Bond Case Briefs

Municipal Finance Law Since 1971

- Treasury, IRS Issue Rules that Will Help Facilitate P3s.
- Notice of Support Availability: Training and Technical Assistance Services for Pay for Success Initiatives.
- MSRB Extends Deadline for Markup Rule Comments.
- MSRB Best-Ex Guidance Could Come in Nov.; Board Presses SEC on Bank Loans.
- Fitch Tax-Supported Criteria Revision.
- Treasury Issues Final Private Activity Bond Allocation and Accounting Regs.
- IRS Announces Inflation Adjustments for 2016.
- NFMA Advanced Seminar on Higher Education.
- *Young v. Red Clay Consolidated School District* – Court of Chancery holds that complaint filed by school district residents, who opposed increase in school-related property taxes but did not vote in special election in which increase was passed, sufficiently pled that school district's interventions affected result of election in resident's action seeking to void result, based on district's alleged actions in discouraging and raising impediments to voting by elderly and disabled residents.
- And finally, this week's Allegorical Day in the Life of a Law Firm Associate is brought to us by *Zollar v. City of Chicago Dept. of Administrative Hearings*, which includes the following, "the 100–pound male bullmastiff, Eli, attacked Jib, a female Portuguese water dog weighing 39 pounds, in an alley." Although in the allegory, Eli's real world punishment – posting a sign alerting passersby of the presence of a dangerous animal, muzzling the dog while off her property, implanting a microchip under the dog's skin, and sterilization – lands squarely on Jib.

PUBLIC UTILITIES - CALIFORNIA

Green Valley Landowners Association v. City of Vallejo

Court of Appeal, First District, Division 1, California - October 16, 2015 - Cal.Rptr.3d - 2015 WL 6121779

Nonresident water customer brought class action seeking to preserve its alleged right to continue receiving water at reasonable rates from an historical water delivery system owned and operated by the City of Vallejo. Customer sued for breach of contract, breach of implied covenant of good faith and fair dealing, breach of duty to charge reasonable water rates, breach of fiduciary duty, specific performance, declaratory and injunctive relief, and accounting. The Superior Court sustained demurrer without leave to amend. Customer appealed.

The Court of Appeal held that:

- Charter city was governed by general law providing that all contracts with a city must be in writing to be valid;
- City could not be sued under an implied-in-law or quasi-contract theory;
- Right to Vote on Taxes Act precluded city from owing any fiduciary duty to continue prior fee ratio; and
- Injunction claims were premature.

INVERSE CONDEMNATION - COLORADO

American Family Mutual Insurance Company v. American National Property and Casualty Company

Colorado Court of Appeals, Div. I - September 24, 2015 - P.3d - 2015 WL 5607602 - 2015 COA 135

Insurers brought subrogation action against Water Board and Colorado Department of Public Safety, alleging inverse condemnation and negligence, after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage. The District Court dismissed the inverse condemnation claims for failure to state a claim. Insurers appealed.

The Court of Appeals held that:

- Insurers had standing to assert inverse condemnation claims;
- Alleged taking of insureds' property did not serve nor was intended to serve a public purpose;
- Insurers lacked good cause to conduct discovery in order to respond to motion to dismiss; and
- Any error by trial court in denying insurers' request to conduct discovery was not prejudicial.

Insurers had standing to bring inverse condemnation claims against Water Board and Colorado Department of Public Safety after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage, where insurers had paid or expected to pay claim to their insureds as a result of damage caused by the wildfire such that they were subrogated to their insureds' claims to the extent of monies paid and to be paid, and insureds held right to pursue inverse condemnation claim, as they were the property owners at the time of the wildfire and had suffered injuries-in-fact to legally protected interests as a result of the wildfire.

Alleged taking of insureds' property by Water Board and Colorado Department of Public Safety arising out of prescribed burn on Water Board land which resulted in wildfire that caused significant property damage, did not serve nor was intended to serve a public purpose, as required for insurance carriers to maintain inverse condemnation claims in subrogation action. While the prescribed burn may have been for a public purpose and the alleged taking may have been a natural or probable consequence of that burn, damage to private property was not for a public purpose and in fact was the opposite of the intent of the prescribed burn.

EMINENT DOMAIN - FLORIDA

General Commercial Properties, Inc. v. State Dept. of Transp.

District Court of Appeal of Florida, Fourth District - October 14, 2015 - So.3d - 2015 WL 5948530

Department of Transportation (DOT) brought eminent domain proceedings against landowner. After final judgment was entered awarding an amount for the parcel, landowner sought attorney's fees based on the DOT's offer to purchase the land made seven years prior to initiating eminent domain proceedings at an amount significantly lower than the judgment amount. The Circuit Court awarded fees based on percentage of difference between final judgment and pre-suit offer made closer to commencement of eminent domain proceedings. Landowner appealed.

The District Court of Appeal held that attorney's fee would be calculated using the later offer.

Department of Transportation's offer to purchase landowner's property seven years before initiation of eminent domain proceedings was not the "first written offer" under eminent domain statute, which provides for an award of attorney's fees to a landowner based on a percentage of the difference between amount of final judgment and first written offer. The offer was made in an arms-length negotiation during department's early acquisition program before project was funded or plans were finalized and before department was certain landowner's property would be needed, and offer was extended on condition that it not be used to determine attorney's fees in a subsequent condemnation proceeding.

IMMUNITY - FLORIDA

City of Fort Lauderdale v. Israel

District Court of Appeal of Florida, Fourth District - October 14, 2015 - So.3d - 2015 WL 5948627

County sheriff brought action against city for breach of contract, unjust enrichment, and open account, and city moved for summary judgment based on sovereign immunity. The Circuit Court denied city's motion. City appealed.

The District Court of Appeal held that sovereign immunity barred sheriff's action.

Sovereign immunity barred county sheriff's action against city for breach of contract, unjust enrichment, and open account, arising out of payments allegedly owed to sheriff for services provided to city after contract had expired, where there was no written contract between sheriff and city.

A municipality waives the protections of sovereign immunity only when it enters into an express contract. When an alleged contract is merely implied, however, these sovereign immunity protections remain in force.

BALLOT INITIATIVES - FLORIDA

In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply

Supreme Court of Florida - October 22, 2015 - So.3d - 2015 WL 6387952

The Attorney General of Florida petitioned for an advisory opinion as to the validity of a citizen initiative amendment to the state constitution and the corresponding financial impact statement submitted by the financial impact estimating conference.

The Supreme Court of Florida held that:

- Proposed citizen initiative amendment complied with single subject requirement;
- Proposed citizen initiative amendment complied with ballot title and summary requirement; and
- Financial impact statement accompanying amendment complied with constitutional requirements.

Proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with the single subject requirement of the state constitution. Although the proposed amendment contained a number of provisions, some dealing with economic barriers to supply of solar electricity and others dealing with government regulation with respect to rates, service, or territory, various provisions were all directly connected to the amendment's purpose of removing legal and regulatory barriers to local solar electricity suppliers who sought to supply and sell up to 2 megawatts of solar generated electricity to purchasers on the same or contiguous property to the supplier, and there was no indication that amendment would have interfered with state's energy policy.

Proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with statutory ballot title and summary requirements, where title and summary clearly and unambiguously informed the voter that the amendment would prevent government and electric utilities from imposing regulatory barriers to supplying local solar electricity up to 2 megawatts to customers at the same or contiguous property, and summary explained that the regulations which would be limited or prevented included government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electricity rates, charges, or terms of service.

Financial impact statement accompanying proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with requirements of the state constitution, where statement was 62 words in length, statement addressed only estimate increase or decrease in revenue and costs to state and local governments, statement clearly and unambiguously stated that there would be decreased revenues for state and local governments and that the fees may have offset a portion of any increased costs, and statement clearly and unambiguously explained that timing and magnitude of decreased revenues could not be determined because of various technological and economic factors.

LIABILITY - GEORGIA

Guice v. Brown

Court of Appeals of Georgia - October 20, 2015 - S.E.2d - 2015 WL 6143383

Motorist brought action against city employee, who was driving city-owned vehicle covered by city's liability insurance policy when he was struck by motorist's vehicle. The trial court denied employee's motion for summary judgment. Employee appealed.

The Court of Appeals held that:

- Motorist failed to demonstrate that employee violated city ordinance and county ordinance;
- Motorist failed to demonstrate that employee violated statute governing obedience to traffic-control devices; and
- Motorist failed to demonstrate that employee committed criminal trespass.

INDEBTEDNESS - IDAHO

Greater Boise Auditorium Dist. v. Frazier

Supreme Court of Idaho, Boise, September 2015 Term - October 15, 2015 - P.3d - 2015 WL 6080521

Auditorium district, a governmental subdivision, filed petition for judicial confirmation that proposed real estate transaction did not violate state constitution's prohibition on municipal bodies, without voter approval, incurring indebtedness or liabilities greater than it has funds to pay for in the fiscal year. The District Court denied the petition. District appealed.

The Supreme Court of Idaho held that:

- Courts have duty to examine other documents affecting question submitted in petition for confirmation;
- Lease did not violate constitution; and
- Overall agreement did not violate constitution.

In deciding petitions for judicial confirmation of the validity of agreements brought by the governing bodies of political subdivisions, courts have a duty to examine other documents which affect the questions submitted and then to determine the propriety of the contracts before them.

Lease between auditorium district, a governmental subdivision, and urban renewal agency did not subject district to more liability than it could pay in year in which it was entered, and therefore entering lease without voter approval did not violate state constitution, despite contention that entire financing structure could have failed and resulted in financier pursuing remedies against district. Lease bound district to pay rent of one year, which it had funds to do, lease allowed district option to renew lease in subsequent years if it had funds to do so, constitution did not bar government subdivisions from incurring all potential liabilities without voter approval, and whether lease was, in fact, equitable mortgage did not create specific liability.

Overall agreement entered into by auditorium district, a governmental subdivision, in which district was obligated to purchase facility upon completion of construction did not subject district to long-term liability greater than it had the funds to pay for in the year in which it was entered, and therefore entering agreement without voter approval did not violate state constitution, despite contention that district was subject to continuing liability of lender's right to impose security interest on facility. Cost of purchase was covered by urban renewal agency if overall agreement was confirmed by court or by district's cash on hand, and any liens imposed by lender would have had to be released before sale, based on requirement of developer to convey clear title.

MUNICIPAL ORDINANCE - ILLINOIS

Zollar v. City of Chicago Dept. of Administrative Hearings

Appellate Court of Illinois, First District, Third Division - October 14, 2015 - N.E.3d - 2015 IL App (1st) 143426 - 2015 WL 5996813

Dog owner sought review of city animal control commission declaring dog to be a dangerous animal. The Circuit Court affirmed. Owner appealed.

The Appellate Court held that:

- Dog was dangerous animal within meaning of city ordinance;
- Any error in admission of investigative report did not prejudice owner; and
- Dangerous animal ordinance was not void for vagueness.

EMPLOYMENT - LOUISIANA

Jackson v. St. John Baptist Parish School Bd.

Court of Appeal of Louisiana, Fifth Circuit - October 14, 2015 - So.3d - 2015 WL 6081000 - 15-254 (La.App. 5 Cir. 10/14/15)

Former school bookkeeper filed petition for payment of sick leave and restoration of sick leave days against school board, following diagnosis of anxiety order stemming from incident where student struck her on school campus. The District Court rendered judgment in favor of bookkeeper and awarded her $9,105.71, plus interest and costs. School board appealed.

The Court of Appeal held that bookkeeper was not required to have diagnosis by licensed psychiatrist or psychologist to receive sick leave benefits.

Former school bookkeeper was not required to have a diagnosis by a licensed psychiatrist or psychologist to receive sick leave benefits from school board that employed her, following diagnosis of anxiety disorder stemming from incident where student struck her on school campus. While workers' compensation statute defining injury required clear and convincing evidence of a mental injury and a diagnosis by licensed psychiatrist or psychologist, bookkeeper sought sick leave benefits, not workers' compensation benefits, statute governing sick leave for school employees only required physician to certify an injury or disability, and bookkeeper provided school board with letter from her physician certifying that she was under his care for anxiety order and that it was his opinion that she should not return to work environment for foreseeable future.

ZONING - NEW JERSEY

Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs

Superior Court of New Jersey, Appellate Division - October 21, 2015 - A.3d - 2015 WL 6160248

Residents filed separate complaints in lieu of prerogative writs, challenging zoning board of adjustment's site plan approval and variance grants for 143.8-foot tall office building in business zone where maximum permitted height was 35 feet. After consolidation and grant of motions to intervene, the Superior Court affirmed, and residents and intervenors appealed.

The Superior Court, Appellate Division, held that:

- Landowner failed to establish undue hardship warranting variance;
- Board, when considering "special reasons" for variance, was required to consider the main building's effect on the general landscape;
- Board was required to address the historic and scenic importance of the unique location when considering variance;
- Landowner was not entitled to bulk variance from parking requirements on grounds that the physical condition of the property prevented it from conforming to parking requirements; and
- Evidence was sufficient to support grant of bulk zoning variance allowing reduction in required parking spaces on grounds that any harm was substantially outweighed by the benefits.

MUNICIPAL ORDINANCE - TEXAS

Weiderman v. City of Arlington

Court of Appeals of Texas, Fort Worth - October 15, 2015 - Not Reported in S.W.3d - 2015

WL 5461516

City resident filed suit for declaratory judgment against city and mayor, alleging that city charter did not permit citizen-initiated referendum to amend city's charter to ban use of red-light cameras. The District Court granted defendants' plea to jurisdiction and dismissed petition. Citizen appealed.

The Court of Appeals held that resident lacked standing to challenge amendment to city's charter to ban use of red-light cameras that had been placed on ballot and approved by majority of voters.

City resident lacked standing to challenge ordinance adopting proposition to amend home-rule city's charter to ban use of red-light cameras that had been placed on ballot and approved by majority of voters, which challenge was based on resident's claim that city's charter did not provide for citizen-initiated referendum, where resident did not allege any injury separate and distinct from injuries suffered by any other voter who voted against proposition, but admitted that he was no different than any other citizen who believed that red-light camera program was good.

EDUCATION FINANCE - PENNSYLVANIA

U.S. ex rel. Oberg v. Pennsylvania Higher Educ. Assistance Agency

United States Court of Appeals, Fourth Circuit - October 21, 2015 - F.3d - 2015 WL 6163007

Relator, on behalf of United States, brought qui tam action under False Claims Act (FCA) alleging that state-created corporate entity intended to facilitate issuance of student loans, the Pennsylvania Higher Education Assistance Agency (PHEAA), defrauded the United States Department of Education.

The Court of Appeals held that:

- State was not functionally liable for FCA claim;
- Autonomy factor weighed against finding that PHEAA was an arm of the state;
- State concern factor weighed in favor of finding that PHEAA was an arm of the state;
- Treatment under state law factor weighed in favor of finding that PHEAA was an arm of the state; and
- PHEAA was not an arm of the state.

The Pennsylvania Higher Education Assistance Agency (PHEAA) was a political subdivision of the State of Pennsylvania, rather than an arm-of-the-state, and thus was a "person" subject to liability under a False Claims Act (FCA) claim by a relator bringing a qui tam action, notwithstanding that much of its revenue was generated from out-of-state activities, and that it was treated as an arm of the state under Pennsylvania law. Pennsylvania was not liable for judgments against PHEAA, and PHEAA exercised significant autonomy from the State.

PUBLIC UTILITIES - PENNSYLVANIA

GSP Management Co. v. Duncansville Mun. Authority

Commonwealth Court of Pennsylvania - October 19, 2015 - A.3d - 2015 WL 6119434

Operator of mobile home park brought declaratory judgment action against municipal authority, challenging on its face and as applied the authority's rate structure for sewer system use, pursuant to which the rate increased on sliding scale corresponding to amount of metered water supplied to customer. The Court of Common Pleas entered judgment in favor of authority. Operator appealed.

The Commonwealth Court held that:

- Authority's rate structure was valid on its face, but
- Operator was entitled to relief for months in which metered water delivered to park greatly exceeded amount of discharge into sewer system.

Municipal authority's rate structure for calculation of sewer bill, pursuant to which the rate for sewer use increased on sliding scale corresponding to amount of metered water supplied to customer, was not facially invalid under Municipality Authorities Act.

Relief from amounts municipal authority billed operator of mobile home park for use of sewer system during certain months was appropriate in operator's action challenging authority's rate structure, pursuant to which the rate for sewer use increased on sliding scale corresponding to amount of metered water supplied to customer. Operator consumed approximately 40,000 gallons of metered water per month on average, operator's metered water use ranged from 110,000 to 580,000 gallons per month during months at issue due to water loss between metering point and point of discharge into authority's sewer system, and unplanned increase in metered water imposed no increase on burden of sewer system.

Where there is an extraordinary water loss between the point of metering and the point of discharge into a municipal sewer system that is substantial in quantity and unplanned or unanticipated, relief from the sewer charges during those periods of extraordinary water loss would be warranted to ensure that the amount billed and collected is not unreasonable in relation to the service rendered, crossing the line between a permitted fee and an unauthorized tax.

PUBLIC UTILITIES - PENNSYLVANIA

Metropolitan Edison Co. v. City of Reading

Commonwealth Court of Pennsylvania - October 15, 2015 - A.3d - 2015 WL 5974066

Utility brought action against city, alleging that negligence of city's employees during excavation led to collapse of utility's electrical duct bank. City filed motion for summary judgment, asserting immunity under Political Subdivision Tort Claims Act. The Court of Common Pleas denied city's motion and, following bench trial, entered judgment in favor of utility. City appealed.

The Commonwealth Court held that exception to immunity under the Act for injury resulting from dangerous conditions of utility service facilities did not apply, and thus city was immune.

Exception to governmental immunity under Political Subdivision Tort Claims Act for dangerous conditions of utility service facilities did not apply in utility's action against city, in which utility alleged that city's excavation work led to collapse of utility's electrical duct bank, and thus city was immune from suit, where dangerous condition that led to collapse did not originate from city's facilities, but from the conduct of city's employees in excavating beneath the duct bank without using support or shoring to stabilize it.

PUBLIC UTILITIES - PENNSYLVANIA

PPL Elec. Utilities Corp. v. City of Lancaster

Commonwealth Court of Pennsylvania - October 15, 2015 - A.3d - 2015 WL 5974272

Public utility filed petition for review seeking declaratory and injunctive relief against city and Public Utility Commission, arguing that ordinances city enacted as part of comprehensive program for management of city's rights-of-way were preempted by the Public Utility Code. Utility filed an application for summary relief.

The Commonwealth Court held that:

- Ordinance purporting to authorize city to inspect public utility facilities to ensure that such facilities did not constitute a public safety hazard and remained in compliance with Public Utility Commission (PUC) standards was preempted;
- Ordinance purporting to grant city the power to order a public utility to remove, relocate, change, or alter the position of any facilities within right-of-way was preempted;
- Ordinance which imposed an annual maintenance fee on any public utility with facilities in city's rights-of-way was not preempted; and
- Ordinance purporting to permit city to bring a complaint against public utilities for violation of a PUC regulation, standard, or order and to fine utility for such violations was preempted.

Puerto Rico Faces Humanitarian Crisis Without Federal Action: Treasury

NEW YORK/SAN JUAN — U.S. Treasury Secretary counselor Antonio Weiss warned that Puerto Rico faces a humanitarian crisis without federal action, as he appealed to Congress to help the debt-ridden U.S. territory, in comments to a Senate committee hearing on Thursday.

Puerto Rico, a U.S. territory home to 3.5 million, is buckling under $72 billion in debt and a 45 percent poverty rate. With financial creditors resisting reductions to debt payments and political gridlock threatening proposed spending reforms, some Puerto Rican leaders have called on the U.S. government to step in.

Weiss said that without action by Congress, Puerto Rico's crisis would escalate and reiterated that the Obama administration's policies were "not a bailout" for the island.

He repeated the key points of a plan released by the Treasury on Wednesday, saying Congress should provide tools for Puerto Rico to restructure its liabilities, increase Medicaid support and boost economic growth through tax credits.

A key element of Treasury's proposal is its endorsement of extending bankruptcy protections not only to Puerto Rico's public agencies, but to the island's government itself – a notion championed by some Puerto Rican leaders but seen as too radical to be politically practical.

Cities, towns and municipal agencies can file for under the U.S. Chapter 9 bankruptcy code, while states cannot. Puerto Rico is exempt from Chapter 9 because it is a commonwealth.

"Bankruptcy is not a bailout," Weiss said, according to testimony released ahead of his remarks. "Allowing Puerto Rico to resolve its liabilities under the supervision of a bankruptcy court involves no federal financial assistance whatsoever. Instead, bankruptcy requires shared sacrifice from both

Puerto Rico and its creditors."

By REUTERS

OCT. 22, 2015, 10:45 A.M. E.D.T.

Obama Administration Draws Up Plan to Help Puerto Rico With Debt.

Looking for a way to help debt-ridden Puerto Rico, administration officials on Wednesday proposed an ambitious — if politically perilous — plan that stops short of a direct federal bailout but that its backers hope is sweeping enough to keep the island from becoming America's Greece.

The plan would create a new territorial bankruptcy regime and impose new fiscal oversight on Puerto Rico, which is mired in the depths of a decade-long recession, running out of cash and struggling to make payments on $72 billion of debt. It represents an urgent bid by President Obama to offer a way forward. But it requires cooperation from a Republican-led Congress bent on imposing spending restraint.

In describing the package on Wednesday, administration officials emphasized that they had exhausted the limits of their own authority to help Puerto Rico, and needed quick action by Congress to avoid a catastrophe.

"Administrative actions cannot solve the crisis," Jacob J. Lew, the Treasury secretary, said in a joint statement with Jeffrey D. Zients, the National Economic Council director, and Sylvia Mathews Burwell, the health and human services secretary.

"Only Congress has the authority to provide Puerto Rico with the necessary tools to address its near-term challenges and promote long-term growth," the statement said.

The situation in Puerto Rico "risks turning into a humanitarian crisis as early as this winter," one senior administration official said, speaking on condition of anonymity because the person was not authorized to speak publicly. Antonio Weiss, Mr. Lew's counselor, will explain the administration's plan in Capitol Hill testimony on Thursday.

The Puerto Rican government has already "done a lot" to restore fiscal order, the official added, but "Puerto Rico cannot do it on its own, and the United States government has a responsibility to 3.5 million Americans living in Puerto Rico" to step in with additional help.

The plan was shared late Wednesday with The New York Times and Agencia EFE, a news organization in Puerto Rico. On the same day, the island's Government Development Bank said it had ended weeks of fruitless negotiations with certain creditors, aimed at persuading them to voluntarily accept lower bond payments. The bank has a bond payment of about $300 million coming due on Dec. 1.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH, MICHAEL CORKERY and JULIE HIRSCHFELD DAVIS

OCT. 21, 2015

U.S. Treasury Supports Broad Bankruptcy Protection for Puerto Rico.

SAN JUAN/NEW YORK — The U.S. Treasury on Wednesday urged Congress to help debt-stricken Puerto Rico, saying the U.S. commonwealth needs the ability to file for bankruptcy protection, changes to Medicaid funding and access to the Earned Income Tax Credit.

"Only Congress has the authority to provide Puerto Rico with the necessary tools to address its near-term challenges and promote long-term growth," Treasury said in a statement.

Puerto Rico, a U.S. territory home to 3.5 million, is buckling under $72 billion in debt and a 45 percent poverty rate. With financial creditors resisting reductions to debt payments and political gridlock threatening proposed spending reforms, some Puerto Rican leaders have called on the U.S. government to step in.

A bailout by the United States is seen as unlikely, but Wednesday's statement from Treasury is the strongest indication yet that President Barack Obama's administration supports some form of federal assistance for the island.

A key element of Treasury's proposal is its endorsement of extending bankruptcy protections not only to Puerto Rico's public agencies, but to the island itself – a notion championed by some Puerto Rican leaders but seen as too radical to be politically practical.

Cities, towns and municipal agencies can file for under the U.S. Chapter 9 bankruptcy code, while states cannot. Puerto Rico is exempt from Chapter 9 because it is a commonwealth.

"With the escalating crisis, bankruptcy protection is now needed for the commonwealth as well," Treasury said in a 10-page proposal. "Congress should authorize a broader legal framework that allows for a comprehensive restructuring of Puerto Rico's debts."

Treasury would be a key ally for Puerto Rico in Washington, where the island has struggled to find powerful supporters.

Antonio Weiss, a counselor to Treasury Secretary Jack Lew, is scheduled to testify on Thursday at a hearing on Puerto Rico before the Senate Committee on Energy and Natural Resources.

Treasury's proposal also calls on Congress to create a fiscal control board for Puerto Rico.

In a statement, Puerto Rico Governor Alejandro Garcia Padilla said his administration would seek to ensure that any such board respected Puerto Rico's autonomy.

Still, Garcia Padilla lauded the Obama Administration for taking what he called the "historic step" of presenting a set of recommendations to help Puerto Rico.

The department's proposal makes clear its view that resolving Puerto Rico's crisis requires a debt restructuring and concessions from bondholders, and that pension benefits should be protected.

While Treasury has also called on Puerto Rico to fix its traditionally opaque financial reporting practices and instill more credible fiscal oversight, the proposal is generally in line with what the island itself has said it needs from Congress and its creditors.

By REUTERS

OCT. 21, 2015, 8:15 P.M. E.D.T.

(Reporting by Nick Brown in San Juan and Megan Davies in New York; Editing by Chris Reese, Diane Craft and Leslie Adler)

Notice of Support Availability: Training and Technical Assistance Services for Pay for Success Initiatives.

This notice of support availability (NoSA) offers in-kind support in the form of training and technical assistance (TTA) services from the Urban Institute’s Pay for Success initiative (PFSI) to guide, design, and assess potential and existing pay for success (PFS) projects.

Urban is offering training and technical assistance only, not direct grantmaking or other monetary investment; the NoSA will not be used to distribute subgrants or other funding. The Urban Institute (Urban) anticipates making multiple TTA awards through this NoSA but reserves the right to select as many or as few recipients for support as it deems reasonable.

Submitting an application does not guarantee that an organization will receive support.

Download the pdf.

The Urban Institute

Issued: October 14, 2015

Kimberly Walker

Fitch: Work Force Evaluation Integral to U.S. Local Government Ratings.

Fitch Ratings-New York-22 October 2015: The relationship between a U.S. local government and its work force has become an important barometer into the strength of the government’s credit rating, according to Fitch Ratings in a new report.

As the largest component of local U.S. government spending, labor costs have come into greater focus since the most recent economic downturn, as well as state laws that govern work forces. Multiple laws can govern different types of employees, with laws in some states changing in recent years and more proposals on the table, according to Managing Director Amy Laskey.

‘The formal bargaining relationship between labor and management provides insight into the level of flexibility management has to adjust this key area of spending,’ said Laskey. ‘Contractual agreements are also important indicators of how quickly spending will grow and how quickly a local government will respond should a change in the broader economy require shifts in spending.’

Above all, the level of cooperation among parties and how committed they are to maintaining financial stability is Fitch’s preeminent indicator of a government’s ability to make adjustments necessary to maintain budget balance. As such, it is an important piece of Fitch’s methodology for local governments, currently in the form of an exposure draft for comment through Nov. 20. In short, a consistently applied work force evaluation is key to assessing the flexibility of main expenditure items.

‘Work Force Evaluation Key to Local Government Analysis’ is available for purchase here.

Fitch: Michigan's Statutory Lien Bill Would Raise Recoveries.

Fitch Ratings-New York-21 October 2015: If enacted, Michigan’s statutory lien bill will significantly improve recovery value if a municipality defaults, compared to other general creditors, including employees, Fitch Ratings says. However, it will not reduce the risk of default.

The legislation would also help improve investor views on the state’s local credits, which were damaged as a result of the losses bondholders suffered in the Detroit bankruptcy. Detroit’s unlimited tax general obligation bondholders recovered 74 cents on the dollar. Had this bill been in place, recoveries could have been higher.

The bill would place a statutory first lien on taxes that are subject to an unlimited tax pledge and require them to be held in trust for the bondholders. The state’s Senate is currently considering the legislation. Polls suggest it is favored by the legislature. However, some state officials, including Governor Rick Snyder, have voiced opposition to it.

In our view, failure to enact this law would be a credit negative for Michigan local issuers, as it indicates lawmakers desire to place bondholders on equal footing with ordinary creditors rather than providing additional security for bondholders. This would suggest that bondholders’ claims should be subject to full re-evaluation in a bankruptcy proceeding.

Similar legislation has been approved in California and New Jersey. In most cases, a statutory lien is a lien arising by force of a statute on specified circumstances or conditions. This lien is in contrast to a consensual lien, which is created by agreement, where both parties to a financing agree to a certain security structure and document that agreement in an indenture or loan document. Debt secured by special revenues is exempt from the automatic stay provisions in this code, protecting such debt from payment interruption in the event of a bankruptcy filing. This protection does not extend to bonds secured by a statutory lien, so timely payment is not guaranteed in a bankruptcy.

