Bond Case Briefs

Municipal Finance Law Since 1971

Legislators Sponsor Bills to Use P3s to Develop VA Facilities.

A new Senate bill could pave the way for the use of public-private partnerships to develop facilities for military veterans.

S. 2958, introduced by Sen. Deb Fischer (R-Neb.) on May 19, would set up a pilot program through which the Secretary of the Department of Veterans Affairs (VA) could enter into up to five P3s to build or modify medical facilities costing at least $10 million or to build or expand VA cemeteries.

State or local agencies, nonprofit organizations, donors and private developers would be eligible to pursue such projects or donate funds to support them.

The bill specifies that one of these projects would involve the design, financing and building of a new ambulatory care center in Omaha, Neb., for which the secretary would be authorized to spend up to $56 million. The VA has expressed interest in building a clinic near an aging hospital in Omaha, reported Omaha.com.

For each project developed under the legislation, the private partner would have to establish a board that would oversee project financing, design and construction. Each board must include a VA employee and a military veteran who is unaffiliated with the department.

The bill has been referred to the Senate Veterans' Affairs Committee.

This legislation is similar to H.R. 5099, introduced by Rep. Brad Ashford (D-Neb.) in late April, which has been referred to the Health Subcommittee of the House Veterans' Affairs Committee.

May 26, 2016

S&P's Proposed Changes In U.S. State Rating Methodology: FAQ.

On May 25, 2015, S&P Global Ratings published a request for comment (RFC) on its proposed changes to the rating methodology for assigning ratings to U.S. states and territories. The comment period ends on June 27, 2016. This article addresses some likely questions following the release of the RFC.

Frequently Asked Questions

Why is S&P Global Ratings proposing changes to its U.S. state rating methodology?
The purpose of the proposed criteria is to align the pension assessment section of the criteria with accounting changes in Governmental Accounting Standards Board (GASB) 67 and 68, reduce volatility in certain factors, and to use related disclosure to enhance our analysis with a more comprehensive and forward-looking assessment of pension funding discipline. We also propose to revise and expand a few of our rating overrides and rating caps to provide for greater transparency

for ratings below the ‘BBB’ category.

How do the proposed criteria differ from the current criteria?
We are proposing changes to our pension assessment and to several rating caps and overrides. Specifically, we propose to revise rating overrides for situations in which a state has weak liquidity and capital market access or a high level of expected future debt and liabilities. The proposal also includes additional guidance for overriding factors related to weak structural budget performance as well as high levels of contingent liquidity risk.

Another key difference is the proposed methodology to arrive at the pension score, although we would continue to analyze many of the same elements as we do today. Under current criteria, we average four indicators to arrive at the overall pension assessment. Under the proposed criteria, we would begin with an assessment of the pension funded ratio and pension funding discipline, as the anchors for the initial pension score. Then we would adjust the initial score in cases where we characterize the state’s unfunded pension liability compared to population or income as extremely large or extremely small. We believe that the core focus on the pension funded ratio and funding discipline provides us with a more forward-looking measure of a state’s potential future liability challenges.

How do the proposed criteria assess pension funding discipline?
We believe a commitment to funding annual contributions that address the long-term pension liability is a key credit consideration. Our existing criteria assess a state’s historical track record of meeting its annual required contribution. However, the new GASB accounting standards no longer define an annual required contribution and reported required contributions will vary based on funding policy.

Therefore, in addition to our analysis of a state’s funding policy and track record, we are proposing to use additional disclosure provided by new GASB standards to evaluate whether plan contributions usually cover certain accrued annual costs, to offset annual growth in the liability and avoid negative amortization, as well as make some progress in funding the estimated liability over time. Specifically, we propose to analyze whether total annual plan contributions are usually sufficient to cover the aggregate annual plan service cost, as well as an annual interest cost and amortization cost component. We assume that there is some amount of likely funding progress if the annual plan contributions cover (1) the present value of benefits earned by participants in the year, (2) a portion of the annual interest cost related to pension liabilities unmatched by plan assets, and (3) some amortization of the beginning unfunded pension liability.

We recognize that actuarial assumptions vary across plans. Therefore, we also propose to assess certain pension plan management characteristics and actuarial assumptions. What we view as particularly conservative or aggressive assumptions or management practices could influence our view of pension funding discipline.

What will be the rating impact? Will there be any changes to U.S. state ratings as a result of the proposed criteria?
We maintain ratings on all 50 U.S. states and two territories. Our testing suggests that there will be no rating changes as a result of the revised criteria.

Where can I get more information on the proposed criteria?
The RFC, “U.S. State Ratings Methodology,” is on RatingsDirect and on www.standardandpoors.com. Further information will be provided via a webcast on June 7, 2016. Please see https://www.spratings.com/en_US/topic/-/render/topic-detail/u-s-states for relevant links to register for the webcast.

How long is the request for comment period? How do I submit comments on the proposed criteria?

We encourage all market participants to submit written comments on the proposed criteria by June 27, 2016. Please send your written comments to https://www.standardandpoors.com/en_US/web/guest/ratings/rfc. Once the comment period is over, we will review the comments, potentially adjust the proposed criteria to reflect relevant market input, and publish the final criteria. The final criteria will be effective immediately upon publication.

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

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Treasury Paper Outlines Steps to Ensure Success In Identifying, Pursuing P3-Suitable Projects.

The U.S. Treasury Department has published a discussion paper to help decision-makers who may be unfamiliar with and confused by the complex structure of public-private partnerships determine when a P3 is more likely than a conventional procurement to produce a beneficial and cost-effective project.

"An Economic Framework for Comparing Public-Private Partnerships and Conventional Procurement" focuses on the factors economists take into account when making this type of assessment, including a project's characteristics, the conditions under which it is being conducted, and the extent of the public agency's ability to take certain actions before bids are solicited to ensure the project is successful and beneficial.

Much of the paper covers familiar ground for seasoned P3 developers by, for example, describing

how this procurement method can save time and money by authorizing a single developer to carry out multiple stages of a project rather than assigning each one to a different contractor and permitting the quick introduction of efficiency-enhancing innovations throughout the project life cycle.

The authors also stress four best practices that public agencies should follow when planning a potential P3 project to ensure its success, many of which mirror NCPPP's own "7 Keys to Successful P3s." The Treasury-identified best practices are:

- Creating a predictable legal and regulatory climate that is conducive to private investment in P3s, training public agency personnel to conduct these transactions and providing information and assistance to agencies at all levels that will help them to pursue this type of procurement.
- Developing a project preparation process that includes defining strategic objectives, taking steps to monitor projects' progress and identifying and mitigating emerging risks.
- Conducting project feasibility studies to reduce risks that the private developer might be forced to bear; these can range from financial risks that could lead the developer to default to stakeholder opposition or failure to acquire necessary permits or land.
- Structuring the P3 to ensure the risks assigned to the developer that will cause the private partner to take steps that increase project value — those that result in a higher quality of service or lower per-unit costs, for example.

"Public-private partnerships represent a promising approach that can leverage the strengths of the private and public sectors to expand and improve our public infrastructure," the report says. "Yet PPPs are not a good fit for all projects. In each case, the public authority must establish that a PPP would provide net benefits to society that go beyond what is attainable through conventional procurements alone, including a careful screening of projects for their suitability factors. Thereafter, successful PPP implementation requires executing a set of additional best practices before the project gets underway. Not taking these steps may lead to higher costs, failure to meet performance targets later in the life cycle and a misallocation of scarce public resources."

May 26, 2016

S&P RFC: U.S. State Ratings Methodology.

S&P Global Ratings is requesting comments on proposed revisions to its methodology for rating United States state governments and territories. The proposed updates better align our criteria with new pension reporting and disclosure, and provide additional transparency and guidance with respect to potential caps and adjustments to the rating. "Rating" refers to the rating assigned to general obligation (GO) debt of U.S. states and territories or the issuer credit rating if no GO debt is outstanding. If the proposed changes are adopted, the new criteria will fully supersede "U.S. States Rating Methodology," published Jan. 3, 2011.

Continue reading.

25-May-2016

S&P Webcast: Request for Comment On Proposed Criteria: U.S. State Ratings Methodology.

Please join S&P Global Ratings on **Tuesday, June 7, 2016 at 11:00 a.m. Eastern Time** for a live Webcast and Q&A discussion on the upcoming Request for Comment regarding proposed changes to our U.S. state ratings methodology.

Register for the Webcast.

Jun. 7, 2016 | New York, NY

Loop Capital Municipal Strategy Report - May 2016

Read the Report.

By Analytical Services Division on May 20th, 2016

The Final Allocation and Accounting Regulations - What Do They Mean For "Phantom Investment Proceeds"?

The flexibility to reallocate proceeds to expenditures using an accounting method other than direct tracing has been a well-recognized and much-appreciated opportunity under the allocation and accounting rules of IRC section 141. The former proposed section 141 regulations (REG-140379-02, Sept. 26, 2006) ("Proposed Regulations"), now replaced by the final section 141 regulations issued October 27, 2015 ("Final Regulations") on which we reported here, here, here, and here and cross-referenced the arbitrage allocation rules in 1.148-6 in allowing the reallocation of proceeds away from the expenditures for which the proceeds were actually spent to different expenditures producing more favorable tax results. If the expenditures to which the proceeds were reallocated were paid later than the proceeds were actually spent, the reallocation raised the question of whether the proceeds had to be treated as spent later for arbitrage purposes, resulting in additional, "phantom" (because they were never actually earned) investment proceeds that were deemed to arise during the time between the date when the issuer originally spent the proceeds, and the date of the expenditure to which it later reallocated proceeds. Fortunately, the Proposed Regulations included an explicit exception from the otherwise applicable consistency rule between the section 141 and section 148 allocation and accounting rules, thereby avoiding phantom investment proceeds. The Final Regulations do not include this rule. So where are we now? Might we have phantom investment proceeds?

Background

Proposed Regulation 1.141-6(a) stated:

> Except as otherwise provided in this section, for purposes of 1.141-1 through 1.141-15, the provisions of 1.148-6(d) apply for purposes of allocating proceeds and other sources of funds to expenditures (as contrasted with investments). Except as otherwise provided in this section, allocations of proceeds and other sources of funds to expenditures generally may be made using any reasonable, consistently applied accounting method. *Allocations of*

> *proceeds to expenditures under section 141 and section 148 must be consistent with each other. . . .* (Emphasis added.)

Had the Proposed Regulations stopped here, we would have been left with the question of the appropriate arbitrage analysis if proceeds were reallocated to different, later expenditures, e.g., to avoid private business use, and the expenditures to which the proceeds were reallocated were paid later than when the proceeds were actually spent. Specifically, would phantom investment proceeds be imputed for the period from the actual expenditure to the reallocated expenditure? Aside from the potential rebate cost of such a rule, the record-keeping burden would have been horrendous. Apparently to avoid this, Proposed Regulation 1.141-6(a) further provided:

> . . . For purposes of the consistency requirements in this paragraph (a), it is permissible to employ an allocation method under paragraph (a)(2), (c), or (d) of this section (for example, the general pro rata allocation method under paragraph (a)(2) of this section) to allocate sources of funds within a particular project for purposes of section 141 in conjunction with an accounting method allowed under 1.148-6(d) (for example, the first-in, first out method) to determine the allocation of proceeds or other sources of funds to expenditures for that project.

The Proposed Regulations have now been replaced by the Final Regulations. Section 1.141-6(a) of the Final Regulations states: "The allocations of proceeds and other sources of funds to expenditures under §1.148-6(c) apply for purposes of §§1.141-1 through 1.141-15." As supported by the preamble explanation, this rule apparently requires consistency in accounting between IRC sections 141 and 148. This consistency rule, however, is not followed (as it was in the Proposed Regulations) by an exception eliminating the concern of phantom investment proceeds. So we are left to determine whether phantom investment proceeds might arise.

As we previously reported in this blog (here),the Final Regulations automatically allocate tax-exempt proceeds to governmental use and qualified equity to private business use, to the extent possible. Moreover, the allocation of proceeds and qualified equity shifts from time to time if and when the location of private business use within the project shifts. Since this rule does not purport to allocate proceeds to particular expenditures and that allocation can shift over time, it appears reasonably clear that the application of this rule will not result in phantom investment proceeds.

The Final Regulations, however, would also appear to permit an affirmative allocation of proceeds to expenditures that is not inconsistent with the general rule described above. For example, assume that all of the proceeds of an issue are actually spent for a particular project (the "first project"). Assume further that the issuer would prefer to allocate a portion of those proceeds to a second, contemporaneous project while allowing the remainder of the issue proceeds to remain allocated to the first project. (Such a reallocation can enable the issuer to increase the benefit of its qualified equity, particularly if both projects are then financed in part with qualified equity.) The Final Regulations would appear to permit this affirmative allocation, but might this reallocation result in phantom investment proceeds?

While the Final Regulations (and the preamble) are silent on this question, it does not appear that issuers need to be concerned with the prospect of phantom investment proceeds. If there were a possibility of having to calculate and track additional investment proceeds, surely Treasury would have made that requirement clear, at least in the preamble if not in the Final Regulations themselves. For example, the method of determining the investment earnings rate alone would raise many unanswered questions that, if Treasury thought applicable, we should be able to assume would have been addressed. Accordingly, it appears appropriate to conclude that under no application of the Final Regulations should an issuer have to calculate phantom investment proceeds resulting

from a potential difference in timing of actual proceeds expenditure versus reallocated proceeds expenditure.

I would further submit that such a result should obtain under IRC section 142 (exempt facility financings), where the consequences of phantom investment proceeds would be much greater. Rather than largely an arbitrage issue as in the case of governmental bonds, under section 142 the consequences would include qualification under the 95% qualified cost requirement. Again in the absence of any indication from Treasury or the IRS to the contrary, a reallocation of proceeds in a section 142 financing should not result in the possibility of phantom investment proceeds.

Squire Patton Boggs

The Public Finance Tax Blog

by Robert J. Eidnier

USA May 26, 2016

SIFMA Submits Comments to the MSRB on Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans.

SIFMA provides comment to the Municipal Securities Rulemaking Board (MSRB) on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans. The proposal is to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients.

Read the Comment Letter.

May 27, 2016

SIFMA AMG Submits Comments to the MSRB on Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans.

SIFMA AMG provides comment to the Municipal Securities Rulemaking Board (MSRB) on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans. The proposal is to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients.

Read the Comment Letter.

May 27, 2016

SIFMA Submits Comments to the MSRB in Response to Request for Comment on Clarifying Exceptions to Minimum Denomination Rule.

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) regarding draft amendments to MSRB Rule G-15(f) on minimum denominations.

Read the Comment Letter.

May 25, 2016

SIFMA Submits Comments to the IRS on Proposed Regulations Defining Political Subdivisions.

SIFMA provides comments to the Internal Revenue Service (IRS) on proposed regulations defining political subdivisions. The Proposed Regulations provide guidance re-defining the definition of political subdivision for purposes of entities that may qualify as issuers of tax-exempt bonds under section 103 of the Internal Revenue Code of 1986.

Read the comment letter.

May 23, 2016

SIFMA Social Impact Investing and Social Finance Fact Sheet.

Social impact investing is commonly used to describe the direction of investment funds to opportunities or companies that have desirable environmental, governance or social factors (also called ESG investing), and is related to social finance, which involves the use financial assets or instruments to fund projects that have a positive social or environmental impact.

Read the Fact Sheet.

May 24, 2016

Bernie Sanders Slams White House Compromise on Puerto Rico Debt.

Conservative political groups and hedge funds that bought Puerto Rico's debts have some surprising company in their quest to block bipartisan legislation that could allow some of those bonds to be written down. Vermont Sen. Bernie Sanders is also rallying his Senate colleagues to oppose the bill.

Mr. Sanders and Wall Street bondholders have very different reasons for opposing the legislation, but the episode illustrates the challenge of getting Congress to agree on how to address the island's debt and economic crises.

The Obama administration and House Speaker Paul Ryan (R., Wis.) have engaged in delicate negotiations for the past month on a bill that would allow Puerto Rico to restructure its $70 billion debt load, and they finally settled on a compromise last week.

Democrats have been pushing for broader latitude for the commonwealth to write down its debts.

Unlike municipalities in some U.S. states, public entities in Puerto Rico don't have access to bankruptcy courts because Puerto Rico is not a state. The Treasury Department says without any debt-restructuring ability, Puerto Rico faces larger defaults and a creditor brawl that will make it even harder for the island to escape a recession that has lasted for most of the last decade.

Some Republican oppose debt restructuring because they say it would be unfair to the island's creditors, and some of those bondholders want to defeat the legislation because it would force them to accept losses upfront. Republicans have insisted that any legislation include a federal oversight board, modeled on the one imposed for Washington, D.C., in the 1990s, to restore financial accountability to the deeply indebted territory.

The current bill essentially combines some of what the Republicans want with some of what the Democrats want, though in the nature of such compromises, no one got everything they wanted. A House committee is set to markup the legislation this week.

Mr. Sanders objects to the imposition of an oversight board and to language throughout the bill designed to assuage Republicans that creditors' rights will be respected. He outlined his initial objections last week, just as the Obama administration had nearly wrapped several months of negotiations with House lawmakers, and he elaborated on them in a letter to Senate colleagues on Monday entitled, "We must stop treating Puerto Rico like a colony."

Even though the debt legislation is relatively obscure as policy issues go, it highlights the contrast between Mr. Sanders and Hillary Clinton, the Democratic front-runner, in substance and style. They face off in the Puerto Rico primary on June 5.

Mrs. Clinton has adopted the position of the Obama administration, saying that while the bill isn't perfect, it's probably the best deal that Puerto Rico is likely to get in the current political environment. "Without any means of addressing this crisis, too many Puerto Ricans will continue to suffer," she said in a statement last week.

Mr. Sanders is advocating a separate and more complex policy proposal that for now has no clear political support. His solution has two basic features. The first would require Congress to grant Puerto Rico's public corporations access to bankruptcy protection. The Obama administration rejected this step last year because it says giving Puerto Rico access to Chapter 9 of the bankruptcy code isn't sufficient to deal with all of the island's $70 billion debt load, since it excludes debts incurred by the central government.

Mr. Sanders also has proposed a plan that he says doesn't require congressional action. Instead, it calls on the Federal Reserve to provide emergency loans to Puerto Rico using the same authority that the government used to bail out American International Group in 2008.

Would this put taxpayers on the hook for Puerto Rico's debts while bailing out the hedge funds and mutual funds that bought up those bonds? Possibly, though Mr. Sanders opposes this.

Forcing investors to take haircuts could invite a constitutional "takings" lawsuit along the lines of one filed by some AIG shareholders. They argued that their property had been seized without proper compensation and while many legal experts initially dismissed their chances, a federal court ruled in their favor in 2014. The government is appealing that case.

Warren Gunnels, policy director for the Sanders campaign, says all of this can be avoided by requiring public entities to buy back their debts through a reverse Dutch auction, or a descending-price auction, allowing the Fed to refinance those holdings at less than full value.

"If the Federal Reserve can use its emergency lending authority to bail out huge Wall Street banks, it can use that same authority to help the same 3.5 million U.S. citizens who live in Puerto Rico," said Mr. Gunnels.

To be sure, the Fed used many of those authorities after majorities in Congress approved legislation in 2008. It's hard to imagine the Fed acting unilaterally and without broad political support for Puerto Rico because Fed officials have said the island's economic crisis poses no systemic threat to the broader municipal market or U.S. economy.

Moreover, some analysts have said such a move could backfire on the Fed by giving ammunition to Fed critics already looking to curtail its authority.

The bipartisan bill has the support of House Minority Leader Nancy Pelosi (D., Calif)., and one of the lead negotiators for Democrats on the House legislation was Rep. Raul Grijalva (D., Ariz.), who was the first lawmaker to endorse Mr. Sanders.

For now, few Democrats have signed onto Mr. Sanders's proposal, though some influential groups—including several large labor unions—have announced that they oppose the bipartisan legislation.

THE WALL STREET JOURNAL

By NICK TIMIRAOS

May 23, 2016 6:42 pm ET

House Committee Approves Puerto Rico Bill with Bipartisan Support.

A House committee on Wednesday advanced legislation to address Puerto Rico's debt crisis with solid bipartisan support, a strong sign the bill could move quickly through Congress ahead of a potential default by the territory on July 1.

The legislation would create a debt-restructuring process and empower a federal oversight board to supervise what is shaping up to be the largest municipal debt workout in American history. The measure wouldn't spend any federal money.

The House Committee on Natural Resources, which has oversight of federal territories, advanced the bill on a 29-10 vote, with 14 Republicans and 15 Democrats backing the legislation.

The bill, which produced a rare moment of bipartisan cooperation in an election year, has drawn strong opposition from some bondholders and other political groups that spent millions of dollars on television advertisements to defeat it.

Puerto Rico last year began defaulting on several classes of nearly $70 billion in debt it owes, threatening to worsen the island's growth prospects after a decadelong recession. Because it isn't a state, its municipalities aren't eligible to restructure their debts in U.S. bankruptcy courts. Because it isn't a country, Puerto Rico can't turn to the International Monetary Fund for assistance.

Rep. Rob Bishop (R., Utah), the committee chairman, said he expects majorities of both parties to back the bill when it comes to the House floor. In the Senate, Majority Leader Mitch McConnell (R.,

Ky.) said Tuesday lawmakers were “anxious to take up” whatever the House could pass. The White House supports the measure.

The measure would mark a significant policy accomplishment for House Speaker Paul Ryan (R., Wis.), who tasked Mr. Bishop with crafting legislation earlier this year for the island to write down certain debts while subject to the federal board. They worked closely with the Treasury Department and Democratic lawmakers, and both sides complimented what they said was an unusually collegial and bipartisan process.

“The legislation provides a framework to motivate the government and its creditors to come to the table to negotiate more,” said Eric LeCompte, executive director of Jubilee USA, an organization that presses for debt relief.

Still, the compromise has been unpopular with blocs in both parties. Labor unions and elected officials in Puerto Rico have objected to several provisions, including an oversight board appointed by the White House and Congress that they say amounts to a colonial takeover.

House Minority Leader Nancy Pelosi (D., Calif.) and Rep. Pedro Pierluisi, a Democrat who serves as Puerto Rico’s nonvoting representative, have supported the bill, saying it is the best package they can secure under a Republican-controlled Congress. Lawmakers should “get real” about any alternative “that can actually become law,” said Mr. Pierluisi. “I do not believe one exists.”

Some conservative lawmakers, meanwhile, said it would harm creditors’ rights and create a potential precedent for distressed U.S. states.

Bond-market analysts said the legislation could actually help the broader $3.7 trillion municipal bond market, because by using the territories clause of the U.S. Constitution, Congress made clear it wouldn’t set a precedent for states.

“This creates a clear firewall and ring-fences Puerto Rico from the broader muni market,” said David Hammer, co-head of municipal bond portfolio management at Pacific Investment Management Co.

Moreover, the debt-restructuring mechanism would require Puerto Rico to cede more power to the federal government, he said. “That’s not something a state or local government would ever seek to do.”

Congress granted U.S. citizenship in 1917 to residents of Puerto Rico, which was seized from Spain after the Spanish-American War of 1898. The U.S. gave the territory the right to elect its own governor in 1947.

Under the legislation advanced Wednesday, a seven-member oversight board, not the government elected by Puerto Rico, would determine whether and when to initiate court-supervised debt restructuring, and it would have the power to approve or reject budgets. The board would terminate after Puerto Rico regains the ability to borrow at reasonable interest rates and balances its budget for four consecutive years.

THE WALL STREET JOURNAL

By NICK TIMIRAOS

Updated May 25, 2016 5:24 p.m. ET

—Siobhan Hughes contributed to this article.

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

SIFMA Develops Model Documents for Compliance with New MSRB Rule G-42.

New York NY, May 21, 2016 – SIFMA has developed a suite of model documents designed to aid municipal advisors in compliance with new MSRB Rule G-42, on duties of non-solicitor municipal advisors. The Rule will be implemented on June 23. SIFMA is issuing the documents as exposure drafts, and is open to industry feedback through the end of this month, at which time they will be finalized.

"SIFMA is pleased to provide municipal advisors with these compliance tools as the G-42 implementation date draws near," said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA's Municipal Securities Division. "We have worked with our members and counsel to develop these drafts, and we welcome additional industry input as we finalize them, with the ultimate goal of aiding firms in their compliance with the new Rule. We feel that the development and use of standardized model documentation plays a critical role in increasing legal certainty and decreasing legal costs and regulatory risk for firms in this business."

The documents in the suite include:

- Municipal Advisor Engagement Letter Form
- Disclosure Statement of Municipal Advisor Form
- Disclosure Letter for Existing Municipal Advisor Agreement Form
- Municipal Advisory Client Worksheet

The exposure drafts are available here.

Release Date: May 21, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

MSRB publishes Investor's Guide to 529 College Savings Plans.

Read the Investor's Guide.

- FAF Issues 2015 Annual Report: "Serving the Financial Statement User."
- What's Going on With Muni Credits?
- Why Statutory Liens Matter in a Chapter 9 World.
- GASB Posts New Page for Financial Statement Users.
- U.S. Municipal Credit Report, First Quarter 2016.
- Tax-Exempt Bonds: Is It Possible for a Municipal Corporation Not to be a Political Subdivision?
- *Schuerman v. Eastwood Local School Dist.* – Court of Appeals holds that local voters lacked standing to challenge school district's agreement with School Facilities Commission to finance new

school (via the issuance of Certificates of Participation) after voters had previously rejected two proposed bond issuances to finance the project.
- And finally, what's the world coming to when mom & pop can't be left in peace to crush a few aluminum cans on the front porch as part of their self-described "small scale recycling business?" Next thing you know, the Jack-Booted Government Thugs are kicking down the door of your suburban home and carting off your "discarded debris/materials, garbage, rubbish, auto parts, appliances/furniture, all unlicensed and/or inoperable vehicles." The priceless part is that the Petersons then sued the city to get it all back, claiming that those crooks down at the code enforcement office had converted the property for their own personal use. Just another perk of that sweet, sweet code enforcement gig.

UTILITY DISTRICTS - ALABAMA

Ex parte Town of Summerdale

Supreme Court of Alabama - May 13, 2016 - So.3d - 2016 WL 2842682

Town, city, and county sewer services company filed actions against county water, sewer, and fire protection authority and county commission, seeking judgment declaring that commission-approved amendments to authority's articles of incorporation, which expanded authority's geographical service area and expanded authority's services to include sewer services, were void.

The Circuit Court consolidated actions and granted town, city, and company summary judgment. Authority appealed. The Court of Civil Appeals held that town, city, and company lacked standing to bring action. Town, city, and company petitioned for writ of certiorari, which was granted except in regard to town's challenge to amendment expanding services.

The Supreme Court of Alabama held that:

- Petitions were not improvidently granted;
- City and town had standing to challenge amendment expanding authority's geographical service area;
- City had standing to challenge amendment expanding authority's services; and
- Company had authority to challenge amendments.

Supreme Court did not improvidently grant certiorari petitions filed by city, town, and county sewer services company, seeking review of Court of Civil Appeals' determination that municipalities lacked standing to bring actions against county water, sewer, and fire protection authority and county commission, seeking judgment declaring that amendments to authority's articles of incorporation were void, where city, town, and company highlighted lack of clarity in cases regarding what was required in order for parties to have standing in cases involving declaratory judgments.

Town and city had standing to bring action against county water, sewer, and fire protection authority and county commission, seeking judgment declaring that commission-approved amendment to authority's articles of incorporation that expanded authority's geographical service area was void, regardless of whether city and town had definite plans to provide water services in expanded service area. Amendment affected ability and authority of city and town to provide water in expanded service area, and town alleged that authority placed water lines inside town's corporate limits without town's permission, which constituted additional basis for town's standing to challenge amendment.

City had standing to bring action against county water, sewer, and fire protection authority and

county commission, seeking judgment declaring that commission-approved amendment to authority's articles of incorporation that expanded authority's services to include sewer services was void, regardless of whether city was actually about to provide sewer services to expanded service area at time amendment was approved. City had legal right to provide sewer services to expanded area, which was thwarted and affected by amendment.

County sewer services company had standing to bring action against county water, sewer, and fire protection authority and county commission, seeking judgment declaring that commission-approved amendments to authority's articles of incorporation that expanded authority's geographical service area and expanded authority's services to include sewer services were void. Authority wished to charge company franchise fee for all customers company provided services to in expanded service area, threat of imposition of fee was threatened injury to company's legal interests, and company's plan to purchase town's sewer system was unable to proceed without being affected by amendments.

EMINENT DOMAIN - ALASKA

City of Kenai v. Cook Inlet Natural Gas Storage Alaska, LLC

Supreme Court of Alaska - May 6, 2016 - P.3d - 2016 WL 2610025

Gas storage company brought action seeking through condemnation an easement on subsurface pore space and seeking determination of whether corporation and State owned the pore space, which was situated beneath land conveyed by State to city, or whether city owned the space.

The Superior Court granted company's motion for summary judgment and awarded attorney fees in favor of corporation and against city. City appealed.

The Supreme Court of Alaska held that:

- Language in patents conveying land to city was governed by rules of statutory interpretation;
- As matter of first impression, subsurface pore space and attendant storage rights were reserved to State;
  American rule regarding pore-space ownership did not apply;
- Rule governing awards of attorney fees to prevailing party that received no monetary judgment applied; and
  Award of fees to corporation was proper.

Subsurface pore space and attendant storage rights were reserved to State in patents conveying land to city and incorporating statutory language reserving mineral rights to State. Term "minerals" was broad, matrices that created pore space and gave it form were mineral in character, and reserving valuable subsurface storage rights to State was consistent with statute's purpose of "provid[ing] for orderly oil and gas leasing that maximiz[ed] [S]tate return on its oil and gas resources."

American rule governing subsurface pore-space ownership, which treated the space as owned by surface owners, did not apply in gas storage company's interpleader action seeking determination of whether State or city owned the subsurface pore space and attendant storage rights beneath land conveyed to city, where rights of State and city were governed by statute reserving mineral rights to State, which included pore space.

IMMUNITY - FLORIDA

Piedra v. City of North Bay Village

District Court of Appeal of Florida, Third District - May 4, 2016 - So.3d - 2016 WL 2339857

Father brought action against city, its contracted groundskeepers, and private property owner to recover for injuries sustained by father's son when son was struck by a car at intersection while riding motorized skateboard on city streets.

The Circuit Court entered summary judgment in favor of defendants. Father appealed.

The District Court of Appeal held that:

- Fact questions regarding city's alleged negligence in the maintenance of planted vegetation at intersection precluded summary judgment for city on grounds of sovereign immunity;
- Fact questions regarding groundskeepers' duty to maintain vegetation at intersection precluded summary judgment for groundskeepers; and
- Fact questions regarding property owner's hedges and whether they obstructed vision of intersection precluded summary judgment for property owner.

City's actions in designing and planting intersection "bulb-outs," curb extensions or planted areas extending parallel to the sidewalk into the street following the curve of an intersection corner, was a planning level function and therefore immune from suit. Maintenance of the areas, however, was an operational, not a planning level function, such that the city would not be immune from suit for its alleged negligent actions or omissions in maintaining the bulb-out areas.

PUBLIC UTILITIES - MAINE

Taylor v. Public Utilities Com'n

Supreme Judicial Court of Maine - May 12, 2016 - A.3d - 2016 WL 2755806 - 2016 ME 71

Water utility sought authorization to execute agreement with corporation allowing corporation to lease premises and purchase water for bottling.

Resident intervened opposing the request. The Public Utilities Commission conditionally approved the request. Resident appealed.

The Supreme Judicial Court of Maine held that:

- Water utility was not prohibited by legislative charter from entering into the lease;
- Proposed agreement did not violate statute governing utility rates; and
- Commission was allowed to apply no net harm standard in analyzing lease.

Water utility was not prohibited by language in its legislative charter from entering into lease with corporation allowing water from aquifer to be extracted in bulk and shipped outside its territory for bottling and reselling, or from selling untreated water. Charter made no mention of public customers, special terms, removal of water, bottling or reselling of water, or untreated or unsafe water.

Proposed agreement between water utility and corporation to extract water from aquifer for bottling

and reselling did not violate statute governing utility rates by allegedly allowing corporation to pay amount above tariff rate. Agreement could in no way result in a rate benefit to corporation, and statute only prohibited rendering of service for free or at a rate less than named in schedules.

Statute requiring Public Utilities Commission authorization for certain leases imposed no requirements on Commission in its choice of a method for determining whether the property at issue in the lease was "necessary or useful" in otherwise providing utility service, as would require Commission approval, and therefore, Commission was allowed to apply no net harm standard in analyzing lease entered into by water utility allowing corporation to extract water for bottling from aquifer.

EMINENT DOMAIN - MICHIGAN

Peterson v. City of Grand Rapids

United States District Court, W.D. Michigan, Southern Division - April 22, 2016 - F.Supp.3d - 2016 WL 1604600

Homeowners who operated a recycling business at their home brought action against Michigan city, city employees, and city's contractor for removal of potential recycling materials from homeowners' property.

City and its employees filed motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim.

The District Court held that:

- Under Michigan law, exclusionary zoning claim was not ripe for judicial review, and
- Homeowners were not excused from seeking state court remedy before bringing suit under Just Compensation Clause.

Under Michigan law, exclusionary zoning claim asserted by homeowners who operated a recycling business at their home in a Michigan city, which use was not permitted under city's zoning code, was not ripe for judicial review, where homeowners had not applied for a zoning use variance or applied for rezoning.

Michigan provides an adequate just compensation procedure, through inverse condemnation proceedings, for parties alleging that the government has wrongfully taken private property, and thus, such parties cannot bring suit for violation of Just Compensation Clause until they have used the procedure and been denied just compensation.

Even if homeowners, who operated a recycling business at their home in violation of Michigan city's zoning code, lacked a remedy under state law to recover potential recycling materials that city had removed from their property, that did not mean homeowners lacked a state court remedy for seeking just compensation for a taking, as would allow them to bring suit under Just Compensation Clause without first pursuing state court remedies.

UTILITIES - NEW YORK

Dorfman v. City of Salamanca Bd. of Public Utilities

Supreme Court, Appellate Division, Fourth Department, New York - April 29, 2016 - N.Y.S.3d - 138 A.D.3d 1424 - 2016 WL 1710170 - 2016 N.Y. Slip Op. 03310

On article 78 petition to annul determination of city's public utilities board, which doubled rates charged for water for consumers with one-inch or larger water meters, the Supreme Court, Cattaraugus County, granted petition. Board appealed.

The Supreme Court, Appellate Division, held that determination lacked rational basis.

Determination of city's public utilities board, doubling rates charged for water for consumers with one-inch or larger water meters, lacked rational basis, even though size of water meter was rational basis upon which to determine charge for water, where record was silent with respect to facts supporting board's determination to double rates only for approximately 3% of consumers with one-inch or larger water meters.

EMINENT DOMAIN - NORTH CAROLINA

Department of Transp. v. Adams Outdoor Advertising of Charlotte Ltd. Partnership

Court of Appeals of North Carolina - April 19, 2016 - S.E.2d - 2016 WL 1569411

Department of Transportation (DOT) filed civil action and acknowledgment of taking for construction of highway project.

The Superior Court awarded compensation to owner of billboard. DOT appealed.

The Court of Appeals held that:

- Trial court did not divest itself of subject-matter jurisdiction by applying incorrect statute to action;
- Billboard was personal property;
- Lost advertising rental income was not a compensable property interest;
- Value of billboard sign permit was not a compensable property interest; and
- Owner's expectation of renewal of lease "in perpetuity" was not a compensable property interest.

SCHOOL FINANCING - OHIO

Schuerman v. Eastwood Local School Dist.

Court of Appeals of Ohio, Sixth District, Wood County - March 4, 2016 - Slip Copy - 2016 WL 853750 - 2016 -Ohio- 846

In order to construct a new, consolidated pre-kindergarten through fifth grade school while demolishing three existing school buildings, school district twice sought voter approval for the issuance of bonds to fund the project. Twice the voters rejected the request.

The district then entered into an agreement with the Ohio School Facilities Commission (OSFC), a state administrative agency, to construct a new school. According to the agreement, the total budget for the project was $19,465,053. The state was to pay $7,007,419 and the district was to pay $12,457,634.

Local citizens filed a complaint for declaratory judgment and permanent injunction seeking to enjoin performance under the agreement with the OSFC. Citizens argued that the district and OSFC were acting outside of their statutory authority. Citing R.C. 33 18.05, the citizens noted that the district voters were not given a chance to approve the ballot measures necessary to generate the district's portion of the project's cost.

Citizens contend that by entering into the project agreement with OSFC, the district effectively disenfranchised them as electors. The citizens contended that an election is required before the district can enter into a project agreement. Citizens, therefore, claim they have standing based on their status as disenfranchised electors.

The school district disagreed that it was required to go to the voters before entering into the agreement/contract with OSFC. This is because R.C. 3318.084(A)(1) authorizes the district to use Certificates of Participation to raise money for its local share of a school construction project.

The Court of Appeals agreed with the school district. As the district was successful in selling enough Certificates of Participation to cover its portion of the project's cost, there was no need to put a bond issue before the voters so citizens were not "disenfranchised electors."

UTILITIES - OHIO

In re Application of Champaign Wind, L.L.C.

Supreme Court of Ohio - April 13, 2016 - N.E.3d - 2016 WL 1459516 - 2016 -Ohio- 1513

Local governmental entities and neighbors appealed a decision of the Power Siting Board that granted applicant a certificate to construct a wind-powered electric-generation facility.

The Supreme Court of Ohio held that:

- Board did not abuse its discretion in quashing neighbors' subpoenas;
- Neighbors were not prejudiced by Board's decision to cut off cross-examination of Board's staff;
- Testimony by applicant's witness was not hearsay;
- Evidence was sufficient for Board to apply minimum setbacks;
- Nighttime noise limit was not against manifest weight of evidence;
- Neighbors were not prejudiced by Board's refusal to reopen hearing record; and
- Draft versions of application were irrelevant to Board's consideration.

PUBLIC UTILITIES - PENNSYLVANIA

Capital City Cab Service v. Pennsylvania Public Utility Com'n

Commonwealth Court of Pennsylvania - April 19, 2016 - A.3d - 2016 WL 1566722

Taxicab companies petitioned for review of orders of the Public Utilities Commission (PUC) granting operator of "transportation network company" (TNC), which involved use of mobile application for customers to request ride from drivers operating their personal vehicles, a conditional right to operate as experimental common carrier.

The Commonwealth Court held that:

- Fact that operator did not have custody of any vehicles did not preclude PUC from having authority

to consider application to operate as experimental common carrier;
- Evidence supported finding that there was a demand or need for operator's services;
- Evidence supported finding that operator had financial ability to provide TNC service;
- Evidence was sufficient to support finding that operator had sufficient technical expertise to provide TNC service; and
- Evidence was sufficient to support finding that operator had appropriate plan to comply with driver and vehicle safety regulations.

EMINENT DOMAIN - PENNSYLVANIA

In re Com., Dept. of Transp.

Commonwealth Court of Pennsylvania - May 5, 2016 - A.3d - 2016 WL 2586144

Landowner petitioned to reopen an eminent domain case in which the Pennsylvania Department of Transportation obtained a temporary construction easement over its property pursuant to the Eminent Domain Code.

The Court of Common Pleas denied petition. Landowner appealed.

The Commonwealth Court held that:

- Landowner could bring action in trespass rather than under Eminent Domain Code, and
- Landowner stated no legal basis for reopening discontinued eminent domain action.

Landowner could bring action in trespass rather than proceed under Eminent Domain Code to recover additional damages for destruction of property that occurred while Department of Transportation occupied construction easement. Unintended damage was allegedly caused by Department's independent contractor, damage to fences, gates, curbing and walls were not permanent, rather they were reparable and could be itemized as specific damages, and the parties had agreed to the amount of just compensation and discontinued the case based on that agreement.

Landowner stated no legal basis for reopening discontinued eminent domain action. landowner received agreed upon compensation from Department of Transportation for the temporary taking of its property, and did not allege mistake, fraudulent inducement, or lack of authority to enter the stipulation stating condemnation proceedings were settled and satisfied.

EMINENT DOMAIN - TENNESSEE

U.S. ex rel. Tennessee Valley Authority v. 1.72 Acres of Land In Tennessee

United States Court of Appeals, Sixth Circuit - May 5, 2016 - F.3d - 2016 WL 2587141

Tennessee Valley Authority (TVA) brought action against landowner to condemn land for power line easement.

The District Court granted TVA's motion for judgment as a matter of law and awarded just compensation of $10,000. Landowner appealed.

The Court of Appeals held that:

- Testimony by landowner's expert about impact of above ground electrical transmission lines could

be excluded;
- Evidence failed to create jury question on reasonable probability of commercial rezoning;
- Landowner failed to show reasonable probability of future market demand; and
- Evidence failed to create jury question on amount of just compensation.

Testimony by landowner's expert that above ground electrical transmission lines would materially and negatively impact development, financing, and ongoing operations of any first tier limited service hotel could be excluded in Tennessee Valley Authority's (TVA) condemnation action to acquire power line easement across agricultural property. The testimony was purely speculative and not based upon any observed data, expert's report did not present any supporting evidence to show that the lines rendered development of a hotel financially unfeasible, and expert did not mention whether county would approve a rezoning, variance, or permits for commercial development.

PUBLIC UTILITIES - TEXAS

Entergy Texas, Inc. v. Public Utility Commission of Texas

Court of Appeals of Texas, Austin - April 8, 2016 - S.W.3d - 2016 WL 1406233

Electric utility and Office of Public Utility Counsel (OPUC) filed action for judicial review of order of Public Utility Commission (PUC) in ratemaking proceeding.

The District Court affirmed Commission's order in part and reversed in part. Utility appealed and PUC and OPUC cross-appealed.

The Court of Appeals held that:

- PUC's interpretation of its prior order as approving post-hurricane regulatory asset, including such asset in electric utility's rates, and authorizing utility's requested amortization schedule was reasonable;
- Evidence supported finding that utility failed to meet burden to prove that its projected capacity costs were known and measurable changes to costs incurred during test year, thus supporting PUC's disallowance of utility's anticipated expenses for purchasing capacity from third parties; and
- Evidence was sufficient to support finding that utility's ice-storm restoration costs were reasonable and necessary.

Interpretation by Public Utilities Commission (PUC) of its prior order as approving post-hurricane regulatory asset, including such asset in electric utility's rates, and authorizing utility's requested amortization schedule was reasonable, in ratemaking proceeding in which PUC disallowed certain post-hurricane restoration costs on basis that utility had already recovered the disallowed amount through rate-setting conducted in a prior docket, where issue of recovery and amortization of the asset was specifically before PUC when prior order was entered and was undisputed, settlement in that docket resolved "all issues," and issue of asset was not specifically excluded or deferred.

Evidence was sufficient to support finding by Public Utilities Commission (PUC) that electric utility failed to meet its burden to prove that its projected capacity costs were known and measurable changes to costs incurred during test year, thus supporting PUC's disallowance of utility's anticipated expenses for purchasing capacity from third parties, in ratemaking proceeding, where objectors testified that many of payments which utility claimed it would pay under third-party capacity contracts did not contain fixed-price terms, that utility's projections contained assumptions about availability and performance that were not supported by historical payments, and that utility's

costs under purchased-capacity contracts with affiliates would fluctuate.

Evidence was sufficient to support finding of Public Utilities Commission (PUC) that electric utility did not meet its burden to prove that adjustments it was seeking for anticipated transmission equalization expenses were known and measurable changes, as would be required for utility to receive such expenses in ratemaking proceeding. Expert witnesses and intervening parties testified to several unknowns with respect to utility's request, including complexity of transmission-equalization formula and that utility's post-test-year adjustment was predicated on unknown future variables.

Public Utilities Commission (PUC) rule providing that, when developing interclass allocations of refunds and surcharges, under- and over-recoveries of fuel expenses were to be allocated to different rate classes and adjusted for line losses using same PUC-approved loss factors that were used in setting fuel factor applied in electric utility's ratemaking proceeding to require PUC to use historical study previously used to set utility's fuel factor, rather than contemporaneous line loss study, in entering order on utility's request for fuel reconciliation, despite argument that utility was not seeking to refund its over-recovery. There was no dispute that utility did over-recover fuel expenses, and utility's proposal to carry balance forward into next fuel reconciliation was effectively a refund.

Evidence was sufficient to support finding of Public Utilities Commission (PUC) that electric utility's ice-storm restoration costs were reasonable and necessary, as would support order entered in ratemaking proceeding allowing utility to include $13 million in such costs in utility's storm-reserve account. Utility's witness testified to utility's distribution operations, industry-recognized comprehensive storm plans, and annual storm drills, and witness submitted exhibits showing that utility's operation and maintenance costs for distribution compare very favorably to costs of other utilities.

DEDICATION - TEXAS

City of McKinney v. Eldorado Land Company, LP

Court of Appeals of Texas, Dallas - May 3, 2016 - Not Reported in S.W.3d - 2016 WL 2349371

Land company sued city alleging it had violated deed restriction by building a library on property it had conveyed to city for use as a community park.

The District Court denied city's motions for summary judgment as to liability and granted company motion for summary judgment imposing liability for violating deed restriction. Following a jury trial on damages, the trial court awarded company more than seven million dollars in damages. City appealed.

The Court of Appeals held that library was a "recreational facility" and thus city did not violate deed restriction specifying property could only be used as a community park.

Library built by city on property conveyed to it by land company was a "recreational facility," and thus city did not violate deed restriction in special warranty deed specifying that the property shall only be used as a community park, defined as a park and recreational facility operated by the city and serving the citizens of the city, where library offered recreation, including story time and music classes for preschoolers, evening computer classes for adults, a glassed-in play area for children,

and a large community meeting room for adults.

ATTORNEYS' FEES - VERMONT

Town of Milton Bd. of Health v. Brisson

Supreme Court of Vermont - May 6, 2016 - A.3d - 2016 WL 2610863 - 2016 VT 56

Town brought action against resident to enforce, by way of injunction, town order requiring resident to remediate problems with his residence that constituted a public health hazard.

The Superior Court issued permanent injunction and, after resident failed to comply, found resident in civil contempt, assessed civil penalty and compensatory costs for engineering fees against resident, and awarded attorney fees to town. Resident appealed.

The Supreme Court of Vermont held that:

- “government expenditure,” as used in statute providing that the court could order reimbursement from any person who caused government expenditures for the investigation and mitigation of a public health risk or investigation, abatement, or removal of public health hazards, did not encompass attorney fees incurred by town in enforcement action, and
- Interests of justice did not warrant award of attorney fees to town, as exception to American Rule.

TAX - OHIO

Riverside v. State

Court of Appeals of Ohio, Second District, Montgomery County - May 6, 2016 - N.E.3d - 2016 WL 2621415 - 2016 -Ohio- 2881

City brought action against State, seeking declaration that statute creating exemption to municipal commuter income tax for Air Force base employees and contractors was unconstitutional.

On cross-motions for summary judgment, the Court of Common Pleas granted State’s motion. City appealed.

The Court of Appeals held that:

- Statute was rationally related to legitimate government interest and thus did not violate equal protection clause;
- Trial court acted within its discretion in granting State’s motion for protective order to prevent city from deposing State, through State’s representative or designee; and
- Trial court’s statement that city could not establish unconstitutionality of statute “beyond a reasonable doubt” did not establish that trial court applied improper standard in ruling on State’s motion for summary judgment.

Tax-Exempt Bonds: Is It Possible for a Municipal Corporation Not to be a Political Subdivision?

With the recent issuance of the proposed regulations that would redefine the term "political subdivision" for purposes of determining which entities can issue tax-exempt bonds under Section 103 of the Internal Revenue Code, as amended (the "Code"), the answer to this seemingly rhetorical question is "yes," at least according to the Treasury Department. This is a significant, and startling, departure from the current Treasury regulations that define "political subdivision" for purposes of Code Section 103.

Current Treasury regulation § 1.103-1(a) provides that interest on an obligation issued by a political subdivision of a State is, except as otherwise provided, excluded from gross income of the holder of the obligation under Section 103(a) of the Code. Current Treasury regulation § 1.103-1(b) further provides that "the term 'political subdivision' . . . denotes any division of any State or local governmental unit which is a municipal corporation . . . ." A municipal corporation is therefore by definition treated as a political subdivision for purposes of Code Section 103. Although the term "municipal corporation" is not defined for this purpose, it has been interpreted, as illustrated by Revenue Ruling 80-136, 1980-1 C.B. 25, with deference to the laws of the applicable State to mean a city, village, town, or borough that is treated under the constitution or laws of the applicable State as a municipal corporation and imbued under such constitution or laws with the powers of self-government.

Like existing Treasury regulation § 1.103-1(a), proposed regulation § 1.103-1(a) provides that, subject to certain limitations, interest on an obligation issued by a political subdivision of a State is, pursuant to Code Section 103(a), excluded from gross income of the holder of the obligation. Proposed regulation § 1.103-1(c), however, goes on to state that:

> The term political subdivision means an entity that meets each of the requirements of paragraphs (c)(2) (sovereign powers), (c)(3) (governmental purpose), and (c)(4) (governmental control) of this section, taking into account all of the facts and circumstances, or that is described in published guidance issued pursuant to paragraph (c)(5) of this section. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations) . . . . (Emphasis added.)

The proposed regulations are to be commended for providing that incorporation as a municipal corporation is not a prerequisite for qualifying as a general purpose governmental entity. Counties and townships of counties are unincorporated but, like municipal corporations, clearly have the characteristics of general purpose governmental entities. The proposed regulations should, however, be revised to define a "general purpose governmental entity" as "a county, township of a county, city, town, village, or borough that is created under the constitution or laws of a State, regardless of whether incorporated as a municipal corporation." Moreover, the proposed regulations should be revised to make clear that a general purpose governmental entity, as so defined, is a political subdivision without application of the sovereign powers, governmental purpose, and governmental control tests set forth in proposed regulations § 1.103-1(c).

The foregoing refinements of the proposed regulations would accord with existing Treasury regulation § 1.103-1(b), which automatically treats a municipal corporation as a political subdivision for purposes of Code Section 103, and with sound policy. Under the constitution or laws of each State, a general purpose governmental entity, as defined above, is no mere special district, but instead: (1) has a substantial amount of taxing, eminent domain, and/or police powers; (2) exists to govern the area that comprises its physical jurisdiction; and (3) is accountable to its electorate and is not susceptible to private control. Subjecting these entities to the sovereign powers, governmental purpose, and governmental control tests of the proposed regulations introduces unwarranted confusion regarding their status as political subdivisions under Code Section 103 without advancing

any discernable policy objective. Further, the application of the sovereign powers, governmental purpose, and governmental control tests to general purpose governmental entities is unnecessary to prevent privately controlled special districts from issuing tax-exempt bonds.

Wednesday, May 18, 2016

by Michael A. Cullers

Partner

Michael Cullers focuses his practice on matters involving tax-exempt bonds, and state and local taxation. Michael has extensive experience in the tax aspects of state and local bond issues including governmental use bonds, qualified 501(c)(3) bonds and other tax-exempt private activity bonds, such as airport financings, as well as tax-advantaged bonds such as Build America Bonds and qualified school construction bonds. This experience includes private business use and private payment analyses; arbitrage issues in new money, refunding and multipurpose bond issues; multipurpose issue…

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U.S. Tobacco Bond Market Shrugs Off Fitch Move to Ditch Ratings.

Fitch Ratings' announcement that it will pull its ratings on tobacco bonds sold by U.S. states and local governments was not shaking up the market for the high-performing debt on Tuesday.

Billions of dollars of bonds are backed by money from U.S. tobacco companies under a 1998 master settlement agreement (MSA) to compensate 46 states, Washington D.C., and Puerto Rico for the cost of caring for sick smokers.

Fitch on Monday said that recent side agreements between several states and tobacco companies that did not participate in the MSA regarding disputed payments "have eroded Fitch's confidence in the predictability of the calculation of MSA payments going forward."

The tobacco sector has not seen much negative movement since Fitch's announcement, said Chris Taddoni, vice president of municipal evaluated bonds at Markit.

The number of price quotes observed by Markit has remained consistent this week, suggesting that Fitch's action "is not having a huge effect on the market."

States have received more than $50 billion so far under the MSA, according to the National Association of State Attorneys General, which manages the agreement.

Fitch said it will withdraw its ratings on tobacco bonds issued by Ohio, California, Puerto Rico, Michigan, Illinois, New York, and others on June 15. The credit rating agency did not respond to requests for further comment.

Moody's Investors Service and Standard & Poor's still rate tobacco bonds.

"I think that perhaps it just doesn't fit their process," said John Miller, co-head of fixed income for Nuveen Asset Management, regarding Fitch's action. "I'm a little bit surprised. It kind of looks like it's a lack of commitment to doing the analysis."

He added that tobacco bonds are in their third year of outperformance driven by stabilizing cigarette sales and investor demand for municipal bonds and high yields.

In the first four months of the year high yield tobacco bonds returned 9.4 percent, according to Barclays Capital, nearly three percentage points better than the next sector, transportation, which has returned 6.5 percent for investors.

Yields hit a high of 6.27 percent in some of the $4.5 million traded in Ohio tobacco bonds with a 5.875 percent coupon maturing in 2047 on Tuesday, according to the Municipal Securities Rulemaking Board.

Dick Larkin, credit analysis director at Stoever Glass & Co, concurred with Fitch's decision.

"So many side settlements, side negotiations and agreements that affect only handfuls of states have made forecasting issuer settlement payments totally unpredictable," he said.

REUTERS

NEW YORK/CHICAGO | BY HILARY RUSS AND KAREN PIEROG

May 17, 2016 5:58pm EDT

(Reporting by Hilary Russ in New York and Karen Pierog in Chicago; Editing by Daniel Bases and Chris Reese)

MuniServices Leads Program to Provide Essential Financial Administration Skills to Aspiring City Managers.

FRESNO, Calif., May 17, 2016 (GLOBE NEWSWIRE) — MuniServices, LLC, a business of PRA Group (Nasdaq:PRAA), in partnership with the California City Management Foundation (CCMF) and Saddleback College, will offer aspiring municipal leaders an opportunity to learn about strategic financial administration through the newly formed Municipal Financial Management Certification Program.

"Working intimately with municipal entities, MuniServices is keenly aware of the unprecedented pressure our public agency partners face on a daily basis to manage finances effectively," said Julia Erdkamp, program chair and client services manager for MuniServices. "The Municipal Financial Management Certification Program is about empowering agencies to meet these growing challenges by providing current and future leaders with the knowledge and tools to navigate the complex terrain of local government finance."

Designed for staff, analysts and managers currently working within local government, the five-course program will be offered through a series of web-based and in-person classes. Course offerings will include tax policy and revenue streams, accounting and budgeting, strategic financing,

and leadership.

Through the program, students aspiring to leadership positions in local government will learn the ins and outs of municipal finance, giving them the tools and skills municipal leaders use each day to maintain fiscal accountability and control over department and program spending.

While these tools are essential for municipal leaders, a primary goal of the program is to teach government finance and leadership best practices that students can observe, understand and apply in their jobs.

Creation of the program is made possible by the partnership of the CCMF and Saddleback College, and the critical support of the Municipal Management Association of Southern California (MMASC). The CCMF provides access to key senior talent within the California city manager ranks. Saddleback College provides the academic rigor, course delivery platforms and educational expertise to ensure the program delivers on its promise of education.

“The California City Management Foundation is dedicated to supporting retired, current and future city managers throughout the state,” said CCMF Executive Director Ken Pulskamp. “Managing the finances of a city is no easy task and will likely become even more complicated over time. This partnership with Saddleback College is a perfect opportunity to assure that the next generation of leaders has the skill set needed to meet financial challenges head-on.”

“Saddleback College is proud to partner with MuniServices and CCMF to provide such a crucial program to local government agencies,” said Israel Dominguez, director of economic development and workforce development at Saddleback College. “Expanding the knowledge of decision makers in local government is truly a win-win that benefits the students and the communities they will go on to serve. It is exactly the kind of role that a community college can fill.”

To learn more about the program, express an interest in participating, or to indicate an interest in teaching, visit www.muniservices.com/education or email Julia Erdkamp at education@muniservices.com.

MuniServices is one of the few firms in the United States offering the full suite of revenue enhancement services including revenue discovery, audit, collections and information services, encompassing every municipal tax source.

About MuniServices, LLC

Founded more than 35 years ago, MuniServices, a business of PRA Group (Nasdaq:PRAA), provides revenue discovery, recovery and compliance services to states and more than 1,000 municipalities nationwide with our PRA Government Services, Revenue Discovery Systems (RDS) and Broussard Partners & Associates (BPA) brands. Our efforts have resulted in reduced administrative costs and the identification of more than $2.4 billion in unreported local taxes and fees. For more information, please visit www.muniservices.com.

About PRA Group

As a global leader in acquiring and collecting nonperforming loans, PRA Group (Nasdaq:PRAA) returns capital to banks and other creditors to help expand financial services for consumers in the Americas and Europe. PRA Group companies collaborate with customers to help them resolve their debt and provide a broad range of additional revenue and recovery services to business and government clients.

PRA has been recognized as one of Fortune's 100 Fastest-Growing Companies for three years, one of Forbes' Best Small Companies in America for eight consecutive years, and one of Forbes' Best Midsize Employers in America in 2016. For more information, please visit www.pragroup.com.

MSRB: Roles and Responsibilities of the Deal Team.

A key part of issuing new debt is assembling a team of professionals to work for the state or local government. Educational resources and tools are available for issuers to help them understand what they should expect from their deal team, which may include a municipal advisor, underwriter, trustee and various other professionals. Read more about the roles and responsibilities of the financing team in both negotiated and competitive deals, and access additional information on working with regulated financial professionals in the MSRB Education Center.

