg

graph showing the difference between AA Bonds subject to the AMT and AA bonds *NOT* Subject to the AMT over the past two-plus years. This difference should *DISAPPEAR* over time if the proposed tax plan is passed.

[Continue reading.](#)

## **Investing.com**

By Cumberland Advisors - (John Mousseau) - Bonds - Apr 27, 2017 12:28PM ET

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### **State and Local Governments Express Concerns About Trump Tax Plan.**

Groups representing state and local governments said that they are “extremely concerned” about an aspect of President Trump’s tax plan.

The president’s plan, an outline of which was released Wednesday, would eliminate the deduction for state and local taxes.

Repealing the deduction is also a part of the House Republicans’ tax plan. Opponents of the deduction argue that it largely benefits the wealthy and subsidizes municipal spending that may be excessive. Also, repealing the deduction could raise revenue to help pay for lowering federal tax rates.

But the state and local groups said in a statement that the deduction should be preserved because it gives municipalities the flexibility to provide services to their residents.

“Any alterations to the deduction would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago,” they said.

The state and local groups also said that curbing the deduction would amount to double taxation.

“We fundamentally believe that Americans’ income, property and purchases should not be taxed twice,” they said.

In addition to urging Congress to preserve the state and local tax deduction, the groups urged lawmakers to keep the tax exemption for municipal bonds. State and local governments issue those bonds to finance infrastructure projects.

Trump’s tax plan did not specifically mention the municipal bond exemption but proposed eliminating “targeted tax breaks that mainly benefit the wealthiest taxpayers.”

“We urge Congress to maintain the state and local deduction and the tax exemption for municipal bond interest,” the groups said. “We will work with Congress to ensure that states and local governments have the tools we need to foster healthy, safe and vibrant communities.”

The groups that issued the statement are: the National Governors Association, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the International City/County Management Association, the National Conference of State Legislatures and the Council of State Governments.

THE HILL

## **States to Battle White House for Tax Deduction, Muni Exemption.**

States and cities are fighting to preserve a deduction for taxes paid to local governments after the White House's tax plan said it would jettison the popular tool.

Local governments say elimination of the deduction amounts to double taxation of its residents. Supporters of the president's plan, however, say states are protecting a deduction for the wealthy, and elimination of the alternative minimum tax would offset losing the deduction.

President Donald Trump's tax proposal, announced April 26, calls for an end to all itemized deductions for individual taxpayers, with the exception of mortgage interest and charitable contributions.

It fails to mention the tax exemption given for the interest earned from municipal bonds, the popular funding source for public projects like bridges and roads that appeal to investors.

But since the proposal was unveiled, many states and cities said they feel attacked by the White House's plan.

### **'Extremely Concerned'**

"We are extremely concerned that President Trump's proposal includes eliminating the deductibility of state and local taxes," said a statement from the Big Seven, a coalition of state and local government groups. "The state and local tax deduction and tax-exempt municipal bonds were part of the original tax code in 1913 and have long served to meet critical needs in our communities."

Representatives of local and state governments around the country immediately began calling members of Congress after the White House's tax plan was announced, according to a staff member of a ranking Republican member of the House.

"I'd be very surprised if either the deduction" or the municipal bond exemption "were seriously in danger, but you never know," he told Bloomberg BNA. "If the president wants this, the president will lose, I think."

Wealthier states, such as New York and California, will press the hardest to protect the deduction for state and local taxes, Jared Walczak, policy analyst for the conservative-leaning Tax Foundation, told Bloomberg BNA. Those states largely voted Democratic in November.

"Any meaningful program of tax reform will have to take on deductions, credits and exemption that some people really like," he said, "and there's no doubt that high-income taxpayers who benefit from the state and local tax deduction are a powerful constituency."



### **Big Apple Deductions**

New Yorkers claimed \$68 billion in itemized deductions for state and local taxes in 2014, according to an analysis by the conservative Empire Center for Public Policy. The average deduction in New York for state and local taxes was \$21,038 that year.

The hardest-hit New Yorkers will be those earning \$1 million or more, E.J. McMahon, Empire Center's founder and research director, said in a blog post.

Elimination of the deduction "would do serious damage" to New York City, city Comptroller Scott Stringer said in a statement. "This isn't a plan to deliver growth, it's a recipe to destabilize our economy and widen the gaps between the wealthiest and those most in need," he said.

Analysis conducted by the comptroller's office showed that almost 40 percent of the city's single parents would face an increased tax bill, Stringer said. That includes 47 percent of single parents who make \$25,000 to \$50,000 and 75 percent of those who make \$50,000 to \$100,000, he said.

More than 95 percent of city taxpayers with income between \$500,000 and \$1 million, and almost 92 percent of those with income above \$1 million, would pay the same or less in taxes than they do today, according to the preliminary analysis.

On average, the tax bills of the city's millionaires would decrease by \$200,000 under Trump's plan, Stringer said.

More than one-third of city taxpayers with incomes between \$50,000 and \$250,000 would pay more in taxes if the broad White House plan were enacted, he said.

### **California 'Calculus'**

California taxpayers would also be injured by the Trump proposal, state Sen. Robert Hertzberg (D) told Bloomberg BNA.

"It has changed the calculus tremendously," he said. "It's going to require us to modernize our tax code."

Hertzberg favors a sales tax on services—or what he calls a consumption tax—that would be deductible. The pressure the Trump plan would put on state and local governments to reduce their own tax burdens creates an opportunity to enact wholesale changes such as those he proposes, Hertzberg said. Business and labor representatives are telling the senator that they would be more open to his proposal if the Trump plan is enacted.

More than 30 percent of federal returns from California taxpayers claim the state and local tax deduction, with an average claim of \$17,100, according to 2014 data compiled by the Tax Policy Center at the Urban Institute and Brookings Institution. Only Connecticut, New Jersey and New York have more claims with higher average amounts.

Maryland was home to the greatest percentage of deduction takers. Forty-five percent of Marylanders claimed the deduction in 2014, according to the Tax Policy Center. The average deduction was \$12,400.

### **Double Taxation?**

Individuals who claim the deduction will face double taxation if the White House plan becomes law, according to the Big Seven, which represents the National Governors Association, the National Association of Counties, National League of Cities, the U.S. Conference of Mayors, Leaders at the Core of Better Communities, the National Conference of State Legislatures and the Council of State Governments.

Elimination could "effectively increase marginal tax rates and shrink disposable income, potentially

harming the U.S. economy,” the Big Seven said in the statement. “Further, any alterations to the deduction would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago.”

Colorado Gov. John Hickenlooper (D) said on CNBC April 27 that the loss of the deduction would mean double taxation.

“We’ve never done that before,” he said. “This is kind of a contract we’ve had between the federal and local and state governments.”

New Jersey Gov. Chris Christie (R), who was among Trump’s top advisers during the campaign, told reporters he has concerns about the loss of the deductions, but wants to “look at the entire plan” before passing judgment.

Christie told a group of reporters after the Commerce and Industry Association of New Jersey’s annual luncheon “I haven’t seen the whole plan yet, so we can’t jump to conclusions about it. It raises a concern for the governor of a higher tax state if you’re going to take away the deductibility of state and local taxes.”

The White House plan, a one-page document, was unveiled April 26 by Trump’s top economic adviser Gary Cohn and Treasury Secretary Steven Mnuchin.

### **Pushback Coming**

While Christie’s response was measured, lawmakers from other parts of the country, including Missouri, expect to push back strongly if the drive to end the deduction picks up steam.

“Pushback is likely putting it mildly,” Mark Haveman, executive director of the Minnesota Center for Fiscal Excellence, told Bloomberg BNA. “It would be an all-hands-on-deck assault. We are very dependent on our very progressive income tax and that dependency is enabled by state tax deductibility.”

Minnesota taxpayers would be disproportionately impacted because a high percentage seek the deduction and the state and local burden is relatively high, Haveman said. Internal Revenue Service data shows 35 percent of taxpayers claimed the deduction in 2014, and the average deduction was 6.2 percent of adjusted gross income, placing Minnesota on the top 10 list of states benefiting from the deduction.

### **Regressive or Not**

Walczak said the state and local tax deduction is one of the more “unusual features” of the otherwise highly progressive federal income tax code because “it represents a transfer from lower income individuals and lower tax states and localities to higher income individuals and higher tax states and localities.”

The issue, for Walczak, is what the deduction incentivizes. The cost of government in wealthier states is being “subsidized by the rest of the country.”

“If you think that this cheaper cost of government in higher income states and localities leads to more spending on social assistance for lower income individuals, maybe the system as a whole isn’t that regressive even if the tax component is,” he said.

### **Alternative Minimum Tax**

Elimination of the deduction isn't the end of the story for taxpayers, McMahon said.

Trump's proposal to double the standard deduction would essentially offset the elimination of deductibility of state and local taxes for taxpayers in lower brackets, he said. And when it comes to high-income taxpayers, elimination of the alternative minimum tax would offset a large portion of the loss of the deductibility of state and local taxes for those earning between \$200,000 and \$500,000, according to analysis by the Empire Center.

The alternative minimum tax is a supplemental income tax in addition to baseline income tax for certain individuals, corporations, estates and trusts that have exemptions or special circumstances allowing for lower payments of standard income tax.

Thomas Shimkin, legislative counsel and director of the Multistate Tax Commission, told Bloomberg BNA that the alternative minimum tax strips out some or all state and local deduction when they represent too high a proportion of deductions or income.

"Of course, the answer will vary by individual tax situation," Shimkin said.

### **Municipal Bond Exemption**

Meanwhile, states will continue to protect the exemption to interest earned from municipal bonds, even though the White House didn't mention it in the tax proposal, Susan B. Hirschmann, chief executive officer of the independent Washington lobbying firm of Williams and Jensen PLLC, told Bloomberg BNA.

"I've been in D.C. long enough to know that an initial Executive Branch proposal, regardless of the administration, is a very long way from what eventually becomes law," she said.

That means those interested in "preserving the current tax treatment of municipal bonds as the most effective and efficient way to fund infrastructure projects need to continue working with the Municipal Finance Caucus to ensure this important tax treatment is maintained," she said.

Michael Decker, managing director and co-head of the municipal securities division of the independent Securities Industry and Financial Markets Association, said that some top congressional and White House leaders have suggested that curtailing or eliminating some tax deductions and exclusions should be a component of tax reform.