Fitch: ACA Exchange Drop May Pressure Hospitals Long Term.

Fitch Ratings-New York/Chicago-21 October 2015: The long-term impact on not-for-profit hospitals of a continued decline in buyers of health insurance through federal and state insurance marketplaces will depend on their state’s Medicaid program and the portion of their patients that have benefits, Fitch Ratings says. The impact of the decline in the short term is expected to be slight even as enrolees through these exchanges fell from 11.7 million to 9.9 million from February to June of this year.

The cost of health insurance in the 19 states that have not expanded Medicaid benefits under the Affordable Care Act (ACA) is likely the biggest factor in the declines. Although many enrolees received federal subsidies for the majority of the cost, wage stagnation and other personal budget factors may make the uncovered cost of the benefits untenable for some. The New York Times reported that Mississippi, where 95% of enrolees received subsidies, saw an 8% decline in enrolment from March 31 to June 30.

The long-run impact on hospitals would depend, in part, on their state's Medicaid program. In New York, which already had a robust Medicaid program in place, the subsidized healthcare exchanges have proven more beneficial to hospitals, as the underinsured have fuller coverage, helping increase utilization in a state where medical costs to patients can be high.

However, we would expect critical access hospitals (CAHs), which are inherently vulnerable to shifts in reimbursement due to their limited revenue base, to be at greater risk. The decline in the rural population that CAHs were created to serve is also pressuring the sector. This population shift is more common in the South and Midwest regions. Those regions are home to the most states that have not expanded Medicaid eligibility under ACA.

We believe the decline in enrolees could continue if stagnant wage growth for earners in the lowest quartile persists. According to the Bureau of Labor and Statistics, since 2000 the average hourly wage for non-management private-sector workers in the lowest quarter (when adjusted for inflation) has declined by 3%.

Moody's: PREPA's Planned Utility Charge Bonds Would Be Similar to Others in the Sector.

New York, October 22, 2015 — Puerto Rico Electric Power Authority's (PREPA; Caa3 negative) anticipated issuance of new securitization bonds would carry risks that are typical of utility cost recovery charge (UCRC) bonds that we rate, such as legislative risk, servicing risk, customer payment delay and default risk as well as event risk stemming from severe weather conditions, Moody's Investors Service says in a new report which outlines how those risks might present themselves in the specific circumstances of PREPA and Puerto Rico.

The planned issuance of the UCRC bonds via a debt exchange with PREPA's uninsured power revenue bondholders is part of the utility's restructuring plan, calling for these bondholders to swap their bonds for new debt at a discount, as described in PREPA's "Ad Hoc Group Exchange Term Sheet" publicly disclosed on September 1st.

UCRC bonds are backed by surcharges on customer's utility bills. Securitization issuance is predicated on passage of state legislation that authorizes and protects these surcharges, according to the Moody's report, "Key Considerations of PREPA's Planned Utility Charge Bonds Would Be Similar to Those of Other Deals in the Sector."

"We view the risk of a legislative body changing or revoking utility charge legislation to the detriment of bondholders as remote in the outstanding UCRC securitizations that we rate, because a breach of the state non-impairment pledge would be a violation of the Contract Clause and the Takings Clause under the US Constitution and state constitutions," says Moody's Vice President — Senior Analyst Tracy Rice. "There is a risk in this type of deal that the authorizing legislation could be subject to a court challenge or to future political pressure for a jurisdiction to pass new laws that would rescind or revamp the charges. In assessing the credit risk of PREPA's planned securitization, we would consider the previous positions taken by the Puerto Rican government."

While the full details of a potential PREPA UCRC transaction are not yet available, Moody's expects PREPA would be the servicer, responsible, among other things, for billing and collecting customer utility payments and segregating the securitization charge payments. The financial stability, ability and experience of the transaction servicer are key considerations in Moody's credit analysis of UCRC securitizations.

"Although PREPA is the sole provider of electricity in Puerto Rico and provides an essential service, the quality of its servicing could deteriorate while the UCRC bonds are outstanding if PREPA's financial condition does not improve or weakens, " says Moody's Rice. "However, we believe that a UCRC securitization would help PREPA achieve longer-term financial stability."

By deferring and/or lowering its debt service through the securitization, the utility would be in a better position to cover its capital expenditures, which PREPA could use to help convert its largely oil-fired generation fleet of power plants to lower-cost and cleaner natural gas-fired plants, which would help PREPA save money and achieve longer-term financial stability, according to the Moody's report.

The ability of a utility's customers to pay the special charges, allowing for collections to be sufficient to meet the debt service requirements on the bonds, is another key consideration in UCRC securitizations. However, true-up mechanisms in UCRC transactions, which are written into the authoring legislation, adjust for all shortfalls, including those that result from customer payment delays and defaults.

"PREPA has many late-paying customers, including its largest customer, the Puerto Rican government, so this could be a concern, but one that a true up mechanism could mitigate," says Moody's Rice.

In Moody's credit analysis of UCRC transactions, it also analyzes the exposure of the utility's service area to severe weather-related events that could lead to a decline in energy usage and therefore cash flow to the deal. True-up adjustments in the transactions are designed to address any material deviations between the securitization charge collections and the required debt service amount.

Puerto Rico has significant exposure to weather-related event risk such as that stemming from a severe hurricane of the magnitude of previous storms in the region such as Hurricane Irene in 2011. "One mitigant to this risk is that PREPA has taken steps to put a significant portion of its wires underground, especially on the north side of the island," according to Moody's Rice.

The report is available to Moody's subscribers here.

Moody's: Pension Underfunding, Potential Cost Shift Could Increase Credit Risk for New Jersey's School Districts.

New York, October 19, 2015 — Potential pension reforms to fix New Jersey's (A2 negative) chronic teacher pension underfunding could lead to higher credit risk for the state's school districts and their finances, Moody's Investors Service says. A state commission is recommending reforming pensions by creating a new plan to be paid by school districts through savings realized from proposed, concurrent district and municipal health benefit reform.

The largest component of New Jersey's FY 2014 $80.5 billion unfunded pension liability is the Teacher's Pension and Annuity Fund (TPAF) at $53.8 billion, Moody's says in "New Jersey Pension Underfunding Poses Risk to School Districts." New Jersey currently pays all teacher pension and retiree health care costs.

“Since 2010, state pension contributions to TPAF have averaged only 15% of the annual required contribution (ARC), resulting in rapid liability growth. As the state has made efforts to increase its contributions, spending on pensions and other post-employment benefits have increased to 8% of the fiscal 2015 budget from 4.9% in 2010,” Moody’s Vice President Josellyn Yousef said.

The commission intends for the pension shift to be cost neutral for school districts through savings on benefit cuts at school districts and municipalities. However, if reforms fail or if the state decides to offload the pension burden in some other fashion, school districts can raise taxes, cut costs, borrow, or spend reserves to raise funds to cover the gap.

“Each option offers potential downsides or limitations,” Yousef said. “For example, raising taxes would be simplest but the ability and willingness of taxpayers to accept a higher levy may be limited.”

Further, Moody’s notes a potential wildcard via an ongoing lawsuit New Jersey faces regarding outstanding pension litigation which could meaningfully worsen the pension funding position owing to a 2011 cost-of-living adjustment (COLA) freeze. If the COLA freeze is reversed, it would materially increase the pension funds’ unfunded liabilities and annual contribution needs for TPAF by roughly 35%.

The report is available to Moody’s subscribers here.

Bloomberg Brief Weekly Video - 10/22/15

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

Watch the video.

October 22, 2015

Puerto Rico Agency Said in Talks With Insurers to Raise Cash.

The Puerto Rico Electric Power Authority and insurance companies that guarantee repayment on some of its bonds are in talks to delay payments to free up cash and and help restructure $8.3 billion of debt, according to two people with knowledge of the matter.

A compromise with MBIA Inc., Assured Guarantee Ltd. and Syncora Guarantee Inc. is the missing piece in a plan announced last month in which some holders of uninsured bonds agreed to take a 15 percent loss in a debt exchange. The parties are working out details that would ease near-term debt payments, said the people, who asked for anonymity because the talks are private.

The negotiations come as Prepa, as the agency is known, won another eight days from investors that hold about 35 percent of its debt, and fuel lenders, to negotiate how to restructure its securities. The forbearance agreement, which now expires Oct. 30 and was set to end Thursday, keeps discussions out of court. This is the 11th extension since the parties first signed the agreement in August 2014. A Prepa restructuring would be the largest ever in the $3.7 trillion municipal-bond market.

Prices Increase

Lisa Donahue, Prepa's chief restructuring officer, said Tuesday at a meeting organized by Puerto Rico's Chamber of Commerce in San Juan that she's confident the utility will come to an agreement with its bond insurers. Jose Echevarria, a spokesman in San Juan for Prepa, declined to comment Thursday.
The utility's bonds maturing in July 2040 traded Thursday at an average price of 61 cents on the dollar, to yield 9.3 percent, according to data compiled by Bloomberg. The debt changed hands at about 50 cents at the start of the year.

"We continue to work with Prepa on a broad consensual settlement that would provide support from Assured Guaranty, and would put the utility on a sound financial footing," according to a response from the bond insurer posted to its website Thursday night following a U.S. Senate committee hearing on Puerto Rico's finances.

Michael Corbally, a spokesman for Syncora declined to comment. Greg Diamond, a spokesman for MBIA, reiterated that the insurer continues to work with Prepa, local government officials and other creditors toward a consensual solution.

Bankruptcy Proposal

The monolines, which insure about $2.5 billion of Prepa debt, are considering embedding in the potential debt exchange an instrument that would provide liquidity, one person said. Prepa and the bond insurers may reach a tentative agreement as soon as Friday, the other person said. The utility faces a $196 million interest payment on Jan. 1.

Doubts about the oversight of Puerto Rico's broader finances is a sticking point in the discussions with the insurers, one person said. Governor Alejandro Garcia Padilla has filed legislation that would create a fiscal oversight board, with the five panel members selected by the governor and approved by the commonwealth's Senate. A board on which members are separate from political leadership would provide better transparency and management of the island's finances, the person said.

Prepa bondholders have objected to an Obama administration proposal released Wednesday that asks Congress to give the commonwealth and its municipalities access to bankruptcy protection to help reduce the island's $73 billion debt load. The governor announced in June that debt payments were unsustainable.

Bloomberg News

by Michelle Kaske

October 22, 2015 — 2:07 PM PDT Updated on October 23, 2015 — 6:44 AM PDT

Muni Yields Hit New Low: It Costs $100 to Borrow $1 Million.

The disappearing yields are an outgrowth of the near zero-interest rate policy that the Federal Reserve has had in place since late 2008, when credit markets seized up after the collapse of investment bank Lehman Brothers Holdings Inc.

That crisis also explains why few local governments are raising money in the floating-rate market, despite the record-low cost: Those bonds saddled them with soaring interest bills during the 2008 turmoil. When the derivatives that were supposed to protect against that risk backfired, governments paid billions in fees to escape from the deals. Only $9 billion of the securities have been issued this year, down from $128 billion in 2008, according to data compiled by Bloomberg.

Chicago and other municipal borrowers in the past decade made bets on the future direction of interest rates through agreements with banks to swap interest payments as part of variable-rate demand debt issues. As rates fell under the Federal Reserve's attempt to stimulate the economy after the financial crisis, many issuers ended up on the wrong side of the bets. Since then issuers have paid at least $5 billion to unwind the agreements.

Chicago's attempt to clean up its legacy of wrong-way bets on interest rates has cost the city at least $270 million since Moody's Investors Service cut its rating to junk in May, according to city documents.

"With news like that out there, these kinds of deals are not something we are going to see again anytime soon," said Andrew Kalotay, chief executive officer of Andrew Kalotay, a New York-based advisory firm to municipal and corporate borrowers. "People are scared of them."

Bloomberg News

by Darrell Preston

October 21, 2015 — 2:31 PM PDT Updated on October 22, 2015 — 7:59 AM PDT

Mets Postseason Run Raises Fortunes of Citi Field Bondholders.

The New York Mets swept their way into the franchise's first World Series in 15 years, and Citi Field bondholders are cheering along with the team's fans.

Riding on this season's playoff run, the team projects total 2016 attendance will rise by 500,000 to 3.1 million, generating an additional $25 million in revenue, according to a person familiar with the estimate. That's on top of a 20 percent attendance increase this year.

The Mets beat the Chicago Cubs 8-3 on Wednesday night in Chicago, taking the seven-game series 4-0 and qualifying for the World Series. That's good news for fans who suffered as the team cut payroll after the the majority owners of the club, led by Fred Wilpon, lost millions investing with Ponzi scheme swindler Bernie Madoff. It's also good news for holders of almost $700 million Citi Field bonds, who've seen the ball park's attendance and revenue fall below projections.

When the 42,000-seat Citi Field opened in 2009, the team projected an average attendance of about 37,980 in 2013, according to a bond offering statement. Instead, the Mets sold an average of 26,366 tickets per game that year, according to Baseball-Reference.com, falling short of projections by 31 percent. Last year, the Mets sixth consecutive losing season, turnout averaged 26,528.

Royals Boost

Boosting attendance to 3.1 million in 2016 would bring the average to 38,272. The Mets didn't project attendance beyond 2013 in their bond offering statement. Mets spokesman Harold Kaufman declined to comment.

Attendance at Kansas City Royals games has increased almost 40 percent this year to 2.7 million, one year after they won the American League championship. The Royals lost to the San Francisco Giants in last year's World Series. The Royals are one game away from the World Series.

A 500,000 increase in Mets attendance would result in a 'meaningful" increase in the ratio of revenue available to pay debt service, said John Miller, co-head of fixed income at Nuveen Asset Management in Chicago. Nuveen is the largest holder of the longest-dated Citi Field bonds.

"I'm sure this season is going to help," he said.

Scarcity Value

The Mets sold $613 million municipal bonds in 2006 backed by payments in lieu of property taxes, lease revenue and installment payments to finance the construction of Citi Field. The team also issued $82.3 million of insured debt in 2009, the year the ballpark opened. The 2006 bonds are rated Ba1 by Moody's Investors Service and BB+ by Standard & Poor's, one step below investment grade.

Citi Field bonds don't trade frequently because investors hold them for their higher yields, Miller said. Citi Field bonds with a 5 percent coupon and callable in January 2017 traded Monday among dealers at a yield range between 2.8 percent and 3.4 percent. Top-rated bonds maturing in one-year yield 0.3 percent.
"There's certain scarcity value to them that's helping their performance," Miller said.

In 2014, Citi Field generated about $117 million in revenue and had about $84 million in expenses, including a $43 million payment in lieu of taxes, according to a financial statement filed by Queens Ballpark Company LLC, a Mets subsidiary.

Citi Field bonds are rated below investment grade in part because of inadequate reserves to make up any deficits that may result from a players' strike or an economic downturn, according to S&P. Debt-service reserves are guaranteed by a unit of Ambac Financial Group Inc., which had its rating cut to junk in 2009 because of losses it suffered insuring derivatives during the financial crisis.

An attendance boost alone won't be enough for a rating change, said S&P analyst Ben Macdonald. "If there was enough liquidity then it could be higher," Macdonald said. "There isn't at this point."

Bloomberg News

by Martin Z Braun

October 21, 2015 — 12:42 PM PDT Updated on October 22, 2015 — 7:20 AM PDT

Muni Tobacco Bonds Rally Most Since January on N.Y. Settlement.

High-yield municipal tobacco bonds rallied by the most since January after New York reached a settlement with cigarette companies that freed up $550 million of funds, fueling speculation that other states will follow suit.

Junk-rated tobacco bonds returned 2.1 percent on Tuesday, boosting 2015 gains to 13.4 percent, Barclays Plc index data show. The broad municipal market is up 2 percent for the year. Some bonds from Ohio's Buckeye Tobacco Settlement Financing Authority touched the lowest yield in more than two years.

New York Attorney General Eric T. Schneiderman announced a settlement Tuesday 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 among states and tobacco companies. Now 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.

That's positive for tobacco bonds, which allowed states and cities to borrow against their settlements. The payments from cigarette companies are used to cover interest and principal bills on the securities.

"Tobacco companies are talking to New York — how could they not be talking to Ohio?" John Miller, co-head of fixed income at Nuveen Asset Management, said in an interview at Bloomberg's New York headquarters. Ohio is the largest issuer of tobacco bonds after New York among the nine states that won decisions in 2013 over disputed payments.

"If Ohio settled, it would release a huge amount of money," said Miller, whose company oversees about $100 billion in munis.

Buckeye tobacco bonds maturing in June 2047 traded Wednesday at an average 86 cents on the dollar to yield 6.98 percent, the lowest rate since June 2013, data compiled by Bloomberg show. The debt has ratings six steps below investment grade by Standard & Poor's and Moody's Investors Service because sharper-than-expected declines in smoking threaten timely payments to investors.

New York tobacco bonds due in June 2021 traded the most since February on the settlement. Unlike the majority of the securities, which carry junk ratings, the Empire State's debt has the third-highest investment grade rank.

Bloomberg News

by Brian Chappatta

October 21, 2015 — 8:24 AM PDT

Puerto Rico Development Bank Ends Debt Talks With Creditors.

Puerto Rico's Government Development Bank said talks with a group of bondholders over a restructuring of the agency's debt and potential financing have ended after they failed to reach an agreement.

The development bank, which is closely tied to other government borrowers because it acts as a lender to the commonwealth and its localities, said in an e-mailed statement Wednesday that it continues to focus on a broader restructuring that would allow bondholders to voluntarily exchange their securities for new ones.

All seven of the members in the bondholder group exited the talks, according to two people with knowledge of the matter. The investors include Avenue Capital Management, Brigade Capital Management, Candlewood Investment Group, Claren Road Asset Management, Fore Research & Management, Fir Tree Partners and Solus Alternative Asset Management, said the people, who asked not to be named because the investor identities weren't made public.

Representatives for each of the investment firms either declined to comment or didn't immediately return messages left for comment.

Senate Hearing

The debt-swap talks ended as the GDB faces a $345 million principal and interest payment due Dec. 1, with $267 million of the bonds guaranteed by the commonwealth. The breakdown comes a day before Governor Alejandro Garcia Padilla, who is seeking to reduce the island's $73 billion in debt, is scheduled to testify at a Senate hearing on Puerto Rico's financial crisis. Officials have said the island may run out of cash in November.

"We do not believe that Puerto Rico has the ability to offer a strong enough exchange security to incentivize legacy holders to trade in their paper," Daniel Hanson, an analyst at Height Securities, a Washington-based broker dealer, said in a note. "We further believe that the negotiating creditors, who likely made this clear to the GDB before beginning their negotiations, might be annoyed that the GDB did not have a good faith plan for exchanging debt when they sat at the negotiating table."

Exchange Proposal

GDB bonds maturing February 2019, the bank's most-actively traded security in the past three months, sunk nearly 3.3 cents when they were last traded Oct. 15 to an average of about 36.8 cents on the dollar, to yield 41 percent, according to data compiled by Bloomberg. That was the lowest average in more than five weeks, the data show.

The proposed transaction would have exchanged existing debt at prices equal to 130 percent of market value, according to an event filing posted on the Municipal Securities Rulemaking Board's website, called EMMA. The new cash notes would have been priced with an 8.5 percent coupon at a 10 percent yield.

"We strongly believe that a voluntary adjustment of the terms of the commonwealth's debt that allows the measures contained in the Fiscal and Economic Growth Plan to be implemented is the best way to maximize recoveries for creditors," Melba Acosta, president of the GDB, said in a statement. "The GDB and the Working Group are engaging constructively with key stakeholders to achieve a comprehensive path forward, and we have begun the process of signing non-disclosure agreements and initial due diligence with a number of creditors."

The U.S. territory had been seeking to restructure some of the development bank's roughly $5.1 billion of obligations. The GDB on Sept. 30 offered the group of bondholders to exchange $850 million of existing GDB notes and sell $750 million of new tax-exempt debt issued by the Infrastructure Financing Authority and backed by taxes on petroleum products and guaranteed by the commonwealth, according to the filing.

The GDB has been working with Citigroup Inc. to help oversee its financial restructuring.

Bloomberg News

by Michelle Kaske and Laura J Keller

October 21, 2015 — 6:19 AM PDT Updated on October 21, 2015 — 10:18 AM PDT

California's Zombie Agencies Beat Rally as Mass Defaults Averted.

Since California shut down 400 authorities that redeveloped blighted neighborhoods, the $30 billion of bonds left behind have rallied as local governments defied speculation about widespread defaults.

Debt from the agencies returned 42 percent in the four years that ended Aug. 31, almost double the overall municipal market and beating the 28 percent for California tax-exempt bonds, according to an analysis by Nuveen Asset Management. Only two cities have missed payments on the securities since Governor Jerry Brown shuttered the agencies in early 2012 to help close the state's budget shortfall.

The bonds, which are financed with local property taxes, have benefited from an orderly payment process overseen by the state and surging real estate prices. The assessed value of California properties increased 4.4 percent to $4.8 trillion in the year ended June 2014, exceeding the peak reached in 2009 before the full impact of the housing-market crash rippled through local tax rolls.

"Whenever there's noise, there's often opportunity," said Stephen Candido, senior research analyst in Chicago at Nuveen, which holds the debt among its $230 billion of assets. "The market is often fearful. We were more focused on the long-term upside, knowing from early on that repaying these bonds would be a priority."

Brown and his fellow Democrats in the legislature abolished the agencies to redirect about $1 billion of their funds to schools, which eased the financial pressure on the state in the aftermath of the recession.

Some consultants to cities warned at the time that they may be unable to cover the agencies' debt bills. In 2012 Moody's Investors Service downgraded $11.6 billion of the securities to junk, citing uncertainty about whether localities would renege on the obligations.

While San Bernardino, a city of 215,000 east of Los Angeles, said the burden contributed to its 2012 bankruptcy, elsewhere the impact has been more limited. The only cities that have missed bond payments are Riverbank, near Modesto with $15.4 million of the debt, and Monrovia east of Los Angeles, which has $11.75 million, according to Municipal Market Analytics in Concord, Massachusetts.

Legacy Debts

Municipalities once used the agencies to borrow for projects that improved blighted areas. A portion of the real-estate taxes that resulted were used to pay off the bonds. Since the agencies were closed, local governments have been required to outline their obligations every six months to the state Finance Department, which has the authority to require them to prioritize payments to bondholders.

The process has gone smoothly, said H.D. Palmer, a spokesman for the department.

The outcome contrasts with investors' initial concerns, said Matt Fabian, an analyst with Municipal Market Advisers.

"RDAs are performing better in the market because much of the uncertainty about the sector's transition has gone away," Fabian said by e-mail. "Plus the turmoil in the last few years likely shook loose a fair bit of the retail owner base, leaving the bonds in institutional hands, implying a bit more trading and liquidity than most municipal sectors."

Bonds Gain

The $85 million of San Jose redevelopment agency bonds maturing in 2030 traded Tuesday for an average price of $1.04 on the dollar, up from 77 cents in December 2011. That reduced the yield to 2.1 percent from 6.4 percent. Bonds sold by Stockton's authority, which come due in 2036, traded Wednesday for 100 cents on the dollar, up from 87 cents in late 2011.

Moody's no longer takes a dim view of the sector, said Robert Azrin, a senior analyst for the company. The median rating for California redevelopment debt is Baa1, three ranks above junk, he said.

"At the time, they were valid concerns, but with each year that's passed, we've seen that these payment schedules have gone smoothly," Azrin said. "With the passage of time, a lot of the risks we identified haven't come to fruition."

Many redevelopment bonds may also be refinanced in the next couple of years as securities issued in 2006 and 2007 reach their 10-year calls, which allow the local governments to pay them off early at face value, said Candido, the Nuveen analyst. He said he expects the bonds to remain popular among investors because governments have been meeting their obligations.

"Here we are in 2015 and they're finally addressing the concerns of investors," he said.

Bloomberg News

by James Nash

October 20, 2015 — 9:01 PM PDT Updated on October 21, 2015 — 10:03 AM PDT

Refinancing Wave Drives Record Muni-Bond Sales as Projects Wait.

The record pace of U.S. municipal bond sales is doing little to address the deteriorating state of the nation's roads, bridges and other infrastructure.

With the Federal Reserve wavering on whether to raise interest rates for the first time in more than nine years, state and local governments are rushing to refinance debt instead as yields hold near a half-century low. They've sold more than $320 billion this year, the most for the period since at least 2003, according to data compiled by Bloomberg.

The flood will continue as governments sell about $40 billion of securities a month for the rest of the year, according to Phil Fischer, head of municipal research for Bank of America Merrill Lynch in New York, the top underwriter of tax-exempt debt during the first half of 2015. Most of the sales are for refinancing as states and cities once battered by the recession remain wary of running up new debt for public works.

"This is an environment of low yields," said Vikram Rai, head of municipal strategy in New York at Citigroup Inc. "It's a great opportunity to actually fund this country's infrastructure needs, and they're missing out on that."

The borrowing will cause the $3.7 trillion municipal market to grow for the first time since 2010, the last year of a federal program that subsidized bonds for construction projects. The dearth of new debt since and the refinancing wave has eased the fiscal pressure on state and local governments. Their annual interest payments slipped to about $188 billion by the end of June from as much as $204 billion in early 2013, according to U.S. Commerce Department figures.

Market Gains

The shift in supply hasn't tempered the market's gains, with tax-exempt debt returning about 2.1 percent through Oct. 19, according to Bank of America's indexes. That's about triple the return on corporate debt and more than the 2 percent gain for Treasuries.

Demand has been fueled by an influx of money into municipal-bond funds, which have received about $5.4 billion from investors this year, according to Lipper US Fund Flows data. Meanwhile, the refinancing has caused some debt to be paid off early.

"You've got really too much money chasing too few bonds," said Robert Miller, a senior portfolio manager at Wells Fargo Asset Management, which oversees about $39 billion of munis. "There's enough cash still on the sidelines to be invested where we can absorb additional supply."

California is among borrowers that are refinancing. The most-populous state is selling about $961 million of general-obligation bonds Tuesday in an auction among underwriters. Last week, New York's Long Island Power Authority raised $1 billion to pay off higher-cost debt.

It's not a sure thing that the pace of refinancing will hold up, said Michael Johnson, managing partner at Gurtin Fixed Income Management, which oversees $9.7 billion of munis. Many borrowers probably did so earlier this year because of anticipation that the Fed would raise interest rates by September, he said.

"I would expect the pace of refundings to decline," said Johnson, who is based in Solana Beach, California. "There was likely some front-loading of refundings due to an expected rise in interest rates."

Building Needs

The long-brewing need to finance infrastructure projects may drive new bond sales if refinancings wane. Governments can't keep putting off needed work on everything from mass transit lines to water and sewer systems, said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, which oversees about $126 billion of assets. The American Society of Civil Engineers has estimated that more than $3 trillion of such work should be done.

"It's a lot of demand building up," said Heckman, who is based in Kansas City, Missouri. "There's a real good possibility that that will be the trigger that will change kind of this dynamic of new issuance."

There's a tendency for issuers to rush to the market at the end of the year, said Bank of America's Fischer, who forecasts that bond sales will reach a record $450 billion in 2015. The bank estimates that only about a third of sales this year have raised new funds, instead of refinancing previously issued debt.

"I have a lot of confidence that we'll get more infrastructure financing and the reason for it is I have chemistry on my side," Fischer said. "Paint will not hold up the bridge."

Bloomberg News

by Elizabeth Campbell

October 19, 2015 — 9:01 PM PDT Updated on October 20, 2015 — 5:49 AM PDT

Banks May Balk at Financing $68 Billion California Bullet Train.

California is counting on private companies to kick in as much as $35.5 billion toward the most expensive public-works project in U.S. history, a proposed high-speed rail line linking San Francisco with Los Angeles. Banks and other contractors who've studied the plan say not so fast.

Even as builders clear land and begin work on viaducts near Fresno for the bullet train's initial segment, financiers solicited by the state rail agency are calling on California to pitch in more than the $10 billion in bond funds already committed in order to give potential investors confidence that the project will become reality.

Their responses point out a dilemma for Democratic Governor Jerry Brown and other supporters of the line: persuading reticent taxpayers to ante up more than already approved under a 2008 bond measure as support for the project declines, though private investors may stay away unless they see a bigger public buy-in.

"We still have a funding gap," rail authority chairman Dan Richard said at an Oct. 6 board meeting at which officials outlined responses from 36 firms and groups of companies asked to outline potential funding packages. "But we're going to build this project notwithstanding that, because we can close that funding gap."

Barclays Plc, AECOM and Kiewit Corp. were among the builders, lenders and contractors who responded to the California High-Speed Rail Authority's request for expressions of interest by companies. The authority released the responses under a public-records request.

Large Financing

"Given the proposed delivery approach and available funding sources, we believe there are a number of concerns which the authority must address," Kiewit, which reported $10.4 billion in revenue last year, said in its response. "The ability to service raised financing does not mean that such a large financing amount could in fact be raised."