Why Munis Are So Important For Infrastructure Projects.

WASHINGTON – The federal government and Congress need to play a more active role in securing infrastructure funding and protecting the tax-exempt status of bonds, said Jim McIntire, Washington state treasurer and president of the National Association of State Treasurers.

In a recent interview with The Bond Buyer, McIntire said that the muni bond market has been hampered due to stresses on state and local budget revenues. As tax reform proposals begin to surface in Congress, he said he wants to remind lawmakers that the nation's infrastructure, including water and sewer systems, roads and schools are in need of "serious repair."

"Repairing these systems and maintaining them is not something you can do easily or quickly. It takes a lot of planning and quite a bit of investment," McIntire said. "It will take planning and broader policy thinking at the federal level."

"It's not just local in scope," he added. "We're talking about transportation – we all need to get goods across state lines. We have a common interest in getting states and localities to invest, but we need a federal frame for that."

NAST leaders in February sent a letter to members of Congress urging them to support tax-exempt bonds as a key source of infrastructure funding in the wake of President Obama's proposed $4.1 trillion 2017 budget that would tax the value of tax exemption at 28%.

NAST senior vice president and Oklahoma state treasurer Ken Miller said in the letter, which had more than 600 signatures from state and local officials as well as organizations, that a cap would place more of an onus on taxpayers to pay for projects in their communities.

"Municipal bonds have long been a vital source of funding for states, cities and counties to pay for essential infrastructure needs," Miller wrote. "Removing the tax-exempt status of these bonds for select taxpayers would cause a devastating ripple effect."

McIntire said in the interview that capping the value of the tax exemption for municipal bonds would raise borrowing costs for bond issuers as well as costs for taxpayers on state and local government projects. State and local governments also would have to use revenue from sales and property taxes

to fill that gap, he added.

McIntire said there is broad bipartisan consensus among his fellow state treasurers around the issue of protecting the tax-exempt status of municipal bonds.

“Three-quarters of infrastructure in this country is financed by state and local governments and we are a major player in that,” he said. “Almost all of that is financed with municipal bonds.”

McIntire made his remarks just before the start of Infrastructure Week on Monday, which includes a series of panels, initiatives and other events across the country that highlight the importance of funding infrastructure projects.

The event has more than 100 government, business and labor affiliate organizations, including the muni bond advocate group Municipal Bonds for America, as well as dealer groups Bond Dealers of America and the Securities Industry and Financial Markets Association.

The theme for this year’s Infrastructure Week is “Infrastructure Matters”, with an emphasis placed on “roads, bridges, rails, ports, airports, pipes and the power grid,” according to the event’s website.

One positive for infrastructure is that Flint, Mich., which has been plagued by a water crisis for more than two years, may be aided by the Water Resources Development Act of 2016, which was passed by the Senate Environment and Public Works Committee last month. The bill, which is still pending in the Senate, would provide $1.4 billion of federal funding over the next five years to “small and disadvantaged” communities comply with the Safe Drinking Water Act.

The Flint provisions had originally been included in the long-stalled Senate energy bill, but were removed in April.

Sen. Mike Lee, R-Utah, had placed a hold on the energy bill because of concerns the Flint provisions would prove too costly, suggesting instead Michigan tap into its $386 million in rainy day funds or its $575 million surplus from 2015 rather than seek federal funding.

McIntire lauded the five-year Fixing America’s Surface Transportation Act that was enacted in December, but said federal leadership is still needed on how to finance transportation systems that can no longer be solely reliant on a gas tax because it has flattened or declined on a per capita basis.

Rural areas, he said, oftentimes don’t have the rate base to afford, maintain and upgrade water systems. Older urban areas that have not experienced much economic prosperity or growth may also lack the necessary tax base rate to make necessary infrastructure improvements, he added.

Rapid growth areas like Seattle in McIntire’s state have their own set of infrastructure challenges that require tax-exempt financing. Washington had a population increase of roughly 150,000 people last year, many of whom moved in from out of state, which places more of a burden on state schools and roads.

“That’s like adding another small city,” he said. “It’s about keeping up with those needs.”

The Bond Buyer

By Evan Fallor

May 16, 2016

Tennessee Enacts Public-Private Partnership Statute In Quest To Solve Growing Traffic Problems.

Thanks to newly enacted legislation signed into law late last month, Tennessee may be one step closer to solving a critical problem facing residents and officials in Middle Tennessee: How to solve Nashville's growing traffic congestion.

An estimated 80 to 100 people are moving to Nashville each day. That is good news to private developers who continue to pour money into the area to meet the demand created by the rapid growth. Many of those people moving to Nashville want to live close to where they work or attend school. In Nashville, that typically means living somewhere between Downtown, the West End, and Green Hills—ground zero for Nashville's traffic congestion.

Most public officials who have looked at the traffic problem in and around Nashville agree more roads and bridges are not necessarily the answer. Nashville's Metro Transit Authority has been studying the issue for years and recently released several options being considered. Those options range in price from an estimated $5.4 billion down to $800 million. And those options all look at solving the problem with mass transit. While most all public officials and their consultants agree mass transit is the best way to solve the growing traffic problem, they also agree funding that solution is likely to be the biggest challenge. That is where the "Public-Private Transportation Act of 2016" steps in.

The new law authorizes agencies to pursue public-private partnerships (referred to as "Public-Private Initiatives" under the act) for mass transit and other related projects. The law was first introduced in January 2016, was signed into law by Gov. Haslam in late April, and becomes effective October 1, 2016. Once implemented, the law will allow the private sector to participate in the development of mass transit projects and, hopefully, provide a creative solution which avoids asking the tax payers to foot the bill through tax revenues.

Under the new law, agencies can either solicit competitive bids or proposals for a project or even receive and consider unsolicited proposals for certain transportation related projects. In the event an unsolicited proposal is received, the public entity will be required to take several steps, including advertising for competitive proposals for the same project.

Under Tennessee's law, a Public-Private Initiative is an agreement between a state, county, or municipality (including agencies or authorities created by those entities) and a private entity whereby the private entity contributes equity, shares resources, or assists in the development of a transportation facility. The law, however, defines a "transportation facility" in such a way that it prevents highways, bridges, and tunnels from being funded by Public-Private Initiatives.

One question raised by several early Public-Private Partnership statutes was whether projects built under the enabling statute would be considered public or private under other laws like the states "little Miller Act" and mechanic's lien laws. That question was raised in several states where a private entity developing a similar project defaulted on payments to contractors hired to build the project. The problem is that when a developer defaults on a private project, the contractors can assert a mechanic's lien to recoup their costs incurred for building the project that the defaulting developer is unable to pay. Those liens, however, are generally not available on a public project or only extend to payments the public owner owes and has not yet made to its general contractor. Therefore, public entities generally require general contractors on public projects to post payment bonds which ensure contractors performing the work will be paid in the event the general contractor

defaults. On this issue, Tennessee joins the majority of states who have recently enacted these laws by requiring private entities participating in a Public-Private Initiative to post both payment and performance bonds.

Ultimately, the new law gives public entities a way to fund mass transit and related projects (e.g., parking facilities, utilities, and related projects to support mass transit projects) without using tax dollars. At the same time, the new law creates opportunities for private investors and developers looking to invest in Nashville's growth. Following the lead of at least 33 other states, including, most recently, Kentucky, Tennessee lawmakers believe Public-Private Partnerships will offer a solution to the traffic problem without dipping too deep into the public coffers.

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.

Article by Zachary D. Jones

Last Updated: May 12 2016

Stites & Harbison PLLC

Colorado Lawmakers Aim to Head Off Challenges to Metro Tax Districts That Worry Developers.

Top Colorado lawmakers introduced legislation Thursday that would prohibit legal challenges to the qualifications of special district electors in all past elections.

The proposal, if approved, would deem all of the special district electors created in special district elections up until April 21, 2016 and in the upcoming May 3 special district elections as eligible and would consider all of the elections since 1981 valid.

The bill is a reaction to a Colorado Court of Appeals ruling earlier this month in a case titled Landmark Towers Association vs. UMB Bank case, which upheld the position of a group of Landmark condo owners that the creation of the Marin Metropolitan District was created by ineligible electors and that legitimate property ownes were cut out of the process.

The ruling has put bond traders, bankers and real estate lawyers on edge and some metropolitan districts that were ready to sell bonds are now in a holding pattern as millions of dollars in transactions came grinding to a halt in the wake of the ruling.

Lawyers who helped craft Senate Bill 16-207 said the situation is urgent. The majority of the state's metropolitan districts were created using the same mechanism used in the Marin metro district. In that case, electors that voted to form the district were qualified because they took out low-down payment options on real estate.

The fear is that the court ruling could lead to lawsuits challenging the eligibility of special district electors in districts created long ago by that very mechanism.

Senate Bill 16-207, wouldn't allow those challenges. It says, "No district election conducted prior to April 21, 2016 may be contested on the ground that any person who voted at such election was not an eligible elector unless such a contest was invalidated prior to April 21, 2016."

The bill, backed by Senate President Bill Cadman, Majority Leader Mark Scheffel and House Speaker Dickey Lee Hullinghorst and House Majority Leader Crisanta Duran, has 10 days to get through the Senate and House before the legislative session ends.

Brian K. Matise, shareholder of Burg Simpson law firm who represented Landmark Towers Association, said he doesn't understand what the urgency is all about. The ruling, he said, is very narrow and wouldn't affect special districts created long ago.

In the Landmark case, the special district was created and approved by six people who were qualified as electors because they bought options on tiny pieces of a 10-by-10-foot parcel of land in the proposed district. To be eligible electors in that district, the six organizers executed option contracts to purchase a sliver of land within the district and agreed to pay $500 each. Then, they held an election in 2007 that created the metro district and authorized the district to issue bonds. But those six electors never paid for the land or paid taxes on the land.

In addition, a group of condo owners in Landmark Towers were lumped into the taxing district but they received no infrastructure benefit from the taxes collected and they were excluded from voting in the tax election, which the appeals court ruled was a violation of the Taxpayers Bill of Rights (TABOR).

Landmark Towers Association argued that the organizers' contracts were a sham. A lower court judge ruled that even though the organizers never paid the down payments for the so-called "director's parcels" or paid any taxes on the land, the option contracts were a legitimate way to create eligible electors for the special district.

But the Court of Appeals disagreed, ruling that the option contracts weren't sufficient to make the organizers eligible electors. The ruling listed six reasons why the electors in the Marin district were ineligible, including that they never paid property taxes.

"The ruling did not say that using option contracts to qualify electors is illegal," Matise said. "What it says, is that you can't have sham contract to qualify the directors. That is different."

But Dee Wisor. a Denver attorney that specializes in public finance issues, said the ruling is unclear on whether it applies only to the electors of the Marin metro district or could be applied to other metro district electors as well.

The ruling did, however, put an immediate chill on bond activity. Sam Sharp, managing director of D.A. Davidson & Co., a brokerage and investment banking firm, said he knows of at least seven transactions representing about $70 million in bond transactions that are on hold since the ruling.

Jan Bilsborrow, a board member of the Red Leaf Metropolitan District in Broomfield, said the district was refinancing its bonds to take advantage of lower interest rates for its taxpayers. The district sold $4.6 million in bonds. But one day later – the day of the Landmark court ruling – the transaction was suspended.

Bond counsel wouldn't sign off on the deal because of questions the ruling raised, she said.

"The projected savings will not happen unless something can change," Bilsborrow said.

The refinancing would have saved each of the 492 property owners in the Red Leaf district about $1,370 in property taxes over the life of the bonds, she said. The timing is unfortunate, she said.

"The original board was fiscally responsible and was doing what was needed for the infrastructure of

our neighborhood,” she said. “It was done exactly how it should have been done.”

The Denver Business Journal

by Monica Mendoza

Apr 29, 2016, 6:00am MDT Updated Apr 29, 2016, 8:43am MDT

Locavesting: Revolutionizing Local Investment.

Locavesting: Revolutionizing Local Investment

June 21, 2016
@ 1:00 pm Eastern

Investing locally has become one of the most trending development finance approaches in decades. This trend, called “locavesting”, which supports both economic and social advancement in local communities, has spurred creativity and significant capital for supporting infrastructure, entrepreneurs and hyperlocal economic development. While still early in its development, locavesting is producing surprising results and showing significant potential.

This month CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will explore locavesting to demonstrate how to unlock this new and innovative development finance resource in your community.

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

REGISTER.

The Fiscal Tools Cities Need to Pay for Infrastructure.

They no longer can count on Washington or their states. They need the authority to find creative local solutions.

As the infrastructure deficit grows in our cities, so do questions about how to pay for these critical systems. Funding from the federal and state levels is uncertain at best, placing increasing pressure on local governments to take the lead. But political realities coupled with unequal access to local revenue tools means some don’t have the authority they need to answer the call.

In April, for example, voters in Pulaski County, Ark., rejected a quarter-percentage-point sales tax increase that would have been the area’s first tax dedicated to transit, projected to raise $18 million annually for bus-service expansion and the creation of bus lanes. The proposed tax drew widespread support within the city of Little Rock, but not in other parts of the county.

Local governments in Arkansas are among those in 29 states that are permitted to levy a local-option sales tax. But even where that authority is granted, additional limitations on these powers stand in the way. Voter approval is just one implementation hurdle states impose on their cities. Others

include rate caps and matching requirements that restrict the ability of cities to meet growing infrastructure demands.

The infrastructure funding relationship that cities have with their states is a complex one. Declining state gas-tax revenues have made state programs and funding to cities increasingly unreliable. Some states are even diverting dedicated gas-tax revenue to balance their state budgets or raiding local revenues to help fill their own maintenance funding gaps. In the rare instances where states have budget surpluses, as in Minnesota, lawmakers are favoring one-time spending increases on transportation over permanent tax increases.

State spending priorities, both for state capital program and infrastructure grants to cities, are often not aligned with city needs or priorities. For example, in New Hampshire, the state implemented a moratorium on aid grants for water and sewer projects even though cities had already completed some of the projects with the intention of using state grants to help retire bond payments.

In short, local governments' access to revenue-raising tools is highly uneven across the country. Our new report, "Paying for Local Infrastructure in a New Era of Federalism," examines the wide variance: While 29 states authorize local-option sales taxes, for example, only 16 allow local-option fuel taxes. Twenty six states allow local-option motor-vehicle registration fees. Thirty-two states authorize public-private partnerships, and 27 have state infrastructure banks.

The way these tools work in each jurisdiction is very much dependent upon the political nuances, demographic makeup and the types of challenges specific to each city. The political landscape in many states is also antagonistic toward cities, particularly for new local taxes and transit projects that are perceived only to serve certain constituencies.

When paying for infrastructure becomes entwined with these sentiments, it is even more evident that cities and their local partners must find other ways. Cities with access to a state infrastructure bank, like those in California, are finding success, but often these banks are restricted to particular uses and particular cities within a state — if they are funded at all.

As a result of the limited options available to cities, some are exploring riskier ways to fund infrastructure, including direct loans and pension obligation bonds. Some are turning to smart-city technologies to increase efficiencies and decrease costs, and others are looking to unlock the value from underutilized assets like parking, lighting and obsolete payphones.

The reason cities are experimenting with a patchwork of new and traditional tools and approaches is because they have to. More funding from federal and state partners would certainly be welcomed. Even more pressing is the need for greater communication and alignment of priorities between levels of government, along with the local authority to implement creative solutions to closing the infrastructure deficit.

GOVERNING.COM

BY CHRISTIANA K. MCFARLAND, NICOLE DUPUIS | MAY 20, 2016

What's Going on With Muni Credits?

The trend of local governments only seeking out one credit rating for bonds is growing. Now, one in five bonds issued in the municipal market has just a single credit rating assigned to it, according to

data from Municipal Market Analytics (MMA).

This can be attributed to several factors. For one, fewer individual investors — the biggest users of credit ratings information — are directly purchasing muni bonds, so the demand for multiple ratings has lessened. Also, agencies are increasingly giving different ratings to the same bond, which "undermines the notch-by-notch value of individual rating assignments," said MMA analyst Matt Fabian.

Along with this trend is another one: A significant portion of municipal issuers are worse off than they were at the end of the Great Recession. By the measure of PNC Capital Markets analyst Tom Kozlik, 20 percent of state and local governments have seen their underlying credit quality decline — some significantly so.

Kozlik blames this on one key fact: governments' inability to balance their revenue and spending to live within their means. "Also," Kozlik adds, "some state and local governments still have not grasped the scale, costs and risk that pension liabilities and other post-employment benefits still pose to credit quality and fiscal balance."

The Takeaway: These two trends contribute to the mysterious reputation the municipal market has with outsiders. When even the credit rating experts can't agree (note Chicago's three different ratings from four agencies), it's tougher than ever to generalize about the overall health of state and local governments. But if more of them continue to falter, it will undoubtedly invite assumptions about unsustainable governments everywhere.

GOVERNING.COM

BY LIZ FARMER | MAY 20, 2016

TAX - NEW JERSEY

Palisadium Management Corp. v. Borough of Cliffside Park

Tax Court of New Jersey - May 2, 2016 - N.J.Tax - 2016 WL 2343387

Corporate taxpayer challenged tax assessments on property with improvements consisting of a building containing a banquet facility and a fitness/health spa facility.

The Tax Court held that:

- Cost approach was not an appropriate methodology for valuing the property;
- A hybrid approach, applying both the sales comparison and income capitalization approaches, was appropriate; and
- Expert's valuation adjustments were not credibly supported.

The cost approach was not an appropriate methodology in property tax assessment proceedings for valuing property consisting of two lots comprising approximately 4.19 acres, with an improvement on one of the lots consisting of 74,668 square feet, containing a banquet hall on the upper level and a fitness center and health spa on the lower level, notwithstanding borough's contention that the property's location, with its superior views of river and city skyline, and its unusual combination of uses, qualified it as a "unique" and "special-purpose" property. The subject properties were constructed more than thirty years before the first valuation date, neither a banquet hall nor a fitness center was unique or specially built, and there was unquestionably a market for the sale of

banquet halls and the lease of health fitness centers.

A hybrid approach, applying both the sales comparison and income capitalization approaches, was appropriate in property tax assessment proceedings relating to property consisting of two lots comprising approximately 4.19 acres, with an improvement on one of the lots consisting of 74,668 square feet, containing a banquet hall on the upper level and a fitness center and health spa on the lower level. The sales comparison approach was appropriate for the banquet facility, and the income and expense approach was appropriate for the fitness/health spa.

Expert's valuation adjustments were not credibly supported in property tax assessment proceedings relating to property consisting of two lots comprising approximately 4.19 acres, with an improvement on one of the lots consisting of 74,668 square feet, containing a banquet hall on the upper level and a fitness center and health spa on the lower level. Expert's conclusion as to market conditions/time adjustment was not discernible from the evidence nor adequately supported by any objective facts, expert used same comparable sales to support multiple paired sales analyses, there was no objective data supporting conclusion that the reason the subject property was able to command higher prices than competitors was a result of its "above average" view of city skyline, and there was insufficient evidence to assess whether subject property actually charged higher prices than comparable venues.

S&P Request for Comment: Charter Schools: Methodology and Assumptions.

S&P Global Ratings is requesting comments on proposed changes to its methodology for assigning ratings and related credit products to U.S. not-for-profit charter schools (charter schools).

Read the RFC.

May 19, 2016

Think Tank Calls for Governments to Remove Obstacles to Private Investment In Public Infrastructure.

Although business leaders and a growing number of government agencies favor private participation in building and maintaining public infrastructure projects, daunting obstacles are hindering developers' efforts to pursue them. They include the absence of a pipeline of projects that are suitable for private investment, a lengthy and time-consuming permitting process, and the constant risk that unexpected political decisions could change or kill a project without warning, the nonprofit Bipartisan Policy Center points out.

However, there are steps governments can take to address these challenges, the think tank says in a new report, "Bridging the Gap Together."

State and local officials should identify and be prepared to educate constituents on the public benefits of proposed projects — including reductions of front-end expenses and life-cycle costs — and the economic consequences of forgoing construction. "Their conclusion mirrors recent data

published by the American Society of Civil Engineers, which suggests that failing to address the nation's vital infrastructure needs could cause a drop of almost $4 trillion in gross domestic product (GDP), leading to the loss of 2.5 million jobs in 2025. Agencies also should maintain inventories of the physical and economic condition of all public assets and set up expert coordinating offices dedicated to recruiting private investment.

The federal government, meanwhile, should commit to speeding up and simplifying permitting and environmental review processes, which the report calls "one of the most significant deterrents to private capital investing in U.S. infrastructure projects."

The report urges the public and private sectors to collaborate in developing model forms and standardized documents and contract language that help investors to assess the viability of potential projects and to increase the number and types of investment vehicles that could stimulate a project pipeline. The center also calls for efforts to ensure, when possible, that those who benefit from a project help to pay for it through user fees or project-specific taxation.

The report singles out for praise several successful projects that were developed through public-private partnerships that illustrate how effective opportunities for these types of collaboration can be, including the Pennsylvania Rapid Bridge Replacement Project.

NCPPP

May 20, 2016

S&P's Public Finance Podcast (Innovations In The Healthcare Sector)

In this week's edition, Senior Director Kevin Holloran joins us to provide some insights on innovations and transformations occurring in the healthcare space.

Listen to the podcast.

May 19, 2016

Why Statutory Liens Matter in a Chapter 9 World.

CHICAGO – Municipal industry experts on Thursday urged analysts to continue focusing on how the presence of statutory liens can change the treatment of debt in bankruptcy proceedings and ratings analyses.

The experts discussed liens during a panel at the National Federation of Municipal Analysts' annual meeting here.

A statutory lien is a provision of a law that gives certain bonds held by investors a higher ranking in a bankruptcy recovery hierarchy than others without such liens. Some states, like California and Rhode Island, have passed laws that explicitly create liens, while the presence of liens for credits in certain other states is still debatable. The possible confusion is compounded even more because the characteristics of statutory liens may differ from state to state.

There is also a question of how special revenue and other pledges compare to statutory liens in terms of protecting bondholders.

The Detroit bankruptcy is one of the more recent events that led observers to question how liens may affect the assessment of debts in bankruptcy proceedings. However, Michigan statutes did not explicitly extend any liens to the debt considered in the Detroit bankruptcy proceedings.

Amanda Van Dusen, a principal with the law firm Miller Canfield, Paddock and Stone in Michigan, said that she didn't appreciate the significance of the word "lien" in a statute until she talked with bankruptcy lawyers.

"I thought, as most bond lawyers did, that a pledge means a promise," she said. "The first lesson that the bankruptcy lawyers pounded into me [was] … that a pledge is a promise and in bankruptcy, promises are broken."

Richard Ciccarone, president and chief executive officer of Merritt Research Service, said that when he was given general obligation bonds that said they were payable from an unlimited tax, he viewed that as a pledge similar to a statutory lien.

"In a way, the pledge that was implied here was something we always believed was really like a common law marriage, you didn't really say yes to the vow, but you were married," Ciccarone said. "You may not necessarily find the words 'statutory lien,' but you believed it was a statutory lien."

Judge Frank Bailey, a U.S. bankruptcy judge for the District of Massachusetts, said Ciccarone was partially right because the bankruptcy code's definition of a statutory lien does not specify that the statute must use the words "statutory" or "lien" in creating one, only that the language match up to the definition outlined in the code.

The panelists also agreed that the lack of bankruptcy court decisions on statutory liens leaves observers with a lack of precedent. Most resolutions where statutory liens are involved come through negotiated settlements. The murky territory that liens currently occupy means industry participants need to talk more about what provisions borrowers may have, Ciccarone said.

"For the analyst still left in a world where [the consideration of statutory liens] is evolving, your responsibilities are going to be more burdensome," he said. "If [issuers] think they have a statutory lien, we want that to be clear. If they don't know, we want them to say they don't know."

Jane Ridley, a senior director and analytical leader with Standard & Poor's, both moderated the panel and played a key role in a report released on Wednesday regarding the role of statutory liens in ratings.

The report acknowledged a recent trend, exhibited by Detroit, Puerto Rico, and earlier by Central Falls, R.I. in its bankruptcy proceedings, of legal provisions like pledges becoming less binding after earlier being widely considered unalterable. But it said ratings analysts should continue to rely more on an issuer's fundamental areas of credit health than the presence of a statutory lien.

For example, the report wrote that if a rating agency was comparing two school districts, one with strong credit fundamentals but no statutory lien and one with weak credit fundamentals but with a statutory lien, "it is difficult for us to imagine a scenario where the latter would carry a higher issue credit rating."

However, the report said that "the existence of legal protections can inform our opinion of the issuer's incentive and ability to pay its various obligations."

"Legal protections, whether in bond documents or by operation of law, can strengthen a bondholder's recovery prospects," the report said. "However, we've observed that when an issuer's creditworthiness deteriorates to the point where bondholders' main comfort is to rely on the legal provisions for payment, the situation isn't nearly as straightforward as it may have appeared when the bonds were issued."

The report also was in line with the panelists' assessments of the lack of legal precedent, arguing that applying legal concepts outlined in negotiated settlements and incomplete case law to all of their ratings is "without analytical merit."

The Bond Buyer

By Jack Casey

May 6, 2016

[Wall Street Sees Year of Progress and Pitfalls in Junked Chicago.]

Since Chicago was cut to junk by Moody's Investors Service in May 2015, the city has sold more than $3.3 billion of debt, allowing it to avoid potentially devastating bank penalties triggered by the downgrade, and pushed through a record property-tax increase.

But the triage over the last year has done little to loosen the financial bind that tarnished its standing on Wall Street in the first place: A $20 billion pension-fund deficit that's adding hundreds of millions of dollars a year to its bills, a legacy of long promising workers more in benefits than officials were willing to fund.

"All of this progress may not mean much if they don't finish the job," said Ty Schoback, a senior analyst at Columbia Threadneedle Investments, which holds about $300 million of Chicago debt among its $25 billion of municipal securities. "They need to start finding the money to put into those funds now. Not six months from now. Not 12 months from now. They need to do it now."

The Windy City, the biggest in the U.S. with a below investment-grade rating, has become a key locus of distress in the $3.7 trillion municipal-bond market, contending with some of the same strains that helped push Detroit into a record bankruptcy three years ago. Reeling from debts that have been building for decades, Chicago's push over the past year to steady its finances illustrates the difficult way out for cities and states that have saved $1.7 trillion less than they need to cover pensions due in the years ahead.

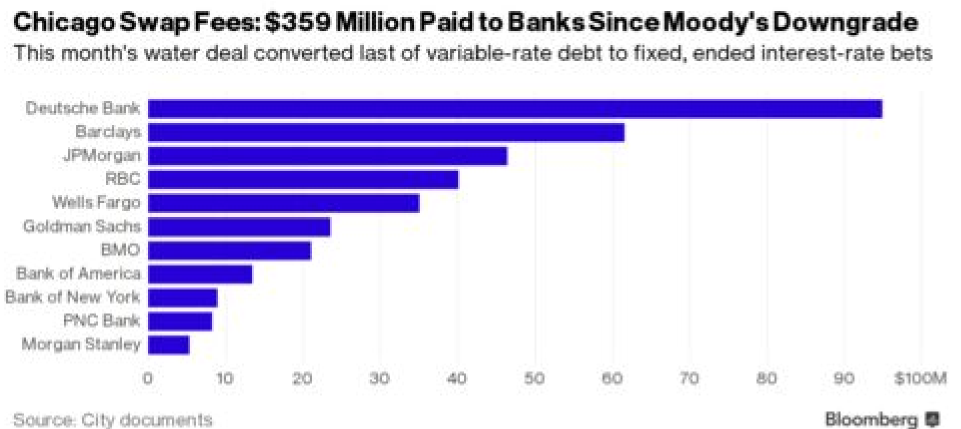
"We have overcome a large number of hurdles," Chicago's budget director Alex Holt said in an interview at City Hall. "It doesn't mean that there are not some big hurdles that are ahead of us, particularly in the case of pensions."

Chicago underfunded its retirement system by $7.3 billion in the decade through 2014, city records show, freeing up cash to spend on salaries, roadwork and other routine bills. That's put it under pressure to set more taxpayer money aside to keep from falling further behind.

The Moody's downgrade threatened to worsen the city's financial burdens by exposing it to as much as $2.2 billion in costs to repay floating-rate debt early and call off related derivative trades, which banks had the right to demand. To skirt that, the city pushed through a wave of bond issues as

investors demanded yields higher than those on some speculative municipal securities.

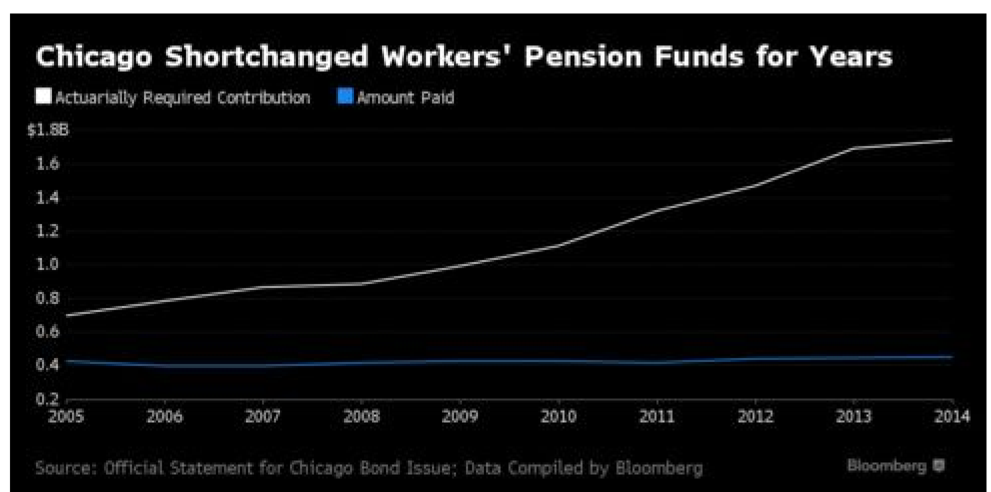
It also paid $359 million to scuttle the interest-rate swap contracts, eliminating the risk of having to settle them when money couldn't easily be raised.



"They acted quickly," said John Miller, co-head of fixed income at Nuveen Asset Management, which oversees $110 billion of municipals and bought Chicago debt after the downgrade. "The rates they're getting on the new issues that they've done are pretty manageable."

Chicago also showed elected officials are willing to raise taxes to chip away at the debts. With support from Democratic Mayor Rahm Emanuel, who was re-elected to another four-year term in April 2015, the city council in October voted to boost real-estate levies by $543 million over four years, the biggest jump ever.

The increase will bolster funding for two of its funds, the police and fire pensions, which were only about a quarter funded as of December 2014. Even so, Emanuel has petitioned Illinois Governor Bruce Rauner to let the city put off about $845 million of pension payments it's supposed to make over the next five years, which would add to future bills. Rauner has until May 31 to approve that law, which would give the city 40 years — instead of 25 years — to make its retirement plans 90 percent funded.



Even with the property-tax increase, the pension obligation is poised to grow each year and the city

has little power to alter benefits. In March, the Illinois Supreme Court dashed Emanuel's plan to cut cost of living adjustments and require workers and the city to pay more into the municipal and laborers pensions.

"We acknowledge the steps that the city has taken over the last few months," said Matthew Butler, Moody's lead analyst on Chicago. "The path to improving the pension situation is likely going to be on the city. It's going to be increasing contributions to those plans."

The city is working to come up with a new way to shore up the pensions, including how to raise revenue, according to Chief Financial Officer Carole Brown. The municipal and laborer plans are on track to run out of money in 10 and 13 years, respectively. If they do, more than half of the budget could be devoted to retirement bills, according to Moody's.

Any overhaul may prove politically difficult. Sixty-two percent of Chicago residents disapprove of Emanuel's job performance, according to a survey by the New York Times and the Kaiser Family Foundation released this month. The mayor's standing has been weakened since last year's release of a video showing a white police officer shooting a black teenager 16 times, which sparked protests decrying the law-enforcement tactics used in Chicago's minority neighborhoods.

The ongoing financial uncertainty has pushed investors to demand high yields to hold Chicago's bonds instead of top-rated debt, even though the city's borrowing costs have dropped amid a rally in the municipal market.

Chicago bonds issued two weeks after the Moody's downgrade that mature in 2037 priced to yield 5.77 percent, data compiled by Bloomberg show. By contrast, investors demanded just a 4.88 percent rate on a portion of the city's January bond offering due in 2038.

Those bonds still trade at a higher rate than debt issued for an upstart methanol plant in Texas, a fertilizer facility in Iowa and even some junk-rated tobacco bonds, which Moody's projects to almost-surely default. Chicago's city council on Wednesday approved selling an additional $600 million of general-obligation bonds, an issue that's set to come to market in the third quarter.

The volatility that rattled bondholders after last year's downgrade is likely to be more muted, said Nuveen's Miller.

"The move last summer was the big one," said Miller, who may buy more Chicago debt. "You have to be prepared for bumps in the road on a credit like this, but I don't think they'll be 200 basis point moves, and you can earn a decent amount of yield along the way."

Bloomberg Business

by Elizabeth Campbell and Brian Chappatta

May 18, 2016 — 2:00 AM PDT Updated on May 18, 2016 — 11:22 AM PDT

Tobacco Bond Ratings From Fitch Will Be Withdrawn in 30 Days.

Fitch Ratings plans to withdraw its ratings on all tobacco bonds in the $3.7 trillion municipal market in 30 days because the company doesn't believe future payments from cigarette makers can be predicted reliably.

Two settlements, one with New York and another with California and 23 other states, modified calculations outside of the original parameters prescribed as part of the 1998 settlement with Reynolds American Inc., Lorillard Inc. and Philip Morris USA, Fitch said Monday in a report. Under the pact, the companies agreed to make annual payments to states in perpetuity to settle liabilities for health-care costs tied to smoking. The amount was distributed according to allocation percentages.

"There was historically a single, consistent application of the calculation adjustments that affected all participating jurisdictions in the same way," Fitch analysts Steven Stubbs, Rodney Pelletier and Kevin Duignan wrote. "However, more recent settlement agreements related to disputed payments connected to the non-participating manufacturer adjustment have eroded Fitch's confidence in the predictability of the calculation of MSA payments going forward."

In October, New York Attorney General Eric T. Schneiderman announced a settlement that releases money from an escrow account to the state, counties and New York City. The funds had been withheld since 2003 because of a dispute surrounding the 1998 settlement. Going forward, 90 percent of previously trapped funds will be released and the state has no risk of losing future annual payments as the result of arbitration proceedings.

Significant Trend

The settlements highlight uncertainty in the $34 billion corner of the municipal market because some states could be vulnerable to an outsized adjustment in cigarette-company payments, Fitch said. High-yield tobacco bonds rallied by the most in nine months after Schneiderman's announcement.

"The significant trend toward material, and different settlements, the introduction of new variables with little analyzable history, and the incentives in place for additional settlements erode our confidence that a consistently reliable structured finance rating methodology can be applied going forward," the Fitch analysts wrote.

California's Golden State Tobacco Securitization Corp. and Ohio's Buckeye Tobacco Settlement Financing Authority are the two biggest issuers of the debt, data compiled by Bloomberg show. Fitch rated each of the agencies' single-largest securities CCC, the fifth-lowest grade and worse than the ranks from Moody's Investors Service and S&P Global Ratings.

In a $55,000 trade on Tuesday, the junk-rated Golden State debt due in 2047 traded at 101.8 cents on the dollar, to yield 3.89 percent, the lowest in a month, data compiled by Bloomberg show. In a $2.78 million exchange, investment-grade California tobacco bonds traded at 121.9 cents, the highest since May 5.

High-yield tobacco bonds have returned 11.2 percent this year, compared with 3 percent for the broad municipal market, Barclays Plc data show. Since the start of 2014, the debt has surged 53 percent.

Bloomberg Business

by Brian Chappatta

May 16, 2016 — 1:37 PM PDT Updated on May 17, 2016 — 6:53 AM PDT

Chicago's Pension-Fund Woes Just Became $11.5 Billion Bigger.

Chicago's pension-fund shortfall just got $11.5 billion bigger.

Thanks to the defeat of the city's retirement-fund overhaul by the Illinois Supreme Court and new accounting rules, Chicago's so-called net pension liability to its Municipal Employees' Annuity and Benefit Fund soared to $18.6 billion by the end of 2015 from $7.1 billion a year earlier, according to its annual report. The fund serves some 70,000 workers and retirees.

The new figure, a result of actuaries' revised estimates for the value in today's dollars of benefits due as long as decades from now, doesn't change how much Chicago needs to contribute each year to make sure the promised checks arrive. But it highlights the long-term pressure on the city from shortchanging its retirement funds year after year — decisions that are now adding hundreds of millions of dollars to its annual bills and have left it with a lower credit rating than any big U.S. city but once-bankrupt Detroit.

"The longer they wait to get this fixed, the more expensive it's going to get for the city's taxpayers," Richard Ciccarone, the Chicago-based president of Merritt Research Services LLC, which analyzes municipal finances.

The estimate presented Thursday to the board of the municipal fund, one of Chicago's four pensions, will add to what had been an unfunded retirement liability for the city estimated at $20 billion.

A key driver was the court ruling striking down Mayor Rahm Emanuel's plan that cut benefits and boosted city and employee contributions. Without it in place, the fund is now set to run out of money within 10 years.

That triggered another change. New accounting rules, adopted to keep governments from using overly optimistic investment-return forecasts to mask the scale of their liabilities, require them to use more modest assumptions once pension plans go broke. As a result, the reported liabilities jump.

The Chicago fund is notable because very few governments have been affected by the change, according to Ciccarone. "The investment returns are not going to fix the problems themselves," he said.

City officials from Emanuel to Chief Financial Officer Carole Brown have said the city is working on a solution to shore up the retirement system. Chicago has already passed a record property-tax increase that will bolster the police and fire funds.

Under the traditional way of estimating the municipal fund's obligations, which is how annual contributions are set, the shortfall rose to $9.9 billion as of Dec. 31, based on market value of its assets, according to the actuaries report. That's up from $7.1 billion a year earlier.

The pension is only 32 percent funded — meaning it has 32 cents for every dollar it owes — compared to 42 percent last year, according to the actuaries. And it has to sell 12 percent to 15 percent of its assets every year to pay out benefits.

City officials are having "very good discussions" with the unions about the issue, according to Emanuel, who has made clear that he disagrees with the court's ruling to throw out his plan.

"We're working through the issue to get to what I call a responsible way to fund their pensions

within the confines, the straitjacket that the court has determined," Emanuel told reporters at City Hall on Wednesday.

A proposal is pending in the state legislature to bolster funding for the benefit fund. The plan would ensure it's 90 percent funded by the end of fiscal year 2055. Jim Mohler, executive director of the fund, told board members on Thursday that it's a "fluid situation."

Bloomberg Business

by Elizabeth Campbell

May 19, 2016 — 2:52 PM PDT Updated on May 20, 2016 — 7:12 AM PDT

Puerto Rico Electric Gets $55 Million Funding From Creditors.

Puerto Rico's government-run electric utility resurrected a deal with creditors willing to lend it $111 million, a sign of slow-moving progress in the island's first negotiated agreement to cut some of its $70 billion of debt.

The Puerto Rico Electric Power Authority's creditors will provide $55 million to the utility as a first installment of a $111 million bond, the agency said in a statement Friday. The parties are working to finalize the sale of the remaining $55 million in securities.

The financing is part of the debt-restructuring accord the utility, known as Prepa, reached in December with hedge funds, bond insurers and mutual funds, which marked the island's first step toward cutting what it owes creditors. The promised cash allowed the utility to avoid defaulting on a $196 million interest payment due in January, with bondholders and insurers agreeing to purchase the three-year bonds later.

Prepa had been negotiating since last week, when the debt-sale agreement between bondholders, MBIA Inc. and Assured Guaranty Ltd. lapsed. Creditors were reluctant to lend because Governor Alejandro Garcia Padilla signed a debt-moratorium law on April 6 that allows him to suspend principal and interest payments. This week, Puerto Rico's Senate alleviated the concerns by passing legislation exempting the new bonds from the moratorium law.

"This agreement with creditors demonstrates the continued commitment of Prepa," Lisa Donahue, the agency's chief restructuring officer, said in a statement.

The move follows an agreement between President Barack Obama's administration and Republicans in Congress on Thursday over legislation, known as PROMESA, that would create a new financial control board to manage a debt restructuring, as well as to oversee the island's finances. The bill also protects any existing, voluntary restructuring agreements between a commonwealth agency and its creditors, like the Prepa plan.

"It's a positive for Prepa because they're getting some money in the door — that will help their liquidity near-term," said Matt Fabian, partner at Concord, Massachusetts-based Municipal Market Analytics. "The potential amendment to the moratorium, or the very reasonable prospects of passing the PROMESA bill, might be giving the creditors some confidence."

Bloomberg Business

by Michelle Kaske and Brian Chappatta

May 20, 2016 — 9:12 AM PDT Updated on May 20, 2016 — 11:12 AM PDT

New Jersey Mega Mall Wants State to Sell Debt to Finish the Job.

The municipal-bond financing plan for the unfinished New Jersey mega mall has changed, the latest of numerous shifts the ill-fated project has undergone since ground was first broken over a decade ago in the Meadowlands.

The council of East Rutherford, the borough that's home to the vacant structure now called American Dream, on Tuesday asked the New Jersey Sports and Exposition Authority to take its place in selling $675 million of municipal debt for the developer, Triple Five Group, which wants to issue tax-exempt securities to lower the cost. Having the state agency do that would be easier and less expensive than going through a lengthy process to change the taxable-debt plans already approved by East Rutherford, said borough Mayor James Cassella.

"Triple Five decided that this would go a lot smoother," Cassella said by telephone Wednesday.

Plans for the mega mall about 10 miles (16 kilometers) west of Manhattan, near the MetLife Stadium, include the country's first indoor ski slope and a theme park. Previous developers had run out cash, leaving thousands of New Jersey commuters with a prominent view of a vacant colossus that Governor Chris Christie once called the "the ugliest damn building in New Jersey, and maybe America." The complex by Edmonton, Alberta-based Triple Five is slated to open in 2017.

The bonds would be backed by payments in lieu of taxes from Triple Five, after East Rutherford receives its cut, Cassella said. An additional debt offering of $350 million would rely on state tax breaks.

Tony Armlin, Triple Five's vice president of development and construction, and Debbie Patire, a spokeswoman for American Dream, didn't return calls and e-mails requesting comment Wednesday.

The New Jersey Sports and Exposition Authority "continues to work with Triple Five to facilitate moving this important project ahead," Brian Aberback, a spokesman, said in an e-mailed statement.

Triple Five said the bonds could be sold by the summer, Cassella said. In June 2015, Armlin said the offerings may occur by September.

"If this works, this would be great. This is the best deal we've had — if it happens," Cassella said. "It's changed twice before. Who's to say it won't change again?"

Christie in 2011 had counted on American Dream, called Meadowlands Xanadu when it started, to bolster a local economy still struggling from the recession. The project by Triple Five, the owner of the Mall of America in Minnesota, was then slated to open in 2013.

Bloomberg Business

by Romy Varghese

May 18, 2016 — 9:23 AM PDT

Bloomberg Brief Weekly Video - 05/19

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

Watch the video.

May 19, 2016

As Junk Rallies, Tribal Startup Sets Riskiest Muni Bond in Years.

In a municipal-bond market flush with cash chasing the riskiest securities, a new business created to sell propane to American Indian tribes is planning to issue debt that, from the start, is seen only a few steps away from a default.

The venture, set up by a Dallas-based company, is aiming at a problem that's vexed remote reservations in the Great Plains: winter fuel scarcities, which have led to price spikes and left some impoverished residents unable to heat their homes. The $22 million sale, which is slated for sometime in the next two months, would be used to buy propane when prices are low, store it and truck it in when needed. Revenue from those sales would repay the debt.

Bondholders may be out of luck if the business fails to get enough tribes to sign on, according to Moody's Investors Service, which said only three had by early May. So it rated the securities Caa2, eight steps into junk, the lowest grade it has given a new bond offering in at least six years. The rank indicates "very high credit risk."

"Anyone who buys will have had to have done extensive due diligence," said Peter Block, managing director with Ramirez & Co., a New York bond underwriter that isn't working on the deal. "Hard to say who will be interested in this."

Now is a good time to find anyone who is. With municipal-market yields the lowest since the 1960s, investors have been snapping up the worst-rated bonds, which have bigger payouts because of the risk. That has fueled a rally in speculative securities issued by state and local government agencies, including bonds repaid with tobacco-company settlements that rating companies say are almost certain to default.

Individuals added $310 million to funds focused on the riskiest municipal debt in the week ended May 11, the most in about four months, according to Lipper US Fund Flows. With money coming in, the assets of such high-yield funds have climbed to a record $82 billion from $58 billion at the start of 2014, according to data from Morningstar Inc. and Lipper.

The debt for the Infrastructure Development Cooperative's energy business would be sold through the Madison, Wisconsin-based Public Finance Authority. The agency, which rents out its access to the tax-exempt market for a fee, has raised money for charter schools, real estate developments and other projects in more than a dozen states. Scott Carper, the authority's program manager, declined to comment.

L. Steven Haynes, the founding partner of Haynes Investments, an affiliate of Highland Park

Management LLC — which Moody's says is overseeing the project — didn't respond to telephone calls seeking comment. Haynes Investments, which is based in a hangar next to Dallas's Love Field airport, describes him as "one of the leading business executives in Native American project finance."

Gabe Doney, executive director of Tribal Infrastructure Development Cooperative, a Valentine, Nebraska, supplier of products and services to American Indians, said in an e-mail that he is Haynes' partner on the deal. Doney said the group's goal is to sell the bonds within the next 60 days.

"We are still working toward our bond," said Doney. "Once we have everything taken care of we would be willing to discuss it."

The business may fill a chronic need. In winter, those living on reservations are routinely squeezed by propane shortages that push retail prices to unaffordable heights, said Gavin Clarkson, American Indian finance scholar at New Mexico State University.

In 2014, the governors of several states signed emergency declarations making it easier to truck in supplies after a shortage led to at least one death at the Standing Rock Sioux reservation, which straddles the border of North Dakota and South Dakota.

"People can't afford to heat their homes so they risk freezing to death," said Clarkson. "It's a solid business concept, but the question is whether the tribes can execute."

The business' ability to generate revenue adequate to repay the bonds is the biggest challenge. Though it identified "significant" demand among 37 tribes, it has only signed agreements with three of the 10 it has targeted as initial customers, Moody's said in a May 11 report. Borrowing without enough agreements makes the deal "highly speculative," even though some of the proceeds will be used to cover the first three years of interest payments, according to the credit-rating company.

"The potential exists for significant shortfalls in net revenues," Moody's said.

Bloomberg Business

by Darrell Preston

May 20, 2016 — 2:00 AM PDT Updated on May 20, 2016 — 8:41 AM PDT

Paying for Local Infrastructure In a New Era of Federalism: A State-By-State Report.

National League of Cities Local Infrastructure Funding Report

Declining funding, increasing mandates and misaligned priorities at the federal and state levels have placed responsibility squarely on local governments to maintain roads, upgrade water and wastewater systems and accommodate growing transit ridership.

But do cities have the authority to raise the revenue needed to maintain aging infrastructure and to make new investments that support growing populations?

The ability of cities to meaningfully address our nation's vast infrastructure challenges is bound by

levers authorized to them by states. This report offers a state-by-state analysis of local option taxes and fees, including motor vehicle fees, sales and fuel taxes, as well as emerging mechanisms like state infrastructure banks and public-private partnerships.

Read the full report.

Republicans, Obama Administration Reach Agreement on Puerto Rico Restructuring Bill.

WASHINGTON — House Speaker Paul Ryan capped weeks of delicate negotiations by agreeing with the White House and congressional Democrats on a deal to allow Puerto Rico to restructure its $70 billion debt load.

The bill, a rare moment of bipartisan cooperation in an election year, offers a path for the island to write down its debt similar to bankruptcy while forcing its government to submit financial statements and budget blueprints to a federal oversight board. The legislation doesn't spend any federal money, a critical ingredient to win Republican support.

The big questions now are whether Mr. Ryan can keep conservative lawmakers from rebelling against the compromise, and if it passes the House, whether and when the Senate might act.

Puerto Rico has defaulted on three classes of bonds, including this month when it missed most of a $422 million payment. It faces payments totaling $2 billion on July 1 that the island's governor said can't be paid.

Puerto Rico's public agencies can't seek protection in federal bankruptcy court to shed debts because the island, a commonwealth of the U.S., isn't a state, and it can't seek aid from the International Monetary Fund because it isn't an independent country.

Mr. Ryan sidestepped a question Thursday about whether the bill would attract a majority of Republicans but said the legislation was "exactly where we wanted it."

Rep. Raul Labrador (R., Idaho), a conservative who has been negotiating closely with Republican leaders on the bill, said he expected the legislation would get widespread GOP support.

Puerto Rico missed a debt payment on Monday. The White House is calling on Congress to step in and help the U.S. territory avoid financial disaster. How did the island get into this situation? WSJ's Jason Bellini has #TheShortAnswer. Photo: Erika P. Rodriguez/Bloomberg
Rep. Jim Jordan (R., Ohio), who leads the conservative House Freedom Caucus, said it wasn't yet clear how many of the group's members would support the bill. "You'll see some who will, some who won't," he said.

Opposition from the entire group would force Mr. Ryan to rely on a significant number of Democrats to pass the legislation, creating the type of political headache that badly weakened his predecessor, John Boehner.

The bill follows weeks of close consultations led by the House Natural Resources Committee, which has jurisdiction of U.S. territories. The committee pulled an earlier iteration from consideration last month after objections surfaced from both parties.

Mr. Ryan "has done what those on the right asked leadership to do for years, which is to do this through regular order and don't jam this down our throats," said Douglas Holtz-Eakin, who heads the American Action Forum, a right-leaning Washington think tank. Those who oppose the bill "can't complain about how it got done."

Democrats appear poised to support the bill. Treasury Secretary Jacob Lew called it "a fair, but tough bipartisan compromise" and House Minority Leader Nancy Pelosi (D., Calif.) said she hoped Congress would "move swiftly" to approve it.

Having an agreement between leaders of both parties in Congress and the White House "is an accomplishment in and of itself," said Mr. Holtz-Eakin, who supports the bill.

The goal of the bill is twofold. First, officials want to reduce a debt burden that currently absorbs nearly a third of the commonwealth's revenues, far more than any U.S. state. Second, they want to avoid a massive courtroom brawl between different creditors and the government that could further chill investment in Puerto Rico, which has been mired in recession for most of the last decade.

The bond funds with the largest exposure to Puerto Rico's debt haven't taken public positions on the bill. OppenheimerFunds Inc. is reviewing the bill, said a spokeswoman. Franklin Templeton Inc. declined to comment.

Senate GOP aides said Thursday they were still reviewing the legislation, but leaders have indicated they would probably approve legislation if the House could pass it first.

"I see it moving through the Senate very quickly, as compared to everything else in the Senate that moves very, very slowly," said former Sen. Judd Gregg, a Republican who has been hired by a group of bondholders that supports the bill.

Still, the legislative process will give deep-pocketed opponents several chances to peel apart a fragile coalition. Some bondholders have objected to a broad debt restructuring because it would force them to accept losses earlier. They say the bill would set a precedent for distressed states and chill the island's ability to issue new debt. And some are ramping up an expensive lobbying campaign to defeat the bill.

Former Treasury Secretary Lawrence Summers said the current legislation offered the "only prospect" of restoring Puerto Rico's access to credit markets anytime soon. "This debt is not being repaid," he said. "Creditors should want to establish the precedent that there is no debt relief without reform and without a clear necessity."

If creditors "were successful in further impoverishing millions of Puerto Ricans for the sake of their bonds, which they bought with a very substantial risk premium, it would really be a demonstration that financial interests have excessive power in formulating public policy," said Mr. Summers.

The compromise left each side without everything it wanted. Democrats didn't receive a health-care funding boost and objected to provisions that exempt the island from new overtime-pay regulations. Some Republicans wanted tougher language to overhaul pensions. And Puerto Rico's governor said the federal oversight board was an "unacceptable" incursion on self-rule.

THE WALL STREET JOURNAL

By NICK TIMIRAOS and KRISTINA PETERSON

Updated May 19, 2016 5:38 p.m. ET

—Heather Gillers contributed to this article.

Write to Nick Timiraos at nick.timiraos@wsj.com and Kristina Peterson at kristina.peterson@wsj.com

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GASB Posts New Page for Financial Statement Users.

Financial reporting is a communication between governments and financial report users. The GASB's goal is to set accounting standards that yield information that users need to assist them in making decisions about a government and to assist them in assessing whether it has been accountable for the resources that have been entrusted to it.

While we believe sound financial reporting helps financial report users to make informed decisions, it is important to note that the GASB always carefully weighs the cost of making changes against the benefit of those changes to users.

Continue reading.

FAF Issues 2015 Annual Report: "Serving the Financial Statement User."

Norwalk, CT — May 19, 2016 — The Financial Accounting Foundation (FAF) today posted its 2015 Annual Report to the FAF website.

With the theme of "Serving the Financial Statement User," the annual report focuses on how the FAF, the Financial Accounting Standards Board (FASB), and the Governmental Accounting Standards Board (GASB) serve the capital markets through their specific roles in the standard-setting process. That process is aimed at developing standards that provide investors, lenders, and other financial statement users with information to make sound decisions about how to allocate capital and other resources.

The annual report features profiles of 16 financial statement users who share, in their own words, why high-quality accounting standards are important to the work that they do. Those profiled include institutional and retail investors, municipal analysts, and data aggregators who use the U.S. GAAP Financial Reporting Taxonomy.

The importance of user input to the standard-setting process is examined in letters to stakeholders from FAF Board of Trustees Chairman Charles H. Noski, FAF President and Chief Executive Officer Teresa S. Polley, FASB Chair Russell G. Golden, and GASB Chair David A. Vaudt.

The annual report also provides a high-level summary of the year's highlights.

In addition to management's discussion and analysis and audited financial statements, the annual report includes listings of all FAF, FASB, and GASB advisory groups, including the Private Company Council and the Emerging Issues Task Force, as well as key FASB and GASB publications issued in 2015.

Those interested in receiving a hard-copy version of the report may request one by emailing clklimek@f-a-f.org. Hard copies are available in limited quantities and will be distributed on a first-

come, first-served basis.

In addition to PDF and hard copies of the 2015 Annual Report, in early June the FAF will roll out a mobile-friendly digital version that features unique video content and links to relevant FAF, FASB, and GASB documents.

U.S. Municipal Credit Report, First Quarter 2016.

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 $96.5 billion in the first quarter of 2016, an increase of 26.2 percent from the prior quarter ($76.4 billion) but a decline of 7.3 percent year-over-year (y-o-y) ($104.0 billion). Including private placements ($2.6 billion), long-term municipal issuance for 1Q’16 was $99.3 billion.

Tax-exempt issuance totaled $89.3 billion in 1Q’16, an increase of 32.6 percent q-o-q but a decline of 5.9 percent y-o-y. Taxable issuance totaled $6.4 billion in 1Q’16, an increase of 23.8 percent q-o-q but a 6.4 percent decline y o y. AMT issuance was $0.8 billion, a decline of 79.7 percent q-o-q and 66.3 percent y-o-y.

By use of proceeds, primary and secondary education led issuance totals in 1Q’16 ($24.6 billion), followed by general purpose ($24.4 billion), and higher education ($10.4 billion).

Notable sectors that saw increased y-o-y issuance were water and sewer facilities ($10.2 billion, an increase of 20.0 percent and 7.9 percent q-o-q and y-o-y, respectively) and economic development ($2.3 billion, an increase of 3.8 percent and 26.3 percent q-o-q and y-o-y respectively).

Refunding volumes as a percentage of issuance rose slightly from the prior quarter, with 51.5 percent of issuance attributable to refundings compared to 43.6 percent in 4Q’15, but was a decline compared to the 62.2 percent in 1Q’15.

Read the full report.

May 18, 2016

FINRA Files Complaint Charging Lawson Financial Corporation, CEO With Fraudulent Municipal Bond Sales, and Charging CEO With Misuse of Customer’s Charitable Trust Funds.

WASHINGTON — The Financial Industry Regulatory Authority (FINRA) announced today that it has filed a complaint against Phoenix-based firm, Lawson Financial Corporation, Inc. (LFC), and Robert Lawson, the firm’s President and Chief Executive Officer, charging them with securities fraud in connection with the sale of millions of dollars of municipal revenue bonds to customers. The

complaint further charges Robert Lawson and Pamela Lawson, LFC's Chief Operating Officer, with self-dealing by abusing their positions as co-trustees of a charitable remainder trust and improperly using the trust funds to indirectly prop up the struggling offerings. Based on the transfers of millions of dollars from the charitable remainder trust account, the complaint also charges Robert Lawson with misuse of customer funds.

The municipal revenue bonds at issue in the complaint include: (1) a $10.5 million bond offering in October 2014 for bonds relating to an Arizona charter school as underwritten by LFC and sold to LFC customers, as well as subsequent sales of these bonds to LFC customers in the secondary market; (2) secondary market bond sales to LFC customers in 2015 of earlier-issued municipal revenue bonds relating to the corporate predecessor of the same Arizona charter school; and (3) secondary market sales to LFC customers between January 2013 and July 2015 of earlier-issued municipal revenue bonds concerning two different assisted living facilities in Alabama.