"And while the tax exclusion for municipal bond interest brings important economic benefits, municipal bonds are the single most important source of capital for financing infrastructure," he told Bloomberg BNA.

Hickenlooper said the federal government appears to be moving toward cost shifting.

"In other words, shifting the burden of costs back onto municipalities and counties, you know, local governments, just at a time when the federal government is telling us, 'Well, you're going to have to raise more money to build your bridges and your roads,'" he said. "It doesn't seem wise to me on the surface."

Philadelphia Mayor Jim Kenney said ending the exemption would be misguided.

"Anything that takes away incentives for municipalities to invest in infrastructure would be moving in the wrong direction," Mike Dunn, Kenney's spokesman, told Bloomberg BNA in an email.

## **Bloomberg BNA**

By Che Odom

April 28, 2017

With assistance from Tripp Baltz in Denver; Michael J. Bologna in Chicago; William H. Carlile in Phoenix; John Herzfeld in New York; Laura Mahoney in Sacramento, Calif.; Leslie A. Pappas in Philadelphia; and Gerald B. Silverman in New York

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### **[Broke Chicago Schools Seek Court Help as Pension Bill Looms.](#)**

- **District leaders say schools may close early without state aid**
- **Judge deals setback to lawsuit in Friday ruling, paper reports**

Chicago's debt-ridden schools are running out of options.

The nation's third-largest school district — whose credit rating has tumbled well into junk — must make a \$721 million pension payment by June 30 and officials are scrambling to find the funds. Ending the year early, canceling summer school, and slashing classroom spending are all possible, the Chicago Board of Education said in connection with a lawsuit that's seeking to wrest more cash from Illinois.

"They're trying any way they can to try to make the state provide more funding," said Daniel Solender, head of municipals at Lord Abbett & Co., which manages about \$19 billion of debt.

A local judge Friday dealt a blow to the schools' lawsuit against Governor Bruce Rauner and the state board of education, which challenges funding practices that have made the district the only one in Illinois that pays most of its pension costs. Cook County Judge Franklin Valderrama rejected the board's assertion that the funding system is discriminatory to the heavily minority-student district, though he gave Chicago until May 26 to file an amended complaint, the Chicago Sun-Times reported.

Escalating pension bills are the crux of the financial squeeze that's threatening the solvency of the school system. For years it has been draining reserves, shortchanging its pensions and borrowing to pay bills. Its retirement system is short by \$9.6 billion, and this year's required payment will eat up 13 percent of the district's operating budget.

Chicago covers a far greater share of its teachers' pension contributions than the rest of Illinois' schools, which receive more state aid. For the year that started July 1, Chicago's will spend about \$1,891 per student on teacher pensions, while other districts only spend about \$86, according to Chicago officials. Illinois kicks in about \$32 per Chicago student, while other districts get \$2,437, the district said in court documents.

The “disparate pension-funding obligations imposed by the state severely undercut CPS’s ability to educate CPS students,” according to court filings by the school board.

The lawsuit came after Rauner vetoed \$215 million of aid for Chicago’s schools in December, though it wouldn’t have received the money unless the state enacted pension reforms –something it’s been unable to do. Illinois has more than \$129 billion of unfunded retirement liabilities and lawmakers haven’t even been able to agree on a full-year budget in almost two years.

To get by, the district has had to “borrow massive amounts of money at crushing rates of interest,” the board said in court documents. Given its fiscal woes, the school board probably couldn’t borrow in a big public offering right now, said Paul Mansour, head of municipal research at Conning, which oversees \$10 billion of state and local debt, including some Chicago school securities.

“They could probably do a private transaction or a direct placement of debt, but to try to issue debt in this environment where there’s so much uncertainty, the risk factors would scare most investors away,” Mansour said. “Who’s going to buy this?”

## **Bloomberg**

by Elizabeth Campbell

April 28, 2017, 2:00 AM PDT April 28, 2017, 1:59 PM PDT

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### **[Puerto Rico Government Development Bank Opts to Liquidate.](#)**

#### ***The territory’s industrial development bank owes about \$4.5 billion to creditors***

Puerto Rico’s industrial development bank has decided to liquidate, proposing a fiscal plan to federal officials that calls for winding down its operations over 10 years.

The Government Development Bank for Puerto Rico, which for decades acted as the U.S. territory’s fiscal agent and government lender of last resort, can’t repay its obligations to bondholders and should wind down, Puerto Rico officials said Friday at a meeting in New York with federal oversight officials.

The federal board overseeing Puerto Rico’s financial restructuring swiftly approved the liquidation proposal, details of which weren’t made public prior to the board’s decision. The bank will continue collecting on its outstanding loans to Puerto Rico agencies, and make disbursements to bondholders and depositors, board members said.

The development bank owes roughly \$4.5 billion to bondholders, including hedge funds that have argued in court that they must be paid out on an equal basis with the bank’s depositors.

GDB’s debt pile is only a fraction of Puerto Rico’s \$70 billion debt load, accumulated through years of borrowing to finance budget deficits against a diminishing tax base.

The board has already approved a fiscal plan for the central government to serve as the basis for negotiations with creditors that allocates less than \$800 million a year for debt service. That represents less than a quarter of the roughly \$3.5 billion a year creditors are owed under existing contracts.

Creditors are up against a deadline to reach consensual settlements by Monday, when a legal shield protecting Puerto Rico from debt-related lawsuits is scheduled to expire. Next week, the board can continue to keep the courthouse doors closed to creditors by placing Puerto Rico under bankruptcy protection. Creditors could then be forced to accept unfavorable repayment terms under this court-supervised process, known as Title III, that was created by Congress last year.

Oversight board chairman Jose Carrion said that the board could petition for Title III without a public hearing and declined to comment further on the board's strategy for the impending deadline. Filing the bankruptcy petition requires votes from five of the board's seven members.

"We reserve the right to pass judgment on these issues in executive session," Mr. Carrion said.

Puerto Rico's advisers have proposed that creditors enter into standstill agreements to forestall litigation while private talks continue. But it remains unclear if creditors are willing to continue negotiating under forbearance agreements or if the board would agree to delay invoking Title III.

The board also approved fiscal plans for other Puerto Rico government agencies that call for creditor concessions to close multiyear fiscal gaps. Puerto Rico's highway authority, its sewer company and its public power monopoly, all of which owe billions of dollars in municipal bond debt, secured approval of fiscal plans predicated on reductions in their debt service outlays. The University of Puerto Rico hasn't yet coordinated with the territorial government to develop its plan, Mr. Carrion said.

Only the Puerto Rico Electric Power Authority, known as Prepa, has hammered out a deal with its creditors, a \$9 billion agreement dating to 2015 that Gov. Ricardo Rossello recently renegotiated to include additional debt concessions.

The board certified fiscal plan adds requirements for Prepa to evaluate selling off assets and privatizing aspects of its power-generation capabilities.

The Puerto Rico Aqueduct and Sewer Authority is considered by investors to be in better fiscal shape than other instrumentalities and was the last Puerto Rico issuer to attempt to tap the bond markets, floating an abortive \$750 million offering in late 2015. Now Prasa will seek holidays on principal repayments or reductions in interest rates to help close a \$3.5 billion funding gap, according to its presentation to the board.

Water and sewer customers meanwhile would pay higher utility rates toward deferred capital expenditures. The less money the utilities need to set aside for their bondholders, the less they need to seek politically unpopular rate hikes on Puerto Rico residents and businesses.

"If we don't have competitive rates in Prepa and Prasa, we will never be able to compete in our region," said Elias Sanchez, the governor's representative on the board. "We have to build a competitive scheme in our rates."

Mr. Carrion said the board didn't have enough time to release public copies of the plan before their approval.

"Simply it was a decision of time constraints," he said. "We had a lot on our plate and it all just came together today."

## **The Wall Street Journal**

By Andrew Scurria

Updated April 28, 2017 12:55 p.m. ET

Write to Andrew Scurria at [Andrew.Scurria@wsj.com](mailto:Andrew.Scurria@wsj.com)

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## **[Puerto Rico Emerges as Sticking Point in Government Funding Showdown.](#)**

### ***President Trump's tweets on the U.S. territory fan GOP divisions as bankruptcy looms***

President Donald Trump's criticism of a "bailout" for Puerto Rico is disrupting a bipartisan consensus on Capitol Hill to send the struggling U.S. territory more federal Medicaid dollars, according to people familiar with the matter.

The president has criticized efforts to funnel additional Medicaid dollars to Puerto Rico, saying in a Wednesday evening Twitter post that congressional Democrats "are trying to bail out insurance companies from disastrous #Obamacare, and Puerto Rico with your tax dollars."

Securing additional Medicaid dollars from Washington has been a priority for Puerto Rico as it sits on the verge of an unprecedented court-supervised bankruptcy. Mr. Trump weighed in after Democratic and GOP leadership reached an agreement to provide incremental assistance to Puerto Rico ahead of an impending health-care funding cliff on the island, according to people familiar with the matter.

Puerto Rico is projected to exhaust a \$6.4 billion Medicaid grant before the end of the year and has been struggling without replacement funding in place to complete annual renewals of its contracts with managed-care organizations, according to the Department of Health and Human Services. Almost half of Puerto Rico residents are covered by its Medicaid program, which Washington funds on a different formula than U.S. states.

Congress meanwhile is up against a Friday deadline to pass spending legislation to keep the U.S. government funded, and GOP leadership intends to buy another week for negotiations by passing a one-week extension known as a continuing resolution. A subsequent omnibus spending package would provide Puerto Rico with an incremental Medicaid grant, the size of which is still in flux, these people said.

House Democrats are now requiring such assistance as a condition for supporting the continuing resolution, and GOP leadership agrees it should be included, Puerto Rico Sen. Eduardo Bhatia said in an interview. But Mr. Trump's apparent skepticism aligns him with conservative House Republicans inclined to view its request as a bailout, leaving the deal a narrow path to passage in Congress.

Mr. Trump doubled down on his earlier remarks Thursday morning, tweeting that Democrats "want to shut government if we don't bail out Puerto Rico... NO!"

A representative for Speaker Paul Ryan (R., Wis.) couldn't immediately be reached for comment.