Backers of the train are counting on the private sector to finance most of the costs, after voters in 2008 authorized $9.95 billion in general-obligation bonds. Other sources of money include $3.2 billion in federal grants and 25 percent of the proceeds from auctioning credits to emit greenhouse gases under the state's cap-and-trade program, which is estimated to yield the project $500 million a year.

Brown spokesman Evan Westrup did not immediately respond to an e-mail asking whether the state could increase its funding pledge. Lisa Marie Alley, spokeswoman for the rail authority, said the responses from the firms confirmed that "ridership and revenue would be available once the system is in operation and revenue is demonstrated."

Critics including Congressman Jeff Denham, a Turlock Republican who represents an agricultural area to be bisected by the rail line, have called the project a "boondoggle" that will run out of money before it reaches population centers. Construction is under way in the lightly populated San Joaquin

Valley on the first 29 miles (47 kilometers) of what's envisioned as an 800-mile network with trains speeding as fast as 220 miles per hour.

Richard said that the state is constrained because the 2008 ballot measure approved by 53 percent of voters allowed only for $10 billion. Several polls since then have shown support for the project slipping below 50 percent.

Boost Commitment

Even so, the state and federal governments need to boost their commitment both to narrow the funding gap and persuade investors that the train will pay dividends, several companies said in their responses to the authority.

As of 2012, there were no similar projects anywhere in the world where the government paid less than half of the cost, according to John Laing Group Plc, a London-based investor and manager of infrastructure projects, including rail in its home country.

"Thus, we would anticipate the project would require comparable levels of capital contributions during construction," the company said.

AECOM suggested that the state break down financing into a series of smaller segments of no more than $5 billion to attract investors. The Los Angeles-based infrastructure company also advised "significant" government contributions.

The state should be able to borrow $10 billion to $12 billion against the annual cap-and-trade revenue, Barclays said. The London-based bank invested in a high-speed rail project in South Africa that linked Johannesburg and Pretoria in 2010, and has underwritten municipal bonds in California.

Legal Challenges

California will need to prevail in legal challenges against devoting cap-and-trade proceeds toward rail, create a mechanism to borrow against the proceeds, extend the carbon-trading program beyond 2020 and lock in a 25 percent commitment of the revenue for high-speed rail as long as the obligations are outstanding, Barclays said.

California also would need to subsidize operations for at least a decade, according to Cintra Infraestructuras SA, a subsidiary of Ferrovial SA, a Spanish builder of roads, rail and airports in Europe, North America, Australia and the Middle East.

"It is doubtful that there is enough capacity in the debt markets for this type of project," Cintra concluded.

Bloomberg News

by James Nash

October 19, 2015 — 2:00 AM PDT

[Without Ticket Revenues, St. Louis Area Having Trouble Funding Police.]

The aftermath of racial turmoil in Ferguson, Mo., is exacting a toll on St. Louis-area communities that built their finances around speeding tickets, thanks to a state law limiting the income they can draw from traffic fines.

The city council of Charlack last week decided the community of 1,400 can't afford an eight-officer police force under the new law, which says traffic citations in St. Louis County municipalities can't exceed 12.5 percent of annual operating revenue, down from 30 percent. Policing in Charlack and in nearby Wellston, which dissolved its 23-officer force in May, is now handled by a recently created cooperative of local departments.

The 2014 police shooting of 18-year-old Michael Brown in Ferguson forced a national re-examination of what critics call "taxation by citation," a situation exacerbated by the sheer number of departments, 18,000 throughout the U.S. A bill is pending in Congress to restrict the amount of revenue local governments can collect from traffic citations. In St. Louis County, which has 90 municipalities and 59 individual police departments, more communities are expected to follow the lead of Charlack and Wellston.

"This will have lawmakers around the country taking a second look at their agencies and making certain that the sole purpose of their existence is not for revenue, but to serve the public interest," said Chuck Wexler, executive director of the Police Executive Research Forum, a Washington nonprofit. "Police departments should not exist if their sole purpose is to generate revenue. That's what we have tax collectors for."

Tense relations between the majority-black residents of Ferguson and the city's mostly white police force grew in part from the excessive issuance of tickets. Some area municipalities were generating more than half their annual operating revenue from citations.

Charlack Mayor Frank Mattingly said disbanding the police and joining the local cooperative will save the city about $170,000. There was no alternative to shutting the department, which cost $520,000 to operate, roughly half the town's annual budget.

"A lot of police officers aren't writing tickets because they're afraid they'll get in trouble," Mattingly said. "Why were we singled out?" Mattingly said more towns will be forced to consolidate their police with neighboring communities, which he said he believes is the intent of the new law.

"There's nothing else they'll be able to do," he said.

St. Louis County, a suburban area of 1 million people, forms a crescent around its namesake city. About a third of the 59 departments cover less than one square mile, according to an April 30 report from the Police Research Forum.

"In many municipalities, policing priorities are driven not by the public safety needs of the community, but rather by the goal of generating large portions of the operating revenue for the local government," the report said.

Missouri state Sen. Eric Schmitt, a Republican from St. Louis County and sponsor of the new law, said some municipalities have "broken down the trust" between residents and the police.

"Some of these communities have used their citizens as ATMs with these speed traps," Schmitt said, pointing to economic pressures.

In the six years since the closing of the Northwest Plaza mall, the suburb of St. Ann increased the number of traffic citations 10-fold. Edmundson Mayor John Gwaltney reminded his town's sergeants and patrolmen in an April 2014 memo that "tickets that you write do add to the revenue on which the P.D. budget is established and will directly affect pay adjustments at budget time.”

The Ferguson turmoil has expanded the national focus beyond frictions between blacks and police departments to the practice of ticket-writing, regardless of race.

In Colorado, the town of Nunn, which is about 31 miles south of Cheyenne, Wyo., depends on speeding citations for about 30 percent of its revenue, said Police Chief Joe Clingan. With 440 residents _ mostly senior citizens _ and few businesses, the city lacks the revenue sources that support most municipal governments, he said.

“We don’t have any tax base and no retail,” Clingan said. “If they want a town government, someone has to pay for it.”

It shouldn’t be drivers, said U.S. Rep. Emanuel Cleaver, a Missouri Democrat and sponsor of the proposed federal law restricting ticket revenue.

“That is a poor excuse and a bad plan for economic development,” Cleaver said.

Cleaver’s bill would establish a 30 percent limit on all municipalities and, he said, would have the effect of encouraging small police departments to merge with those of neighboring towns or have their patrolling done by the county.

“It would cost a lot less for these small towns to pay money to the county and have the county police patrol the area than to do it on their own,” Cleaver said.

BY TRIBUNE NEWS SERVICE | OCTOBER 23, 2015

By Tim Jones

(With assistance from Jennifer Oldham in Denver.)

A Bullet Train Into a Fiscal Swamp?

Construction is underway on California’s $468 billion bullet train connecting Los Angeles and San Francisco. But the closer you look at the project, the shakier its finances appear.

The good news is that 36 companies from around the world responded to the California High-Speed Rail Authority’s request for suggestions about how to complete the project, and many expressed a willingness to participate. The bad news is that several of the respondents expressed serious concerns about the bullet train’s finances.

Perhaps the biggest concern was whether fare revenues would cover operating costs. The plan that state voters approved to fund the project bans the use of public subsidies for the operation of passenger service. State officials have long claimed that the line will turn a profit as soon as the first 300-mile segment between the San Fernando and Central valleys opens, but that hardly seems certain.

In its response to the authority’s request, Spanish construction company Sacyr wrote that “it is our opinion that revenue from ridership may not be sufficient to cover all [operation and maintenance] cost." If Sacyr is right, does anybody doubt that maintenance is what would lose out? Skimping on maintenance saves money in the short run but dramatically increases costs over time and degrades service quality.

Subsidiaries of the Spanish company Ferrovial SA wrote that "it is highly unlikely that the [California system] will turn an operating profit within the first 10 years of operation and that "more likely, [the system] will require large government subsidies for years to come."

The Ferrovial subsidiaries also noted that most high-speed rail systems around the world require operating subsidies and suggest that the same will probably be true for California's. That is certainly at odds with High-Speed Rail Authority Chair Dan Richard's assertion that every major high-speed rail system in the world operates without subsidies. It's also at odds with the argument made by other high-speed rail boosters, that "every form of transportation requires government investment."

If any high-speed rail line is likely to require subsidies, it's California's. The Los Angeles Times looked at a number of major rail corridors. Fares range from 25 cents per mile on Italy's Milan-t--Salerno line to 50 cents per mile for Amtrak service between Boston and Washington, D.C. California's bullet train plans to charge 20 cents per mile.

There is also uncertainty around the project's capital funding. The state is committed to provide up to $500 million per year until at least 2020 from money it expects to collect from companies to offset carbon emissions. But these greenhouse gas fees are untested as a funding source, and post-2020 public funding is uncertain. While a number of firms have expressed a willingness to participate in the project, none have yet offered to put up their own money.

Since what feels like the beginning of time, governments have built transportation assets with revenue sources that are inadequate to fund ongoing operation and maintenance costs. California's bullet train takes this bad practice a step further because the state only has on hand about half of the $31 billion needed to build the initial segment of the line.

Few public assets are more important to regional economies than transportation infrastructure. But moving forward on those projects without sufficient revenue sources usually results in a trip to a quagmire.

GOVERNING.COM

BY CHARLES CHIEPPO | OCTOBER 23, 2015

S&P: Debt Financing of Infrastructure Could Hurt States' Credit.

DALLAS — States will be hard-pressed to maintain their credit quality if they attempt to fund infrastructure needs solely through traditional tax-exempt debt financing, Standard & Poor's said in a new report.

"According to our assessment, states won't be able to solve the problem of inadequate infrastructure nationally solely through the issuance of traditional tax-supported debt," said credit analyst Gabriel Petek. "Putting a meaningful dent in the infrastructure deficiency will likely require a mix of traditional debt, public-private partnerships, and additional federal engagement."

States would have to issue an additional $1.19 trillion of debt through 2020 to fund their share of the

$3 trillion of infrastructure investments regarded as necessary by the American Society of Civil Engineers, Standard & Poor's said. That would raise state debt ratios to a 7.6% of gross domestic product, which S&P considers a high level, from the current and more moderate 2.9%.The states could contribute to reducing the national infrastructure deficit by acting individually to address more of their local needs, Petek said.

"In our view, most states have at least some capacity at current rating levels to issue additional debt," Petek said. "However, the states as a group do not have enough capacity to finance, using traditional tax-supported debt, their historical share of aggregate infrastructure costs without impairing their credit quality."

State and local governments issued an average of $234 billion per year of tax-exempt, new-money bonds from 1996 through 2010, the report said. However, in the wake of the Great Recession, new-money bonds have averaged only $151 billion per year.

The pullback in debt issuance can be attributed at least in part to the recognition by states that the expense of operating and maintaining infrastructure can extend for decades, which adds significantly to total project costs, Petek said.

Public-private partnerships offer a way to fold long-term operations and maintenance costs into the overall project financing plan, he said, noting that most states already have P3 enabling legislation with more expected to follow.

"However, the P3 model can be complex and in certain cases states attempting P3 projects have encountered political opposition," he said.

States cannot expect more financial support for highway projects from an increase in federal transportation funding in the next few years, Petek cautioned.

"Given that the federal government's share of infrastructure project financing has been shrinking in recent years, we don't currently anticipate a large increase in federal funding," he said.

State and local governments could find their transportation funding further imperiled with the penchant by the millennial generation for shorter road trips in more fuel-efficient cars, which curbs gasoline tax revenues, according to a separate new article from Beth Ann Bovino, Standard & Poor's chief U.S. economist.

Millennials (those born between 1982 and 2000) tend to use public transit more than their elders and obtain drivers licenses at a lower rate and a later age, she said.

"This drop in funds available to construct and repair the country's infrastructure could, in our view, weigh on growth prospects for U.S. GDP, as well as states' economies, and, in some cases, where states and municipalities choose to replace the lost federal funds with locally derived revenues, could hurt credit quality," Bovino said.

If the federal gasoline tax of 18.4 cents per gallon had been indexed to inflation when it was last raised in 1993, it now would be more than 30 cents per gallon and bring in $42 billion per year rather than the current $25 billion, she said.

THE BOND BUYER

by Jim Watts

OCT 20, 2015 2:04pm ET

S&P's Public Finance Podcast: (Affordable Multifamily Housing and States' Annual Debt Report).

In this week's Extra Credit, Associate Alex North discusses the key findings from our recent articles on the affordable multifamily housing space, and Managing Director Gabe Petek reviews the State Group's new annual debt report.

Listen to the Podcast.

Oct. 23, 2015

EXEMPT PROPERTY - WISCONSIN

SSM Health Care of Wisconsin, Inc. v. City of Fitchburg

Court of Appeals of Wisconsin - September 24, 2015 - Slip Copy - 2015 WL 5598829

SSM Health Care of Wisconsin, Inc., which owns and operates St. Mary's Hospital, sought a refund for property taxes levied by the City of Fitchburg against all of SSM's personal property that was located in a renal center and a sleep center owned and operated by SSM in Fitchburg during the 2009, 2010, and 2011 tax years.

On summary judgment, the circuit court held that some of SSM's personal property in the two centers was exempt from tax under WIS. STAT. § 70.11(4m)(a) (2013–14), the non-profit hospital tax exemption, and that SSM was entitled to a refund for that tax-exempt personal property.

The City appealed, arguing that the circuit court erred in granting summary judgment in favor of SSM for two reasons: (1) the non-profit hospital tax exemption under WIS. STAT. § 70.11(4m) does not apply here because the renal center and the sleep center are each used as a "doctor's office" and, therefore, all of the personal property located in each center is taxable; and (2) SSM initially sought tax exemption for "all" personal property in each center and, according to the City, SSM cannot subsequently "convert a request for a total tax exemption into a partial exemption in the midst of litigation."

The Court of Appeals affirmed, holding that:

- Neither the renal center, nor the sleep center are "doctor's offices" and
- Although SSM did not provide an itemized list of non-exempt property when it initially filed the tax-exemption requests, it does not follow that this bars SSM from entitlement to a refund for taxes levied against property that is tax-exempt.

TAX - NEW YORK

Allegany Mountain Resort, LLC v. Town of East Otto

Supreme Court, Appellate Division, Fourth Department, New York - October 9, 2015 - N.Y.S.3d - 2015 WL 5894848 - 2015 N.Y. Slip Op. 07361

Taxpayer brought proceeding to challenge town's tax assessments for property on which it operated a campground resort facility. The Supreme Court, Cattaraugus County, granted taxpayer's motion for summary judgment, and town appealed.

The Supreme Court, Appellate Division, held that measurements based upon the size of the chassis of each trailer at taxpayer's campground resort facility could not be used to establish that the trailers were 400 square feet or less in size, as required to qualify for exemption from property taxation.

Measurements based upon the size of the chassis of each trailer at taxpayer's campground resort facility could not be used to establish that the trailers were 400 square feet or less in size, as required to qualify for exemption from property taxation for recreational vehicles that are 400 square feet or less, self propelled or towable by an automobile or light duty truck and used as temporary living quarters for recreational, camping, travel or seasonal use. Trailers were vehicles, and their dimensions were thus required to be measured inclusive of load and bumpers.

NFMA Advanced Seminar on Higher Education.

The National Federation of Municipal Analyst's Education Committee is pleased to open registration for the Advanced Seminar on Higher Education to take place on January 14 & 15 at the Arizona Biltmore in Phoenix. An exciting slate of experts is being assembled to present on the following topics:

- Federal & State Funding: Shifting Paradigms & Focus on Accountability
- Academic Medical Centers: New Challenges & Strategic Responses
- Embracing Privatization Initiatives / P3s from Residence Halls to Beyond
- Digital Disruption: Opportunities & Challenges in the Online Education Sector
- The Changing Role of Community Colleges
- School of Hard Knocks: Distressed Higher Ed
- The Future of Tenure: Implications for University Operations & Finances
- Financial Management Challenges in Today's Competitive Environment

The Keynote Speaker will be Michael M. Crow, 16th president of Arizona State University.

To view the program, please click here.

To register for this event, please click here.

Fitch Tax-Supported Criteria Revision.

Tax-Supported Criteria Revision

Overview
Unprecedented challenges in US Public Finance and a divergence of opinion between major credit rating agencies led Fitch Ratings to conduct an in-depth review of factors that drive resilience—and spur divergent recoveries—in municipal credits. Leveraging qualitative judgment, fundamental data and an experienced analytical team, we are proposing revisions to our approach to state and local

government ratings to more clearly articulate our assessment of credit quality to the market.

The criteria revision designates key factors that help differentiate credits in a concentrated, municipal ratings scale and shows why some credits are more resistant to risk than others. The framework also better differentiates between credits, defines triggers that change ratings, improves consistency of rating assessments, and highlights our through-the-cycle rating approach.

If you have questions or comments, please refer to the Contacts list on the right or send a note to pfcomment@fitchratings.com.

TELECONFERENCE REPLAY: Revenue Sensitivity Tool for Tax-Supported Issuers
Fitch Ratings held a teleconference on its Revenue Sensitivity Tool for Tax-Supported Issuers on Wednesday, September 30 at 2:00pm EDT. Fitch Managing Directors James Batterman and Laura Porter gave an overview of the new tool.

WEBCAST REPLAY: Tax-Supported Criteria Requests for Comments
Fitch Ratings held a webinar on the exposure draft on Wednesday, September 16 at 2:00pm ET. Managing Directors Jessalynn Moro, Amy Laskey, and Laura Porter discussed proposed revisions to the criteria and gave an overview of new analytical tools and models, followed by a Q&A with webinar participants.

The research and commentary on this page is complimentary and only requires a one-time Fitch Research registration to view.

Exposure Draft: US Tax-Supported Rating Criteria
This exposure draft details Fitch's proposed enhancements to its US tax-supported rating criteria. In order to highlight the most significant elements, the exposure draft applies only to the general credit quality of US states and general purpose local governments.

Proposed Tax-Supported Rating Criteria: Overview & FAQ
This executive summary highlights the most important features and goals of the criteria revision and answers some frequently asked questions.

BlackRock Infrastructure Joins Michigan's Freeway Lighting P3.

BlackRock Infrastructure will participate in a public-private partnership to upgrade and maintain Michigan's freeway lighting system.

The international investment management firm will join forces with the Michigan Department of Transportation (MDOT) and Freeway Lighting Partners, which announced the P3 in August.

BlackRock-managed funds will finance the replacement and upgrade of approximately 15,000 freeway and tunnel system lights in the metropolitan Detroit region with energy-efficient LED lights. Blackrock will be responsible for ensuring that 95 percent of the lights remain operational for a 15-year term, which includes a two-year construction period.

More than 85 percent of metro Detroit's freeway lights are outdated high-pressure sodium or metal halide fixtures, and about 30 percent of them don't work. The state expects to save $35 million by using a P3 to replace and maintain them, MDOT spokesman Jeff Cranson said, according to Crain's Detroit Business.

The contract is valued at $123 million. MDOT will receive an additional $79 million in federal funds for the project, which, with energy consumption factored in, has an estimated cost of $145 million.

NCPPP

October 23, 2015

House Transportation Bill Would Help Agencies at All Levels to Pursue P3s.

A House bill to fund transportation projects over the next six years would create a bureau within the U.S. Department of Transportation (USDOT) to promote and support the use of innovative financing — including public-private partnerships — at all levels of government.

The House Transportation & Infrastructure Committee unanimously approved the six-year $325 billion Surface Transportation Reauthorization and Reform (STRR) Act of 2015 on Oct. 22, which would allocate $261 billion for highways, $55 billion for transit and about $9 billion for safety programs. The bill only guarantees three years of funding, however, The Hill reported.

The legislation would allow state and local governments to spend funding provided through the Surface Transportation Block Grant Program to establish P3 design, implementation and oversight offices and to pay stipends to unsuccessful bidders for these projects to encourage competition.

The bill would also create the National Surface Transportation and Innovative Finance Bureau to work with USDOT, states "and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships."

The bureau would advise state and local governments on how to access federal credit assistance programs and disseminate information such as funding case studies and best practices on P3 procurement, consideration of unsolicited bids, and tools used to determine appropriate project delivery models, such as value for money analyses.

The bureau would also be charged with reducing "uncertainty and delays with respect to environmental reviews and permitting" of transportation projects.

USDOT has already launched the Build America Transportation Investment Center to provide much of the expert assistance the bill requires the bureau to offer.

NCPPP

October 23, 2015

S&P State and Local Government Credit Conditions Forecast: Growth Rules, With Regional Variation.

The U.S. Commerce Department's stronger-than-expected third estimate of second quarter GDP growth has led Standard & Poor's Ratings Services' economics team to edge up its forecast for U.S. economic expansion in 2015 to 2.5% from 2.3%, which was our forecast in June. An improved GDP outlook reflects that a range of important indicators point to a stronger economy throughout the remainder of 2015. Somewhat softer jobs reports in August and September, however, contradict the notion that the economy is in acceleration mode. Still, through September, year-over-year hourly wage increases of 2.2% remained similar to the 2.3% as of May — which was the strongest since 2011. Housing starts softened a bit in August but remain on track to top the 1 million mark at an annualized rate of 1.13 million. Building permits, a forward looking indicator, remain more favorable, having increased 3.5% in August to a 1.17 million annual rate, enabling our economists to maintain their expectation for about 1.5 million new housing starts by 2017.

Taken together, these key factors underlying the country's economic performance should help state and local tax revenue trends gain some momentum. And even if the national economy is signaling a softer patch ahead, it will take time for that to flow through to state and local coffers. Either way, it's crucial to remember that the underlying economic factors and their consequent tax revenue implications vary considerably by region. States, as well as localities more dependent on oil extraction, for example, are much less likely to lead the way in construction and housing starts. In fact, some of the housing construction now underway in some states — such as in South Dakota — could find that demand has already begun to dry up.

Overview

- State and regional outlooks for 2016 are mostly positive with pockets of slowing or weakness.
- State budget wrangling is greater than we would expect this far into a growth cycle and is affecting some local governments.
- As has generally been the case, areas with population growth have a rosier outlook than those that are stagnant or declining.

Continue reading.

20-Oct-2015

S&P: U.S. State Debt Levels May Be More Sustainable Than the Condition of the Nation's Infrastructure.

U.S. state tax-supported debt outstanding, in the aggregate, continues to increase but at a subdued pace. According to Standard & Poor's Ratings Services' calculations, total tax-backed state debt outstanding grew by just 1.9% in fiscal 2014. State debt balances have increased at anemic rates ever since the onset of the Great Recession (not including 2010 when there was a surge of issuance under the Build America Bond program). Given the widely acknowledged inadequacy of U.S. infrastructure, it's tempting to summarily conclude that the slow pace of new debt issuance, which has persisted through an extended period of low interest rates, represents a missed opportunity. In our view, however, this interpretation of recent state debt trends is simplistic.

U.S. states navigated the Great Recession adroitly, for the most part, with their credit profiles intact. Policymakers have managed this difficult environment by maintaining a sustained focus on their states' fiscal margins, which — already narrow — are likely to remain tight in the years to come. The Urban Institute reported that — as of February 2015, when states were crafting their budgets — aggregate revenue growth was expected to remain slow. The states anticipated revenue growth of just 1.7% and 1.2% for fiscal years 2015 and 2016, respectively, which would be well below the long-term growth rate of 2.5% (in real terms). (1) Likely in response to this slow revenue growth, lawmakers have recognized that the cost of new debt goes well beyond additional debt servicing costs and includes taking on new operations and maintenance (O&M) expenses.

Overview

- Current state debt levels are sustainable, in Standard & Poor's view.
- State infrastructure needs top what states can currently finance in traditional ways if they are to maintain credit quality.
- States' lower-than-normal funding of infrastructure projects may be because of the increased ongoing O&M costs such projects would require.

Continue reading.

19-Oct-2015

Broward County Airport Deal is Largest U.S. Muni Sale Next Week.

Oct 22 – Broward County, Florida, plans to issue $488.9 million of airport system revenue bonds, the largest sales to hit the U.S. municipal market next week, according to Thomson Reuters data.

Altogether, U.S. municipal bond issuers are expected to offer about $4.1 billion of municipal bonds and notes, down from about $8 billion this week, the data showed.

The sale in Broward County, which operates the Fort Lauderdale-Hollywood International Airport and the North Perry Airport, comes as the municipal airport sector has recently seen signs of improvement. The 20 busiest airports have all experienced growth in passenger boarding revenue and above-average growth at international gateways. Two of the nation's largest airports, Chicago's O'Hare and Atlanta's Hartsfield Jackson, were upgraded.

Airport bond volume is on pace to be flat in 2015 and 20 percent below average since 2008, according to Wells Fargo Securities. Primary market issuance was $12.1 billion in 2012 and $18.6 billion 2010.

"We see airports as resistant to the challenges faced by state and local governments with respect to post-employment benefits," Wells Fargo reported last week. "Demand is not all that surprising as investors in municipal airports have been rewarded over the past three years with relatively attractive returns as have toll road investors."

Airports have benefited from lower energy prices and a gradually improving economy. They have also weathered the most recent cycle of airline consolidation, which added stability to the sector, according to Janney Fixed Income Strategy.

The mergers may impact airports disproportionately, however. American Airlines, for example, now has nine hubs, which "may be more than needed," Janney noted in a report earlier this month. That may leave airports, such as Philadelphia, particularly vulnerable to traffic decline if American Airlines were to cut back.

The Broward County airport sale is rated A+ by Standard & Poor's Ratings and A1 by Moody's Investors. The lead manager is Raymond James.

REUTERS

(Reporting by Robin Respaut; Editing by Frances Kerry)

[Edward Jones Quits Negotiated Muni Bond Business.]

CHICAGO – St. Louis-based retail stalwart Edward Jones will drop its negotiated public finance underwriting business at the end of the year, a decision the firm says is not linked to recent regulatory action on its primary pricing of bonds.

The financial services firm will continue to place competitive bids, said Jim Krekeler, general partner and head of a public finance banking team that includes seven investment bankers and seven analysts and support staff.

The move, announced internally about two weeks ago, comes two months after Edward Jones was the target of the Securities and Exchange Commission's first enforcement case on primary market municipal bond pricing. The SEC ordered the firm to pay more than $20 million for overcharging retail customers.

"This is a long-term strategic decision for the firm and it's not based on a regulatory settlement," Krekeler said. "Over time our investment banking operations have provided a much smaller percentage of firm's bond supply. Our trading systems have advanced and the firm is able to generate supply in other places," through competitive bids and the secondary market.

"We decided to focus our capital and resources elsewhere," he added in an interview Friday as word began to spread of the firm's decision, which was not yet publicly announced.

The firm's leaders caught members of its public finance group off-guard when they delivered the news about two weeks ago, according to sources. "It's a small part of the company's overall business" but it one that was profitable and supported its overall operations by originating paper for sale to retail clients, one public finance source said.

Krekeler said the public finance originations have produced an annual profit for the firm, but its revenues of $5 million to $10 million annually make up a small piece of the firm's overall $6.3 billion of net revenues.

The firm will honor its participation on deals for assignments already established that close before the end of the year and won't seek new business. "We will honor our commitments," Krekeler said.

The firm will also drop its smaller corporate investment banking originations business.

The public finance team being cut includes professionals at the managing director, director and analyst levels in its St. Louis headquarters and offices in Illinois, California, Michigan, and Texas. Krekeler, who has been with the firm for 28 years and has led the group for the last five, said his focus will be on helping those "talented" professionals land elsewhere.

The firm's banking group expanded about six years ago. At the time, the firm said the expansion was driven by demand for more product by the swelling number of local retail brokers, who are known as financial advisors.

The firm ranked 58th nationally as a senior manager on 26 issues valued at $279 million and was 61st to date this year working on 28 issues valued at $304 million, according to data from Thomson

Reuters. The firm ranked 39th in the Midwest last year on 17 deals valued at $175 million and ranks 35th so far this year on 22 deals valued at $241 million.

The firm was founded in 1922 by Edward D. Jones Sr. Its focus has long been on individual investors, growing to more than 11,500 offices throughout the country and Canada with 14,000 advisors.

“There’s not a lot of other firms out there like Edward Jones,” said one banker who has worked at the firm. “That’s the firm’s pitch. It’s a true mom and pop retail shop.”

In its enforcement action, the commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk took bonds into the firm’s own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began and did not monitor the reasonableness of its markups in certain secondary market trades.

It marked the commission’s first case against an underwriter for pricing-related fraud in the primary market for municipal securities. The overcharges in this case occurred through the offer and sale of 156 different bonds in 75 negotiated offerings in which Edward Jones served as a co-manager between February 2009 and December 2012.

The SEC offered a stinging rebuke at the time.

“Edward Jones undermined the integrity of the bond underwriting process by overcharging retail customers by at least $4.6 million and by misleading municipal issuers,” Andrew Ceresney, director of the SEC’s enforcement division, said in an Aug. 13 release.