The complaint alleges that Robert Lawson and LFC were aware of financial difficulties faced by the municipal revenue bond conduit borrowers (the charter school in Arizona and the two assisted living facilities in Alabama) and fraudulently hid from LFC customers who purchased the bonds the material facts that the charter school and the two assisted living facilities were under financial stress. The complaint alleges that Robert Lawson and LFC carried out their fraudulent scheme by transferring millions of dollars from a deceased customer's charitable trust account to parties associated with the conduit borrowers to hide the financial condition of the bond borrowers and the risks posed to the municipal revenue bonds. In particular, the complaint alleges that LFC and Robert Lawson hid from LFC customers who purchased the bonds the material fact that Robert Lawson – in his role as co-trustee of the charitable trust account, and with the knowledge of his wife Pamela Lawson – was improperly transferring millions of dollars of funds from the charitable remainder trust account to various parties associated with the bond borrowers when the borrowers were not able to pay their operating expenses and, for certain of the bonds, were not able to make the required interest payments on the bonds.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Under FINRA rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's BrokerCheck. FINRA makes BrokerCheck available at no charge. In 2015, members of the public used this service to conduct 71 million reviews of broker or firm records.

Investors can access BrokerCheck at www.finra.org/brokercheck or by calling (800) 289-9999. Investors may find copies of this disciplinary action as well as other disciplinary documents in FINRA's Disciplinary Actions Online database. Investors can also call FINRA's Securities Helpline for Seniors at (844) 57-HELPS for assistance or to raise concerns about issues they have with their brokerage accounts and investments.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules,

enforcing those rules and the federal securities laws, and informing and educating the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

For Release:
Thursday, May 19, 2016

Contact(s):
Michelle Ong (202) 728-8464
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- GFOA Alert: Bank Loan Disclosure
- The Hidden Risks of a Growing Way to Pay for Infrastructure.
- How The MSRB Wants To Change Dealer Closeout Procedures.
- MSRB Seeks SEC Approval of Proposal to Update Close-Out Procedures.
- Why Is an Indianapolis Authority Settling a Rebate Dispute with the IRS?
- *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.* – Supreme Court of Ohio holds that Legislature was able to authorize State Board of Education to adjust local school funding calculations and to retroactively immunize Board from liability for any legal claim of reimbursement by a school district for a reduction of school-foundation funding without violating state constitution's retroactivity clause, as the clause does not protect political subdivisions that are created by the state to carry out governmental functions, including school districts.
- And finally, You Can Take My Quercus Berberidifolia When You Pry It From My Cold, Dead Fingers is brought to you this week by *GeorgiaCarry.org v. Atlanta Botanical Garden, Inc.*, in which the Atlanta Botanical Garden was sued over its no-firearms policy. School field trips are about to get a lot more interesting, kids! No word yet on when Friends of the Library plans to go nuclear. We'll keep you posted.

MUNICIPAL ORDINANCE - COLORADO

City of Fort Collins v. Colorado Oil

Supreme Court of Colorado - May 2, 2016 - P.3d - 2016 WL 1757630 - 2016 CO 28

State oil and gas association brought action against home-rule city requesting declaration and permanent injunction related to city's fracking moratorium.

The District Court granted association's motion for summary judgment. City appealed, and the Court of Appeals requested a transfer of the case to the Supreme Court.

The Supreme Court of Colorado held that:

- Moratorium involved a matter of mixed state and local concern;
- Oil and Gas Conservation Act did not impliedly preempt moratorium; but
- Moratorium operationally conflicted with Act.

Home-rule city's five-year moratorium on fracking and storage of fracking waste within city

operationally conflicted with application of Oil and Gas Conservation Act, and therefore Act preempted city's moratorium. Even though it may have been possible to produce oil and gas without fracking, Commission promulgated exhaustive set of rules and regulations pursuant to Act to prevent waste and to conserve oil and gas, which comprehensively regulated fracking process, city's fracking moratorium rendered state's statutory and regulatory scheme superfluous by preventing operators who abided by Commission's rules and regulations from fracking, and city's moratorium materially impeded effectuation of state's interest in efficient and responsible development of oil and gas resources.

GUNS - GEORGIA

GeorgiaCarry.org v. Atlanta Botanical Garden, Inc.

Supreme Court of Georgia - May 9, 2016 - S.E.2d - 2016 WL 2619594

Visitor to botanical garden operated by nonprofit corporation on property leased from city, who held a Georgia weapons carry license, petitioned for declaratory and injunctive relief regarding garden's prohibition of weapons on garden's premises.

The Superior Court dismissed petition. Visitor appealed.

The Supreme Court of Georgia held that:

- Visitor did not improperly call for the interpretation and application of a criminal statute in seeking declaratory judgment; and
- Claim for interlocutory injunction, prohibiting botanical garden from banning licensed individuals from carrying weapons on garden's premises, did not improperly implicate the administration of criminal law.

Visitor to botanical garden operated by nonprofit corporation on property leased from city, who held a Georgia weapons carry license, did not improperly call for the interpretation and application of a criminal statute in seeking declaratory judgment that garden could not prohibit licensed individuals from carrying weapons on the property. Though statute on which the visitor based his action was found within confines of criminal code, visitor did not seek an advisory opinion that his proposed actions would not be criminal, his requested relief was not based on mere speculation that garden would enforce weapons ban since he had already been escorted from property by law enforcement, and there was no allegation that criminal conduct had been accomplished.

Because nonprofit corporation that operated botanical garden complex on property leased from city lacked authority to administer the criminal law, injunction sought by visitor to prevent garden from "causing" an arrest or prosecution of visitor or other similarly licensed individuals from carrying a firearm on the property would be fruitless.

Claim for interlocutory injunction, prohibiting botanical garden operated by nonprofit corporation on property leased from city from banning licensed individuals from carrying weapons on garden's premises, did not improperly implicate the administration of criminal law.

PENSIONS - ILLINOIS

Matthews v. Chicago Transit Authority

Supreme Court of Illinois - May 5, 2016 - N.E.3d - 2016 IL 117638 - 2016 WL 2586346

Current and retired former employees brought putative class action against Chicago Transit Authority and its retirement plan following changes to health care benefits, asserting breach of contract, promissory estoppel, breach of fiduciary duty, and declaratory relief.

Authority filed motions to dismiss. The Circuit Court dismissed the action. Employees appealed, and the Appellate Court affirmed in part and reversed in part. Authority appealed, and employees cross-appealed.

The Supreme Court of Illinois held that:

- Current employees lacked standing to attack modification of health care benefits resulting from an arbitration award to which their exclusive bargaining agent was a party;
- Retirees had standing to pursue claims for enforcement of benefits granted under an earlier collective bargaining agreement;
- Retirees' right to fully-paid health care benefits became vested by their retiring while collective bargaining agreement was in effect; and
- Retirees could not adequately allege a claim for promissory estoppel.

Claims of current employees of Chicago Transit Authority attacked modification of health care benefits resulting from an arbitration award to which their exclusive bargaining agent was a party, and therefore, current employees lacked standing. Current employees did not allege that the union, as bargaining agent, breached its duty of fair representation.

Chicago Transit Authority retirees, even those formerly represented by unions, were not represented by the unions in collective bargaining that resulted in an increase in their health care obligations, and therefore, retirees had standing to pursue claims for enforcement of benefits granted under an earlier collective bargaining agreement. There was nothing in complaint or attachments to indicated that retirees agreed to union representation in the negotiation and arbitration of the agreement at issue.

Retirees' right to fully-paid health care benefits became vested under collective bargaining agreement (CBA) by their retiring from Chicago Transit Authority while CBA was in effect, despite provision of CBA stating that health care benefits could be changed by agreement upon its expiration. CBA stated that benefit terminated when retirees attained age 65, which extended the right to receive the health care benefits beyond the term of the CBA.

Retirees could not adequately allege a claim for promissory estoppel against Chicago Transit Authority on basis of changes in health care benefits in collective bargaining agreement and Authority's alleged promises that retirees would receive fully-paid health care benefits. Authority was a municipal corporation and could not be held liable under a contract implied in fact, Authority could only be bound by official action taken by Chicago Transit Board, and Authority was precluded from making outside promises of benefits that exceeded those set forth in collective bargaining agreements.

LIABILITY - MARYLAND

Harris v. Housing Authority of Baltimore City

Court of Special Appeals of Maryland - April 27, 2016 - A.3d - 2016 WL 1664928

Resident of row houses owned by city housing authority, on behalf of her minor son, sued authority for negligence and violations of Consumer Protection Act (CPA), alleging son suffered injuries due to lead-based paint exposure.

The Circuit Court granted authority summary judgment. Resident appealed.

The Court of Special Appeals held that:

- Resident's oral notice did not substantially comply with Local Government Tort Claims Act's (LGTCA) notice requirement;
- Trial court did not inappropriately usurp role of jury in determining whether resident had shown good cause to waive notice requirement;
- Trial court did not abuse its discretion in determining that resident did not show good cause for waiver of notice requirement;
- Trial court did not abuse its discretion by considering length of time in bringing suit when making good cause determination;
- Alleged hearsay statement in director of housing management administration's affidavit was not relevant to issues on appeal; and
- Statement was not hearsay.

SEWAGE DISTRICTS - NEW JERSEY

Paige Land Development Corp. v. Borough of Riverdale

Superior Court of New Jersey, Appellate Division - March 23, 2016 - Not Reported in A.3d - 2015 WL 10529378

Non-member customer of sewerage authority brought action against borough alleging non-user fee was illegal, and seeking refund of $98,400 it had paid in fees.

The Superior Court invalidated borough's ordinance, but denied customer's request for a refund. Customer appealed, and borough cross-appealed.

The Superior Court, Appellate Division, held that:

- Superior Court, Law Division, did not abuse its discretion by relaxing 45-day period for filing complaint in lieu of prerogative writ to challenge borough's non-user, municipal sewage ordinance;
- In an apparent matter of first impression, borough's non-user ordinance was ultra vires, without any legal force or effect; and
- Volunteer rule applied to preclude non-member customer from obtaining refund.

Trial court did not abuse its discretion by relaxing 45-day period for filing complaint in lieu of prerogative writ to challenge borough's non-user, municipal sewage ordinance. The court found that the public interest exception recognized in *Borough of Princeton v. Bd. of Chosen Freeholders* applied, reasoning that the non-user fees charged by the borough, if improper, constituted a continuing violation of public rights.

Municipal and County Sewerage Act did not authorize an annual charge to non-member customer of sewerage authority on unimproved property that was not using the sewerage system, and therefore,

because borough's non-user ordinance was an annual sewerage charge on unimproved property not currently using the sewerage system, it was ultra vires, without any legal force or effect.

Volunteer rule applied to preclude non-member customer of sewerage authority, who paid non-user fees without protest and without duress, from obtaining refund, even though borough's non-user ordinance was found to be ultra vires, without any legal force or effect.

POLITICAL SUBDIVISIONS - OHIO

Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.

Supreme Court of Ohio - May 4, 2016 - N.E.3d - 2016 WL 2341959 - 2016 -Ohio- 2806

Parents of children enrolled within school districts and school districts brought actions against State, seeking a writ of mandamus ordering Department of Education to calculate and pay school foundation funds to districts in accordance with law, or for a declaration that Department was required to calculate the payments for three fiscal years on basis of their average daily membership of first of those years.

Actions were consolidated. The Court of Common Pleas entered judgment in part on pleadings with regard to parents' claims in favor of State. State sought review. Parents and districts cross-appealed. The Court of Appeals affirmed. State sought review.

The Supreme Court of Ohio held that retroactivity clause of state constitution does not protect political subdivisions that are created by state to carry out governmental functions.

Legislature was able to authorize State Board of Education to adjust local school funding calculations and to retroactively immunize Board from liability for any legal claim of reimbursement by a school district for a reduction of school-foundation funding without violating state constitution's retroactivity clause, as clause did not protect political subdivisions, including school districts.

UTILITIES - OREGON

Northwest Natural Gas Co. v. City of Gresham

Supreme Court of Oregon - May 5, 2016 - P.3d - 2016 WL 2587424

Public utilities brought declaratory relief action challenging city's resolution that increased their utility-license fees from five percent to seven percent of the gross revenue that utilities received from their city operations.

The Circuit Court granted summary judgment in favor of utilities, ruling the resolution void and unenforceable. City appealed. The Court of Appeals reversed and remanded. Utilities sought further review, which was granted.

The Supreme Court of Oregon held that:

- Resolution imposed privilege tax;

- Resolution did not create franchise agreements with utilities;
- Resolution was not preempted by state law governing public utilities operating without a franchise;
- Resolution imposed intergovernmental tax on public utility district;
- State law reaffirming cities' home-rule authority with respect to regulation of its rights-of-way did not provide express authority to impose intergovernmental tax; and
- State law governing powers of public utility districts did not provide express authority for city to impose intergovernmental tax.

Municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city imposed a privilege tax that city was permitted to impose on utilities that were operating without a franchise, where fee was imposed on utilities for use of city's public rights-of-way.

Municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city did not create franchise agreement with utilities that permitted city to impose privilege tax. Term franchise in statute permitting imposition of privilege tax on utilities operating without a franchise was meant to refer narrowly to describe negotiated agreements between a government entity and another entity for their mutual advantage.

Municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city were not preempted by state law governing public utilities operating without a franchise. Statute was framed as an authorization, rather than a restriction, such that it was not an unambiguous expression of an intent to preclude local governments from regulating utilities, purpose of statute was to ensure that cities had authority to deal with recompense for utilities' use of cities' rights-of-way on a local level, and city had a legitimate local concern, funding of its fire and police departments, that it chose to meet by enacting a resolution that increased the license fee paid by utilities to use its rights-of-way.

Municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city constituted "intergovernmental tax" with respect to municipal utility district, and therefore city was required to have express statutory authority to impose tax. Although challenged fee was labeled a fee rather than a tax, it was not being assessed to cover costs associated with district's use of city's streets, but rather was to be expended for general public purposes.

State law reaffirming cities' home-rule authority with respect to regulation of its rights-of-way did not grant city express authority to impose intergovernmental tax on municipal utility district by way of municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city.

State law setting forth various powers of public utility districts (PUD) did not grant city express authority to impose intergovernmental tax on municipal utility district by way of municipal enactments that increased the licensing fee that each public utility was required to pay from five percent to seven percent of the utility's gross revenues earned within the city, where statute provided PUDs with authority to enter into franchise agreements, intergovernmental agreements, and contracts with cities and to pay fees under such agreements, but made no mention of taxation.

UTILITIES - PENNSYLVANIA

Augustin v. City of Philadelphia

United States District Court, E.D. Pennsylvania - March 18, 2016 - F.Supp.3d - 2016 WL 1073223

Landlords filed § 1983 action alleging that city-owned gas utility's method for imposing liens on their properties for unpaid utility bills incurred by their tenants violated their procedural due process rights.

Plaintiffs moved for partial summary judgment.

The District Court held that utility's procedure for imposing liens violated landlords' due process rights.

City-owned gas utility's procedure for imposing liens on non-customer landlords' properties for unpaid utility bills incurred by their tenants violated landlords' procedural due process rights, despite existence of post-deprivation remedies, absent showing that it would be impracticable or impossible to notify landlords of tenants' delinquencies within such time as would allow landlords to investigate and take steps to hold tenants accountable before their account arrearages reached level triggering imposition of liens.

IMMUNITY - SOUTH CAROLINA

Graham v. Town of Latta, South Carolina

Court of Appeals of South Carolina - March 30, 2016 - S.E.2d - 2016 WL 1239752

Homeowners filed suit against town after municipal sewer system backed up, overflowed, and flooded their property, raising claims for negligence, inverse condemnation, and trespass.

The Circuit Court entered a directed verdict on claims for inverse condemnation and trespass, and the jury returned a verdict in favor of homeowners. Town appealed, and homeowners cross-appealed.

The Court of Appeals held that:

- Town was not entitled to discretionary immunity;
- Evidence supported inference that town failed to exercise due care in the operation and maintenance of its sewer system;
- Evidence support amount awarded for damages to real property;
- Evidence supported amount awarded for damages to personal property;
- Release of sewage did not constitute an inverse condemnation; and
- Release of sewage did not constitute a trespass.

Evidence supported finding that town's choice to do nothing about leaking sewer pipe was not the product of weighing competing considerations and making a conscious choice, as would establish discretionary immunity under South Carolina Tort Claims Act in homeowner's negligence action brought after municipal sewer system backed up, overflowed, and flooded their property. There was no expert testimony indicating the town actually weighed the competing considerations when confronted with the problem, or that the town utilized accepted professional standards in choosing to do nothing.

EMINENT DOMAIN - TEXAS

Love Terminal Partners v. United States

United States Court of Federal Claims - April 19, 2016 - Fed.Cl. - 2016 WL 1588327

Leaseholders of property at airport in Dallas, Texas brought action against United States, alleging that provision of Wright Amendment Reform Act (WARA) prohibiting use of portion of airport effected taking.

The Court of Federal Claims entered summary judgment for leaseholders.

The Court of Federal Claims held that:

- WARA effected a categorical regulatory taking;
- WARA effected a non-categorical regulatory taking;
- Leaseholders were entitled to just compensation in amount of $133.5 million for the fair market value of their taken property; and
- It was appropriate to utilize prudent investor rule (PIR) when determining proper rate of interest to be applied to compensation awarded to leaseholders.

Wright Amendment Reform Act (WARA), which required Dallas, Texas to demolish airport terminal building in which lessees held long-term leasehold interest, deprived lessees' interest of all economically viable use, thereby effecting a categorical regulatory taking for which United States was required to pay just compensation to lessees. Highest and best use of leasehold interest before enactment of WARA was as a passenger airline terminal, and following enactment of WARA, such use was completely prohibited.

PUBLIC EMPLOYMENT - WASHINGTON

Arnold v. City of Seattle

Supreme Court of Washington - May 5, 2016 - P.3d - 2016 WL 2586691

City employee brought action against city, claiming she was entitled to an award of attorney fees incurred for representation at civil service hearing.

The Superior Court granted summary judgment for city, and employee appealed. Following transfer, the Court of Appeals reversed.

The Supreme Court of Washington held that:

- Employee's appeal to the civil service board constituted an "action" for judgment to recover back wages or salary for purposes of statute that allowed for an award of attorney fees in a successful action to recover wages;
- Statute preempted city code provision explicitly providing that individuals may be represented only at their own expense in civil service commission hearings; and
- An employee who recovers wages from a civil service commission proceeding is entitled to attorney fees under statute when requested in a separate superior court action; overruling *Cohn v. Department of Corrections*, 78 Wash.App. 63, 895 P.2d 857, and *Trachtenberg v. Dep't of Corr.*, 122 Wash.App. 491, 93 P.3d 217.

TAX - LOUISIANA

Trunkline LNG Co., LLC v. Calcasieu Parish School System

Court of Appeal of Louisiana, Third Circuit - April 13, 2016 - So.3d - 2016 WL 1445938 - 2015-1062 (La.App. 3 Cir. 4/13/16)

Taxpayer appealed decision of the Board of Tax Appeals reducing amount of refund of taxpayer's overpayment of sales taxes to parish school board.

The Court of Appeal held that:

- Taxpayer was not entitled to set off overpayment from some months against deficiency in other months, and
- Taxpayer was not entitled to call school board employee as a witness.

Taxpayer that was originally assessed sales tax excessively in some months and deficiently in others was not entitled to set off what it owed for months in which it was deficient with refund to which it was entitled for months in which it had overpaid, but was instead required to pay interest in amount of 15% for months it was deficient and was entitled to interest of 2–3% for months in which it had overpaid.

TAX - NEW HAMPSHIRE

Everett Ashton, Inc. v. City of Concord

Supreme Court of New Hampshire - April 29, 2016 - A.3d - 2016 WL 1719255

Manufactured housing park owner brought action against city for declaratory relief, injunctive relief, and damages, after city refused to issue demolition permits for abandoned manufactured homes until owner paid taxes owed by tenants.

The Superior Court held that city was required to issue the permits, that city could not place a lien on owner's land for its former tenants' unpaid water bills, and that owner was entitled to compensation and attorney's fees. City appealed.

The Supreme Court of New Hampshire held that:

- As a matter of first impression, city's refusal to allow owner to remove homes exceeded its discretion;
- Municipalities may place a lien on a park owner's property if tenants, who have individual meters, fail to pay their water bills; and
- City's decision to withhold demolition permits was not a regulatory taking that required just compensation.

City's refusal to allow manufactured housing park owner to remove valueless, abandoned homes until it paid taxes thereon, despite express statutory provision that park owners were not responsible for such taxes, exceeded scope of city's discretion, and therefore city was required to issue demolition permits for homes in park. City could not hold owner hostage by refusing to allow removal of derelict homes even though owner could not have been held liable for unpaid taxes, and legislature could not have intended for discretion granted to city to allow removal of structures taxed as real estate to be exercised in way that would allow city to nullify statute stating park

owners were not liable for taxes due upon manufactured housing.

NABL: Lawmakers Seek Guidance on Student Loan Bonds.

Bipartisan groups of House and Senate lawmakers have sent letters to the Treasury Department and the Internal Revenue Service (IRS), asking for guidance to facilitate the refinancing of student loans.

In similar letters from the House and Senate, lawmakers appreciated the guidance from Treasury and IRS in Notice 2015-78, which clarified that tax-exempt bonds can be used for a wide range of refinancings to allow student loan borrowers to take advantage of lower rates.

However, the lawmakers asked for further guidance on three issues: 1) guidance that bonds issued for refinancing purposes not be considered refunding bonds; 2) guidance for issuers to help them determine that the original student loans met loan size limitations for tax-exempt financing; and 3) guidance that a former student can refinance an original loan that was a parent loan and vice versa and that parents' current state of residence is not an impediment to refinancing.

The letter from the House members is available here. The letter from the Senators is available here.

TAX - LOUISIANA

Bridges v. Nelson Indus. Steam Co.

Supreme Court of Louisiana - May 3, 2016 - So.3d - 2016 WL 2338036 - 2015-1439 (La. 5/3/16)

Following remand of electricity producer's suit against parish for refunds of sales and use taxes and state's suit against producer to collect sales and use taxes, the District Court rendered judgments in favor of state and parish. Producer appealed. The Court of Appeal affirmed. Producer sought writ of certiorari.

The Supreme Court of Louisiana held that limestone bought and used by producer in producing ash was subject to "further processing" exclusion from sales tax.

Limestone bought and used by electricity producer for dual purpose of inhibiting sulfur in production of electricity and producing ash was subject to "further processing" exclusion from sales tax. Ash was an article of tangible personal property for sale at retail, chemical makeup of limestone was found in ash and was an integral part thereof, and limestone was purchased with purpose of inclusion in final product of ash although that was not the primary purpose for purchasing limestone.

TAX - FLORIDA

Island Resorts Investments, Inc. v. Jones

District Court of Appeal of Florida, First District - March 21, 2016 - So.3d - 2016 WL 1085225 - 41 Fla. L. Weekly D721

Owner of 99-year leasehold interest in unimproved 12-acre parcel filed action for a declaratory judgment that its interest could be taxed only as intangible personal property, and for an injunction

prohibiting the assessment and collection of ad valorem taxes on the land.

The Circuit Court entered judgment for county appraiser and tax collector, and leasehold interest owner appealed.

The District Court of Appeal held that leasehold interest owner was not the equitable owner of the leased land.

Owner of 99-year leasehold interest in unimproved land owned by county was not the equitable owner of the leased land and thus was not required to pay ad valorem taxes on the land, where owner did not have the right to the perpetual renewal of its lease or the right to purchase the property for nominal consideration at the end of the lease, owner bore all the burdens during the term of the lease, at the end of which all the rights to the property reverted, rental payments were due in consideration for the leasehold interest, and the property was not financed, acquired, or maintained through the issuance of bonds.

TAX - PENNSYLVANIA

City of Philadelphia v. Auguste

Commonwealth Court of Pennsylvania - April 29, 2016 - A.3d - 2016 WL 1718844

Property owner moved to set aside sheriff's sale after property was sold for nonpayment of real estate taxes.

The Court of Common Pleas set aside sale. City and assignee of tax sale purchaser appealed.

The Commonwealth Court held that city's service on owner of petition and rule to show cause why property should not be sold for nonpayment of real estate taxes was sufficient to meet requirements of Municipal Claims and Tax Liens Act.

City's service on property owner of petition and rule to show cause why property should not be sold for nonpayment of real estate taxes was sufficient to meet requirements of Municipal Claims and Tax Liens Act, despite argument that other addresses existed at which property's mortgagee could have been served, where city sent petition and rule via certified mail to owner, return receipt requested and by first class mail with prepaid postage, at mailing address listed on city's tax information certificate, service was also made in same manner on mortgagee at its registered agent for service of process, city filed affidavit of service, and petition and rule were posted on property.

The Hidden Risks of a Growing Way to Pay for Infrastructure.

More and more, governments are turning to bank loans rather than bonds. But too often the terms of the loans — and who is first in line to collect — are secret.

A perilous new financial risk may be hiding in the fine print of loan agreements in state capitals, county seats and city halls across the country. The cost could be high for millions of individuals whose investment dollars help finance the public schools, water systems, bridges and roads that we all rely on and which in many cases are in desperate need of repair.

Investment in the nation's infrastructure has long been a partnership between state and local governments and retail investors. State and local governments prioritize public projects, investment bankers provide products to help spread costs over the life of the project, investors buy in to earn reliable, often tax-free interest income, and then taxpayer dollars repay the bonds. Today, more and more communities are opting for alternatives to this traditional municipal-bond model in the form of direct loans from banks. Estimates are that the bank financing of public projects has ballooned to more than $155 billion with another $25-$30 billion being added each year.

Borrowing funds from a bank to build a bridge is not inherently problematic. The problems arise when the extent of the borrowing — and the precise terms of the loans — are a secret. For municipal-bond financings, states and communities have obligations under federal law to publicly disclose material information to investors at the outset. But no such disclosure requirements exist at the time they receive loans from banks. Investors who hold a city's outstanding bonds may have no idea that the city has taken on more debt or that the bank making the loan has made sure it will be first in line to collect if the city runs into financial troubles.

That's just what happened in Lawrence, Wis. The small town borrowed heavily from local banks, and it agreed to put the banks before the bondholders in the event it someday couldn't cover all of its financial obligations. When a major ratings agency learned of the unfavorable terms for bondholders, it quickly downgraded Lawrence's bonds to junk status. Bondholders who thought they were holding investment-grade paper are now left with a far riskier asset.

No one knows how many other Lawrences are out there. A few states, counties and cities voluntarily make information about their bank loans publicly available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (EMMA), the official public archive for financial documents and other information for municipal bondholders. But the vast majority of bank-financed public projects remain a mystery to municipal bond investors, taxpayers and securities regulators.

As the national regulator charged with protecting municipal bond investors, the MSRB is advocating for expanded disclosure of the amounts and material terms of these alternative financings by state and local governments. Since 2012, the MSRB has encouraged states and communities to take advantage of EMMA to make bank loan information available to the public, something several industry groups support.

This year, the MSRB is escalating its call for improved bank loan disclosure. We are now collecting public input on how the MSRB might exercise its regulatory authority over the financial professionals who work with state and local governments to require more transparency around these loans. Because state and local governments have legal protections against federal oversight, the MSRB cannot simply mandate bank-loan disclosure on their part. Any future action by the MSRB must also take into consideration the fact that bank-loan documents may contain proprietary information that would need to be redacted prior to public dissemination.

Despite these constraints, the MSRB believes it is imperative to address the risks that undisclosed bank loans pose to bondholders and the broader financial health of communities nationwide. Until the amount and terms of these loans are understood, there's no way to assess the likelihood of a crisis in the making, one that could result in thousands of bank-leveraged bridges and millions of burned bondholders.

GOVERNING.COM

BY LYNNETTE KELLY | MAY 13, 2016

[The Miami Method for Zoning: Consistency Over Chaos.]

After a population explosion and building binge led to haphazard and random growth, Miami became the nation's first big urban area to adopt a citywide code based on looks.

Miami's Wynwood neighborhood epitomizes hip. A neglected industrial enclave that sat mostly empty just a few years ago, Wynwood today thrums with energy. Its low-slung warehouses and onetime auto garages are filled with buzz-worthy eateries, high-end tattoo studios, vegan juice bars and edgy art spaces. At Wood Tavern, twentysomethings gather around graffiti-covered picnic tables to sip La Rubia blonde ale, brewed just a couple of blocks away at the Wynwood Brewing Company. At nearby Wynwood Kitchen and Bar, diners eat Latin-tinged cuisine under wall-sized paintings by popular street artists. A block down, the line at Panther Coffee can stretch out the door. Throughout the neighborhood, at all hours of the day, people stop to snap selfies in front of the colorful new murals that cover seemingly every inch of every building in Wynwood.

It's the kind of dynamic urban scene that cities dream about. And it would never have happened, Miami planners say — or at least not to the same degree of success — without the city's new zoning code known as Miami 21. "I cannot imagine it," says Francisco Garcia, the city's planning director, shaking his head at the thought. "I just can't even imagine."

Miami 21 isn't actually brand-new: It's been on the books since 2010. But it was the first true overhaul of the city's code in nearly 80 years, and it points toward major change in the way Miami will grow for generations to come. The controversial code has altered every aspect of the city's development, from the way a builder interacts with the planning department to the size of the windows of a finished storefront. And it touches every part of the city, from the shimmering urban high-rises of downtown Brickell to the single-family homes in historic, tree-lined residential neighborhoods like Little Havana and The Roads.

Public zoning codes are typically filled with mind-numbingly dry details of frontages, setbacks and floor-area ratios — and Miami's is too. But these codes ultimately determine the way a city looks and feels and functions. They're the 1s and 0s that build the matrix. Miami 21 may be abstruse, but it's also a new vision for what the city wants to be.

Miami 21 is what's known as a form-based code. Rather than prescribing development based on how a plot of land will be used — residential, say, or mixed-use commercial — the code defines the physical shape development should take in different parts of the city. That means buildings are considered in context with what's around them, regardless of what goes on inside. The goal is a more walkable, more human-scale form of development. When Miami adopted the code in 2010, it was the first big U.S. city to implement a form-based code citywide. Six years later, it's still the only one.

Most of the impact of Miami 21 isn't as tangible or as concentrated as in Wynwood. But its effects are suffused in properties throughout the city. On a recent sunny Friday, as Assistant Planning Director Luciana Gonzalez drove around town with a couple of visitors, she couldn't help interrupting herself every so often to point out the role of the new code. "That's Miami 21," she says, as she drives past a new bank branch building set close to the street, with parking hidden behind it. "That's Miami 21," she says again, pointing out a multistory self-storage facility that looks more like a sleek office tower, with inviting plate-glass windows along the sidewalk and a soon-to-open high-end rooftop restaurant that will take advantage of the views of the Miami River. A little later, Gonzalez passes an under-construction residential high-rise that's wrapped in street-level retail

spaces. “That’s Miami 21, too.”

Miami’s form-based code has been lauded by the international planning community as a progressive commitment to New Urbanist ideals. But getting to this point involved years of convincing skeptical developers, architects, neighborhood organizers and political leaders that this change was the right thing for the city. And the code still has plenty of critics, including, perhaps surprisingly, Tomás Regalado, the city’s current mayor. He acknowledges that Miami 21 “looks good on paper,” but says it’s proven difficult to implement on the ground. When asked whether the new code is an improvement over the way things used to be, Regalado pauses, holds up a finger and says, “Maybe.”

There’s nothing all that remarkable about the Catalonia apartment building on SW 27th Ave. A bland 13-story building finished in two tones of beige, it’s the kind of faceless, nondescript mid-rise you drive past without giving it much thought. But one thing makes the Catalonia, which was completed in 2007, stand out. It sits smack next door to a small single-family home, a modest one-story house with a red tile roof and a patio out front. And that’s made the Catalonia emblematic of the kind of unregulated growth Miami planners hope never to see again.

The former zoning code was adopted in 1936, and for many decades it seemed to serve the city just fine. Higher-density buildings — and some skyscrapers — were concentrated downtown and along Biscayne Bay, while residential neighborhoods were left mostly untouched. But the code became increasingly complicated as a succession of city leaders tacked on modifications and revisions and exceptions. As in most U.S. cities, Miami’s old code was based on separation of uses. But the number of “uses” eventually exceeded 360 and didn’t seem to make sense: A barbershop was considered a different use than a beauty salon.

Then came the 1990s population boom, and things really went haywire. Miami and surrounding Dade County grew by more than 18 percent in the 1990s, a growth trend that would continue into the 2000s and 2010s. Much of the influx was driven by immigrants from Latin America. By 2002, Miami-Dade had a higher percentage of foreign-born residents, 51.4 percent, than any other county in the country. The city went on a building binge. Height allowance was determined solely by the size of a lot, so if developers could simply cobble together enough plots of land, they could build 15- or 25- or 40-story buildings anywhere they wanted, even right next to a leafy neighborhood of small homes. High-rises sprouted like weeds overnight. One building might be 10 feet from the sidewalk, while the one next door was set back 30 feet. Blank walls stretched along sidewalks for entire blocks.

It was haphazard and random growth, “and it was all perfectly legal,” says Ana Gelabert-Sanchez, who was the city planning director at the time. “It was all done by the book, within the code at the time. But it didn’t result in a city that was nice to live in.”

Manny Diaz was elected mayor in November 2001, and he sensed that Miami’s development had gotten off track, even if he couldn’t articulate it. “I wasn’t trained in urban planning or design, but instinctively I knew something was wrong, because I just looked around,” he says. “I saw pretty buildings that had no connection to the street, no connection to the buildings around them. I knew something had to be done, but I didn’t know what that meant.”

Diaz turned to Gelabert-Sanchez and to Elizabeth Plater-Zyberk, the renowned Miami-based architect who, along with her husband, Andrés Duany, has become an international leader in New Urbanist design. “The old code,” says Plater-Zyberk, “was completely unpredictable.” It had resulted in a “totally incoherent” city.

Plater-Zyberk and the city planning team got to work on a code that would help guide the form of

new buildings, rather than just prescribe how a specific property would be put to use. It would emphasize street-level activity and public spaces to encourage walking, and it would bring a sense of order to Miami's explosive new growth.

Other cities had already implemented partial form-based codes in certain areas, such as a downtown core or a tourist district. In most places, the new code existed in parallel to a traditional use-based code. Cities would incentivize developers by, say, offering faster permitting for those choosing to abide by the form-based code, but it wasn't mandatory. The planners in Miami began drafting something similar, a code that could be used to augment planning in certain hot spots around town.

Diaz had a different idea: Scrap the old code completely and start over from scratch. If a form-based code was good for certain parts of the city, he felt, then it would be good for the city as a whole. "It just made sense," he says. "Let's just do it all at once. I know it's crazy, but let's just do it now."

The plan was hit by opposition almost immediately. "There was a lot of concern, reluctance — fear, even — at the very beginning," says Garcia, Miami's planning director, who at the time was working in the private sector, on Plater-Zyberk's team.

"Some people in the design community were worried that everything would end up looking the same," says Gelabert-Sanchez. "Or they were worried that we in the city were going to say, 'I don't like those windows. I don't like that arch.' But we just wanted to establish principles. We don't care about the style."

Over a period of six years starting in 2003, the city held 60 formal public hearings on the new code, in addition to another 500 meetings with residents and other stakeholders — ranging from events with hundreds of attendees in large downtown convention halls to intimate sit-downs in residents' living rooms. Many of the meetings were in Spanish. "We knew we'd have skeptics," says Diaz. "So we wanted the process to be as transparent and as inclusive as possible. One thing no one can say is that this was some backroom deal between the city and developers, or land use attorneys."

As the city coalesced around a plan, developers got on board. Because the new code provided much more predictability in terms of what was allowed on a given plot, the approval process need no longer involve acrimonious public hearings and contentious fights with the city over building plans. Everything would be spelled out in the code itself. And neighborhood conservationists appreciated that a new plan could better preserve the character of Miami's distinct communities.

Still, there were critics. Property owners said the new code would devalue their land by limiting the amount of future development they could undertake. Builders said the code would throw all the city's existing structures into legal limbo because they wouldn't conform with the new regulations. And some of the preservationists and neighborhood groups that had initially supported the idea began to complain that the new code didn't go far enough in protecting Miami neighborhoods; they waged fights with the city to "downzone" residential areas even further.

On Oct. 22, 2009, after an embarrassing initial rejection, Miami 21 was approved during Diaz's very last meeting as mayor. The new code was law. But that didn't end the opposition. The lone city council vote against the final code had been cast by Regalado, who 12 days later was elected mayor. Many people expected he might dismantle Miami 21 as soon as he took office. Indeed, some in the community hoped he would. Today, Regalado says he never even considered doing that. But at the time, advocates were worried. "Two or three [city commissioners] — and in particular Mayor Regalado — were set to take it apart," says one person who was tracking the issue closely.

Then came the Great Recession. Ironically, it may have been the best thing that could have

happened to Miami 21. Development in South Florida ground to a halt, and city leaders were overwhelmed by other concerns. Suddenly, debate over a zoning code was no longer a front-burner issue.

Gonzalez in the city planning office agrees. “It was good timing, actually, because then when the economy did come back, we were ready to receive the development. And ever since the beginning of 2013, it’s been, like, boom!”

It can be hard to appreciate the staggering rate of change Miami has seen in the past decade. From 2000 to 2014, the city’s downtown doubled in residential population, and almost half the residents who live there now are between 25 and 44 years old. In the past decade alone, the city has added 113 new high-rises. Some of that development happened prior to Miami 21, which officially became law in May 2010. But most of it has happened since.

For many in the city, the jury is still out. Regalado complains that with so many details spelled out in the code itself, or hammered out between developers and city planners, less of the process is subject to public input. “In the old code, every minor zoning change had to be done by public hearing,” he says. “Miami 21 [offers] less transparency.”

Garcia says that’s not the case. “Under the old code,” he says, “the public hearings were much more acrimonious than they have been under Miami 21. Now we get out there and engage with the stakeholders.” By the time a public hearing does occur, he says, everything has already been worked out.

Aside from dissatisfaction with the process, there are still some people who think the new code is a substantively bad deal. A few lawsuits have been filed by landowners — including the Catholic Archdiocese of Miami, which sued the city for $89 million in 2013 — who say the new code has devalued their property. None of the suits has gone anywhere. Others have accused the city of applying the code inconsistently, letting certain projects skirt the regulations: A proposed Walmart in Midtown became a particular lightning rod for controversy, as urban big-box stores often are. But the city says the store has been designed to comply with Miami 21; ground was broken on the project in January.

For the most part, Miamians seem to be living with the new code. Architects and developers appreciate the predictability of it; city planners like the way it’s shaping new growth. In fact, nearly everyone seems to agree that it’s working extremely well downtown. But it becomes more problematic when applied to smaller neighborhoods. “Miami 21 is great in the areas of town that are already designated as high-density, high-intensity development,” says Ines Marrero-Priegues, a local land use attorney. The process for upzoning to add new denser projects in other parts of the city, however, is “very lengthy. It’s easy to get projects approved in the urban core, but it can be very onerous for people who are doing smaller projects where there’s less density already.”

There’s one thing you won’t find mentioned anywhere in the pages of Miami 21: climate change. According to some of the latest projections of sea-level rise, large parts of Miami could be underwater in as little as 85 years, which can make Miami 21’s intense focus on walkability and livability seem a bit ironic. It’s not quite like rearranging the deck chairs on the Titanic, but some fear it might be close. “I think we’re behind the curve,” says Regalado. “Sea-level rise is something no one wants to talk about because the condos are selling very well; Latin American people are buying condos by the dozen. It’s going to be painful, but we do need to create a code that takes sea-level rise into account.”

Regalado says he wants to add a climate change component to Miami 21 before he leaves office in

November 2017. That's something that Garcia would love to see as well. The climate change conversation, he says, has typically been dominated by architects, not planners, and has focused on making single buildings climate-resilient. "What I think is being left out of the conversation," he says, "is neighborhood resiliency, as opposed to building resiliency."

The full impact of Miami 21 won't be felt for decades. But simply getting to this point has been a remarkable event. "Those seven years we spent developing the code," Garcia says, "were seven years of getting a better understanding of what the concerns of the citizens were, and engaging the citizens to wrestle with planning and zoning issues. The knowledge base improved significantly, so now we can have much more advanced, sophisticated conversations with stakeholders. The profile of planning as a whole has been elevated."

Walking around Wynwood, or popping into a sidewalk coffee shop in a new skyscraper downtown, most people aren't thinking about the building code. They just know that Miami is becoming a nicer place to live. But the city as a whole has indeed come to appreciate the role zoning plays in creating a better built environment. Former mayor Diaz says that's something he learned as well. "You don't run for office on urban planning. You run because you say, I'm going to fight poverty, or fight crime, or improve education. But I realized that planning is the most important issue. We fight crime, and it goes down, and that's good. But in a few years, it might go up again. You move the needle as best you can, but these are constantly changing issues." But a new building, he says, will impact residents for generations. "When you put up a building, it's there for a hundred years."

GOVERNING.COM

BY ZACH PATTON | MAY 2016

[S&P Report Discusses Cost to State, School Districts of California's Teacher Pensions.]

SAN FRANCISCO (Standard & Poor's) April 12, 2016—In 2014, California enacted legislation to eliminate its teachers retirement system's unfunded pension liability by 2046. In a report published today, Standard & Poor's Ratings Services says that the additional contributions under the law should bolster the pension system's funded status over the long-term. Insofar as the law reduces the likelihood that the unfunded liability will spiral out of control, it's favorable for the credit quality of both the state and its school districts. However, the additional contributions mandated by the reforms could also strain the finances of either the state or some school districts, depending upon future investment performance.

The report is titled, "Post-Funding Reform, CalSTRS Defined Benefit Remains Guaranteed; Cost To State, School Districts Is Anything But."

The legislation—AB 1469—was adopted because by 2014 annual contributions to the California State Teachers Retirement System (CalSTRS) had fallen to a level such that the long-term solvency of its defined benefit plan was in jeopardy.

"Standard & Poor's generally views AB 1469 favorably because it should stabilize CalSTRS' long-term funding situation," said credit analyst Gabriel Petek. "At the same time, we also view the contribution increases it calls for as large enough to have material fiscal implications. Funding the higher contributions could strain the state's budget—or those of the local school districts. We can

envision plausible circumstances in which the added fiscal pressure caused by the higher contributions could weaken credit quality. At this point, however, it's unclear whether—or if—the higher contribution rates will stress the finances of either the state or any particular school district to this degree.

Part of our uncertainty stems from the fact that AB 1469 did not allocate CalSTRS' unfunded liability to the state and school districts in a strictly proportional fashion. And the way the funding mechanism is designed means that the state's contribution rates (and therefore the fiscal implications to the state) are influenced disproportionately by CalSTRS' investment performance.

As for the school districts, those with declining enrollments or limited budget flexibility could be challenged by the increasing contribution rates that the law specifies.

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

The report is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@standardandpoors.com.

Ratings information can also be found on Standard & Poor's public Web site by using the Ratings search box located in the left column at www.standardandpoors.com. Members of the media may request a copy of this report by contacting the media representative provided.

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GFOA Alert: Bank Loan Disclosure

Over the past five years, the municipal securities market has witnessed a dramatic increase in the use of bank loans by municipal issuers as a tool to finance capital improvements as well as refund outstanding debt. Bank loans, which may be structured with fixed or variable interest rates and with defined maturities or flexible payment provisions, may offer a number of potential advantages over a public offering of municipal securities. The increasing use of bank loans has recently begun to attract the attention of regulators, such as the Municipal Securities Rulemaking Board (MSRB) and Securities and Exchange Commission (SEC), as well as the credit rating agencies, which are growing increasingly concerned about bank loan disclosure practices among municipal issuers.

Typically, the process for executing a bank loan is more streamlined than a traditional bond issue that is publicly marketed, with fewer costs of issuance and ongoing compliance requirements. In particular, banks loans often do not require an offering document or credit ratings. Additionally, bank loans are often structured in a more flexible manner than a traditional municipal bond issue, to conform to a specific project schedule or particular cash flow considerations. However, because bank loans are not typically executed in an environment that is as transparent as the municipal securities market, an issuer may have limited ability to assess information about whether the proposed interest rate, fees, and terms of a particular loan are consistent with bank loan market

practices.

For these reasons, GFOA urges state and local governments that are considering bank loans to:

- Provide voluntary public disclosure of the bank loan;
- Develop specific policies and procedures that address the applicable legal and financial requirements of using bank loans for their jurisdiction; and
- Seek guidance from outside professionals including municipal advisors and bond counsel in reviewing the legal and financial terms of the bank loan.

Bank Loan Disclosure Considerations

In order to enhance market transparency and public communication to its citizens and other stakeholders who are interested in understanding a government's total debt profile, GFOA recommends that governments should voluntarily disclose information about bank loans. Disclosure of a bank loan would be relevant to bondholders if the bank loan is secured by any or all of the same revenues as the outstanding bonds, and is large enough to be material to the creditworthiness of the government. Additionally, if a government executes numerous bank loans, entities investing in the government's bonds may need to know about the combination of those loans in the aggregate. Lastly, certain terms and conditions of the bank loan (e.g., liquidity covenants, events of default, and acceleration provisions) may be important information for credit analysts and bond holders. While disclosure of bank loans is not currently required under MSRB or SEC rules, issuers are advised that increased regulatory scrutiny may result in mandatory disclosure of bank loans in the future, subject to similar standards of materiality and timeliness as apply to municipal securities.

Voluntary disclosure of bank loans may be accomplished in a variety of ways, either by posting the loan agreement itself or a summary of material terms on the MSRB's Electronic Municipal Market Access (EMMA), incorporating bank loan information in the government's comprehensive annual financial report, or releasing a summary of the material terms of the bank loan on the government's website. When using EMMA to disclose bank loan information, governments should be aware that the bank loan will not have a CUSIP reference number, and the information will need to be uploaded as "other Information" connected with a bond issue already established in EMMA. The government, in consultation with its municipal advisor, disclosure counsel, and bond counsel, should determine both the extent of information it provides and the manner in which it is disseminated.

GFOA also encourages governments to keep abreast of the current regulatory environment surrounding bank loan disclosure. For example, the MSRB recently requested public comment on a regulatory approach that would require municipal advisors to disclose information about the bank loans and direct purchases of their government clients on EMMA. GFOA will submit comments to the MSRB on this proposal and invites GFOA members to do the same. GFOA has significant concerns with this proposal, including the fact that municipal advisors are the only party in a municipal debt transaction that have a fiduciary responsibility to issuers, as outlined in the SEC's 2013 MA Rule. The MSRB's proposed approach to pass along responsibility of issuer disclosure of bank loans and private placements breaches that fiduciary duty, making municipal advisors also beholden to the investor community. Such a requirement would change the nature of issuers' relationships with municipal advisors in a way that is beneficial to neither issuers nor municipal advisors.

Comment letters are due May 27, 2016, and can be transmitted to the MSRB through this link. GFOA members can access full text of the short regulatory proposal here.

Resources

- GFOA Best Practice – Understanding Bank Loans (2013)
- MSRB Bank Loan Disclosure Market Advisory (2015)
- Moody's Investor Service – Growth in Bank Loans and Private Financing Creating Information Gaps in US Municipal Market (2012)
- Standard & Poor's Rating Services – Not All Loans are Equal: Some Terms and Conditions That Make Disclosure Critical in Evaluating Credit Risk (2014)
- National Federal of Municipal Analysts – Considerations Regarding Voluntary Secondary Market Disclosures About Bank Loans (2013)

Thursday, May 12, 2016

FAF Releases Updated Print Editions of FASB and GASB Accounting Standards Codifications.

Norwalk, CT — May 9, 2016 — The Financial Accounting Foundation (FAF) has released updated print editions of the Financial Accounting Standards Board's *FASB Accounting Standards Codification*® and the Governmental Accounting Standards Board's (GASB) *Codification of Governmental Accounting and Financial Reporting Standards.*

The FASB Codification is the single, authoritative source of Generally Accepted Accounting Principles (GAAP) for public and private companies and not-for-profit organizations. The GASB Codification is the single, authoritative source of GAAP for state and local governments.

FASB Codification

The new four-volume bound edition of the FASB Codification contains all of the content in the online Codification as of October 31, 2015. The annual bound edition of the FASB Codification is intended to be used as a reference tool in conjunction with the always current online Codification available at https://asc.fasb.org.

This edition includes an alphabetical listing of all the Topics referenced in the FASB Codification—with their related starting page numbers—at the beginning of each volume, for more effective use. The annual bound edition of the FASB Codification can be ordered online at the FASB Store at the cost of $240.

GASB Codification

The new two-volume bound edition of the GASB Codification contains all of the content in the online Codification as of June 30, 2015, as well as integrates Implementation Guide No. 2015-1 according to the simplified GAAP hierarchy described in GASB Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments.*

The annual bound edition of the GASB Codification is intended to be used as a reference tool in conjunction with GASB Statements and Implementation Guides issued after June 30, 2015. GARS online can be accessed at https://gars.gasb.org. The annual bound edition of the GASB Codification can be ordered online at the GASB Store at the cost of $110.

About the Financial Accounting Foundation

Established in 1972, the Financial Accounting Foundation (FAF) is the independent, private-sector,

not-for-profit organization based in Norwalk, Connecticut responsible for the oversight, administration, financing, and appointment of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB). The FASB and GASB establish and improve financial accounting and reporting standards—known as Generally Accepted Accounting Principles, or GAAP—for public and private companies, not-for-profit organizations, and state and local governments in the United States. For more information, visit www.accountingfoundation.org.

Are Counties Major Players in Public Pension Plans?

The brief's key findings are:

- County governments play only a limited role in most states, but in a handful of states they are major public service providers.
- In these states, led by California, Maryland, and Virginia, counties employ lots of workers and provide pensions.
- County pension costs, which include contributions to plans they administer and to state-run plans they participate in, equal 4.8 percent of their revenues.
- The plans sponsored by counties are about 75 percent funded, slightly on the high end compared to other governmental entities.
- Overall, counties hold 12 percent of unfunded public pension liabilities, indicating that – with a few exceptions – they play a modest role in the pension world.

Download the full brief.

The Center for Retirement Research at Boston College.

by Alicia H. Munnell and Jean-Pierre Aubry

Bond Math Two-Day Intensive Bootcamp.

Bond Math Two-Day Intensive Bootcamp

June 13-14, 2016 New York City

The Bond Math Bootcamp program is a two-day training program delivered via interactive lecture format. The course concepts and methodologies discussion will be supplemented by in-class hands-on exercises as well as optional homework. This seminar will provide an in-depth exposure to yield, pricing and interest rate conventions for fixed income securities.

The session begins with an introduction to such fundamental concepts as time value of money, interest/discount rates as well as the compounding and day count conventions upon which market measures are based. The balance of the class will be devoted to exploring how these concepts are applied to the determination of price, yield, interest/discount rates, rates of return, accrued interest, etc.

View the full agenda.

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- Time Value of Money

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- Bond Prices
- Bond Yields
- Expected Risks Versus Expected Returns

Yield Curves

- Fundamentals
- Yield Curves Theory and Practice
- Yield Curves and Securities Valuation
- Forward Rates Pricing and Analytic Applications

Quantifying and Managing Interest Rate (Price) Risk

- Factors Determining Sensitivity of Price to Change in YTM
- Quantifying Price Sensitivity to Changes in Market Yields
- Non Callable Bonds
- Callable Bonds
- Applications of Duration

MSRB Seeks SEC Approval of Proposal to Update Close-Out Procedures.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission amendments to its proposal to update MSRB requirements for procedures for municipal

securities dealers related to the close-out of open inter-dealer fail transactions. Proposed amendments to MSRB Rule G-12 would require that open transactions be closed out no later than 20 calendar days after settlement date, and make other changes designed to accelerate and modernize the close-out process. The changes seek to reduce dealer and systemic risk, and the likelihood and duration that dealers are required to pay "substitute interest" to customers.

View the filing.

Proposed Political Subdivision Regulations Recall Earlier Failed Regulations: Squire Patton Boggs

As we have discussed here before, we may be coming to the point where there are no new ideas in public finance tax law. Yet another example: The recent proposed political subdivision regulations hearken back to a similar regulation project on a related topic many years ago, which suffered from many of the same drawbacks found in the proposed political subdivision regulations.

In 1976, Treasury issued proposed regulations (41 Fed. Reg. 4829) that would have codified a specific definition of a "constituted authority" of a State or political subdivision that can issue tax-exempt bonds on its behalf. These concepts are similar to the concepts that we find in the proposed political subdivision regulations, but the result is somewhat different. An entity can be a constituted authority of either a State or a political subdivision. (See here for prior coverage of this topic.) Prior to the proposed constituted authority issuer regulations, issuers looked to a series of revenue rulings (the first of which was Rev. Rul. 57-187) to determine whether an entity was a constituted authority of a State or a political subdivision.

Like the proposed political subdivision regulations, the constituted authority proposed regulations articulated tests that sound eminently reasonable when you hear them for the first time. And like the proposed political subdivision regulations, the devil (or devils) were in the details.

First, like the proposed political subdivision regulations, the proposed constituted authority regulations would have required the constituted authority to serve a public purpose of the governmental unit on whose behalf it was issuing bonds. But the test was quite a bit more specific than that.

Click here to view the image.

As the Preamble to the proposed constituted authority regulations noted: A constituted authority "must be specifically authorized pursuant to State law to issue obligations on behalf of the unit to accomplish a public purpose of the unit." The authorization would need to specify the public purpose of the governmental unit that would be accomplished by the constituted authority, and the authority would have to be created "solely to accomplish a public purpose of the governmental unit."

Second, like the proposed political subdivision regulations, the proposed constituted authority regulations would have required the constituted authority to be controlled by a State or local governmental unit. Again, the test was quite a bit more specific than that.

Click here to view the image.

The proposed regulations would have required a governmental unit to control the authority's board. In addition the proposed regulations had specific requirements for the composition of the board, and

would have barred a private person from appointing even a small minority of the board. The proposed regulations would have imposed a requirement that certain board members not have a term of more than 6 years. In addition, the governmental unit would need to exercise either "organizational control" or "supervisory control" over the authority. The tests for each of these were exhaustive and exhausting.

Finally, to round out the tests, the proposed constituted authority regulations would have required that no part of the earnings of the constituted authority could inure to the benefit of any person other than the governmental unit and upon dissolution of the authority all property of the authority must vest in the governmental unit.

Each of the elements above are present in very general terms in the revenue rulings that preceded the proposed constituted authority regulations. In its attempt to codify the principles, though, Treasury went far beyond anything that might be considered workable.

After sustained criticism, Treasury withdrew the proposed constituted authority regulations on January 1, 1984. LR-8-73, 1984-1 C.B. 592 (Jan. 1, 1984). In the notice of withdrawal, Treasury stated that "A large number of comments were received, and a public hearing was held on April 26, 1976. After consideration of the comments it has been determined that this notice be withdrawn." Instead, the tax-exempt bond community could (and still does) continue to rely on prior revenue rulings (such as Rev. Rul. 57-187) to determine whether an entity is a constituted authority of a State or of a political subdivision. Treasury has never again attempted to promulgate regulations on this topic.

It seems that a number of conditions that caused the on behalf of issuer regulations to fail are also present with the proposed political subdivision regulations. Treasury and the IRS have said that the proposed political subdivision regulations are based on commonsense principles and are an attempt to be surgical in responding to a particular perceived abuse – the issuance of tax-exempt bonds by special districts that in Treasury's view are politically unaccountable. But, as in the proposed constituted authority regulations from 1976, their attempt to codify these principles has gone far beyond even their modest stated goal. As with the 1976 proposed constituted authority regulations, the proposed political subdivision regulations take up the quixotic task of trying to tease apart what activities serve a "public" purpose and which do not. The response to this point so far has been a rather unsatisfying "but it's a federal subsidy!" That may be, but it seems that a fundamental change to a longstanding definition is better resolved by the fount of the subsidy – Congress – rather than an administrative agency. Given the many similarities between the proposed political subdivision regulations and the proposed constituted authority regulations from 1976, many in the tax-exempt bond community are hoping that the proposed political subdivision regulations suffer a similar fate.

Squire Patton Boggs – John W. Hutchinson

The Public Finance Tax Blog

USA May 12 2016

Seven Accused of Selling Fake Bonds.

Federal prosecutors charged a former campaign adviser to Secretary of State John Kerry and a second man once dubbed by the media "porn's new king" along with five others in an alleged scheme involving a Native American Tribal bond offering.

Devon Archer, an adviser to Mr. Kerry's presidential campaign in 2004, and Jason Galanis, a former investor in the adult-entertainment business, allegedly duped clients into investing more than $43 million in sham bonds issued in 2014 and 2015 by an affiliate of the Oglala Sioux Nation in South Dakota.

Messrs Archer, Galanis and the five other defendants, including Mr. Galanis's father, then allegedly diverted tens of millions of the bond investments to accounts they controlled and used them to purchase luxury goods and support an initial public offering for a technology company, authorities said.

Lawyers for Mr. Archer and for Mr. Galanis and his father didn't immediately respond to requests for comment.

All seven defendants were arrested Wednesday, and the Manhattan U.S. attorney's office charged them with securities fraud. The Securities and Exchange Commission filed related civil charges.

Along with Jason Galanis, 45 years old, those arrested were his father, John Galanis; Devon Archer; Bevan Cooney; Hugh Dunkerley; Gary Hirst and Michelle Morton.

Susan Brune, a lawyer representing Mr. Dunkerley, said her client "looks forward to addressing the charges." A lawyer representing Mr. Cooney denied the allegations.

A lawyer for Mr. Hirst didn't immediately respond to a request for comment. And a lawyer for Ms. Morton, couldn't be immediately identified.

The younger Galanis was charged in Manhattan federal court in September for activities related to an alleged pump-and-dump scheme. He was accused by prosecutors of secretly taking control of reinsurance firm Gerova Financial Group Ltd. and then dumping its stock, reaping nearly $20 million in illegal profits. Mr. Galanis' father is also charged in that case. They have pleaded not guilty in the Gerova case.