HHS this week estimated that Puerto Rico needs \$900 million to fund its Medicaid program through mid-2018. But Gov. Ricardo Rossello's lobbying for federal subsidies on Capitol Hill has drawn the ire of Puerto Rico creditors who are being asked in debt restructuring negotiations to take large write-downs on \$70 billion in municipal bonds.

While Congress negotiates the continuing resolution and omnibus spending package behind closed doors, Puerto Rico's creditors are up against their own deadline. A legal shield protecting the territory from lawsuits over debt defaults is set to expire on Monday, and key creditor groups haven't yet signed forbearance agreements to postpone litigation so confidential talks can continue, according to people familiar with the matter.

Without standstill agreements in place, the federal board overseeing Puerto Rico's finances has the authority starting Tuesday to invoke a quasi-bankruptcy proceeding known as Title III. That process includes mechanisms to bind creditors to unfavorable repayment terms.

Dissatisfaction with the board has grown among Republican lawmakers, several of whom have questioned its 10-year fiscal blueprint, which earmarks \$800 million a year to pay creditors, or roughly a quarter of what they are owed under existing debt contracts.

With Monday's bankruptcy deadline looming and the board slated to meet on Friday in New York, Mr. Bhatia said creditors are making a last-ditch lobbying push to delay or restrict the board's power to invoke Title III as a condition of the Medicaid assistance.

One idea gaining traction with conservative House lawmakers is to require Government Accountability Office approval for any bankruptcy petition, according to people familiar with the matter. Backers of Title III say it was carefully negotiated when Congress passed a federal rescue law for Puerto Rico last year and shouldn't be revised now.

"The governor should come out strongly and say, no way," Mr. Bhatia said. "I'm making sure that whoever is behind this, we expose them."

## **The Wall Street Journal**

By Andrew Scurria

Updated April 27, 2017 6:28 p.m. ET

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### **[Puerto Rico Bondholders Reject Island's Restructuring Offer.](#)**

- **GOs would receive as much as 77 cents on the dollar in plan**
- **Sales-tax bonds would get as much as 58 cents on the dollar**

Puerto Rico bondholders rejected Governor Ricardo Rossello's debt-restructuring proposal days before a May 1 deadline to craft a deal or face a potential wave of creditor lawsuits.

The Caribbean island is offering holders of its general-obligation bonds as much as 77 cents on the dollar while proposing as much as 58 cents on the dollar for its sales-tax debt, according to the commonwealth's latest creditor proposal, dated April 24 and posted at midnight Saturday on the Municipal Securities Rulemaking Board's website, called EMMA.

The cash-strapped commonwealth is negotiating with its investors and has until Monday night to reach a restructuring accord, otherwise a legal stay that shields the island from creditor lawsuits expires. Absent a restructuring deal or an agreement to suspend legal claims, Puerto Rico may face potentially adverse rulings on cases already filed, as well as new legal challenges.

Puerto Rico is seeking to reduce its \$70 billion debt load after years of economic decline and

overspending. It would be the largest restructuring in the \$3.8 trillion municipal-bond market. The island is operating under a federal oversight board that has the ability to seek creditor losses through a bankruptcy-like process called Title III.

### **Title III**

Groups holding general-obligation bonds and senior sales-tax debt, which get the first claim on that revenue, rejected the offer. The senior sales-tax group now wants Puerto Rico to seek Title III, which Congress approved last year. The commonwealth's plan doesn't offer a better recovery to senior sales-tax bonds compared with the subordinate lien, a feature the investor pool disagrees with, Matt Rodrigue, managing director at Miller Buckfire & Co., financial adviser to the senior sales-tax group, said in a telephone interview.

"The right next step is a Title III filing to provide a forum in which creditors' rights will be respected and it also will provide a continuance of the stay, which will protect the people of Puerto Rico," Rodrigue said.

The senior group has declined Puerto Rico's request for a 60-day forbearance, Rodrigue said.

While general obligation bondholders are looking to avoid Title III, they say Puerto Rico's plan isn't a credible starting point for negotiations. The offer is based on the commonwealth's fiscal plan, which creditors say doesn't allocate enough money for principal and interest payments.

### **'Consensual Solution'**

"We urge Puerto Rico's elected leadership to work with creditors to construct a consensual solution that is based on a credible financial forecast and that avoids the free fall Title III that the Oversight Board seems intent on imposing," Andrew Rosenberg, a partner at Paul Weiss Rifkind Wharton & Garrison, who advises the group of GO bondholders, said in an email Saturday.

The governor on Saturday reiterated his belief that the parties can reach a deal and that talks may continue beyond Monday. He didn't rule out using Title III.

"I believe that there is a possibility that all parties could reach an agreement," Rossello told reporters in San Juan. "One of the powers I have is Title III and if I have to use it I will."

The commonwealth's proposal illustrates the gap between the parties. Senior Cofinas, as the sales-tax bonds are called, want to receive 95 cents on the dollar, with the subordinate lien getting 60 cents, Rodrigue said.

Puerto Rico is committed to reaching a consensual resolution with its creditors, Gerardo Portela Franco, executive director of the island's Fiscal Agency and Financial Advisory Authority, said in a statement Saturday.

"This proposal is intended to maximize returns to its creditors in a manner consistent with Puerto Rico's goals for economic growth equitably," Portela Franco said. "The government anticipates the discussions to continue over the coming weeks."

Puerto Rico general obligations are trading below the best-case scenario recoveries in the commonwealth's plan. General obligations with an 8 percent coupon and maturing in 2035, the most actively traded GOs, changed hands Thursday at an average of 64.6 cents, below the 77-cent offer, according to data compiled by Bloomberg.

Senior sales-tax bonds with a 6.05 percent coupon and maturing in 2036 traded Thursday at an average of 60.7 cents, above the 58-cent proposal, the data show.

## **Recovery Range**

Puerto Rico is offering to repay general-obligation bondholders as much as \$10.25 billion of the \$13.2 billion it owes, according to the proposal. The island also would repay as much as \$10.2 billion of \$17.6 billion of sales tax bonds.

Investors would exchange their existing securities for two different types of debt: tax-exempt senior bonds with a constitutional priority maturing in 30 years, and cash-flow bonds that would be repaid after the senior securities, depending on the commonwealth's liquidity.

That structure gives general-obligation bondholders a recovery range of as little as 52 percent — if Puerto Rico only repays the senior bonds — and as much as 77 percent if it repays both the senior debt and the cash-flow securities. The recovery range for sales-tax securities is 39 percent to 58 percent.

## **Bloomberg Markets**

by Michelle Kaske

April 28, 2017, 10:47 PM PDT April 29, 2017, 1:32 PM PDT

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## **[Puerto Rico Board Moves to Consider Bankruptcy-Like Process.](#)**

- **Oversight board gives itself right to hold session on topic**
- **Decision comes as island faces creditor lawsuits as stay ends**

Puerto Rico's federal overseers took an initial step toward considering the use of bankruptcy-like proceedings to allow the island to escape from \$70 billion of debt and approved a plan that calls for extracting concessions from owners of water agency bonds.

The territory's oversight board, which was created to help resolve the fiscal crisis, unanimously approved a measure that allows it to hold executive sessions to consider petitioning a court to cut Puerto Rico's obligations. That process, known as Title III, was created under a rescue law enacted last year. The vote also allowed the board to consider a negotiated settlement with creditors should one be reached.

"We're trying to do our best and trying to do the right thing by all the stakeholders and the people of Puerto Rico," Jose Carrion, chairman of the board, told reporters after the meeting. "It's a very difficult situation. These folks have lent Puerto Rico money and we are where we are and it's not a situation where we don't understand."

The decision comes just days before the expiration of a legal stay that has sheltered Puerto Rico from lawsuits filed by bondholders after an escalating series of defaults. The government has also struggled to make headway in negotiations with creditors, leading analysts to speculate that the issue is likely to be resolved in court.

The board approved increasing water rates as part of a plan to steady the Puerto Rico Aqueduct and Sewer Authority, the island's main water utility. Prasa, as the agency's known, will seek to cut its \$4

billion of debt by negotiating with bondholders to accept less than what they're owed, according to the plan. Prasa says it needs to reduce debt service costs by 35 percent and that it would be able to cover \$2.13 billion of the \$3.26 billion of payments due during the next decade — a shortfall of \$1.1 billion.

Separately, the board approved winding down Puerto Rico's government development bank, which financed public works on the island until it defaulted during the crisis.

"This will provide a viable path for an orderly process for the Government Development Bank with the least impact for stakeholders involved," said Elias Sanchez, Governor Ricardo Rossello's representative on the federal board.

Puerto Rico's debt restructuring, however it's ultimately done, will be the largest ever in the \$3.8 trillion municipal-bond market, with the commonwealth's debt issued by more than a dozen agencies and backed by sometimes competing repayment pledges. It promises to impose steep losses on investors, with Rossello's fiscal recovery plan covering less than a quarter of the debt payments that are due over the next decade, even after he takes steps to cut spending and raise revenue.

## **Bloomberg**

by Michelle Kaske

April 28, 2017, 6:56 AM PDT April 28, 2017, 10:50 AM PDT

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### **[Hedge Funds That Flocked to Puerto Rico Bonds Face Long Road Out.](#)**

- **Debt restructuring likely to wind up in court, analysts say**
- **Bonds trade below recovery rates suggested by Moody's ratings**

Hedge funds first starting buying Puerto Rico debt in the summer of 2013 because they liked what they saw: A government that was paying high, tax-free yields that couldn't go bankrupt.

Nearly four years later, the Caribbean island has defaulted on most of its bonds and Governor Ricardo Rossello, who took office in January, says it can pay less than a quarter of what's owed over the next decade, assuming he can slash the budget and increase the island's revenue. Some of the securities are trading near record lows. And, thanks to the U.S. Congress, Puerto Rico and its federal overseers can use bankruptcy-like proceedings to have some of its \$70 billion debt written off in court, something investors once assumed it couldn't ever do.

"It's been a really long trade," said David Tawil, president and co-founder of Maglan Capital LP, who bought Puerto Rico bonds in 2013 but has since sold them. "I don't think when they first got into this they bargained for this type of length of trade. There's been a lot more twists and turns and not to any substantial progress point between then and now."