The enforcement prompted an industry debate over whether Edward Jones’ actions were an aberration or a systemic problem and whether changes are needed in industry practices on the pricing of new bonds.

THE BOND BUYER

BY YVETTE SHIELDS

OCT 23, 2015 4:28pm ET

While Arizona Cardinals Soar, Legal Battle Puts Stadium Investors in Red Zone.

Dispute over rental-car taxes that help cover stadium’s payments highlights risks for bond investors

The Arizona Cardinals are one of the National Football League’s hottest teams, leading their division with a 4-2 record.

Their stadium, however, is on a losing streak with investors. Its operator, along with state tax collectors, have lost two court rulings since last year over the legality of rental-car taxes used to fund the $455 million University of Phoenix Stadium in Glendale. The battle threatens the authority’s capacity to collect revenue that accounts for nearly a third of the stadium’s bond payments.

A lawyer for the operator, the Arizona Sports and Tourism Authority, said he expects the state agency to prevail on appeal.

The legal fight highlights the risk borne by investors who buy stadium bonds.

U.S. state and local governments from Florida to Arizona have financed stadium construction and improvements by linking bonds to tourism taxes, such as on hotels and rental cars. But the practice can backfire when collections decline, leaving taxpayers on the hook and investors facing downgrades and falling bond prices.

"These fluctuate and people cut back on things like tourism expenses when the economy's down," versus, say, a bond backed by water or utility fees, said Howard Cure, director of municipal research at Evercore Wealth Management.

Now, litigation is proving another risk. Rental-car agencies contend that the fees Arizona levies are a vehicle tax, which the state's constitution limits to supporting roads. A state court last year agreed, and in August, the state was ordered to refund what could amount to tens of millions of dollars while it appeals the case.

Those taxes make up about one-third of the payments on the authority's almost $270 million of municipal bonds. Without them, the Arizona stadium debt may be downgraded, ratings firms have warned. The bonds enjoy an investment-grade rating now. But Fitch Ratings said in an August report that the absence of legislative action to replace the money "could result in ratings dropping to below investment-grade levels."

Some Arizona Sports and Tourism Authority bonds maturing in 2036 traded recently at yields around 4%, about half a percentage point above comparably rated debt, according to Thomson Reuters Municipal Market Data. Yields rise as prices fall.

Tourism taxes are one of the most-common sources of public money for stadiums nationwide. U.S. cities and states owe around $3.5 billion in bonds backed in some part by hotel and rental-car payments, according to a Wall Street Journal analysis of Bloomberg and Electronic Municipal Market Access data. The money has helped build stadiums for teams including the Houston Texans, San Antonio Spurs and the under-construction ballpark for the Atlanta Braves.

Fitch downgraded bonds that paid for Orlando's basketball arena to junk in 2010, citing fluctuations in revenue from tourism taxes and warning officials would need to tap reserves to pay investors. The rating firm upgraded the bonds this year.

The use of tourism taxes is the result of public officials' attempting to make stadium borrowing more palatable to voters by passing on the cost to outsiders, several analysts said.

"For local officials, it makes it more appealing to say this particular tax is going to fall on nonresidents," said David Swindell, director of the Center for Urban Innovation at Arizona State University. "We saw that in authorities across the country during the recession—they took a big hit because they were so dependent on tourism dollars." That can leave taxpayers facing higher bills to make up the difference.

Now, lawyers for rental-car companies suing the stadium authority are asking a judge to escrow the taxes while the state appeals, a process that could mean years of uncertainty for bondholders. Shawn Aiken, who represents the plaintiffs, said that in Arizona, those taxes are reserved for highways and he is confident the state can find other sources of money to pay investors.

"The building of a football stadium is clearly a non-highway purpose," he said.

Timothy Berg, a lawyer who represents the stadium authority, said it will oppose the motion to withhold the taxes while it appeals.

While bonds sold for stadiums tend to be lower-rated and more volatile than other municipal debt, even the worst-off facilities typically avoid long-term distress, said John Miller, co-head of fixed income at Nuveen Asset Management LLC. His firm holds some of the Arizona bonds, as well as those that paid for Chicago's Soldier Field, ballparks for the New York Yankees and Mets, and Houston's venues.

"They tend to be lower rated, because of the reliance on these entertainment and travel sources of revenue," Mr. Miller said. "They're more economically sensitive, but they've come back stronger since 2009," as tourism rebounded after the recession.

The problems with the rental-car taxes are just the latest wrinkle in the region's misadventures hosting big league sports, Mr. Swindell said.

The city of Glendale suffered downgrades after it built a hockey arena for the Arizona Coyotes and spent tens of millions covering the team's losses, amid broader financial difficulties for the city.

The state stadium authority has already struggled to make ends meet. A legislative audit last month found tourism revenue was insufficient to fulfill its financial obligations, which include promoting tourism and funding youth sports. Tourism money has also fluctuated widely, exacerbating shortfalls, while debt payments are scheduled to increase in coming years.

THE WALL STREET JOURNAL

By AARON KURILOFF

Oct. 24, 2015 5:33 a.m. ET

TAX APPEAL - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - October 20, 2015 - N.E.3d - 2015 WL 6288275 - 2015 -Ohio- 4304

Court-appointed receiver for former owner of property brought real property valuation complaint seeking reduction of valuation of real property. Following remand from the Court of Common Pleas, the county board of revision (BOR) dismissed complaint. School board and former owner appealed. The Board of Tax Appeals (BTA) dismissed appeal for lack of jurisdiction. School board and former owner appealed.

The Supreme Court of Ohio held that:

- Former owner's failure to serve subsequent owners with notice of appeal did not warrant dismissal of appeal;
- Initial appeal to court of common pleas did not deprive BTA of jurisdiction to consider subsequent appeal; and
- BOR was precluded by law of the case doctrine from dismissing complaint for lack of standing.

Former property owner's failure to serve subsequent owners with notice of appeal from dismissal of former owner's real property valuation complaint did not require dismissal of appeal. Although serving subsequent owners was required by statute, counsel for former owner had also appeared on behalf of subsequent owners, and counsel had pursued previous appeal on behalf of both former owner and subsequent owners.

Property owner's initial appeal to court of common pleas did not deprive Board of Tax Appeals (BTA) of jurisdiction, pursuant to subsequent-appeal rule, to consider property owner's and school board's subsequent appeal after court's remand to county board of revision (BOR). Although, in the context of appeals from decisions of county boards of revision, county courts of common pleas and the BTA had concurrent jurisdiction, school board was only statutorily permitted to appeal to BTA.

County board of revision (BOR) was precluded by the law of the case doctrine on remand from dismissing former owner's real property valuation complaint for lack of standing, where common pleas court had already determined that former owner had standing to file complaint.

Municipal Bond Sales Poised to Decelerate as Redemptions Rise.

Municipal bond sales in the U.S. are set to decrease in the next month while the amount of redemptions and maturing debt rises.

States and localities plan to issue $7.8 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $11.2 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Broward County, Florida, Airport System plans to sell $489 million of bonds, Tennessee has scheduled $416 million, Florida State Board of Education will offer $230 million and California State Public Works Board will bring $223 million to market.

Municipalities have announced $13.8 billion of redemptions and an additional $10.6 billion of debt matures in the next 30 days, compared with the $21.3 billion total that was scheduled a week ago.

Issuers from New York have the most debt coming due with $2.63 billion, followed by California at $1.15 billion and Michigan with $695 million. New York City Transitional Finance Authority has the biggest amount of securities maturing, with $767 million.

Fund Flows

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

Investors added $617 million to mutual funds that target municipal securities in the week ended Oct. 14, compared with an increase of $558 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $211.3 million last week, boosting the value of the ETFs 1.19 percent to $18 billion.

State and local debt maturing in 10 years now yields 100.4 percent of Treasuries, compared with

102.3 percent in the previous session and the 200-day moving average of 102.6 percent, Bloomberg data show.

Bonds of Tennessee and Michigan had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Tennessee's securities narrowed 7 basis points to 2.05 percent while Michigan's declined 2 basis points to 2.32 percent. Puerto Rico and Illinois handed investors the worst results. The yield gap on Puerto Rico bonds widened 64 to 10.67 percent and Illinois's rose 28 basis points to 3.96 percent.

Bloomberg News

by Kenneth Kohn

October 26, 2015 — 3:59 AM PDT

[Company That Sold a Record Muni Junk-Bond Is Back With an Even Bigger Deal.]

Two years after selling what was then the biggest junk bond in the history of the U.S. municipal-securities market, a Dutch chemical company is back again with an even larger deal to build a methanol plant near Texas's Gulf Coast.

OCI N.V.'s Natgasoline LLC plans to issue $1.4 billion of debt through Texas's Mission Economic Development Corp. as soon as next week to finish work on the facility in Beaumont, according to data compiled by Bloomberg. The company, run by Egyptian billionaire Nassef Sawiris, is no stranger to the state and local bond market: its Iowa Fertilizer Co. backed a $1.2 billion junk-bond sale in April 2013.

The deal may be the largest offering of speculative-grade municipal bonds since March 2014, when Puerto Rico sold $3.5 billion, and comes amid a rally in the securities as investors seek higher returns with yields holding near a half-century low. The plant would almost double U.S. production of methanol, a business dominated by overseas companies and dependent on a steady supply of low-cost natural gas.

"Methanol might be a little bit tougher of a market than fertilizer in the Midwest," said John Miller, who runs Nuveen Asset Management's $10.9 billion municipal high-yield fund, the largest of its kind. He said he may buy some of the bonds, anticipating the yields could exceed 10 percent on taxable securities. "The yield differential is going to be gigantic."

Debt issued for companies through public agencies is among the riskiest in the municipal market because governments aren't on the hook if the projects fail. As a result, they offer higher payouts than state or city debt.

Iowa Fertilizer bonds were sold for yields of as much as 5.3 percent, about 3 percentage points more than top-rated debt, Bloomberg data show. With the new deal, the chemical company may need to pay more than it did in Iowa because the methanol industry would be affected by a worldwide economic slowdown, said Miller, whose company owns $219 million of the fertilizer bonds.

Such returns may draw high-yield municipal money managers who have had few new deals to chose from as their funds pulled in $758 million over the past three weeks, the largest inflow since

January, Lipper US Fund Flows data show. This year, just $1.7 billion of municipal debt came to market with a speculative grade from one of the three largest credit raters, a sliver of the $320 billion in sales, Bloomberg data show.

The imbalance has fueled a rally in the debt, with high-yield munis returning 4 percent since the end of June, according to Bank of America Merrill Lynch indexes. Those returns stand in contrast to the rout in corporate junk bonds, which have lost 2.2 percent during that time.

Hard Sell

The project may be a hard sell with some municipal-bond investors who have little expertise with the chemical business. Jason Diefenthaler, who manages a high-yield fund at Wasmer Schroeder & Co. in Naples, Florida, said he's steering clear.

"This is the kind of deal we usually strike off our list — the reality is we're more traditional municipal-bond investors and these types of deals are a bit unusual," Diefenthaler said. "We don't feel like we bring expertise in the methanol industry."

Natgasoline's 518-page offering document details 25 separate risks to bondholders, including its limited experience producing methanol, which is used in paints, plastics, furniture and car parts. The company is also counting on natural gas prices remaining below the 25-year average of $4 per million British thermal units through 2024.

The offering statement says Standard & Poor's and Fitch Ratings will rate $1.2 billion of the taxable debt, though the grades have yet to be assigned. They'll probably be ranked BB-, three steps below investment grade and the same as the Iowa Fertilizer bonds, said David Ambler, who analyzes high-yield munis at AllianceBernstein Holding LP in New York.

Hans Zayed and Omar Darwazah, spokesmen for OCI, didn't respond to e-mails or voice messages seeking comment.

Challenging Importers

The company is seeking to capture a share of the 4.8 million tons of methanol that the U.S. imports annually. The Beaumont facility, expected to open in 2017, will have the capacity to produce 1.75 million tons per year, according to offering documents. That compares with 2 million tons generated in 2014 across the U.S.

"We're seeing a sizeable increase in demand for methanol," said Gregory Dolan, chief executive officer of the Methanol Institute in Alexandria, Virginia.

Beaumont, a city of 118,000 about 85 miles (137 kilometers) east of Houston, has one of the nation's busiest ports. The plant will be "in the heart of the United States natural gas pipeline network," according to offering documents.

OCI already has experience in the area. The company in 2011 acquired a methanol-production facility from Eastman Chemical Co. that's two miles away from the new site, according to offering documents. It began producing the chemical in 2012.

OCI uses a case study of its Iowa Fertilizer plant as evidence that the bonds are a worthy investment. Of 13 nitrogen fertilizer projects that were announced across the country after 2010, only the Iowa facility received financing and is currently under construction, according to the report from Integer Research.

The bonds have also paid off: a $429 million portion of the debt maturing in 2025 last traded for an average of $1.08 on the dollar, a gain of 8.3 percent since they were first sold.

Bloomberg News

by Brian Chappatta

October 25, 2015 — 9:01 PM PDT Updated on October 26, 2015 — 5:49 AM PDT

MSRB Best-Ex Guidance Could Come in Nov.; Board Presses SEC on Bank Loans.

WASHINGTON — The Municipal Securities Rulemaking Board may be able to publish guidance on its best execution rule as soon as next month, MSRB officials said Monday.

But possible delays could occur if the Securities and Exchange Commission decides the guidance needs to be published as rule changes or if the MSRB needs more time to coordinate with the Financial Industry Regulatory Authority, which is writing best-ex guidance for corporate debt, said Robert Fippinger, the board's chief legal officer.

Fippinger talked about the best-ex guidance in a conference call with reporters after the MSRB's Oct. 21-22 meeting in Alexandria, Va., the first meeting with the board's new chair, Nat Singer, and seven new members.

The MSRB recently informed dealers that the best-ex rule will not take effect until four months after the guidance is released. It is expected to be in a question and answer format.

MSRB executive director Lynnette Kelly told reporters that the MSRB is dealing with three high profile initiatives that have significant implications for, not just the muni market, but the securities market in general. These are: its best-ex rule; a proposed rule that would require dealers to disclose, on retail customer confirmations, markups and markdowns for principal transactions and; standards of conduct rules for municipal advisors.

The best-ex rule requires dealers to use "reasonable diligence" to determine the best market for a security and to then buy or sell the security in that market so the price for the customer "is as favorable as possible under prevailing market conditions."

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. But dealers have been clamoring for clarifications on a number of issues.

Under the proposed markup rule, a dealer buying or selling munis for its own account would be required to disclose the markup or markdown on a customer's confirmation when: it executes a transaction on the same side of the market as the customer; the transaction is greater than or equal to the size of the customer's; and the dealer transaction occurs within a two-hour window on either side of the customer transaction.

Kelly said board members met with SEC Office of Municipal Securities director Jessica Kane and deputy director Rebecca Olsen, as well as FINRA chairman and chief executive officer Rick Ketchum and director of fixed-income regulation Cynthia Friedlander.

Kelly told reporters that board members "encouraged the SEC to provide guidance on bank loans." The board wants the commission to: define whether, or in what circumstances, bank loans would be considered securities subject to SEC and MSRB rules; encourage or mandate the disclosure of bank loans and other types of indebtedness of muni issuers, and; clarify whether, or when, non-dealer municipal advisors need to register as broker dealers when placing bank loans.

Kelly said the MSRB has been discussing bank loans with the SEC for about three years. It asked the SEC to require disclosure of issuers' bank loans in a letter it sent to the commission on Rule 15c2-12 on disclosure in January. Asked if the SEC officials are willing to provide the guidance, Kelly said reporters should ask them.

Kelly also told reporters that the board plans later this year to ask for public comments on proposed changes to its Rule G-12 on "closeout" procedures, which have not been updated since 1983. These are dealer procedures for completing a transaction.

The board also expects to seek public comments later this year on the proposed rule changes that would be needed to move the muni market to a T+2 settlement cycle, in which transactions would settle in two rather than the current three days after execution.

The board also discussed how to design a continuing education program for municipal advisors. It plans to publish a request for comment on a proposed program next summer after advisors complete the Series 50 municipal advisor representative qualification exam. The board will administer a pilot qualification exam early next year and a final exam after that.

THE BOND BUYER

BY LYNN HUME

OCT 26, 2015 11:44am ET

Treasury, IRS Issue Rules that Will Help Facilitate P3s.

WASHINGTON — The Treasury Department and Internal Revenue Service have released final allocation and accounting rules that bond lawyers say will help in administering public-private partnerships for transportation and joint ventures involving hospitals.

"These final regulations are a great step forward for encouraging public and private funding for projects and therefore for encouraging public-private partnerships," said Vicky Tsilas, a partner at Ballard Spahr in Washington.

The rules, which lawyers said are much better than those proposed in 2006, were released Monday and are scheduled to be published in the Federal Register on Tuesday. Some provisions of the proposed rules were withdrawn rather than finalized.

The rules will generally apply to bonds sold on or after a date that is 90 days after publication in the Federal Register, and the provisions regarding remedial actions will apply to deliberate actions that occur on or after that date. The rules provide issuers with guidance for applying the private-activity bond restrictions. Under federal tax law, for governmental bonds, no more than 10% of the proceeds can be used by private parties and no more than 10% of the debt service can be paid for or secured by private parties. The thresholds are lowered to 5% for 501(c)(3) bonds. If these limits are exceeded, bonds become private-activity bonds and are not tax-exempt unless they fall within specific categories.

Two key parts of the rules are the flexible proportional allocation provisions for mixed-use projects and the look-through treatment of public-private partnerships, said John Cross, Treasury associate tax legislative counsel.

Issuers may want to develop "mixed-use" projects that have some governmental use and some private use, finance the public portion with tax-exempt bonds and finance the private portion with equity. Under the rules, qualified equity is allocated first to the private-business use of the mixed use project and then to governmental use, while bond proceeds are allocated first to governmental use and then to private business use.

Carol Lew, a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif, said that the concept of allocating equity first to private business use is helpful and "issuer sensitive."

"These allocation provisions look good," said Matthias Edrich, an attorney at Kutak Rock in Denver, though there's a lot for bond lawyers to still consider.

The allocation rules for mixed-use projects are simpler in the new guidance than they were in the proposed rules, lawyers said. Under the proposed rules, there were two different allocation methods that could be used for mixed-use projects, and issuers had to elect to use one of the methods. But under the final rules, issuers do not have to make elections and bond proceeds and equity are always allocated using the "undivided portion" method, which is based on the percentage of use by an entity rather than the percentage of physical space used.

The rules expand the definition of a project that can be treated as partially financed with tax-exempt bond proceeds and partially funded by other means, a feature that bond lawyers praised.

"Under the new regulations, an issuer can choose to treat any property financed with the same bond issue as the same 'project' regardless of any functional relationship. That flexibility could provide for substantial post-issuance compliance relief," said Michael Bailey, a partner at Foley & Lardner in Chicago.

However, Bailey expressed concerns that the time limits placed on when equity contributions can be made might be overly restrictive for projects with long construction periods.

The rules also address allocating bond proceeds and other funds in cases where property is used by public-private partnerships.

In the proposed rules, partnerships were automatically treated as private entities unless all of its members were public. But the final rules take a different approach and treat partnerships as aggregates of their partners. Under the rules, the amount of private business use is the private partner's share of the amount of the use of the property by the partnership. The share is defined as the private partner's greatest percentage share of any of the partnership items attributable to the time during the measurement period that the partnership uses the property.

Tsilas said that “permitting aggregate treatment for all partnerships has become particularly important in recent years because of the need to implement policies of the Affordable Care Act that are intended to promote cooperation between the public and private sectors.”

The look-through treatment of partnerships is in line with the recommendations made by the National Association of Bond Lawyers and the tax-exempt financing committee of the American Bar Association’s taxation section.

The rules also provide guidance about when and how issuers can take “anticipatory remedial actions” and redeem tax-exempt bonds before they take actions that would cause there to be excessive private-business use. The proposed rules had set a lot of conditions that issuers had to meet to take anticipatory remedial action. The final rules are simpler and allow issuers to redeem or defease bonds if they declare their intent in advance. The declaration of intent has to identify the financed property or loan that the anticipatory remedial action would concern and describe the action that potentially may result in the private business tests being met.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, praised the availability of anticipatory remedial actions under the rules but said, “the need to describe possible future private business use for anticipatory remedial actions is unnecessarily detailed.”

Treasury and the IRS are also working on a separate project relating to remedial action rules, Cross said. One of the items that project will address is how leases fit with the remedial action rules.

THE BOND BUYER

BY NAOMI JAGODA

OCT 26, 2015 3:12pm ET

MSRB Holds Quarterly Board Meeting.

Alexandria, VA – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 21-22, 2015 where it discussed multiple initiatives aimed at promoting a fair and efficient municipal securities market, and held annual meetings with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

The MSRB is currently addressing several high-profile regulatory issues with significant implications for the municipal market— and securities markets generally. Among these are the manner in which dealers execute municipal trades for their retail customers; increased transparency for retail investors into their transaction costs; and standards of conduct for municipal advisors, which include a fiduciary duty.

At its meeting last week, the Board met with the SEC Office of Municipal Securities’ Director Jessica Kane and Deputy Director Rebecca Olsen, and with FINRA Chairman and Chief Executive Officer Richard Ketchum and Director of Fixed Income Regulation Cynthia Friedlander regarding the current status of various rules which are awaiting final approval, new rulemaking initiatives, and coordination on cross-market initiatives.

“We are tackling major market issues that relate to certain activities in other securities markets,” said MSRB Chair Nat Singer. “Regulatory coordination is the best approach for ensuring regulatory efficiency but it also can mean that the rulemaking process can be extended."

The MSRB is finalizing practical guidance for municipal securities dealers on the application of a new "best-execution" standard that requires them to use reasonable diligence when handling orders and executing trades for retail investors to obtain a price that is as favorable as possible under prevailing market conditions. The MSRB is coordinating with FINRA, which is also developing guidance for best-execution rule for the corporate bond market. In addition, both regulators currently have proposals out for public comment that would require confirmation disclosure of additional information relating to transaction costs for retail customers. The proposals share a comment deadline of December 11, 2015.

The Board also discussed the growing use of bank loans by state and local governments. The MSRB supports disclosure of all of a municipal security issuer's debt so that investors have a full picture of an issuer's indebtedness. The MSRB encouraged the SEC to provide guidance to the municipal market regarding bank loans with respect to when these "loans" are, in fact, securities subject to SEC and MSRB rules. If a "loan" is a security, the MSRB also is concerned that a non-dealer municipal advisor may be subject to registration as a broker-dealer when it engages in assisting an issuer in placing a direct "loan" with a bank.

"Multiple regulators are focused on this pressing issue right now and the MSRB looks forward to continuing to educate the market about its concerns," Chair Singer said.

The Board approved issuing two requests for comment, one on proposed changes to MSRB Rule G-12, on dealer closeout procedures, which have not been updated since 1983. The initiative is part of the MSRB's regulatory efficiency initiative. The Board also approved publishing a request for comment on MSRB rule changes necessary to support the industry-wide initiative to move to a T+2 settlement cycle. Both of these potential changes are designed to promote efficiency and mitigate risk.

Another major MSRB initiative is the development of professional qualifications and continuing education requirements for municipal advisors. At its meeting, the Board discussed how to design a continuing education program for municipal advisors to ensure they remain informed on an ongoing basis of issues that affect their job responsibilities and regulatory developments. The Board agreed to continue to refine its approach to continuing education requirements for municipal advisors as soon as advisors complete the MSRB Municipal Advisor Representative Qualification Exam (Series 50) next year. The MSRB plans to publish a request for comment next summer.

Date: October 26, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

Treasury Issues Final Private Activity Bond Allocation and Accounting Regs.

Treasury has issued final allocation and accounting regulations under Section 141 of the Code. The regulations are expected to be published in the Federal Register tomorrow. The Final Regulations generally apply to bonds sold on or after 90 days after publication in the Federal Register. The rules regarding remedial actions, however, apply to deliberate actions that occur on or after 90 days after publication.

The Final Regulations allow permissive application of (1) the partnership provisions, the allocation and accounting rules, and certain corresponding rules for qualified 501(c)(3) bonds in whole, but not in part, to bonds to which the 1997 Final Regulations apply; and (2) the multipurpose rule to bonds to which the refunding rules apply.

The text of the final regulations is available here.

IRS Announces Inflation Adjustments for 2016.

On October 21, 2015, the Internal Revenue Service (IRS) released Rev. Proc. 2015-53 setting out amounts for items in the tax code that are adjusted for inflation. The state PAB volume caps for 2016 will be the greater of $100 per capita or $302.88 million, a slightly higher minimum amount than 2015. The Revenue Procedure includes the 2016 figures for other bond-related items as well, such as safe harbor rules for brokers' commissions for GICs and yield restricted defeasance escrows.

Click here to read the Revenue Procedure (see pages 15-16).

MSRB Reminds Underwriters of October 28, 2015 Deadline for Submissions of 529 College Savings Plan Data.

The Municipal Securities Rulemaking Board (MSRB) reminds underwriters that the first semiannual submissions of data on municipal fund securities, including 529 college savings plans, are due to the MSRB no later than October 28, 2015 (see MSRB Notice 2015-09).

MSRB Rule G-45 requires a dealer, when acting in the capacity of an underwriter for a 529 college savings plan, to provide the MSRB with information. The required information includes plan descriptive information, assets, contributions, withdrawals, fees and cost structure.

MSRB Extends Deadline for Markup Rule Comments.

WASHINGTON – The Municipal Securities Rulemaking Board is extending the date for comments on its recently proposed markup disclosure rule while an industry group wants the board to delay the implementation deadline for its best execution rule.

The deadline for comments on the markup rule will be pushed back to Dec. 11 from Nov. 20 to align with the Financial Industry Regulatory Authority date for comments on its similar rule for corporate bonds.

"The extended comment deadline is intended to give commenters sufficient time to evaluate both proposals and provide more meaningful comment to both the MSRB and FINRA," the MSRB said in its regulatory notice.

Both the MSRB and FINRA had previously proposed rules that would require dealers to disclose a "reference price" of the same security traded on the same day. The MSRB proposed the reference price rule in changes to its Rule G-15 on confirmation. It is now pursuing the markup disclosure rule instead, although it has included revisions to the reference price rule as another option for commenters. FINRA has only revised its reference price rule in response to comments.

The MSRB's markup rule would require a dealer buying or selling bonds for its own account to disclose the markup or markdown on a customer's confirmation when: it executes a transaction on the same side of the market as the customer; the transaction is greater than or equal to the size of the customer's and; the dealer transaction occurs within a two-hour window on either side of the customer transaction. The MSRB would limit the disclosures to secondary market trades.

The Securities Industry and Financial Markets Association and a number of other industry groups have said they plan to submit comments on the proposal.

Meanwhile, SIFMA said recently it might be unrealistic to allow only four months after guidance is released for implementation of changes to the MSRB's Rule G-18.

Leslie Norwood, associate general counsel and co-head of municipal securities for SIFMA, said in a comment letter filed with the Securities and Exchange Commission that if the guidance calls for broker-dealers to change any automated processes or systems, there would have to be a lead time of six months, and preferably one year.

The extended period of time would allow the dealers to build the system changes, test them, train appropriate staff, and develop appropriate compliance procedures, according to Norwood.

It also would accommodate many firms that have an operational system "lockdown" period that typically extends from mid-December to mid-January, during which time no operational changes can be made.

Budgeting for the changes and having additional time to change a third-party vendor system that may be handling the collection of sophisticated muni market professional certificates would also benefit from a timeline longer than four months, Norwood said.

The best ex rule requires dealers to use "reasonable diligence" to determine the best market for a security and to then buy or sell the security in that market so the price for the customer "is as favorable as possible under prevailing market conditions." The SEC called for the adoption of such a rule in in its 2012 Report on the Municipal Securities Market.

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. The effective date for the rule was to be Dec. 8, 2015, but the need to coordinate with the SEC and FINRA caused the MSRB's guidance on the rule to take longer than expected.

THE BOND BUYER

BY JACK CASEY

OCT 20, 2015 2:15pm ET

[Montgomery County, Md., Must Meet MS4 Permit Obligations Despite Rulings: Holland & Knight.]

HIGHLIGHTS:

- Maryland courts have issued two important decisions regarding assessing and collecting stormwater management fees in Montgomery County.
- Court rulings have held that Montgomery County must do a better job explaining how it will achieve its water restoration goals and how it charges its Water Quality Protection Charge (WQPC) to ultimately fund such work.
- Given the rising costs of compliance, Montgomery County and other counties across Maryland may best be served by greater private sector participation in the delivery and financing of stormwater projects.

Maryland courts have issued two important decisions pertaining to the ability of Montgomery County, Md., to assess and collect stormwater management fees from a private landowner and the validity of the Municipal Separate Storm Sewer System (MS4) Permit issued by the Maryland Department of the Environment (MDE) to Montgomery County.