Mr. Archer was the college roommate of the secretary of state's stepson, H.J. Heinz Co. ketchup heir Christopher Heinz, and has business ties to Vice President Joe Biden's son, Hunter.

Mr. Archer, 39, and Hunter Biden, 44, have worked for Rosemont Seneca Partners, a U.S. investment company. It is affiliated with Rosemont Capital, a private-equity firm Mr. Archer co-founded with Mr. Heinz.

Messrs. Archer and Biden also recently joined the board of directors of Burisma Holdings Ltd, a Ukrainian gas producer controlled by a former top security and energy official for deposed President Viktor Yanukovych, as previously reported by The Wall Street Journal.

That move has attracted attention, given the Obama administration's recent support for pro-Western demonstrators who toppled Mr. Yanukovych's Kremlin-backed government in February.

Rosemont Seneca, now a part of New York-based Burnham Asset Management, according to Rosemont's website, declined to comment. Burnham didn't respond immediately to a request for comment.

Jason Galanis has previously run afoul of the SEC. To settle another SEC case, he agreed to a five-year ban from serving as an officer or director of a publicly traded company in 2007. The agency alleged he had filed false accounting information for Penthouse International Inc., an adult magazine publisher in which Jason Galanis owned a significant stake, that SEC complaint said.

Jason and John Galanis were also accused on Wednesday of diverting funds to pay for legal costs in their ongoing pump-and-dump case. Seven individuals have been charged in the alleged Gerova fraud, including Mr. Hirst, who was Gerova's chairman and chief investment officer. In the separate Gerova case, six of that case's seven defendants are scheduled to go to trial in September and have pleaded not guilty.

THE WALL STREET JOURNAL

By CHRISTOPHER M. MATTHEWS

Updated May 11, 2016 8:08 p.m. ET

—Ezequiel Minaya contributed to this article.

Write to Christopher M. Matthews at christopher.matthews@wsj.com

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Long-Term U.S. Muni Bond Yields Hit Another Low.

Long-term U.S. municipal bond prices rose again on Thursday, driving the 30-year yield down 1 basis point to a record low of 2.44 percent, with even some lower-quality deals selling at tighter spreads.

"There appears to be copious amounts of cash around" and "spreads are compressing as investors reach for yield," said Greg Saulnier, a Municipal Market Data (MMD) analyst. Bond prices move inversely to yields.

Previous record lows, set in November 2012, were 2.47 percent for the 30-year and 1.47 percent for the 10-year. Top-rated long-term munis broke that record on Wednesday and again on Thursday, according to MMD, a Thomson Reuters company.

Though the 10-year yield for triple-A munis rose 1 basis point on Thursday, it still closed just 7 basis points off the record at 1.54 percent.

Investors have poured money into muni bond funds for 32 weeks straight, with $22.1 billion of inflows this year, according to data from Lipper, a Thomson Reuters unit.

The week ended May 11 was the biggest in inflows so far this year, with $1.2 billion.

"This streak is quite amazing given the low levels of municipal rates and ratios, but the risk-adjusted yields on munis are still reasonable given the alternatives," said Chris Mauro, head of U.S. municipals strategy at RBC Capital Markets.

He will be watching whether bondholders put their money back into the market after their June 1 coupon payments.

"If recent weekly flows are any indicator, the reinvestment could be quite strong," he said.

Flows into long-term funds have also been near record levels as investors extend duration in an effort to pick up yield, Mauro said.

The last week in April, long-term muni funds had $1.1 billion of inflows, their strongest showing

since February 1997.

Investor demand for any yield at all in a global low-yield environment even squeezed spreads on lower credit deals.

On Thursday, the Central Texas Regional Mobility Authority received $2 billion of orders for its $368.7 million offering, making it more than five times oversubscribed, according to MMD.

But a spokesman for Central Texas told Reuters on Friday that the deal got $4.2 billion of orders, meaning it was more than 11 times oversubscribed.

The authority's senior lien revenue refunding bonds were rated Baa2 by Moody's Investors Service, a low investment grade rating.

The demand allowed Central Texas to bump prices on its entire deal. The yield of bonds maturing in 2046 with a 5 percent coupon fell 13 basis points to 3 percent.

Reuters

By Hilary Russ

Fri May 13, 2016 4:08pm EDT

(Reporting by Hilary Russ in New York; Editing by Alan Crosby and Matthew Lewis)

U.S. Muni Bonds Unlikely Home For the Huddled Masses.

Could the almost 6m daily passengers on New York's subway system prove the unlikely beneficiaries of the ever growing universe of negative-yielding bonds?

It is not as far fetched as it sounds. Foreign investors are buying increasing amounts of the municipal bonds sold by US states and cities to fund public works and infrastructure projects.

The introduction of negative rate policies by the European Central Bank and the Bank of Japan, analysts and investors say, is further sharpening overseas interest in an asset class that historically has been the preserve of US buyers who are not required to pay tax on the income from municipal bonds.

"There is a real demand for yield," says Christopher Molumphy, chief investment officer of fixed-income at Franklin Templeton. "We've had some foreign buying into US municipals, which I was surprised about when I first heard because they don't benefit from the tax treatment."

Foreign investors still represent a tiny share of the $3.7tn market. Foreign investors held $85bn of the debt at the end of last year, up from $80bn a year earlier and $29bn in 2005, the latest data from the Federal Reserve show.

However, with almost $10tn of bonds globally carrying negative yields, according to Fitch, and corporate bonds in the US and Europe rallying hard, many expect the buying to accelerate.

"We're probably in the first inning of the foreign investor game," argues Mikhail Foux, a specialist in municipal bonds at Barclays in New York. "We're seeing some money put to work but it is a small

portion. Over the next six to 12 months well see more of that happening."

Fresh foreign buyers are helping to fan an existing rally in municipal bonds that has drawn impetus from a dearth of supply as US cities and states refrain from borrowing.

The yield on 10-year municipal bonds dipped below 1.7 per cent on Wednesday, less than one basis point above a record low touched this February as the asset class was buoyed by the sell-off in riskier assets. Bond yields move in the opposite direction to prices.

The benchmark ten-year US government bond yields 1.73 per cent, a result of the differing tax treatments. By contrast, similar German, French and Swedish sovereign debt offers less than 0.5 per cent, while shorter-dated bonds from the countries carry a negative yield.

Against a backdrop of wider market volatility — and still fragile sentiment towards riskier assets — muni bonds are continuing to lure US investors. Mutual funds and exchange traded funds that invest in municipal bonds have recorded 31 straight weeks of inflows, with $19.5bn of fresh capital pouring in, Lipper data shows.

"Flows have been very heavy," says Mark Paris, who runs Invesco's high-yield municipal bond fund. "Supply . . . is now clearly down. The technicals are overwhelming. There have been deals that have been seven-times oversubscribed because so much money has come into the space."

It is a rally that has made munis expensive, according to Thomas McLoughlin, head of municipal research at UBS Wealth Management Americas, who cautions that interest from foreign buyers is still nascent.
California and New York have been among the borrowers to benefit, with a $1.4bn offering last month from the Golden State attracting "strong bids," says Alan Schankel, a municipal bond analyst at Janney Montgomery Scott.

However, those high-profile sales stand out as activity has slowed. Sales this year, at $138bn, are more than 10 per cent lower than the same period in 2015 as fewer issuers refinance, according to Thomson Reuters.

Then there is the politics. Despite an improved revenue picture at the state and local level the need to retrench during the financial crisis of 2008- 2009, when states suffered steep losses to their tax bases, has left a hangover.

"There's a political stigma with taking on more debt," says Genevieve Nolan, an analyst with Moody's.
The looming presidential election is also diminishing the appeal of issuance to local and state politicians grappling with pension reforms, new healthcare programmes and — in states such as Alaska, Texas and Oklahoma — the drag on their finances from lower energy prices.

Natalie Cohen, head of municipal research at Wells Fargo, and Mr Foux of Barclays expect supply to

climb after the election in November. Constitutional provisions in many states require voters to approve certain debt sales — most often concerning the issuance of general obligation bonds — a point that will be watched by underwriters as state and local elections near.

States and cities lack of appetite to tap the municipal bond market this year comes as the chronic lack of investment in America's infrastructure climbs up the national agenda as a range of events, including a polluted water scandal in Flint, Michigan and problems with DC's metro system, force attention on the issue. Presidential frontrunners Hillary Clinton and Donald Trump have called for investment in US infrastructure.
Investors are already casting their attention to potential funding for large projects, like the reconstruction of LaGuardia Airport and multibillion-dollar financing needs of New York's transportation authority as it constructs its new Second Avenue subway.

If the trend continues, money escaping negative yields in the eurozone and Japan may ultimately help fund such ventures. As Ms Cohen of Wells Fargo says, "Even if [foreign investors] are not subject to the US tax code, a plus two is better than a minus one. It's just basic math and that has made municipals attractive."

The Financial Times

by Eric Platt in New York

May 12, 2016 5:23 pm

Puerto Rico Electric Says Bondholders Need to Pay Up This Time.

In an unusual twist of events, one of Puerto Rico's main municipal-debt issuers is saying that bondholders must make good on a pledge to help fund a restructuring agreement or the accord risks falling apart.

A bond-purchase agreement between the Puerto Rico Electric Power Authority, a group of bondholders and bond-insurance companies will expire Thursday unless the creditors give Prepa, as the utility's known, $111 million or the pact is extended. The agreement is part of Prepa's larger debt restructuring deal. Without a bond-purchase agreement, the overall $9 billion restructuring plan would expire.

An ad-hoc group of investors holding about 35 percent of the power utility's securities and bond-insurance companies agreed in December to buy $111 million of three-year Prepa bonds if the utility paid in full $196 million of principal and interest due Jan. 1, which it did. Puerto Rico lawmakers passed a debt moratorium in April that allows Governor Alejandro Garcia Padilla to skip debt-service payments on all island debt. Prepa's creditors are reluctant to lend the utility more money unless Puerto Rico lawmakers amend the moratorium law to exempt Prepa.

A Prepa restructuring would be the largest ever in the $3.7 trillion municipal-bond market. The proposal would help lower the utility's debt and modernize a system that relies on oil to produce electricity. Hedge funds, bond insurers and mutual funds have been working with Prepa on a way to restructure its obligations since August 2014. That's when the parties first entered into a forbearance agreement to keep negotiations out of court after the utility raided reserve funds to pay for fuel.

The parties have extended the bond-purchase agreement before. Puerto Rico has satisfied two key milestones for the bond sale to proceed, Prepa said in a statement Tuesday. First, lawmakers passed legislation in February to give Prepa the authority to execute the restructuring deal and second, the utility on April 7 filed a proposed customer surcharge to the island's energy commission.

"Conditions required for creditors to fund the $111 million bond purchase under Prepa's restructuring support agreement and related documents have been satisfied, and as a result such creditors are required to fund the $111 million bond purchase on May 12, 2016," the utility said in the statement. "Prepa paid $111 million in interest to these creditors in January 2016 in reliance on the creditors' agreement to re-lend the same amount if two important milestones in Prepa's restructuring occurred."

The obligation of creditors to buy the three-year bonds is subject to several conditions being fully satisfied, according to a Jan. 28 update to Prepa's restructuring deal. One condition is that no Puerto Rico statue enacted after the agreement shall have an adverse affect on the rights and remedies of the 2016 bonds or their validity or enforceability, according to the document.

Dan Zacchei, a representative in New York at Sloane & Co. for the ad-hock bondholder group, declined to comment on Prepa's statement. Greg Diamond, a spokesman for MBIA, and Ashweeta Durani, spokeswoman for Assured Guaranty, didn't have a comment on the statement.

The $111 million of bonds will carry a 10 percent coupon and mature July 2019. An ad-hock group of bondholders would buy $65 million of the bonds and MBIA Inc. and Assured Guaranty Ltd. would purchase $50 million, according to the debt-restructuring accord.

Puerto Rico's Senate declined to vote Monday on a House bill that would remove Prepa from the debt moratorium law. The governor used that law when the Government Development Bank on May 2 defaulted on $370 million, the largest such payment failure to date for the island.

The ad-hock group late Monday offered to deposit $61 million in an escrow account to fund the bond-purchase agreement and extend the termination deadline to May 31 or until island lawmakers amend the commonwealth's debt-moratorium law.

Prepa's restructuring plan would reduce what it owes by $600 million and offer debt-service relief for five years of more than $700 million. Bondholders would take a 15 percent loss on their securities by exchanging them for bonds repaid with a new customer fee, called a securitization charge. The island's energy commission is reviewing that proposed fee.

Bloomberg Business

by Michelle Kaske

May 10, 2016 — 8:08 AM PDT Updated on May 10, 2016 — 3:03 PM PDT

Puerto Rico Is Not Pompeii. But …

There is a very unusual thing going on in the municipal market right now: People are losing money by the bucket, and soon they'll be losing money by the boatload. While regrettable, this is what happens when reality intrudes upon a fantasy.

Because Puerto Rico has defaulted, is defaulting and will default on some or all of the $70 billion in tax-exempt debt it has run up in the modern era as it borrowed to build stuff, and then to fill big holes in its budget.

Finally last June, Governor Alejandro Garcia Padilla declared on the front page of the New York Times that, "The debt is not payable."

What makes it so unusual is that this is the municipal market, where states and cities promise they'll do everything they can in order to repay the money they borrow, including selling the streets and (gasp!) raising taxes. Instead, the governor was saying, Game Over.

The defaults, the millions and soon billions of dollars in losses, and the governor's startling admission are a little like the eruption of Mount Vesuvius in the municipal market. Although only a little, because it's Puerto Rico — a territory, not a state. Had an actual U.S. state done this, the municipal market would be like Pompeii, buried under six feet of ash.

As it is, because it's Puerto Rico, very few people in finance really care about it except for muni analysts, a handful of municipal mutual funds (which hold at least $7.9 billion of the bonds), some hedge funds (which hold about $20 billion of the debt), and of course Puerto Ricans (who apparently hold about $20 billion, much of it in their retirement accounts).

The U.S. Congress is getting around to doing something about it, setting up a whole framework to put Puerto Rico "on the path to fiscal responsibility," according to Rep. Rob Bishop of Utah, who is chairman of the House Natural Resources Committee.

The main element in the proposal is to set up a Financial Control Board to make sure that Puerto Rico lives within its means and balances its budget. It will also balance the needs of bondholders and pensioners, said Bishop — and not along the lines of the Detroit model, either.

In Detroit, which filed for Chapter 9 bankruptcy in 2013, bondholders bore the brunt of creditor losses. Rep. Bishop said most restructuring in Puerto Rico would be "consensual."

That's a very defusing word. It was good to hear after so many months of listening to hedge funds and their mouthpieces talk about the constitutional guarantees on general obligation debt, and how anything less than 100 percent repayment would be unacceptable.

Now, normally, I would be in the strict constructionist camp in regard to general obligation debt. Meaning: Hey, you borrowed this; you have to do everything in your power to repay it. But.

The "but" is a combination of the island's feckless management and flagging economy, the arrogance of the hedge funds who have been the island's lenders of last resort, and Wall Street's own culpability in stuffing this Caribbean piñata full of bonded debt it couldn't afford. Puerto Rico is a very special case.

Let's begin with the economy. The island has been in a tailspin since a special tax break that made it worthwhile for manufacturers to set up shop there expired in 2006. That was the Crack of Doom. The tax break led the island's management to imagine it had a full-fledged, manufacturing-based economy instead of a more typical Caribbean economy based on tourism.

Then there are the municipal bonds. There's a publication put out by Moody's every year called State Debt Medians, and it's just the Best Thing, tracking states and how much they borrow by various measures.

Every year they would publish this report, and every year you'd see the list of 50 states and then way at the bottom, below the states and on a line all its own, would be Puerto Rico, "not included in any totals, averages, or median calculations but provided for comparison purposes only." And every year I would see the Puerto Rico figure grow.

I reported in a column in 2004 that Connecticut had the most tax-supported debt per capita at $3,558. And then I wrote, "The actual No. 1 borrower isn't a state at all. Puerto Rico has $5,758 in net tax-supported debt per capita. That's a little scary." I wish now I had done a little more with that.

Incidentally, the 2015 State Debt Medians report, which covers 2014, showed that Connecticut still had the most tax-supported debt per capita, at $5,491, and Puerto Rico's had grown to $15,637. In terms of net tax-supported debt as a percentage of gross domestic product, Hawaii topped the state list at 9.18 percent. Puerto Rico's was 53.85 percent.

Wall Street underwriters profited handsomely, making about $908 million on the island's bond sales since 2000, Bloomberg News estimated in March of 2014 after Puerto Rico sold $3.5 billion in general obligation bonds.

Finally, let's talk about the hedge funds.

Some of the hedge funds bought those $3.5 billion Hail Mary general obligation bonds in 2014, which carried an 8 percent tax-exempt coupon. This was sold to give the island "breathing room," it was said, to clean up its finances.

Some of the hedge funds bought Puerto Rico bonds from investors eager to sell as the island began its descent into the financial maelstrom. Those who bought at 70 or 80 cents on the dollar might still make money, depending on how those consensual negotiations go.

It's been interesting to hear these guys, on Twitter and elsewhere, discuss Puerto Rico. First they discounted the sheer staggering, insane amount of bonded debt that Puerto Rico had incurred, claiming that the $70 billion was just fine and utterly reasonable.

Then they said that Puerto Rico was somehow in much better shape than it let on, even after the governor declared that the debt was not payable. (Actually, we don't know the true financial condition of the island, because the last audit we have is from fiscal 2013).

Finally, the hedgies dug in their heels and said the debt they owned was legally guaranteed, and that they expected to be repaid at par. As I say, I respect this argument, and even might have embraced it at one point. But for a municipality in extremis like Puerto Rico, the legal niceties no longer apply.

And this is why people are losing money — lots of it — on their municipal bonds. Which is a very unusual thing.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

Bloomberg View

by Joe Mysak

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Memphis Slum Bond Default Spurs Effort to Oust Property's Owner.

A ministry that owns and manages two low-income apartment complexes in Memphis that were infested with roaches, littered with sewage and replete with broken windows and damaged walls, must be removed, said the trustee for municipal bondholders that financed the complexes.

The trustee, Bank of New York Mellon Corp, sued the owner, Global Ministries Foundation, in U.S. court on May 6, seeking the appointment of an receiver to take over, improve the apartments and sell them. In March, the U.S. Department of Housing and Urban Development cut off rent subsidies for more than 1,000 residents and said it would relocate them because of numerous health and safety violations. As a result, about $12 million of bonds backed by the subsidies defaulted, causing the price to tumble to as little as 21 cents on the dollar.

“Unless the borrower is removed, further payments from HUD will not be forthcoming in a very short while and once funding is stopped, the only recourse to the bondholders will be to the collateral itself, which deteriorates further every day,” the trustee said in the suit. “Most importantly, however, a third party receiver needs to be appointed who can attempt to improve the living standards of the residents.”

GMF, a Tennessee non-profit run by a Baptist minister, has raised $400 million through one of the riskiest corners of the municipal-bond market — local agencies with few, if any, employees and that exist only to sell tax-exempt debt for a fee. It owns and operates 60 multifamily complexes in 8 states.

The ministry allowed conditions at the Memphis complexes to deteriorate, failing to address health and safety violations that federal housing regulators found in April and December 2015. The April inspection of 30 buildings and 25 units revealed “life threatening” breaches including exposed wires and blocked emergency exits, as well as buckled ceilings, cracked windows and leaking pipes. HUD said GMF failed to correct the violations and stopped the subsidies in February.

Richard Hamlet, GMF’s president, said he disputes many of the allegations in the lawsuit, without identifying the particulars. The ministry is in favor of appointing a receiver because “it is in the best interest of the properties and the residents,” he said in an e-mailed statement.

“GMF has invested millions of dollars in these historically troubled properties, but unfortunately we were not successful,” he said.

Bank of New York has requested proof that funds were spent to improve the apartments, but has only received a ledger showing payment of certain amounts, the suit said. The bank also alleged that GMF misappropriated $625,000 of insurance proceeds after a June 2015 fire at one of the apartment complexes, saying it failed to give notification about the fire or provide a copy of the insurance claim. The bond contracts require insurance proceeds to be paid to the trustee.

Bank of New York recommended that Donald Shapiro, who runs Foresite Realty Management, be appointed as receiver. Foresite has experience with federally subsidized low-income housing and has

served a receiver in Memphis, Bank of New York said.

Bank of New York's suit was reported May 10 by the Commercial Appeal of Memphis.

Bloomberg Business

by Martin Z Braun

May 11, 2016 — 11:49 AM PDT

Wayne County Executive Out to Fix Michigan's 'Broken' Funding Model for Cities.

LANSING, MI — When Wayne County Executive Warren Evans took office he set out to right the county's budget. He did it, but realized about halfway through his first year in office that the way Michigan's cities get money is, in his words, "broken."

"Balancing the budget… it made me realize that even running effectively and getting ourselves on firm financial footing, we just didn't have the resources going forward with the existing state of municipal financing," Evans said.

He's launching a statewide tour titled, "Investing in Michigan Communities: Finding Fair Funding for Strong, Successful Communities."

Evans is kicking off the tour in Trenton, and plans to talk with local officials about financing mechanisms that fuel their communities and challenges they face. In addition to Southeast Michigan, he plans to visit Grand Rapids, Lansing, Flint, Traverse City and the Upper Peninsula.

The goal is to build consensus around a solution. Evans laid out a problem in his March State of the County address: the county got $418 million less in tax receipts from 2008 to 2014 due to declining property values and limitations on how local municipalities can recover those funds.

He plans to hear from local officials statewide on this tour, and spend this year gathering information. In 2017, he intends to gather what he has learned and put forward solutions with broad support.

Evans is not the only one who has delved into municipal finance lately. Michigan State University researchers have traced local financial problems back to state policies, and the Michigan Municipal League recently launched a website that aims to educate on Michigan's "abysmal record" of investing in local governments.

Evans recognized that there are differences between municipalities, and there may be disagreement on how to proceed.

"If that weren't the case we'd have a remedy now," Evans said. "But we think that if we know enough about the problem and know enough about the issues that different parts of the state have, that gives us a leg up on trying to craft something that we can all live with."

Around Wayne County Evans said he hears almost universally that residents want two things: better infrastructure, like roads, and more public safety workers.

He said there are levels of nuance and differences between communities, but there are also a lot of similarities. Statewide solutions are necessary for all communities, Evans said.

In Wayne County, he's confident he's put the area on a sound financial footing. But he's still hearing about public safety, about roads.

"Without additional revenue, we, like a lot of communities are going to fall short of being able to perform the way that we think our citizens expect us to perform," Evans said.

Joining Evans on the tour are Bill Anderson, Government Finance & Operations Specialist for the Southeast Michigan Council of Governments; Eric Scorsone, founder of Michigan State University's Center for Local Government Finance and Policy; Tony Minghine, Associate Executive Director & COO of the Michigan Municipal League; Eric Lupher, President of the Citizens Research Council of Michigan; and city of Taylor Mayor Rick Sollars.

By Emily Lawler | elawler@mlive.com

May 16, 2016 at 10:01 PM, updated May 16, 2016 at 11:23 PM

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In the Lands of Negative Yields, Even U.S. Municipal Bonds Lure.

In 1989, Japanese investors bought Rockefeller Center. Now, they're plowing into the market that finances the subways underneath.

Faced with negative interest rates in their own countries, foreign banks and pension funds are looking increasingly toward municipal bonds, a bastion of buy-and-hold investors seeking U.S. income-tax breaks.

Money managers including ColumbiaThreadneedle Investments and Western Asset Management Co. say they have set up accounts for Asian and European investors who are buying U.S. state and local-government debt. In November, Shinsei Bank Ltd. and Western Asset, a unit of Baltimore-based Legg Mason Inc., started a private fund that invests in municipal bonds for Japanese financial institutions.

"We have investors coming from around the globe looking and saying, 'Here's a security that will offer us a decent yield without all the credit risk,'" said Robert Amodeo, head of municipals in New York for Western Asset Management, which oversees about $440 billion.

With central banks in Japan and Europe holding interest rates below zero in a bid to boost their moribund economies, overseas funds are contributing to the flood of money coming into the $3.7 trillion municipal market where local governments borrow to build roads, bridges and schools. That's adding to a rally in the price of the bonds, whose low default rates and lack of volatility make them an alluring alternative to U.S. corporate debt.

Other assets have seen bigger price swings amid volatile oil prices and building concern about the slowdown of the Chinese economy. During a shift away from corporate junk bonds this year, for instance, the extra yield investors demanded to hold them instead of top-rated debt reached a more

than four-year high of almost 9 percentage points in February. The gap has since narrowed by about 2.5 percentage points as prices recovered.

Since overseas firms don’t benefit from the U.S. income-tax exemption given to interest payments from most municipal bonds, they’ve focused largely on the $466 billion of taxable debt that carries higher yields. By Friday, those securities maturing in 10 years yielded 2.44 percent, 0.74 percentage point more than Treasuries. Similarly dated German bonds yield 0.14 percent, while in Japan they pay -0.11 percent, meaning it costs money to own them.

Taxable municipal bonds have outperformed over the 3, 5 and 10 years that ended Dec. 31, according to data from Barclays Plc. The bank’s index of the securities had a total return of 6 percent per year over the past 10 years, compared with 4.5 percent for its broader measure of Treasuries, corporate debt and other U.S. investment-grade fixed-income instruments.

The international buyers are contributing to a flood of cash that has lifted municipal-debt prices and held yields near their lowest in half a century. Some of the investments have been made through mutual funds, said James Dearborn, head of tax-exempt securities at Boston-based ColumbiaThreadneedle, which has $464 billion under management.

Municipal bonds are a haven from financial-market turmoil because more than half of it is owned by individuals typically more interested in the tax-free interest than capital gains. As a result, they tend to hold until maturity, preventing the periodic bouts of selling that whipsaw prices of other securities.

“They’ve been largely insulated from a lot of the volatility in the markets,” said Dearborn.

International investors previously emerged as big buyers of Build America Bonds, which were created by the federal government to boost the economy after the onset of the recession. States and local governments issued almost $200 billion of the taxable securities, whose interest payments were subsidized by the U.S. Treasury. By the time the program lapsed at the end of 2010, foreign investors held about $72 billion of municipal debt, up $21 billion from two years before, according to the Federal Reserve. By the end of 2015, they owned $85 billion.

Bond-fund managers are cultivating the interest abroad. In March, Eaton Vance Management co-sponsored an institutional investors forum in Tokyo that drew more than a hundred representatives of banks, funds and pensions. Cindy Clemson, Eaton Vance’s co-director of municipal investments, was among the speakers.
“Certainly in the Japanese climate, yield is at a premium,” she said.

Shinsei and Western Asset last year started a yen-denominated fund, with about 8 billion yen ($65 million) at the time, targeted towards revenue bonds, which finance projects such as toll roads, water and sewer systems or airports. The fund invests in those with an A rating, comfortably within investment grade, or higher.

“We’ve received a great response to our U.S. municipal bond funds,’’ Akiko Suda, general manager of product planning at Tokyo-based Shinsei’s asset-management business, said in an e-mail. “The funds are highly rated and spreads are comparatively deep. We have strong expectations for the investment balance to grow further here in Japan.’’

ColumbiaThreadneedle, a unit of Ameriprise Financial Inc., got its first mandate from foreign investors about a year ago, Dearborn said. The firm manages “hundreds of millions of dollars,” in separate accounts or through its mutual funds, he said. ColumbiaThreadneedle is now seeing

interest from Europe.

"This is a brand new thing for us," Dearborn said.

Bloomberg Business

by Martin Z Braun

May 16, 2016 — 2:00 AM PDT Updated on May 16, 2016 — 7:57 AM PDT

Chicago City Council Committee Advances $600 Million Bonds.

A Chicago City Council committee on Monday approved the issuance of up to $600 million of new general obligation bonds as well as a proposed ordinance to subject future debt issues to greater scrutiny.

The council's finance committee agreed to send the bond issue to the full city council, which meets on Wednesday. If approved, the bonds would be priced through Goldman, Sachs & Co in the third quarter or sooner depending on market conditions and other factors, according to Chicago Chief Financial Officer Carole Brown.

Chicago's sinking credit ratings due to budget and pension woes have led investors to demand hefty yields for the city's debt.

Brown said the implementation of Mayor Rahm Emanuel's plan to reform the city's debt practices and the passage of a big property tax increase last year to help fund pensions have tightened the city's so-called credit spread over Municipal Market Data's benchmark triple-A yield scale.

"I think the market has responded to a lot of the hard choices that this council and the mayor have made related to our finances," Brown said.

She estimated Chicago would continue to have spreads over MMD's scale in the 200 basis-point range. The finance committee lowered the interest rate cap for the new bond sale to 10 percent from 18 percent.

Brown said the municipal bond market is awaiting the fate of legislation sitting on the desk of Illinois Governor Bruce Rauner's desk, which would allow the city to spread out payments to two public safety pension funds. Nearly two months after the state supreme court threw out cost-saving reforms to Chicago's other two pension funds, the mayor has yet to release a detailed plan B.

Proceeds from the bond sale would fund equipment purchases and capital improvements, with $100 million earmaked for legal settlements in 2016 and 2017.

The finance committee also advanced a Debt Transactions Accountability Ordinance that would require reports detailing the risks, benefits and costs of a debt issue prior to sale.

Participants in a bond issuance would not be indemnified by the city from "gross negligence, illegal acts, fraud, bad faith breach or willful misconduct."

The proposed ordinance also sets out timelines for city council deliberations and public hearings on bond sales and requires annual post-sale financial performance reports by the city's CFO.

Reuters

Mon May 16, 2016 3:36pm EDT

(Reporting by Karen Pierog; Editing by Matthew Lewis)

IRS Updates Start-Of-Construction Rule: Four Years For Project Completion.

On May 5, 2016, the US Internal Revenue Service released Notice 2016-31 (available here) (the "Notice"). The Notice updates previous guidance on satisfying the "start of construction" requirement to reflect the fact that wind, hydropower, geothermal, and biomass and trash facilities can now qualify for the full renewable electricity production tax credit ("PTC") under Section 45 of the Internal Revenue Code of 1986 (the "Code") (e.g., 2.3 cents per kilowatt) if construction starts before 2017 (or a reduced credit, if construction starts before 2020).

The Notice provides that the US Treasury Department and the IRS will issue separate guidance to address the application of these rules to solar energy facilities claiming the investment tax credit ("ITC") under Section 48 of the Code.

The basic rules regarding the "five percent safe harbor" and "significant physical work test" remain unchanged. The Notice provides projects with a four-year window for completion and provides additional guidance regarding multiple "facilities" that operate as a "single project."

Background

In the final days of 2015, the Consolidated Appropriations Act of 2016 (P.L. 114-113) (the "Act") extended the PTC to qualified facilities, such as wind facilities, that begin construction before January 1, 2020 (the previous expiration date was January 1, 2015). The Act also phased out the wind PTC, which generally is an amount equal to the product of 1.5 cents, adjusted for inflation (which, for 2016, results in a credit rate of 2.3 cents), multiplied by the kilowatt hours of electricity produced by the taxpayer and sold to an unrelated person, by providing that the amount of the credit shall be reduced by 20 percent for facilities that begin construction during 2017, 40 percent for facilities that begin construction during 2018 and 60 percent for facilities that begin construction during 2019. For a more detailed analysis of the Consolidated Appropriations Act of 2016, see our December 28, 2015, Legal Update).

Prior to the extension, the PTC was available for a qualified facility, such as a wind facility, only if construction of the facility began before January 1, 2015. The IRS also had issued guidance in the form of a series of notices (the "Prior Guidance") to clarify when construction of a facility was deemed to have begun.

Under Notice 2013-29 (available here), a taxpayer can establish that construction has begun by starting physical work of a significant nature prior to January 1, 2014 (the "Physical Work Test") or by paying or incurring at least five percent of the total cost of the facility before January 1, 2014 (the "Five Percent Safe Harbor"). In addition, under the Physical Work Test, the taxpayer is required to maintain a continuous program of construction, while the Five Percent Safe Harbor requires that the taxpayer make continuous efforts to advance toward completion of the facility (for a more detailed analysis of Notice 2013-29, see our April 16, 2013, Legal Update). Subsequently, in Notice 2013-60 (available here), the IRS clarified that the continuous program of construction and continuous efforts requirements would be deemed satisfied if the facility were placed in service before January 1, 2016

(the "Continuity Safe Harbor") (for more complete coverage of Notice 2013-60, see our September 23, 2013, Legal Update). In Notice 2014-46 (available here), the IRS further clarified and modified Notices 2013-29 and 2013-60 (for a discussion of Notice 2014-46, see our August 8, 2014, Legal Update). Finally, the IRS issued Notice 2015-25, which updated previously issued guidance to reflect the one-year extension of the PTC until December 31, 2014, including the extension of the date of the Continuity Safe Harbor to January 1, 2017 (for more complete coverage of Notice 2015-24, see our March 12, 2015, Legal Update).

Until the issuance of the Notice, there was uncertainty as to whether the Prior Guidance would continue to apply with respect to the five-year extension. Of particular concern was how the IRS would roll forward the date of the Continuity Safe Harbor in light of the multi-year extension and the phase-out of the PTC.

The Notice

Completion Window – Continuity Safe Harbor. Previously, Notice 2013-29 had imposed a requirement that a project owner continuously advance the construction of the project from the time construction starts through the placed-in-service date. In reaction to industry comments, the IRS had created the Continuity Safe Harbor in Notice 2013-60 to deem continuous construction to have occurred if the project was placed in service before January 1, 2016. The Notice significantly expands the Continuity Safe Harbor to deem a project to meet the "continuity" requirement if the project is placed in service by December 31 of the year that includes the fourth anniversary of the date of the start of construction. The Notice provides the following example in which "construction begins on a facility on January 15, 2016, and the facility is placed in service by December 31, 2020, the facility will be considered to satisfy the Continuity Safe Harbor."

To head off gamesmanship with respect to the application of the four-year rule, the Notice provides that a project "may not rely upon the Physical Work Test and the Five Percent Safe Harbor in alternating calendar years." For example, a project owner that started physical work in 2016, and thus had until December 31, 2020, to place the project in service, may not in 2017 incur five percent of the cost of the project and take the position that it has until December 31, 2021, to place the project in service. Thus, taxpayers are advised to carefully select the year in which a project satisfies the Physical Work Test or Five Percent Safe Harbor, although the four-year window for satisfaction of the Continuity Safe Harbor may take some pressure off this selection.

Completion Window – Facts and Circumstances. In addition to the Continuity Safe Harbor, Notice 2013-29 provided that a taxpayer may satisfy the continuity requirement based on all the relevant facts and circumstances. Notice 2013-29 further provided a non-exclusive list of excusable disruptions in the taxpayer's construction of a facility that will not be considered as indicating that a taxpayer has failed to maintain a continuous program of construction. The Notice adds additional excusable disruptions to the list, including interconnection-related delays and delays in the manufacture of custom components. The Notice also expands some of the already-listed excusable disruptions including by broadening safety related delays to include all matters of safety, not just public safety, and by eliminating the limitation of no more than six months on financing delays. As with Notice 2013-29, the list of excusable disruptions provided by the Notice continues to be non-exclusive.

Physical Work Test. Under Notice 2013-29, the Physical Work Test requires "physical work of a significant nature." Notice 2014-46 clarified that this test focuses on the nature of the work performed, not the amount or cost. To illustrate activities that constitute "physical work of a significant nature," Notice 2014-46 provided a non-exclusive list of activities that included (i) the beginning of the excavation for the foundation, the setting of anchor bolts in the ground or the

pouring of the concrete pads of the foundation, (ii) physical work on a custom-designed transformer that steps up the voltage of electricity produced at the facility to the voltage needed for transmission and (iii) roads that are integral to the facility.

The Notice confirms that the Physical Work Test is satisfied with the performance of work of a significant nature, irrespective of the amount or value of the work performed. To illustrate physical work of a significant nature, the Notice provides a non-exclusive list of qualifying activities that, with respect to wind facilities, includes only the beginning of the excavation for the foundation, the setting of anchor bolts in the ground or the pouring of the concrete pads of the foundation. Although the Notice does not reiterate the other examples included in Notice 2014-46, nothing in the Notice suggests that the IRS is abandoning its earlier guidance. On the contrary, the Notice expressly provides that the Prior Guidance continues to apply except as otherwise provided in the Notice.

Multiple Facilities as a Single Project. The Notice and the Prior Guidance apply the start-o--construction rules to a "project," whereas other IRS guidance had viewed each turbine as a separate unit of property for federal income tax purposes. The definition of a single project is critical because whatever facilities are within the scope of a single project have the same start-o--construction date for purposes of determining the level of tax credits to which the project is entitled. For example, for a project using the Physical Work Test, this principle means the work need only occur with respect to the project generally and not with respect to each turbine.

The single project principle also makes it feasible to have a project built in large phases and have all of the phases have a common start-of-construction date for purposes of determining the level of tax credit eligibility.1

While Notice 2013-29 had generally provided that whether multiple facilities will be treated as a single project will depend on the relevant facts and circumstances, it also identified eight non-exclusive factors that indicate that the multiple facilities are operated as part of a single project. Some of the factors did not apply to certain projects. For example, a "merchant" project would not have a common power purchase agreement, and an equity-financed project would not have a common construction loan. The Notice retains the language indicating that the single project determination will depend on the relevant facts and circumstances; however, it does not identify any specific relevant factors. Nevertheless, nothing in the Notice suggests that the IRS no longer considers the previously identified factors as indicating that multiple facilities are operated as part of a *single project* and, as previously noted, the Notice expressly provides that the Prior Guidance continues to apply. The omission of any specifically identified factors, however, could suggest that the emphasis is on how an individual project *operates*, as opposed to whether all eight identified factors are satisfied.

Disaggregation. The Notice also provides additional guidance with respect to the single project determination that was not addressed in the Prior Guidance.

First, the Notice clarifies that although multiple facilities may be treated as a *single project* for purposes of the Physical Work Test or the Five Percent Safe Harbor Test, the fact that some facilities may not satisfy the continuity requirement (and thus will not be eligible for the PTC) will not disqualify the other facilities that have satisfied that requirement from being eligible for the PTC. This is helpful guidance that resolves, in favor of the taxpayer, the considerable uncertainty as to whether the *single project* concept may be used, not only to qualify otherwise disqualified individual facilities within a single project, but to disqualify otherwise qualified individual facilities within a project as well.

Second, the Notice clarifies that the *single project* determination will be made in the year in which

the last of the multiple facilities is placed in service. While this point was not entirely clear under the Prior Guidance, it is consistent with the Prior Guidance's focus on factors that have bearing on how a project will be operated once it is placed in service.

Retrofitted Facilities. A project must be originally placed in service (i.e., essentially be new) to be eligible for the PTC. The Notice clarifies that a facility may qualify as originally placed in service even if it contains some used property, as long as the fair market value of the used property is not more than 20 percent of the facility's total value (i.e., the cost of the new property plus the value of the used property). The application of the so-called 80/20 rule to a project claiming PTCs comes as no surprise, as the IRS in other guidance has indicated that the 80/20 rule would apply in such a situation (see Rev. Rul. 94-31). The Notice clarifies that, in the case of a single project comprised of multiple facilities, the 80/20 rule is applied to each individual facility comprising the single project, not to the project as a whole.

Footnotes

1."Phases" is an industry term, rather than nomenclature used in the notices.

Mayer Brown

Article by Jeffrey G. Davis, David K. Burton, Anne S. Levin-Nussbaum and Isaac L. Maron

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S&P's Public Finance Podcast (Local Government Insights and Credit Drivers, and the Rating Action on Kaiser Permanente)

In this week's edition, Senior Director Jane Ridley provides some insights on market ratings and drivers, in light of recent bankruptcies, and Managing Director Martin Arrick discusses our recent rating action on Kaiser.

Listen to the Podcast.

May 11, 2016

Hawkins Advisory (Area Median Gross Income Figures)

This issue of the Hawkins Advisory provides with information of specific interest to single-family housing bond issuers regarding area median gross income figures.

Read the Advisory.

Hawkins Delafield & Wood LLP

5/12/2016

Why House Panel Leaders Should Care About Munis.

WASHINGTON – Rep. Randy Hultgren, R-Ill., warned House subcommittee leaders considering tax reform proposals on Thursday that a cap or elimination of tax exemption for municipal bonds could raise the cost of infrastructure projects in their own districts.

Hultgren made the remarks during the House Ways and Means Committee's tax policy subcommittee's hearing for members of Congress to discuss proposals for tax reform.

He told subcommittee chairman Rep. Charles Boustany, R-La., that bonds issued last year by St. Martin Parish in his state to build new schools and improve existing ones would have had an additional $1.2 million in issuance costs had the tax exemption of the bonds been capped.

He told Rep. Richard Neal, D-Mass, the top Democrat on the subcommittee, that a recent issuance by Springfield, Mass. to fund 22 separate projects, including a school renovation project and heating ventilation and air conditioning work at its city hall, would have cost taxpayers an additional $7 million.

"While serving in local government in Illinois I saw firsthand the benefits provided by this reliable option of financing community development," Hultgren said of municipal bonds. "Washington disagrees on how to strengthen our infrastructure but I believe decisions made by local communities handling local products and projects tend to be more efficient than from one size fits all policy from Washington D.C."

Hultgren also cited a 2013 study that found if tax exemption is capped or eliminated that it will be more costly to issue debt. He also cited an example from his own state. The Red Gate Bridge that spans the Red Fox River in St. Charles would have cost the city an additional $617,000 in interest costs without the tax exemption, he said.

Hultgren and Rep. Dutch Ruppersberger, D-Md., in March launched a bipartisan Municipal Finance Caucus made up of House members that works to protect the tax-exempt status of municipal debt.

The two Congressmen also sent a letter to House leaders last year urging them to reject any cap on

or elimination of the tax exemption for municipal bonds. That letter had more than 120 signatures.

Boustany said he would take the collective panel's remarks into consideration.

House Ways and Means Committee chairman Rep. Kevin Brady, R-Texas, said it has been "years" since the committee held a member day hearing on tax code reform, and called the hearing an "important step" in creating opportunities for legislators to put forth tax ideas. Testimony was limited to members of Congress who have either introduced or co-sponsored tax legislation.

Brady, who chairs both the committee and the House Task Force on Tax Reform, has previously said tax reform should lower tax rates for families and businesses as well as eliminate special-interest carve-outs.

"We are deliberately and thoughtfully considering improvements to the tax code that will grow our economy and make the tax code fairer and simpler," Brady said Thursday. "The fact that over 30 members are sharing their ideas today is a testament to our new process – and to our return after so many years to regular order."

House Republicans in February announced the formation of the committee-led task force on tax reform that is to consider recommending limits to deductions, credits and exclusions, and will consider tax-exempt bond interest along with other tax preferences.

The tax policy subcommittee held its first hearing on tax reform on March 22, where its members considered shifting from an income tax base to a consumption or cash-flow tax base.

Several tax reform plans would either limit or eliminate tax-exempt bond interest in order to help pay for lowering tax rates and broadening the tax base.

In his fiscal 2017 and previous budget requests, President Obama has proposed capping the value of tax-exempt interest at 28 percent.

Former House Ways and Means Committee chair Dave Camp, R-Mich., floated an earlier tax reform plan that would have capped the value of tax-exemption at 25% and eliminated the tax exemption for both new private-activity bonds and new advance refundings. Hultgren argues that the elimination or cap on tax exemption would increase public borrowing costs and hamper state and local governments' ability to invest in themselves.

Neal called for a bipartisan effort to pass tax reform legislative proposals sooner rather than later.

"If legislation is not controversial, opposed by the administration, and introduced in a bipartisan and fiscally responsible manner, the committee should work expeditiously to get it approved," Neal said.

The Bond Buyer

By Evan Fallor

May 12, 2016

Why Is an Indianapolis Authority Settling a Rebate Dispute with the IRS?

WASHINGTON – The Indianapolis Airport Authority said this week that it has agreed to settle a

dispute with the Internal Revenue Service over rebate liability in connection with $347 million of tax-exempt bonds, even though it disagrees with the IRS' position on the bonds.

"Although the authority disagrees with and has opposed the field office's position, the authority and the Internal Revenue Service have agreed to a settlement of the dispute that will close the examination with no change to the tax exempt status of the bonds," authority officials wrote in an event notice posted on the Municipal Securities Rulemaking Board's EMMA website on May 6. The authority said in the notice that the settlement agreement is to be executed on May 20.

Robert Thomson, the senior finance director for Indianapolis Airport Authority, declined to comment on the details of the proposed settlement, saying it hasn't been reviewed yet by the authority's board.

But Thomson said the disagreement centered on the interpretation of the federal tax law related to "replacement proceeds." When certain material terms of bonds are changed, the bonds can be considered to be newly issued to replace the earlier bonds so that they become subject to the latest tax laws.

Thomson added that the IRS examination was a "normal review" rather than an audit. Thomson said the IRS opened its examination of the bonds in 2013.

In the event notice, the airport authority officials stressed that neither it nor the bond bank had received a Notice of Proposed Issue from the IRS as of May 6.

"There was a difference in interpretation of the law," Thomson said. "We've ultimately been working on this for three years. It's been a while — lots of meetings and lots of data, so we said, 'Let's come to a settlement. Let's not continue this investment of services and time.'" The IRS requires issuers to pay a rebate at least every five years and after the final maturity of the bonds. Failure to comply with federal rebate requirements can lead to the loss of tax-exempt status of the bonds.

The $347 million of tax-exempt Series 2006F were issued by the bond bank, which loaned the proceeds to the airport authority. The proceeds were to be used to purchase airport revenue bonds issued by the authority, pay for the cost of issuance of both the 2006F bonds and series 2006A Authority bonds, and pay for certain program expenses of the bond bank, according to the official statement for the bonds. The authority issued $42.8 million in Series 2006G taxable bonds at the same time.

The proceeds of the Series 2006A authority bonds were used to fund the airport authority's 2001-2010 capital improvement program for the airport system, including the development of a 1.2 million-square-foot midfield passenger terminal.

The Series 2006F and G bonds were underwritten by a syndicate led by City Securities, Inc. Ice Miller LLP and Coleman Graham & Stevenson, LLC served as co-bond counsel and First Albany Capital Inc. was financial advisor for the issue.

The bond bank is independent of the city of Indianapolis and the airport authority, according to the official statement for the 2006 bonds. Its purpose is to "buy and sell securities of 'qualified entities'" and is governed by a board of five directors appointed by the mayor of Indianapolis. The bond bank routinely serves as the conduit issuer for the airport's bond deals.

The airport authority, the owner and operator of Indianapolis International Airport, in March cancelled a proposed $500 million medical center and sports complex that would have been developed on the site of the airport's former terminal. The proposal, which was seen as too

ambitious by the board, included several medical office buildings and a 20,000-seat sports stadium.

Indianapolis International Airport served nearly 8,000,000 passengers in 2015, according to the Federal Aviation Administration. It also serves as a hub for FedEx Express.

The Bond Buyer

By Evan Fallor

May 11, 2016

How The MSRB Wants To Change Dealer Closeout Procedures.

WASHINGTON – The Municipal Securities Rulemaking Board has filed revised amendments with the Securities and Exchange Commission that would require municipal securities transactions to be closed out within 20 days rather than 30 days of settlement.

The MSRB's current rules for closeout procedures are included in a years-old portion of MSRB Rule G-12 on uniform disclosure. There is no mandate for a closeout, only a recommendation that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date. The changes would lessen the effect of interdealer transaction failures on the market.

"The MSRB believes that a more timely resolution of inter-dealer fails would ultimately benefit customers by providing greater certainty that their fully paid-for securities are in fact owned in their account, not allocated to a firm short, and would benefit dealers by reducing the risk and costs associated with interdealer fails," the MSRB said in its filing.

Dealers would have a 90-calendar day grace period after the rule is approved to resolve all outstanding dealer failures, which the MSRB estimated is about 170, according to the filing.

The self-regulator had originally planned to revise the rule to put a 30-day limit on closeouts, but the Securities Industry and Financial Markets Association made clear in a comment letter it thought the timeline could be shortened to 15 days with an option for a 15-day extension if both sides in a transaction agree more time is needed.

Ultimately, the MSRB chose 20 days because it was concerned small dealers would be overburdened by a shorter timeline and because it wanted to give all dealers the same fixed time frame.

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

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

or yield.

The Bond Buyer

By Jack Casey

May 12, 2016

What GFOA Members Need to Know About Bank Loans.

WASHINGTON – The Government Finance Officers Association posted an alert on Thursday encouraging its members to both voluntarily disclose the terms of their bank loans and pay attention to regulators' increased scrutiny of the lack of such disclosures.

GFOA gave its members several options for how to make the disclosures rather than suggesting one uniform method.

Bank loans have become popular in the municipal market with some issuers using them as an alternative to the issuance of munis because they are cheaper and subject to much less regulation.

While general information, such as the size of the loan, usually ends up in an issuer's annual financial reports, specific loan terms are only disclosed sporadically.

Many muni market participants, including the Municipal Securities Rulemaking Board, have urged the Securities and Exchange Commission to provide more guidance on bank loans, including when they could be considered a security and when municipal advisors working with issuers on them may be crossing over into broker-dealer activities.

GFOA told its members that they can make their disclosures in a variety of ways, including: posting loan agreements or a summary of their terms on the MSRB's EMMA website; incorporating bank loan information into their comprehensive audited financial reports; or releasing summaries of the loans' material terms on their own websites.

GFOA also warned members that if they use EMMA, they will have to be aware that the bank loan will not have a CUSIP and thus will have to be uploaded as "other information" connected with an already posted bond issue.

The MSRB recently said that it had conducted a search ending on March 28 that uncovered only 143 hits when searching EMMA for the term "bank loan." Of those hits, 64 were not filed in the recommended subcategory for bank loans.

The MSRB recommends issuers disclose bank loans under its continuing disclosure category of "financial/operating filing" and then "investment/debt/financial policy."

"Disclosure of a bank loan would be relevant to bondholders if the bank loan is secured by any or all of the same revenues as the outstanding bonds, and is large enough to be material to the creditworthiness of the government," GFOA said in the alert. Additionally, if a government executes numerous bank loans, the combination of those loans in the aggregate and the terms and conditions of the loans may be important for investors in the government's bonds to know, the group said.

GFOA also advised members to develop policies and procedures that address applicable legal and

financial requirements for using bank loans in their jurisdictions and to seek guidance from outside professionals like municipal advisors and bond counsel when reviewing the terms of bank loans.

Without that focus, regulators may feel the need to step in, GFOA warned.

“While disclosure of bank loans is not required under MSRB or SEC rules, issuers are advised that increased regulatory scrutiny may result in mandatory disclosure of bank loans in the future, subject to similar standards of materially and timeliness as apply to municipal securities,” GFOA said.

The alert also focused on an MSRB concept release from March 28 that asked whether the self-regulator should require MAs to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it proposed requiring the disclosures from MAs because issuers have not readily responded to requests for voluntary bank loan disclosures on EMMA.

GFOA said it has significant concerns with the proposal, partly because municipal advisors are the only party in a municipal debt transaction that has a fiduciary responsibility to issuers.

“MSRB’s proposed approach to pass along responsibility of issuer disclosure of bank loans and private placements breaches that fiduciary duty, making MAs also beholden to the investor community,” GFOA said in the alert. “Such a requirement would change the nature of issuers’ relationships with MAs in a manner that is neither beneficial to issuers or MAs.”

The group did not explicitly ask members to file comments but provided them links to the proposal with a reminder that comments are due by May 27.

The Bond Buyer

By Jack Casey

May 12, 2016

Chicago Water Bond Deal Washes Off Taint of Interest Rate Bets.

Chicago removed the stain of ill-timed bets on derivatives as it sold more than half a billion dollars of debt for its water system.

The nation’s third-largest city sold about $505 million of securities on Wednesday to buy back the last of its variable-rate debt and help cover about $102 million of fees to Royal Bank of Canada and Barclays Plc to break off interest-rate swaps.

The offering concludes a refinancing wave by Chicago since its credit rating was cut to junk by Moody’s Investors Service a year ago, which gave banks the right to force it to pay off debt early and terminate related swap contracts. Chicago has already paid about $260 million to cancel derivative trades over the past 12 months, foisting added costs on a city already contending with soaring bills to a retirement system that it owes $20 billion.

“It’s a smart defensive move to do this, and I think the market will view it positively,” said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including Chicago securities, and is considering buying in the latest deal. “It represents good financial stewardship to remove derivative products from the balance sheet as it reduces financial

risk."

Securities due in 2031 sold for 3.08 percent, according to three people with knowledge of the deal who requested anonymity before the final prices were released. The top yield is about 1.1 percentage points more than benchmark municipal debt that matures in 15 years, data compiled by Bloomberg show.

"Investors responded quickly and favorably to the second lien water revenue bonds demonstrating the financial community's ongoing support for the Mayor's plan to repair city finances," Carole Brown, Chicago's chief financial officer, said in an e-mailed statement after the sale.

Even before the Moody's downgrade, Mayor Rahm Emanuel had been planning to cut the city's exposure to floating-rate bonds and derivatives, a financing technique that was popular with states and cities until the financial crisis of 2008 hit them with spiraling bills. Such deals have since cost governments billions and helped to push Jefferson County, Alabama, into a record-setting bankruptcy.

Chicago has sold about $2.8 billion of debt in the past 12 months, according to Bloomberg data. It last issued $500 million of tax-exempt general-obligation bonds in January for top yields of 4.9 percent, about 2.3 percentage points more than benchmark securities.

The city's latest may benefit from an influx of cash into municipal-bond funds that are hunting for higher returns as yields hover near a 50-year low. Investors added $710 million to such funds in the week ended May 4, marking 31 weeks of inflows, according to Lipper US Fund Flows data.

Chicago's water bonds carry higher credit ratings than its other securities, thanks to the revenue reaped from rate increases in the past three years and a customer base split between the city and its suburbs. S&P Global Ratings on April 26 boosted the second-lien water bonds to A, five levels above junk and two steps higher than the city's general-obligation debt, citing the benefits from getting rid of the derivative deals. Moody's, which didn't rate Wednesday's deal, grades Chicago's second-lien water debt Baa2, two steps above junk.

Beyond Names

"It has the name Chicago in it so some investors look at it kind of negatively, but if you look at the underlying credit it's a strong credit," said Brian Steeves, a portfolio manager in Rye Brook, New York, at Belle Haven Investments, which oversees $4 billion of munis and is considering buying the new bonds. "It will definitely be well-subscribed."

In a sign of such demand, the water-system debt trades for lower yields than the city's general obligations, indicating that investors perceive less risk. A portion of the securities due in 2025 traded Tuesday for an average yield of 3.3 percent, according to data compiled by Bloomberg. That compares with 5.1 percent for general obligations.

Even so, Chicago's still struggling with ballooning retirement costs and the political paralysis that's left the state without a budget.

"There still is that broader cloud of the pension and the lack of a state budget that overshadow some of these positive fundamental trends for some of the specific issuers in the Chicagoland complex," said Gabe Diederich, a Menomonee Falls, Wisconsin-based portfolio manager at Wells Fargo Asset Management, which manages about $39 billion of munis, including various Chicago bonds.

Emanuel has yet to lay out how Chicago will shore up its pension funds after the state supreme court

threw out his plan to reduce benefits and require workers and the city to boost their contributions. A record property-tax hike will provide funds for the police and fire pensions, but without changes, the other two retirement funds will run out of money in 10 to 13 years.

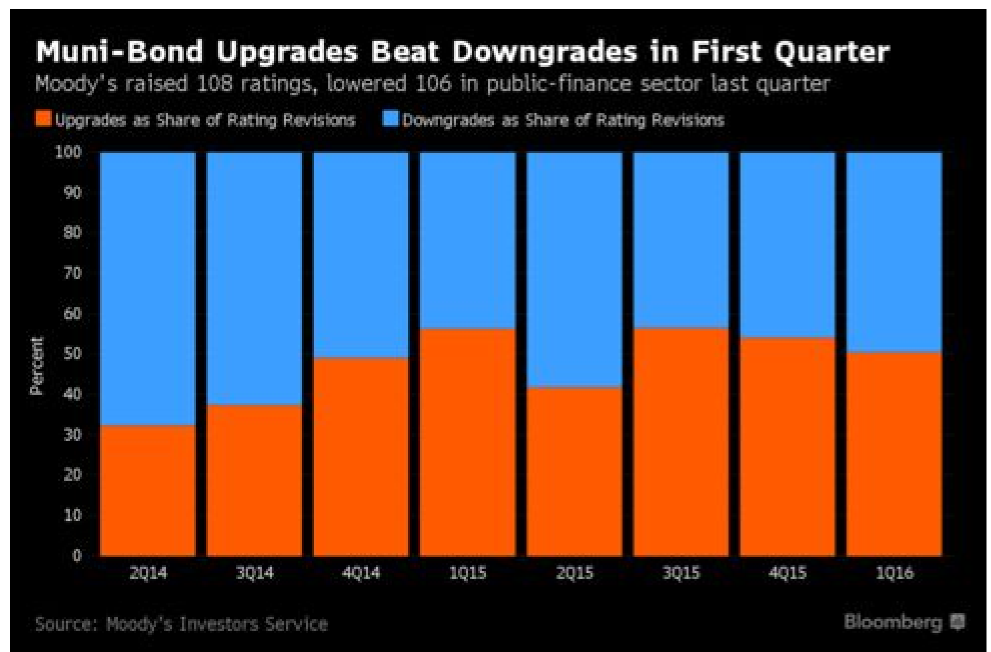
"Once you have a distressed obligor, in this case, the city, it's best to just avoid everything given the uncertainty of just what tools it'll use to kind of repair its own general operating budget," said Tom Schuette, co-head of credit research and portfolio management at Solana Beach, California-based Gurtin Fixed Income Management LLC, which doesn't hold Chicago debt among its $10.1 billion of assets. "Once you're in a distressed situation, we think all bets are off."