Puerto Rico investors holding general-obligation bonds and sales-tax debt and insurance companies are negotiating through mediation on a restructuring deal, the largest ever in the \$3.8 trillion municipal-bond market. There isn't much time: The commonwealth faces a fresh hurdle on May 1, when a temporary hold that's sheltered it from the impact of creditor lawsuits is set to expire. If Puerto Rico fails to strike a deal with its creditors or gets bogged down in a legal morass, it can seek to reduce its obligations through a court — an avenue that analysts say looks increasingly likely.

“We’re at the very beginning of a process that will likely take years,” said Matt Fabian, partner at Concord, Massachusetts-based Municipal Market Analytics Inc.

Hedge funds, which hold about one-third of Puerto Rico’s debt, started buying in 2013, after the island’s long-running recession and unremitting budget shortfalls caused other investors to flee. The distressed-debt buyers scooped up the bonds as traditional municipal-bond investors dumped their holdings and prices fell. An index of Puerto Rico bonds plunged nearly 10 percent in August 2013, the biggest monthly decline since the index’s inception in 1999.

The size of Puerto Rico’s outstanding debt made it easy to take large positions and the discounted value left open the chance of a price rebound — dangling an opportunity for speculative gains rarely seen in the municipal market, where few borrowers default. Distressed debt was scarce at that time and the island’s bonds were one of the few places to buy cheap securities, Tawil said.

“This was the first real distressed opportunity in U.S. municipals,” Tawil said. “It’s a gigantic capital structure so all of the big distressed guys can go ahead and look at this and say ‘I could put a couple hundred million to work here, no problem.’”

Hedge funds wagered that investors would ultimately allow the island to push out maturities if the commonwealth did its part to cut the government’s spending, Tawil said. Instead, by 2015, Puerto Rico started defaulting on bonds to avoid potentially devastating budget cuts.

“There’s just not enough money,” Fabian said. “We have a basic problem of where do municipal-bond payments fit as far as the priority of payment? GO and Cofina believe that they’re at the top and the board believes they’re at the bottom.”

While Puerto Rico’s debts include a web of obligations sold by different government entities with various repayment pledges, investors are now fighting over an average \$787 million that Rossello says he has each year to pay principal and interest over the next decade. One key issue is what will receive a better recovery — the \$12.5 billion of general obligations or the \$17.3 billion of sales-tax bonds.

Puerto Rico’s constitution states the island’s general obligations are to be paid before other expenses, while sales-tax bonds have a claim on that revenue before the commonwealth can use it for other expenses. The government hasn’t missed payments on its sales-tax bonds.

Moody’s Investors Service estimates the general obligations and senior Cofinas, which get first claim on the sales-tax receipts, will receive 65 cents to 80 cents on the dollar in a restructuring deal. MMA’s Fabian doubts the recovery rates will be that high because Puerto Rico’s outcome is unpredictable. Securities with even weaker repayment pledges may receive less than 10 cents on the dollar, he said.

Some bonds are trading below the projected recovery rates. General obligations with an 8 percent coupon and maturing in 2035, the island’s most-actively traded, fell to as little as an average 61.8 cents on the dollar on March 30, the lowest since they were first sold in 2014 at 93 cents, data compiled by Bloomberg show. The debt traded at an average 63.1 cents on Friday.

Cofinas with 6.05 percent coupon and maturing in 2036 traded at an average 60.8 cents Friday after falling to 58.7 cents on April 12, the lowest in nearly a year, Bloomberg data show.

Analysts say Puerto Rico’s debt crisis will ultimately be resolved in court, given the long odds of convincing creditors — some of whom have already taken opposing sides in lawsuits — to voluntarily accept steep losses, despite whatever legal claims they have on the government’s cash.

“It’s hard to see how mediation could succeed theoretically,” Fabian said. “There are fundamental points like the constitutional prioritization of GOs and the purported segregation of Cofina that need a court to decide their staying power.”

## **Bloomberg**

by Michelle Kaske

April 24, 2017, 2:00 AM PDT

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### **[Most Special Districts Lag in the Transparency Department.](#)**

***Special districts are all over, and according to one of the first nationwide reports on them, most aren’t revealing even basic information online about how they’re spending public money.***

When citizens turn on their faucet, visit a library or fly out of an airport, there’s a good chance they’re being served by a special district. These entities frequently spend hundreds of millions in public funds a year, but information about how those dollars are used is often scarce.

A [report](#) published this week by U.S. PIRG, a public interest research group, is likely the first national review of online transparency practices for special districts. It found that most of them fail to meet basic transparency standards, and a slight majority of the special districts reviewed received failing grades.

Some of the more common special districts include water and sewer districts, airports and parking authorities. They’ve proliferated over the past several decades, with more than 38,000 nationwide as of 2012, according to Census of Governments data. States like Colorado, Illinois and Kansas have a particularly large number of special districts.

According to the U.S. PIRG report, just 38 percent of the special districts reviewed published their most recent budgets on their websites, while only 30 percent posted comprehensive annual financial reports. Eleven of the districts failed to post any financial information online at all.

The 42 districts slapped with failing grades in the report include housing authorities, large hospital districts and statewide utility authorities. According to U.S. PIRG, most of them provided only one financial document online, rather than both budgets and financial reports. Of the districts that did publish annual reports, many covered only the highlights of them.

Reporting requirements for special districts vary, but they’re often not held to the same standards as cities, counties and other localities.

“We really didn’t see the same level of transparency that we’d come to expect from general purpose governments,” says U.S. PIRG’s Michelle Surka, who co-authored the report. “The difference is really striking.”

For the study, researchers assessed a sample of 79 larger special districts. They included entities with the 20 highest total expenditures nationally, the 20 highest expenditures for each government function type and others spending the most in each state.

Other reviews conducted by individual states have identified similar holes in transparency. A 2012 [report](#) by the Kentucky Auditor's Office, for instance, found that 40 percent of the state's special districts failed to submit budgets as required, while nearly half of larger districts had not performed audits on an annual basis. It concluded that current laws did not provide "sufficient consequences" for districts that failed to comply with reporting requirements and recommended stronger incentives.

Districts earning the top scores in the U.S. PIRG report were the Port of Houston Authority, Chicago Transit Authority and Metropolitan Transit Authority of Harris County. All have established user-friendly websites with multiple datasets available for download.

If there's one common trait shared by the higher performing districts, it's that they're in states that have taken steps to bolster reporting practices.

Illinois, for example, passed a law in 2015 that led to creation of the [Greater Chicago Mass Transit Transparency and Accountability Portal](#), which posts regular spending, contacts and employee data. U.S. PIRG's Surka also cites Kentucky, which launched a central reporting agency for its districts, and Texas, where the state comptroller runs a Transparency Stars program that encourages disclosure.

Some special districts might not post financial information on their own websites but instead share data with state agencies that post it elsewhere online. U.S. PIRG gave these districts partial credit in its scoring.

In some cases, Surka actually suggests that states take the lead in publishing special districts' data. The U.S. PIRG report reviewed large special districts that manage big budgets, but there are also many smaller districts with volunteer boards that might not be able to fund and maintain comprehensive online checkbook sites.

While special districts' governing bodies are primarily responsible for making their financial information available, the report outlines several steps states and localities can take to improve reporting practices. These include establishing a central registry of all special districts, uniform reporting requirements and tasking a government agency with tracking districts' financial data.

"Improving budget and spending transparency will make special districts — which often exist in the shadows of our democracy — more accountable to governments that created them and the public they serve," the report states.

GOVERNING.COM

BY MIKE MACIAG | APRIL 28, 2017

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## [The Week in Public Finance: Trump's Tax Plan, the Tampon Tax and Calling Out the SEC.](#)

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

GOVERNING.COM

BY LIZ FARMER | APRIL 28, 2017

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## **Think Public Pensions Can't Be Cut? Think Again.**

***It's happened several times in just the last few years. With so many systems severely underfunded, it's likely that more government employees will be blindsided.***

As John M. Richardson, a pioneer in the study of system dynamics, once put it, "When it comes to the future, there are three types of people: those who let it happen, those who make it happen, and those who wonder what happened."

That's as good a way as any to describe what has befallen so many of our state and local government pensions systems, now facing a collective funding shortfall of \$5 trillion: legislative bodies that let it happen by creating unsustainable pensions, policymakers who perpetuated the problem by not fully funding their plans, and retirees who have been blindsided, wondering what happened, when their pensions have been slashed.

Consider, for example, the nearly 200 retirees of California's now-defunct East San Gabriel Valley Human Services Consortium, an employment and job-training agency known as LA Works, who just had their pensions cut by as much as 63 percent. Who's to blame? Policy leaders who set up the risky pension structure; city governments that didn't keep up with pension payments; and the California Public Employees' Retirement System (CalPERS), which did not alert the workers that their employers had fallen behind on their pension payments until this January, just two months before slashing their pensions. It's hardly surprising that the affected employees are questioning how, after paying into the pension fund for 25-plus years, this could have come to pass.

What's happening with LA Works' retirees isn't a unique situation. CalPERS, whose pension debt stands at \$170 billion, just last year drastically cut pension benefits for retirees who worked for the city of Loyaltan. Many other cities, and several states, are struggling to keep their heads above water in the face of runaway pension costs.

Think it can't happen to your city? Think again. Detroit, Mich., and Central Falls, R.I., are polar opposites in many ways, but they have one thing in common: Both slashed their retirees' pensions when the cities filed for bankruptcy.

Detroit's was the largest municipal bankruptcy in the nation's history. After the city filed for bankruptcy protection in 2013, thousands of retirees saw their pensions cut by 4.5 percent, their cost-of-living allowances eliminated and their health-care benefits reduced. Just this past October, after much legal back-and-forth, a federal appeals court rejected the retirees' challenge to reinstate their full pensions.

Central Falls cut pensions for its 133 retirees by as much as 55 percent when the city filed for bankruptcy in 2011 (although the state later eased the pain by reducing the cuts to 25 percent for the first five years). At the time of its bankruptcy, Central Fall's pension plan was a staggering \$80 million in debt. Retirees who had saved for their entire careers and assumed their pensions were secure suddenly found themselves forced back into the workforce to make ends meet.

The only truly secure guarantee that a public employee has is a fully funded pension system. But that's a guarantee that's likely to become rarer as cities face mounting fiscal strains. Of the nation's 89,000 local governments, some 11,000 have defaulted on bonds at some point in our history. As pension costs continue to escalate, it's nearly certain that the number of defaults will rise. How lucky do you feel? Will your city run out of money?