MS4 permits are required under federal and state law to address stormwater runoff impairing water quality and to ensure that the municipalities manage, implement and enforce stormwater management programs to comply with Maryland's receiving water quality standards. In *Maryland Department of the Environment, et al. v. Anacostia Riverkeeper, et al.*, the Maryland Court of Special Appeals held that the MS4 permit requires the county to "implement or install best management practices on 20 percent of the impervious surfaces within the county in an effort to restore the pollution reductions functions performed by undeveloped land" and to submit "a long term schedule for completion of detailed assessments of each watershed in the County." In order to fund these projects, Montgomery County assesses a Water Quality Protection Charge (WQPC) against all property (including businesses, HOAs and non-profit organizations) based on the potential for a property to contribute to stormwater runoff.1

In one case, the court held that the MS4 permit was faulty because it was not specific enough concerning the manner in which the county measures compliance with water quality goals. In the other, the court held that the county's collection of a fee from a developer was inconsistent with state law. While these cases may be seen as a setback to Montgomery County, they do not alleviate the need of the county (and like counties in Maryland) to continue retrofitting impervious acres and finding a way to pay for it. Assuming the decisions stand, both the county and state can address the courts' concerns with greater explanation of the rationale behind their decisions. Meanwhile, jurisdictions and counties across the region have begun looking at unique, alternative delivery mechanisms, such as public-private partnerships as a means to adhere to MS4 requirements while being more cost-effective. Given that overall requirements to clean up the Chesapeake Bay remain, creative solutions such as public-private partnerships may look increasingly attractive. These court rulings should not affect such creative solutions. In fact, they may make them more attractive.

Stormwater Fees

In *Paul N. Chod v. Board of Appeals for Montgomery County*, the Montgomery County Circuit Court heard a challenge to Montgomery County's stormwater remediation fee (Section 19-35 of the County Code), also known as the WQPC. The challenge was brought by developer Paul Chod in response to an $11,000 WQPC bill assessed against his Shady Grove Development Park in Gaithersburg. Chod's property had several stormwater management ponds that collect and treat all of the stormwater that drains from the park and surrounding private and public properties. In 1991, Chod entered into a Declaration of Stormwater Management Facility with the county that obligated Chod to provide landscaping and trash removal maintenance and the county to provide structural maintenance of the ponds, at the county's discretion. In 2013, the county assessed a WQPC on the petitioner's property for $14,932.17, and the petitioner applied for a credit of the charge. The county eventually proffered a partial credit, which prompted Chod to file suit.

At issue is §4-202.1 of the State Environment Article, the recently amended law2 requiring all 10 local jurisdictions subject to a MS4 permit to adopt a stormwater remediation fee. The underlying Maryland law provides the following:

(e)(3)i) If a county or municipality establishes a stormwater remediation fee under this section, a county or municipality shall set a stormwater remediation fee for property in an amount that is based on the share of stormwater management services related to the property and provided by the county or municipality.

(ii) A county or municipality may set a stormwater remediation fee under this paragraph based on:

1. A flat rate
2. An amount that is graduated, based on the amount of impervious surface on each property
3. Another method of calculation selected by the county or municipality

Typically, a larger, more developed property produces more runoff, and therefore, is assessed a higher WQPC. During trial, the county indicated that it uses the amount of impervious surface on a property to calculate the WQPC. The county further testified, however, that Chod's retention ponds control the quality and quantity of stormwater for the entire 150-acre drainage area and that the county's services are "essentially nonexistent."

The court considered the following two questions concerning the WQPC: (1) whether the WQPC is invalid for failing to adhere to §4-202.1; and (2) whether the petitioner, Chod, was entitled to a full credit for the fee.

Consistency with §4-202.1

The county took the position that §4-202 was inherently flexible, allowing a charge to be imposed as a fee unrelated to the services provided. The court rejected this argument, holding that "the WQPC is not valid simply because it uses one of the methodologies permitted in subsection (e)(3)(ii), which in this case was the amount of impervious surface on the property. The statute still requires that the WQPC be based on the county's stormwater management services that are related to the property." Thus, the court "finds that the WQPC is invalid per se because this Charge need not reasonably relate to the stormwater management services provided by the County."

WQPC as Applied to Chod

Chod also challenged the WQPC under the theory that the county's stormwater management services to the property were essentially nonexistent. The court noted that the stormwater retention ponds service an area three times the size of the Shady Grove Development Park and receive essentially no services from the county in return. It found that, "as applied, the Charge does not take into account the services provided by the property owner compared with the services provided by the county. Property owners like the Petitioner are thus being burdened with the same charge as other property owners despite bearing the cost of managing the property themselves. Such an application of the statute clearly violates the intentions behind the law, thus creating an arbitrary and onerous burden on the Petitioner."

Significance

While the court did set aside the WQPC as applied to Chod, it did not enjoin the county from continuing to assess stormwater fees. Therefore, this decision should be considered limited to the facts and circumstances of Chod. The county is free to continue assessing WQPCs consistent with the ruling (i.e., making sure that they address the services they provide related to the property – such as maintenance, repair and inspection of BMPs). While parties may see Chod as a roadmap to argue that no fee should be assessed if their system retains all stormwater on site, the county, equipped with information regarding the specific services provided related to the properties, is well positioned to argue that WQPCs are valid.

MS4 Permit

In *Maryland Department of the Environment, et al. v. Anacostia Riverkeeper, et al.*, the Maryland Court of Special Appeals held that the MS4 permit issued by the MDE to Montgomery County violated the Federal Clean Water Act (CWA) and state law.

Montgomery County obtained its MS4 permit in 2010, requiring the county to restore 20 percent of impervious surfaces and complete a 10 percent restoration requirement from its previous permit term. In December 2013, Montgomery County Circuit Court Judge Ronald B. Rubin held that the MS4 permit did not meet federal or state requirements. The lower court judge found that MDE improperly failed to spell out how the agency would measure compliance. The court further held that "the permit's requirements to restore 20 percent of impervious surface is simply too general to show how permittees will meet water quality standards."

Level of Specificity in Permit

On appeal, the Court of Special Appeals held that the permit was not specific enough to allow for adequate public comment and did not provide meaningful deadlines to measure compliance with water quality goals. Specifically, the court held that permit "fails as a substantive matter because it does not contain ascertainable metrics that defines how the County must comply, or whether at some point it has complied with what all agree are two of the Permit's most important terms: regulation of TMDLs and the twenty percent requirement." The court reasoned that the permit does not "connect specific or measurable BMPs or various management programs [and] requires no justification for why a BMP strategy was selected and how that program or strategy will reduce discharges to the maximum extent practicable." The court concluded that the permit fails to explain how "anyone can define the universe of impervious surfaces or how specific BMPs will achieve the 20 percent impervious restoration requirement under the permit." The court appeared troubled by MDE's reliance on references to the stormwater manual and other BMP guidance documents, which it found "indecipherable," and expressed frustration that there is no way of knowing which BMPs the county will select until after the work is completed.

Significance

The court sent the permit back to MDE, but held the following:

Importantly, though, we hold that the Department and the County had the law right: the Permit falls short not for failing to hold the County to State water quality standards, as the challengers urge, but because it did not afford an appropriate opportunity for public notice and comment and because it lacks crucial details that would explain the County's stormwater management obligations.

Thus, the overall impact of this ruling implicates the process and the level of detail in the permit. Upon remand, MDE must do a better job of explaining its calculations and BMP assessments. It is unclear how specific MDE can actually be given that BMPs usually are applied on a case-by-case basis. In turn, while the court found MDE's guidance documents "indecipherable," stormwater professionals have relied on them for years and appear to have little difficulty applying such documents.

Conclusion

Montgomery County experienced a one-two punch in the courts over the past several months. If the decisions stand upon appeal, the county will have to do a better job demonstrating how it will achieve its restoration goals and how it charges its WQPC to ultimately fund such work. Regardless, the obligation to continue the restoration work remains while MDE makes changes to the permit. Given the rising costs of compliance, Montgomery County may best be served by allowing for greater private sector participation in the delivery and financing of stormwater projects in conjunction with, or exclusive of, its current efforts. Counties in Maryland and elsewhere across the country can look to the green stormwater retrofit public-private partnership in Prince George's County, Md., as an example of how to involve the private sector in developing innovative solutions to help meet their MS4 requirements.

Footnotes

1 Under recent revisions to State law sought by Governor Hogan, other Maryland counties may, but are not obligated to, assess stormwater fees. They do, however, have to ensure adequate funding for MS4 restoration work.

2 While Montgomery County was exempt from amendments to Section 402.1 pursuant to the Watershed Protection and Restoration Programs Revisions, under the law, the county is obligated to file a financial assurance plan that clearly identifies actions it will take to meet its MS4 permit; projected five-year costs; projected annual and five-year revenues; sources of funds to meet the requirements and actions and expenditures undertaken the previous fiscal year. In addition, the county has to demonstrate that it has "sufficient funding in the current fiscal year budget to meet its estimated annual costs." MDE must approve the plan.

Last Updated: October 16 2015

Article by Rafe Petersen

Holland & Knight

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.

SCHOOL TAX REFERENDUM - DELAWARE

Young v. Red Clay Consolidated School District

Court of Chancery of Delaware - October 7, 2015 - A.3d - 2015 WL 5895838

After voter referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district passed in special election, owners who opposed tax increase but did not vote filed suit against district, asserting under § 1983 that district deprived owners of their right to vote without due process of law and of equal protection, and that district violated Elections Clause of state constitution by discouraging and raising impediments to voting by elderly and disabled residents. District filed motion to dismiss for failure to state a claim.

The Court of Chancery held that:

- District's interventions in special election was not constitutionally-protected government speech under First Amendment right to advocate;
- Elections Clause was not equivalent to government speech doctrine, and thus it was not appropriate to interpret Clause in lockstep with cases applying doctrine;
- Elections Clause had meaning independent from federal protections for voting rights developed under Fourteenth Amendment;
- Owners sufficiently pled that district's interventions affected result of election, as would support voiding result;
- Attorney General's decision not to bring charges against school district did not dispose of owners' civil claim;
- Owners stated a claim under § 1983 for due process and equal protection violations; and
- Owners stated a claim for violation of Elections Clause.

School district's interventions in special election, during which voters passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, was not constitutionally-protected government speech under First Amendment right to advocate. Government speech doctrine responded to Free Speech Clause claims, and did not mean that there were no restraints on government speech.

State constitutional Elections Clause was not equivalent to government speech doctrine under First Amendment, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence applying doctrine. Government speech doctrine only responded to Free Speech Clause claims and did not provide defense to claim under state law, federal parallel for Elections Clause was not the Free Speech Clause and cases applying government speech doctrine, but rather was federal regime of implied constitutional protection for voting rights that developed under Due Process and Equal Protection Clauses, and Elections Clause was both separate from and more protective of electoral rights than implied federal regime.

Elections Clause of state constitution had meaning independent from federal regime of implied constitutional protection for voting rights developed under Due Process and Equal Protections Clauses, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence developed under Fourteenth Amendment. Unlike state constitution, federal constitution did not explicitly provide individual with right to vote or explicit guarantee of free elections, history of Elections Clause indicated that it had meaning independent from Fourteenth Amendment, and differences in structure between federal and states constitutions demonstrated independent meaning of Elections Clause.

Complaint filed by residents who opposed increase in school-related property taxes but did not vote in special election in which increase was passed sufficiently pled that school district's interventions affected result of election in resident's action seeking to void result, based on district's alleged actions in discouraging and raising impediments to voting by elderly and disabled residents. According to complaint, district affected outcome by systematically encouraging and facilitating voting by residents with school-aged children who were more likely to vote in favor of increase, and that district's family-focused get-out-the-vote events reduced turnout by elderly and disabled voters by interfering with their ability to access polls.

Failing to contact Department of Elections on day of special election, in which residents voted on and passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, did not preclude owners who opposed tax increase but did not vote in special election from bringing civil action against district, seeking to invalidate election. Statutory provisions create post-election day private rights of actions.

Attorney General's decision not to bring criminal charges against school district did not dispose of civil claim filed by residents to invalidate special election, alleging that district discouraged and raised impediments to voting by elderly and disabled residents on referendum to increase school-related property taxes paid by owners of non-exempt real estate located within district. Assuming that Attorney General concluded that there was insufficient evidence to prove guilt beyond a reasonable doubt as to criminal conduct, that assessment did not mean that evidence did not establish electoral misconduct under preponderance-of-the-evidence standard for purposes of civil claim, and Attorney General had no authority to enforce civil election violations.

School district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim under § 1983 against district for due process and equal protection violations based on district's electoral interventions as a whole. Although district's interest in fostering informed electorate was sufficient to justify engaging in government campaign speech, complaint alleged that district's intervention in election by providing rewards for voting designed to appeal to demographic group that district believed was likely to support tax increase had purpose and effect of discouraging voting by identifiable group district believed would oppose increase, and for pleading purposes, district's desire to educate electorate did not justify selective get-out-the-vote efforts.

In challenging school district's electoral interventions as a whole, district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim against district for violation of Elections Clause of state constitution. Residents contended that district provided selective rewards for voting, which allegedly made election less free and equal, residents alleged that district violated Elections Clause based on its government campaign speech, which included engaging in electioneering in close proximity to voting rooms, and complaint alleged that district engaged in selective get-out-the-vote efforts directed towards an identifiable group, which had negative effects on the elderly and disabled.

Illinois Bond Rating Cut Again Over Budget Impasse.

CHICAGO — Illinois' ongoing failure to enact a fiscal 2016 budget due to political wrangling led to a second major credit rating agency downgrading the state's debt to the low investment grade triple-B level this week.

Moody's Investors Service cut the state's general obligation bond rating one notch to Baa1 with a negative outlook on Thursday. The move occurred three days after Fitch Ratings dropped Illinois to BBB-plus.

Both ratings are now just three steps above the "junk" level.

Moody's cited the potential that Illinois' financial position could weaken further due to an impasse between the state's Republican governor and Democrats who control the legislature that has left

Illinois without a budget for the fiscal year that began on July 1.

“What we are seeing is the very real possibility of deterioration as the finances weaken with no plan in place,” said Moody’s analyst Ted Hampton.

The downgrade by Moody’s, which affects $26.8 billion of GO bonds, also pointed to Illinois’ inaction on its huge $105 billion unfunded pension liability. An Illinois Supreme Court ruling in May voided a law aimed at reducing that liability by cutting benefits, leaving the state limited options for dealing with the problem.

Worsening pension problems and a growing pile of unpaid bills could result in a further downgrade, Moody’s cautioned. Illinois’ bill backlog stood at $7 billion on Thursday, according to the state comptroller.

The downgrade by Moody’s marked the 17th by major credit rating agencies for Illinois since 2003 and the second under Governor Bruce Rauner, a political newcomer who took office in January with an agenda to turn around the state’s sagging finances.

A spokeswoman for Rauner said the latest downgrade confirms his contention the state needs pro-business and structural reforms that Democratic lawmakers have rejected.

Democrats, in turn, pointed the finger of blame at Rauner.

“Since Governor Rauner has taken office, revenue is down, the bill backlog is up, services are cut, jobs growth has slowed and now our credit rankings are lower,” said Rikeesha Phelon, a spokeswoman for Senate President John Cullerton.

Even before this week’s downgrades, Illinois had the lowest credit ratings among the 50 U.S. states. Ratings histories from the three major credit rating agencies indicate few states have ever had their GO ratings fall below the A level.

Robert Amodeo, a portfolio manager at Western Asset in New York, said bond investors are frustrated by the lack of progress in the fifth-largest U.S. state. Still, Illinois is contemplating a return to the municipal bond market this fiscal year after an absence of nearly 1-1/2 years.

“They will find a clearing level even at triple-B, but they will be penalized for it,” Amodeo said.

Illinois has been paying a hefty market penalty for a while. Its so-called credit spread over Municipal Market Data’s benchmark yield scale for triple-A-rated bonds is 190 basis points for 10- and 30-year debt.

Moody’s also downgraded Illinois’ sales tax revenue bonds to Baa1 from A3 and cut the rating on state appropriation dependent Metropolitan Pier and Exposition Authority bonds to Baa2 from Baa1.

By REUTERS

OCT. 22, 2015, 6:06 P.M. E.D.T.

(Additional reporting by Dave McKinney in Chicago; Editing by Bill Rigby and Matthew Lewis)

SIFMA U.S. State Briefing Book 2015.

An annual snapshot containing municipal, corporate, equity, and financial industry statistics on the state level for the United States.

View the Briefing Book.

October 19, 2015

- Intro Property Assessed Clean Energy (PACE) Finance WebCourse.
- NAMA: Some MSRB Gift Rule Changes Are Unclear or Could Lead to Abuse.
- Chicagoans' Cost to Exit Swap Agreements Approaches $300 Million.
- GASB Proposes Changes to Pension Standards for Certain Governments.
- Appellate Court Upholds TIF District Levy and Collection of Taxes.
- *Arras v. Regional School Dist. Number 14* – Supreme Court of Connecticut holds that towns' failure to strictly comply with statutory notice provisions by publishing an official warning of referendum, on question of whether to approve resolution by board of education authorizing issuance of bonds and notes to finance certain school construction, in legal notice section of newspaper of general circulation, did not require invalidation of the referendum, absent proof that the failure caused the referendum results to be seriously in doubt; overruling *Pollard v. Norwalk*.
- *Florida Bankers Ass'n v. Florida Development Finance Corp.* – Supreme Court of Florida holds that bankers association lacked standing to appear in appeal of trial court's validation of bonds issued by government corporation for qualifying improvements in county, in development finance company's action seeking to determine validity of series of bonds proposed to be issued under Property Assessed Clean Energy (PACE) Act. See prior coverage *here*.
- And finally, in *Mender v. Chauncey*, a standard-issue unlawful termination case brought by a mayor against her town, we encountered this rather startling sentence, "Her husband Stace Mender and her two daughters, Merissa Nicholson and Cassie Gardner, were co-plaintiffs asserting loss of consortium claims." Either that family has a rather, uh, unique relationship or "loss of consortium" means something a bit different than we had been led to believe.

INSURANCE - ALABAMA

St. Paul Fire and Marine Insurance Company v. Town of Gurley

United States District Court, N.D. Alabama, Northeastern Division - September 8, 2015 - Slip Copy - 2015 WL 5286915

St. Paul Fire and Marine Insurance Company sought a declaratory judgment that it had no duty to defend the Town of Gurley from the claims and damages asserted in underlying litigation between the and M & N Materials, Inc.

M & N sued the Town for inverse condemnation and other causes of action after the Town annexed property on which M & N had planned to operate a rock quarry and subsequently implemented regulations prohibiting this use.

St. Paul had issued a Public Entity Composite Policy to the Town. The Policy contained Public Entity Management Liability Protection ("PEML") and Public Entity General Liability Protection ("PEGL").

The court held that St. Paul had a duty to defend the Town against M & N's claims. The court reserved the issue of indemnification, pending the outcome of the trial.

EMINENT DOMAIN - CALIFORNIA

Los Angeles County Metropolitan Transportation Authority v. KBG I Associates, LLC

Court of Appeal, Second District, Division 5, California - October 7, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 5841977

KBG I Associates, LLC (KBG) appealed from the trial court's orders excluding the property valuation reports prepared by KBG's expert in an eminent domain action.

According to KBG, the orders deprived it of its constitutional right to have a jury determine the issue of just compensation. KBG contended that the trial court erred when it ruled that KBG's appraiser could not consider the loss of direct access to its property caused by the construction of a public works project and the revocation by the Los Angeles County Metropolitan Transportation Authority (MTA) of a revocable license providing access to the property. KBG also contended that the trial court erred when it excluded from KBG's property valuation other evidence of impaired access caused by the project.

The Court of Appeal held that the termination of a revocable license concerning access to a property, work on a public street, and non-substantial changes in access to the property are not compensable. Thus, the trial court's orders prohibiting KBG's expert from considering evidence of the loss of direct access and other impairments of access to KBG's property were correct.

BOND VALIDATION - CONNECTICUT

Arras v. Regional School Dist. Number 14

Supreme Court of Connecticut - October 20, 2015 - A.3d - 2015 WL 5945416

Town residents brought action against town and board of education, contending that failure to publish warning of referendum in newspaper as statutorily required rendered the referendum null and void ab initio. Both parties moved for summary judgment. The Superior Court denied residents' motion for summary judgment and granted defendants' motion. Residents appealed and the case was transferred.

The Supreme Court of Connecticut held that failure to strictly comply with statutory notice provisions by publishing an official warning of referendum did not require invalidation of the referendum, overruling *Pollard v. Norwalk*, 108 Conn. 145, 142 A. 807.

EMINENT DOMAIN - ILLINOIS

Forest Preserve District of Cook County v. Chicago Title and Trust Co.

Appellate Court of Illinois, First District, First Division - September 30, 2015 - N.E.3d - 2015 IL App (1st) 131925 - 2015 WL 5734706

Landowners filed petition seeking to vacate an agreed order they entered into with county forest preserve district in eminent domain proceedings, after discovering that the district's ordinance under which it brought the proceedings was not validly enacted. The Circuit Court vacated the agreed order. District appealed.

The Appellate Court held that:

- Circuit court had subject-matter jurisdiction over the underlying eminent domain proceedings;
- Landowners were not precluded from seeking relief from judgment by failing to file a traverse or motion to dismiss prior to the entry of the agreed order or by release language in challenged agreed order;
- Landowners presented meritorious defense as basis for relief from judgment;
- Landowners demonstrated due diligence in seeking relief from judgment; and
- Circuit court did not abuse its discretion by not allowing for additional discovery or an evidentiary hearing on amended petition.

BOND VALIDATION - FLORIDA

Florida Bankers Ass'n v. Florida Development Finance Corp.

Supreme Court of Florida - October 15, 2015 - So.3d - 2015 WL 5996764

Development finance company brought action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act. The Circuit Court validated bonds. Bankers association and property owner appealed.

The Supreme Court of Florida held that:

- Association lacked standing to appear in appeal, and
- Owner was not denied due process by trial court's acceptance of company's amended financing agreement.

Bankers association lacked standing to appear in appeal of trial court's validation of bonds issued by government corporation for qualifying improvements in county, in development finance company's action seeking to determine validity of series of bonds proposed to be issued under Property Assessed Clean Energy (PACE) Act. Association did not intervene or appear in trial court proceedings, never showed that it was citizen, taxpayer, or property owner in any jurisdiction where company's bonds would support PACE improvements, and presented no evidence that it suffered any specific injury or had stake in matter sufficient for standing.

Property owner failed to preserve for appellate review the claim that he was denied due process when development finance company and trial court accepted amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. At bond validation hearing, when company's attorney offered amended agreement during testimony of company's executive director, owner's attorney did not object to admission of documents or testimony about it, but asked only to be allowed to inquire into document on cross-examination.

Property owner was not denied due process by trial court's acceptance of development finance company's amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Owner had opportunity at show cause hearing and hearing on his motion for rehearing to raise objections to amended agreement and to bring those objections and arguments to court's attention.

Validation of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act was ripe for determination, in development finance company's action seeking to determine validity, even though company had not yet entered into any interlocal agreements under PACE program. Trial court had statutory jurisdiction to determine validity of bonds and certificates of indebtedness, company had statutory authority and appropriately enacted resolution to issue bonds and to seek determination of validity of bond issue before doing so, and company intended to execute interlocal agreements to provide for implementation of PACE program in localities that chose to participate, where local governments would levy and collect non-ad valorem special assessments at issue.

Remand was warranted for trial court to require development finance company to amend all bond documents that referred to company having, or being delegated, authority to levy non-ad valorem special assessments, to make clear that it was local government that would levy such assessments, in company's action seeking to determine validity of bonds to be issued by government corporation for qualified developments in county under PACE Act. While Act did not authorize company to levy assessments, inclusion of language in bond documents did not provide basis to reverse court's amended final judgment that validated bonds, as court agreed that assessments would be collected by local government, but language of judgment was subject to misinterpretation so long as any documents continued to contain references to company imposing assessments.

Remand was warranted for trial court to require that amendment of bond documents remove all references to judicial foreclosure and that such amendments be approved by governing board of development finance company, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Only collection method authorized by Legislature for special assessments was uniform method set forth by statute, Act did not provide for judicial foreclosure as remedy, and, while amended financing agreement removed one reference to foreclosure as remedy, other references still remained.

PENSIONS - LOUISIANA

Born v. City of Slidell

Supreme Court of Louisiana - October 14, 2015 - So.3d - 2015 WL 5972534 - 2015-0136 (La. 10/14/15)

Retired city employee brought action against city, seeking declaration of his right to continued health coverage under city's health insurance plan and injunction prohibiting city from removing him from plan.

The District Court denied city's exception raising the objection of prescription and entered judgment granting declaratory and injunctive relief. City appealed. The Court of Appeal affirmed. Certiorari was granted.

The Supreme Court of Louisiana held that:

- Claim for declaratory and injunctive relief accrued, and three-year prescriptive period began to run, when retired employee turned 65 years old and city failed to provide coverage under plan, and
- Retired employee had right to continue to participate in plan.

Retired city employee's claim for declaratory and injunctive relief regarding alleged entitlement to continued participation in city's health insurance plan after his 65 birthday accrued, and three-year prescriptive period began to run, when retired employee turned 65 years old and city failed to provide coverage under plan, not earlier date on which city modified ordinance governing health benefits for retirees 65 years of age or older. Prior to city removing retired employee from plan, there was no indication that city would apply ordinance retroactively to retired employee.

Retired city employee had right to continue to participate in city's health insurance plan after retired employee turned 65 years old, even though plan document reserved to city the right to terminate, suspend, discontinue, or amend plan. Retired employee had met all of the requisite conditions at time of his retirement to participate in plan, and city's attempt to remove retired employee from the plan and require him to enroll in Medicare Advantage plan, on basis of amended ordinance governing health benefits for retirees 65 years of age or older, would have divested employee of his vested right in the benefits which he was owed under his contract with the city.

MUNICIPAL ORDINANCE - MISSISSIPPI

Hopkins v. City of Mendenhall

Court of Appeals of Mississippi - October 6, 2015 - So.3d - 2015 WL 5797809

Citizens sought review of city's adoption of an ordinance to close portion of a road. The Circuit Court affirmed the board's decision and the citizens appealed. The Court of Appeals held that the record was insufficient for appellate review and reversed and remanded. After remand, the city made factual findings, and the Circuit Court upheld the ordinance. Citizens appealed.

The Court of Appeals held that:

- Citizens had standing to challenge the ordinance, and
- City's closure of the street was for the public good and was not arbitrary, capricious, or without substantial evidence.

Citizens of city had standing to challenge city's ordinance that closed portion of a street, where citizens owned property in the city located near the closed street, and alleged that the closure would have an adverse impact.

Substantial evidence supported city's finding that closing portion of road, which had church as only abutting landowner, was for the public good, and not for the sole private benefit of the church, and therefore closing the road was authorized. Church would benefit from closed street, but not through ownership, and testimony of six out of nine persons before city board in favor of closing supported the city's findings that the street needed to be closed for safety reasons.

PENSIONS - NEW YORK

Begley v. DiNapoli

Supreme Court, Appellate Division, Third Department, New York - October 8, 2015 -

N.Y.S.3d - 2015 WL 5839186 - 2015 N.Y. Slip Op. 07323

Public employee applicant for disability retirement benefits brought article 78 proceeding to review decision of state Comptroller denying him enhanced benefits.

The Supreme Court, Appellate Division, held that incident in which employee slipped and fell in an icy parking lot was entirely foreseeable, and thus did not constitute an "accident" without meaning of Retirement and Social Security Law.

LIABILITY - NEW YORK

Moore v. City of New York

Supreme Court, Appellate Division, Second Department, New York - October 7, 2015 - N.Y.S.3d - 2015 WL 5827366 - 2015 N.Y. Slip Op. 07249

A 15-year old student brought action to recover damages for personal injuries against city, city police department, city department of education, and police officers, claiming that defendants were negligent in failing to protect student, who was involved in a physical altercation, after which student was shot in the back and paralyzed from the waist down. The Supreme Court, Kings County, granted summary judgment to defendants. Student appealed.

The Supreme Court, Appellate Division, held that:

- Municipality's provision of heightened police protection did not create a special relationship with student, and
- There was no evidence that student justifiably relied on municipality's provision of heightened police protection.

PUBLIC UTILITIES - NORTH CAROLINA

City of Asheville v. State

Court of Appeals of North Carolina - October 6, 2015 - S.E.2d - 2015 WL 5797639

City brought action against State and sewerage district, challenging the constitutionality of legislation requiring it to cede ownership and control of its public water system to another political subdivision. The Superior Court entered summary judgment in favor of city. State and district appealed.

The Court of Appeals held that:

- City had standing to bring action challenging General Assembly's authority to enact Water/Sewer Act provision;
- It was not clear that provision requiring city to cede ownership violated constitutional provision prohibiting laws relating to health or sanitation;
- Provision did not violate Law of the Land Clause; and
- Provision did not exceed the State's authority to take property.