Bloomberg Business

by Elizabeth Campbell

May 11, 2016 — 2:00 AM PDT Updated on May 11, 2016 — 2:51 PM PDT

Oil Industry's Rout Slows Pace of Municipal-Bond Upgrades: Chart



Moody's Investors Service raised slightly more U.S. municipal-bond ratings than it lowered in the first three months of 2016, marking the fourth time in five quarters that upgrades have exceeded downgrades. Moody's raised the ratings on 108 borrowers and lowered the rankings of 106, the company said in a report Tuesday. Low oil prices helped to drive the downgrades, which included energy-industry dependent Alaska, Louisiana and Houston.

Bloomberg Business

by Elizabeth Campbell

May 10, 2016

Bloomberg Brief Weekly Video - 05/12

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

Watch the video.

10:45 AM PDT
May 12, 2016

IRS ACT to Submit Recommendations at June Meeting.

WASHINGTON — The Internal Revenue Service's Advisory Committee on Tax Exempt and Government Entities (ACT) will hold a public meeting on June 8, 2016, when the panel will submit its annual report and recommendations to the IRS.

The ACT includes external stakeholders and representatives who deal with employee retirement plans; tax-exempt organizations; tax-exempt bonds; federal, state, local and Indian tribal governments. They advise the IRS on operational policy and procedural improvements.

At the public meeting, the ACT subcommittee members will present their report that includes recommendations on:

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

The ACT was established under the Federal Advisory Committee Act to provide an organized public forum for discussion of relevant issues affecting the tax exempt and government entities communities.

The ACT's public meeting will begin at 2:00 p.m. ET on June 8, 2016, at the IRS headquarters at 1111 Constitution Ave. NW, Washington, D.C. The 2016 ACT report will be available on IRS.gov on the day of the meeting.

Due to limited seating and security requirements, members of the public interested in attending the public meeting should call Nicole Swire at 202-317-8736 (not a toll-free call) or email tege.advisory.comm@irs.gov to confirm their attendance. Attendees must have photo identification and are encouraged to arrive at least 30 minutes before the session begins.

ACT Members Continuing on the Committee in 2016

Employee Plans

- Susan Bernstein, Schulte Roth & Zabel LLC, New York, New York
- Judith Boyette, Hanson Bridgett, San Francisco, California
- Christopher W. Shankle, Argent Trust Company, Shreveport, Louisiana
- Matthew I. Whitehorn, Dilworth Paxton LLP, Philadelphia, Pennsylvania

Exempt Organizations

- Natasha Cavanaugh, Bill & Melinda Gates Foundation, Seattle, Washington
- Cindy Lott, Columbia Law School, New York, New York
- Amy Coates Madsen, Standards for Excellence Institute, Baltimore, Maryland
- Andrew Watt, Association of Fundraising Professionals, Arlington, Virginia

Federal, State and Local Governments

- Dean J. Conder, State of Colorado, Denver, Colorado
- Vandee V. DeVore, State of Missouri, Jefferson City, Missouri

Indian Tribal Governments

- Tino Batt, Shoshone-Bannock Tribes, Fort Hall, Idaho
- Marcelino Gomez, private practice, Phoenix, Arizona

Tax Exempt Bonds

- David Danenfelzer, Texas State Affordable Housing Corporation, Austin, Texas
- William Johnson, First Southwest, Dallas, Texas
- Floyd Newton III, King & Spalding, Atlanta, Georgia

IR-2016-73, May 3, 2016

- Deloitte Playbook for Implementing T+2 Settlement Cycle in the U.S.
- MSRB Publishes Educational Resources on Municipal Advisor Conduct Rule.
- BDA Submits Comment Letter to the SEC: FINRA Rule 4210 “TBA” Margin Amendments.
- Municipal Bond Premiums: Separating Fact from Fiction.
- Why Consolidations in Municipal Evaluations Landscape Signal ‘Tectonic Shift’ for Industry.
- Colo. Court Case Puts Spotlight on Special Districts that Issue Munis.
- CDFA Webcast: Financing Water Infrastructure.
- *Landmark Towers Association, Inc. v. UMB Bank, N.A.* – Court of Appeals holds that organizers’ option contracts for purchase of undivided 1/20 interest in 100-square-foot parcel within proposed special district were sham contracts, and therefore organizers were not eligible electors for purposes of special district bond and tax election; condo purchasers within the district, who were parties to contracts obligating them to close as soon as purchased units were completed and obligating them to pay pro-rated property taxes from date of closing to end of year, qualified as eligible electors.
- *City of Chesapeake v. Dominion SecurityPlus Self Storage, L.L.C.* – Supreme Court of Virginia holds that subdivision plat that reserved 50-foot right of way in favor of city for purposes of future expansion of highway constituted a waiver of damages to residue of property, including waiver of

loss of direct access to highway and loss of visibility, after city condemned right of way.
- And finally, BCB's Practice Tip of the Week is brought to you by *Landmark* (above), which provided us with the recipe for creating a foolproof special district. Step one: find ten buddies. Step two: issue each individual an option contract to purchase a 1/20 interest in a 100-square-foot parcel (the square footage of a roomy jail cell). (Bonus tip: don't bother to collect the $10 down payment for the contracts.) Voila, instant special district. Go forth and issue $35 million in bonds safe in the knowledge that no one will ever dare look askance at this arrangement.

SPECIAL DISTRICTS - COLORADO

Landmark Towers Association, Inc. v. UMB Bank, N.A.

Colorado Court of Appeals, Div. III - April 21, 2016 - P.3d - 2016 WL 1594047 - 2016 COA 61

Homeowners association, representing condominium purchasers whose properties were included in special district, brought action against district and investors to invalidate approval of bonds and taxes and to recover taxes paid to district.

Following a bench trial, the District Court granted association part of the requested relief, ordered partial refund, and enjoined district from continuing to collect taxes. District and investors appealed and association cross-appealed.

The Court of Appeals held that:

- The District Court did not abuse its discretion in determining that investors were not entitled to costs;
- Association's challenge to bond and tax election was not barred by issue preclusion;
- Association's claim that ineligible electors voted in election was not subject to statutory time bar;
- Equitable tolling allowed association's claim, even if it was subject to statutory time bar;
- Voters in election were not eligible electors; and
- Purchasers qualified as eligible electors.

Special district and its investors waived for appeal their argument that 30-day time limit in Supplemental Public Securities Act barred homeowners association's challenges to validity of district's taxes. Even though district and investors cited time limit in their answer and in trial management order, they did not cite to time limit statute at any point during trial or argue at trial that association's claims were barred by that statute.

Special district and its investors' contention that Federal Deposit Insurance Corporation (FDIC) was indispensable party to homeowners association's action against district and investors to invalidate approval of bonds and taxes and to recover taxes paid to district was self-serving and untimely, and therefore trial court did not err in adjudicating association's claims in FDIC's absence; district and investors raised issue for first time in post-trial motion for reconsideration, and they had known about FDIC's interests in action since it was filed.

Trial court did not abuse its discretion in determining that investors were not prevailing parties, and thus were not entitled to costs, in homeowners association's action against special district and investors to invalidate approval of bonds and taxes. Even though two of association's claims against investors were unsuccessful, investors worked extensively with district to present united position

against association, investors had as much interest in defeating association's claims as did district, and association prevailed on most significant issues at trial and recovered substantial monetary judgment.

Homeowners association's challenge to bond and tax election under Taxpayer's Bill of Rights (TABOR) was not previously litigated with special district, and therefore association was not barred by issue preclusion from raising challenge. Previous litigation involved association's attack on formation of special district and resulted in holding that association was statutorily barred from challenging district's validity, and association's subsequent claims did not challenge creation of district, but instead alleged that district did not comply with notice requirements for valid TABOR election, which were addressed by different laws than those pertaining to creation of special districts.

Homeowners association's claims that ineligible electors voted in special district bond and tax election under Taxpayer's Bill of Rights (TABOR), and that eligible electors did not receive constitutionally required notice of election, were substantive, and therefore claims were not subject to statutory time bar. If claims were correct, special district would not have had constitutional authority to issue bonds or levy taxes.

Equitable tolling allowed homeowners association's claim that eligible electors did not receive constitutionally required notice of special district bond and tax election under Taxpayer's Bill of Rights (TABOR) to proceed, even if ten-day statute of limitations applied to such claim. Special district prevented purchasers of condominiums in association's building from finding out about creation of district and TABOR election in order to pass heavy tax levies to fund separate development, purchasers did not know about TABOR election or taxes it approved, and purchasers relied on district's omissions in closing their purchase contracts.

Organizers' option contracts for purchase of undivided 1/20 interest in 100-square-foot parcel within proposed special district were sham contracts, and therefore organizers were not eligible electors for purposes of special district bond and tax election under Taxpayer's Bill of Rights (TABOR). Size of parcels were too small to permit any beneficial use, obligation to pay property taxes under contract was illusory, and no organizer paid $10 down payment required by contracts, paid any property taxes, or exercised options to purchase.

Condominium purchasers, who were parties to contracts obligating them to close as soon as purchased units were completed and obligating them to pay pro-rated property taxes from date of closing to end of year, qualified as eligible electors in special district under Taxpayer's Bill of Rights (TABOR). Purchasers were not obligated to pay taxes before closing in order to be eligible electors, and purchasers' obligation to begin paying property taxes on their units at time of closing existed at time of TABOR election.

INSURANCE - COLORADO

Colorado Insurance Guaranty Association v. Sunstate Equipment Company, LLC

Colorado Court of Appeals, Div. III - April 21, 2016 - P.3d - 2016 WL 1593711 - 2016 COA

Colorado Insurance Guaranty Association (CIGA) filed recoupment action against insured, seeking to recover claims paid on behalf of insolvent workers' compensation insurer. Insured filed counterclaims. The District Court entered summary judgment in favor of CIGA, but allowed insured offset. Insured appealed, and CIGA cross-appealed.

The Court of Appeals held that:

- Use of fixed date to determine insured's net worth for purposes of determining CIGA's right of recoupment under net worth statute did not violate equal protection as-applied to insured;
- Failure of net worth statute to adjust for inflation did not violate equal protection as-applied to insured;
- Net worth statute did not violate insured's procedural due process rights;
- As an issue of first impression, immunity statute did not violate constitutional prohibition on special legislation;
- As an issue of first impression, immunity statute barred insured's claims that CIGA's negligent handling of workers' compensation claim precluded it from recouping payments from insured;
- CIGA was not required to demonstrate that claims were covered under workers' compensation policy prior to seeking recoupment from insured; and
- Insured was not entitled to offset for early access distributions (EADs) CIGA received in insurer's liquidation proceedings.

Use of fixed date to determine insured's net worth, under statute authorizing Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, was rationally related to legitimate legislative purposes of ease of administration and preservation of limited fund resources, and thus did not violate equal protection as applied to insured, which asserted its net worth had fluctuated below $25 million threshold at certain times. Provision conserved resources available to pay claimants and protected CIGA's financial stability, requiring CIGA to determine insured's fluctuating net worth would consume its resources, and high net-worth could be considered proxy for sophistication in ability to be selective in purchasing insurance.

Failure of net worth statute, which authorized Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, to adjust $25 million net-worth threshold for inflation did not lack minimum rationality, and thus did not violate equal protection as applied to insured, even if $25 million net worth equated to lower number three years after Act's enactment when insured's net worth was determined. There was no indication that difference was so great as to undercut basic rationale of such a provision of treating high net worth insureds differently to conserve limited resources.

Net worth statute, which authorized Colorado Insurance Guaranty Association (CIGA) to recoup payments made on behalf of insolvent insurers from high net-worth insureds, did not violate insured's procedural due process rights, though statute did not require CIGA to provide actual notice to insured when it took over workers' compensation insurance claim, and such notice would only have been minimal burden. Insured's interests were purely economic, there was only limited risk of erroneous deprivation of insured's interests, insured had constructive notice that CIGA would take over claim when insurer became insolvent, and insured could have challenged any workers' compensation benefits it did not think were reasonable and necessary.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent

insurers, did not create illusory class of one, in violation of constitutional prohibition on special legislation, since immunity provision also applied to any member insurer as well as the state Insurance Commissioner or his representatives.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent insurers, was reasonably related to a legitimate government purpose of avoiding excessive delay in payment and financial loss to claimants or insureds because of insolvency of the insurer, and thus did not violate constitutional prohibition on special legislation.

Immunity statute, which provided Colorado Insurance Guaranty Association (CIGA) with immunity from liability for any actions taken in performance of its powers and duties in stepping into the shoes of insolvent insurers, barred insured's claims that CIGA's negligent payments of workers' compensation claim precluded it from recouping those payments from insured under net worth provision. Insured's claims all related to CIGA's alleged mishandling of workers' compensation claim, which fell within actions taken in CIGA's performance of its powers and duties, and permitting insured to assert that CIGA mishandled workers' compensation claim would result in liability to CIGA by limiting its ability to recoup payments.

Colorado Insurance Guaranty Association (CIGA) was not required to demonstrate that workers' compensation claims were covered under workers' compensation policy prior to seeking recoupment of claims paid on behalf of insolvent insurer from insured under net worth statute authorizing CIGA to recoup payments made on behalf of insolvent insurers from high net-worth insureds. Insured was required to maintain workers' compensation insurance obligating insurer to pay any compensation to the employer for which insured became statutorily liable, and in workers' compensation proceedings, either insurer or workers' compensation claimant could litigate necessity and reasonableness of specific medical payments based on that statutory requirement, not as a matter of policy limits.

Genuine issue of material fact existed as to whether amounts Colorado Insurance Guaranty Association (CIGA) paid on workers' compensation claim on behalf of insolvent workers' compensation insurer were covered claims, in that they were either specifically authorized in the underlying workers' compensation proceedings or were reasonably necessary if the orders from the underlying proceeding did not specify the nature of any future medical benefits that might be required, thus precluding summary judgment on CIGA's claims for recoupment against insured under net worth statute authorizing CIGA to recoup payments made on behalf of insolvent insurers from high net-worth insureds.

Recovery of workers' compensation claims paid by Colorado Insurance Guaranty Association (CIGA) on behalf of insolvent workers' compensation insurer from insured, under statute allowing for recoupment of such payments from high net worth insureds, would not result in impermissible double recovery to CIGA, though CIGA has received early access distribution (EADs) in insurer's liquidation proceedings in California. Net worth claim was effectively a subrogation action, and thus to extent CIGA recovered its payments on workers' compensation claims from insured, under California law, it was required to return any EADs paid to insurer's liquidation estate, and those funds would become available to other creditors, including insured.

AGENCY - DELAWARE

Town of Georgetown v. David A. Bramble, Inc.

United States District Court, D. Delaware - March 15, 2016 - Slip Copy - 2016 WL 1019630

The Town Georgetown filed a motion to quash a subpoena directed to contractor Davis, Bowen & Friedel, Inc. (DBF) at the request of Liberty Mutual Ins. Co. At was whether DBF is considered an agent of Georgetown with respect to the construction project giving rise to this litigation.

Georgetown made two primary arguments in supporting its position: that the relevant contractual documents pertaining to the project indicate that DBF was its agent for purposes of the project, and that DBF acted as Georgetown's "Town Engineer" for the past twenty years.

The District Court held that DBF was not Georgetown's agent for purposes relevant to this litigation, as Georgetown failed to exercise the level of control over DBF required to establish a principal-agent relationship.

Accordingly, Georgetown's motion to quash was denied.

ANNEXATION - INDIANA

Town of Fortville v. Certain Fortville Annexation Territory Landowners

Supreme Court of Indiana - April 28, 2016 - N.E.3d - 2016 WL 1718831

Landowners filed petition remonstrating against town's proposed annexation of territory.

The Circuit Court concluded that statutory requirement for annexation had not been met. Town appealed. Transfer was granted.

The Supreme Court of Indiana held that evidence supported trial court's finding that there was not a need for town to annex territory in near future.

Evidence supported trial court's finding that there was not a need for town to annex adjacent land in near future. Trial court found no evidence of physical construction in annexation area in near future, town had no plans to build roads through area, none of the landowners had been approached by developers interested in their land, and no residential permits had been issued in area for several years.

JURISDICTION - KANSAS

City of Neodesha v. BP Corporation North America Inc

United States District Court, D. Kansas - March 31, 2016 - F.Supp.3d - 2016 WL 1298087

City filed 821 state court complaints against oil and gas corporation, alleging that corporation violated city's waste ordinance. Corporation filed notices of removal. Complaints were consolidated, and City moved to remand.

The District Court held that:

- Complaints constituted "civil actions" under general diversity jurisdiction statute, not criminal or quasi-criminal actions, and, thus, were subject to removal under federal removal statute, and

- Municipal waste ordinance scheme expressly created civil penalties, not quasi-criminal or criminal penalties, for purposes of general diversity jurisdiction under federal removal statute.

Complaints filed by city against oil and gas corporation, alleging that corporation violated city's waste ordinance, constituted "civil actions" under general diversity jurisdiction statute, not criminal or quasi-criminal actions, and, thus, were subject to removal under federal removal statute. Complaints almost entirely tracked exact language of ordinance, city intended to apply new ordinance's civil penalty provision to violations of ordinance, monetary penalty set out in municipal code rendered complaints civil rather than criminal, and city did not clearly provide evidence to outweigh its express intent to create a civil penalty, as it enacted ordinances to generate alternative sources of revenue to clean up contamination, not to punish crimes corporation was committing in city.

Municipal waste ordinance scheme expressly created civil penalties, not quasi-criminal or criminal penalties, for purposes of general diversity jurisdiction under federal removal statute. Although behavior to which penalty applied was a crime, penalty provision of ordinance explicitly provided "civil penalties," monetary assessments did not constitute an affirmative disability or restraint, monetary penalties were not exclusively criminal, ordinance did not require scienter, deterrence could serve civil goals, ordinance could have purpose of creating resources to clean up waste and protect public health, and civil penalties were not so disproportionate to purposes of ordinance so as to be viewed as penal in nature.

ZONING - NEW JERSEY

Cranford Development Associates, LLC v. Township of Cranford

Superior Court of New Jersey, Appellate Division - April 26, 2016 - A.3d - 2015 WL 10715449

Developer brought fair housing suit seeking to require township to approve construction of residential development.

The Superior Court granted builder's remedy but denied counsel fees. Parties appealed.

The Superior Court, Appellate Division, held that:

- Developer engaged in good-faith negotiation before filing suit;
- Developer was entitled to builder's remedy;
- Trial court acted within its discretion in appointing special hearing examiner;
- Builder's remedy awarding 360 units rather than 419 units was not an indication that site was unsuitable for project; and
- Developer was not entitled to attorney fees.

Developer engaged in good-faith negotiations with township, as required before developer could obtain builder's remedy in suit to require township to use its zoning powers in affirmative manner to provide realistic opportunity for production of housing affordable to low- and moderate-income households. Developer appeared at three meetings of municipal governing body and had requested inclusion of proposed development in township's fair housing plan, and developer's predecessor in title had conducted fruitless negotiations with township for more-modest affordable housing development in same location.

Developer was entitled to builder's remedy in suit to require township to use its zoning powers in

affirmative manner to provide realistic opportunity for production of housing affordable to low- and moderate-income households, even if township would have filed new fair share housing plan without lawsuit. Township was out of compliance at time developer filed suit, and special master opined that, even if implemented, township's plan would not have satisfied its fair share requirements.

Trial court acted within its discretion in appointing special hearing examiner to oversee final site plan approval in lawsuit to require township to use its zoning powers in affirmative manner to provide realistic opportunity for production of housing affordable to low- and moderate-income households. Transcript of oral argument did not contain a word of objection to the appointment, and court's decision was justified by township's record of obstructing affordable housing projects and planning board's past hostility to much more limited affordable housing plan.

Builder's remedy awarding 360 units to developer rather than the 419 requested by developer was not an indication that site was unsuitable for developer's residential project, in lawsuit to require township to use its zoning powers in affirmative manner to provide realistic opportunity for production of housing affordable to low- and moderate-income households. Neither special master nor trial court found that site was unsuitable for project, and none of special master's proposed changes were based on finding that site was environmentally inappropriate for proposed multi-unit development.

A developer that prevails in a lawsuit seeking to require that a municipality use its zoning powers in an affirmative manner to provide a realistic opportunity for the production of housing affordable to low- and moderate-income households is not entitled to attorney fees under the Civil Rights Act (CRA).

PUBLIC RECORDS - OHIO

White v. King

Supreme Court of Ohio - May 3, 2016 - N.E.3d - 2016 WL 2341968 - 2016 -Ohio- 2770

Member of school district board brought action against board, alleging violation of Open Meetings Act. The Court of Common Pleas granted board's motion for judgment on the pleadings. Member appealed. The Court of Appeals affirmed. Member appealed.

The Supreme Court of Ohio held that e-mail discussions between members of board qualified as a discussion of "public business."

E-mail discussion between members of school district board to prepare response to editorial that criticized one of its decisions qualified as a discussion of "public business" within meaning of Open Records Act; majority of board members voted to ratify board's response at public meeting.

ZONING - VERMONT

In re Rutland Renewable Energy, LLC

Supreme Court of Vermont - April 29, 2016 - A.3d - 2016 WL 1729592 - 2016 VT 50

Solar energy provider sought certificate of public good for constructions of solar photovoltaic electric generation facility. The Public Service Board granted CPG. Town and five adjoining landowners appealed.

The Supreme Court of Vermont held that:

- Proposed project would not have unduly interfered with orderly development of region;
- Proposed project would not have had undue adverse impact on aesthetics of the region; and
- Proposed project would not have had adverse impact on historic sites in the region.

EMINENT DOMAIN - VIRGINIA

City of Chesapeake v. Dominion SecurityPlus Self Storage, L.L.C.

Supreme Court of Virginia - April 28, 2016 - S.E.2d - 2016 WL 1697129

City filed condemnation action. The Circuit Court awarded damages to landowner. City appealed.

The Supreme Court of Virginia held that subdivision plat that reserved right of way constituted a waiver of damages to residue of property.

Subdivision plat that reserved 50-foot right of way in favor of city for purposes of future expansion of highway constituted a waiver of damages to residue of property, including waiver of loss of direct access to highway and loss of visibility, after city condemned right of way and additional property that was not within easement. Landowner had waived “any claim for damages” to residue, and there was no term of foreseeability.

TAX - NEW YORK

Highbridge Broadway, LLC v. Assessor of City of Schenectady

Court of Appeals of New York - May 5, 2016 - N.E.3d - 2016 WL 2350154 - 2016 N.Y. Slip Op. 03544

Owner of commercial property in city brought proceeding alleging that property was overassessed in first year for which business investment property tax exemption had been granted, because the exemption had been undervalued.

The Supreme Court, Schenectady County, granted summary judgment to owner, and ordered city, city school district, and county to issue refunds for multiple years. Thereafter, the Supreme Court denied owner’s motion to hold city school board in civil contempt for failing to pay refunds for multiple years. On cross-appeals, the Supreme Court, Appellate Division affirmed as modified. Owner appealed.

The Court of Appeals held that owner’s single petition alleging that property was overassessed in first year and that exemption had been undervalued preserved right to obtain tax refunds in subsequent years for taxes paid based on the initial assessment.

Municipal Market is `Wild West' for Green Bonds, TIAA Says.

The $3.7 trillion municipal market is the “wild, wild West” for so-called green bonds as issuance of such deals ramps up despite no industry-standard criteria for the securities, according to Joel Levy, group head of municipal fixed income at TIAA Global Asset Management.

There is no settled classification for what constitutes a green bond, according to Levy, who moderated a panel on sustainable investing at the National Federation of Municipal Analysts conference in Chicago on Thursday. In some ways, the label is a marketing tool, said Glen Yelton, vice president and head of impact research at SNW Asset Management, who called for an external standard to use as a benchmark.

"There are more green bonds," said Levy, who oversees about $350 million of the firm's $11 billion of municipal debt. "There will be more green bonds labeled this year than there were last year, and next year, there'll be more than this year."

U.S. state and local governments have issued about $7.5 billion of green bonds since 2010, according to data compiled by Bloomberg. The designation is being used by borrowers to appeal to buyers who use social factors such as the environment, education and health care to guide their decisions.

"Because this asset type is relatively new and without industry accepted standards, investors who are interested in green bonds may want to rely on the expertise of asset managers that have the resources and knowledge to carefully evaluate the validity of the social and environmental impact of these issues," Levy said in a follow-up e-mail on Thursday. Individual investors can use TIAA-CREF's social choice bond fund to invest in green bonds.

Certification Providers

Green bond issuance globally, not just counting municipal debt, reached $16.5 billion in the first quarter of this year after totaling $42 billion last year, according to Yelton, who cited data from Climate Bonds Initiative.

Some companies and organizations such as Sustainalytics, an Amsterdam-based firm, offer certification. New York's Metropolitan Transportation Authority sought in February to have an offering certified under standards set by the Climate Bonds Initiative, the agency's first green-bond issue.

A green bond is a label that is "self-declared by the issuer," said Thomas Kloc, managing director of the U.S. sustainability services practice at KPMG. It's important that there's some accountability and measurable metrics on what the green project is going to do going forward, he said. The issuer should be providing "enough transparency" so investors are able to decide if the bond meets their definition of green, Kloc said.

Bloomberg Business

by Elizabeth Campbell

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Bloomberg Brief Weekly Video - 05/05

Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Brian Chappatta about this week's municipal market news.

Watch the video.

May 5, 2016

Municipal Bond Premiums: Separating Fact from Fiction.

SUMMARY

- Investors may prefer premium municipal bonds once they separate fact from fiction.
- Yield to worst is a more meaningful metric than price to help determine value.
- A premium helps defend against punitive tax consequences of the IRS de minimis rule.
- Understanding premiums on municipal bonds can be confusing for many investors. Common misconceptions regarding premiums can prevent investors from making sound investing decisions in the municipal bond market.

Unfortunately, when it comes to premium municipal bonds, we often hear these fictions repeated:

- “If I buy a premium bond and it matures at par, I lose that premium. I will lose money, so I should avoid premium bonds.”
- “My muni bond, which yields 2% and pays a 5% coupon, provides me with income of 5%.”
- “If I buy a bond at $110 and it matures at par ($100), I get to book a $10 loss.”

The concept of “lost premium” is a fiction. In this Insight, we present facts about premium municipal bonds in order to help dispel common misconceptions. We explain why most municipal issuance comes as a premium, how the coupon factors into the equation, why the yield to worst (YTW) is so important to consider, and how the investor can opt to preserve the premium paid on a municipal investment.

Fact #1: The size of a bond’s premium is not an indication of value.

Put differently, a premium bond is not inherently an overvalued bond. Historically, the size of a bond’s premium is directly related to the bond’s coupon – the higher the coupon, the higher the premium. This is best explained by comparing two bonds and their associated cash flows.

Consider two bonds that both mature in one year, shown in Exhibit A. Both bonds have a YTW of 3%; YTW is a measure of what investors earn on their money, expressed as an annual rate. Which bond do you prefer, and why?

At maturity in one year, the cash flows associated with each bond tell us the real story. Netting the coupon income against the amortized premium is how the investor determines the true income (or yield income) of a municipal bond. Both scenarios assume the buyer receives $100 par back at maturity; both bonds provide a return of 3% despite one having a premium and one not having a premium.

Importantly, there is no loss on either bond; this dispels one of the most oft-repeated fictions about premium municipal bonds. The premium on Bond 2 is amortized down and is returned in the form of a higher coupon; it is not being lost.

Exhibit A **Cash flows tells the real story with premium muni bonds.**

Bond 1 (Par Bond)

Yield	3%
Coupon	3%
Initial Cost	$100
Premium Paid	$0

Coupon Income $3 – Amortized Premium $0 = Yield Income $3

Bond 2 (Premium Bond)

Yield	3%
Coupon	5%
Initial Cost	$102
Premium Paid	$2

Coupon Income $5 – Amortized Premium $2 = Yield Income $3

Source: Eaton Vance. This chart is for illustrative purposes only. Results may not represent the experience of individual investors, and should not be construed as tax or legal advice. An investor should consult a financial and/or tax professional concerning his or her specific situation before making any financial decisions. Any references to future returns should not be construed as an estimate of the results a client portfolio may achieve.

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orst is the best determinant of value for premium municipal bonds.

The price of a premium bond is certainly relevant, but it must be viewed in the context of the bond's other characteristics, such as the coupon rate, call and put provisions, time to maturity and YTW, as well as other factors such as credit structure and the availability of alternatives offering similar income potential.

Many investors confuse coupon and yield (more precisely, yield to worst or YTW). Yield is defined as what you earn on your money. As outlined above, when you net the annual coupon income against the amortized premium, the net result is the yield income of the bond. This is the math behind municipal bonds and it always holds true.

Yield, therefore, is a more meaningful metric than price to help investors to determine the value of a particular bond issue, and YTW factors in the possibility of a bond issue potentially being called or subjected to default or other provisions.

The fact that investors receive 1099-INTs with only the coupon income can be misleading. Investors must determine the bond price amortization (mistakenly thought of as lost premium) for the year and subtract that from the coupon income for their tax filings. The bond amortization schedule is readily available. It is this net number (coupon income minus bond amortization) that must be reported on the investor's annual tax return.

Fact #3: Municipal bonds issued with a premium guard against tax consequences of de minimis risk.

Bonds are issued with premiums in the municipal market to guard against a taxable event resulting from the IRS de minimis rule. Only issuers can create tax-exempt income. When market conditions dictate that a bond should sell at a discount, accretion from the discounted price may represent income taxed as ordinary income instead of capital gains. Per the IRS, a discount (from the lower of par or an accreted original issue discount) equal to 0.25% times the number of full years to maturity is considered inconsequential (or de minimis). Once the discount exceeds this threshold however, all accretion is taxable as ordinary income.

Here, an example might help better explain the concept. Take a bond with a 20-year final maturity

issued at $100, but purchased in the secondary below $95. As the bond accretes or gains value (it will mature at $100, or par), the accretion is subject to being taxed as ordinary income.

It is because of this IRS rule that investors in the muni bond market demand high premiums, also known as coupon protection. A stated coupon in excess of the YTW of a bond means its price will be at a premium, offering some protection against potential higher taxes.

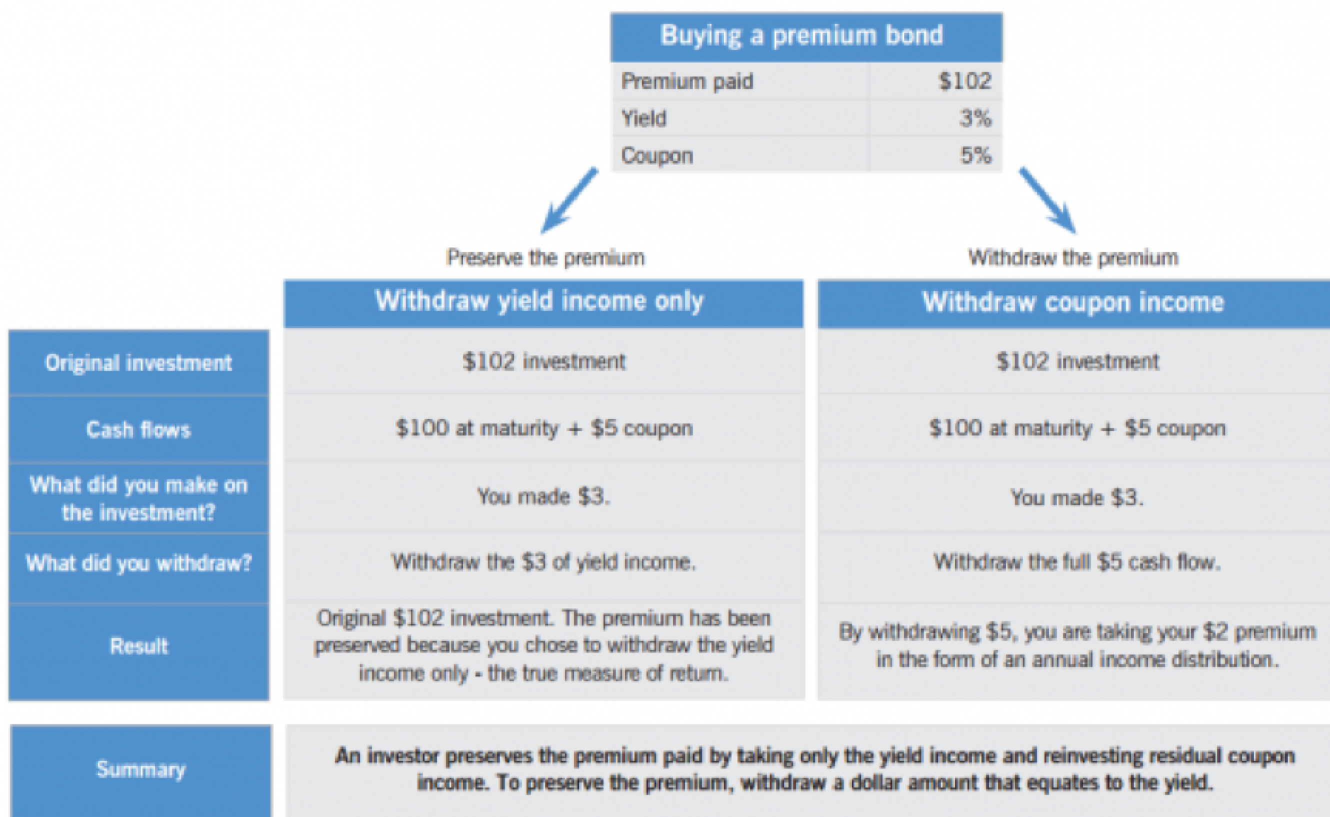
We note that in 2015, roughly 75% of bonds issued in the market had 5% or greater coupons with significant price premiums. In addition, the publicly disclosed muni trade history on the website of the Municipal Securities Rulemaking Board (MSRB) shows a large majority of trades with prices of $115 and higher, indicating the prevalence of bonds offering coupon protection.

Fact #4: An investor can preserve the premium of a bond by only receiving yield income instead of the full coupon income.

As discussed, municipal bonds are issued at premium prices to guard against taxes. The higher the premium, the higher the coupon rate on the bond. But as also discussed, the true measure of bond return is only the yield, not the coupon. It is important to realize that taking an income distribution in excess of the yield means you are eroding the principal of your muni bond investment. If a bond yields 3% and the coupon rate is 5%, receiving a distribution of 3% preserves the premium paid, while receiving a distribution of 5% erodes the premium. A premium bond amortizes some of its premium every year, reducing the cost basis until the bond matures at par. This amortizing premium is directly offset by the coupon income in excess of the yield. An investor wishing to preserve the premium paid can opt to take only the income corresponding to the yield, or yield income, and, in doing so, preserve the original premium paid.

Consider a premium bond with one year to maturity, a coupon of 5% and a yield of 3% purchased at a premium price of $102. In the first case, the investor chooses to receive the full coupon income of 5% as a distribution, as shown in Exhibit B.

Exhibit B **How an investor could preserve the premium paid on a premium muni bond.**



Buying a premium bond	
Premium paid	$102
Yield	3%
Coupon	5%

	Preserve the premium Withdraw yield income only	Withdraw the premium Withdraw coupon income
Original investment	$102 investment	$102 investment
Cash flows	$100 at maturity + $5 coupon	$100 at maturity + $5 coupon
What did you make on the investment?	You made $3.	You made $3.
What did you withdraw?	Withdraw the $3 of yield income.	Withdraw the full $5 cash flow.
Result	Original $102 investment. The premium has been preserved because you chose to withdraw the yield income only - the true measure of return.	By withdrawing $5, you are taking your $2 premium in the form of an annual income distribution.
Summary	**An investor preserves the premium paid by taking only the yield income and reinvesting residual coupon income. To preserve the premium, withdraw a dollar amount that equates to the yield.**	

Source: Eaton Vance. This chart is for illustrative purposes only. Results may not represent the experience of individual investors, and should not be construed as tax or legal advice. An investor should consult a financial and/or tax professional.

Alternatively, if the investor had instead chosen to take a distribution of only the yield income of 3% (the true measure of return), residual coupon income of 2% would have been realized. (You can determine the excess coupon income by subtracting the yield from coupon. In this case, it's 5% – 3% = 2%) By taking only the yield income and reinvesting the residual coupon income, the investor preserves the premium paid.

Why we favor premium bonds

Investors tend to prefer premium municipal bonds once they separate fact from fiction. Fortunately, the facts are easy to understand:

- The size of a bond's premium has nothing to do with the bond's value.
- Yield is the meaningful metric – not price – to help determine the true return.
- Premiums help defend against punitive tax consequences of the de minimis rule.
- An investor can preserve a premium paid by taking only yield income.

For savvy investors, premium bonds can be an appropriate vehicle for building a muni bond portfolio with a defensive structure in today's low-yield environment. All else equal, a premium bond (higher coupon) will likely outperform a par bond in a rising rate environment thanks to a lower duration, or sensitivity to interest rates.

Relying on YTW is just one of the many factors to consider when purchasing premium bonds. We believe security selection will be critical to success when investing in a market as vast and increasingly complex as the municipal bond market. We believe relative value analysis is just as important. As always, individual investors may benefit from skilled professional management and

credit research.

Importance tax considerations

Many investors are not aware of IRS guidelines on reporting tax-exempt investment income, which instruct investors to report on line 8b of the 1040. This is not the 1099-INT income, but rather the income less the annual reduction (or, more accurately, the amortization) of bond premium.

Though provided by the advisor's firm, investors can calculate the premium amortization (or reduction of premium) themselves. The IRS instructs investors to use the current yield method of amortizing bond premium.

About Risk

An imbalance in supply and demand in the municipal market may result in valuation uncertainties and greater volatility, less liquidity, widening credit spreads and a lack of price transparency in the market. There generally is limited public information about municipal issuers. As interest rates rise, the value of certain income investments is likely to decline. Longer-term bonds typically are more sensitive to interest-rate changes than shorter-term bonds. Investments in income securities may be affected by changes in the creditworthiness of the issuer and are subject to the risk of nonpayment of principal and interest. The value of income securities also may decline because of real or perceived concerns about the issuer's ability to make principal and interest payments. A portion of municipal bond income may be subject to alternative minimum tax. Income may be subject to state and local tax.

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Before investing, investors should consider carefully the investment objectives, risks, charges and expenses of a mutual fund. This and other important information is contained in the prospectus and summary prospectus, which can be obtained from a financial advisor. Prospective investors should read the prospectus carefully before investing.

May 2, 2016

by Jonathan Rocafort, Christopher Harshman, Evan Rourke
of Eaton Vance

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MSRB Publishes First Quarter 2016 Municipal Market Statistics.

The Municipal Securities Rulemaking Board (MSRB) today released municipal market statistics for

the first quarter of 2016, showing par amount traded rebounded to $634.7 billion, up from $507.3 billion traded in fourth quarter 2015 and slightly higher than the $618.5 billion traded during the first quarter one year ago. The MSRB's quarterly statistical summaries include aggregate market information for different types of municipal issues and trades, and the number of interest rate resets for variable rate demand obligations and auction rate securities.

View the 2016:Q1 statistics.

Cities Go After Lenders.

The foreclosure crisis certainly hurt the millions of homeowners who lost their houses during the Great Recession. But it hurt localities, too. They lost tax revenue. And in a case of cause and effect, they watched as the suddenly vacant houses led to blight, which in turn led to spikes in crime because governments at the time couldn't afford to invest more in their police forces.

So now cities are testing whether they can sue banks for damages under the Fair Housing Act. Los Angeles; Miami; Oakland, Calif.; and Providence, R.I.; have all filed lawsuits against lenders seeking reparations. The lenders are arguing that the act applies to people, not governments. The question of whether cities have the standing to sue is before the U.S. Supreme Court.

The takeaway: If the court rules that cities don't have standing to sue, it would add to the view that financial institutions are not being held accountable for their role in the 2008 crisis. As The Atlantic noted this week, the people who were most damaged by the foreclosure crisis — those who lost their homes — typically don't have the resources to bring lawsuits. Most of the civil suits have been brought by investors who bought bad home loans. In their quest, cities likely represent the last group to try to punish lenders for their practices during the mid-2000s.

GOVERNING.COM

BY LIZ FARMER | MAY 6, 2016

CDFA Webcast: Financing Water Infrastructure.

Financing Water Infrastructure

May 17, 2016
@ 1:00 pm Eastern

Building and maintaining water systems is a growing investment challenges for many communities. Coupled with rapidly aging system concerns, communities are facing billions of dollars investment in both drinking and waste water projects over the next few decades. How can communities access low cost capital in order to meet this demand? Bond financing and low cost federal lending remains the most viable options for many communities, and this month during the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will dive into both water bonds and federal financing tools that can be used to support water infrastructure projects across the country.

Speakers:

David Safer, Moderator
Vice President, Sales & Relationship Management
The Bank of New York Mellon

Julia McCusker
Vice President, Rural Water Lending
CoBank

Robin Schmidt
Environmental Loans Sections Chief
Wisconsin Department of Natural Resources

Aaron Heintz
Finance Program Administrator
State of Wisconsin Capital Finance Office

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

REGISTER

S&P's 2015 Annual U.S. Public Finance Default Study and Rating Transitions.

U.S. public finance (USPF) exhibited growing credit strength in 2015, though at a slower rate than in 2014. Overall, upgrades outpaced downgrades by a ratio of 2.20 to 1 in 2015, compared with 3.33 to 1 the previous year. The ratio of upgrades to downgrades was 2.15 to 1 for bonds excluding housing and 4.27 to 1 for housing bonds. In the previous year, the ratio for nonhousing was 3.38 to 1, and housing had more downgrades than upgrades.

In addition, in 2015, upgrades outnumbered downgrades in every quarter for the third consecutive year. The year ended with 13 straight quarters of more upgrades than downgrades, the longest streak since the first quarter of 2001. In the midst of this, defaults increased to 12 in 2015 from eight in 2014. This continues a recent phenomenon of higher-than-average defaults, particularly among appropriation-backed debt. In the last five years, the number of defaults among credits not including housing has exceeded the average of three going back to 1986. There were 21 defaults of appropriation debt between 2011 and 2015, after only three in the previous 25 years.

Overview

- S&P Global Ratings upgraded 991 bonds and downgraded 461 in USPF in 2015, excluding housing.
- There were 47 housing upgrades and 11 downgrades in 2015.
- All but one sector in USPF–higher education–had more upgrades than downgrades in 2015. This was the second consecutive year of negative rating trends in higher education.
- Twelve defaults occurred in USPF in 2015, compared with eight the previous year.
- Since 1986, the average annual number of defaults in all of USPF combined is five, out of a total of more than 21,000 ratings.

Continue reading.

04-May-2016

GASB Forms Going Concern Disclosures Consultative Group.

The GASB has formed a consultative group to assist the Board's research in the reexamination of the going concern provisions of Statement No. 56, *Codification of Accounting and Financial Reporting Guidance Contained in the AICPA Statements on Auditing Standards*. The members were appointed by GASB Chair David A. Vaudt.

High-Yield Funds With Cash to Burn Chase Tobacco Bonds' 51% Gain.

High-yield municipal bond fund managers have cash to burn. So do American smokers, who have extra money after filling their gas tanks.

The two groups, each in their own way, are driving a rally in the $34 billion tobacco-bond market that's outpacing just about every other investment.

High-yield tobacco securities have surged 10.2 percent in 2016, the most among all segments of the $3.7 trillion municipal market, Barclays Plc data show. That follows gains of 15.8 percent and 19.2 percent in the past two years. The 51 percent return since the start of 2014 beats more than 80 percent of stocks in the S&P 500 Index and close to 90 percent of the Russell 2000 Index of small-cap company shares, data compiled by Bloomberg show.

To explain much of the gain, one needs only to follow the money. Individuals added cash to high-yield muni funds for 100 of the past 122 weeks, lifting their assets to a record $82 billion from $58 billion at the start of 2014, according to data from Morningstar Inc. and Lipper US Fund Flows. With Puerto Rico heading toward an unprecedented restructuring, money managers who once snapped up the island's bonds are now avoiding them, leaving the tobacco securities one of the few available alternatives.

The other side of the rally stems from signs that American smokers are using savings at the gas pump to buy more cigarettes. The shipments backing the debt as part of a 1998 settlement with tobacco companies increased last year by 1.9 percent, the most ever, according to data from the National Association of Attorneys General.

"If you're getting lots of money into a high-yield fund and you've decided that you're not going to buy Puerto Rico, like most people, really tobacco is your only other option," said Craig Brandon, co-director of municipal investments in Boston at Eaton Vance Management, which oversees $32.5 billion of the debt. The uptick in smoking "gives you a credit reason to buy tobacco at a time when you really need a high-yield sector to invest in."

Buying tobacco bonds has long been considered a risky move. Most are rated junk because when governments first sold them more than a decade ago, which gave them advances on money they are set to receive from Reynolds American Inc., Lorillard Inc. and Philip Morris USA, they didn't anticipate how quickly Americans would give up smoking. And the more cigarette sales fall, the longer it will take for governments to collect the payouts.

Moody's Investors Service projects that a 4 percent annual decline in cigarette shipments would cause 80 percent of the bonds to default. From 2007 to 2014, the drop was even bigger: Shipments fell an average of 4.7 percent annually, according to NAAG data.

The decline in oil prices in the second half of 2014 — from over $100 a barrel to about $53 — halted the decline because gasoline fell, too, giving people more disposable income. The national average for a gallon of gas in the U.S. is $2.22, about 40 cents lower than a year ago, according to the American Automobile Association.

Smokers "save more because of lower gas prices and they tend to spend it on cigarettes," said Vikram Rai, head of muni strategy at Citigroup Inc. While the boost in cigarette shipments "could be a flash in the pan," he says high-yield investors should consider buying the securities and definitely hold onto those they currently own.

Some of the biggest and most-frequently traded tobacco bonds are at levels not seen since before the financial crisis.

Two of the three largest single tobacco bonds, from Ohio's Buckeye Tobacco Settlement Financing Authority and California's Golden State Tobacco Securitization Corp., traded in the past two weeks at about 100 cents on the dollar, the most since February 2008 and August 2007, respectively, data compiled by Bloomberg show. Both have a June 2047 maturity and ratings six steps below investment grade by Moody's, which projects annual shipment declines of 3 percent would cause them each to default.

"I'm pretty cautious at these levels — there's been a lot of gains," said Alan Schankel, a managing director in Philadelphia at Janney Montgomery Scott. "The upside is limited as you approach par, and the downside is there."

Tobacco-bond returns have also dwarfed other junk asset classes. High-yield corporate bonds and loans returned 4.75 percent since the start of 2014, Barclays data show.

While buying after the rally isn't the best entry point, the dynamics driving it don't seem likely to change this year, Citigroup's Rai said. Even if prices remain steady, the largest tobacco bonds offer investors yields above 5 percent at a time when top-rated munis maturing in 30 years deliver half as much.

"Tobacco bonds are priced properly because we know what the moving parts are; we know how to model that risk," Rai said. "If you're content with a 6 or 7 percent return, even if you buy them now, you'll get that."

Bloomberg Business

by Brian Chappatta

May 9, 2016 — 2:01 AM PDT Updated on May 9, 2016 — 6:28 AM PDT

Measuring Municipal Bond Market Liquidity.

We reviewed trade and quote activity on approximately 570,000 unique municipal bonds from January 2015 through March 2016. The study surveyed the overall quote/trade depth and diversity during that period, as we focused mainly on unique bonds during various periods of time. This study did not factor in trade, quote, or bond issue size, but we want to make it clear that all three can also be used to assess a bond's liquidity profile. We note that since the dataset includes quotes and trades regardless of size, it could potentially overstate liquidity as compared to a round lot portfolio.

Our analysis concluded that municipal bond liquidity was stable during the period and the market was relatively efficient, but there were intermittent periods when liquidity did taper off due to seasonal factors. Here are some of our findings:

> -483,647 unique bonds traded and 253,194 were quoted in 2015, with approximately 50% of those appearing in the first four months of the year. Almost 99% of the quoted bonds traded at least once, with approximately 2,800 never trading during the year
>
> -There is a direct relationship between the number of unique quotes and bonds that trade on a given day or month, with the correlation almost perfectly linear during a monthly period. The difference likely illustrates some time delay between the negotiation initiated post-quote and when a trade actually takes place
>
> -The number of dealers quoting a bond on a given day is correlated with the likelihood of it trading. Data indicates that increasing the depth from one to four dealers increases the probability of a revenue bond trading from 19% to 66%, based on 2015 data
>
> -New York general purpose and public improvement bonds had the highest likelihood of trading (25%) in 2015 among the 15 most quoted and traded use of proceeds and state combinations revenue bonds that were only quoted once on a given day. In the case of general obligation bonds, Massachusetts bonds had the highest trade rate (22%) based on the same analysis
>
> -There were 250 trading days in 2015 and not a single municipal bond traded every day. However, there were two bonds that traded 248 days: California State 7.55% 4/2039 and Illinois State 5.1% 6/2033 taxable bonds, with neither making the top 10 list of most traded bonds in 2015 by trade count
>
> -Approximately 9,900 bonds traded at least 10 days in 2015, but quotes were not sent via a broad distribution by any dealers during the year. However, there were only 316 bonds that were quoted at least 10 days that never traded during the year

Download the full Report.

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MSRB Publishes Educational Resources on Municipal Advisor Conduct Rule.

To assist municipal advisors preparing to comply with core standards of conduct that become effective June 23, 2016, the Municipal Securities Rulemaking Board (MSRB) recently published a brief overview of the duties and obligations under new MSRB Rule G-42. A companion document for underwriters addresses implications of the rule for underwriters and provides an overview of the rule itself to assist dealers acting as underwriters in understanding the regulatory framework that applies to municipal advisors.

Rule G-42 establishes requirements for many aspects of the relationship between a municipal advisor and its client by addressing the disclosure of conflicts of interest, documentation of the relationship, recommendations and conduct that is specifically prohibited.

MSRB Rule G-42 Resources

- Municipal Advisors: Understanding Standards of Conduct
- Underwriters: Understanding Duties of Municipal Advisors
- On-Demand Webinar on MSRB Rule G-42

Move over, Puerto Rico, Illinois, New Jersey and Other States Face Municipal Bond Woes, Too

Puerto Rico isn't the only municipal bond issuer facing fiscal problems, and if your clients are expecting a smooth ride in the high-yield muni market, you may have to tell them to fasten their seat belts.

Puerto Rico's partial default on its bonds this month shook the muni market, and particularly some funds with big holdings in the bonds, which are free from state and local taxes across the country. But other muni issuers are in rough shape as well, even though most states' balance sheets are improving, says Standard & Poor's.

The two biggest problems: Falling oil prices and exceptionally brutal financial wrangling in the statehouses. States that depend on oil production, such as Alaska, Louisiana, Oklahoma and North Dakota, are seeing revenue shortfalls because of lower energy prices.

Alaska, for example, is facing a $3.9 billion budget shortfall, equal to 74% of expenditures, according to S&P. It's rated AA+, a strong rating, but with a negative outlook. Louisiana, which is not only dependent on oil, but has major structural budget problems, is rated AA with a negative outlook.

Many of the states' woes appear to be of their own making. Illinois, for example, has an A- rating with a negative outlook, the worst of the 50 states. The rating could hit BBB if the state does not make "significant improvements to its budgetary alignment," S&P said in its most recent assessment of the state's debt.

New Jersey boasts the next-worst rating for its general obligation bonds: an A rating, with a negative outlook. The state's underfunded pensions and large outstanding debt were behind the relatively low rating.

Even though states can't declare bankruptcy, their bond prices can get smacked when they get a ratings downgrade. Nevertheless, some funds have taken significant stakes in Illinois and New Jersey debt, according to Morningstar, the Chicago investment trackers.

Prudential Short Duration Muni High Income (PDSAX) has 11.9% of its assets in New Jersey paper, according to Morningstar, the highest percentage of any fund in the high-yield muni category. (It also has 11.2% of its portfolio in Illinois).

The biggest fan of Illinois muni bonds: Wells Fargo High Yield Municipal A (WHYMX), with 15.2% of its assets in the state's paper. Oppenheimer Rochester Limited Term Muni (OPTIX) has 12.9% of its portfolio in Illinois munis, as well as 19.7% in Puerto Rico.

Most of these funds have relatively low duration, which means that they're not taking any chances on long-dated issues from shaky states. Prudential's offering, for example, has an average effective duration of 3.85 years. The Wells Fargo fund weighs in at 5.67 years.

States with rising populations have the best outlook for their municipal finances, S&P says. Those states with an aging population are spending more on retirement benefits and less on infrastructure, which could limit future growth.

Investing in municipal debt with shaky credit ratings is far less dangerous than it may seem, at least in the long term. High-yield municipal bonds funds have returned an average 7.4% a year the past five years, vs. 4% for high-yield corporate bonds. And funds that invest in long-term California bonds — once a poster child for state budget reform — have returned an average 6.9%.

Investment News

By John Waggoner

May 6, 2016 @ 1:04 pm

Arizona House Reverses Course, OKs Bill Aiding Developers.

PHOENIX (AP) – The Arizona House reversed course after an initial rejection and approved a bill Thursday that will give developers more power to issue municipal bonds and levy taxes to pay for public infrastructure in communities they are building.

The change came after an hours-long effort by House Speaker David Gowan to garner support for his proposal.

The legislation will allow developers and land owners to automatically set up special taxing districts run by boards with powers similar to governments, including the ability to tax homeowners.

Supporters say it will help bring jobs to the state, while opponents call the legislation a power grab by developers.

The initial vote remained open for nearly an hour as Gowan attempted to corral votes. Eight Republicans broke ranks to reject House Bill 2568 on a 28-32 vote Thursday.

Late Thursday, Gowan succeeded in gathering support, and on a reconsideration vote it passed with no votes to spare, 31-26.

Republican Rep. Warren Petersen of Gilbert was among several who changed their votes. He initially said developers should be using private financing rather than municipal bonds to pay for things such as public roads, water and sewer systems in planned communities.

Petersen said the special taxing districts, known as community facility districts, confuse homebuyers who don't initially realize they have to pay additional property taxes to live in those communities.

"They distort the market. They distort prices," he said. "Until I can be convinced otherwise to see the value in this, I just don't see why we are going to use property taxes as a tool for this."

He said he changed his mind after Gowan assured him a follow-up bill will add accountability and

transparency requirements.

Gowan said that banks have been reluctant to provide private financing for large developments since the recession. He said the bill would spur business growth, especially in his legislative district in the southeastern part of the state.

“It helps putting people back to work by building houses,” he said.

The Landowners For Arizona’s Economic Development Coalition is the primary group backing the legislation. They say they represent about 200,000 acres of land set aside for master planned communities, though it would likely take decades to develop it. The coalition includes at least 11 developers, including El Dorado Holdings Inc. and Diamond Ventures Inc.

Gowan has received nearly $5,000 from owners or employees of developers El Dorado Holdings and Diamond Ventures to fund his congressional campaign and was seen sitting with Diamondbacks co-owner Mike Ingram, who founded El Dorado Holdings, for the team’s opening day.

Stephanie Grisham, Gowan’s spokeswoman, said he and Ingram only met briefly and did not know each other when the bill was crafted.

The measure would have a significant impact on the growth of master planned communities across Arizona as developers would be more likely to take advantage of the public financing available through the special taxing districts. That would include an area in Gowan’s legislative district where El Dorado Holdings Inc. is developing a 28,000-home community featuring an 18-hole golf course and a park.

The proposal also will change the makeup of the governing board behind these districts to include two members chosen by the landowners, two members selected by the closest municipality and one member chosen by the municipality from a short list provided by landowners.

To date, about 75 of these districts have been established in Arizona.

ASSOCIATED PRESS

By RYAN VAN VELZER

Thursday, May 5, 2016

The Pension Grand Bargain: A New Reform Model for Cities.

Academics and attorneys specializing in municipal finance are expressing doubts about a public pension overhaul proposal being touted by the Manhattan Institute, which suggests the “grand bargain” model pioneered during Detroit’s bankruptcy could be used to remedy the significant retirement liabilities crippling the rust belt cities of Chicago, St. Louis, Cleveland and Buffalo.

In addition, scholars studying public philanthropy dismissed the Manhattan Institute’s assertions that regional and national foundations would be willing to serve as a “piggy bank” for cities’ public-sector pension debts.

The Manhattan Institute report, released May 3, observed that Detroit’s solution was particularly innovative. It used substantial contributions from private foundations to leverage much broader

contributions from state government, corporations, public employees and retirees to sweep away a significant portion of the city's liabilities. The report pointed to sufficient philanthropic assets in Chicago, St. Louis, Cleveland and Buffalo to achieve the same result.

But Christopher Berry, director of the Center for Municipal Finance at the University of Chicago's Harris School of Public Policy, told Bloomberg BNA that the Manhattan Institute's analysis represents a fundamental misunderstanding of Detroit's experience.

Berry said the pension component of Detroit's grand bargain included some new funds from outside sources and cuts in benefits for participants, but it also made some long-term bets on the city's capacity to recover. In this regard, the plan gave Detroit permission to lighten its pension contributions for 10 years while it focused on economic recovery. In theory, he said, the city will have sufficient economic strength to ramp up its pension contributions in 2023.

Despite these good intentions, Berry said it's unclear what Detroit's pension hole will look like when the bills come due, or whether the city will be in any position to make good on its obligations. The notion that this uncertain model should be extended to neighboring rust belt cities is problematic. Moreover, it is unclear how Detroit's grand bargain could be layered on cities operating outside the crucible of bankruptcy.