All public-sector retirees deserve safe and secure futures, not to be reduced to poverty when their pension plans fail them. Retirement benefits should be sustainable and predictable for current and future public employees. To live up to this expectation, governments need to fully fund their plans.

Today's pension crisis may be due to policy decisions made years ago, but it's incumbent upon current policymakers to turn the tide and make their systems sustainable. Public employees and retirees didn't create this mess, and they shouldn't be left wondering what happened when the money runs out.

GOVERNING.COM

BY CHUCK REED | APRIL 26, 2017

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## [Following the Money 2017: Special Districts](#)

### **Executive Summary**

Citizens' ability to understand how their tax dollars are spent is fundamental to democracy. Budget and spending transparency holds government officials accountable for making smart decisions, checks corruption, and provides citizens an opportunity to affect how government dollars are spent.

"Special districts" are a type of government agency that exist outside of traditional forms of general purpose local or state governments, and serve key governmental functions such as public transit or housing. However, special districts are poorly understood by the public and often do business without adhering to modern standards of government budget or spending transparency. The lack of transparency and accountability of many special districts has caused concern among some state agencies and government watchdogs, as it can contribute to an atmosphere conducive to lowered efficiency and potential misconduct.

**A review of 79 special districts' online financial transparency shows that while a few districts are meeting the goals of "Transparency 2.0" - a standard of comprehensive, one-stop, one-click budget accountability and accessibility - the vast majority do little to inform citizens about how they spend money.** To empower and engage the public, enable citizen oversight of all branches of government, and improve the efficiency with which they operate, special districts, along with local and state governments, should expand the amount and improve the quality of spending data that are made available to the public online.

Special districts are a significant form of government, and should be held to strong financial transparency standards.

- Nationwide, there are more than 38,000 special districts, many of them charged with fulfilling key governmental functions, that spend more than \$200 billion annually.
- The creation of special districts can enable large expenditures to occur mostly or entirely off the budgets of state or local general purpose governments. According to a study by MASSPIRG Education Fund from 2010, revenues from special districts in Massachusetts amounted to at least \$8.76 billion - equal to one third of the state's general budget.
- Special districts are not held to the same transparency and accountability standards as other types of government. A 2012 Kentucky Auditor's report found that in 2011 only 60 percent of special districts required to submit budgets to the Department for Local Government's office did so, and many special districts were not even aware of their legal and financial reporting obligations.

## **The nation's most transparent special districts are often those in states that have taken action to require or encourage the posting of financial information online.**

- The Texas Comptroller of Public Accounts offers a Transparency Stars program for local governments, including special districts, excelling in financial transparency. Of the seven leading special districts evaluated in this report, three are from Texas and all three have received at least one Transparency Star from the Comptroller.
- In Illinois, legislation requiring the creation of a transparency portal for the Chicago area's transportation districts has resulted in an easy-to-use resource for citizens seeking to access financial information. One district included in the legislation was evaluated in our report, and received a leading score.
- The Kentucky Department for Local Government was established as the central reporting agency for all state special districts in 2013, and publishes a public portal of special district budget and spending information. The one special district from Kentucky evaluated in this report also received a leading score.

## **Our snapshot of special district online financial practices shows that many of these governmental bodies are not meeting standards for government transparency.**

In this report, we evaluated the online financial transparency practices of 79 special districts nationwide, chosen to represent a diversity of functions and states. Of those 79 special districts:

- Seven special districts, 9 percent of those evaluated in the report, received leading scores.
- 30 special districts, 38 percent, received lagging scores.
- 42 special districts, 53 percent, received failing scores, having failed to meet basic financial transparency criteria.
- Of the failing districts, 11, or 14 percent of districts evaluated, received a score of zero, having made little to no evident effort to provide online financial transparency information.

Special districts varied greatly in providing financial transparency information online:

- 30 special districts, 38 percent of those evaluated in the report, have posted the most recently approved budget document on their website.
- 24 special districts, or 30 percent, currently publish a comprehensive annual financial report on their website in accordance with the Government Accounting Standards Board's specifications.
- Eight special districts, or 10 percent, publish full annual salary ranges by job title.
- Seven special districts, or 9 percent, provide information on checkbook-level spending, and only two of those district websites allow users to view the information without having to download data.

There are many opportunities to improve online financial transparency.

### **Districts that already provide checkbook spending data still have room to improve.**

No district in our sample has a thorough "completeness statement" alerting citizens to the specific exclusions from checkbook-level spending information.

Only the Chicago Transit Authority, via the Regional Transit Authority's Transparency Portal, hosts checkbook data on a portal with a full search function.

Special districts may be able to take advantage of existing local or state transparency portals to expand the amount of information they share with the public. The Utah Transit Authority, for example, provides revenue and itemized expenditure data on the Utah state checkbook website.

## **Districts should make available the most recently approved budget document on their website.**

Publishing detailed categories of revenues and expenditures allows for citizens to easily find how a district is funded, and what the district plans to accomplish in a fiscal year.

In addition, publishing past years' budgets allows for comparison in expenditure levels between fiscal years, ultimately giving citizens the ability to identify unusual trends or changes in spending categories.

Special districts should aspire to provide audited financial statements in accordance with the Government Accounting Standards Board's specifications, even if state or local law does not require them to do so.

Special districts that have annual financial reports hosted on an external site, such as that of a state auditor's office, should offer direct links to the documents from their own websites.

In particular, special districts such as hospitals that issue municipal bonds and report financials to the Electronic Municipal Market Access database (EMMA) should offer direct links to documents hosted on the database, if not publish those documents directly on their own organization's website. Housing authorities should publish their annual plans with capital funds information as reported to the U.S. Department of Housing and Urban Development on their agency websites.

[Download Report.](#)

**RELEASED BY:** U.S. PIRG EDUCATION FUND AND FRONTIER GROUP

**RELEASE DATE:** TUESDAY, APRIL 25, 2017

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## **[Tax Increment Financing Pays Off for Racine.](#)**

RACINE — State law gives municipalities the tool of tax increment financing to develop or redevelop defined areas, and since 1980 the City of Racine has used it to boost its tax base by a net \$181-plus million and counting.

Tax incremental financing allows a municipality to pay for improvements in a defined area, or tax increment district, with the future taxes generated as development occurs there.

With the city in the process of forming its 20th TIF district — for the Regency Mall area — The Journal Times assessed information from the Wisconsin Department of Revenue and City of Racine to see how previous TIF districts have performed.

In general, Racine's TIF districts have been a proven way to manifest new development and thereby build the city's tax base in particular areas.

"I would say on the whole, they have done well," said City Finance Director David Brown, who was not with the city when it established its first TIF district to upgrade the infrastructure for a portion of Downtown. "They have done what the city had hoped for."

As examples, the city laid the groundwork for Young Industrial Park, off Mount Pleasant Street on the north side, and Olsen Industrial Park, on the far south side, with TIDs created in 1983 and 1985,

respectively. Together, those two areas contribute more than \$23 million in city tax base and have likely employed thousands of people over the years.

### **Successful TIF districts**

One of Racine's most successful active TIF districts is No. 9, the Johnson Building at 555 Main St., which was formed in 2000. From its base value of \$877,600, its assessed value has mushroomed to well over \$29 million.

Like any TID, the additional property tax revenue collected on the tax base increase, or "increment," from the Johnson Building TIF district is used only to repay the city for its investment in creating it, until the TID's termination.

A TIF district is terminated either by reaching the end of its preset life or by paying off the municipality's initial investment earlier. Then all other taxing jurisdictions can begin sharing in the additional property taxes flowing from the greater tax base that was created.

(Brown said Racine's TID No. 2 remains active at 34 years old by special legislation passed for that purpose.)

Racine's most successful TIF district ever, which closed in 2013, was Gaslight Pointe, a project done by Wispark, the development arm of Wisconsin Energy Corp. Gaslight put about \$41.5 million worth of property on the tax rolls to benefit the city, county, Racine Unified School District, Gateway Technical College and State of Wisconsin.

### **Assessing negative numbers**

Brown pointed out that some of the city's active TIF districts don't have large amounts of tax base increment, and a few are negative. But he said in general, the city doesn't have much of an investment in them.

An example is No. 14, the former Walker Manufacturing and Pugh Marina, now called Harborside District. That area at one time was to have become an enormous project by developer Scott Fergus, called Pointe Blue. The TIF district was set up for that purpose, "But the city doesn't really have any investment there," Brown said.

"Should a developer come in and want to do a development there," he said, "the TIF is in place to take care of that."

TIF district No. 15, the former Homeward Bound block on the near north side, is a similar example, Brown said. "We haven't put any money into the infrastructure."

No. 17, the former Porters of Racine site, was formed to support a planned redevelopment of the furniture store into retail and apartments, by property owner Micah Waters. But he eventually abandoned the project and had the sprawling Porters building removed.

"When the TIF was created, those buildings were there, and now they're gone," Brown said. "So the assessment has decreased. But the city hasn't spent money on it. The city's expenses, for all practical purposes, are nothing."

### **Help for mall's owners**

Hull Property Group, recent buyers of Regency Mall, appreciate that the city is forming a TIF district

to help them try to reverse the fortunes of that troubled property.

“Hull Property Group views the TID as an inducement to invest heavily into Regency Mall,” said Hull Vice President of Government Relations John Mulherin. “The TID creates a financial framework which provides some clarity as to what future operating costs may be, which in turn, provides some comfort in making a significant investment to the property.”

“Stabilizing the Regency Mall property will eventually attract additional retail and restaurants to the area,” Mulherin said. “The TID is critically important to help ‘jump-start’ this process. We commend the community leadership who had the vision to begin the work to help revitalize this critically important retail node.”

THE JOURNAL TIMES

MICHAEL BURKE mburke@journaltimes.com Apr 2, 2017

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## **[S&P: U.S. States May Have Solved The Riddle Of Lost Online Sales Tax.](#)**

States may finally have found a way to collect online sales tax, just in time to stem substantial losses in revenue. On April 1, 2017, Amazon increased the number of states in which it collects and remits sales taxes to all the states that impose them, although remittance does not apply to the third-party sellers that use its platform.