City had standing to challenge the authority of the General Assembly to enact Water/Sewer Act provision requiring it to cede ownership and control of its public water system to another political subdivision, where it had not accepted any benefit from the Act.

It was not plain and clear and beyond reasonable doubt that Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision violated constitutional provision prohibiting local laws relating to health or sanitation. Act did not expressly state that its purpose was to regulate health or sanitation, but rather its stated purpose was to address concerns regarding the quality of the service provided to the customers of public water and sewer systems.

It was not plain and clear and beyond reasonable doubt that Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision violated constitutional provision prohibiting local laws relating to non-navigable streams. Mere implication in legislation of a public water system which happened to derive water from a non-navigable stream did not necessitate a conclusion that the Act related to non-navigable streams in violation of the Constitution, and there was nothing in the Act which suggested that its purpose was to address some concern regarding a non-navigable stream.

Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision did not violate state constitution's Law of the Land Clause, which provided that no person shall be denied equal protection of the laws. If General Assembly irrationally singled out one municipality, it merely meant that the legislation was a local law and did not render the legislation unconstitutional per se, and clause was included to provide better governance of the city's water system and allowed it to be governed by representatives from all areas served by the system.

Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision did not exceed the State's authority to take property or take property without paying just compensation. Transferring property and authority by act of the legislature from a city to another political subdivision where the property was still devoted to its original purpose did not invade the vested rights of the city.

EMPLOYMENT - OHIO

Mender v. Chauncey

Court of Appeals of Ohio, Fourth District, Athens County - September 25, 2015 - N.E.3d - 2015 WL 5782425 - 2015 -Ohio- 4105

Mayor brought action against village for gender discrimination, defamation, intentional infliction of emotional distress, and conspiracy. During a jury trial, the Court of Common Pleas granted village's motion for a directed verdict. Mayor appealed.

The Court of Appeals held that:

- The Court of Common Pleas did not impermissibly weigh evidence in granting motion;
- Evidence was insufficient to support prima facie case of gender discrimination;
- Evidence did not support actual malice element of defamation claim;
- Alleged conduct was not extreme and outrageous as required to support intentional infliction of emotional distress claim; and
- Mayor failed to bring viable primary claims as required to support derivative claims.

SIGNAGE - SOUTH DAKOTA

Lamar Advertising of South Dakota, Inc. v. City of Rapid City

United States District Court, D. South Dakota, Western Division - September 29, 2015 - F.Supp.3d - 2015 WL 5714869

Outdoor advertising company, together with company having ownership interest in several parcels of real property leased by first company for its outdoor advertising signs, brought action against city, asserting that two citizen-initiated billboard ordinances contradicted state law, resulting in a taking of private property without just compensation, and violated rights of freedom of speech and equal protection secured by the United States and South Dakota Constitutions.

The District Court held that:

- Plaintiffs failed to demonstrate “good cause” to amend their complaint to include theory of recovery based on defendants’ pre-initiative denial of advertising company’s six billboard applications, and
- Plaintiffs’ regulatory takings claims were not ripe.

Plaintiffs, an outdoor advertising company and a landowner that brought action challenging city’s citizen-initiated billboard ordinances, failed to demonstrate “good cause” to amend their complaint, pursuant to motion made immediately prior to start of trial in response to court’s pretrial ruling granting city’s second motion in limine, to include theory of recovery based on defendants’ pre-initiative denial of advertising company’s six billboard applications. Plaintiffs were aware of their theory of damages for more than two years yet did not seek to amend their complaint, and nowhere in plaintiffs’ oral or written arguments did they identify a reason, let alone demonstrate good cause, for their failure to include such theory in their complaint.

Regulatory takings claims asserted by plaintiffs, an outdoor advertising company and a landowner that brought action challenging city’s citizen-initiated billboard ordinances, were not ripe. There was no evidence that compensation to plaintiffs was unavailable or otherwise foreclosed, plaintiff did not even apply for the permits necessary to convert the 11 signs at issue to digital, let alone seek any type of administrative remedy, and plaintiffs did not pursue an available state-court inverse-condemnation action, but, instead, chose to file their claims in federal court.

BATIC Institute's First Webinar Will Spotlight Pennsylvania Bridge Replacement P3.

A ground-breaking public-private partnership will be discussed in the first in a series of webinars to be held by a new institute that seeks to educate state agencies on how to obtain financing for transportation projects.

The Build America Transportation Investment Center (BATIC) Institute, launched by the American Association of State Highway and Transportation Officials (AASHTO), is designed to serve as an education and training component of the U.S. Department of Transportation’s BATIC.

The inaugural webinar will focus on the Pennsylvania Department of Transportation’s Rapid Bridge Replacement Program, which will replace 558 structurally deficient bridges throughout the state. The webinar will be held Nov. 2 at 2:00 p.m. Eastern.

The BATIC Institute will offer a variety of tools and resources to help state transportation departments and local partners understand the types of project financing tools that are available, such as bonds and federal credit assistance, and how to create an environment in which to forge solid partnerships with “project delivery stakeholders,” according to AASHTO’s Oct. 14 press release. State agencies and localities also can learn how to assess projects to determine their suitability to be conducted as P3s and how to pursue these types of projects, the institute said on its website.

BATIC Executive Director Andrew Right recently acknowledged the center’s plan to collaborate with AASHTO in improving the public sector’s ability to use new and existing tools and resources to finance infrastructure projects. In addition to its webinar series, the institute will hold in-person seminars, peer-exchange gatherings and workshops and provide e-learning opportunities and a website resource for practitioners.

“With this specialized website, online training and peer-to-peer exchanges, the institute will deliver the types of services and information our state departments of transportation need to examine all of their options,” said BATIC Institute Director Jennifer Brickett.

To sign up for the webinar, visit the registration webpage. Visitors to the site also can sign up to receive email notifications about new service offerings and events and take a short survey to help the institute design future services.

Intro Property Assessed Clean Energy (PACE) Finance WebCourse.

December 1-2, 2015
12-5 p.m. (EST)

Property Assessed Clean Energy (PACE) is an emerging financing tool designed to catalyze energy efficiency improvements on industrial, commercial and residential structures. These programs help communities to reduce their energy use, lower energy costs and lessen environmental impacts. PACE uses special assessment districts to allow for the cost of energy efficiency improvements to be paid for over time through the property owner’s tax payments.

The Intro Property Assessed Clean Energy (PACE) Finance WebCourse will explore the process of creating, operating and maintaining a community based PACE program. This two day course will feature a comprehensive overview of PACE including program design, capital markets analysis, investor attraction, legal and regulatory considerations, market potential, operations and much more. CDFA’s Intro PACE Finance Course will put your community on the path to energy independence while creating jobs and improving the environment.

Click here to view the Agenda.

Click here to Register.

The District of Columbia and Georgia Join the Growing Number of States to Enact P3 Legislation: Seyfarth Shaw.

Funding the maintenance or expansion of existing infrastructure and the development of new infrastructure is one of the key bottlenecks to global infrastructure development and has resulted in governments and the private sector turning to alternative project procurement methods. One such alternative is the public-private partnership.

Public-private partnerships, or P3s, are gradually becoming a mainstream form of large project procurement in the United States.

The District of Columbia and Georgia have recently joined in the momentum of support for P3 legislation. The DC P3 Act took effect as of March 11, 2015 and the Georgia P3 Act took effect on May 5, 2015.

DC P3 Act

The DC P3 Act establishes the Office of Public-Private Partnerships (P3 Office) which will be responsible for “facilitating the development, solicitation, evaluation, award, delivery and oversight of public-private partnerships that involve a public entity in the District”. The P3 Office, which is headed up by an Executive Director, is entitled to retain consultants and enter into contracts to provide financial, legal or other technical expertise necessary to assist in such administrative role. The P3 Office will essentially be the main point of contact for parties involved, or looking to become involved, in a public-private partnership.

Public-private partnerships are defined in the DC P3 Act as “a long-term, performance-based agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which (A) a private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function, and (B) the District of Columbia may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated and maintained over its life-cycle.”

Projects that qualify as a potential public-private partnership include education facilities, transportation (e.g. roads, highways, public transit systems and airports), cultural or recreational facilities (e.g. libraries, museums and athletic facilities), buildings that are of beneficial interest to the public and are developed or operated by a public entity, utilities (e.g. water treatment, telecommunications, information technology), improvements to District-owned real estate or any other facility, the construction of which would, in the P3 Office’s opinion, be beneficial to the public interest.

A public-private partnership may be procured by process of a request for proposals or as a result of an unsolicited proposal. Via the process of requested proposals, a proposal will be evaluated against, among other criteria, the proposed cost and delivery time for the project, the financial commitment required of public entities, the capabilities and related experience of the proposer, a value-for-money and public sector comparator analysis, the inclusion of novel methods, approaches or concepts in the proposal, the scientific, technical or socioeconomic merits of the proposal, how the proposal benefits the public and other factors the P3 Office deems appropriate to obtain the best value for the District.

The District may consider, evaluate and accept unsolicited proposals from a private entity if the proposal addresses a need of the District, is independently developed and drafted by the proposer without District supervision, demonstrates the benefit of the proposed project to the District, includes a financing plan to allow the proposed project to move forward pursuant to the District’s budget and finance requirements and includes sufficient detail and information to allow the P3

Office to evaluate the proposal and make a worthwhile determination.

The DC P3 Act also sets out various terms required in any public-private partnership agreement, including the legal rights of the District with respect to the takeover or termination of a public-private partnership agreement.

Georgia P3 Act

On May 5, 2015, Georgia Governor Nathan Deal signed into law Senate Bill 59, known as the “Partnership for Public Facilities and Infrastructure Act” (the “P3 Act”). In simplest terms, the P3 Act amends the public works bidding portion of the existing Georgia Code to allow private companies to propose projects to the local and state governments. The local governments that may participate in the P3 Act partnerships are any county, municipality, consolidated government, or board of education. The state governments that may participate in the P3 Act partnerships are any department, agency, board, bureau, commission, authority, or instrumentality of the State of Georgia, including the Board of Regents of the University System of Georgia.

The projects proposed by the private entity must be “qualifying projects” meaning they must meet a public purpose or public need, as determined by the local or state government. The P3 Act does not apply to projects for generation of electric energy for sale, communication services, cable and video services, and water reservoir projects.

Guidelines and oversight for P3 Act projects take different approaches depending whether the partnership is with a local or state government. For partnerships with local governments, the P3 Act provides that a P3 Act Committee will be created to prepare model guidelines for local governments to use in implementing P3 Act projects. The P3 Act Committee is composed of 10 persons with varying backgrounds and qualifications as provided in the P3 Act. The appointments to the P3 Act Committee will be made by August 1, 2015, and the P3 Act Committee has until July 1, 2016, to issue model guidelines to local governments. With respect to partnerships with state governments, for qualifying projects undertaken by the State Properties Commission, the Georgia State Financing and Investment Commission will be solely authorized to develop guidelines, and for qualifying projects undertaken by Board of Regents, the Board of Regents will be solely authorized to develop guidelines for those projects.

For a project to become a reality under the P3 Act, it must proceed through the following series of steps outlined in the P3 Act:

1. For a local government, it must adopt the model guidelines or create its own guidelines including the required contents outlined in the P3 Act. A state government must use the guidelines established by the State Properties Commission or the Board of Regents.

2. To participate, a local government must adopt a rule, regulation or ordinance affirming its participation in the P3 Act process.

3. A private entity may submit an unsolicited proposal for a project to the applicable local or state government for review and determination as a qualifying project in accordance with its respective guidelines and the submittal requirements outlined in the P3 Act. For state government P3 Act projects, the unsolicited proposal must be submitted between May 1, and June 30, of each year.

4. A private entity submitting an unsolicited proposal to a state government must also notify each local jurisdiction and allow 45 days for the local government to comment on whether the proposed project is compatible with local plans and budgets.

5. The local or state government approves or rejects the unsolicited proposal. A local or state government may reject any proposal at any time and is not required to give reasons for its denial. If an unsolicited proposal is accepted as a qualifying project, the local or state government must seek competing proposals by issuing a request for proposals for not less than 90 days.

6. The local or state government will rank the proposals received by utilizing a variety of factors outlined in the P3 Act, such as cost, reputation and experience of the private entity, and the private entity's plan to employ local contractors and residents. 7. The local or state government will negotiate with the first-ranked private entity and will continue to negotiate with subsequent-ranked private entities until an agreement is reached. Prior to entering into an agreement, the local or state government may cancel the requests for proposals or reject all proposals for any reason whatsoever.

8. The local or state government and the private entity enter into a comprehensive agreement. The terms of the comprehensive agreement include, but are not limited to, description of duties, timeline for completion, financing, and plans and specifications and the project begins.

Conclusion

By allowing partnerships between the private and public sector, P3 Acts create opportunities for governments to engage in new projects that would previously have been cost prohibitive. Under this new law, the private entities can take on design and construction costs previously borne by the government. Beyond that, P3 Acts will encourage investment in infrastructure and aid urban renewal.

Article by Alison Ashford, Eric F. Barton and Stephanie A. Stewart

October 12 2015

Seyfarth Shaw LLP

MSRB Announces Regulatory Topics to be Discussed at Upcoming Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 21-22, 2015 where in addition to addressing corporate and governance issues, the Board will discuss the following rulemaking topics:

Mark-Up Disclosure
The Board will discuss its current proposal to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions.

Close-out Procedures for Dealers
The Board will discuss publication of a request for comment on proposed changes to MSRB Rule G-12, on dealer closeout procedures as part of the MSRB's regulatory efficiency initiative.

Continuing Education Requirements for Municipal Advisors
The Board will conduct a policy discussion about the development of continuing education

requirements for municipal advisors.

Trade Settlement Cycle
The Board will discuss MSRB rule changes necessary to support a T+2 settlement cycle with a view toward publication of a request for comment.

This list is subject to change without notice. A summary of actions taken by the Board at the meeting will be sent to regulated entities and published on the MSRB's website following the meeting.

NAMA: Some MSRB Gift Rule Changes Are Unclear or Could Lead to Abuse.

WASHINGTON — The Municipal Securities Rulemaking Board's proposed changes to extend its gift rule to municipal advisors "remain unclear in crucial areas" and "do not go far enough to prevent abuses" by both MAs and broker-dealers, the National Association of Municipal Advisors said.

NAMA made the comments in a letter to the Securities and Exchange Commission on MSRB Rule G-20 on gifts, gratuities, and non-cash compensation that was signed by the group's president, Terri Heaton.

The rule already applies to dealers. The MSRB is asking the SEC to approve the proposed amendments in an effort to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act. The modified rule would take effect six months after SEC approval.

The rule currently prohibits dealers from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

The board would extend for MAs several exceptions from the $100 restriction, including "normal business dealings," like gifts of meals or tickets to entertainment if the regulated entity or associated persons host the event and the number of gifts is not "so frequent or so extensive as to raise any question of propriety," the MSRB said. Also exempted would be "legitimate business functions" that the Internal Revenue Service recognizes as deductible expenses and infrequent gifts like those for weddings and funerals.

The proposed rule changes also would prohibit MAs and dealers from getting reimbursed through bond proceeds for certain entertainment expenses related to a muni offering if the expenses were not "ordinary and reasonable."

Heaton said in the group's letter that several key amendments to the rule need clarification or further change.

The references to "municipal securities activities" and "employees" of municipal entities may not fit the goal of the rule Heaton said, because there are questions as to whether issuers engage in municipal activities as the MSRB defines them. In addition, people who could be swayed by gifts, such as municipal board members, may not be "employees" of the municipality.

She recommended the MSRB codify interpretive guidance into the rule and "make explicit in either a definition of municipal securities activities or in supplementary material that municipal securities activities includes the activities of issuers."

The letter also asks that the exemption for normal business dealings be eliminated and the gift amount be raised to no more than $250 per year rather than $100 per year for both MAs and dealers.

"By exempting items such as meals and tickets to theatrical, sporting, and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse," Heaton said.

She added that the change would allow the rule to match up with MSRB Rule G-37 on political contributions, which permits municipal finance professionals to make donations of up to $250 to any candidates for whom they can vote without triggering the rule's restrictions.

NAMA also asked the MSRB, which also sought to amend its Rule G-8 on books and records, to require a regulated entity to keep records for all gifts, whether subject to the limit or excluded. The proposed recordkeeping requirements do not require records for occasional gifts that are exempted and Heaton argued that would "not provide any effective mechanism for ensuring that" the gifts are occasional or should be exempted.

"The imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest," Heaton wrote.

NAMA agreed with the MSRB that MAs should keep records for five years, which Heaton called the standard requirement in other MSRB recordkeeping rules. The proposed changes would require five years of records for MAs but six years for dealers.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA supports the rule, but takes issue with the different periods for keeping records for MAs and for dealers. She said the rule should be uniform and fair for all the participants.

THE BOND BUYER

BY JACK CASEY

OCT 19, 2015 12:48pm ET

Peering Under the Coupon.

Pimco veteran Joe Deane focuses on the reality of what's backing up muni bonds. On the Municipal Bond fund, he teams up with David Hammer.

Early in Joe Deane's career—back in the mid-1970s, when New York City was on the verge of bankruptcy—he learned a valuable lesson about municipal finance.

"What you have on a piece of paper is not going to matter nearly as much as what's going on in the real world," says Deane, now the head of municipal-bond management at Pimco. In other words, the realities of keeping a city afloat can trump paying municipal-bond holders.

New York City averted bankruptcy in 1975, but Deane's fascination with municipal bonds was established. Forty years later, that era still resonates with Deane, who oversees $14 billion of municipal-bond assets at Pimco in separate accounts and 19 mutual funds.

Since the mid-1970s, numerous fiscal disasters have played out, most recently in Detroit and Puerto Rico. Deane, however, steered Pimco away from those troubled securities. “In 2012, when I was considering coming to Pimco, I saw they had a tiny exposure to Puerto Rico in their portfolios that shortly thereafter went to zero,” says David Hammer, 37, Dean’s right-hand man, whose duties include co-managing the $555 million Pimco Municipal Bond fund (ticker: PMLAX). “I looked at Joe’s position versus many in the industry, and thought it was a really smart position.”

Hammer, who began his career at Morgan Stanley, worked at Pimco in 2012 and 2013. He returned to Morgan Stanley briefly and then came back to Pimco in May, recruited by Deane and the allure of co-managing many of the firm’s municipal funds.

Neither Hammer nor Deane has an office, instead sitting next to each other on a trading desk in a midtown Manhattan skyscraper, an arrangement that allows them to communicate directly throughout the day. “I’m a little more big picture, and Dave is a little bit more about getting every trade done,” says Deane.

Deane, 68, adds that he will keep managing money for “as long as it is fascinating for me.” Outside the office, he is especially keen on downhill skiing and golf. “You never conquer golf,” he says. “You may conquer it for a day, a week, or a year, but it’s always changing. The same thing is true of the markets.”

Deane worked at the same firm from 1972 until 2011, although it went through multiple iterations. He began at E.F. Hutton, which became part of Smith Barney. That company was acquired by Citigroup, which swapped its asset-management business for Legg Mason’s brokerage business in 2005. Legg Mason owns Western Asset Management, a bond shop that is one of Pimco’s biggest competitors. Deane ran what is now the Western Asset Managed Municipals fund (SHMMX) from 1988 to 2011, during which the portfolio had an annual return of 6.5%, tops in its category, according to Morningstar.

Western is based just north of Los Angeles and Pimco, just south, but Deane, who grew up in Staten Island, has been steadfast about not relocating to Southern California.

Deane joined Pimco in July 2011, well into his 60s, in large part because he wanted to work with Bill Gross, Pimco’s co-founder, whose investing prowess Deane admires. Gross abruptly left Pimco three years later and last week sued his former firm, claiming that “a cabal of Pimco managing directors plotted to drive” him out of the company. Deane says he’s not concerned about the recent turmoil. “I viewed Pimco as the No. 1 bond firm in the world with Bill, and it’s still the No. 1 bond firm today,” he asserts.

Upon arriving four years ago, Deane immediately sold the fund’s stake in Detroit general-obligation bonds, and, by early 2013, had sold all of its Puerto Rico holdings, too. “There were so many deals that were done where all of the revenue just went to pay the debt service of other bonds that had been previously issued,” he recalls.

The fund now has a solid three-year annual return of 2.9%, besting 61% of its peers.

Clearly, for Deane, sound fixed-income investing comes down to zeroing in on “what’s backing this bond up.” That has been particularly true since the financial crisis, as the municipal-bond market has changed considerably. Many of the insurers that backed municipal bonds lost their AAA ratings or, in certain cases, went out of business. The upshot is that most municipal bonds coming to market today aren't backed by insurance. "It reminds me very much of the market I grew up in—in the '70s and '80s—where credit quality was every bit as important as duration," says Deane.

Many managers favor general-obligation bonds, since they're backed by taxes that can be raised, if necessary, to pay back bondholders. But they can be subject to political pressure, Deane says, and a big worry has been increasing unfunded pension obligations, with the states of New Jersey and Illinois having especially bad problems. After Deane scaled back on GO bonds earlier in the year, he and Hammer changed course over the summer and snapped up some Chicago GOs. The city's mayor, Rahm Emanuel, "has flat out stated that he is going to get a significant property-tax increase through," says Deane.

DEANE TYPICALLY PREFERS revenue bonds, which are backed by the money generated by a specific entity—a water authority, for example. In Detroit, "revenue-bond holders were generally protected and unimpaired through the bankruptcy," says Hammer.

Owing to a recent change in the flagship fund's prospectus, the managers can hold as much as 20% of the portfolio in high-yield munis, up from 10%. They like tobacco master settlement agreement bonds, which grew out of a 1998 settlement between the major tobacco companies and most state attorneys general. As cigarette consumption has declined, the revenue backing these bonds has dropped, as well, increasing the likelihood that they might default at some point. However, even in default they will continue to pay out the funds they have, until all interest and principal is paid—an attribute that's undervalued by investors.

It has been a tough year for municipal bonds, with increased issuance and concerns about when the Federal Reserve finally will raise interest rates. The fund is up a mere 1.1%, year to date. Still, Deane says he's not worried. The portfolio is a bit more defensive today, with the coupons of many holdings at about 5%, with a tilt to shorter-term securities to offset duration risk.

"There are a lot of guys out there buying" bonds with lower coupons, he observes, "but that's not where we want to go." The 5% coupons tend to be less affected by rate hikes and offer more income to reinvest at the higher rates, says Deane.

BARRON'S

By LAWRENCE C. STRAUSS

Updated Oct. 17, 2015 12:21 a.m. ET

[This U.S. State Could End Up Like Debt-Troubled Puerto Rico.]

Like the U.S. territory, New Jersey is borrowing to cover its budget holes.

Mike Myers' 1997 movie Austin Powers has a scene in which a character is squashed by a steamroller. The film is a comedy, and the humor in the scene comes from how avoidable the tragedy is. The steamroller starts far away, and moves pretty slowly. But instead of moving to avoid the steamroller, the victim just stands there, screaming "Oh no!" until he's flat.

Puerto Rico and its creditors are now under the steamroller. As in Austin Powers, the steamroller did not move very quickly. Analyst Sergio Marxuach, for example, warned in 2006 that the

Commonwealth's finances were on an unsustainable path. Marxuach pointed out in his warning that in other cases of municipal distress, for example New York in the 1970s, fiscal discipline had been imposed from above. Puerto Rico's peculiar status as a commonwealth has meant that discipline from above has so far been unavailable. And discipline from capital markets, though now severe, has been late to arrive.

So after years and years of borrowing, including borrowing to cover operating deficits, Puerto Rico and its government-chartered corporations now have a total debt of $72 billion. This is approximately a year of the island's Gross National Product. As former U.S. Congressional Budget Office director Douglas Holtz-Eakin said in his September testimony before the Senate Finance Committee, a 10% ratio of interest payments to revenues marks something of a 'bright line' way to identify distressed sovereign borrowers, and Puerto Rico crossed that threshold in March of 2015. In August, Puerto Rico Governor Alejandro Garcia Padilla announced that the island's debt was unpayable.

So I believe that it is now safe to describe the situation as a crisis. Two competing teams of former IMF economists are now laying out their prescriptions. One team, commissioned by the Commonwealth's Government Development Bank, says that the only way forward is to impose some debt restructuring on the island's bondholders. The release of this report coincided with Governor Padilla's announcement that the island's debt was unpayable. A second team of former IMF economists, commissioned by a group of hedge funds that hold some of Puerto Rico's debt, claims that with sufficient fiscal austerity the island can, in fact, pay its capital market obligations. I conclude this from the two competing reports: the end of a long career at the IMF does not mean the end of opportunities to do well-compensated work in warm places.

One can create caricature versions of these two different views that are not as far apart as they seem at first glance. The (caricature) first report: the current debt is unpayable without imposing unprecedented and unacceptable austerity on the island's residents. The (caricature) second: the current debt can be paid. You just have to impose unprecedented austerity on the island's residents. The second set of economists make the point that stiffing today's creditors will make it much more expensive to borrow in the future. The island must choose between firing its teachers today and being unable to finance new schools for the children of tomorrow.

Regardless of which generation of children we decide to punish in this crisis, the blame belongs to yesterday's and today's adults. This steamroller did not fall out of the sky – year after year the island failed to balance its books, and closed the difference by borrowing. Without a change in this pattern, the crisis was inevitable.

Whatever happens to the debt, some restructuring of the Puerto Rican economy is essential. Inefficient government monopolies raise the cost of electricity and water on the island. The Puerto Rican minimum wage is the same as in the mainland U.S., even though labor productivity is much lower. And I cannot imagine any serious economist coming out in support of the Jones Act, a protectionist measure that protects the U.S. shipbuilding industry. This much-discussed policy hurts the mainland economy a bit, but is much more damaging for Puerto Rico because of the island's greater dependence on shipping.

Returning to the debt, competing reports now emerge about potential federal intervention in the situation. Democrats in Congress have introduced legislation that would give government entities in Puerto Rico access to Chapter 9 bankruptcy protection, but this legislation does not appear to have a realistic path towards enactment. Apparently credible reports of a Treasury-sponsored 'superbond' plan, through which the island's debt would be consolidated, have now been denied by Treasury spokesperson, although officials have met with the indebted U.S. territory's leadership to discuss how the federal government could help.

One type of federal intervention would be a bailout, but the current prices of Puerto Rican bonds seem to indicate that this is unlikely. On the other hand, a presidential election is on the horizon, and Puerto Rican voters in Florida are an important group in a potentially decisive swing state. I suspect that either of our political parties, if offered the presidency for the price of a bailout, would find a way to get comfortable with it. But Puerto Rico is just one issue in a very complicated election season, so I think that any help from the federal government simple enough to be described only with the word 'bailout' seems unlikely.

All that I am confident about now is that there will be litigation, that the litigation will be expensive, and that the people of the island, one way or another, will bear most of the costs.

Are there any lessons in the Puerto Rican experience that might be applied elsewhere? Well, at the end of 2010, Meredith Whitney created a stir in the municipal finance market, warning, in effect, that the steamroller was upon us. She claimed that a massive wave of municipal defaults would materialize in a matter of months.

At the time, many market participants argued that Whitney's predictions were way off the mark. Harvard's Randy Cohen and I wrote a paper in response to her statements, but our voice was just one among many. We argued then that in most places, there was still time, with responsible political behavior, to avoid the steamroller. Now five years later, the massive wave of defaults Whitney predicted has not materialized on anything close to the timetable she described.

But we are now five years on, and there are certainly places where the steamroller is closer in 2015 than it was in 2011. One feature of American municipal finance is that states and municipalities, in general, have rules that prevent them from borrowing in order to cover budget deficits. In practice, this rule means only that they have to employ trickery in order to accomplish the economic substance of borrowing to cover deficits while technically complying with balanced budget rules. The most important channel for this trickery has been through pensions, as Robert Novy-Marx of the University of Rochester and Joshua Rauh of Stanford have highlighted in a series of papers. There are other channels as well.

In the humorously named 'Truth and Integrity in State Budgeting,' the Volcker Alliance examines the situation in New Jersey. The report focuses on the recent financial chicanery that the state has employed in order to 'balance' its budget. A relatively simple example (and New Jersey is not alone here) is the issuance of bonds whose above-market coupons mean that they can be issued at prices above par, with the difference between the offering price and par value being used as revenue in the current fiscal year. This trick is just a back-door way for New Jersey to do borrow to close a budget shortfall, just like Puerto Rico.

Other examples are more complicated. The coverage of New Jersey's catastrophic recent tobacco bond refinancing by Cezary Podkul of ProPublica has been an example of great journalism about an extremely convoluted financial topic. I think that only the deal's complexity has prevented this and other similar transactions from becoming even greater national scandals than they have been. Tobacco bonds stem from the 1998 Tobacco Master Settlement Agreement, through which states gave up legal claims against tobacco manufacturers in exchange for future payments tied to tobacco consumption. Like many states, New Jersey years ago securitized much of it future payment stream, selling the future receipts off to investors in exchange for upfront cash.