"The grand bargain was a way out of bankruptcy. It wasn't a grand solution to the pension problem," Berry said. "We will only know if this was a solution to the pension problem when those pension payments are due and the city starts paying them."

Hole Is Getting Bigger

James Spiotto, managing director of the municipal finance consulting firm Chapman Strategic Advisors LLC, told Bloomberg BNA that the initial reviews of Detroit's pension systems since the approval of the bankruptcy plan in 2014 aren't encouraging.

"The problem is the hole is getting bigger," said Spiotto, a frequent speaker on municipal bankruptcy. "The projections say they are not earning what they thought they'd earn. They have losses and the benefit costs are different. So they could end up with a significantly larger unfunded problem in 2023. Sometimes, this grand bargain is better referred to as a grand bet."

The Manhattan Institute's premise that philanthropic organizations should play a role in resolving Chicago's $20 billion pension crisis was quickly dismissed by the John D. and Catherine T. MacArthur Foundation.

"Unlike what came together for Detroit in its bankruptcy case, a long-term solution to the fiscal challenges in Chicago will require significant political compromise and legislative action that demonstrably are not possible in the context of the current intransigent stalemate in our state capital," Valerie Chang, the MacArthur Foundation's managing director of programs, told Bloomberg BNA.

"We do not believe it is the role of local philanthropies to address budgetary shortfalls created by representative government at the local and state levels making choices about how to spend scarce resources," Chang said.

Made in Detroit

The Manhattan Institute's report, "The Pension Grand Bargain: A New Reform Model for Cities," notes that Detroit's efforts to emerge from bankruptcy were stymied by a "crippling overhang" of

retirement obligations. Fearing that the crisis would eventually force the court to sell off the city's beloved art collection at fire-sale prices, a consortium of philanthropic organizations came together to break the impasse.

The consortium pledged $366 million to address Detroit's pension liability and leveraged similar commitments from private corporations and the state of Michigan. In addition, public-sector unions representing Detroit employees and retirees agreed to forgo a portion of their retirement benefits as a contribution toward long-term solvency (25 PBD, 2/6/15). This "grand bargain gambit" eventually won the support of the bankruptcy court and, the report contends, placed Detroit on a sustainable path.

While other rust belt cities struggling with crushing pension obligations, declining municipal services and escalating property taxes don't find themselves in the clutches of bankruptcy, the Manhattan Institute said "Detroit has pioneered a model worthy of imitation."

"This paper finds that philanthropic assets in the aforementioned cities are more than sufficient to support a Detroit-style grand bargain—if paired with contributions proportionally equivalent to those made by other Detroit stakeholders (corporations, government, and labor)—to reduce such cities' pension debt, as well as to improve municipal services and/or reduce taxes," the report concluded.

The report includes a rough financial analysis suggesting how a proportionally equivalent version of the Detroit model could be applied in each of the four rust belt cities.

For instance, the Manhattan Institute points to a $19.4 billion unfunded pension liability in Chicago. That shortfall could be slashed to approximately $7.5 billion with a $1.8 billion contribution from the MacArthur Foundation, the Robert R. McCormick Foundation and others; a $1.3 billion contribution from state and local government; and an $8.8 billion contribution from labor in the form of benefit adjustments.

'Incredibly Unrealistic.'

Vasyl Markus, director of special projects at the Chicago-based Center for Tax and Budget Accountability, told Bloomberg BNA that the Manhattan Institute's analysis might make sense for Detroit but not the four other cities.

Markus, who specializes in municipal pension issues, said the major players managing the Detroit crisis understood that the city was dealing with a depleted property tax base that offered little hope of generating the revenue needed to make good on its broader obligations. The same can't be said of Chicago, which continues to have a viable commercial, industrial and residential tax base but does not have the political will to fully leverage it.

Markus said Cleveland, St. Louis and Buffalo are also in much better positions than Detroit to generate tax revenue to solve their problems. Even in the context of bankruptcy, he said, it would be hard to imagine a court concluding one of the four cities simply didn't have the tools to pay down its debts.

"This report is incredibly unrealistic," he said. "This struck me very much as a comparison between an orange and a rotten apple, particularly when you think about a comparison of Chicago and Detroit."

'Bad Public Policy.'

The University of Chicago's Berry warned that the grand bargain model is simply "bad public policy," sending elected officials, public employees and unions the signal that private foundations will always bail them out.

"What message are you sending?" he said. "This does nothing to address the underlying incentives. The incentives involve politicians and employees kicking the can down the road and passing benefits that are invisible to voters now. Until we change those incentives, nothing is going to change."

James Ferris, director of the University of Southern California's Center on Philanthropy and Public Policy, told Bloomberg BNA that the grand bargain was particular to the difficult circumstances Detroit faced and might not work in other communities. He added that the unusual role played by private foundations overlapped with their commitments to Detroit and their missions to preserve a prized art collection. The notion that foundations might respond in a similar fashion in other cities is "misguided."

"There are a lot of forces at play behind the grand bargain," Ferris said. "To view it as simply a model for foundations/philanthropy bailing out a city and their pension obligations is naive and misguided. Philanthropy is not a piggy bank."

Pension & Benefits Daily

By Michael J. Bologna

May 6, 2016

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San Francisco Public Utilities Commission to Issue Green Bonds.

San Francisco Public Utilities Commission next week will issue $240 million in wastewater revenue "green" bonds, the first infrastructure municipal bonds to meet specific criteria under a new environmental standard for water projects.

The certification comes from the London-based Climate Bonds Initiative, which developed the standard using a technical working group of academics and experts in the sector.

The commission is planning a competitive sale of $308 million of revenue bonds, of which $240 million meets the green certification.

Green bonds are still relatively new in the $3.7 trillion U.S. municipal bond market.

In February, the New York Metropolitan Transit Authority issued a $500 million green bond, which was certified under the Climate Bonds Standard's low carbon transportation criteria.

Terms and conditions, as well as disclosure practices, vary widely in the emerging green bond muni market, Moody's Investors Service said in a report last week.

Moody's surveyed 15 muni green bond transactions from 14 entities in 2013 and 2014. Timely reporting is not the norm, and issuers of seven of those transactions "have still not published reports

that we could find," Moody's said.

Money from next week's sale will be used to repair and rebuild the ocean-side city of San Francisco's sewer system, protecting it from rising sea levels and intense rainfall that could result from global climate change.

Currently, more than 300 miles of San Francisco's sewers are over 100 years old and were not constructed to withstand major earthquakes or the impacts of climate change, according to an analysis by Sustainalytics.

Last month, Standard & Poor's Ratings Services upgraded the commission's wastewater enterprise revenue bonds from AA-minus to AA.

"We're upgrading our credit ratings, we're upgrading our bond standards, and most importantly, we're upgrading our aging wastewater infrastructure," said Harlan L. Kelly, Jr., general manager of San Francisco's sewer system.

"Our infrastructure was built to last a hundred years; it's only fitting that we use the latest, most innovative financing techniques to ensure our city's sewer system lasts for the next 100 years," he said.

Overall, an estimated $8.09 billion of debt will hit the U.S. municipal bond market next week, according to preliminary Thomson Reuters data.

REUTERS

LOS ANGELES | BY RORY CARROLL

(Reporting by Rory Carroll; Editing by James Dalgleish)

Fri May 6, 2016 5:34pm EDT

How Three U.S. Cities Are Building on Public/Private Partnerships.

American cities seeking to reinvent themselves can do so by using creative financing, among other tools, according to a panel of experts at the 2016 ULI Spring Meeting in Philadelphia. The panel also served as the launch event for the new ULI publication *Reaching for the Future: Creative Finance for Smaller Communities*.

Municipalities must first take inventory of their competitive advantages, sincerely want to transform, be willing to take on some risk, and use innovative public/private partnerships, said Thomas Murphy, ULI senior resident fellow and a former mayor of Pittsburgh. "There is always money somewhere; it's the vision of where you want to go that's important," said Murphy. "The conversation must begin with the community making a choice of what it wants to be."

Metropolitan areas across the United States—including Greenville, South Carolina; Bethlehem, Pennsylvania; and Cincinnati, Ohio—have taken control of their destiny and successfully transformed themselves. "Today, many cities are trying to figure out their place in the world," said Murphy. "Virtually every city has seen a decline in manufacturing. A city making a new choice about its future needs a clear understanding of what its competitive advantages are. In addition, cities should

have strong leadership, a strategic vision, and knowledge of public financing tools."

Municipalities must also become entrepreneurial. "There is always money available. You just have to know where to look," Murphy said. "The ideas are more important and the vision of where you want to go."

An example is Greenville, a textile market that decided to reinvent itself decades ago. "One of its advantages was that Greenville was the site of the largest textile convention in world, and European companies visited Greenville," said Stephen P. Navarro, executive vice president in the Greenville office of CBRE. "European firms knew about its 'Southern' advantages: it is a right-to-work state, has a low cost of living, cheap taxes, and low-cost labor."

Before long, overseas companies started expanding into the area. International tire maker Michelin established its U.S. headquarters in Greenville, and later BMW opened a plant there that now manufactures more cars than any other site outside Germany.

Developers began to revitalize Greenville's central business district, focusing on the Reedy River Falls, which had been hidden by a massive, ugly bridge.

"Many people didn't know about the waterfalls. Greenville didn't have any tourism to speak of, job generators, nor significant history," Navarro said. "What it did have was strong leadership. Greenville had three amazing mayors over 30 years, all with a similar attitude to think big. All were great communicators to the public sector, to their staff, and to the business community.

"In addition, Greenville had a strong city administration with an ability to create partnerships and to plan and invest in infrastructure that laid the groundwork for development. This is probably the most important element of Greenville's success," he said.

Strong civic leadership was important in the transformation of downtown Cincinnati, said Anastasia Mileham, vice president, marketing and communications, at Cincinnati Center City Development Corporation (3CDC), a private nonprofit real estate group.

"We had a visionary mayor that kick-started it, and companies such as Proctor & Gamble, Macy's, Western & Southern, Kroger, GE, and others contributed funds. They looked at the city two decades ago and said, 'We have to do something about economic development to recruit the best and the brightest to live and work in the city.' They put money where their mouth was and pooled $50 million to create 3CDC."

Targeted for revitalization by 3CDC was Cincinnati's Over-the-Rhine neighborhood, which then was known for having one of the highest crime rates in the city. Today, the area—believed to be the largest, most intact urban historic district in the United States—has undergone a transformation to become one of Cincinnati's most vibrant neighborhoods.

Also refurbished by 3CDC was the city's Fountain Square, and the organization continues to revitalize Cincinnati's central business district. "Fountain Square is a two-acre [0.8 ha] public space, but ten years ago [it] was blocked off from any pedestrian activity," Mileham said. "It was a desolate space. Nothing happened except for people begging."

Transformed by 3CDC, Fountain Square now is a mecca for visitors and offers about 500 free events a year that bring millions of visitors downtown.

Not that many years ago, Bethlehem, Pennsylvania, was also a municipality on a downward spiral, recalled John Callahan, former mayor of the city and now director of business development at Florio

Perrucci Steinhardt & Fader. "At the end of the day, we really didn't have a choice. We had to act," he said. "Bethlehem Steel was closing and 20 percent of the population worked there. We couldn't continue to see the city's decline."

Rather than try to be something it was not, the city decided to build on its past. "What makes Bethlehem special is Bethlehem Steel," he said. "So we decided to build on that uniqueness of 125 years of steelmaking history."

Jump-starting the city's economic recovery was the Sands Casino Resort Bethlehem, which opened in 2009 on the old Bethlehem Steel grounds. Today, tens of thousands visit the tables every day. "Redevelopment was funded almost exclusively with tax increment financing revenues from the casino complex," Callahan said.

Greenville, Bethlehem, and Cincinnati are three remarkable communities that made a clear choice, said Murphy. "They wanted to be something that they weren't, and they all did it their way," he continued. "In Greenville and Bethlehem, change resulted from public officials. In Cincinnati, the transformation was driven by the private sector. 3CDC is a model that has importance to every city. Every city has some major companies and wealth."

The Urban Land Institute

By Mike Sheridan

April 28, 2016

Lessons from Ramapo: Squire Patton Boggs

The federal government has brought the first ever criminal securities fraud charges in connection with a municipal bond financing, following an investigation by U.S. Attorney for the Southern District of New York Preet Bharara, according to recent news reports.

So what lessons are there to be learned from this?

For those who have not followed the story, the charges were brought against Christopher St. Lawrence and N. Aaron Troodler. Lawrence was the elected supervisor of the Town of Ramapo, New York ("Town"), and Troodler was the executive director of the Ramapo Local Development Corporation ("RLDC").

The Ramapo indictment is another high-profile indictment by Bharara, who has brought many high-profile charges for financial fraud and public corruption, which are summarized here and here. The charges in the Ramapo case include securities fraud, wire fraud, and conspiracy. A copy of the indictment is available here.

According to the indictment, RLDC built a minor league baseball stadium. A resolution for the Town to guarantee $16.5 million of bonds for the stadium was rejected by approximately 70% of the voters. Lawrence stated that the stadium would be built with private funds. Half of the $58 million amount came from the Town. The town had guaranteed the RLDC's bonds. The charges stemmed from fabricating receivables, mischaracterizing others, transferring funds between accounts of the Town and RLDC in violation of state law, and purporting to make payments from current operating funds when in fact assets were sold or when lines of credit were used to make the payments. These

are of course only indictments, and so we have not yet heard the full story of what happened.

Nonetheless, at least two lessons can be learned from this indictment.

First, we can expect municipal bond issuances to be subject to more scrutiny than in the past. Although this appears to be the first time that criminal charges have been brought, it is safe to assume that it will not be the last. Prosecutors may also feel emboldened to pursue more civil actions.

Second, everyone, whether working for an issuer, underwriter, borrower, or professional service provider should be alert for potential signs of problems in every financing that they work upon. For instance, one should verify statements and track down the cause of any inaccuracies or inconsistencies. Almost always, there will be an innocent explanation behind mistakes. And in the extremely unlikely event that there isn't, you will be glad that you asked.

Squire Patton Boggs

by Alexios S. Hadji

USA April 29 2016

TAX - ALASKA
City of Valdez v. State
Supreme Court of Alaska - April 29, 2016 - P.3d - 2016 WL 1719372

Municipalities challenged Department of Revenue regulation, under which all appeals of oil and gas property tax valuation were to be heard by State Assessment Review Board (SARB), while appeals of oil and gas property taxability were to be heard by Department, arguing that regulation contradicted statute that granted SARB exclusive jurisdiction over all appeals from Department's assessments of oil and gas property.

The Superior Court upheld regulation as valid. Municipalities appealed.

The Supreme Court of Alaska held that:

- Regulation was subject to substitution of judgment standard of review;
- Regulation was not entitled to deference afforded to longstanding and continuous interpretations of enabling statutes; and
- As a matter of first impression, regulation was invalid.

Department of Revenue regulation, under which all appeals of oil and gas property tax valuation were to be heard by State Assessment Review Board (SARB), while appeals of oil and gas property taxability were to be heard by Department, did not implicate Department's expertise or fundamental policies, and thus substitution of judgment standard of review applied in assessing validity to Department's interpretation of enabling statute establishing overarching regime for statewide assessment of oil and gas property in municipalities' challenge to regulation. Case involved both statutory interpretation of a non-technical statutory term, a task in which courts were well versed, and question of scope of and relationship between Department's and SARB's jurisdictions.

Department of Revenue regulation, under which all appeals of oil and gas property tax valuation

were to be heard by State Assessment Review Board (SARB), while appeals of oil and gas property taxability were to be heard by Department, was not entitled to additional deference afforded to longstanding and continuous interpretations of enabling statutes in proceedings on municipalities' challenge to regulation as conflicting with statute establishing overarching regime for statewide assessment of oil and gas property. Application of regulation was not consistent.

Department of Revenue regulation, under which all appeals of oil and gas property tax valuation were to be heard by State Assessment Review Board (SARB), while appeals of oil and gas property taxability were to be heard by Department, was invalid, since regulation had no reasonable basis in enabling statute establishing overarching regime for statewide assessment of oil and gas property. Department's interpretation of statute through regulation was inconsistent with statute's text, which indicated that assessment encompassed initial taxability determination, statute's legislative history, which indicated it was unlikely that legislature intended to create a bifurcated appeal process without expressly doing so, and statute's purpose.

Deloitte Playbook for Implementing T+2 Settlement Cycle in the U.S.

A shorter settlement cycle will enhance US market structure by improving safety and efficiency for investors. The T+2 Industry Steering Committee's (ISC) Implementation Playbook, developed with Deloitte Advisory, provides a detailed timeline, milestones and dependencies to achieve the move to a two-day settlement cycle (T+2) in the US by the third quarter of 2017. Shortening the US settlement cycle will provide a number of benefits, including reducing operational, systemic and counterparty risk and lowering liquidity needs, while aligning the US with other T+2 settlement markets across the globe.

Download the Playbook.

MSRB: Trades Up; Disclosure Documents Down in 1Q 2016.

WASHINGTON – The par amount and number of municipal securities trades rose in the first quarter of this year, compared to both the previous and same quarters last year, according to Municipal Securities Rulemaking Board statistics posted Thursday.

But the number of continuing disclosure documents received by the board dropped to 46,623 in the first quarter of this year from 47,934 during the same period last year, the board said.

The par amount traded was $634.7 billion, slightly higher than the $618.5 billion traded in the first quarter of last year and a lot higher than the $507.3 billion traded in the fourth quarter.

The total number of trades was 2.27 million, up about 1% from the first quarter of last year and 6.5% from the fourth quarter, the MSRB said.

The most frequently traded muni was a 30-year fixed-rate revenue bond that the Parish of St. John the Baptist in Louisiana sold for Marathon Oil Corp. in June 2007 to help finance the expansion of an existing oil refinery and related facilities located in the parish. The issuance amount was $1 billion, with a coupon of 5.13%, and the bonds were not subject to the alternative minimum tax. The MSRB data showed a par amount of $776.3 million of the bonds with 5,792 trades – more than twice the

next highest amount of 2,093 trades of the South Carolina Public Service Authority's Series A 2016 tax-exempt refunding bonds.

The most actively traded, in terms of par amount, was an almost $2.8 billion 16-year general obligation refunding bond with a 4.00% interest rate sold in March 2007 by Unified School district No. 230 in Johnson/Miami County, Kansas. The bonds were insured.

Customer purchases of munis increased slightly to an average daily par amount of $5.10 billion in the first quarter, compared to $4.98 billion in the same period as last year. The average daily number of customer purchases totaled 15,187 in the first quarter, which was higher than 15,006 of similar trades during the same period in 2015.

Only about $407.8 million or 8% of customer purchases per day was of $100,000 of less of munis, nearly the same as $396.1 million or 8% for the same quarter last year.

Both variable rate demand obligation and auction rate securities resets declined in the first quarter from the same period in 2015. VRDO resets were 120,950, compared to 133,873 while ARS resets were 2,214, compared to 2,284.

The Bond Buyer

By Lynn Hume

May 5, 2016

TAX - FLORIDA

City of Fort Pierce v. Treasure Coast Marina, LC

District Court of Appeal of Florida, Fourth District - April 27, 2016 - So.3d - 2016 WL 1660600

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

Both parties moved for summary judgment. The Circuit Court granted summary judgment to owner. City appealed.

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

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

S&P Public Finance Podcast (State Budgets And Oyster Bay, New York)

In this week's episode, Managing Director Gabe Petek discusses the highlights of our comprehensive report on state budgets and credit analyst Victor Medeiros explains what spurred our recent rating action on Oyster Bay, New York.

Listen to the podcast.

May 3, 2016

MCDC's Appropriateness, Effect on Market Disclosure Debated.

CHICAGO – A regulatory official and market participants sparred over the merits of the Securities and Exchange Commission's voluntary continuing disclosure enforcement initiative during a panel here on Wednesday while acknowledging the need to improve municipal disclosure.

The industry roundtable at the National Federation of Municipal Analysts' annual conference was designed to address a variety of disclosure issues across the municipal market, such as the recent lack of bank loan disclosure, but quickly narrowed to a discussion of the changes in disclosure that have occurred as a result of the SEC's Municipalities Continuing Disclosure Cooperation initiative.

The MCDC initiative promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. Altogether, 72 underwriters representing 96% of the underwriting market by volume, paid $18 million to settle violations with the SEC under the initiative. The SEC has already started reaching out to issuers about settlements and has said it intends to pursue actions against those who didn't report under the program after it finishes settling with those who did.

Ben Watkins, Florida's director of bond finance who represented the Government Finance Officers Association on the panel, advocated for voluntary efforts among industry participants to solve disclosure challenges instead of a regulatory or enforcement solution like the one chosen by the SEC. The Securities Industry and Financial Markets Association has taken the lead in holding meetings for such discussions, which have also included market groups like GFOA, the NFMA, and the National Association of Bond Lawyers.

"My own personal point of view is [MCDC] was the most misguided, coercive, punitive approach to improving continuing disclosure that I have ever seen," Watkins said. "It was a monumental waste of resources."

Michael Decker, a managing director and co-head of municipal securities for SIFMA, said he couldn't think of "very much good to say about MCDC," going on to call it "a very frustrating experience from the industry's perspective."

"Maybe the most frustrating aspect of it was the enforcement people were addressing an issue where nobody lost money," he said. "Nobody lost a penny and still it cost issuers and underwriters many hundreds of millions of dollars."

Watkins said a study GFOA had conducted found that MCDC led to an average out-of-pocket cost for issuers of between $7,000 and $10,000.

But others on the panel, led by SEC Office of Municipal Securities head Jessica Kane, saw MCDC in

a more positive light.

"From my perspective, the MCDC program was very successful. There was robust participation," Kane said. "It especially heightened the focus of the market on continuing disclosure obligations."

She added that the mandatory portions of the settlements that required underwriters to hire and retain independent compliance consultants are a "really great benefit." She also emphasized that the initiative was a voluntary way to address past securities law violations and did not require anyone to participate.

Watkins said skeptically that Kane was calling it "voluntary and cooperative when the [SEC] says 'if you don't do it we're going to come find you and throw you in jail.'"

All the participants, however skeptical, acknowledged that the industry is more focused on disclosure now than it was before MCDC.

Lisa Washburn, the NFMA's chair and the panel moderator, said she and other analysts saw "a bunch of filings" come into the EMMA system after the initiative was announced. She also noted that MCDC helped spur SIFMA to organize the other industry groups to talk more about disclosure.

Decker said SIFMA has been pursuing changes both by itself and with the group since the industry groups first met in October. Most recently, SIFMA sent a white paper to the SEC outlining various changes it believes should be made to SEC Rule 15c2-12 on disclosure. Among other things, the paper asks the SEC to extend due diligence requirements to MAs that have worked with issuers on official statements, especially in competitive transactions, and improve the timeliness of issuers' annual disclosures after the end of their fiscal years.

"We thought for five minutes about seeking statutory changes and asking Congress to give the SEC more authority to regulate issuer disclosure more directly, but that didn't really seem politically feasible and I think the issuer community historically has been opposed to that for some pretty good reasons," Decker said. "We did look at areas where short of regulation we think there could be some improvement."

Others said the main problem with disclosure lies with an issuer's staff, resources, and educational capabilities. Watkins said getting everyone educated about proper disclosure practices is "a monumental task" and added that while larger issuers usually have "robust" disclosure, many smaller issuers have trouble. One example cited by panelists was when an official for a small issuer may have multiple responsibilities beyond overseeing the issuer's finances.

Bill Daly, NABL's director of governmental affairs, agreed with Watkins and mentioned how he had recently heard about a client in a "plains state" that is both the finance director for a school district and the district's bus driver.

The panelists offered several solutions to such problems, including having states take more responsibility for checking in with issuers about their continuing disclosure obligations. Louisiana already requires that auditors ask about compliance when they evaluate issuers. Most panelists also urged issuers to create and follow written policies and procedures to both keep consistency and prevent disclosure from deteriorating if an especially knowledgeable person leaves.

Washburn raised the issue of timeliness in disclosures, saying analysts have seen some issuers amend their continuing disclosure agreements to allow for more time to file after the end of the fiscal year. Watkins recommended the SEC try to address timeliness by creating a safe harbor for issuers to disclose unaudited interim information.

He said it is important to understand that governments are risk averse and if they violate securities laws after they pushed information out without waiting for an audit, they are not going to do it again and will take their time and delay disclosure to make sure everything is correct.

“Suffice it to say we don’t love that,” Washburn said.

The Bond Buyer

By Jack Casey

May 5, 2016

Why Consolidations in Municipal Evaluations Landscape Signal 'Tectonic Shift' for Industry.

A string of recent acquisitions in the municipal pricing and indexes space could bring “colossal change” to the market, participants said.

It began last October, when Intercontinental Exchange announced the purchase of Interactive Data Corp. for $5.2 billion. Then, in March, ICE announced the acquisition of Standard & Poor’s Securities Evaluations and Credit Market Analysis. Additionally, Bloomberg purchased Barclays’ Risk Analytics and Index Solutions business. The BRAIS are currently evaluated by IDC.

Stephen Winterstein, managing director of research & chief strategist at Wilmington Trust Investment Advisors, Inc., thinks it’s unlikely these acquisitions in such a short span are pure coincidence.

“How it shakes out is anyone’s guess. This appears to be the start of a game of musical chairs,” said Winterstein. “There were five major valuation services for municipal securities. Perhaps we are seeing only the beginning of a consolidation in that segment’s service providers.”

Winterstein noted there are currently three leaders in municipal fixed income indexing: Barclays (soon to be Bloomberg), S&P, and Bank America Merrill Lynch. He also said he could imagine a world where ICE is in both the municipal bond evaluation and index businesses.

“In light of their recent acquisitions, I wouldn’t be at all surprised to learn that ICE is developing its own family of fixed income indices, or planning to possibly acquire another index group – or, perhaps a combination of the two,” he said. “Further, the acquisition of IDC and S&P Evaluations may pave the way for ICE to create a municipal electronic exchange. After all, they are in the business of securities exchanges, so they certainly have the bandwidth, and now they have the data content to undertake such a challenge in the municipal bond market.”

There are more questions than answers on this topic but Winterstein said he firmly believes that this is going to be a “colossal change” and that no one knows what the end result will look like.

“I think there is a tectonic shift afoot in how munis will be evaluated and what index families will thrive,” he said. “Over the next six to eighteen months this could be a bigger deal than anyone is making it out to be now.

“What were the two leaders in municipal evaluations are now in the process of becoming one,”

Winterstein said. “There are barriers to enter this niche marketplace and it’s a space that saw few players to begin with. It is a rapidly occurring confluence of transactions and circumstances within the municipal fixed income markets, over which many practitioners are scratching their heads.”

Tom Doe, president of Municipal Market Analytics in Concord, Mass., said the arrival of Wall Street giant Intercontinental Exchange Inc. into the municipal market is monumental and could have a serious lasting impact on the industry.

“I find this as potentially disruptive as when the futures markets went from an outcry of people on the floor to an electronic exchange,” Doe said. “That changed the data and the personality of the market.”

ICE owns the New York Stock Exchange and is the leading network of regulated exchanges and clearinghouses for financial and commodity markets.

Creating a pricing service monopoly has its potential advantages and disadvantages, according to Doe, whose firm is a leading source of municipal market analysis and commentary.

Chief among the “interesting” yet unanswered questions is price discovery, regulation, and how ICE will interface with the Municipal Securities Rulemaking Board, he said.

Kevin Strom, senior managing director and head of capital markets at Ziegler said that we have regulators and technology vendors who are driving hard towards a new world order, whatever that will eventually look like. On the other side, he said, there are broker dealers who are struggling to catch up on the technology and regulation front, and doing everything to control costs “while the vendors could increase costs and I assure you, the compliance and regulatory environment is raising everyone’s costs.

“This is a bad recipe if you’re on the dealer community side of the fence, so this is a big deal,” he said.

“The words oligopoly and monopoly come to mind,” Strom said. “My costs for pricing and data services are not going down in all likelihood, they are going up. If the Justice Department and regulators allow that to happen as it relates to bond markets where those two pricing services are the only relevant muni pricing services , I would argue that is not good.”

Doe said that consolidation of data pricing providers could make some of these issues more challenging, and could potentially introduce new concerns, including possible antitrust issues and the lack of diversity in a long-standing multifaceted, multi-vendor industry.

“It starts to shake the landscape” of the municipal market, especially at a time of heightened regulation and surveillance, Doe noted.

“You’ve had a quiet period where data was status quo, and everything went along and innovators brought technology into the market,” Doe said. “Now with this tech giant being very aggressive, with lots of money and lots of success and customers on the buy side, it gives them a leg up over something like Market Axess,” Doe explained.

The potential for ICE to lead the data pricing industry comes at a time when market participants are “struggling” to maintain liquidity and exchanges are trying to make it easier to comply with increased regulation, he said.

Doe said ICE’s leadership is entirely different than various other institutions, like Bloomberg or TMC

Bonds, and Market Axess, contributing to market advancements like creating electronic platforms or tweaking technological improvements.

"Now you have ICE coming in buying the two largest data information providers that own buy side customers and influence every evaluation that goes on every investors' statement – individuals and institutions – and they would own that," Doe explained. "That's incredibly powerful."

Among other questions is whether the current evaluation models, such as the Barclays indices, for example, are calculated, he said.

"You have a legacy of triple-A bond insurance to solidify the basis for the triple-A benchmark," Doe said. "But, you bring somebody in who's in control of the evaluation process do they dictate how things are looked at, and can they provide regulators with a better context instead of several vendors?"

"The municipal market does everything off of the high-grade curve, so are those days numbered?" Doe continued. "Will models change and the behavior of the market change?"

On the other hand, Doe said the arrival of ICE into the municipal data pricing industry could open new avenues to the future.

"They tend to go into different markets that were behind in technology and have been able to transform a market place," Doe said of ICE. The move could be a real positive for the market – one that "brings it into the 21st century," he hinted.

Still, Doe said there are wrinkles to be ironed out before the market adapts to a new way of operating with respect to data pricing and evaluations.

"Large sums of money coming into a market place is disruptive, for sure, but hopefully to the positive," Doe said.

"Other institutions have done positive things for the market place and anything that ICE would do, hopefully, the market adapts and the industry only gets better with technology coming into the world of disclosure."

At a time when the municipal market is heading toward increased transparency, the concept of data pricing consolidation hurts rather than helps the industry, and further limits the already error-prone process, according to John Mousseau, managing director at Cumberland Advisors.

"I think we need more pricing services, not less," he said.

"No pricing service is totally correct. Most miss the market when it is in transition to either a higher coupon standard or a lower one, and they misprice it most on premium bonds," Mousseau explained.

Limiting the number of pricing services to a monopoly doesn't add value for clients, and makes comparisons virtually impossible, he noted. "With more than one service at least you can see some degree of difference. How would one compare just a one-source price?"

Ron Valinoti, president at Triangle Park Capital Markets Data who has worked for both IDC and S&P, said the potential disappearance of one of the two major pricing services could have wide-ranging implications for the muni market.

"The other firms are newer, especially to the municipal business," said Valinoti, whose own firm is

aggregating data based on observable market data. “Without one of these two familiar services, the market’s concern is you have to go out and employ one of these other services. And that’s a lot of work.”

But beyond the impact for mutual fund portfolio managers, Valinoti said, the data provided by the big pricing services is so pervasive throughout the muni business that it has secondary market effects too. Traders often have to check a screen carrying that data before they can execute a trade, Valinoti said, because the estimated price can sometimes diverge significantly from the actual price someone is willing to pay for a bond at that time. The data provided by the services also makes up a part of the compliance systems broker-dealers use to determine a fair price for a bond in the case of securities that haven’t traded recently.

“It’s pretty far-reaching,” he said.

Valinoti said that all the pricing services try to do “a credible job” of reaching their conclusions, and it is ultimately incumbent on firms who rely on them to do their due diligence in making decisions about how and if they will restructure their policies and procedures to match the new landscape. Many mutual fund companies are currently required by their policies to use two of these services, said Valinoti, though a “bigger, better mousetrap” emerging from the purchase could actually improve price discovery in the muni market, he said.

“If the justice department thinks it’s a good idea to allow these dominant firms to merge because the benefit on other side of the fence, like a more efficient marketplace or a new municipal exchange, or more access to market information, then that would be very interesting news to our marketplace,” said Strom. “But it doesn’t deal with keeping the vendors honest in terms of the future prices they will charge if they dominate a sector of a marketplace.”

Strom said that it’s safe to say that the regulators from the SEC to FINRA to the MSRB think the muni retail market is pretty inefficient, and that it is dominated by mom and pop investors that need more protection as the end user of bonds through direct purchase, or via money managers and mutual funds.

“As a marketplace, and with our regulators, we will have to find a balance between these forces,” said Strom.

The Department of Justice declined to comment on whether it is investigating the acquisitions. It is common for the DOJ to not comment on ongoing investigations.

ICE also declined to comment, as a spokeswoman for the company said that the proposed acquisition of the Standard & Poor’s Securities Evaluations business has not yet closed.

Strom said that he isn’t sure if ICE creating a muni exchange or other products is a good thing or not, but that he believes it might not work out well for retail investors in terms of cost.

“If the new monopoly or oligopoly in town doesn’t have some controls, or regulatory input, in terms of what they charge for their services, just like regulators want more controls on our side of the industry. I would think this topic would need to be dealt with somehow,” said Strom.

Strom said that when it is all said and done, the landscape will certainly look different than it does today.

“Small dealers that have dominated the local muni business for 100 years, with its millions of CUSIPs that don’t trade every day, will have to adapt,” he said. “The big question is whether, in a

new world order, where technology and access to information and data rule the day on one side, can that be balanced against monopoly or oligopoly behavior by vendors with pricing, on the other side of the fence?

"Time will tell whether these dealers in this industry can survive the way we know them today," Strom said.

The Bond Buyer

By Aaron Weitzman and Christine Albano and Kyle Glazier

May 2, 2016

Colo. Court Case Puts Spotlight on Special Districts that Issue Munis.

WASHINGTON – A broad ruling by the Colorado Court of Appeals in a case of a developer's egregious fraud has sent lawyers to the state's General Assembly for legislation to protect existing special districts that issue tax-exempt bonds.

The case could have been the poster child for English Comedian John Oliver's recent television segment skewering special districts and is an example of everything the Treasury Department is concerned about with such districts. But lawyers in Colorado say it shouldn't be used to taint other special districts that have been properly set up and followed the law.

The case involves a high-profile developer, Zachary Davidson, who used sham contracts to make him and five associates organizers or "eligible electors" who formed a special metropolitan district in Greenwood Village, Colo. that issued almost $35 million of bonds now in default. Davidson included nearby condominium purchasers in the district and obligated them to pay taxes to help pay off the bonds, even though the condo owners were unaware they were in the district or that bonds had been issued.

Davidson stole millions of dollars of bond proceeds for his personal use and was eventually indicted on 20 felony counts by an Arapahoe County, Colo. grand jury. He eluded law enforcement for months and ultimately committed suicide by hanging himself from a tree in Withlacoochee State Forest in Florida at age 46.

After several years of litigation, the Colorado Court of Appeals issued a ruling on April 21 favoring the condo owners' Landmark Towers Association, Inc., ruling in part that Davidson used sham contracts to give him and his associates control of the special district and the bond issue.

Muni market participants in Colorado fear the case will be used to try to undo previously existing special districts and their taxing powers.

"This case has exceptionally unique and bad facts," said Dee Wisor, a lawyer with Butler Snow in Denver. The appeals court's ruling "was broadly written" and "not limited to the facts" of the case, he said.

"The risk here is that lawyers will go out and recruit taxpayers in special districts to invalidate elections that happened many years ago to avoid paying taxes," said Wisor. "We're trying to get the General Assembly to adopt legislation to validate other special district elections that have been

previously held and which are not the subject of previous disputes," he said.

"It's common for the General Assembly to weigh in on legislative intent," said Mary Kay Hogan, director of government affairs for R&R Partners. Special districts are governed by state laws.

There's a lot at stake for special districts in Colorado, which were responsible for 240 general obligation bond deals totaling $2.9 billion in the six years from 2009 through 2014, according to the Special District Association of Colorado.

That group and the Colorado Municipal Bond Dealers Association, Inc. each filed friend-of-the-court briefs in the case, asking the appeals court to reverse certain findings of the district court. The two groups warned that the findings, if left standing, would hurt the muni bond market in Colorado.

Beyond Colorado

But the case may have national implications as well.

It comes as the Treasury and Internal Revenue Service have proposed controversial new rules for political subdivisions because of concerns that some special districts, or community development districts as they are called in Florida, are controlled by developers and their associates rather than taxpayers. Treasury and the IRS contend that developer-controlled districts should not be able to issue tax-exempt bonds.

Muni market participants argue that historically, many developers have set up special districts to issue bonds to pay for infrastructure improvements for projects such as retirement communities or business parks until homeowners or businesses can move in and begin to pay assessments or taxes to pay for the bonds.

For years, the test under the federal law for whether a district is a political subdivision that can issue tax-exempt bonds has been based on whether an entity has been delegated a substantial amount of at least one of three sovereign powers: eminent domain, taxation, and policing.

The Treasury and IRS are now proposing rules to expand that test to add two new requirements. Under rules they proposed February, a political subdivision that can issue tax-exempt bonds, would also have to serve a governmental purpose and be governmentally controlled "with no more than an incidental private benefit."

The proposed rules have met with a firestorm of criticism from muni lawyers who have warned they would threaten existing special districts and potentially millions of dollars of bonds.

But this case epitomizes the concerns of Treasury and the IRS. Davidson, through 7677 East Berry Avenue Associates, L.P. where he was managing partner, built two high-rise residential condominium towers in Greenwood, Colo., called Landmark and Meridian, from 2005 through 2007, according to court documents.

He did not create a special district for the project and instead entered into agreements with Greenwood Village in 2005 to build the towers and to receive a rebate of 50% of city sales taxes collected by commercial activities conducted on the project site for 20 years. Sales and use taxes on the building and construction materials as well as building permit fees were waived.

The towers were to be completed in 2007 and 2008. By the end of 2006, Davidson's company had 130 buyers for the condos under contract. The buyers paid $35,000 to $100,000 in nonrefundable deposits and agreed to pay pro-rated taxes for the year at closing, according to court documents.

That same year, Davidson, through Everest Marin, L.P., where he was also managing partner, bought 11.1 acres adjacent to the towers to develop a residential community to be called European Village that was to include manor homes, brownstones and infrastructure.

Davidson decided to create a special district, called the Marin Metropolitan District, to issue up to $35 million of general obligation bonds to finance the project. But he found the village property would not provide a sufficient tax base to support the GO bonds. So, acting on behalf of both his 7677 East Berry and Everest companies, Davidson decided to include the Landmark and Meridian Towers in the special district, without telling the condo buyers, documents show.

Contracts

Davidson entered into option contracts with five associates to qualify them and him as “eligible electors” who then elected to form the district and issue the bonds. The option contracts were for the purchase of an undivided 1/20th interest in a 10 foot by 10 foot parcel. These six individuals were the only ones who received notices of elections and votes and the only ones who voted on anything.

The six “electors” of the district submitted a service plan to Greenwood Village stating the district would provide public infrastructure improvements to all property within the district and would finance them with bond proceeds.

The Marin Metropolitan District hired Piper Jaffray to assist it in issuing the bonds. In June 2008, nearly $30.49 million of district GO bonds were underwritten by Piper Jaffary and sold to Colorado Bondshares, a tax-exempt mutual fund. The bonds had an interest rate of 7.75% and a maturity of 20 years, according to bond documents. UMB Bank, N.A. was trustee. About $13 million of the bonds were redeemed after that. The bonds went into default last year, according to bond documents. Davidson, who as a managing partner of Everest and an “elector” of the district had unsupervised access to the bond funds, was hurting for cash. He withdrew about $8 million of the bond proceeds, using much of it for his personal benefit.

The Landmark condo owners would never receive any benefits from the use of those bond proceeds and yet all of a sudden, they were on the hook for paying back the bonds.

In 2011, the Landmark Towers Association began to uncover the fraud and filed a complaint in a Colorado district court against the Marin Metropolitan District, Colorado Bondshares and UMB Bank to enjoin them from the future levying of taxes under the state’s Taxpayers Bill of Rights (TABOR).

Landmark claimed the bond and tax election was illegally conducted because the option contracts of the district’s organizations were a sham and Landmark buyers had not been allowed to participate. It claimed the district had improperly disbursed bond funds for the benefit of Davidson. It also charged the district had set the property tax levy for debt service higher than allowed by law. Landmark said taxing the condo owners violated their constitutional right to due process because the bond-financed improvements would not benefit them.

The district court ruled in favor of Landmark on most of its claims and ordered the Marin district to refund to the condo owners the portion of the misused bond proceeds they had paid. The court also ordered the district to refund some of the property taxes collected and enjoined it from imposing further taxes on the condo owners.

But the court ruled that, even though district’s organizers never made down payments for “director’s parcels” or paid any taxes on the land, the option contracts were not a sham and were a

legitimate way to create “eligible electors” of the district.

The defendants, including Colorado Bondshares, appealed the ruling, arguing in part that Landmark’s challenge was untimely and that neither the taxes levied nor the misuse of bond funds violated TABOR. Landmark cross appealed disputing the court’s findings that its challenge to the bond and tax election was time-barred. It also challenged the court’s alternative determination that the election complied with TABOR and applicable statutes.

The appeals court affirmed parts of the district court’s ruling, reversed other parts, and remanded the case back to the lower court.

Particularly important was that the appeals court disagreed with the district court’s conclusion that the contracts were sufficient to make the organizers of the district eligible electors. It concluded instead that the organizers’ contracts were sham agreements because of seven factors, including that none of the organizers (electors) made down payments or paid taxes, and that the parcel of land was too small to have any beneficial use.

“The purpose of requiring a district to gain approval from persons who own property within a district before it imposes a new tax is to allow the people who will have to pay the tax to decide whether the tax should be levied,” the appeals court judges said in their ruling.

Wisor and other lawyers say they are trying to get the Colorado General Assembly to pass legislation before the session ends on May 11 validating existing special districts that have followed the law.

The Bond Buyer

By Lynn Hume

April 29, 2016

As Puerto Rico's Storm Grows, Muni Market Is Smooth Sailing.

You’d never know from looking at the $3.7 trillion municipal market that the largest restructuring in its history is unfolding in Puerto Rico.

Individuals last week poured more money into tax-exempt mutual funds than at any other time this year, just days ahead of the commonwealth’s well-anticipated default on $422 million of Government Development Bank debt. Munis have gained every month this year, only the second time that’s happened since 1999. And on the U.S. mainland, prospects are brightening: S&P Global Ratings has upgraded more localities than it has lowered for 13 straight quarters, the longest streak since 2001. Just nine issuers have defaulted in 2016 apart from Puerto Rico, compared with 24 at this time last year.

Much like how Puerto Rico is an island territory off the coast of the U.S., the trends show that investors are treating the commonwealth’s debt crisis as separate from the broader municipal market. Monday’s default, its largest yet, was a long-time coming: Puerto Rico lost its investment grades over two years ago, and 10 months ago Governor Alejandro Garcia Padilla declared its debt too crippling to pay.

“It was telegraphed,” John Miller, who oversees $110 billion of munis as co-head of fixed income at

Nuveen Asset Management, said in an interview on Bloomberg Radio with Tom Keene and Michael McKee. “It’s a continuation of an ongoing reality that they don’t have the revenues to meet all their budgetary expenses and pay debt service at the same time.”

Puerto Rico wasn’t the only borrower on the precipice of a historic default. Atlantic City, the distressed New Jersey gambling hub, made $1.8 million in interest payments due May 1, after saying it might not. It avoided the first default for a municipality in the Garden State since the Great Depression.

The clearest sign that the market is shrugging off Puerto Rico and Atlantic City is the money pouring into tax-exempt bond funds.

Individuals have added assets to muni funds for 30 straight weeks dating back to October, the longest stretch since March 2010, Lipper US Fund Flows data show. The $1.2 billion inflow in the week through April 27 was the largest of 2016, and came after Moody’s Investors Service warned that a Puerto Rico default was inevitable.

“They are unique,” Peter Hayes, the head of municipals for BlackRock Inc., the world’s largest money manager, said in a Bloomberg Television interview. “It’s been coming for the last few years. Investors were either comfortable or not.”

“The market is pretty big. It’s $3.7 trillion. It’s different than other fixed-income asset classes. They don’t all have problems.”

Part of the reason investors have been so willing to buy munis is because the bonds have gained every month this year, S&P Dow Jones Indices data show. It’s just the second time that’s happened in the past 18 years.

Also padding returns: improving credit quality for states and cities across the country. S&P said in February that it upgraded nearly twice as many issuers as it downgraded in the fourth quarter of 2015. The 13th-straight quarters of elevating more municipalities than it lowered is the longest streak since 2001.

Fitch Ratings said last week that the trend continued: It upgraded 29 issuers and lowered 19 in the first quarter. Positive outlooks are the highest since at least 2001, when Fitch began tracking that, while negative outlooks are the lowest since the third quarter of 2008.

Defaults, aside from Puerto Rico, are also slowing among municipal borrowers. Just nine issuers missed payments for the first time in the first four months of the year, compared with 24 at this time a year ago and 15 in 2014, according to data from Municipal Market Analytics.

Bloomberg Business

by Brian Chappatta

May 2, 2016 — 7:42 AM PDT Updated on May 2, 2016 — 8:22 AM PDT

New York City Speaker Seeks SEC Probe of OppenheimerFunds on Puerto Rico.

New York City Council Speaker Melissa Mark-Viverito has asked the Securities and Exchange Commission to investigate OppenheimerFunds Inc., saying the asset-management company has played a role in worsening Puerto Rico's fiscal crisis by increasing its investments in the island's debt.

"I urge you and your agency to investigate whether Oppenheimer has fully complied with all securities laws and regulations in the manner in which it has handled its multi-billion dollar investments in Puerto Rican bonds," Mark-Viverito wrote in a letter sent Thursday to SEC Chair Mary Jo White.

Mark-Viverito, 47, a Democrat who was born in San Juan, has blamed the island's financial crisis on hedge funds, banks and other investors in Puerto Rican general-obligation bonds and utility debt. She has described the companies as "vultures" feeding off the instruments' high yields and claimed they have lobbied against legislation that would reduce its payments to bondholders. Some investors have pushed back, saying they represent the island's best hope to improve its economy and stabilize its finances.

"In spite of this crisis and overwhelming evidence that the debt is unsustainable Oppenheimer has voiced its staunch opposition in Congress, in the courts and in the media to providing Puerto Rico with access to Chapter 9 of the bankruptcy code," Mark-Viverito wrote. "Its aggressive opposition to meaningful debt relief will further exacerbate the humanitarian crisis."

Debt Holdings

Kimberly Weinrick, an OppenheimerFunds spokeswoman, issued an e-mailed statement asserting that the company has helped its investors for more than two decades while helping Puerto Rico finance its infrastructure. She didn't address Mark-Viverito's criticisms.

"We continue to work constructively with all parties involved in an effort to try to reach an equitable agreement," she stated in the e-mail. "Throughout Puerto Rico's recent economic difficulties we have also been fully transparent with our investors."

Although Mark-Viverito asserts that OppenheimerFunds has added $500 million to its investments in Puerto Rican debt in the past eight months, the firm's 20 municipal mutual funds over the period have shed about $1 billion, or 4.5 percent of its assets, data compiled by Bloomberg show. That would curb managers' ability to buy new securities.

To meet those investor redemptions, OppenheimerFunds has frequently sold non-Puerto Rico bonds, which would have the effect of increasing the percent allocation to the commonwealth — the trend that caused Mark-Viverito alarm. Its Limited Term Municipal Fund, which saw the most outflows for a total of $463 million, sold just two Puerto Rico bonds in the quarter ended March 31, the data show.

According to Morningstar Inc., OppenheimerFunds' total exposure to Puerto Rico in its mutual funds has decreased since 2014. The firm at the end of 2015 held about $3.8 billion of commonwealth securities in its mutual funds, or about 16 percent of total investments. That's down from $4.8 billion of Puerto Rico securities held, for an allocation of about 18 percent, in March 2014.

Judith Burns, an SEC spokeswoman in Washington, declined to comment about the letter, which was reported earlier by Politico.

OppenheimerFunds in December agreed, along with other mutual funds and hedge funds, to take a

15 percent loss on Puerto Rico Electric Power Authority debt that it holds. The firm is also negotiating with the commonwealth on other potential debt restructurings that may require a loss of principal.

Puerto Rico and its agencies, which are $70 billion in debt, owe $2 billion on July 1, which Governor Alejandro Garcia Padilla has said the island cannot pay unless creditors agree to restructuring deals. The commonwealth's Government Development Bank defaulted on nearly $400 million of debt May 2, the largest such payment failure for the island.

Bloomberg Business

by Henry Goldman and Michelle Kaske

May 5, 2016 — 12:42 PM PDT Updated on May 5, 2016 — 2:07 PM PDT

American Smoking on the Rise Ignites Tobacco Bonds.

Municipal tobacco bonds have returned 17.4 percent over the past year, more than triple the gain of the broad tax-exempt market, S&P Dow Jones Indices data show. The securities have surged because the cigarette shipments backing them as part of a 1998 settlement agreement increased last year by 1.9 percent, the most ever, according to data from the National Association of Attorneys General. The rally in tobacco bonds, which are mostly speculative grade, is a stark contrast to the other large high-yield segment of the municipal market: Puerto Rico debt is down 4.7 percent in the last 12 months.

Bloomberg Business

by Brian Chappatta

May 3, 2016 — 7:35 AM PDT

Morgan Stanley Cut From NYC's Senior Muni Bond Underwriters.

New York City cut Morgan Stanley from the ranks of its senior general obligation and Transitional Finance Authority bond underwriters, while elevating Samuel A. Ramirez & Co. and Royal Bank of Canada.

New York, one of the largest issuers of municipal bonds in the $3.7 trillion market, plans to issue about $14 billion of general-obligation bonds and $15.2 billion of Transitional Finance Authority debt in the next four fiscal years, according to the city's financial plan.

The Transitional Finance Authority was created in 1997 to circumvent limits on New York City general-obligation bond sales. State law doesn't allow it to file for bankruptcy and they are backed by the city's income tax, and if needed, its sales tax.

Morgan Stanley's demotion comes five months after the eliminated about 25 percent of it's fixed-income staff. The investment bank is included as a senior co-manager for the city's GO and TFA debt.

Mark Lake, a spokesman for Morgan Stanley, declined comment. Carol Kostik, deputy comptroller for public finance, wasn't immediately available for comment, a spokesman said. New York City Mayor Bill de Blasio's office didn't immediately respond to a request for comment.

"Ramirez is thrilled to be added to the GO and TFA syndicate," said Ramirez president and chief executive officer Samuel A. Ramirez. "We are honored to serve the City and we look forward to continuing our work with them for many years."

"We are delighted to be selected. We appreciate the confidence shown in our firm by the City of New York," said John Puig, Managing Director and Co-Head of the New York Municipal Finance Group for RBC.

In addition to Samuel A. Ramirez and RBC, the city's senior GO and TFA bond managers include Bank of America Merrill Lynch, Siebert Brandford Shank & Co., Goldman Sachs Group Inc. Jefferies Group LLC, Wells Fargo Corp., Citigroup Inc., JPMorgan Chase & Co. and Loop Capital Markets LLC.

Cities and states typically pick new underwriting groups every few years to spur competition and respond to staff changes at investment banks. The underwriting group, or syndicate, announced by New York Thursday replaces one set up in December 2012.

Bloomberg Business

by Martin Z Braun

May 5, 2016 — 2:10 PM PDT Updated on May 5, 2016 — 2:47 PM PDT

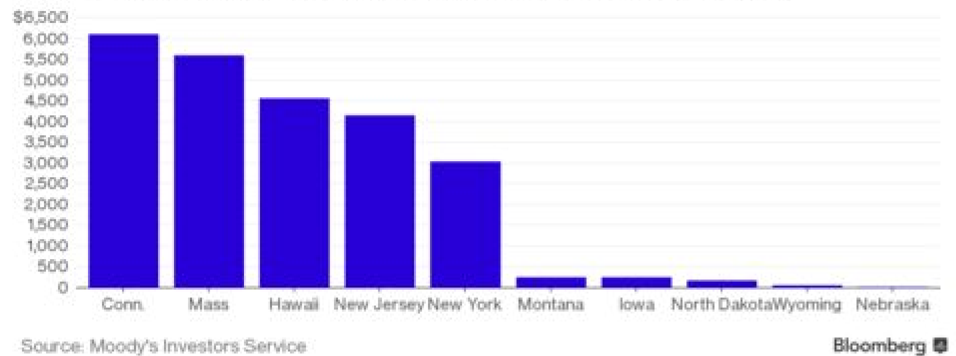
U.S. States Stay in Austerity Age as Debt Barely Budges in 2015.

The debt of U.S. states last year remained below its all-time high from 2013, showing officials were hesitant to borrow even with interest rates near record lows and the recession six years in the past.

States' net tax-supported debt edged up 0.6 percent in 2015 to $512.5 billion, according to a Moody's Investors Service report released Friday. In 2014, the figure fell for the first time in almost three decades, from the record high of $516 billion.

After contending with a long recovery from the recession, states and cities have used the $3.7 trillion municipal-bond market in recent years largely for refinancing instead of running up new debt for public works. There hasn't been a more attractive time in decades for lawmakers to issue long-term bonds: the yield on a Bond Buyer index of 20-year municipal general-obligation bonds fell in February to the lowest since 1965.

"The recent slowdown in debt levels highlights states' reluctance to take on new debt despite continued annual increases in tax revenue," analysts for Moody's wrote in the report. "Several factors will likely suppress growth in state debt burdens in the next year, including the recent decline in commodity markets along with longer term trends of continued uncertainty over federal fiscal policy and healthcare funding."



Connecticut retained its spot at the top of Moody's debt medians, with $6,155 of net tax-supported debt per resident. That's up from $5,491 in last year's report.

Massachusetts, Hawaii, New Jersey and New York round out the top five, like the year before, each with more than $3,000 per person. Nebraska, Wyoming, North Dakota, Iowa and Montana have the smallest burdens, at less than $250 per resident.

Kansas's debt load in 2015 jumped about 40 percent, the most of any U.S. state, after it issued $1 billion of pension bonds. South Dakota's grew 20 percent.

Puerto Rico, the U.S. territory on the brink of the municipal market's largest-ever restructuring, wasn't included in the report due to lack of available data. It had $15,637 of tax-supported debt per person in Moody's prior report.

Bloomberg Business

by Brian Chappatta

May 5, 2016 — 9:01 PM PDT

A Top Muni Fund's Secret: Buy Tobacco, Stay Clear of Puerto Rico.

One of the best-performing U.S. municipal-bond funds rose to the top with debt backed by a once bankrupt county and cigarette-company payouts at risk as Americans kick the habit. Another driver: It largely steered clear of Puerto Rico.

Money managers Jeffrey Burger and Daniel Barton pushed the Dreyfus High Yield Municipal Bond Fund to a return of 4.5 percent this year, more than any other open-end muni fund that's available to American individual investors, according to data compiled by Bloomberg. The fund, with about $160 million in assets, has gained 8.6 percent over the past year, besting 93 percent of its peers.

The fund has benefited from gains in the riskiest corners of the $3.7 trillion municipal market as investors look for bigger returns while yields hold near a half-century low. With money flowing in and debt sales slowing, some of the lower-rated securities have rallied, including those repaid with money states receive from the 1998 legal settlement with tobacco companies.

"A lot of people have been trying to get very few deals," said Barton, who is based in Boston. "The

market is likely to continue at a premium, if not get stronger."

The fund's biggest single holding at the end of March was about $5.8 million worth of New Jersey tobacco bonds due in 2041, with the second $4.2 million of Ohio's that mature in 2047. Its third largest: a $3.9 million block of securities sold by Jefferson County, Alabama, in 2013 as it emerged from the bankruptcy. The Dreyfus fund held about $1 million of debt issued by Puerto Rico, whose growing fiscal crisis led this month to the government's biggest default yet.

The push into tobacco bonds proved prescient. The industry arrested a long-time slump, partly because lower gas prices left consumers with more to spend. Cigarette sales, which determine the size of the legal payments, grew 2 percent last year after declining since 1981, according to a May 2 report by Janney Montgomery Scott LLC. As a result, the securities delivered 17 percent over the past year, more than triple the gain of the broader tax-exempt market, S&P Dow Jones Indices data show.

"Tobacco bonds have taken off thanks to an increase in smoking spurred by lower energy prices," said Burger, who co-manages the fund from Boston at Standish Mellon Asset Management Co.

The Dreyfus fund's investments are scattered over nearly 100 individual securities, which buffers it against risk. The managers declined to comment on specific holdings.

"Diversification is important in the high-yield sector, just as it is in any other kind of investing," said Barton.

The fund's portfolio also included Chicago's wastewater system bonds, private prisons and charter schools in Arizona, and capital appreciation bonds — which delay payments until they mature — that financed California schools and a retirement center.

One criteria the managers weigh heavily: How easy it will be to sell a bond if they want to change course. Recently, the strong demand for high-yield debt — and the diminished pace of new borrowing — has made the market more liquid, they said.

Returns are also being buttressed by the improving finances of state and local governments, which stands in contrast to the high-profile collapse of Puerto Rico. The Caribbean island's long-building strains haven't affected the broader market because investors recognize that its problems are unique.

"You didn't see the contagion in this market that you may have seen in others," said Burger. "Most municipal credit is improving, and we look for bonds that have better credit characteristics."

Bloomberg Business

by Darrell Preston

May 5, 2016 — 2:00 AM PDT Updated on May 5, 2016 — 6:27 AM PDT

BDA Submits Comment Letter to the SEC: FINRA Rule 4210 "TBA" Margin Amendments.