[Continue reading.](#)

Apr. 24, 2017

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## **[Overview Of Bond Financing For 501\(c\)\(3\) NonProfit Organizations.](#)**

### INTRODUCTION

This memorandum provides a brief explanation and overview of tax-exempt Bond financing for 501(c)(3) nonprofit organizations under the Internal Revenue Code of 1986, as amended (the “I.R.C.”). Tax-exempt 501(c)(3) Bonds may be issued for most facilities utilized for the exempt purposes of Section 501(c)(3) organizations, as outlined in this memorandum. The principal advantages of such bond financing are the low interest rates and the attractiveness of the debt to lenders and investors. Bond financing may permit a user to build its projects sooner, expand the scope of its projects, or direct its fundraising to other purposes. With facilities financed by low-interest, long-term bonds, fundraising can be directed to other purposes, as well as into debt reduction.

Purpose of this Overview. This brief overview discusses tax-exempt bond financing for 501(c)(3) nonprofit organizations (referred to herein as the “Nonprofit”) under the I.R.C. The information provided may be useful in determining whether bond financing will be available in particular cases, how the transaction might be structured and proceed, what advantages exist, and what limitations are imposed. However, Bond Counsel should be consulted early to assist in determining whether a project qualifies and in assuring that the applicable legal requirements will be met.

## BOND FINANCING

What is Bond Financing? Bond financing takes the form of loans, or some times leases or installment sales, from a local government entity, often a development authority or development corporation (the "Issuer"). State laws vary concerning Bonds, but they are available in most jurisdictions. The interest rate is low because Bonds issued by the Issuer can be qualified to pay tax-exempt interest to the investors under the I.R.C., and the low interest rate is passed on to the Nonprofit. The money raised from the Bonds is reloaned by the Issuer to the Nonprofit or used to acquire facilities to be leased or sold by the Issuer to the Nonprofit. The loan, lease or sale agreement is pledged by the Issuer as the payment source for the Bonds and the Issuer is not otherwise liable for the Bonds. Bonds offer considerable flexibility in structuring terms, such as variable and fixed interest rates, prepayment and long and short maturities. Tax-exempt Bonds issued to finance facilities for use by governmental bodies and by for-profit organizations are beyond the scope of this discussion, and are addressed in our "Overview of Governmental Financing" and our "Overview of Private Activity Bond Financing and Incentives," available on request.

Why Use Bond Financing? Interest on a qualified 501(c)(3) Bond is exempt from Federal income taxation, alternative minimum tax and, usually, income taxation in the state in which the Bonds are issued. Bond borrowing rates are substantially lower than interest rates on conventional borrowings. Such Bond issues usually are exempt from SEC and blue sky registrations. Another advantage to the use of Bond financing is that the public involvement in the financing can generate substantial community interest in and support for the Nonprofit.

How are Bonds Repaid? Bond financing is normally backed solely by the Nonprofit's credit and any credit enhancement that it furnishes, and sometimes by assets or other security that the Nonprofit may pledge for this purpose. Nonprofits commonly utilize bank letters of credit or other forms of "credit enhancement" such as bond insurance to back Bonds issued for their facilities. Credit enhancement assures that the Bonds can be readily sold and obtain the lowest interest rates, as investors examine and rely upon the credit enhancer's financial strength and not the Nonprofit's. The Nonprofit's credit, financial position, operating history and fundraising must be satisfactory to the credit enhancer, however, in order to obtain this type of financing.

Who Buys the Bonds? Tax-exempt Bonds may be publicly sold or privately placed. Bonds, particularly if they are credit enhanced, may be sold to institutional investors and mutual funds, and sometimes individuals, through an underwriter or placement agent. Banks may buy 501(c)(3) Bonds and hold them as loans, although the I.R.C. results in increased rates on bank-held Bonds unless they are "Bank-Qualified" as discussed below.

What are "Bank-Qualified Bonds"? Generally, Banks and other financial institutions holding tax-exempt Bonds are not entitled to a tax deduction for their related carrying costs, or "cost of funds", determined by the ratio of the institution's borrowed funds to its equity, and banks and other financial institutions may find it relatively unattractive to hold tax-exempt Bonds. However, most Issuers that reasonably anticipate issuing not more than \$10,000,000 of 501(c)(3) or governmental bonds during any calendar year may designate such Bonds as "Qualified Tax-Exempt Obligations." Such "Bank-Qualified" Bonds are subject to only a 20% disallowance of the allocable carrying cost and are attractive for Banks to hold. For the purpose of determining compliance with the \$10,000,000 limitation, obligations of the Issuer and any subordinate entities must be aggregated, together with some obligations of superior entities. Note that an Issuer's Bank-Qualified Bonds may count against the ability of the superior entities to issue Bank-Qualified obligations.

Contents of this Memorandum. The remainder of this memorandum will outline who may issue 501(c)(3) Bonds and for what purposes, the limitations and requirements imposed by state and

Federal law on 501(c)(3) Bond financing, the typical structures for such transactions, the steps necessary to complete the same, other incentives, and the role of Bond Counsel.

## WHEN A PROJECT IS FINANCEABLE

What is Financeable? 501(c)(3) Bonds may be issued to finance most facilities used for the operation of 501(c)(3) non-profit organizations, such as charities and certain educational and healthcare organizations. No more than 5% of the proceeds of such Bonds may be used with respect to property that meets both of the “private business tests” described below. Outstanding conventional debt or loans in many cases can be refinanced with 501(c)(3) Bonds, if the debt paid costs that are financeable, and Bond Counsel is satisfied with the documentary record.

**Private Business Tests.** A 501(c)(3) Bond will be disqualified for tax exemption if more than 5% of the proceeds are put directly or indirectly to “private business use” and if payment of more than 5% of the Bonds is directly or indirectly secured by or to be derived from property put to “private business use” (or payments with respect to such property). “Private business use” means use by the 501(c)(3) organization that would be treated as “unrelated taxable business income” or use by others in any nongovernmental trade or business. In less technical terms, although property financed with 501(c)(3) Bonds may be used in the exempt operations of the 501(c)(3) organization and by the general public or governmental units, issues arise when property is used by other persons or entities or by the 501(c)(3) organization itself for non-exempt purposes. Of particular concern are leases, management contracts and similar user arrangements affecting financed property. A 501(c)(3) Bond also will be disqualified for tax-exemption if the private loan financing test is met. The private loan financing test is met if the lesser of 5% of Bond proceeds or \$5,000,000 is used directly or indirectly to make or finance loans to persons other than governmental units. An indirect loan may be found, for example, if borrowings are used to finance facilities to be used by less than all of the general public and paid for by user fees. Any private business issues should be analyzed by Bond Counsel in the light of detailed regulations.

**Management Contract Safe Harbors.** Part or all of facilities to be financed by 501(c)(3) organizations, particularly healthcare organizations, are sometimes managed or operated by for-profit companies. “Safe harbor” guidelines can be used to assure that such arrangements do not impair the tax exemption of 501(c)(3) Bonds. Briefly, the guidelines require that the manager’s or operator’s compensation be determined by a periodic fixed fee, a capitation fee (an amount per person, regardless of services rendered), a per-unit-of-services fee, or a percentage of gross revenues or expenses, but in no case by a percentage of net revenues or profits. The permitted length of a contract (including all binding renewal options) is limited depending on the type of compensation; the more fixed compensation, the longer a contract may extend. If compensation is based on at least 95% fixed fees, contracts may be for a term up to 15-years; if at least 80% fixed fees, 10-years; if 50% fixed fees or 100% capitation fees (or a combination), 5-years (if the contract is cancellable by the 501(c)(3) within 3 years); if per-unit fees, 3-years (if the contract is cancellable by the 501(c)(3) within 2 years). A special rule applies to new facilities during a start-up period or to facilities primarily providing services to third parties: compensation can be based entirely on a percentage of fees charged, or a combination of per-unit-of-services fees and a fixed fee (or during the start-up period, a percentage of gross revenues, adjusted gross revenues or expenses), if the contract has a term of 2-years or less (cancellable by the 501(c)(3) within 1 year).

**Intent to Finance Costs Must be Documented.** For facility costs paid prior to the Bond issue to be financed with tax-exempt 501(c)(3) Bonds, an “official intent” to finance those costs must be declared not later than 60 days after the payment of such costs. A simple form of such declaration is a resolution of the board of directors of the 501(c)(3) organization evidencing such intent. An “official intent” must declare an intent to finance, establish a maximum amount of debt covered and

generally describe the project. Bond counsel should be consulted to determine the sufficiency of an “official intent”. An “Inducement” (discussed below under “Procedural Steps”) by the Issuer also will serve as a declaration of official intent. If a declaration of official intent is made, Bonds generally may be issued as late as 3 years after the declaration and within 18 months after the facilities are completed. There is no downside to adopting an “official intent”, as it only preserves the possibility of using Bonds in the future.

Disqualified Uses. In no event may proceeds of a 501(c)(3) Bond be used to provide an airplane, private luxury box, gambling facility or liquor store.

## BOND ISSUERS

State Law. Bonds for 501(c)(3) organizations must be issued by governmental authorities. Virtually all states authorize Bond financing, and the types of Issuers and the projects that they may finance vary. Frequently included in financeable costs are preliminary studies, direct costs of the project, attorneys’ fees and other financing and issuance costs, interest paid during construction and certain reserve funds. For illustrative purposes, several of the Issuers in the State of Georgia are described below.

Development Authorities. Created by statute in every Georgia city and county, and active in many, Development Authorities may issue 501(c)(3) Bonds to finance the acquisition, construction, improvement, modification, renovation or rehabilitation of any land, buildings, structures, facilities, fixtures, machinery, equipment, furniture or other property, provided that a majority of the directors of the Development Authority determines by resolution that the project will develop and promote trade, commerce, industry and employment opportunities for the public good and general welfare, and will promote the general welfare of the State. No facility may be financed by a Development Authority unless it will increase or maintain permanent employment in the jurisdiction to some degree. A number of regional Development Authorities also have been created in Georgia.

Downtown Development Authorities. Downtown Development Authorities also can be activated in any incorporated municipality in Georgia. A Downtown Development Authority may finance 501(c)(3) projects that the Authority determines will further the public purposes for which it was created. However, Downtown Development Authorities may finance projects only in designated downtown development areas.