The recent tobacco bond refinancing transaction boils down to this: New Jersey received $93 million in budget relief today in exchange for $400 million over the next several years. Some additional net payments based on smoking patterns decades into the future give the deal enough complexity that, should the need arise, a team of suitably incentivized experts will be able suppress their laughter while certifying that the deal was a good idea for the state.

But it’s bogus. It is borrowing to cover a budget hole, like Puerto Rico in 2006. It is a step in the direction of the steamroller that is now on top of Puerto Rico.

FORTUNE

by Daniel Bergstresser

OCTOBER 19, 2015, 12:11 PM EDT

Daniel Bergstresser is an associate professor of finance at Brandeis International Business School. The views expressed here are his own and not necessarily those of Brandeis. Bergstresser is also engaged in consulting activities for financial institutions, but he has no direct or indirect financial stake in the performance of municipal bonds issued out of either Puerto Rico or New Jersey.

Update on the SEC's MCDC Initiative: Ice Miller

Many of you have asked for an update on the SEC’s 2014 Municipalities Continuing Disclosure Cooperation Initiative (MCDC). The MCDC is a self-reporting initiative for underwriters and state and local governmental bond issuers, such as school corporations, targeting misstatements in Official Statements regarding prior compliance with Continuing Disclosure Undertaking Agreements under SEC Rule 15c2-12.

Orders Regarding Underwriters

On September 30, 2015, the SEC announced a second round of settlements with underwriters of municipal bonds under the SEC’s MCDC Initiative. In this round of settlements, the SEC announced cease and desist orders for 22 municipal bond underwriting firms, finding violations of federal securities laws resulting from material misstatements and omissions in Official Statements and failures by underwriters to conduct adequate due diligence regarding past continuing disclosure compliance. The SEC’s press release announcing the enforcement actions is available here.

The first round of MCDC settlements, involving 36 municipal underwriters, was announced in June, 2015. The SEC’s press release announcing these enforcement actions is available here. Another round of settlements with underwriters is expected, perhaps later in 2015.

The underwriting firms neither admitted nor denied the findings but agreed to cease and desist from further violations. Settlements included payment of civil penalties to the SEC, and the promise to retain independent consultants to review policies and procedures on due diligence. It is important to note that these fines and the resulting settlement orders were exactly what was communicated in the original announcement of the MCDC.

Anticipated Orders Regarding Issuers

It is expected that further SEC announcements concerning settlements with self-reporting bond issuers will follow after the last wave of Underwriter orders. Originally, the SEC believed that all orders relating to MCDC would be complete by the end of 2015. However, it now appears more likely that they will continue into 2016. SEC representatives have also indicated that every issuer who self-reported will, at some point, receive correspondence from the SEC even if it is just to notify the issuer that the SEC has decided to take no action.

Representatives from the SEC have indicated that just because an underwriter has entered into a settlement order for a misstatement regarding a particular bond issue, it does not necessarily mean that the SEC will be asking for a settlement from that issuer. It is believed that many issuers self-reported under the MCDC in an abundance of caution not necessarily because they believe misstatements were material. **If a school corporation is contacted by the SEC, remember it is important to consult with school counsel or bond counsel before responding.**

Of the over 200 bond lawyers who were surveyed by the National Association of Bond Lawyers, 73% responded that all, most or some of their issuer and borrower clients self-reported under the MCDC. Some of the most surprising responses were related to questions regarding materiality. Roughly 93% of the lawyers that responded said their clients self-reported some or many misrepresentations about compliance with continuing disclosure obligations that were unlikely to be considered material. According to case law, information is material if an investor would want to know it before buying or selling securities.

The settlements cover Official Statements for Bonds issued between 2010 and 2014. The SEC's stated goals with MCDC include the improvement in quality and timeliness of continuing disclosure filings on EMMA (which stands for Electronic Municipal Market Access; click here for link) and improvement in underwriter review of disclosures in Official Statements regarding prior compliance.

When a School Corporation issues bonds, it is important to carefully review the Official Statement to make sure that it is accurate and does not omit any information which would be material to an investor. Even though the School Corporation may hire another party, such as a financial advisor, to assemble this information, the School Corporation is legally responsible for the content of the Official Statement. In addition, an issuer of municipal bonds should consider adopting post issuance procedures, and once adopted, the issuer must make sure that the procedures are followed.

Please feel free to contact Jane Neuhauser Herndon, Kristin McNulty McClellan, Erik Long or any member of the Municipal Finance Group with any questions or concerns or for more information about MCDC, EMMA or Post Issuance Procedures.

Jane Neuhauser Herndon, Erik B. Long, Kristin McNulty McClellan

October 12, 2015

This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader should consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.

Arizona Cardinals Stadium Debt Jeopardized by Car-Tax Challenge.

To money manager Todd Curtis, the decade-long fight over a tax that helped build the stadium for the National Football League's Arizona Cardinals didn't look good for bondholders.

Last year, a state judge ruled that a vehicle-tax that pays for about a third of the stadium's $266 million of debt is illegal. Then August brought another legal blow: The state was ordered to pay tens of millions of dollars in refunds while it appeals the case, threatening to reduce funding for the Arizona Sports & Tourism Authority, which issued the bonds. Curtis sold the securities.

"If they lose, they could probably still make their bond payments, but they couldn't pay for much else," said Curtis, a portfolio manager with Aquila Group of Funds in Phoenix who runs a $280 million Arizona bond fund. "The sports authority has always run on a very thin line."

While stadiums in cities including Indianapolis and Oakland have put taxpayers on the hook for subsidies to professional sports teams, the challenge over funding behind the Glendale, Arizona, coliseum has left another constituency at risk: Investors who bought its bonds.

Financial Toll

The loss of the car-tax money, if upheld on appeal, would put an added squeeze on the financially struggling tourism authority, whose credit rating is at risk of a downgrade from Moody's Investors Service and Fitch Ratings. The operator of the stadium, which hosted this year's Super Bowl, has already failed to bring in enough tax money to cover its operations, which include promoting tourism and assisting professional baseball teams that come to Arizona for spring training.

"If they can't collect this tax, that compounds the issue," said Heather Macre, a Phoenix attorney who represents Saban Rent-A-Car LLC and others that are challenging the tax.

The companies say that the subsidies violate the law because Arizona's constitution requires vehicle taxes to be used for roads. On Oct. 5, the companies filed a motion to put the disputed funds into an escrow account until the case is resolved, which may take years.

Pricing Risk

The legal risk has lingered in the background since not long after the first bonds were issued in 2003, and the prices of the securities were little changed after the recent court decision. On Oct. 16, the $19 million of stadium bonds maturing in 2028 traded for an average yield of 3.3 percent, about 1.7 percentage points more than benchmark securities, according to data compiled by Bloomberg. That yield is down from 3.8 percent in early August.

"Depending on what level they're at, the risk can make it more attractive," said Craig Brandon, a portfolio manager of Eaton Vance Management, which holds $29.7 billion of municipal bonds, including some of the stadium debt. "If it's not going to continue generating income, we will be concerned. From an income perspective, we're comfortable with the level we're at."

While Brandon considers the risk of default to be low, he said the bonds may be downgraded if the authority can no longer collect the rental-car tax. Fitch Ratings and Moody's Investors Service put negative outlooks on the bonds in 2014 after the first decision, a first step toward a rating cut. Fitch grades the senior bonds A, the sixth-highest investment grade. Moody's rates them A1, one step higher.

"The negative outlook is a flashing red light," said Steve Murray, an analyst with Fitch in Austin. "Until this plays out, we're watching very closely."

Victory Seen

The authority expects to prevail in its appeal, which has yet to be filed, Timothy Berg, the agency's attorney in Phoenix, said in an e-mail. The final verdict could take as much as three years if it goes all the way to the state Supreme Court, said Macre, the lawyer for the plaintiffs.

So far the case has had no impact on the state budget, said Daniel Scarpinato, a spokesman for Governor Doug Ducey. What happens if the tax is struck down will be up to the governor and state lawmakers, who so far have taken no steps to find a backup revenue source.

“I don’t think the state is going to let the sports authority go under,” said Curtis, the portfolio manager with Aquila Group. “But they aren’t going to do anything until their back is up against the wall.”

Bloomberg Business

by Darrell Preston

October 18, 2015

Kentucky Report Addresses Risks, Benefits of Transportation P3s.

Public-private partnerships could become a viable way for Kentucky to develop transportation projects in the near future if enabling legislation is enacted, a University of Kentucky research team predicts. The number of transportation P3s being conducted in the United States has increased significantly in recent years but the risks and benefits of such agreements must be weighed carefully before they are negotiated, the university’s Kentucky Transportation Center said in a new report.

P3 legislation was considered by the state General Assembly this year and in 2014 that would have facilitated construction of a bridge linking northern Kentucky with Cincinnati. In 2014, Gov. Steven Beshear vetoed the bill. Earlier this year, the bill was passed in the House but failed to gain approval in the Senate.

The study describes a variety of P3 agreements and the challenges and rewards of pursuing this type of procurement in the face of growing infrastructure needs and declining budgets. The report also warns of pitfalls agencies face if they fail to oversee projects closely, gain public support for them or if agencies do not negotiate solid agreements involving projects that are most suitable for a P3.

The study’s authors noted that the acceptance of unsolicited proposals, which would have been authorized by the Kentucky legislation and is permitted in other states, could encourage private developers to pursue only highly profitable projects, leaving states to take on “more undesirable” ones. Agencies could avoid this by inviting firms to bid on a package containing both more and less financially appealing projects, offering subsidies to encourage private participation in a project that might otherwise be overlooked, and allowing other firms to compete for a proposed project.

The Kentucky Transportation Center’s study is entitled Synthesis of Public-Private Partnerships: Potential Issues and Best Practices for Program and Project Implementation and Administration.

S&P’s Public Finance Podcast (Rating Transitions in the Housing Sector).

In this week’s Extra Credit, Senior Director Larry Witte discusses the factors driving rating transitions in the public housing sector, and Senior Director Lisa Schroeer reviews the key rating actions we took on various entities across the country over the past week.

Listen to the Podcast.

Oct. 16, 2015

Appellate Court Upholds TIF District Levy and Collection of Taxes.

The Illinois Appellate Court recently upheld the actions of a city council in its establishment and implementation of a TIF district (*Devyn Corp. v. City of Bloomington*). In this case, the Court addressed the adequacy of a TIF district's financial statements as well as when a TIF district's authority to collect taxes terminates.

This case arises out of the creation of the Downtown Bloomington Tax Increment Redevelopment Plan ("the TIF District") by the Bloomington City Council in December of 1986. The TIF District was scheduled to last 23 years and had an estimated date of completion of December 21, 2009. Through the duration of the TIF District, the city generated approximately $1.9 million, which was used to fund a number of projects focused on infrastructure improvements within the TIF District. During the city council meeting to approve the use of funds from the TIF District, Devyn Corp. objected, stating that the City's use of the funds was a violation of the TIF Act. Soon thereafter it filed a complaint alleging that the City's financial statements failed to account for certain expenditures and that the City unlawfully appropriated taxes from the TIF District by collecting taxes after the December 21, 2009 estimated date of completion.

The trial court found in favor on the City on both issues, holding that Devyn Corporation failed to establish that it lacked an adequate remedy at law to obtain the financial statements of the City regarding the funds collected from the TIF District. Additionally, the trial court held that the estimated date of completion for the TIF District served only as an estimate and therefore did not bar the City from levying taxes after December 21, 2009.

On appeal, the Fourth District Appellate Court affirmed the trial court's ruling. Specifically, the Court found no basis for an equitable accounting of the funds received and spent from the TIF District since Devyn Corp. could also obtain this information through the Freedom of Information Act or through discovery. The Court noted that Devyn Corp. did in fact make such a request after filing this lawsuit and received all financial information that would have been turned over in an equitable accounting. With respect to the estimated date of completion, the Court held that the legislature's intent was an estimate as opposed to a hard date of termination. As such, the City's levy and collection of incremental taxes on December 28, 2009 (after the estimated date of completion) was lawful.

This decision ultimately preserves the wide latitude municipalities are given in administering TIF Districts. Given this wide latitude afforded to municipalities, other taxing agencies should make the most of all the opportunities available to them to influence and monitor the creation of TIF Districts.

by Ares Dalianis, Jamel Greer, Scott R. Metcalf | Franczek Radelet P.C.

10/12/2015

Fighting Wildfire With Finance.

The western United States is fighting an increasingly high-stakes battle with wildfire. At this very moment, 10 wildfires are raging throughout the state of California. Ten firefighters have already died this year protecting our forests and thousands more are at risk every day as wildfire season becomes longer and more intense each year. Unfortunately, these severe wildfire seasons are not an anomaly, but rather a taste of the new normal. At the same time, 92 percent of California is experiencing "severe drought" conditions, with research suggesting that this is likely the worst drought in 1,200 years. As climate change continues to create a hotter and drier environment this challenge too is expected to continue. Perhaps no one is affected by the drought more than California farmers, who last year received only 15 percent of water requested from the state. As a result, many are losing not only their crops but their livelihoods as well.

As the wildfires and drought persist, there is no denying that the well-being of our communities is inextricably linked to the health of our forests. As humans settled and built communities in and around forests, fires that would naturally burn and maintain healthy forest ecosystems have been suppressed, leading to severely overgrown forests with up to 10 times more trees per acre than nature intended. This incredible density creates the opportunity for a small burn to turn into a catastrophic mega-fire. Compounding this problem, high tree density reduces the amount of water available to local utilities due to increased precipitation evaporation and excess vegetation soaking up precipitation before it reaches our reservoirs.

While the U.S. Forest Service (USFS) recognizes the tremendous economic and environmental benefits to be gained from forest restoration — a significant reduction in wildfire severity, as well as up to 16 percent higher water volumes to local utilities — the government agency simply doesn't have the financial means to undertake the project. The costs of fighting increasingly intense forest fires has severely limited the resources available for prevention activities. Annual fire suppression costs in the U.S. have ballooned from $450 million just 20 years ago to $1.6 billion (and growing) today. With a budget designed for a reality that no longer exists, USFS is trapped in a vicious cycle of paying for today's fires by borrowing funds intended to prevent tomorrow's. As droughts get longer and fires larger, this funding deficit for prevention-oriented activities will only widen.

It is clear that we need cost-effective, innovative solutions to build the resilience of the communities in dealing with both mega-fires and the drought. Recognizing that it costs up to 40 times more to put out a fire than prevent it, the private finance community has seen an opportunity to shape a solution that raises the capital needed to fund prevention efforts — not by donating, but by investing through a Forest Resilience Impact Bond. Spearheaded by Blue Forest Conservation, Private Capital for Public Good, and Encourage Capital, the Forest Resilience Impact Bond is a proposed new form of pay-for-success funding that seeks to leverage financial innovation to fund environmental conservation. The effort is funded by The Rockefeller Foundation's Zero Gap portfolio, which focuses on shaping and supporting the next generation of innovative financing solutions through a venture philanthropy model that leans heavily on collaboration with both private and public sector partners. The inaugural Forest Resilience Impact Bond is being intended to raise capital from private investors to fund forest restoration designed to decrease burn severity and increase water availability for local utilities. Preliminary research suggests that investors are expected to earn market returns as real economic results — USFS cost savings from reduction in number and severity of fires, and increased revenue for water utilities as a result of increased water flow — are achieved.

As the USFS faces the impossible task of responding to more and more frequent mega-fires with a budget that cannot conceivably keep pace, financing mechanisms such as the proposed Forest

Resilience Impact Bond can offer a solution that brings new capital and new thinking to the market. We need to focus our efforts on more than just fighting the wildfires and drought — we need to keep looking for creative financing solutions to tackle complex problems and build the resilience of our communities.

THE HUFFINGTON POST

Saadia Madsbjerg
Managing Director, the Rockefeller Foundation

Adam Connaker
Program Associate at the Rockefeller Foundation for Innovative Finance and Impact Investing

Posted: 10/12/2015 1:55 pm EDT Updated: 10/12/2015 1:59 pm EDT

Goldman Sachs Social Impact Bond Pays Off in Utah.

DALLAS – After three years of working with social impact bonds, Goldman Sachs achieved a milestone this month with a Utah preschool program that became the first to pay investors for the program's success.

"Obviously, we find this success very encouraging, so we will continue looking at other opportunities," said Andrea Phillips, vice president of Goldman's Urban Investment Group. "But we will look at each program on its own merits and do our due diligence."

Social impact bonds are a relatively new type of finance devised to deal with intractable social problems, such as prison recidivism, health programs or other issues that cost society or government in the long run.

The Utah program, established in 2013 by the United Way of Salt Lake City, sought to reduce demand for costly special education in the Granite School District by providing high-quality pre-kindergarten for children aged 3 and 4 years.

The preschool program was based on research conducted by Voices for Utah Children, an advocacy group for disadvantaged children.

While research showed that early childhood education could reduce costs throughout the child's education, the majority of Utah 3 and 4-year-olds were not enrolled in pre-kindergarten. Utah was one of only 10 states that provided no state funding for high-quality preschool.

To help fund a high-quality pre-K, Janis Dubno, then director of early education policy for Voices for Utah Children, designed a "sustainable financing model" to illustrate that early childhood education investments could ultimately save money for Utah taxpayers.

Dubno's model evolved into a results-based financing system that allowed private investors to cover the up-front cost of pre-K programming for at-risk 3- and 4-year olds, with the state reimbursing investors for each child who was considered at risk for later special education intervention upon preschool entry.

The "bond" was more of a bet that the program would work. Investors, who provided $4.6 million of upfront loans, would be paid back by the state if the program worked. A successful preschool program would save public funds by avoiding the high cost of special education services.

Thus, the program served a secondary purpose of demonstrating to legislators and other policy makers the cost effectiveness of early childhood education.

United Way of Salt Lake convened partners and investors to launch the first year and earmarked $1 million to serve as the repayment fund for the transaction's first cohort of children. Salt Lake County added to the repayment fund and became the first government in Utah to embrace the pay-fo--success model.

The Utah State Legislature in 2014 passed House Bill 96, the Utah School Readiness Initiative sponsored by House Speaker Greg Hughes, R-Draper. The legislation established the School Readiness Board, made up of appointees from the State Department of Workforce Services, Utah State Office of Education, Utah State Charter School Board, business leaders, and other individuals committed to advancing early childhood education in Utah.

The School Readiness Board is responsible for entering into pay-for-success financing contracts with private investors on behalf of the state.

In 2014, Utah signed a contract with United Way of Salt Lake, Goldman Sachs, and the Chicago-based J.B. Pritzker Foundation to fund the project for the preschool children.

Of the 595 low-income children who attended high-quality preschool financed by the SIB in the 2013-14 school year, 110 of the four-year-olds were identified as likely to use special education in grade school. Results showed that of those 110 students identified as at-risk, only one used special education services in kindergarten. The 110 students will continue to be monitored through sixth grade, generating further success payments based on the number who avoid use of special education in each year.

The successful results led to the first investor payment for any pay-for-success financing mechanism in the U.S. market.

"These results show that the pay-for-success model creates an opportunity to put taxpayer dollars towards what actually works, rather than following an outdated recipe that we once thought or hoped would work," said Salt Lake County Mayor Ben McAdams.

Total savings calculated in Year 1 for Cohort 1 are $281,550, based on a state resource special education add-on of $2,607 per child. Investors received a payment equal to 95% of these savings.

"Goldman Sachs is paid first," Phillips said. "We expect to be repaid over seven years." With a target base interest rate of 5%, the implied maximum return is about $5.5 million, according to a fact sheet about the program.

The initial investment of $1 million was considered proof of concept that represented the first phase of a $20 million commitment by J.B. Pritzker, Goldman Sachs and other private investors for the Early Childhood Innovation Accelerator, a fund designed to increase the availability of high-quality early childhood education while building a strong evidence-base of success.

While the Utah program was the first to pay off, Phillips said her group is anticipating similar results in a Goldman Sachs-funded program in Chicago.

Established in 2001, the Goldman Sachs Urban Investment Group has committed more than $4.5

billion for various projects.

Phillips, who earned her graduate degree at Harvard's John F. Kennedy School of Government, worked in nonprofit finance before joining Goldman in May 2010. She has guided the social impact bond initiative since Goldman issued the nation's first one in 2012.

Goldman's first social impact bond ended in August without the desired outcome. The program at Rikers Island in New York was designed to reduce recidivism among inmates. But results audited by an independent board showed no improvement, meaning the state would not pay off.

"While we certainly hoped for greater impact, we learned a great deal along the way and remain committed to investing in projects that support important public initiatives," Phillips said.

Now that a SIB has shown success, Phillips said new research is needed to anticipate odds of success. Unlike traditional municipal bonds, social impact bonds have no credit ratings that could tell investors the degree of risk they are facing.

"As social impact bonds become more common, there will be a need for more metrics to determine a program's chances of success," she said.

THE BOND BUYER

by Richard Williamson

OCT 9, 2015 1:25pm ET

Miami-Dade Tries to Break P3 Mold.

BRADENTON, Fla. – Miami-Dade County plans to break the traditional P3 mold with what its leader calls an innovative capital program that could surpass $7.85 billion.

With 2.6 million residents, and more on the way, county Mayor Carlos Gimenez told a private industry forum last month that it is critical to find new ways to maintain and enhance the county's infrastructure.

"As part of my goal to lead a more efficient government, one that stretches its dollars to the maximum extent, we need to look for creative solutions," Gimenez said. "That is where opportunities lie for public-private partnerships."

The county's plan could entice investors to step out of their comfort zones because most P3s currently involve large stand-alone projects such as major toll roads, according to a global infrastructure financing expert.

Although Miami-Dade is still in the early planning stages of its program, Gimenez said the nation's seventh most-populous county has already compiled more than 50 potential capital projects that will be studied to determine whether they will benefit from the public-private financing structure.

The projects run the gamut of those local governments have traditionally financed with general obligation and revenue bonds, including public works, cultural facilities, water and sewer, detention facilities, transit, parks, public housing, roads, aviation, and ports.

Project cost estimates run from under a million dollars to convert a toll plaza office into a restaurant to more than $2 billion for a federal consent decree-driven water and sewer improvement program.

Whether Miami-Dade is successful developing the capital plan depends on its structure along with the expectations of county officials and market participants, said Michael Likosky, who leads the infrastructure practice at New York-based 32 Advisors.

“Miami-Dade is seeking to develop an innovative approach to the market that very few entities have tried to do on an ambitious level in the United States,” said Likosky, whose credentials include working with local and state governments, the United Nations, the Organization for Economic Cooperation and Development, and the Clinton Global Initiative.

“It’s a tall order,” he said. “For me there is a clear path to success but it’s not particularly easy.” In the U.S., the P3 market has been the most receptive to working with single, large stand-alone projects, according to Likosky.

With little experience structuring comprehensive municipal capital plans with public-private partnerships, the development of such a program must be realistic and contain prioritized projects because the finance and construction side of the P3 market is inclined to be inflexible, he said.

“There tends to be a cookie-cutter approach now that will fund certain projects of priority but will not fund the rest,” Likosky said. “The job of a public entity is to determine how to leverage the bankable stuff in order to finance the non-bankable stuff.” Miami-Dade County is not alone in seeking alternatives to debt to finance a wide array of projects.

Rating agency analysts believe that growing unfunded infrastructure needs and budget concerns will help drive further use of P3 contracting into sectors other than transportation. The contracts between the public and private sectors will allow state and local governments to design, build, finance, operate and maintain government-related infrastructure for a fixed period of time, Moody’s Investors Service said in a September report.

P3 contracts will allow governments to bring private capital to new sectors such as housing, higher education, and water and sewer, according to Moody’s senior analyst John Medina. As an example, Moody’s cited the Next Generation Kentucky Information Highway System, a first-of-its kind P3 to bring high-speed Internet to a state where the service has lagged the rest of the country.

Kentucky issued $230.05 million of 30-year tax exempt bonds for the project in August to finance a 30-year concession agreement with a consortium whose main investors are Macquarie NG-KIH Holdings Inc., Ledcor US Ventures, and First Solutions LLC.

Standard & Poor’s analyst John Sugden said P3s offer an alternative way of delivering large projects, though acceptance of the mechanism has been slow for some areas.

“We expect that the states with established P3 programs will continue to use P3 financing,” Sugden said in a special report last month.

However, the size, complexity and lack of uniformity in concession agreements have created high start-up costs for some governments and created a barrier to greater adoption of the model, he added.

Some P3 obligations are considered debt, depending on the structure, and can be factored into credit ratings, the S&P report noted.

P3 programs don’t come without risks, said Municipal Market Analytics partner Matt Fabian. “Like swaps, P3s can be highly complex, long-term arrangements that are difficult to restructure if needed,” Fabian said Tuesday.

P3s, like swaps, can also create an accelerant to unexpected credit troubles, he added. “To the extent issuers are using P3s to avoid the characterization of their obligation as debt, it raises serious concerns about the issuer’s disclosure practices and willingness to pay,” Fabian said.

In July, he warned municipal investors to be wary of local issuers engaging in P3 transactions, particularly in states that are actively encouraging the financing technique.

The complex relationships and unique risk allocation in each P3 transaction imply a need for financial and legal sophistication and revenue raising flexibility that cannot be counted on among all local governments, he said.

A case in point, Fabian said, is the Virginia Route 460 project. The P3 was cancelled in part because the state failed to obtain final permits, leaving Virginia on the hook for about $300 million for a road that will not be built.

Fabian said Virginia is well-known for being ahead of the curve in terms of its P3 strategy and use, though at the time the Route 460 project was approved political pressure influenced the decision to move forward with the higher-risk project without adequate transparency and oversight.

As a result, Virginia enacted legislative changes to the process for approving P3s that includes the formation of an advisory committee to determine if potential projects are in the public’s interest.

In Miami-Dade, county commissioners are proceeding cautiously to develop the capital program they hope will serve both the public and private sector. The entire P3 program has been in development for several years.

Last week, commissioners appointed the final two members of a 15-member task force that will make recommendations on how the county advances the use of P3s.

The task force members include those involved in P3 projects, attorneys specializing in infrastructure finance, and experts in planning, construction, engineering, architecture, and banking.

Miami-Dade is also hiring P3 legal and financial advisors, including a pool of consultants for the county’s massive sewer improvement program.

Sikorsky said the county needs a clear strategy to develop the final comprehensive capital plan. “We know in the muni context that it’s pretty clear there’s a strategy for doing that with a GO or revenue bond, but in a P3 that doesn’t exist,” he said. “There’s no off-the-shelf solution.” Banks and investors will only pay for certain types of projects, such as those with a revenue stream, so the capital plan should use P3s for large, stand-alone projects and include other financing mechanisms.

“If you associate all of the projects with P3s, then all this isn’t going to get done,” Sikorsky said. “I think they should be after a public-private plan, and P3s are one type of [financing] deal.” While the task will not be easy or straightforward, he said Miami-Dade is attempting to create an ambitious program that could shift P3 market dynamics.

“I think the unique aspect to it is that people typically think about bringing a P3 project in stand-alone way to market,” Sikorsky said. “So it’s very unique in the U.S., and innovative, to think about an entire capital plan, and I have to give credit to them for doing so."

THE BOND BUYER

by Shelly Sigo

OCT 14, 2015 12:16pm ET

Figure in Troubled Bond Deals Leaves a Company Board.

PHOENIX – Christopher Brogdon, who recently emerged at the center of more than a dozen problematic healthcare municipal bond deals for which at least $2 million was unaccounted for, will resign from the board of directors of a healthcare company.

Brogdon will step down from the board of AdCare Health Systems at the next shareholder meeting, the company announced Wednesday.

AdCare, which trades on the New York Stock Exchange under the symbol ADK, owns, leases or manages for third parties 39 senior living and long-term healthcare facilities. Brogdon owns more than 5% of the company's shares, according to its regulatory filings.

Brogdon is the central figure more than a dozen defaulted bond issues stretching back more than a decade that trustee Bank of Oklahoma Financial has said are missing some $2 million from debt service reserve funds.

AdCare was involved in two of those deals, according to regulatory filings.

On Tuesday, the firm filed a form 8-K disclosure with the Securities and Exchange Commission noting that two facilities controlled by entities related to AdCare and financed with municipal bonds had been the subject of default notices filed by the bond trustee.

For bonds issued by the city of Springfield, Ohio for a nursing home run by a wholly-owned affiliate of AdCare, "the Company has cured such defaults," AdCare reported in the 8-K.

In the case of bonds issued by the Medical Clinic Board of the City of Hoover, Ala. for a facility owned by "a consolidating variable interest entity of the Company which is owned and controlled by Christopher Brogdon," AdCare said "it is the Company's understanding" that the entity is working to cure the bond default.

The trustee bank announced in filings over the summer on the Municipal Securities Rulemaking Board's EMMA website that it had fired a senior vice president following a bondholder complaint she colluded with Brogdon.

The terminated employee, Marrien Neilson, denied wrongdoing, and has retained an attorney specializing in employment litigation and dispute resolution. The bank has since posted numerous EMMA notices on the statuses of the various projects, some of which it is trying to sell and others it is trying to place into receivership or forbearance. But some holders of the bonds, which have coupons in excess of 7%, aren't satisfied.