On May 2nd, BDA submitted a comment letter to the SEC in response to FINRA's filing of

Amendment #2 on its Rule 4210 “TBA” margin amendments.

The SEC solicited public comment on Amendment #2 and designated a longer period for Commission action for assessing the proposed rule. The Commission has until June 16, 2016, the maximum allowable timeframe for the Commission to approve or disapprove the rule under the proceedings process.

BDA Comment Letter Summary

BDA’s letter urges the Commission to disapprove the rule and focuses on the following issues:

- The legal and compliance cost burdens for middle-market dealers to implement and continue to maintain the requirements of this proposed rule
- The fact that the proposed margin amendments will not have a fair and equitable impact on mortgage market participants and, therefore, the amendments violate Exchange Act Section 15A(b)(6)
- BDA argues that FINRA does not have the statutory authority to adopt a margin rule for the exempt securities defined as ‘covered agency securities’ by FINRA in the proposed rule

Additional Information

In February, BDA submitted a comment letter in response to the SEC’s request for comment on FINRA’s Rule 4210 filing with the SEC. The SEC’s order instituting proceedings can be read here.

The original Rule 4210 margin amendments that FINRA filed with the SEC in October 2015 can be read here.

BDA submitted a comment letter to the SEC in November 2015.

BDA met with the SEC, FINRA, and key Congressional committees in January.

05-02-2016

The ‘Citigation’ Phenomenon: Municipalities Teaming up With Plaintiffs’ Firms to File Suits.

The 20-attorney legal department in Providence, R.I., mostly defends the city against lawsuits. But since 2011, it has partnered with outside law firms to file more than two dozen lawsuits alleging a variety of securities and antitrust violations. The outside law firms have funded the litigation in return for a share—a third—of any monetary award.

As we report in today’s Wall Street Journal, Providence is one of many municipalities trying its hand at affirmative litigation, amid a slow economic recovery and uneven regulatory enforcement at the state and federal level.

Lawrence Rosenthal, a law professor at Chapman University in California who worked in Chicago’s law department, said political and practical considerations figure into decisions by governments to partner with outside law firms.

“It requires no investment of taxpayers funds. All the money is fronted by the plaintiffs firms,” he

said. “Many smaller municipalities lack in-house expertise as well as in-house resources, so they really have very little choice but to use outside counsel.”

Still, municipalities may pay a price.

“You necessarily turn over control, and the litigation can then turn into a pursuit of the private investor’s goals at the expense of public policy objectives,” Mr. Rosenthal said.

Such partnerships trace to the tobacco litigation in the 1990s, when states paired with trial lawyers to sue cigarette makers. The latest wave of cases builds on a decade-old trend of municipalities and municipal pension funds taking companies and banks to court, plaintiffs’ lawyers said.

Municipalities have moved beyond such securities litigation in recent years, filing lawsuits alleging among other things that defendants sold them products at unfair prices, damaged the environment and infrastructure, illegally marketed painkillers and discriminated against minority residents.

Providence adopted its current litigation strategy in 2011.

We report,

> Jeff Padwa, Providence’s city attorney from 2011 to 2014, said he devised an affirmative-litigation strategy over dinner with then Mayor-elect Angel Taveras days before Mr. Taveras’s 2011 swearing-in. At the time, the city’s unemployment rate was 11% and its tax base was shrinking.
>
> Mr. Padwa said he modeled the legal department after the Connecticut attorney general’s office in the 1990s under Richard Blumenthal, who positioned the state as one of the leaders in the tobacco litigation and joined other states in a suit against Microsoft over alleged antitrust violations.

“Just a few years ago, many municipalities considered class actions with trepidation and maybe even skepticism,” said Paul Geller, a founding partner of Robbins Geller Rudman & Dowd LLP, one of the country’s largest plaintiffs’ firms that specializes in securities litigation.

Mr. Geller said new requests by municipalities for class-action lawyers now surface weekly.

THE WALL STREET JOURNAL

By JOE PALAZZOLO

May 3, 2016 10:05 am ET

- Enhancing Tax Abatement Transparency.
- NABL: IRS Issues Final Regs on Determining AFRs for Tax-Exempt Bonds.
- Hawkins Advisory: IRS Revenue Procedure 2016-25 Regarding Mortgage Revenue Bonds and Mortgage Credit Certificates.
- MSRB Reminds Municipal Advisors and Dealers of the May 6, 2016 Effective Date of Amendments to Gifts Rule.
- SEC Approves MSRB Rule Changes For Two-Day Settlements.
- When Debt Meets Public Approval: Municipal Bond Elections in San Antonio, Texas.

- MSRB Webinar: What to Expect From Your Municipal Advisor.
- *Concerned Citizens of Southeast Polk School Dist. v. City of Pleasant Hill, Iowa* – Supreme Court of Iowa holds that City, which had consolidated urban renewal areas in order to use tax increment financing (TIF) from original renewal area across a greater area, lacked authority to extend renewal area and TIF arrangement in light of statute limiting a TIF division based upon an economic development determination to 20 years. (Why can't we once, just once, get an "Indifferent Citizens vs. Whatever"?)
- And finally, Staggering Irony of the Week is brought to you this particular week by *Baker v. Wayne Cty.*, in which the brain trust at Wayne City elected to erect a statue of – of all things – a deer. These vermin are a sufficient pestilence to motorists while ambulatory, so how in the name of all that is cloven-hoofed was it deemed wise to carve one in stone? Yep, you know where this is going – Kelli Baker loses control of her vehicle, hits the damn things and dies. Oh, deer.

EMINENT DOMAIN - CALIFORNIA

Boxer v. City of Beverly Hills

Court of Appeal, Second District, Division 1, California - April 26, 2016 - Cal.Rptr.3d - 2016 WL 1678864 - 16 Cal. Daily Op. Serv. 4410

Homeowners brought inverse condemnation action, seeking damages and injunctive relief after city planted trees in park which impaired their views.

The Superior Court sustained city's demurrer, and homeowners appealed.

The Court of Appeal held that:

- Loss of view was not a compensable taking, and
- Speculative risk that trees might catch fire was sufficient to a constitute a taking.

Loss of view due to trees which city planted in neighboring park was not a compensable taking of homeowners' property absent any physical intrusion, occupation, or invasion of their property or any physical damage to their property.

Speculative risk that trees planted in neighboring park might catch fire was insufficient to a constitute an inverse condemnation of homeowners' properties.

ZONING - MARYLAND

A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colorado, LLC

Court of Appeals of Maryland - April 26, 2016 - A.3d - 2016 WL 1637650

Restaurant operator, a foreign limited liability company (LLC), petitioned for review of decision of city department of zoning and planning, approving application for special exception for competitor to open a restaurant 400 feet from operator's restaurant.

The Circuit Court dismissed the petition, and operator appealed. The Court of Special Appeal affirmed. Operator petitioned for review.

The Court of Appeals held that:

- As a matter of first impression, a foreign LLC may file a suit and subsequently cure its noncompliance with statutory registration requirements and continue with its suit, but
- Operator was not aggrieved for standing purposes.

A foreign limited liability company (LLC) may file a suit and subsequently cure its noncompliance with statutory registration requirements, existing at time of suit, and continue with its suit. The statutory prohibition on a noncompliant foreign LLC "maintaining" suit is subject to a proviso that the LLC show to the court's satisfaction that it has paid a penalty for noncompliance and complied with registration requirements.

A protestant (but not a catholic?) is specially aggrieved by a decision of board of zoning appeals so as to be entitled to seek judicial review when she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action to be considered almost prima facie aggrieved, and offers "plus factors" supporting injury.

Restaurant operator was not specially aggrieved by decision of city department of zoning and planning approving application for special exception for competitor to open a restaurant 400 feet from operator's restaurant, and therefore operator could not seek judicial review, notwithstanding claim of increased traffic, where operator's property was not within direct view of competitor's property.

LITIGATION PRIVILEGE - MARYLAND

O'Brien & Gere Engineers, Inc. v. City of Salisbury

Court of Appeals of Maryland - April 26, 2016 - A.3d - 2016 WL 1637731

Engineering firm brought action against city for injunctive and monetary relief on ground that city violated non-disparagement clause in settlement agreement during litigation against non-settling parties in suit arising out of problems with new wastewater treatment plant designed by firm.

The Circuit Court dismissed action. Firm appealed. The Court of Special Appeals affirmed. Firm's petition for writ of certiorari was granted.

The Court of Appeals held that:

- Termination of city's litigation against non-settling parties did not render case moot;
- As a matter of first impression, litigation privilege can apply as a defense to claims sounding in contract;
- Privilege immunized city from liability; and
- City did not waive the privilege by entering settlement agreement.

Non-disparagement clause of settlement agreement stating that adequate remedy at law would not exist for breach and that non-breaching party would be entitled to equitable relief did not show intention to limit available relief and preclude money damages, and, thus, termination of city's litigation against non-settling parties did not render moot settling party's case against city for breach of the clause during the litigation. The agreement focused precisely on adequacy of a legal remedy, not on its availability.

Litigation privilege immunized city from liability to engineering firm for breach of non-disparagement clause in settlement agreement during city's suit against construction manager. City needed to establish firm's defective design of wastewater treatment plant in order to show manager

breached contract to advise city of deficiencies, and applying the privilege would not frustrate purpose of settlement agreement and city's obligation to indemnify firm from any claim asserted by any other party, since manager's defense was not claim or suit, but would promote due administration of justice and free expression by participants in judicial proceedings.

City did not waive litigation privilege by entering settlement agreement with engineering firm and agreeing to non-disparagement clause and, therefore, was protected by privilege during litigation against construction manager raising design deficiencies in wastewater treatment plant as defense. The clause did not prohibit city's statements in the litigation, but focused on statements made or issued to the media, or other entities or persons, firm knew of the pending litigation at time of settlement, the agreement did not restrict issues city could raise or its strategy, and facts relating to manager's alleged breach of contract were interrelated to alleged design flaws.

ZONING - MISSISSIPPI

Barrett v. City of Gulfport

Supreme Court of Mississippi - April 21, 2016 - So.3d - 2016 WL 1593353

Adjacent landowners appealed city council's approval of city's application to use historic home as a recreation center upon its reconstruction after Hurricane Katrina. After city withdrew application, the Circuit Court dismissed the appeal as moot. Adjacent landowners appealed.

The Supreme Court of Mississippi held that:

- Appeal was rendered moot by city's withdrawal of application and city council amendment exempting all city-owned property from complying with the city's zoning ordinances;
- Court could consider amendment exempting all city-owned property from zoning ordinances when considering whether appeal was moot; and
- Challenge did not meet the "capable of repetition yet evading review" exception to the mootness doctrine.

Adjacent landowners' challenge to city council's approval of city's application to use historic home as a recreation center, which was rendered moot by city's withdrawal of application and ordinance exempting city-owned property from zoning ordinances, did not meet the "capable of repetition yet evading review" exception to the mootness doctrine. There was no reasonable expectation that home would be used as a recreation center in the future, as city withdrew its application and admitted that home's current design would not be conducive to such use, and it would be impossible for the issues to be repeated, as the property currently was exempt from the zoning ordinances in question.

UTILITIES - NEW YORK

New York State Elec. & Gas Corp. v. County of Chemung

Supreme Court, Appellate Division, Third Department, New York - March 31, 2016 - N.Y.S.3d - 137 A.D.3d 1550 - 2016 WL 1248642 - 2016 N.Y. Slip Op. 02507

Corporation, which provided natural gas to residential and commercial customers in town and village, brought action against county, town and village, seeking compensatory damages for repairing service laterals in town and village, and permanent injunction requiring defendants to prevent further damage to corporation's laterals.

The Supreme Court, Chemung County, dismissed action. Corporation appealed.

The Supreme Court, Appellate Division, held that:

- Action was limited to 39 laterals identified in notices of claim, and did not permit inclusion of approximately 800 additional properties alleged in complaint;
- Corporation's claims seeking compensatory damage due to interference with its laterals were time-barred; but
- Corporation's claims based on defendants' failure to maintain its sewer and water mains were timely;
- Corporation stated trespass and public and private nuisance claims;
- Corporation's constitutional taking or inverse condemnation claims were precluded; and
- Corporation was not entitled to permanent injunctive relief.

Corporation, which provided natural gas to residential and commercial customers in town and village, was not entitled to permanent injunctive relief requiring county, town and village to prevent further damage to its natural gas service laterals, as corporation had repaired damaged laterals, and action was supported by basic premise that county, town and village had no authority to interfere with corporation's facilities.

IMMUNITY - OHIO

Baker v. Wayne Cty.

Supreme Court of Ohio - April 19, 2016 - N.E.3d - 2016 WL 1592921 - 2016 -Ohio- 1566

Administrators of motorist's estate filed wrongful death action against county arising out of fatal accident on county road, in which motorist's right tires left the road over an edge drop at limit of pavement, causing motorist to overcorrect and ultimately resulting in crash.

The Court of Common Pleas entered summary judgment for county on grounds of immunity, and administrators appealed. The Court of Appeals reversed and remanded. County appealed.

The Supreme Court of Ohio held that:

- Definition of "public road" provided in statutory chapter on political subdivision tort liability is the exclusive definition of public road for purposes of determining applicability of exception to sovereign immunity for negligent failure to keep public roads in repair, and
- Edge drop of between four and five inches at limit of paved roadway was not part of a "public road," and thus exception to sovereign immunity for negligent failure to keep public roads in repair did not apply to instant action.

ZONING - OHIO

Center for Powell Crossing, LLC v. City of Powell, Ohio

United States District Court, S.D. Ohio, Eastern Division - March 25, 2016 - F.Supp.3d - 2016 WL 1165355

Owner of parcel of largely undeveloped land within city's zoned downtown business district brought § 1983 action against city, seeking to challenge amendment to city's charter, as approved by popular

vote, that required organization of commission comprised of five private citizens to draft new comprehensive zoning and development plan. Owner moved for preliminary injunction against enforcement of amendment, which court then combined with final hearing on merits.

The District Court held that:

- Consolidating request for preliminary injunction with final hearing on merits was appropriate;
- Owner obtained protected property interest in previously-approved development plan;
- Owner was afforded all process to which it was entitled prior to deprivation of its protected interest;
- City did not violate property owner's substantive due process rights;
- Challenged provision of amendment was not unconstitutionally vague;
- Provisions requiring organization of commission to draft new plan represented unlawful delegation of legislative authority;
- Amendment was not unconstitutional bill of attainder;
- Owner failed to demonstrate adequate grounds for its "class of one" equal protection claim;
- Unlawful provisions of amendment could be severed; and
- Amendment violated Ohio constitutional provision regarding referendum power.

DEVELOPMENT IMPACT FEE - RHODE ISLAND

5750 Post Road Medical Offices, LLC v. East Greenwich Fire Dist.

Supreme Court of Rhode Island - April 26, 2016 - A.3d - 2016 WL 1637853

Corporations brought action against fire district and town seeking declaratory judgment, injunction, and refund of fees that allegedly violated Rhode Island Development Impact Fee Act (RIDIFA).

The Superior Court entered summary judgment in favor of district and town. Corporations appealed.

The Supreme Court of Rhode Island held that district's resolution was adopted without ordinance formalities that were required to impose fees.

Fire district's resolution was adopted without formalities that were required for enactment of ordinance, which was required under Rhode Island Development Impact Fee Act (RIDIFA) for imposition of fee, assuming fire district had authority to impose and collect development impact fees. Even though district adopted resolution at regular monthly meeting, district did not publish proposed regulation or hold public hearing before it voted to adopt proposed schedule of development impact fees, town charter required such formalities for passing ordinances, and district was required to use same formal procedures that bound town.

ZONING - VERMONT

In re Waterfront Park Act 250 Amendment

Supreme Court of Vermont - April 15, 2016 - A.3d - 2016 WL 1538830 - 2016 VT 39

City applied for amendment to land use permit for waterfront park, specifically an amendment to conditions relating to timing and frequency of events at park and maximum allowed sound levels, more than 15 years after city obtained the permit to host festivals and other public events at park.

The Environmental Commission approved amendment. Objector appealed. The Superior Court, Environmental Division, entered summary judgment in favor of city. Objector appealed.

The Supreme Court of Vermont held that:

- City's application for amendment was not a mere effort to relitigate already-resolved matters or to undermine purposes of conditions in permit, and
- The need for flexibility outweighed the need for finality, as required for Commission to conduct a merits review of city's application.

City's application for amendment of land use permit for waterfront park, specifically an amendment of conditions relating to timing and frequency of events at park and maximum allowed sound levels, was not a mere effort to relitigate already-resolved matters or to undermine purposes of conditions in permit, which city obtained more than 15 years earlier to host festivals and other public events at park, and therefore city could seek amendment under former version of rule governing permit amendments, where park underwent dramatic changes since its inception including an addition of an aquarium and science center, festivals and other park events had become a central element of city and regional cultural life drawing 185,000 yearly visitors, and city's plans to grow and support downtown economy depended in part on increasing public use of park.

Under former version of rule governing amendments to land use permits, the need for flexibility outweighed the need for finality, as required for Environmental Commission to conduct a merits review of city's application for amendment of land use permit for waterfront park, specifically an amendment of conditions relating to timing and frequency of festivals or other public events at park and maximum allowed sound levels. Although neighboring landowner relied on prior permit limitations, park had been a dynamic resource to city, the increased use of park had been and would continue to be important to city's prosperity and its cultural, recreational, and social life, and sound limitations in original permit were ambiguous.

MSRB Expands Access To Data Offerings Through Research Platform.

WASHINGTON – The Municipal Securities Rulemaking Board is making its trade data available through a research platform to individuals associated with more than 400 institutions around the world, but without the controversial anonymous dealer identifiers in a proposed new product still under development.

The subscription-based research platform where the data is now available, Wharton Research Data Services (WRDS), gives about 40,000 corporate, academic, and government users located in more than 30 countries access to data in areas like accounting, banking, economics, finance, marketing and statistics. The platform is associated with the University of Pennsylvania's Wharton School of Business and will offer all of the data already available for paid MSRB subscribers.

The MSRB, in a release about the available information on the new platform, said it will allow researchers to study statistical trends and patterns in the data to inform public policy and municipal finance using information from the 40,000 trades that are executed daily in the municipal market.

"The MSRB is excited to be working with WRDS to make this data available to universities and other institutions in a way that fosters academic research," said MSRB executive director Lynnette Kelly. "We support and encourage independent research that advances understanding of the municipal market and informs policymakers."

Robert Zarazowski, managing director of WRDS, said "advancing knowledge and helping clients quickly and easily obtain the data they need to perform ground-breaking research is what we do."

Despite the positive outlook from the MSRB and WRDS, at least one data analyst said it will take time for the MSRB data to really be useful to some researchers.

"I think it is going to take a while for many academics to figure out how to use this data," said Marc Joffe of the Center for Municipal Finance. "Because any given issuer has a lot of CUSIPs, it will be challenging to figure out what this CUSIP-level data can tell us about cities, counties, [and] school districts."

For example, he said, if a researcher wants to study the interest rates a county is paying in a given month, the researcher may have to look at 40 bonds the county has outstanding. Some of those bonds will trade once, some multiple times, and some not at all.

"You'd have to implement some procedure for determining which trades to include and then how to aggregate them," he said.

Meanwhile, the MSRB is still wrestling with whether to include anonymous dealer identifiers in data offerings to academics, despite protests from dealer groups that this could lead to the uncovering of proprietary information. Academics, however, want the anonymous dealer identifiers, saying this is key to certain research.

The anonymous identifiers were part of a July 2015 proposal for a new data product that has not moved forward after one round of comments. The MSRB already makes public some post-trade information that dealers are required to report, but the data does not identify dealers or customers.

The proposed trade product, besides including anonymous dealer identifiers, would: require academics to agree not to engage in reverse engineering; prohibit redistribution of data; mandate users disclose their specific intentions for requesting the information; and only be available to academics with institutions of higher education. Information would also have to be more than two years old to be eligible for release.

Bond Dealers of America and the Securities Industry and Financial Markets Association both said in comment letters on the proposed product that they were concerned this would open their members up to the possibility of having their identities, trading strategies, and inventories discovered through reverse engineering.

But academics who wrote letters argued the market would see more liquidity if they were allowed to access the proposed new data. They also wanted to see a shorter delay in release, with the majority suggesting one year instead of two and one saying six months would be best.

The Bond Buyer

By Jack Casey

April 25, 2016

Bill Would Expand Indian Tribes' Ability to Issue Tax-Exempt Bonds.

WASHINGTON – A bipartisan bill introduced in the House would expand the ways in which Indian tribes can issue tax-exempt bonds and place them more on par with state and local governments under the federal tax law.

The Tribal Tax and Investment Reform Act of 2016 (H.R. 4943), introduced by Rep. Ron Kind, D-Wis. on April 14, would amend the federal tax code to remove special status for Indian tribal governments and instead establish a volume cap for their tax-exempt bonds similar to those for state governments.

Kind is a member of the House Ways and Means Committee, which writes tax laws. His bill is co-sponsored by Lynn Jenkins, D-Kan., who is also a member of that committee.

Tribes currently can issue governmental bonds only if the proceeds are used for an "essential government function" such as for projects involving schools, streets or sewers. They cannot issue bonds for activities for which state and local governments issue private activity bonds.

Congress removed the essential government function limitation for tribal government bonds in 2009 and 2010 under the American Recovery and Reinvestment Act. President Obama, in his budget requests in recent years, has proposed repealing the "essential governmental function" standards for tribal governments.

Under the bill, the Treasury Department would create a national bond volume cap for tribal governments based on a tribe's national population, similar to the population formula it uses for states.

Kind said that Indian tribes face "historic disadvantages" in accessing capital and that "codifying tax parity with respect to tribal governments is consistent with federal treaties recognizing the sovereignty of tribal governments."

The bill says that Indian tribes are also currently excluded from certain federal tax code provisions, which "results in unfair tax treatment for tribal citizens or unequal enforcement authority for tribal enforcement agencies."

"It is long past time that changes are made to give tribes fair treatment in the tax code and access to a full range of financing options," Kind said on Monday. "Tax exempt bonds are a critical tool for raising capital and I am pleased to have bipartisan support for this legislation. I will continue to work with my colleagues across the aisle to move this important legislation forward."

The bill has been referred to the House Ways and Means committee and House Education and the Workforce committee.

Kind introduced a similar bill last Congress, which was not acted upon.

The bill would also allow Indian tribal governments to offer pension plans to their employees and to have access to the Federal Parent Locator Service run by the Department of Health & Human Services.

Indian tribes have long called for repeal of limitations on the tax-exempt bonds they can issue, which they have contended puts them at a competitive disadvantage to state and local governments.

Perry Israel, a lawyer with his own firm in Sacramento, said Monday it would "be good" to eliminate special status and put an end to an issue he remembers as lasting more than three decades. Confusion over essential government functions, he said, also gave rise to Tribal Economic

Development Bonds, the 2009-2010 bonds issued under the ARRA, which were not required to be issued for "essential governmental functions."

"I think it's about time we stopped having special rules for Indian tribes," Israel said. "There is this big question – what is an essential government function? We ought to go and treat tribes the same as we treat other states."

The Bond Buyer

By Evan Fallor

April 25, 2016

Recent Texas Supreme Court Opinions Change the Landscape of Governmental Immunity: Andrews Kurth

On April 1, 2016, the Texas Supreme Court issued opinions in *Houston Belt & Terminal Railway Co. v. City of Houston* and *Wasson Interests, Ltd. v. City of Jacksonville*, in which the Court further constrained the application of governmental immunity.

Houston Belt & Terminal Railway Co. v. City of Houston, No. 14-0459, Texas Supreme Court, April 1, 2016

The *ultra vires* doctrine is a narrow exception to governmental immunity, under which a claimant may sue a government official for injunctive relief if the official has either acted without legal authority or failed to perform a ministerial duty. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Following *Heinrich's* establishment of the framework for evaluating whether a claim properly alleges *ultra vires* conduct, the general consensus has been that where government officials are vested with discretion, suits involving the exercise of that discretion do not properly present *ultra vires* claims and are therefore barred by governmental immunity.

In *Houston Belt*, the Texas Supreme Court considered this issue in the context of limited official discretion (as opposed to instances of absolute discretion) and found that an *ultra vires* claim may be premised on allegations asserting that an official exceeded his discretion. The Court reviewed the ordinance underlying the plaintiffs' claims and evidence regarding the manner in which it had been applied. Based on that review, the Court concluded that the plaintiffs' allegation that the official responsible for implementing the ordinance had exceeded the discretion granted him was sufficient to avoid dismissal on immunity grounds. The Court reasoned that where only limited discretion exists, governmental immunity does not bar a suit to enjoin an official's actions taken without reference to or in conflict with the constraints of the law authorizing the official to act.

The decision in *Houston Belt* alters the analysis of an *ultra vires* claim when the basis for an immunity defense is that the claim is premised on a government official's exercise of discretion. In order to determine the applicability of governmental immunity in such suits, courts will have to analyze the limits of the official's discretion and then resolve any fact issues concerning whether the official acted within those limits. As a part of that analysis, courts should consider the statutes or regulations applicable to the government action or inaction at issue. *Sw. Bell Tel. Co. v. Emmett*, 459 S.W.3d 578, 583 (Tex. 2015). Courts also can consider evidence necessary to resolve jurisdictional fact issues. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004). It is

clear, however, that merely alleging an official's discretion is limited will not be sufficient to avoid dismissal. As the Court noted in *Houston Belt*, "many legislative grants of authority, although not absolute, will be broad enough to bar most, if not all, allegedly *ultra vires* claims."

Wasson Interests, Ltd. v. City of Jacksonville, No. 14-0645, Texas Supreme Court, April 1, 2016

In 2006, *Tooke v. City of Mexia*, 197 S.W.3d 325 (Tex. 2006) established that a city is not immune from suit for torts committed in its proprietary capacity. Since that time, there has been disagreement in the courts of appeals as to whether this governmental/proprietary dichotomy also applies to contract actions against cities. Compare *City of San Antonio v. Wheelabrator Air Pollution Control, Inc.*, 381 S.W.3d 597 (Tex. App.—San Antonio 2012, pet. denied) (holding that there is a presumption of immunity and immunity was not "waived" in breach of contract cases where the contract was entered into in a city's proprietary capacity); *Republic Power Partners, L.P. v. City of Lubbock*, 424 S.W.3d 184, 193 (Tex. App.—Amarillo 2014, no pet.) (same) with *City of Georgetown v. Lower Colo. River Auth.*, 413 S.W.3d 803, 812 (Tex. App.—Austin 2013, pet. dism'd) (determining that the governmental/proprietary dichotomy applies to contract actions).

The Texas Supreme Court resolved the circuit split in *Wasson Interests*, holding that when cities enter into contracts in their proprietary capacity, they are not shielded by immunity from lawsuits related to those contracts. The Court reasoned that the governmental immunity afforded to political subdivisions of the State is not inherent in the political subdivision, but rather is derived from the State's immunity. That is, for cities, there is no "default immunity." Within that framework, the Court held immunity only attaches to actions performed by a municipality in its governmental capacity, because those actions are the only ones that are performed by a city as an agent of the State. Accordingly, the Court concluded that when a city contracts in its proprietary capacity, immunity never attaches.

Until now, the general understanding has been that the only instance in which immunity did not apply to bar a contract action was when the contract came within the scope of Subchapter I of Chapter 271 of the Texas Local Government Code, which waives immunity from suit and provides the process for adjudicating disputes involving contracts for goods or services. Tex. Loc. Gov't Code Ann. §§ 271.151-.160 (West 2005 & Supp. 2015). In *Wasson Interests*, the City of Jacksonville argued that these provisions abrogated the common law governmental/proprietary dichotomy with respect to contracts. The Court disagreed, reiterating that when a contract is entered into by a municipality in its proprietary capacity, no immunity exists and, thus, there is no immunity to waive.

Notably, the Court resolved another question that had been left open after *Tooke*, and confirmed in a footnote that the governmental/proprietary dichotomy applies only to municipalities, because they are the only political subdivisions that can act in a proprietary capacity.

Following *Wasson Interests*, in order to invoke the protections of governmental immunity in breach of contract actions, cities will have to show that they were acting in a governmental capacity. The practical reality is that there will be increased litigation over what is governmental and what is proprietary in breach of contract cases. As guidance, the Court noted that the Legislature is empowered to delineate the functions of a municipality that are governmental and those that are proprietary, as it has done in the Texas Tort Claims Act (the "TTCA"), see Tex. Civ. Prac. & Rem. Code Ann. § 101.0215. The Court directed trial judges to look to the TTCA for guidance when resolving the governmental/proprietary question in contract actions, just as they do in tort cases. It is important to note, however, that the TTCA does not establish an exclusive list of proprietary functions and, thus, is simply a jumping off point for courts considering whether a contract was entered into in a proprietary or governmental capacity.

As overarching takeaways from *Houston Belt* and *Wasson Interests*, municipalities need to be mindful of the fact that they do not have "default immunity." Municipalities should therefore consider establishing limitations on their liability within the terms of any contracts they enter into in their proprietary capacity. Likewise, to the extent municipalities intend to imbue their officials with absolute discretion sufficient to invoke governmental immunity, they should take care to ensure that municipal ordinances clearly effectuate that goal.

Article by Mark B. Arnold, Kelly Sandill and Katie Alrich

Last Updated: April 26 2016

Andrews Kurth LLP

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

MSRB Reminds Municipal Advisors and Dealers of the May 6, 2016 Effective Date of Amendments to Gifts Rule.

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers, municipal securities dealers and municipal advisors that amendments to MSRB Rule G-20 on gifts, gratuities and non-cash compensation and related amendments to MSRB Rule G-8 on recordkeeping become effective on May 6, 2016.

The amendments, among other things, extend the restrictions regarding gift giving and the related recordkeeping requirements currently applicable to brokers, dealers and municipal securities dealers to municipal advisors. The changes also include a new provision to prohibit expressly the seeking or obtaining of reimbursement by a dealer or municipal advisor of certain entertainment expenses from the proceeds of an offering of municipal securities.

View the regulatory notice.

View the approval order.

Watch an on-demand webinar on the amendments to Rule G-20.

MSRB Webinar: What to Expect From Your Municipal Advisor.

May 26, 2016

12:00 p.m. – 1:00 p.m. ET

Issuers of municipal securities can attend this free educational webinar to learn about the new rules for municipal advisors and to hear about how their relationship with financial professionals, hired as part of the deal team, may change as the municipal advisor rules go into effect.

Register for the webinar.

Op-Ed: Universities Should Consider P3s to Meet Infrastructure Needs.

More colleges and universities should consider joining the slowly growing number of institutions that are using public-private partnerships to address infrastructure and other capital needs, argues the head of one nonprofit organization.

Many of these institutions no longer can rely on existing debt capacity, budget surpluses and reserves to maintain and expand their assets. As a result, they should look into allowing outside players to build and maintain some of their infrastructure to save money, free up funds for other priorities and improve their ability to pursue their academic mission, contends Brian Mitchell, director of the Edvance Foundation in an April 25 op-ed in the Huffington Post.

For example, colleges that use private financing and expertise to develop on-campus housing can improve students' quality of life, increase enrollment and graduation rates while freeing up money to maintain and add assets, he points out.

Student housing is not the only type of P3s schools are pursuing; others include Ohio State University's energy P3 and the University of Utah's installation of solar panels. Ohio State's project also includes an academic component. Bidders were asked to include in their proposals descriptions of educational opportunities they might offer, such as research projects and collaborative projects with faculty, scholarships, student internships and co-branded energy marketing opportunities.

Mitchell also sees value in P3s that are designed to serve, not only those who study or work on campus, but the surrounding community as well.

"In today's environment, American higher education — whether public or private — is beginning to use private investment to meet strategic needs that link real estate, student services, academic programs, facilities expansion and town/gown relations together in new and innovative ways," he explains.

New Jersey City University, for example, has moved beyond student housing P3s and is using commercial development on school-owned property as an engine for local business and residential growth. Miami Dade College is developing a P3 that combines a multi-dimensional cultural arts center with private residential units, restaurants and retail space. Meanwhile, Boston Mayor Marty Walsh has asked area colleges and universities to build on-campus housing to make more off-campus housing available to local residents, Mitchell points out.

Tapping private financing for student housing and other non-academic projects can free up money for a school to spend on its educational mission, he adds, noting Northeastern University's plans to use a P3 to build and manage student dorms, which will allow it to fund a new $225 million science and engineering building.

"There is a growing understanding that the old college business models are insufficient to meet the rigors and demands of newer strategic thinking. The tired, archaic principles that govern the cultural inertia that inhibited private investment are breaking down — especially among the more nimble institutions, those willing to experiment from a position of strength and those that have no choice," Mitchell writes.

April 28, 2016

Orrick: Sales Tax Revenue Bonds Provide Critically Needed Transportation Funding Source.

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Download.

by Jenna Magan | Devin Brennan

04-26-2016

Hawkins Advisory: Internal Revenue Service Revenue Procedure 2016-25 Regarding Mortgage Revenue Bonds and Mortgage Credit Certificates.

Read the Advisory.

Pension Envy: Lessons From Well-Managed Plans.

Bad press has blurred the fact that not all public pension plans are underfunded and overly generous.

Public pension plans have gotten a lot of bad PR in recent years. And while some of that bad press is certainly warranted, it's wrong to assume they're all a failure. In fact, there are many plans across the country that are humming along fine.

Case in point: Missouri's Local Government Employees Retirement System, or LAGERS. Last year, a reporter for the Springfield News-Leader wanted to know why the city's pension plan was just 80 percent funded — far below the fund's aggregate 94 percent funding level. LAGERS has the ability to compel payments from cities, so the reporter, Amos Bridges, wondered if the fund was letting Springfield off the hook.

As it turned out, LAGERS wasn't. The current funding level only reflected active employees; It was closer to 90 percent when incorporating retirees. Additionally, LAGERS had Springfield on a payment plan to get back to a fully funded status.

"Defeated in my search for a scandal, I had to admit: These LAGERS people seem to know what they're doing," Bridges wrote.

But the News-Leader's complimentary column is more the exception than the rule. Rarely is news ink ever used on a foiled search for a scandal. So what's driving the generally negative coverage? Pension envy.

At a time when few Americans have any substantial retirement savings, public pensions are one of the only vehicles left that offer workers real retirement security. What's more, the ones that make headlines seem overly generous to taxpayers working in the private sector. Financial advisors recommend a retirement income somewhere around 70 percent of a retiree's salary, and the average American has far less than that saved.

In 2014, a study by the conservative American Enterprise Institute found that full-career state workers in five states — California, New Mexico, Oregon, Texas and West Virginia — earned more in retirement income than in their final salary.

But it's unfair to label all pension plans as overly generous taxpayer burdens. In the above five states and others, lawmakers enhanced benefits — often without paying for them — when times were good. The added-on benefits pushed liabilities higher and unfunded liabilities grew faster. Sometimes, governments skipped out on making their full pension payment, which added to the pressure. Then, the losses during the Great Recession only made matters worse. That's simply not the case in many other states.

Employees, though, shouldn't be relying alone on their public pension plans, according to LAGERS Executive Secretary Keith Hughes. One's retirement plan should also include personal savings and social security benefits where available.

"We don't believe the pension's purpose is to create wealth for the member and their family forever and ever," said Hughes. "We believe it is to provide [security] for them for their lifetime. If members want [a plan] to provide wealth, there's probably another vehicle to do that."

Part of the reason LAGERS and other similar plans are able to make their annual payments is because their benefits are modest and held in check. Replacement salary for these plans are typically between 30 and 50 percent of the employee's annual salary. Often, there are checks and balances when it comes to adding benefits. LAGERS, for example, requires a cost study before a contributing government is allowed to enhance its benefits. And no government is allowed to increase benefits without paying for them.

So why don't more places operate like these plans?

Speaking for the municipal plans, Hughes does admit that managing more than 1,000 plans — with their own menu of benefits — for about 700 governments is a lot of actuarial work.

Furthermore, not every place is capable of enforcing a payment mandate like LAGERS and other well-run plans. Those plans can intercept tax money collected by the state that's due to the municipality if that government is delinquent on its pension bill. In addition to LAGERS, Illinois' municipal fund and Idaho's public employees fund mandate payment by state statute. Texas has the pension payment mandate in its constitution.

In the end, the pension envy resulting from some of the bad PR could present a unique opportunity for a larger discussion.

"I think one of the challenges is that a lot of Americans right now have nothing," says Bailey Childers, head of the National Public Pension Coalition. "I think the question is, how do we take some of the benefits of professionally managed pensions and take that to private sector?"

GOVERNING.COM

BY LIZ FARMER | APRIL 28, 2016

MSRB Investor Notice: The Importance of Monitoring Municipal Bonds.

Read the MSRB Notice.

IRS PLR: LLC's Restructuring Will Not Result in Gulf Opportunity Zone Depreciation Recapture.

The IRS ruled that restructuring transactions undertaken by two limited liability companies owned by the same individual will not result in the recapture of any Gulf Opportunity Zone bonus depreciation under section 1400N(d)(5) in connection with property transferred between the two companies.

Read the Letter.

When Debt Meets Public Approval: Municipal Bond Elections in San Antonio, Texas.

Institute of Municipal Finance & Governance Presentation.

Jacqueline Peterson
IMFG Blanche and Sandy Van Ginkel Graduate Fellow, 2015-16
PhD Candidate, Political Science
University of Toronto

Read the Presentation.

Attorney's Fees Under Florida's Public Records Act: Taking Intent Out of the Equation.

In a move towards strict liability, a recent Florida Supreme Court holding allows no room for public agency error under Florida's Public Records Act ("Act"). On April 14, 2016, the Supreme Court of Florida issued on opinion in Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, and held that a party is entitled to attorney's fees under the Act when a public agency unlawfully refuses access to public records, regardless of a public agency's reasonable or good faith mistake in refusing to produce the requested records.

The Florida Constitution provides individuals with the "right to inspect or copy any public record . . ." The Act codifies this constitutional mandate and incentivizes compliance by allowing for a prevailing party in a civil action to recover attorney's fees when an "agency unlawfully refuse[s] to permit a public record to be inspected or copied."

The Board of Trustees case originated in late 2009 after Curtis W. Lee ("Lee") requested a series of public records from the Board of Trustees of the Jacksonville Police & Fire Pension Fund ("Pension

Fund"). Following Lee's requests, disputes arose around the Pension Fund's prerequisites to public record access. Lee sought relief from the Circuit Court alleging the Pension Fund's prerequisites violated the Act. The Circuit Court ruled the Pension Fund violated the Act and the First District Court of Appeal later affirmed the Circuit Court's ruling.

Following this favorable ruling, Lee moved for attorney's fees against the Pension Fund. The Circuit Court denied Lee's request stating the Pension Fund's Act violations were not "knowing, willful or done with a malicious intent." Upon Lee's appeal, the First District Court of Appeal ("DCA") reversed the Circuit Court's decision. Articulating that, regardless of intent, attorney's fees must be awarded once a court determines an agency unlawfully violated the Act.

The First DCA's holding aligned with the Second DCA which previously held there was no "good faith" or "honest mistake" exceptions when a public agency violates the Act. To the contrary, the Third, Fourth, and Fifth DCAs have held that attorney's fees are not warranted under the Act when a public agency was acting reasonably or made a good faith mistake. Recognizing this conflict among the DCAs, the Florida Supreme Court accepted review of the Board of Trustees case.

The Florida Supreme Court, in accordance with the First and Second DCAs, held that the right to attorney's fees under the Act is predicated on a public agency's unlawful refusal to provide access to public records regardless of the agency's good intentions. The Court examined the Act's legislative history and noted the Legislature had "multiple opportunities to explicitly require a 'good faith' standard" in the Act's attorney's fees section and chose otherwise. In fact, prior to 1984, access to attorney's fees required a showing that an agency "unreasonably refused" access to a requesting party. However, in 1984, the Legislature changed the phrase "unreasonably refused" to "unlawfully refused," signifying a change in Legislative intent towards strict liability.

For public agencies around the State of Florida, the Board of Trustees case may be costly precedent. Unfortunately for public agencies, this case allows no room for missteps. In order to avoid paying attorney's fees, public agencies will need extensive training on recognizing public records, processing public record requests, and complying with requests in a timely manner. If a public agency fails to comply with a records request, the agency can expect to pay for their mistake … intentional or accidental.

Article by Leonard J. Dietzen, III and Lindy K. Keown

Last Updated: April 27 2016

Rumberger, Kirk & Caldwell, P.A.

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.

U.S. Supreme Court Invalidates Maryland Power Generation Incentive Program On Preemption Grounds.

On April 19, 2016, the U.S. Supreme Court decided *Hughes v. Talen Energy Marketing, LLC*. In its opinion, authored by Justice Ginsburg, the Court rejected the attempt by the State of Maryland to incentivize the construction of new power plants through the use of a contract for differences. A contract for differences would guarantee the price paid to a developer for capacity in the PJM

capacity market. The Court found that such action by a state is preempted by the Federal Power Act (FPA) and implied preemption. Duane Morris previously referenced the pendency of this case in the February 19, 2016, Alert, "What Does U.S. Supreme Court Decision Upholding FERC's Authority Over Demand Response Mean for the Future of FERC's Jurisdiction?"

In so ruling, the Court further supported FERC's authority to regulate competitive wholesale markets for electricity, including the interstate wholesale rate FERC requires. The effect of a contract for differences is to set a different capacity price for power from the plant than paid by other participants in FERC's capacity auction. Although Maryland's intent was to encourage construction of new in-state generation, the Court found that Maryland's program, by adjusting the interstate wholesale rate for power sold by a plant holding a contract for differences but selling into the FERC auction, contravenes FPA's division of authority between federal and state regulators.

The Court left open whether there may be other means available to the states to encourage the construction of generation in transmission constrained areas. The Court limited its holding to Maryland's program because that program disregarded FERC's required wholesale rate. The Court specifically stated that its opinion does not rule on the permissibility of other measures that a state might employ to encourage the development of generation, such as tax incentives, land grants, direct subsidies, construction of state-owned generation or re-regulation of the energy sector. It remains to be seen how incentives can be crafted by states so that they do not impermissibly affect wholesale market prices.

Article by Phyllis J. Kessler

Last Updated: April 26 2016

Duane Morris LLP

Disclaimer: This Alert has been prepared and published for informational purposes only and is not offered, nor should be construed, as legal advice. For more information, please see the firm's full disclaimer.

S&P's Public Finance Podcast (Higher Education Trends and the Rating Actions on Catholic Health Initiatives and Atlantic City Municipal Utilities Authority)

In this week's Extra Credit, Analytical Manager Jessica Matsumori discusses the trends shaping the higher education sector, Director Scott Garrigan explains what's behind the multiple notch downgrade on Atlantic City Municipal Utilities, and Senior Director Kevin Holloran reviews our recent downgrade on Catholic Health Initiatives.

Listen to Audio

Apr. 25, 2016

Enhancing Tax Abatement Transparency.

As a follow-on to last week's blog post describing 3 steps economic developers should take to prepare for GASB 77 tax abatement disclosures, I want to share a set of recommendations from the Government Finance Officers Association (GFOA) that complement our suggestions for economic development groups.

GFOA is concerned, as we are, that the tax abatement disclosure guidelines will not provide complete information to citizens and other users of government financial reports because they do not include "the justification and expected long-term benefits of tax abatements."

GFOA offers several helpful recommendations on how and where to provide this information. The full, two-page best practice statement from GFOA on Enhancing Tax Abatement Transparency is available here. To summarize the recommendations:

The government should disclose additional tax abatement information in its letter of transmittal

The letter of transmittal accompanies the comprehensive annual financial report (CAFR), which includes the financial note providing the tax abatement disclosure. GFOA suggests that this letter include:

- a reference to other documents where a complete cost/benefit analysis can be found
- an explanation of how tax abatements are accounted for and incorporated into the budget
- a description of policies governing tax abatements, including what the government is hoping to achieve and methods used to determine the return on investment (ROI)
- an identification of those responsible for monitoring compliance with abatement agreements
- an explanation of the relationship between tax abatements and the government's goals as set forth in its strategic plan
- a five-year chart of benefits anticipated and received

The tax abatement information in the letter of transmittal should be simple, straightforward and material

The information should not be duplicative or provide unnecessary detail. Using charts and graphs to supplement written material can be helpful. GFOA also suggests aggregating information by government and tax abatement program, consistent with the GASB guidelines.

Finance staff should communicate with economic development partners

As we said last week, complying with GASB 77 will require cooperation between the economic development organization and the government's finance staff because, in many cases, neither will have all the information necessary to determine the financial disclosure. GFOA is also concerned with ensuring the proper flow of information to comply with disclosure guidelines.

Build relationships and establish a timeline

GASB 77 requires disclosure of tax abatements entered into by other governments that reduce the reporting entity's tax revenues. GFOA recommends establishing relationships with these other governments and creating a timeline for sharing information to prevent reporting delays.

As a reminder, the Governmental Accounting Standards Board (GASB) last year approved Statement No. 77, Tax Abatement Disclosures, which establishes guidance requiring state and local governments to disclose certain information about tax abatement agreements for periods beginning after December 15, 2015.

Check out our previous blog posts on this topic for economic developers:

- [3 steps economic developers should take to prepare for GASB 77 tax abatement disclosures]
- [What will tax abatement disclosures mean for economic development groups?]
- [Smart Incentives comments on tax abatement disclosure guidelines]

Smart Incentives

Posted by Ellen Harpel | April 26, 2016

TAX - OHIO

Christian Voice of Cent. Ohio v. Testa

Supreme Court of Ohio - April 14, 2016 - N.E.3d - 2016 WL 1459544 - 2016 -Ohio- 1527

Nonprofit corporation that operated radio station broadcasting religious programming sought review of the tax commissioner's denial of a real-property tax exemption for houses used exclusively for public worship.

The Board of Tax Appeals affirmed. Corporation appealed.

The Supreme Court of Ohio held that corporation's property was exempt under the public-worship exemption.

Nonprofit corporation's appeal of denial of the public-worship property tax exemption for its property that was used to operate a Christian radio station presented a question of law, and Supreme Court's review was not deferential but de novo, where the parties' dispute concerned not the underlying facts but whether those undisputed facts indicated that the property and attendant lands were a house used exclusively for public worship and thus entitled to the exemption.

Primary use of nonprofit corporation's property, including a radio station that broadcast religious programming, was for public worship, and therefore the property qualified for exemption for houses used exclusively for public worship, where corporation conducted religious activities through its broadcasts and on its premises, the majority of broadcasts were devoted to contemporary Christian music, corporation employed a full-time minister who led a weekly Bible study and gathered on a regular basis with other staff members in the on-site chapel to pray for intentions submitted by listeners, and corporation was active in community performing charitable acts.

Statute defining a church for purposes of real-property tax exemption does not require a congregation or worship activity; instead, its concern is whether the organization has a primarily religious purpose and is not for profit.

TAX - INDIANA

Angel v. Vanderburgh County Treasurer

Court of Appeals of Indiana - April 15, 2016 - N.E.3d - 2016 WL 1535783

Tax sale purchaser petitioned for tax deed. After granting purchaser's petition, the Superior Court, granted property owner's motion for relief, ordered tax deed rescinded, and denied purchaser's

motion to establish a redemption amount. Purchaser appealed.

The Court of Appeals held that:

- Tax sale purchaser could recover from the owner of the real property, or any other person primarily liable for the payment of taxes and special assessments on the property, an amount which included the amount of purchaser's lien, together with interest, and
- Three-year limitation period for a tax sale purchaser to claim tax sale surplus funds upon redemption of a tract of real property did not apply to property that was not redeemed.

NABL: IRS Issues Final Regs on Determining AFRs for Tax-Exempt Bonds.

The Internal Revenue Service (IRS) published today in the Federal Register final regulations that provide the method to be used to adjust the applicable Federal rates (AFRs) to determine the corresponding rates under section 1288 of the Internal Revenue Code (Code) for tax-exempt obligations (adjusted AFRs) and the method to be used to determine the long-term tax-exempt rate and the adjusted Federal long-term rate under section 382. For tax-exempt obligations, the regulations affect the determination of original issue discount under section 1273 and of total unstated interest under section 483. The IRS final regs, which are effective today, April 26, 2016, adopt proposed regs (REG-136018-13) issued in March 2015 without substantive change.

The final regulations are available here.

NABL: Bill Would Expand Bond Issuance for Indian Tribes.

Rep. Ron Kind (D-WI) introduced the Tribal Tax and Investment Reform Act of 2016 (H.R. 4943), which would, among other things, establish a tax-exempt bond volume cap for Indian tribal governments, similar to the volume caps for state governments. The tax-exempt bond volume cap would be based on the total national tribal population and allocated to individual tribes by the Secretary of the Treasury. H.R. 4943 would also repeal the essential government function requirement. H.R. 4943 has been referred to both the House Ways and Means Committee and the House Education and the Workforce Committee.

H.R. 4943 is available here.

TAX INCREMENT FINANCING - IOWA

Concerned Citizens of Southeast Polk School Dist. v. City of Pleasant Hill, Iowa

Supreme Court of Iowa - April 22, 2016 - N.W.2d - 2016 WL 1612935

Citizens filed petition for writ of certiorari and for a declaratory judgment and an injunction to prevent annexation near high school and amended urban renewal plan from taking effect. City filed motion for summary judgment, and school district intervened.

The District Court granted summary judgment in part. Citizens and school district appealed, and the

Court of Appeals affirmed. The Supreme Court granted further review.

The Supreme Court of Iowa held that:

- City lacked authority to extend renewal area and tax increment financing (TIF) arrangement after consolidation of urban renewal areas;
- City could not use TIF revenue from original urban renewal area to fund street improvements and construction and other aspects of economic development outside the boundaries of the urban renewal area; and
- Amended urban renewal plan was not inconsistent with city's comprehensive plan.

City, which had consolidated urban renewal areas in order to use tax increment financing (TIF) from original renewal area across a greater area, lacked authority to extend renewal area and TIF arrangement in light of statute limiting a TIF division based upon an economic development determination to 20 years. While original urban renewal area pre-dated statute and thus was grandfathered, that original urban renewal area no longer existed due to consolidation and thus grandfathered right was lost.

City could not use tax improvement financing (TIF) revenue from original urban renewal area to fund street improvements and construction and other aspects of economic development outside the boundaries of the urban renewal area. While city could consolidate urban renewal areas and then use TIF revenue from one former area in another former area, city could not then extend former area, which no longer existed, while simultaneously treating that former area as integrated within the consolidated area.

Amended urban renewal plan, which contemplated street improvements and construction, conformed to city's comprehensive plan, which had designated area as commercial. Although city was working toward development of industrial warehouse on land, warehouse was not part of urban renewal plan, and street improvements were not themselves inconsistent with the general plan, which simply did not mention some of the improvements when describing goals for road development.

SEC Approves MSRB Rule Changes For Two-Day Settlements.

WASHINGTON – The Securities and Exchange Commission on Friday approved Municipal Securities Rulemaking Board amendments to facilitate moving to a two- instead of three-day settlement cycle for municipal securities.

The amendments modify MSRB Rule G-12 on uniform practice, Rule G-15 on confirmation, clearance, settlement, and other requirements so that dealer transactions with customers can be settled within two days of execution instead of three.

The changes are tied to the SEC shifting to a T+2 cycle under its Rule 15c6-1, which governs settlement for corporate bond and equity markets, and are part of an industry migration to the new cycle by the third quarter of 2017.

The MSRB has not set a compliance date for the proposed rule change but has said it will publish a notice on its website to align the compliance date to that of the rest of the markets. The MSRB's amendments received generally positive feedback from industry groups during the approval process. SEC commissioners Michael Piwowar and Kara Stein, as well as SEC chair Mary Jo White, have also

applauded the idea for an industry shift to a T+2 timeline and said they would like to see it accomplished as soon as possible.

Bond Dealers of America, in a comment letter to the SEC, had expressed concern that the rule changes might impact retail investors who purchase securities using written checks. But the SEC said in its approval notice that the MSRB addressed the issue by arguing in its filing that the large majority of firms have access to technology that would allow their clients to deliver funds in a timely manner that matches with the T+2 timeline. The MSRB also suggested firms encourage their customers to use electronic funds payment to streamline processing.

Both BDA and the Securities Industry and Financial Markets Association said the changes could affect MSRB Rule G-32 on disclosures in connection with primary offerings. BDA asked that the MSRB leave Rule G-32 unchanged while SIFMA said the changes for T+2 provided “an opportune time” to revise customer disclosure requirements under the rule. The MSRB, in its filing with the SEC, said it may consider suggested clarifications to the rule at a later date.

The Bond Buyer

By Jack Casey

April 29, 2016

MSRB to Accept Additional Board Applications for Specific Category.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.7 trillion municipal securities market, announced today that it is accepting additional applications for its Board of Directors from banks and broker-dealers with specific municipal market expertise. The application window will be open from May 3 – 10, 2016.

The MSRB will accept applications from individuals with sales and trading desk experience—including the pricing and trading of municipal securities, determinations of prevailing market price and mark-up policies—and an understanding of syndicate practices. The Board has identified the need for this expertise in light of the MSRB’s strategic plan and ongoing initiatives, which include a new best execution rule, development of prevailing market price guidance and mark-up disclosure requirements, and an analysis of pre-trade data with the potential to make some of it publicly available on the MSRB’s Electronic Municipal Market Access (EMMA®) website. The MSRB’s goal is to ensure the necessary skill-sets are present on the Board to support advancement of the organization’s agenda and to further inform market structure and transparency initiatives.

The MSRB recently solicited Board applicants for terms that begin October 1, 2016 and continues to evaluate candidates that are representative of the public and regulated entities.

The Board sets the strategic direction of the MSRB, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations. It consists of 11 members that are representative of the public, including investors, municipal entities and other non-MSRB regulated individuals. The Board also has 10 members that represent MSRB-regulated entities, including broker-dealers, bank dealers and municipal advisors.

To be considered for a position on the MSRB Board of Directors, please submit an application through the MSRB Board of Directors Application Portal, which will be available May 3 – 10, 2016.

Questions can be directed to Sara Majroh, Senior Manager, Corporate Governance and Compliance, at 202-838-1359 or at smajroh@msrb.org.

Date: May 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Stage Set for Shortened Trade Settlement Cycle for Municipal Securities.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to move toward a shortened settlement cycle for municipal securities. The MSRB was the first regulator to advance a rule change proposal in support of an industry-wide initiative to reduce the time between trade execution and settlement of the transaction by one business day.

"The MSRB fully supports the industry's efforts to expedite the settlement process and enhance market efficiency," said MSRB Executive Director Lynnette Kelly. "We are pleased to be among the first regulators to prepare for this important initiative. The benefits of moving to T+2 will enhance the overall efficiency of the securities markets, promote financial stability and better align the U.S. securities markets with global markets."

Provisions related to settlement cycles in MSRB Rules G-12, on uniform practice, and G-15, on confirmation, clearance, settlement, have been unchanged since 1995. The SEC's approval sets the stage for the MSRB to coordinate with fellow regulators and the industry in order to transition to a shortened settlement cycle.

Date: May 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Chicago Muni Bonds Left Isolated as Crisis Deepens.

A decision from Illinois' Supreme Court to reject pension reforms has seen Chicago's municipal bond spreads widen, with little effect on neighbouring municipalities.

- Municipal bond spreads in surrounding cities widened 20% on the back of Chicago's 'junk' downgrade last year
- Spreads across the board tightened significantly towards the end of 2015, reversing much of the post-downgrade spread deterioration
- Latest Fitch and S&P downgrades have seen Chicago's spreads widen again, but this time in isolation

Chicago's credit woes deepened last month as Fitch slashed the city's credit rating by two notches to

BBB-. The downgrade means that both Fitch and S&P (BBB+) now have the city teetering above 'junk' status, a perilous position as it struggles to deal with $30bn of unfunded pension obligations.

The downgrade was a blow for the credit worthiness of Chicago's municipal bonds, which have diverged versus neighbouring cities' municipal bonds since the third major rating agency, Moody's, downgraded Chicago to 'junk' last May.

Junk status

On May 12th 2015, Moodys downgraded the city of Chicago from investment grade to 'junk' status in a move which deviated from the opinions of the other two major rating agencies, which held Chicago's issuer rating higher. $8.1bn of outstanding general obligation (GO) debt, $542m of outstanding sales tax revenue debt and $268m of outstanding and authorized motor fuel tax revenue debt were all simultaneously downgraded.

Chicago's municipal bond spread (premium over 10-yr AAA rated bonds) widened more than 30% after Moody's' decision, as surprised investors re-evaluated Chicago's credit worthiness. The downgrade also caused contagion in surrounding municipalities, which saw spreads widen in tandem.

Taking nine neighbouring cities in the Cook County area (Bellwood, Berwyn, Cicero, Elk Grove, Evanston, Highland, Lemont, Niles and Oak Lawn) and averaging their spreads, Chicago's downgrade had a 20% (wider) instantaneous impact.

Diverging paths

Municipal bond spread performance of both Chicago and surrounding cities continued to remain volatile over the following months (June 2015 to Sep 2015), although Chicago continued to see steady deterioration.

September 2015 until year end saw investor sentiment reverse, with volatility decreasing and spreads tightening across the board. By January this year, the average spread for the Cook County cities had retracted all the spread underperformance encountered after the Moody's downgrade, while Chicago's % change in spread fell from the 40% highs seen in September last year to just 5%.

But the positive sentiment was short lived as Chicago was forced to offer above average yields to garner investor demand in January. As fears started to escalate again around Chicago's inability to raise funds or cut costs, the supreme court of Illinois rejected pension reform legislation for two of Chicago's four pension plans last month, triggering a spate of downgrades from Fitch and S&P. The move, seen as a negative for credit quality, meant that rating agencies were now seeing their ratings converge towards the negative.