Healthcare Authorities. Residential Care Facilities for the Elderly Authorities and Hospital Authorities also exist or can be activated in each county, with the capacity to issue 501(c)(3) Bonds for certain healthcare projects.

Constitutional Authorities. In approximately two-thirds of Georgia’s counties, special authorities have been created by amendment to the Georgia Constitution with powers to issue Bonds. The particular legislation must be consulted in each instance.

## ARBITRAGE

Arbitrage Restrictions. Bonds are not entitled to tax exemption if they are deemed “arbitrage bonds.” Arbitrage rules are complex, and only a brief sketch is provided below. Bonds are arbitrage bonds if more than the lesser of 5% or \$100,000 of amounts treated as bond proceeds are reasonably expected to be used, or to replace funds used, directly or indirectly to acquire higher yielding investments. Amounts treated as bond proceeds can include amounts pledged to payment of Bonds, or sinking funds or other funds from which repayment of Bonds may reasonably be expected to be made. The concept of “investments” is broad, including virtually any contract or property to

which a rate of return can be ascribed. Exceptions are made for investment of proceeds during certain temporary periods, including the temporary investment of monies in a bona fide debt service fund and in a fund for proceeds awaiting use. The temporary period for investment of proceeds pending use for the acquisition or construction of property is three years. Amounts in a reasonably required reserve or replacement fund are not subject to investment yield restrictions, provided that the reserve or replacement fund cannot generally exceed 10% of the proceeds of the issue.

**Replacement Funds and Fundraising.** If Bonds finance facilities for which other funds were earmarked, these funds (as well as other School funds that secure repayment of the Bonds or having a sufficient "nexus" to the Bonds) may be subject to arbitrage yield restriction. This can occur when fundraising will be conducted in connection with the project. Bond counsel should be consulted early to ascertain whether such "replacement funds" are created.

**Arbitrage Rebate.** Even though Bonds may comply with the arbitrage rules referred to above, arbitrage earnings in excess of the yield on the Bonds must be rebated periodically to the federal government. The rebate rules require that periodic computations and filings be made. However, there are limited "2-year construction," "18-month" and "6 month" exemptions from the rebate requirement. The ability to comply with the appropriate exemption may influence the timing of when the Nonprofit will want to close the Bond issue.

**2-Year Construction Exemption.** The construction exemption applies to financings where at least 75% of the "net proceeds" of the obligations are to be used for construction, reconstruction or rehabilitation. The rebate requirement does not apply if the net proceeds are expended in accordance with the following minimum requirements: 10% within six months; 45% within one year; 75% within 18 months; and 100% within two years (except that the two year period may be extended to three years if the requirement would have been met within two years but for a reasonable retainage not exceeding 5% required to ensure compliance with the terms of a construction contract). "Net proceeds" includes the proceeds of the issue (except for amounts placed in a reasonably required reserve fund) plus investment proceeds earned before the close of the period. If, however, an election is made on the closing date, net proceeds excludes interest earnings on any reasonably required reserve fund, but interest earnings on such fund will be subject to the rebate requirement from the closing date, rather than from the end of the two-year expenditure period. If an election is made on or before the closing date to pay a penalty in lieu of payment of the rebate amount, the rebate requirement is deemed to be satisfied if the Issuer pays a penalty with respect to the close of each six-month period after the closing date equal to 1.5% of the amount of the net proceeds of the issue, which as of the close of such period are not spent as required.

**18-Month Exemption.** An exemption from the rebate requirement applies if all gross proceeds (except for proceeds placed in a reasonably required reserve fund) are expended in accordance with the following schedule: At least 15% within 6 months; at least 60% within 12 months; and 100% within 18 months (with an exception for reasonable retainage spent within 30 months).

**Six-Month Exemption.** An exemption from the rebate requirement applies if all gross proceeds (except for proceeds placed in a reasonably required reserve fund) are expended within six months.

**Limitation of Exemptions.** Compliance with the construction, 18-month or 6-month exemptions does not relieve the obligation to rebate arbitrage from investment of a reasonably required reserve fund or arbitrage on a bona fide debt service fund in excess of \$100,000 per year.

## OTHER LIMITATIONS

**Length of 501(c)(3) Bond Financing.** The average maturity of a 501(c)(3) Bond issue is limited by

Federal law to 120% of the average reasonably expected economic life of the project financed. Average economic life must be weighed by taking into account the respective costs of the components of the project. Economic life is to be determined as of the later of the date a Bond is issued or the date facilities are placed into service. Midpoint lives under the old ADR system for personal property and guideline lives under Revenue Procedure 62-21 for buildings may be treated as safe harbors for determining economic lives. Land generally is not to be taken into account in determining the average.

Federal Guaranty Prohibition. 501(c)(3) Bonds are not entitled to tax exemption if the payment of principal or interest is directly or indirectly guaranteed in whole or in part by the United States or any of its agencies or instrumentalities. Bonds will be treated as guaranteed by the federal government if 5% or more of the proceeds are used to make loans guaranteed by the federal government or to invest in federally insured deposits or accounts. Exceptions are made to permit proceeds to be invested in United States Treasury obligations and to permit investments of bona fide debt service funds, reasonably required reserve funds, and funds to hold proceeds prior to their initial use.

Speculative Projects. Compliance with several provisions of Federal and state law requires that the particular assets to be financed with a 501(c)(3) Bond be ascertained with reasonable certainty prior to issuance. A 501(c)(3) Bond generally cannot be issued to finance undetermined projects or contingencies, or in an amount substantially in excess of that required for the project.

Issuance Costs. No more than 2% of the proceeds of a 501(c)(3) Bond may be used to pay costs associated with the issuance of the Bond. Any excess costs may be paid from other sources.

Change in Use. A change in use of a facility financed with a 501(c)(3) Bond to a use for which such a Bond could not have been issued may result in the interest on the Bond becoming taxable or other consequences.

## INDUCEMENT

Inducement Resolutions. Although not necessarily required, the first step in a 501(c)(3) Bond transaction normally is obtaining an inducement resolution and agreement from the Issuer (the "Inducement"). This constitutes an agreement in principle by an Issuer to issue Bonds for a proposed Project. The Inducement can serve as the as the declaration of "official intent" discussed above, in lieu of a School's board resolution.

Expiration. An Inducement may or may not have an expiration date. In any event, a 501(c)(3) Bond must be issued within three years after the declaration of official intent and eighteen months after the later of the date a Project is acquired or placed in service.

## FORM OF TRANSACTION

General. Because a 501(c)(3) Bond transaction utilizes an Issuer as an intermediary, the transaction takes a form different from a conventional financing transaction. The exact form to be used depends on the desires of the parties and local requirements. In any transaction the Issuer sells the Bond and makes the proceeds available for the Project. Three forms of transaction commonly are used: loans, leases and installment sales.

Loans. An Issuer may be authorized by statute to loan 501(c)(3) Bond proceeds to a Nonprofit for use on a project. When this form is used, the Nonprofit enters into a loan agreement with the Issuer and usually gives its note to evidence the loan. The Issuer will assign the loan agreement and note as

security for the Bond. The Nonprofit holds title to the project in such a transaction. This is the simplest and most common arrangement.

Leases. Most Issuers can, and some Issuers must, own the project financed and lease it to the Nonprofit. When such form is used, the project site normally is conveyed to the Issuer and the project is constructed or acquired in the name of the Issuer with the proceeds from the Bond. The project is then leased to the Nonprofit, which agrees to pay rents to be applied to service principal and interest on the Bond. The Issuer assigns its rights under the lease as security for the Bond. When the Bond is paid, the Nonprofit normally purchases the project at a nominal purchase price.

Installment Sales. An installment sale transaction sometimes is used. This type of transaction is similar to the lease transaction in that the Issuer takes title to the project. Instead of leasing the project to the Nonprofit, the Nonprofit enters into an installment sale agreement whereby it agrees to pay purchase price installments equal to debt service on the Bond. Title to the project may be conveyed to the Nonprofit immediately or upon payment of the Bond.

Nonprofit's Control Over Project. Under any arrangement, loan, lease or sale, the Nonprofit normally is responsible for insurance, taxes and maintenance, has freedom with respect to design and construction, and may be regarded as the project "owner" for all practical purposes. During the term of the financing, the Nonprofit has essentially the same control over the project as under conventional financing. Furthermore, covenants and security devices usual in conventional lending normally can be incorporated in the Bond transaction.

Credit for Bonds. Regardless of the form of the transaction, usually neither the Issuer, the local government nor the state provides any credit for the Bonds. The bondholders look to the underlying obligation of the Nonprofit and any guaranties, mortgages, security instruments, insurance, letters of credit or other funds or credit enhancements that may be provided as arranged by the Nonprofit to pay the Bonds.

"Variable Rate Demand Bonds" Specialized methods of financing have developed in the Bond area that provide highly favorable terms. The "variable rate demand bond (VRDB)" or "lower floater" method of financing accesses short-term markets for a longer-term stated maturity, but with a "put" option whereby the bondholder at regular intervals (usually weekly) may cause the Bond to be repurchased on behalf of the Nonprofit. Because of the "put" feature, a variable rate demand Bond can be sold in the short-term market, which involves the lowest interest costs. Such a Bond bears interest at rates that may be reset by a remarketing agent. A variable rate demand Bond may be held by a particular holder for any period and normally would be "put" if the holder has other needs for its funds or market interest rates have shifted upward such that the rate borne by the Bond is not currently attractive. If a lower floater Bond is "put" because of an upward shift in rates, the remarketing agent will set a new, higher rate at which a remarketing agent can re-place the Bond; if market rates fall below the Bond rate, the agent will reset the rate at the lowest rate that will avoid the Bond being "put." A credit facility of a rated institution must be available to advance the repurchase price of any variable rate demand Bond that is "put" back.

## PROCEDURAL STEPS

Bond Placement. After an Inducement is obtained and Bond Counsel has determined that the transaction can be appropriately structured as a 501(c)(3) Bond project, generally the Nonprofit will place the Bonds, generally through an investment banker or underwriter. Bonds may be privately placed, for example, with an investor group or a financial institution, placed with a mutual fund or sold publicly. Disclosure documents normally are prepared when a bond fund or public sale is utilized. Depending on the nature and number of the bondholders, a trustee may be appointed for

the issue.