Chicago's municipal bond spread has since widened again, back near levels seen after last year's Moody's downgrade, but interestingly, in divergence to fellow Cook County city spreads. As the crisis deepens, it seems Chicago is left more and more isolated.

For more information regarding Markit's Municipal Bond Pricing service, please click here.

Neil Mehta | Analyst, Fixed Income, Markit

Apr 27th, 2016

After Bankruptcies, Murky Future for California POBs.

LOS ANGELES — The future of pension obligation bonds remains cloudy in California in the wake of the haircuts imposed on their holders in the San Bernardino and Stockton bankruptcies.

Municipal bond industry professionals interviewed for this article disagreed about the future viability of POBs in California.

Tom Schuette, partner and co-head of portfolio management for Gurtin Fixed Income, said the firm holds some of the taxable securities for its investors.

"As with all securities, we are highly selective and look to the overall credit quality of the obligor," Schuette said.

"We believe the bankruptcies are a reminder to avoid distressed obligors, which Stockton and San Bernardino were, not a cautionary tale to avoid entire security classes," Schuette said. "We would anticipate that while obligors may have to pay up slightly to issue POBs in the future given the losses felt by San Bernardino bondholders, we still would expect high quality obligors to be able to find a receptive market."

Schuette says the prices in California pension obligation bonds have not changed in the last month, and that POBs from high-quality California obligors are generally trading slightly off of their GO debt, but not by significant levels, he said.

California taxable pension obligation bonds were pricing in the 3.09% to 4.6% range for 10 years and in the 4.84% to 5.57% range for 30 years on Tuesday, according to Markit.

Marilyn Cohen of Envision Capital Management said she never thought POBs were a good idea – even before the bankruptcies.

"I have been railing against how pension obligation bonds should not be in anyone's portfolio for a long time," she said.

She thinks the tough treatment of POBs in the two California bankruptcies will give future investors — and issuers — pause.

"As the stresses continue in pension liability, investors will demand more and more yield, so that it will be untenable for issuers to sell POBs," Cohen said.

She said she won't but her money or her clients' money in POBs because the rate of return does not match the risk.

In the San Bernardino Chapter 9, the settlement deal with pension obligation bondholders and insurers calls for the city to give them what it describes as a 40% recovery over the long term.

It's significantly more than the 1% the city first proposed, but continues a trend of bonds faring worse than pensions in Chapter 9 cases, as in Vallejo, Calif., Detroit and Stockton.

John Knox, a partner with Orrick, Herrington & Sutcliffe, said investors should not have been surprised that the pension obligation bonds were impaired, because they are an unsecured credit – and that is how unsecured credits are treated in bankruptcy.

“Clearly, the Stockton case and San Bernardino have both shown — which is not a surprise to me or other bond lawyers — that pension obligation bonds are an unsecured promise to pay by the municipality,” Knox said.

POBs are a promise by the municipality to pay, just like borrowed money on a consumer line of credit, Knox said.

“I think folks thought there was more there, they might have thought there was some additional level of security,” Knox said. “If you are dealing with an unsecured obligation and there is a secured obligation, the secured obligation is more likely to be paid.”

He added he doesn’t think the decisions in the bankruptcies have changed the rules.

“If you have an unsecured obligation and the debtor goes into bankruptcy, that is likely to be impaired,” Knox said.

Though the California cases don’t change the rules of the road, Knox does think they will change investor perception of pension obligation bonds.

“I have always scratched my head when rating agencies rated POBs higher than lease obligations, but I’m not a rating agency,” he said.

While the asset backing a lease obligation could be damaged or destroyed, the bonds do have that asset backing the bonds, which provides some level of security, he said.

But for whatever reason, before Stockton, the rating agencies tended to rate POBs a notch higher than lease obligations, he said.

“As far as I know, nothing represents a change in structure for pension obligation bonds, or represents anything people should be surprised about in how they were treated in bankruptcy,” he said, “because any unsecured obligation is at higher risk than a lease obligation.”

Knox thinks the structure of future California POB issues could evolve into lease-backed financings.

“I am not surprised when any investor is upset about being impaired in bankruptcy,” he said. “Before Vallejo, Jefferson County, Stockton and Detroit there was a feeling that munis would never go bankrupt – and you did not have to think about it too much. Now that a few have – and it is a small number compared to the universe of issuers – I think people are waking up and saying: ‘If this does happen, what do we have?’ In the case of a pension bond, it’s an unsecured obligation.”

In San Bernardino, the European bank that held the POBs raised the argument, rejected by the court, that if the city keeps paying pensions it should continue to pay the pension bonds, Knox said.

“I have heard that argument before, it holds no water,” Knox said. “The fact that they settled for the amount they did belies the fact that creditors didn’t believe it either. In one case, they didn’t even raise it. In San Bernardino, they raised it but lost.”

Investors should have been drawing distinctions between general obligation bonds, pension obligation bonds and lease revenue debt, Knox said.

“Muni bonds aren’t monolithic,” he said. “There are scores of different kinds of muni bonds. They have different credit scores and different payment sources. I don’t see that that is different from 10 years ago. Now that a few have gotten into trouble, people realize they were not paying enough

attention to the distinctions."

According to Robert Christmas, a Nixon Peabody partner, the issue always boils down to one question: What is the nature of the security?

"Pension obligation bonds are one of the elephants in the room for municipal finance and they are going to have to be dealt with," Christmas said. "And maybe issuing bonds to deal with pension liability is not the way to go."

Pensions are clearly a huge issue in municipal finance in terms of the solvency of the issuers, he said.

"The focus to me is not the subject of the issuance, but what is the statutory framework in that state for bondholders," he said. "We have clear statutory liens or narrow issuance for revenue bonds, which are protected under the bankruptcy code."

What Stockton and Detroit pointed out is that while investors might think they have a lien, they may not because the statute isn't clean, Christmas said. That is what led to haircuts for bondholders in the Detroit workout.

"I haven't worked on a POB deal, but it strikes me that they are from another era where there were ever higher pension costs and no one thought the market would tank on that," Christmas said.

What investors need to contemplate is whether POBs are helping to smooth out the operations of a municipality or are a Band-Aid hiding a larger issue, he said.

"As we saw in Stockton and San Bernardino, a lot of issuers don't have the appetite to litigate over claims priority with state agencies (like the California Public Employees' Retirement System), to whom they owe money," he said. "And agencies might have statutory frameworks involving the cities owing pension funds money."

Cities must also weigh their ability to market bonds in the future if they give bondholders to steep of a haircut, whether on pension obligation bonds or other bond categories.

"We know in Chapter 9 everyone is going to take a haircut," Christmas said. "If you cut the hair to short, you aren't back in the market. It could be years (before a city is able to market bonds again)."

Orange County, bankrupt in 1994, was able to sell bonds not too long afterward, as part of California's strong coastal economy with strong property values and affluent taxpayers, Christmas said.

Investors take that into account, he said.

The Inland Empire's San Bernardino and the Central Valley's Stockton, with high crime rates and less affluent populations and tax bases, don't have the same economic strengths going for them.

The Bond Buyer

By Keeley Webster

April 28, 2016

Financial Experts and Social Service Providers Challenge State, Municipal, and Chicago Public Schools Payments to Wall Street Banks.

Chicago, IL –(ENEWSPF)–April 27, 2016. On Wednesday, a set of financial experts and social service providers gave testimony before the Illinois House Revenue and Finance Committee detailing how Wall Street banks have soaked all levels of government in Illinois for hundreds of millions of dollars through interest rate swaps and other complex financial deals.

"In essence the banks lured the state of Illinois into a suckers bet – heads I win, tails you lose," stated Saqib Bhatti, Director of the ReFund America Project. "During the budget stalemate this year, while the Governor has refused to fund critical services, the state has nevertheless paid more than $92 million in fees to banks. $68 million of this money was for toxic swaps—the same toxic swaps that have drained more than a billion dollars out of the Chicago and CPS's budgets."

The panel of experts included: Saqib Bhatti, ReFund America, Greg Will, SEIU HCII, Jonathan Jackson, Business Professor at Chicago State University; Brad Miller, Former US Congressman; and Tom Sgouros, Senior Policy Advisor, Rhode Island General Treasurer.

The expert panel questioned the ability of local and state governments to win bets against savvy Wall Street bankers.

"The parties to an interest rate swap are each taking different sides of a bet. One party is betting that interest rates will rise, while the other is betting they will fall. Pricing risk is a tricky business. People write doctoral dissertations about it, and win Nobel prizes in Economics for figuring out the essential problems involved," explained Sgouros.

"There are many other specific risks that the banks knew well and even the most sophisticated public issuers did not. The failure to disclose those risks seems very much like a realtor not telling a homebuyer that the basement floods," added Miller.

In addition to the interest rate swaps the panel of experts pointed out the numerous add on fees that have continued to be paid during the budget impasse despite the lack of a budgetary authorization. "The state has paid banks and other finance industry companies for a litany of fees and charges: letters of credit, other credit enhancements, remarketing fees, trustee fees, ratings agency fees, fees to counsel, underwriter fees, fees associated with cash management functions – the list goes on," explained Greg Will, Research Director for SEIU HCII.

Experts made clear that the state paying these fees without a budget was likely illegal, "What's truly scandalous is that the Governor's office is actually breaking the law to pay the banks. The state has paid more than $10.5 million in bank fees that have no budget authorization. These are illegal payments," said Saqib Bhatti.

Prioritizing payments to Wall Street banks over human service providers is having a devastating impact on the social service infrastructure in Illinois. Inspiration Corporation, an agency that provides job training and employment placement, supportive housing, meals, and other services to Chicago's homeless and low-income residents has had to lay off staff and reduce services as a result of late payments from the state.

Evan Cauble-Johnson, Chief Development Officer at Inspiration Corporation explained during the hearing, "Study after study has shown that the cost of providing supportive housing to the homeless is a fraction of the cost of relying on emergency services like policing, emergency medical care, or

incarceration. If we do not preserve supportive housing for our most vulnerable neighbors now, if we choose to direct the money that we have towards interest payments on risky loans instead of on vital services to our most vulnerable neighbors and fellow citizens, not only do we fail the people that need our support the most, we fail ourselves. We will pay for this choice down the road. There is no avoiding it."

Municipal Bonds For The Rest Of Us: A Startup Seeks To Democratize Public Finance.

In 2012, entrepreneur Jase Wilson and bond broker Patrick Hosty came up with a novel way to open up public finance to small investors: create an online marketplace allowing regular folks to invest smaller-than-usual amounts of money in municipal bonds backing specific civic projects of interest.

"If people had more ways to invest in these bonds they would," says Rodrigo Davies, chief product officer of Neighborly, the company Wilson and Hosty founded. "It just hasn't been on their radar."

But it was a tall order, requiring tackling a complex financing system with a fairly new technology. So Wilson and Hosty decided to get their feet wet by first launching a crowdfunding platform for financing community projects, like parks and bicycle lanes. In its first two years, the Kansas City, Mo.-based startup raised about $3 million for over 60 projects. Wilson had started a company by the name of Luminopolis to build open-source software systems for cities, so he already had experience with tech entrepreneurship.

By 2014, they figured they were ready for prime-time–their well-planned pivot into the municipal bond market. When they were accepted into 500 Startups, the San Francisco accelerator, they moved their headquarters to the Bay Area. (Hosty stayed in Kansas City). Not long after, the company raised $5.5. million in a seed round from Formation 8, Sound Ventures, which is actor Ashton Kutcher' s VC firm, and others.

The basic concept is to offer a platform through which unaccredited investors can buy portions of a municipal bond. Many moons ago, bonds were clear-cut instruments tied to defined projects, like building the Golden Gate bridge. (A framed 1930′s bond certificate from the Golden Gate Bridge and Highway District adorns a wall in Neighborly's office and an appropriately breath-taking picture of the bridge is the first image that greets visitors to the company's web site). Over time, they've become more complex and confusing, as multiple projects have been combined into one bond. These days, much of the $3.8 billion municipal bond market–that figure is from the company–is held by wealthy individuals who want the tax break.

With Neighborly, investors answer a few questions online about their areas of interest, like education or the environment, and then the platform matches them with appropriate choices. The company will sell the financial instruments through its own registered broker-dealer.

Still in beta, the platform is now open to anyone who works in public finance, from underwriters to public agencies, that can sign up and start using the data on the site. It also includes a variety of tools providing such features as an easy way to do issuance comparisons. Next step is to allow individual investors to participate and to make investments well below the usual minimum level of $5,000. In a recent survey by Neighborly, a majority of respondents said they'd like to invest about $1,000.

Individuals also will be able to do research on investments, drilling down so they can see everything from the population living in a project's area to disclosures For now, the focus is on school districts in California–the sector surveys revealed to be the most popular–but the plan is to expand to other sectors eventually.

Davies predicts the platform could boost civic engagement and citizen involvement in local communities. He also acknowledges that the company has a long way to go. "Our investors realize this is a 200-year-old market and there's a lot of work to do," he says. "But it's also a big opportunity."

FORBES

by Anne Field

APR 30, 2016 @ 02:21

Century-Old Oklahoma Tribal Map Is Flash Point in Digital Debate.

Pioneer George Rainey bounced into Oklahoma aboard a Santa Fe train in 1889 seeking his fortune. He landed a job as a county clerk and published a map of the state, including the vast tracts that once belonged to the Comanche, Cherokee and other tribes.

Today, Rainey's "Historical Map of Oklahoma 1870-1890" is central to a most modern debate: how much the federal government should spend to help people stay connected as the Internet emerges as the central communications service of the 21st Century.

The U.S. Federal Communications Commission has adopted Rainey's 1917 map as the reference for determining how big a subsidy poor Oklahoma residents get for telephone and Internet service. It includes wide areas that were once Indian reservations, where residents get $34.25 a month — compared with $9.25 elsewhere.

The subsidies are part of a nationwide system. But relying upon the long-dead cartographer's handiwork in Oklahoma is being cited by critics as evidence of what they say is the program's mismanagement and waste. It has become a rallying cry for Republicans in Congress who want to contain spending for what they derisively call the Obamaphone.

Internet Expansion

"There are problems plaguing this system," Representative Greg Walden, an Oregon Republican, said last week as lawmakers debated a Republican bill to limit spending on the program. "There's been cases of waste, fraud — a lot of fraud."

The Lifeline program has been around in some form since 1985, during the administration of Republican President Ronald Reagan. Last year it spent about $1.5 billion to help people pay for service over mobile phones and land lines. In March, the FCC expanded it by making broadband Internet eligible for subsidies.

That could drive up demand and costs for the program, which is paid for through a telecommunications tax on telephone bills. The FCC says switching from a 1951 map now in use in Oklahoma — where about two-thirds of all enhanced tribal subsidies are paid — will save money by

cutting the capital Oklahoma City from areas regarded as former reservations. But it leaves much of the rest of the state still eligible, including Tulsa, the state's No. 2 city with about 400,000 people.

Tribal Subsidies

The enhanced subsidy is meant to provide an incentive for companies to provide service in neglected tribal areas.

The map grants standing for an expanded subsidy "even if you're not a tribal member, and if you're living in a major urban area," said Ajit Pai, a Republican FCC commissioner who has criticized Lifeline.

"If we're going to make this program fiscally responsible, and direct funding to people that actually need help, people in Tulsa don't need that subsidy," Pai said. "We should have reclaimed some of that subsidy and redirected it to people in need."

Democrats oppose a spending cap, saying it could arbitrarily bar poor people from a program that makes it possible for schoolchildren to complete homework, and grown-ups to reach jobs and doctors.

Poverty Program

"This is truly the lifeline for people that live in poverty," Representative Anna Eshoo, a California Democrat, said during debate April 19 before a House subcommittee that passed a cap, sending the bill on to full committee. "Why are we hurting these people?"

On this issue, Democrats can count on the backing of the wireless industry. CTIA, a trade group representing companies including AT&T Inc. and Verizon Communications Inc. that offer Lifeline service, told Congress a cap "would be counterproductive" in part because it would "exclude an undetermined number of the eligible low-income consumers."

The program offers the monthly support for people with incomes at or below 135 percent of federal poverty guidelines.

Lifeline swelled to as much as $2.2 billion for 17.2 million beneficiaries in 2012, up from $819 million for 6.7 million accounts in 2008. The rise happened after the FCC said wireless companies could offer service paid by Lifeline without owning a network, and scores of providers that lease wireless capacity rushed to join the program.

FCC Reforms

In response, the FCC tightened rules and claims credit for the drop of about 30 percent in spending from 2012 levels. The agency decided recipients need to provide documented proof of eligibility such as participation in U.S. welfare programs like food stamps, and it set up a database of participants that phone companies are to check to ensure there's no more than one subsidized device per household.

Regulators haven't said how much spending may rise as the program expands to include Internet service. If spending approaches $2.25 billion the FCC is to re-assess its actions.

The program will offer help to Americans who "live on the wrong side of the digital divide," FCC Chairman Tom Wheeler and Commissioner Mignon Clyburn said in a March 8 blog post. "What we're really talking about is people – unemployed workers who miss out on jobs that are only listed online,

students who go to fast-food restaurants to use the Wi-Fi hotspots to do homework."

Fraud Cases

Republicans aren't mollified, and they point to recent fines imposed on companies for program abuses — such as claiming a second subsidy for a customer by falsely listing them at the address of a homeless shelter.

The FCC has proposed roughly $155 million in fines against 16 phone companies accused of bilking Lifeline since early 2013, according to a list maintained by the Universal Service Administrative Company, the non-profit that administers the program in partnership with states and the FCC.

In Oklahoma, the broad availability of a higher subsidy has attracted an unusual number of companies. The state had 74 Lifeline providers at the end of last year, compared with 40 providers in Oregon, a state with about the same population, according to Universal Service Administrative Company reports to the FCC. The two states had roughly the same poverty rate in 2014, approaching 17 percent.

Lifeline spending last year in Oregon was $7.3 million; in Oklahoma it was $108.2 million, of which all but $88,000 was billed at the higher tribal rate, according to the USAC reports to the FCC. The Oklahoma payments amount to about two-thirds of the $159.9 million in enhanced tribal payments nationwide.

Oklahoma Payments

Oklahoma authorities, concerned that some companies were enrolling more than the permitted one phone per household, in 2013 began an investigation that resulted in fines, according to Matt Skinner, a spokesman for the Oklahoma Corporation Commission that regulates Lifeline in the state. The agency "cracked down on the practice of merely handing out Lifeline phones to anyone" and created an enforcement unit, Skinner said in an e-mail.

By cutting Oklahoma City (population about 620,000 people) from the regions regarded as former tribal areas, the program expects to save $30 million to $40 million annually, said Mark Wigfield, an FCC spokesman.

Offering enhanced tribal subsidies in urban areas "does not reflect poorly" because the payments encourage building of telecommunications and makes services more affordable, he said in an e-mail.

Wireless companies went to court to block the new map, and settled after the FCC delayed implementation for four months, to June 8, to give more time to notify customers.

"This federally-mandated change will make it harder for our customers to stay connected to jobs, health care, family and emergency services and education," David Dorwart, chairman of Assist Wireless, the largest provider of Lifeline in Oklahoma said in an e-mail.

June Order

On its Web page, Assist says customers may be "very frustrated, angry, or even devastated" and encourages them to write to the FCC, state officials and Oklahoma City's U.S. Representative Steve Russell. The Republican declined to comment, said Daniel Susskind, a spokesman.

The FCC in its June order changing the map asked if it should also cut Tulsa and other municipalities, such as Reno, Nevada, and Anchorage, Alaska, from enhanced tribal areas.

The notion is “deeply offensive,” Jefferson Keel, lieutenant governor of Chickasaw Nation based in Ada, Oklahoma, said in a Sept. 28 letter.

To “balance the budget on the backs of the poorest and most vulnerable is unacceptable,” Keel said. Changing tribal lands “smacks of a bygone era of the misdeeds” as “something that was given is taken back, and yet again, land is taken away.”

Bloomberg Technology

by Todd Shields

April 27, 2016 — 2:00 AM PDT

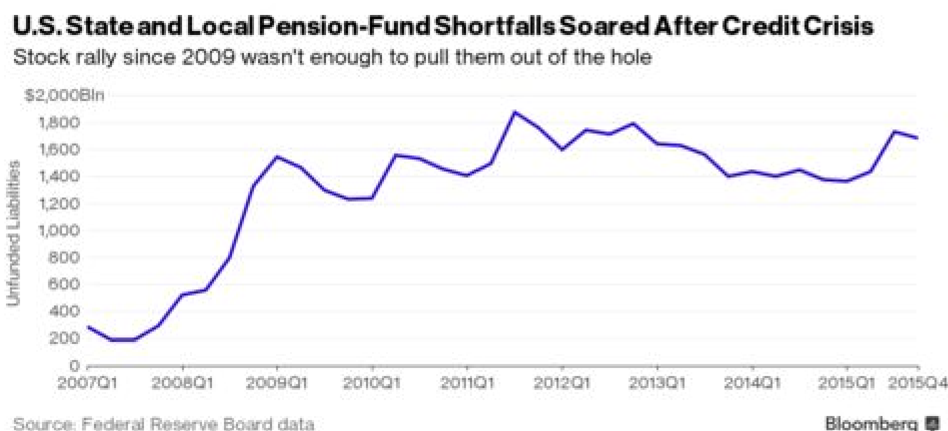
[U.S. Pensions Solve New Debt Equation. Answers Vary by Billions.]

When Kentucky Governor Matt Bevin proposed his budget in January, he told lawmakers the teacher retirement system had $13.9 billion less than needed to cover promised pension benefits. The state’s audited financial statements earlier estimated the shortfall was about 55 percent larger, at $21.6 billion.

The discrepancy for the pension that serves 122,000 current and former school workers didn’t result from a secret investment windfall that slashed its debt. It’s because of a gulf that’s emerged between official figures that are disclosed to municipal-bond investors — and those states and cities can rely upon when deciding how much they need to pay into their retirement funds.

New accounting rules that took full hold last year prevent governments from counting on investment returns after they’re broke, a technique that masked the scale of the debts they face as workers retire. But outside of their certified books, they’re free to sideline it.

“There is great confusion about the numbers and what they mean,” said Robert North Jr., former chief actuary for New York City’s pension funds. “Whatever numbers are used are dependent on how they are created, what they represent and their purpose.”



The strains of America’s public pension funds have taken on renewed importance since the credit crisis, which saddled them with investment losses from which they haven’t fully recovered. By the

end of 2015, state and local government retirement systems had $1.7 trillion less than they will eventually need, up from a $293 billion shortfall eight years earlier, according to Federal Reserve Board figures.

Because governments typically count on investment returns of more than 7 percent a year, when they fall short of that they need to pump additional money into the funds to catch up. Such financial pressure led Moody’s Investors Service to cut Chicago’s bond rating to junk last year and threatens to exaggerate the fiscal crisis in Puerto Rico. It can also pose risks to municipal-debt investors if a government goes broke: In the major bankruptcies that followed the recession, bondholders bore deeper losses than retirees.

The changes from the Governmental Accounting Standards Board were aimed at addressing concerns that states and cities were using investment-earnings forecasts to minimize the size of their unfunded debt to retirees.

As a result, when putting a current value on pension obligations due far in the future, they now have to use less aggressive assumptions for the years after they run out of cash. That increases the stated liability.

The standards, which aren’t required by federal regulations, don’t mandate how governments calculate their annual payments into the funds, said Keith Brainard, who tracks pensions for the National Association of State Retirement Administrators.

“Systems are generating two numbers for two different purposes,” said Brainard. “One for accounting and one for funding.”

The difference can be significant. When New Jersey sold bonds earlier this year, it put both in the official documents that were provided to investors. Under the old accounting standard, it’s unfunded liability was $43.8 billion. Under the revised one, $78.8 billion.

With the new rules, the funding level of the Kentucky Teachers’ Retirement System is 45.6 percent, meaning it has 45.6 cents for every dollar it owes, according to the annual financial report released in December.

Governor Bevin used the more well-funded level of 55.3 percent when asking the legislature to determine how much money the state needs to allocate for the pension.

The higher figure is reflection of different assumptions, said Mark Bunning, Kentucky's deputy finance secretary. "The numbers we use can change over time as assumptions about investment returns evolve," he said.

If the funding level is higher, governments don't have to pony up as much, which means they may eventually not have enough to cover what they owe to retirees, said Chris Tobe, a pension consultant who previously served as a trustee of the Kentucky Retirement Systems.

"They have to use GASB when they issue bonds, but when they seek funding from the legislature it's better to go with higher numbers," said Tobe. "The larger numbers make them look better funded and then they don't have to raise taxes or cut spending on education."

The accounting standards setter anticipated that government officials would take time to get used to the new rules.

"It's something we would expect during this transition period as some take comfort in having the old numbers," said Kip Betz, a spokesman for GASB. "I expect we'll evolve away from that over time."

In the meantime, it's sowing some confusion about the financial health of the retirement plans. "The public would have a better understanding if the two numbers could be reconciled in a way that would make clear what they mean," said David Crane, a lecturer of public policy at Stanford University.

Bloomberg Business

by Darrell Preston and Neil Weinberg

April 27, 2016 — 2:00 AM PDT

Pimco Backs House's Puerto Rico Legislation as Way Out of Crisis.

The U.S. House bill that would establish a federal oversight board for Puerto Rico and give it powers to reduce the island's $70 billion of debt would be a "satisfactory resolution" to the commonwealth's worsening crisis, according to Pacific Investment Management Co.

In an online posting Tuesday, Pimco, which doesn't own any of the territory's securities, said the legislation wouldn't trigger higher borrowing costs for other municipal issuers, a concern raised by some Republicans in Congress. The legislation is pending in the House Natural Resources Committee, which canceled a planned vote this month so it could address criticism from lawmakers of both parties.

"Diverse interests have emerged seeking to derail a bill aimed at a satisfactory resolution to Puerto Rico's debt crisis," Pimco's David Hammer, Sean McCarthy and Libby Cantrill wrote. The analysts, whose firm manages more than $40 billion of municipal debt, said the legislation "represents a responsible framework for managing the unavoidable restructuring of Puerto Rico's debt and other liabilities."

The firm's comments may bolster support for the legislation, which marks the broadest effort yet by Washington to pull the U.S. territory from its swiftly escalating crisis. The bill has also won support from Nuveen Asset Management and holders of Puerto Rico's sales-tax backed bonds, while hedge

funds that own the commonwealth's general obligations have opposed it.

The Congressional delay has left Puerto Rico without federal help as it faces a potential default on a $422 million debt payment due on May 1. On Tuesday, House Majority Leader Kevin McCarthy, the chamber's No. 2 Republican, said he's "hopeful" that the House will pass the legislation before $2 billion is due in July.

The oversight board created under the bill would manage budgets, oversee restructurings and impose a stay to temporarily protect the island from creditor lawsuits. Without the pause in litigation, the municipal market may see "confusing precedents" from the outcomes of any legal decisions, Pimco said.

Bloomberg Business

by Romy Varghese

April 27, 2016 — 7:31 AM PDT

Which Puerto Rico Bond Defaults Next? A 1,600% Yield Says It All.

As far back as December, Puerto Rico Governor Alejandro Garcia Padilla warned that May would be the month when it could no longer pay bondholders. It's almost here.

The commonwealth owes $470 million in payments on May 1, including $422 million on securities sold by its Government Development Bank, which has already frozen some deposits to preserve cash. Because May 1 falls on a Sunday, the island has until Monday to come through.

The failure to pay what's owed on the development bank bonds would mark the biggest default yet by Puerto Rico, whose fiscal crisis has been steadily building for the past 10 months. With the government nearly drained of its cash, Moody's Investors Service says such a lapse is a virtual certainty. Investors appear to agree: The securities last traded for 32 cents on the dollar, just weeks before the government was scheduled to pay them off at full face value. That effective yield: About 1,600 percent.

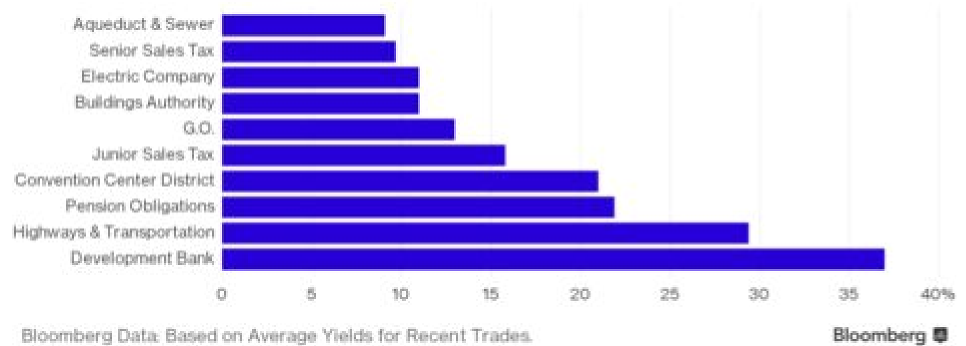
The Caribbean island of 3.5 million residents faces the next major hurdle in July, when $2 billion of bond payments are due, including those on general obligations that the constitution says should be paid above all else.

Its defaults so far have been relatively small, limited to about $143 million of missed payments, according to Moody's. None of the securities were backed by the government's full taxing power, nor are the development bank's, leaving bondholders with little legal recourse.

The Public Finance Corp., which borrowed to help cover the government's deficits, hasn't met its debt-service bills since August, leaving the bonds trading at about 7 cents on the dollar. The commonwealth's Infrastructure Financing Authority followed in January, defaulting on debt backed by rum taxes. Bonds maturing in 2028 with insurance from Financial Guaranty Insurance Co., which only covered 22 percent of what it owed, traded this month for an all-time low of 26.7 cents on the dollar.

Here's the market's best guess for which other securities are most at risk. What follows are the

amount of debt outstanding per Puerto Rico issuer, along with the most recent trading prices of bonds that aren't insured against default, according to data compiled by Bloomberg. When possible, the securities with the highest volume over the past month were used. They are listed from the highest yields (which represents the most risk) to the lowest.



Puerto Rico Government Development Bank: $7.7 billion. The GDB lends to the commonwealth and its localities. When those loans are repaid, the bank can pay off its debt. With $422 million due in May, and officials saying there's not enough money to make it, tax-exempt bonds maturing in 2023 last traded for an average yield of 37 percent.

Puerto Rico Highways & Transportation Authority: $5.4 billion. The highway agency repays its debt with gas-tax revenue. It owes less than $1 million in May, which will probably be paid with reserve funds because the commonwealth has been using the agency's revenue to pay general obligation bondholders. Moody's said there's still a chance that they'll default. Bonds maturing July 2033 last traded for an average yield of 29.4 percent.

Puerto Rico Pension-Obligation Bonds: $2.8 billion. The taxable debt was sold to bolster the island's nearly depleted pension fund. The bonds are repaid from contributions that the commonwealth and municipalities make to the retirement system. The system owes $13.9 million of interest every month in this budget year. Securities maturing in 2038 last traded for an average yield of 21.9 percent.

Puerto Rico Convention Center District Authority: $397.7 million. The agency oversees the convention center, as well as other facilities, and receives hotel-room tax receipts to repay its debt. It will make its July payments in full by using reserve funds, according to Standard & Poor's. Like the highway securities, they're subject to clawback. Bonds insured by FGIC maturing in 2023 last traded for an average yield of 21 percent.

General-obligations: $12.9 billion. The debt is backed by the island's full faith and credit. Its constitution says general obligations must be repaid before other expenses. Puerto Rico owes just $3 million on all commonwealth-guaranteed debt in May, before $805 million of principal and interest is due July 1. Securities with a 5 percent coupon and maturing in 2041 last traded for an average yield of 9.5 percent. Debt with an 8 percent coupon and due in 2035 last traded for an average yield of 13 percent.

Puerto Rico Public Buildings Authority: $4.2 billion. The PBA bonds are repaid with lease revenue that public agencies pay for their office buildings. The debt is more secure than typical revenue bonds because the commonwealth has guaranteed repayment. Bonds maturing in 2042 last traded for an average yield of 11 percent.

Puerto Rico Sales Tax Financing Corp.: $16 billion. The bonds, know by the Spanish acronym Cofina, are repaid from dedicated sales-tax revenue and come in two types: senior, with the first claim on revenue, and subordinated, which are second in line. The authority will make debt payments in August because revenue has already been delivered to the bond trustee, according to a Standard & Poor's report. Senior Cofinas maturing in 2057 last traded for an average yield of 9.7 percent, while subordinate ones maturing in 2042 yielded 15.8 percent.

Puerto Rico Electric Power Authority: $8.6 billion. Prepa, as it's called, is the island's main supplier of electricity and repays the debt from what it charges customers. The utility is the only government entity that has cut a deal with creditors to reduce what it owes, a step that Garcia Padilla wants to do on a broader scale for all of the island's obligations. That restructuring has yet to be completed, with some procedural hurdles yet to be overcome. Tax-exempt bonds maturing in 2030 last traded at an average yield of about 11 percent.

Puerto Rico Aqueduct & Sewer Authority: $3.6 billion. The utility, called Prasa, supplies most of the island's water. The debt is repaid from water rates charged to customers. The water agency owes $2.6 million in May. Bonds maturing in 2042 last traded at an average yield of 9.2 percent.

Bloomberg Business

by Brian Chappatta

April 29, 2016 — 2:00 AM PDT Updated on April 29, 2016 — 8:08 AM PDT

Record Municipal Junk Bond for Hospital Set as Market Draws Cash.

The need to protect against earthquakes is about to jolt the municipal junk-bond market from its slumber.

California's Loma Linda University Medical Center on Wednesday is planning the biggest speculative grade, tax-exempt health-care deal since at least 1990, according to data compiled by Bloomberg. The $883 million sale will finance an expansion and overhaul to comply with the state's seismic safety requirements, a project that will double the center's debt and triggered a fall from investment grade last year.

The offering will gauge whether investors are growing more willing to buy the riskiest securities as cash floods into municipal-bond funds and yields hold near a five-decade low. It comes after underwriters have struggled since last year to line up buyers for other big speculative-grade sales, delaying issues from a Florida passenger railroad and a Texas methanol plant.

"The market is a little bit yield starved,'' said Steve Czepiel, a senior portfolio manager in Philadelphia at Delaware Investments who oversees a $1.15 billion high-yield municipal fund that holds some of the California hospital's securities. "This is a very good time for them to bring this deal to the marketplace."

Investors' increasing allocations to the municipal market have boosted prices this year as the Federal Reserve has held off on raising rates since its initial increase in December. By late last week, investors had added money to state and local debt funds for 29 straight weeks, the longest streak since March 2010, Lipper US Fund Flows data show.

The supply of new securities hasn't kept pace with the influx. This year, about $121 billion have been sold, down 13 percent from a year earlier, according to data compiled by Bloomberg.

"Cash flows into the market are very strong and there is very little to own," said Blake Anderson, managing director in high-yield securities trading at Mesirow Financial in San Francisco. "It's an auspicious time for the hospital to issue a substantial amount of debt."

Loma Linda's center, located about 60 miles (96 kilometers) east of Los Angeles, will use the proceeds to cover the bulk of its $1 billion project, which will add 983,000 square feet of hospital space and bring the complex into compliance with seismic safety rules that take effect in January 2020. Its facilities lie near two major earthquake faults.

Credit-rating companies downgraded Loma Linda last year because of the debt issue. This month, Standard & Poor's cut its grade again, dropping it one step to BB, the second level into junk, saying the medical center has little financial room to maneuver if the project encounters delays. Fitch Ratings has a stable outlook on its BB+ grade, the first step into junk.

Susan Onuma, a spokeswoman for the hospital group, declined to comment.

The yields on some Loma Linda bonds have risen relative to benchmark securities ahead of the offering. A bond due December 2044 traded Monday at an average yield of 4.19 percent, or 2.7 percentage points over top-rated debt, data compiled by Bloomberg show. That gap is up from about 2 percentage points in December 2014, when they were first issued.

The new securities will only be sold to qualified institutional buyers, such as mutual-fund managers, instead of individual investors, because of the "material degree of risk," according to offering documents.

"In buying this type of bond, you have to be comfortable with the long-term outlook of the credit,'' said Dan Solender, head of municipals at Lord Abbett & Co. in Jersey City, New Jersey. He manages $18 billion of municipals, including those issued by Loma Linda.

Bloomberg Business

by Romy Varghese

April 26, 2016 — 2:00 AM PDT Updated on April 26, 2016 — 6:00 AM PDT

[Bloomberg Brief Weekly Video - 04/28]

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

[Watch the video.]

April 28, 2016

Supreme Court Reinforces Free-Speech Protections for Public Employees.

WASHINGTON—The Supreme Court reinforced free-speech protections for public employees Tuesday, ruling that a Paterson, N.J., police officer can sue after being demoted when city officials learned he carried a campaign sign for the mayor's political opponent.

The twist in the case was that the officer, Jeffrey Heffernan, said he hadn't actually supported Larry Spagnola, a former police chief who was running against Paterson Mayor Joey Torres. Instead, he had picked up the sign on behalf of his bedridden mother, who asked him to get a replacement after a Spagnola lawn sign vanished ahead of the 2006 municipal election.

The Supreme Court previously has held that public employees can generally sue when a government agency punishes them for political activity undertaken on their own time. But a federal appeals court in Philadelphia dismissed Mr. Heffernan's case, reasoning that since he delivered the sign as a favor to his mother rather than to express an opinion, no constitutional rights were violated by his demotion.

The Supreme Court by a 6-2 vote saw the case differently.

"The government's reason for demoting Heffernan is what counts here," Justice Stephen Breyer wrote for the court. "When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action… even if, as here, the employer makes a factual mistake about the employee's behavior."

Justice Breyer cited a 1994 ruling that said a nurse could sue a public hospital in Macomb, Ill. The hospital fired her for badmouthing the obstetrics department. The nurse maintained that rather than merely griping, she was raising policy questions about hospital practices, a matter of public concern protected by the First Amendment. In that case, "the employer reasonably but mistakenly thought that the employee hadn't engaged in protected speech. Here, the employer mistakenly thought the employee had engaged in protected speech," Justice Breyer wrote.

The opinion continued a pattern evident since the February death of Justice Antonin Scalia left the eight-member court wary of deadlock on ideological lines. Since then, its output has been characterized by a conservative-liberal majority issuing relatively short opinions avoiding sweeping conclusions. Tuesday's decision, numbering eight pages, was joined by Chief Justice John Roberts and Justices Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan.

Conservative Justices Clarence Thomas and Samuel Alito have tended to dissent, as they did Tuesday.

"Demoting a dutiful son who aids his elderly bedridden mother may be callous, but it is not unconstitutional," Justice Thomas wrote, joined by Justice Alito.

Mr. Heffernan's attorney, Mark Frost, said the case created new protections for "perceived association."

"It instructs supervisors that if you are going to act with ill motives to suppress somebody's rights, you're still going to be held responsible," he said.

Mr. Torres, a Democrat who has been Paterson's mayor since 2002 except for the 2010-2014 term, didn't return a call seeking comment. An attorney for the city said he had been directed not to

comment on the decision.

THE WALL STREET JOURNAL

By JESS BRAVIN

April 26, 2016 7:39 p.m. ET

Write to Jess Bravin at jess.bravin@wsj.com

Atlantic City, America's Worst-Rated Town, Stares at Default.

Atlantic City has so little money left that it could miss a $1.8 million bond payment due Sunday, a step that would make it the first New Jersey municipality to default on debt since the Great Depression.

The Jersey Shore gambling destination has endured years of strain as a third of its casinos shut down. But now its cash levels are low enough that bankruptcy is a possibility for the 39,000-population city, according to Mayor Don Guardian.

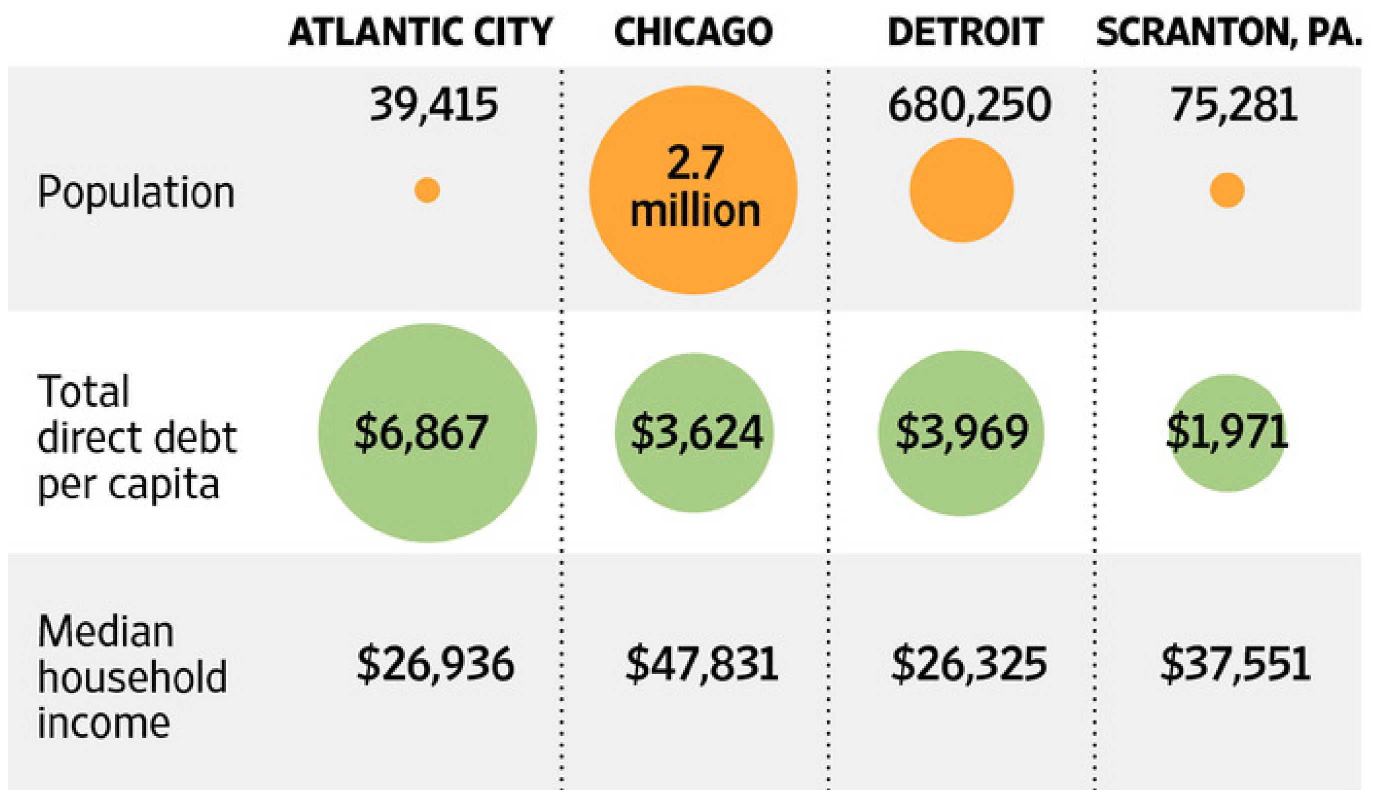
"We're down to a couple million dollars on any given day," the mayor said in an interview.

Once prized as a vacation destination because of its giant casinos and boardwalk, Atlantic City is in this position because of a declining economy and mounting debt. Its predicament is more severe than most distressed U.S. municipalities because it has the worst credit rating of any American city.

The appetite for higher yields in the staid municipal-bond market has allowed some troubled cities to issue new debt or renegotiate existing terms. The Chicago Public Schools issued $725 million worth of bonds in early February despite a junk rating and a push by Illinois's governor to give the school district the authority to declare bankruptcy. As recently as a year ago, bondholders purchased about $50 million in Atlantic City bonds backed by state aid payments.

Risky Gamble

Atlantic City, N.J., is struggling with higher amounts of debt per capita than other distressed cities around the country. Data are from 2014.



Source: Merritt Research

THE WALL STREET JOURNAL.

Since then, however, New Jersey Gov. Chris Christie blocked the delivery of a more than $30 million rescue package, a judge ruled Borgata Hotel Casino & Spa could stop paying about $30 million in annual city taxes and the city lost a $160 million property-tax dispute with the Borgata that the city can't afford to pay.

Standard & Poor's Ratings Services said in January it appears "inevitable" that Atlantic City would default on debt payments within six months barring major improvements. It rates Atlantic City triple-C-minus. S&P also downgraded the city's municipal utilities authority to junk last week, with further downgrades likely.

Atlantic City's credit rating has sunk so low that city officials and bankers say investors would likely reject any offers to buy new debt or refinance.

"If we could go to the market, we more than likely would've," said Marty Small Sr., the city council's president.

The writing was on the wall for the city when neighboring states opened their borders to gamblers over the past decade and took away Atlantic City's special draw. Subsequent declines in the hospitality and food industries caused four of Atlantic City's 12 casinos to close over the past two years, cutting the city's revenue in half.

Its direct debt, meanwhile, soared to $240 million, larger on a per capita basis than either Detroit's or Chicago's, according to Merritt Research Services LLC, a municipal-bond data provider.

Atlantic City's crisis worsened in January, when Moody's Investors Service downgraded its general-obligation debt to Caa3, near the bottom of the rating firm's scale. That placed Atlantic City eight notches below Chicago's junk rating.

Junk-rated cities remain a rarity. Only about 15 of more than 2,000 U.S. cities have ratings of BB-plus or below, according to Merritt Research.

"It's become more and more clear that the cash [the city] expected to be there wasn't," said Jim Colby, who manages a VanEck fund that bought Atlantic City debt last year.

Talk of default is spooking bond investors whose holdings have traded for as little as 66 cents on the dollar in recent weeks, according to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website. That is down from close to 100 cents on the dollar early last year.

New Jersey leaders, including Gov. Christie and the Democratic state Senate president, agree on a general fix for Atlantic City: a state takeover of the city's operations that would give the state ability to sell city assets, restructure debt or renegotiate union contracts. But a separate plan, backed by the state's Democratic assembly speaker, opposes altering union contracts and has so far blocked takeover legislation.

The proposals differ on how quickly the state would take over. Any action would require state assembly approval.

But Mayor Guardian has called the state's plan "a fascist dictatorship" and wants to retain local control of operations. His plan is to cut the city budget by at least $10 million and bring in new residents by giving away land and vacant homes.

"We're not an industrial town like Detroit," he said. "We're a tourist destination."

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN and HEATHER GILLERS

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Where Did the Government Jobs Go?

On a muggy afternoon in April, Angelina Iles, 65, folded herself into my passenger seat and took me on a tour of her beloved Pineville, La., a sleepy town smack in the middle of the low, wet state. We drove past spaced-out, low-slung houses and boarded-up businesses — shuttered restaurants, a decrepit gas station — as Iles, an African-American retired lunchroom worker and community activist, guided me toward the muddy banks of the Red River. Near there stands the locked-up Art Deco shell of the Huey P. Long hospital, which once served the poorest of the poor in Rapides Parish

— and employed more than 300 workers.

When employers leave towns like Pineville, they often do it with a deaf ear to the pleading of state and local governments. But in the case of Huey P. Long, the employer was the government itself. Its demise began, arguably, in 2008, when Bobby Jindal was swept into the Louisiana governor's mansion on a small-government-and-ethics platform, promising to modernize the state and unleash the power of American private industry along the Gulf Coast. At the time, Louisiana was flush with federal funds for Hurricane Katrina reconstruction and running a budget surplus. Jindal and the State Legislature slashed income taxes and started privatizing and cutting. This was a source of great pride for Jindal. During his failed bid for the presidency last year, he boasted that bureaucrats are now an endangered species in Louisiana. "I've laid off more of them than Trump has fired people," he said, "and I've cut my state's budget by more than he's worth."

He laid off more than just bureaucrats. Jindal cut appropriations for higher education, shifting the cost burden onto students themselves. (State spending per student was down more than 40 percent between 2008 and 2014; just one state, Arizona, cut more.) And he shuttered or privatized nine charity hospitals that served the state's uninsured and indigent. They were outdated and costly, Jindal argued, and private management would improve access, care and the bottom line. Huey P. Long was one of those hospitals.

Iles, along with dozens of other workers and activists, helped organize a protest against the cuts, she told me. They held a vigil on the hospital's front lawn. Iles even helped produce an anti-Jindal documentary called "Bad Medicine" that was broadcast on local television. But it was all for naught. "The good governor did not want to listen to us," Iles said, checking her constantly buzzing phone in the car. The hospital closed its doors in 2014, and its patients were redirected to other local medical centers and clinics. All of the hospital's workers lost their jobs.

Driving around Pineville, Iles and I dropped in on a friend of hers from church, Theresa Jardoin, 68, who worked in the hospital for 41 years, most recently as an EKG supervisor. Out of work, she spends most of her days at home, taking care of her family. Earlier, Iles had introduced me to another friend, Linette Richard, whose story was similar. She had been working as an ultrasound technician when the hospital closed. She lost much of what she had been expecting for her retirement, because she had not been there long enough. "Nobody's jumping to hire a 58-year-old, especially in my field," Richard said. "You can get a low-paying job, like McDonald's or Burger King. But higher up? We don't have positions available. That's the way it is."

That's the way it is across much of Louisiana. The state has added 80,000 new jobs since the Great Recession officially ended in 2009. But at the same time, jobs have been shrinking at every level of government, with local offices losing 10,600 workers, the state government 31,900 and the federal government 1,600. Louisiana is an exaggerated case, but the pattern persists when you look at the country as a whole. Since the recession hit, private employers have added five million jobs and the government has lost 323,000. The country has recovered from the recession. But public employment has not.

The public sector has long been home to the sorts of jobs that lift people into the middle class and keep them there. These are jobs that have predictable hours, stable pay and protection from arbitrary layoffs, particularly for those without college or graduate degrees. They're also more likely to be unionized; less than 7 percent of private-sector workers are represented by a union, while more than a third of those in the public sector are. In other words, they look like the blue-collar jobs our middle class was built on during the postwar years.

The public sector's slow decimation is one of the unheralded reasons that the middle class has

shrunk as the ranks of the poor and the rich have swollen in the post-recession years. This is certainly true in Louisiana, where five of the 10 biggest employers are public institutions, or health centers that in no small part rely on public funds. In Rapides Parish, which includes Pineville, the biggest employer is the school district.

Across the country, when public-sector workers lose their jobs, the burden disproportionately falls on black workers, and particularly women — people like Theresa Jardoin and Linette Richard.

“We felt middle class,” Richard told me. “Now we feel kind of lower.”

In the middle of the last century, a series of legal and legislative decisions — fueled by and fueling the civil rights movement — increased the number of black workers in government employment. F.D.R. ended official discrimination in the federal government and in companies engaged in the war effort; Truman desegregated the armed forces; Kennedy established the Committee on Equal Employment Opportunity; and Johnson signed an executive order banning discrimination by federal contractors. As a result, black workers gained more than a quarter of new federal jobs created between 1961 and 1965. And the share of government jobs held by women climbed 70 percent between 1964 and 1974, and nearly another 30 percent by the early 1980s.

Through the middle of the century, the wage gap between white and black workers narrowed as social forces and political pressure compelled private businesses to open up better jobs to black workers. “Public-sector work has been a backbone of the black middle class for many reasons,” says Mary Pattillo, a sociologist at Northwestern who studies race and class. Affirmative action helped bring marginalized groups into the public work force; there, they benefited from more public scrutiny of employment practices. “The inability to fire people in a willy-nilly fashion has likely protected African-Americans, who are perhaps likely to be fired in a willy-nilly fashion,” she says. As of 2007, black workers were 30 percent more likely than workers of other races to be employed in the public sector.

For any number of reasons, the Great Recession unraveled much of the progress made by the black middle class. Leading up to the mortgage crisis, black families tended to have a higher proportion of their wealth tied up in their homes. And regardless of their income, black families were much more likely to be rejected for conventional mortgages and pushed into high-cost subprime loans. All of this meant that when housing prices turned down, the black-white wealth gap yawned. As of 2013, white households were, on average, 13 times wealthier than black households, the biggest gap since 1989, according to Pew Research Center data.

Declining tax revenue led to tightened state budgets, which led to tens of thousands of layoffs for public-sector employees. And during the recovery, public workers became easy political targets precisely because of their labor protections. Collective-bargaining rights, pension funds and mandatory raises look like unnecessary drains on state coffers to a work force increasingly unfamiliar with such benefits. And when the layoffs came, black Americans experienced a disproportionate share of the ill effects. A graduate student of sociology at the University of Washington, Jennifer Laird, wrote a widely cited dissertation, examining the effects of public-sector layoffs on different races. She found that the government-worker unemployment rate climbed more for black men than for white men — and much more for black women than for white women, with the gap between the two groups soaring from less than a percentage point in 2008 to 5.5 percentage points in 2011. “It may be that black workers are more likely to be laid off when the layoffs are triggered by a sudden and significant reduction in funding,” she wrote. “When the number of layoff decisions increases, managers have more opportunities to discriminate.” Worse, once unemployed, black women were “the least likely to find private-sector employment and the most likely to make a full exit from the labor force.” As a result of all these economic punishments, a recession that set

America back half a decade may have set black families back a whole generation, if not longer.

And because the public sector provides so many essential services, cuts to it have a cascading effect. Hospitals close, and people have to drive farther away for medical care. Teachers' aides lose their positions, and local kids no longer have the same degree of special-education attention. Angelina Iles, the retiree I met in Pineville, cited the loss of dental, mental-health and emergency medical services as being a particularly profound problem for her community.

Other states and towns are electing to have smaller public work forces. Wisconsin, for instance, has thinned its ranks of government workers by some 5,000 since its Republican governor, Scott Walker, led a push to abrogate public workers' organizing rights — a political choice with profound economic and racial ramifications. "They try to say that collective bargaining is a drain on the economy, when it provides the ability and opportunity for folks to have a seat at the table," Lee Saunders, the president of the American Federation of State, County and Municipal Employees, told me. And the economic evidence does show that a higher concentration of unionized workers increases intergenerational mobility and raises wages for all workers, public and private.

With time, government jobs should come back; that pathway to the middle class should grow again. "Government jobs are always slower to come back after a recession," says Roderick Harrison, a former Howard University demographer. It takes time for private businesses to rehire workers. It takes time for tax revenue to rise to a level at which cities and states feel comfortable adding public workers back onto their payrolls. "That means that the portion of the black middle class that was dependent on government jobs — police, schools, emergency workers and so on — is going to take longer to recoup and regain whatever positions they had," he says.

For Pineville, that recovery might come too late for many of its workers, especially those who were looking toward retirement. Because Linette Richard can't find suitable work, she and her husband get by on what he makes as a car salesman. She has given up trying to find work again around Pineville. So has Theresa Jardoin, who has resigned herself to a tougher retirement than she thought she would enjoy.

"All of a sudden, there's nothing," she said, sitting in an easy chair in her living room, just blocks from Huey P. Long, playing with her granddaughter's hair. "You can't enjoy retirement in this situation."

"You didn't even get a pocket watch, did you?" Iles asked.

"No," Jardoin said, with a resigned laugh. "Just aches and pains."

THE NEW YORK TIMES

By ANNIE LOWREY

APRIL 27, 2016

Texas Court Blocks Houston From Using Tougher Clean-Air Laws.

HOUSTON — Houston's efforts to use local clean air laws to regulate pollution in the home of the nation's largest petrochemical complex were halted Friday by a Texas Supreme Court ruling in favor of energy and chemical companies that claimed the city had overreached.

The coalition made up of ExxonMobil Corp. and other companies with nearby refineries and plants had sued the nation's fourth-largest city in 2008 after Houston passed ordinances that required businesses to pay registration fees based on the number and type of pollution sources on each site. The city used the fees to investigate potential violations of air pollution laws.

The ordinances also made it unlawful to operate a facility inside Houston unless it was registered with the city. Violations of the ordinances could have been prosecuted in municipal court and were punishable with fines between $250 and $2,000 per day.

Attorneys for the city had argued in court documents the ordinances were a local expression of state laws regulating pollution, that they didn't make an "end-run" around state regulations and the lawsuit was hiding the real issue, "which is that industry does not want to be accountable to the people to stay within industry's permitted levels of pollution."

But in a 8-1 ruling against the city, the state's all-Republican high court said the ordinances were inconsistent with the Texas Legislature's intent that favored statewide consistency in enforcement. The Texas Commission on Environmental Quality is the agency in charge of administering the state's environmental laws.

The Supreme Court said the ordinances allowed criminal prosecution without letting the environmental commission determine if a violation had taken place and without allowing the agency to determine if administrative or civil penalties were more appropriate.

"The Legislature has enacted a comprehensive and flexible regulatory regime for investigation into possible violations … and consistent enforcement of the state's air pollution laws," the high court wrote.

Janice Evans, a spokeswoman for the city of Houston, said the city would have a statement on the ruling later Friday.

Evan Young, an attorney for the Business Coalition for Clean Air Appeal Group, said he was pleased with the ruling.

"We think it upholds the integrity of Texas environmental law and reaffirms the important role for clear, even-handed statewide regulation," he said.

If Houston's ordinances had been upheld, it would have created a patchwork of such laws across the state that would have allowed counties or cities to "establish their own priorities and their own determinations of when to try and bring a particular kind of enforcement," Young said.

Adrian Shelley, executive director of Air Alliance Houston, an environmental group that had filed a motion in support of the ordinances, called the ruling "bad news for public health in Houston."

He said the court's decision falls in line with recent actions by the state — including a law last year barring local ordinances that prevent fracking and other oil and natural gas activities that are potentially harmful to the environment — that erode Texas residents' rights to seek environmental and public health protections.

"We don't have enough resources for enforcement and as a result, we have levels of pollution that endanger public health and do not comply with state and federal standards," he said.

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