**Legal Documentation.** When the type of Bond sale has been determined, the terms and provisions of the Bond and the related documents must be negotiated and settled upon. Bond Counsel will prepare most of the necessary documentation for the transaction. Provided that a declaration of official intent has been made, the acquisition and construction of the Project could be commenced during this period if funds are available.

**“TEFRA” Hearing.** Federal law requires that a public “TEFRA” hearing be held at least 14 days after the giving of published notice apprising the community of a proposed 501(c)(3) Bond and the nature and the location of the project. Following such public hearing, both the Issuer and an appropriate elected official or legislative body with jurisdiction over the project must approve the Bond.

**Validation and Other Procedures.** States frequently require additional procedural steps prior to the issuance of a Bond. For example, most Bonds in Georgia must be judicially validated in a proceeding to which the State, the Issuer and the Nonprofit are parties. Another public notice must be published in advance of this proceeding. Both the TEFRA and the state procedures affect the closing date.

**Information Report.** In connection with the closing of the transaction, an information report providing details of the 501(c)(3) Bond, the Issuer, the Nonprofit and the project must be filed with the Internal Revenue Service.

## LIVING WITH A BOND ISSUE

After Bonds are issued, there are only a few obligations of the Nonprofit that are different from a conventional loan. Principally, the Nonprofit must remain its 501(c)(3) status and the project must not be used by for-profit entities or operations. The Nonprofit must avoid arbitrage practices and pay arbitrage rebate if an exemption does not apply.

## BOND COUNSEL

Counsel experienced in municipal bond law should be retained to serve as Bond Counsel. The function of Bond Counsel is to structure and document the transaction and to issue an opinion on the validity and tax status of the Bond. Fees of Bond Counsel are payable by the Nonprofit from Bond proceeds. Bond Counsel may represent other parties or the Nonprofit, the Issuer and the Bond purchaser or underwriter may be separately represented. Smith, Gambrell & Russell, LLP is a “Red Book” listed Bond Counsel firm.

## SUMMARY

This memorandum has been designed to provide a brief overview of 501(c)(3) Bond financing. Tax-exempt Bonds may provide significant advantages, but are subject to extensive regulation on the federal and/or state levels. This outline can do no more than touch upon some of the more salient issues and must not be regarded as an in-depth treatment on all legal issues. Instead, this Overview provides some basic information that may serve as the basis for further discussions with Bond Counsel.

Last Updated: April 26 2017

Article by James P. Monacell

**Smith Gambrell & Russell LLP**

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

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## **[Availability Of Tribal Economic Development Bond Allocations: Holland & Knight](#)**

Based on a recent Internal Revenue Service (IRS) announcement, the Published Value Cap Limit for Tribal Economic Development Bonds (TEDBs) is steadily shrinking.

The [IRS reported](#) on March 31, 2017, that the TEDB Published Volume Cap Limit for the period commencing April 1, 2017, has now been reset at \$155 million per tribal applicant. This figure represents 20 percent of the amount of the total remaining available volume cap of \$777 million. As described in [Notice 2012-48, 2012-31](#), IRS guidance provides that no tribal government will receive an allocation that would cause the aggregate amount of volume cap allocated to that tribal government to exceed the Published Volume Cap Limit in effect. The Published Volume Cap Limit for any period is the greater of: 1) 20 percent of the amount of available volume cap as of the first day of such period, as described in the notice; or 2) \$100 million. The notice also indicates that the IRS will allocate an amount of available volume cap equal to the amount requested in the application on a first-come, first-served basis by order of submission date.

In 2009, Congress initially designated a total of \$2 billion in volume cap for TEDB allocations. Since that date, approximately 61 percent of the TEDBs allocations have been used by tribal governments. Initially, there was little use of TEDBs by tribal governments. Recently, however, the utilization of TEDBs by tribes has accelerated noticeably.

As the overall volume cap diminishes, the amount that can be requested by any one tribe is reduced. For example, at \$500 million in overall available cap, the maximum request per tribe will be reduced to \$100 million. Under the formula, it will stay at that level until the aggregate amount is used in its entirety. Once the overall TEDB Volume Cap is exhausted, it can only be reauthorized by an act of Congress.

Congress is likely to consider changes to the tax-exempt bond rules in the context of tax reform. While state and local governments are working diligently to preserve their current ability to issue tax-exempt bonds for a variety of uses, tribal governments are pressing for parity with other governmental issuers. Unfortunately, there is no guarantee that TEDB Volume Cap will be replenished or that other favorable legislative changes sought by tribes for many years, such as elimination of the “essential governmental function” test, will be achieved this year.

TEDB allocations may be used not only for bonds, but for tax-exempt bank loans, including draw-down loans. (See Holland & Knight alert, [“IRS Amends TED Bond Volume Cap Rules to Accommodate Draw-Down Loans,”](#) Dec. 8, 2015).

With interest rates on the rise and the economy improving, many tribal governments are considering whether to pursue tax-exempt financing for economic development projects.

Last Updated: April 19 2017

Article by Kathleen M. Nilles and Randolph A. DelFranco

**Holland & Knight**

Kathleen M. Nilles is a partner in Holland & Knight's Washington D.C., office and Randolph A. DelFranco is a partner in Holland & Knight's New York office.

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

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## **Minibonds: Miles & Stockbridge**

The City of Cambridge, Massachusetts recently sold \$2,000,000 of community-sourced minibonds (the "Community Bonds") to finance various capital projects, including school building renovations and street and sidewalk improvements. The Community Bonds are referred to as "minibonds" because (a) they were marketed only to residents of the City of Cambridge, (b) minimum denominations were lowered to \$1,000 from the customary \$5,000 and (c) individual orders were capped at \$20,000. The hope of such a sale is to engage residents and to make residents partners in infrastructure investments in the community. Such a sale required an additional publicity campaign in order to engage resident, including "Invest in Cambridge" pamphlets, bus signage and a sign in front of Cambridge City Hall. There were also additional administrative burdens and costs associated with such a sale.

To meet the larger infrastructure needs of the City of Cambridge, the City also sold (on the same day) \$56,500,000 of general obligation bonds (the "GO Bonds") for purposes of sewer and stormwater projects, energy efficiency and street repair. Unlike the Community Bonds, the GO Bonds were sold to more traditional bond investors at a public sale.

Minibonds are not a completely new concept and in fact the same structure was employed many years ago to finance original infrastructure in many communities in this country. In more recent times, Denver, Colorado has used this concept to provide its residents the opportunity to invest in the community in which they live. Minibond sales are planned later this year in Burlington, Vermont, Austin, Texas and Lawrence, Kansas.

Minibonds might be what the new generation of public finance which investors desire.

Last Updated: April 26 2017

Article by Francina J. Brinker

### **Miles & Stockbridge**

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

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## **The Yield Curve - What It Is and Why It Matters: Squire Patton Boggs**

For those of you new to bonds and not generally familiar with financial terms, you may hear the term "yield curve" thrown around and be wondering what it means and why it matters. The yield curve is a chart showing the yield of debt instruments (such as U.S. treasuries or notes) on the y-axis and the maturity (on the x-axis). So why does it matter? It can be a crystal ball into the future of interest

rates.

[Continue reading.](#)

The Public Finance Tax Blog

By Alexios Hadji on May 1, 2017

**Squire Patton Boggs**

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## **Atlanta's Controversial 'Cityhood' Movement.**

***Recent border battles have once again redrawn the lines of the metro area.***

On the Saturday before Election Day last November, Jason Lary, a former insurance executive, crouched on a rough patch of grass at the center of a busy intersection 20 miles outside of Atlanta in DeKalb County. Lary was holding a hammer, and he tapped carefully on the thin wire base of a campaign sign. “My hand is like Fred Flintstone’s right now because I banged my hand in the night,” he said, noting his latest sign-related injury. This hazard, though, was worthwhile: “If you don’t start [the sign] with your hand, it will bend. It takes longer—guys are 10 times faster than I am. But my sign’s still gonna be up.”

This was a non-trivial advantage for Lary, who for the past month had begun most mornings with a kind of ground-game whack-a-mole. He would put up signs under the cover of night, only to have his opponents dislodge them by hand or, when that failed, run over them with their cars. Nevertheless, Lary was feeling good. “My opposition? Worn down,” he told me. “They don’t even have any more signs. And I kept a stash, knowing this time was coming. This is not my first picnic with nonsense.”

[Continue reading.](#)

THE ATLANTIC

SAM ROSEN APR 26, 2017

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## **Bloomberg Brief Weekly Video - 04/27**

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

[Watch video.](#)

**Bloomberg**

April 27, 2017

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## **Fitch: Growth Solid for US Transportation as Trade & Fiscal Shifts Loom.**

**Fitch Ratings-New York-26 April 2017:** Healthy growth is in the cards for all major U.S. transportation segments despite longer-term questions brought on by shifting economic, trade and fiscal policies, according to Fitch Ratings in its latest U.S. Transportation Trends special report.

International hub airports are set to lead overall airport passenger traffic growth after passenger enplanements rose 3.5% for calendar-year 2016. 'Growth in passenger enplanements, however, is and will continue to soften as carriers scale back on service additions,' said Senior Director Seth Lehman. Fitch is projecting 2.5%-3% overall growth for 2017.

Growth among ports throughout the country will likely mirror that of the GDP. Much of the upward movement came from West Coast ports in the second half of last year (1.8% growth year-over-year), while East Coast ports rebounded with 3.4% growth in the second half, but only grew 0.4% overall for the year as compared with 2015. 'Shifting trade agreements or renegotiated tariffs may affect import/export volumes, though the full effects of these changes will likely extend beyond 2017,' said Director Emma Griffith.

As for toll roads, Southeast and Southwest facilities should continue to lead in traffic performance similar to 2016 thanks to moderate economic and population growth. 'Toll road revenues are positioned to grow faster than traffic as many authorities implement policies of inflationary toll increases,' said Director Tanya Langman.

Also highlighted in the report is a new metric that Fitch has introduced called 'Peak Recovery', which supplements Fitch's peak-to-trough metric and shows how each credit performed in 2016 relative to their pre-recession peak volume. Fitch's latest 'U.S. Transportation Trends' report is available at '[www.fitchratings.com](http://www.fitchratings.com)' or by clicking on the above link.

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