Bernard Miskiv, a retired optometrist who lives in Kissimmee, Fla., said he has about $300,000 invested in several bonds local governments issued for several different non-profit borrowers with links to Brogdon. Miskiv said he and a confederation of about 40 other investors who also bought the bonds through a shared broker feel that the bank is largely to blame for the situation, including the case of one facility in Sumner, Ill. that was sold at a tax sale in 2008 — a fact that apparently went unnoticed by the bank until recent months.

“Without the bank enabling Brogdon, this never could have happened,” Miskiv said. “How are they protecting the bondholders? We don’t want retribution, we want restitution.”

Miskiv said he has repeatedly called and written to BOKF’s trustee department, and told the bank he would like it to buy his bonds back.

“There’s no market for them,” he said. “They’re worthless.”

A number of the bonds do continue to trade, though infrequently, according to activity listed on EMMA.

BOKF has issued numerous EMMA notices in the past two weeks, some of which raise even more questions about where the money for debt service went and how some of the money that did come in got there.

On Oct. 1, BOKF posted notices for several of the issues indicating that it had received debt service checks and that it planned to distribute the funds to bondholders as usual. However, the checks came from companies uninvolved in the deals.

“The trustee is unable to determine whether the funds received by the trustee for the debt service payment are pledged revenues under the trust indenture,” the notices say in part. “In the future, the trustee will not accept payment from any person or entity other than the borrower, a guarantor, or a person or entity tendering payment as agent for and on behalf of the borrower.”

The companies that made the mysterious payments, including St. Simons Healthcare LLC/Gordon Oaks Assisted Living, Bleckley NH LLC, and St. Simons Healthcare LLC Riverchase Village, all appear to be owned or run by Brogdon.

Joseph Crivelli, a senior vice president and director of investor relations at BOKF, said that the bank filed a lawsuit against the Brogdon-affiliated nonprofit National Assistance Bureau and Brogdon himself in the U.S. District Court for the Middle District of Georgia on Oct. 12. The National Assistance Bureau shares an Atlanta address with Global Healthcare REIT, a publically traded firm of which Brogdon is president.

On another deal, a 2000 $4.2 million issuance located in Bibb County, Ga., Crivelli said the bank filed for receivership on Oct. 9.

Miskiv said his broker had found a buyer willing to purchase the Bibb facility, which is still operational, and make bondholders whole, but that the bondholders had trouble getting the bank to consider it.

Crivelli said last month that the bank was conducting an internal investigation and had hired a forensic accountant to assist in that investigation. Crivelli said this week that the bank is continuing to cooperate with regulatory investigations into the Brogdon deals.

Brogdon has not responded to requests to be interviewed.

Brogdon has a checkered past as a securities professional. Financial Industry Regulatory Authority records show that Brogdon was a licensed broker at Dean Witter Reynolds in New York from 1978 until 1991, but was expelled from membership in FINRA's predecessor, the National Association of Securities Dealers after the NASD found that Brogdon had violated federal securities laws and Municipal Securities Rulemaking Board rules by both making unauthorized trades and preparing inaccurate records while he was working on behalf of Harbor Town Securities, where he was registered from 1982 to 1986.

THE BOND BUYER

BY KYLE GLAZIER

OCT 14, 2015 4:27pm ET

As Retirees Outnumber Employees, Pensions Seek Saviors.

Desperate for more money, public pension systems have been making high-risk investments hoping for a higher profit. But they may ultimately cost taxpayers more.

The $300 billion California Public Employees' Retirement System began showing its age this year: It started paying out more money to retirees than it gained in contributions and investments. In roughly 20 years, CalPERS' retirees will outnumber active workers by a ratio of nearly 2-to-1 in some of its plans.

In fact, a lot of state and local pension systems are already showing their age. Back in the 1970s, the typical pension fund had four to five times more active employees than it had retirees. Today, that ratio has slipped to 1.5-to-1 and is falling.

In the investment world, financial planners advise older individuals to steer their retirement accounts toward more conservative, fixed-income investments, such as bonds. The idea is to reduce the risk that an investment could turn south just when it's time to start withdrawing funds.

But most pension plans have been doing the exact opposite. In search of high returns, they have been turning to alternative investments. The focus has mainly been on hedge funds and private equities. Hedge funds are investment pools in high-risk assets that are aggressively managed for big or so-called absolute returns. Private equity funds pool money to buy companies with the goal of selling them or taking them public for a profit. Both funds' managers typically charge 2 percent of the total investment value as a fee (roughly twice the rate of more traditional fund managers), and managers take a 20 percent cut of the profits. They are by their very nature opaque, built on secret investment formulas that make tracking money in the funds next to impossible. The investments have been sold to institutional investors as a way to diversify and lower a plan's dependence on the swings of the stock market. But many are now questioning whether, for public pension plans — especially maturing plans that are paying out more than is coming in — these high-risk, high-fee investments are worth it.

CalPERS has decided that hedge funds aren't. Last year, the system announced it was divesting the $4 billion it had in those funds as part of the system's "flexible de-risking" strategy, investor-speak for making the pension system more conservative as it enters its golden years. The pension board is also evaluating ways to step down its assumed rate of return, a move that would reduce the pressure to take investment risks.

CalPERS is among a few pension systems that are dialing back enthusiasm for alternative investments. But concerns have been mounting for years. The lack of transparency and high fees paid out in these types of investments have contributed to pay-to-play scandals in at least three states. An investigation by the U.S. Securities and Exchange Commission (SEC) into 400 hedge funds found that half charged bogus fees and expenses. This summer, 13 state treasurers penned a letter to the SEC calling for regulations requiring that private equity firms more clearly outline the types of fees they charge.

Still, becoming a more conservative investor — even to reduce risk — is politically difficult. When pension funds reduce the expectations of what they will earn per year on their investments, governments may have to increase the amount of money they — or their employees — pay into the fund. So in the current investment market where low-risk bonds offer minimal returns, some pension systems continue to shift their money into high-risk assets. But these attempts to beat the market come at the expense of transparency, and they may ultimately cost taxpayers more.

Most pension portfolios have a long-term investment return target between 7 and 8 percent a year. Historically, plans achieved that with relative ease. But a lot has changed in the past 20 years. In 1992, the median pension fund's assumed rate of return was 8 percent, and U.S. Treasury securities paid out 7.67 percent, according to an analysis by the Pew Charitable Trusts and the Arnold Foundation. That means a pension portfolio's overall investments only had to perform slightly better than the bond market — not a very big gamble. By 2012, pension plans had lowered their return assumptions to a median 7.75 percent, but the 30-year Treasury bond returns had plummeted to just under 3 percent. The pressure on pensions to boost investment returns intensified tenfold.

Other factors have made things worse. In the late 1990s and early 2000s, many governments took funding holidays. Thanks to robust returns on stock market investments, half of all state pension plans were fully funded, according to Pew research. Meanwhile, state legislators increased benefits for retirees without increasing funding — adding to the long-term liabilities of their pension plans. The 2008 recession soured the investment picture, but pension funding ratios were already on the decline. State plans were funded on average at 85 percent of liabilities in 2006, according to Pew. By 2014, it was 74 percent, a Governing analysis found.

With strained budgets, most governments have not rushed to put extra money into their retirement systems. That puts pressure on pension plans to make up the difference. "This whole system works as long as governments are willing to make their payments no matter what," says Donald Boyd, director of fiscal studies at the Rockefeller Institute of Government. "So now pensions are relying more on investments than ever before. It makes you feel as if they're trying to fix a problem that wasn't their making."

According to data from the Boston College Center for Retirement Research (CRR), the typical pension fund a decade ago had about 1 percent of its assets sitting in alternative investments. By 2013, that had ballooned to 14 percent — a value of nearly $1 trillion. Some plans invest far more. Pennsylvania's teachers and state employees plans — which both face benefits cuts as the state struggles to fund them — have more than 40 percent of their money in alternative assets, according to the CRR.

The appeal is in the returns the funds produce. In fiscal 2015, the pensions' public equity portfolios (a.k.a. stocks) did not perform well. Private equity portfolios, however, came in with returns that were near or at double digits. Hedge fund returns were far lower, and most pension plans have reported their overall fiscal 2015 returns were less than 5 percent for the year.

One reason hedge funds may not be helping the bottom line could be their fees. Pension officials have maintained that the high fees associated with alternative investments are worth the above-average returns. But studies show that low-cost indexed funds (low-fee portfolios that replicate the movements of a specific financial market) can outperform hedge funds for a fraction of the cost. Recently The Economist compared the return from an S&P-indexed portfolio and the average return from hedge funds. The analysis found that the indexed portfolio easily outperformed the hedge funds. In other words, as The Economist put it, "hedge funds are a very expensive way of buying widely available assets." In keeping with that logic, Nevada Chief Investment Officer Steve Edmundson last year began moving the state pension funds' stock and bond investments into securities that track market indexes.

For CalPERS, which has been invested in hedge funds for more than a decade, it was time to call it quits. The hedge fund program "wasn't having a significant material impact," says Cal-PERS spokesman Joe DeAnda. "At the same time it's very complicated, very complex, and the fee structure is higher." In order for the absolute returns to potentially have a larger impact, CalPERS would have to invest a lot more than $4 billion out of its $300 billion portfolio. "There wasn't a strong desire to go that route," DeAnda says.

Of even greater concern for some is the lack of transparency in how these funds operate and in how they are charging fees. "With alternative investments, all I have is a contract. I can't see the assets," says Chris Tobe, a former Kentucky Retirement Systems trustee and author of Kentucky Fried Pensions, a book alleging a culture of corruption surrounding the fees the system paid to managers. "The numbers on it are the numbers [the managers] decide to give to me," he adds. "I'm not allowed to look under the hood."

Hank Kim, the executive director of the National Conference on Public Employee Retirement Systems, admits "it's entirely appropriate" to ask whether a public plan should be investing in a very opaque arena. But he likens the situation to a Coca-Cola shareholder asking the soft drink company to reveal its secret recipe. "The question is what is proprietary for a business," he says. "For private equities and hedge funds, their business model is the secret sauce."

The lack of transparency leads to a lot of confusion about where pension plans' money is going. Fees to asset managers are inconsistently reported, which makes it impossible to reasonably compare pension plans. For example, South Carolina's retirement system in 2013 paid $500 million in fees to asset managers — the same amount that New York City paid in fees for a portfolio more than five times bigger. A follow-up report released earlier this year by the fund analysis firm CEM Benchmarking — and commissioned by the South Carolina Retirement System — found that the state discloses more fees than is typical. In fact, the report estimated, pension funds are disclosing less than half of the private equity costs they actually incur.

In worst-case scenarios, the secretive environment can lead to scandal. In the late 2000s, the SEC investigated funds in California and New York, alleging that investment firms made improper payments to politically connected middlemen in exchange for investments from the pension funds. In New Mexico, the state's investment account and teacher pension fund lost an estimated $150 million as a result of politically driven investment decisions that underperformed. The scandal drew multiple lawsuits and a guilty plea to tax evasion by a former broker.

As alternative asset managers openly target institutional investors, there may be an opening for public pensions to demand more transparency from them. While state treasurers have called on the SEC to apply pressure, some pension systems are already demanding better transparency. CalPERS, frustrated with the lack of uniformity in the data it receives from its private equity managers, developed its own reporting template. DeAnda says the system soon plans to use that data to publicly report its private equity cash flow.

Pension systems can also do a better job of disclosing all the fees they pay. Rhode Island's treasurer recently pushed through a new investment policy requiring transparency from investment managers to disclose all fees, expenses and fund-level performance. It's a turnaround from the previous treasurer, now-Gov. Gina Raimondo, who drew criticism by refusing to disclose information related to fees and performance while shifting more state investments into alternatives.

But pension systems cannot truly act independently of lawmakers. For instance, many need approval from lawmakers to lower their long-term investment return assumptions. While CalPERS does not have that restriction, politics is still at play in determining how quickly the system can implement some of its decisions. Its plan to lower its return assumption, for example, would take place over a decade. "If [pension plans] were really independent, they wouldn't care what lawmakers thought," Boyd says of the overall dilemma state and local pension plans face. "They'd lower their assumptions, become a lot more conservative and ask the governments to pony up now. It's a very, very difficult situation to be in."

GOVERNING.COM

BY LIZ FARMER | OCTOBER 2015

How Blacksburg, Va., Got So Many People to Go Solar.

Dozens of U.S. communities have launched similar programs, but Blacksburg, Va.'s is different.

Solar is cheaper than it's ever been before. The cost of installing solar panels on the average home has plummeted 70 percent since 1998. Nevertheless, the upfront costs of installing panels still require a decent chunk of change. That's where a program like Solarize Blacksburg comes into play.

Blacksburg, Va., a city of about 50,000, launched the program — the first of its kind in Virginia — early last year in an effort to get more city residents to go solar. Working with installers, the city, along with community partners, negotiated a substantial discount for homeowners, lowering costs by 16 percent to an average savings of $3,256 per installed solar array. Today, it costs about $26,000 to install 5 kilowatts on an average home, according to the National Renewable Energy Laboratory.

Solarize Blacksburg is not unique. Rather, it's one of many "solarize" campaigns. The model started in 2009 as a grassroots effort to help residents of Portland, Ore., overcome the financial and logistical barriers to installing solar power. Since then, dozens of communities across the U.S. have launched their own versions of a neighborhood collective purchasing program.

Blacksburg's version differs from past programs in that it "puts demand last," says Chase Counts, energy efficiency program manager for the nonprofit Community Housing Partners, which helps run Solarize Blacksburg. Other solarize models typically start when a neighborhood or team of neighbors get together, form a co-op, and then vet and choose a contractor that will perform all of the solar installations. "We chose a different kind of model where we actually find the contractors upfront," says Counts. "We get them to agree to specific pricing options, different technical specifications and then we drive the demand from there."

And drive demand it did. Solarize Blacksburg saw residential solar quadruple in the six months after its launch. The results surprised program officials because they weren't sure whether solar would catch on in the state at all. One reason for the skepticism is that Blacksburg is a college town, home to Virginia Tech, and therefore the housing is 70 percent renter-occupied. Another reason is that Virginia’s energy policies aren’t especially favorable for solar. “The solarize model has spread largely in states that had very friendly solar energy policies,” says Carol Davis, Blacksburg’s sustainability manager. Given the state’s regulatory framework, she says, “Solarize Blacksburg was a gamble.”

But Solarize Blacksburg and a follow-up program to it, Solarize Montgomery, were both enormously successful. More than 800 people combined signed up, largely because there was “so much pent-up demand for residential solar that hadn’t been tapped in the state,” says Davis.

Both Solarize Blacksburg and Solarize Montgomery, which is the county in which Blacksburg is located, were one-time programs. “We didn’t want to create the community impression that these solarize programs will be ongoing,” says Counts. “That might result in potential participants thinking, ‘Well, I won’t sign up this year because they are going to run it next year, so I will just wait again.’”

So Solarize Blacksburg and Solarize Montgomery were never meant to be ongoing. As city officials started planning the program, they looked at what had happened with other solarize programs. “While we were really excited about the prospect of this huge bump in residential solar when the program was live,” says Davis, “what we saw that came next was actually the most encouraging. After a program closes out, it seems to jump-start the adoption of solar in the community.”

In fact, a study by Yale and New York universities found that residents are more likely to install solar if other systems have already been installed in the community. Ten additional installations in a given ZIP code, the study found, increased the probability of adoption by 7.8 percent. “That’s why we’re not doing another program,” says Davis. “We gave solar a push. Now we want it to move on its own, and we’re seeing evidence that it is.”

In Montgomery County alone, solar use grew by 273 percent from December 2012 to July 2015. “Since we launched the Solarize campaign — we won’t take 100 percent of the credit, but we’ll take a good bit of the credit — residential solar has more than doubled across the whole state,” says Davis. Indeed, Solarize Blacksburg has had quite a ripple effect: To date, at least 25 other Virginia communities have followed Blacksburg’s lead and created solarize programs. Since 2012, residential solar has grown by 122 percent across the state.

GOVERNING.COM

BY ELIZABETH DAIGNEAU | OCTOBER 2015

What a Little Dose of Privatization Could Do.

When an agency fails as spectacularly as the Boston region’s transit system has, it’s time for some competition.

Many conservatives hail privatization as the magic bullet to fix bloated government bureaucracies. Many liberals reflexively dismiss it as putting profits before people. The truth, of course, lies somewhere in the middle. And sometimes it takes a crisis to show exactly where privatization could work for taxpayers.

One of those places is the Greater Boston’s region’s transit agency. There can be little doubt that the

Massachusetts Bay Transportation Authority (MBTA), is in crisis. Last year's record snow and cold, along with the damage inflicted by a $7.3 billion maintenance backlog and huge payments to service the nearly $9 billion it owes in debt and interest, finally brought the system to its knees.

Since that time, MBTA's leadership has been replaced, a winter resiliency program has been implemented, and the authority has won a three-year reprieve from Massachusetts anti-privatization law.

Government panels and think tanks are among the organizations that have focused on the MBTA in the wake of last winter's meltdown, and the data they have developed should guide MBTA policymakers as they try to emerge from what would be called bankruptcy in the private sector.

One idea that should be pursued is opening MBTA bus-maintenance services to private competition. A study by former Massachusetts Inspector General Greg Sullivan for the Pioneer Institute (I am affiliated with Pioneer as a senior fellow but was not involved in the preparation of the report) estimates that competitive procurement would save the MBTA about $50 million annually.

Sullivan found that in 2013 the MBTA had the highest maintenance costs per hour of bus operations of any of the nation's 425 bus transit agencies. The costs are largely attributable to high staffing levels and labor hours per vehicle mile.

Sullivan's numbers mirrored federal data. According to the Federal Transit Administration-sponsored Integrated National Transit Database Analysis System, MBTA's total bus-maintenance costs were not only higher than any of its peers (Atlanta, Baltimore, Miami, Philadelphia and Washington, D.C.), but its maintenance cost per vehicle revenue mile was a stunning 92.2 percent higher than the average of the five agencies. Clearly, bus maintenance is a service that could benefit from competitive procurement.

Other privatization opportunities have also emerged. Last year, the MBTA reinstituted late-night service on weekends, running until 2:30 a.m. instead of 1 a.m. Businesses pledged to help support the service, which had been tried before and shut down in 2005 due to lack of riders, but their contributions have fallen short of promises. Like any transit agency, the MBTA also has a number of regular bus lines with lower ridership.

Rather than discontinuing low-ridership lines and late-night service, the authority could reduce its losses by using smaller buses to provide both. But the MBTA has only full-size buses, making these services two more candidates for competitive procurement.

When he won a three-year reprieve from Massachusetts' anti-privatization law, Gov. Charlie Baker said he had no interest in large-scale MBTA privatization, which could quickly turn into a political and substantive quagmire. But experience has taught us that less-ambitious forms of privatization, such as the targeted use of competitive procurement, can pay dividends that make it worth wading into the ideological waters.

GOVERNING.COM

BY CHARLES CHIEPPO | OCTOBER 16, 2015

Instead of Fighting, Some Cities Team Up With Airbnb and Uber.

State and local governments have had a tumultuous relationship with Uber, Airbnb and other online companies that let people book rides, rooms, and goods and services from people rather than big businesses. Observers have focused a lot of attention on government attempts to control peer-t--peer services, yet some state and local governments are trying to use the sharing economy to their own benefit.

So far, the efforts have been limited. Most recently, Uber announced a partnership with the National Center for Missing and Exploited Children in 180 cities to send Amber Alerts to their drivers. But interesting models have emerged in a couple of other areas.

Emergency Preparedness

Several companies use technology to let people book stays at other people's houses instead of hotels. The biggest is Airbnb, which is expected to generate more than $850 million in revenue this year and by some estimates is worth more than the Marriott hotel chain. In 2012, when Hurricane Sandy hit the Northeast, some 1,400 Airbnb hosts — people who rent their rooms to others — listed their lodgings at no cost for people displaced by the storm. Since then, Airbnb hosts in other cities around the world — including Toronto, San Diego and Atlanta — have offered free rentals to displaced people during local emergencies.

In 2014, Portland, Ore., struck up an agreement with Airbnb to help streamline disaster response in an emergency (the city passed legislation allowing short-term rentals). Airbnb now identifies hosts who are willing to help and shares that information with the city. In return, Airbnb waives its service fee to hosts who offer free lodging. The company also trains hosts to prepare for emergencies and uses its app to notify users about possible crises. San Francisco's Department of Emergency Management has a similar partnership with Airbnb.

Typically during an emergency, the Red Cross provides food and shelter to displaced people and families, and "people will also find shelter on their own, usually at local hotels and motels," said Dan Douthit, the public information officer for Portland's Bureau of Emergency Management. But available rooms can fill up quickly. "This agreement adds capacity; it isn't meant to replace what the hospitality business provides," he said. The hotel industry also lacks Airbnb's database of hosts, which gives the city a real-time list of the number of lodgings available and where they're located.

No emergency has happened in the Portland area that's called for Airbnb hosts to help out so far. Douthit believes an earthquake would be a likely scenario, but a flood or major fire could put the agreement into action.

Transportation

Uber, the ride-booking service, has become popular in most major cities, and at least one local government sees an opportunity to work directly with the company.

Macomb County, Mich., located north of Detroit, has turned to Uber to provide door-to-door transportation for people who receive a summons for jury duty. The pilot project, launched in July, gives each juror an Uber code that covers a $20 ride to the courthouse (which Uber offers the county for free) on the morning of jury duty. County Clerk Carmella Sabaugh said the service gives jurors a safe ride to the courthouse and helps them avoid the hassles of limited parking in the area.

Local taxicab companies expressed concern about competition from Uber, but none were willing to offer free rides. Uber, which already offers a free ride to first-time customers, agreed to extend the offer to jurors for a trial period when approached by the county. Since 2004, the county has offered jurors free bus rides to the courthouse, but public transportation is limited, making Uber a convenient way for jurors to travel.

Macomb County's pilot is believed to be the first of its kind in the country. Depending on its success, the program could be continued beyond the trial period in Macomb County and expand into other counties in Michigan, Michael White, the general manager for Uber Michigan, told the Detroit Free Press.

Ride-booking services are also helping local governments transport disabled travelers.

In July, Uber launched UberACCESS, a pilot program that adds wheelchair-accessible vehicles to its services in Austin, Texas. Similar programs already operate in Chicago, New York, Philadelphia, Portland and San Diego.

Meanwhile, Seattle passed an ordinance creating a 10-cent surcharge on every ride originating in the city with the several ride booking firms that operate there. The money will be used to help drivers defray the cost of owning and operating a wheelchair-accessible taxi, according to the Shared Use Mobility Center.

It's too early to tell how successful these arrangements will be for governments. But technology has allowed a market for a need — in these cases, rooms and rides — to emerge by using information in an efficient and user-friendly way. And the sharing economy isn't limited to lodgings and rides. It makes what is surplus available to those who need it more efficiently than do many markets that government regulates.

GOVERNING.COM

BY TOD NEWCOMBE | OCTOBER 14, 2015

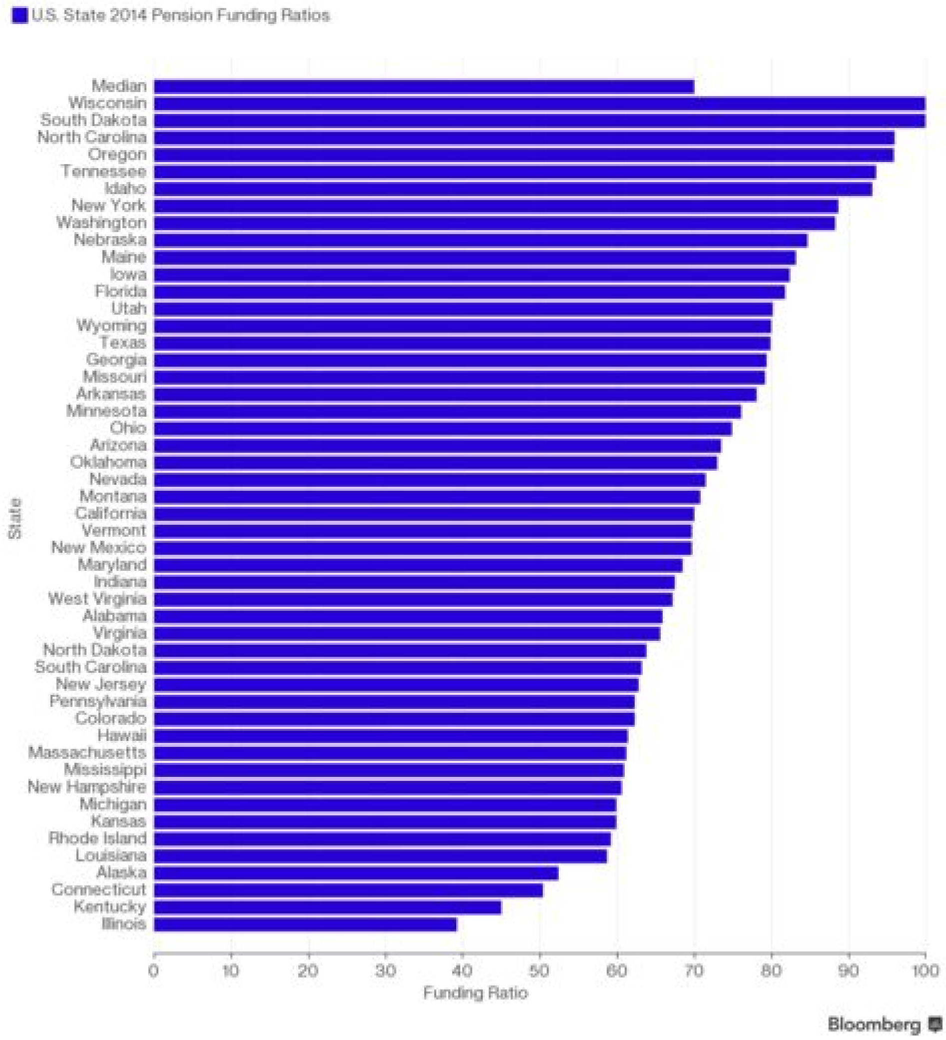
State Pension Funding Levels in U.S. Improve for a Second Year.

The finances of more than two-thirds of U.S. state pension plans improved in fiscal year 2014, as a soaring stock market boosted returns and many states stopped incorporating losses from the recession into their pension calculations.

The median state pension last year had 70 percent of the assets needed to meet promised benefits, up from 69.2 percent in 2013, according to data compiled by Bloomberg. It was the second straight increase in pension funding. Public pensions had median investment gains of 16.9 percent for the 12 months ended June 30, 2014 according to Wilshire Associates.

"It's generally agreed that 2014 was mostly a year of improvement for public pension funds," said Josh Gonze, who co-manages $10.5 billion of municipal bonds at Thornburg Investment Management in Santa Fe, New Mexico. Thornburg's $7.3 billion Limited Term fund is the 13th largest open-end tax-exempt mutual fund, according to data compiled by Bloomberg.

The Federal Reserve's policy of keeping short-term interest rates near zero and an improving economy boosted the Standard & Poor's 500 Index of U.S. stocks by 24.6 percent in the 12 months through June 30, 2014 including dividends, helping to ease the strain on public pensions.



Broad numbers mask big difference in the health of public pensions between states. Eight of 13 states whose funding level declined were states with below average funding levels.

“We have states that seem to be in genuine trouble,” Gonze said, listing Illinois, Kentucky, Alaska and New Jersey. “And clearly states that are not in any trouble at all.”

Illinois, with a pension shortfall of more than $100 billion, remains the state with worst-funded retirement system, with a ratio of assets to liabilities of 39.3 percent, followed by Kentucky at 45 percent and Connecticut at 50.4 percent.

In May, the Illinois Supreme Court struck down a 2013 pension overhaul saying it violated the state constitution’s ban on reducing worker retirement benefits. The ruling highlighted the lack of legal flexibility some states have in addressing their pension funding deficits.

Accounting Change

New Jersey’s pensions are projected to run out of assets to pay liabilities between 2021 and 2032, depending on the retirement system, under new accounting rules that most states began implementing in 2014, according to Moody’s Investors Service.

New Governmental Accounting Standards Board rules require public pensions to use a lower discount rate to value liabilities for plans with projected asset depletion dates and market value rather than the actuarial value of assets among other things.

Puerto Rico, Illinois and New Jersey are the three issuers whose pension funding deficits are serious enough that Thornburg is avoiding their securities, Gonze said. Thornburg's limited term fund focuses on debt maturing in 10 years or less.

More Retirees

Loop Capital Markets, in a report last month, said it expects "continued bifurcation" among governments in terms of the fiscal health of their pensions.

"A combination of strong pension protections, coupled with low funded levels, should be especially noted as they indicate escalating budgetary pressure," Loop's report said. "For those perennially struggling with funding pension payments and low funded levels, these pressures are not expected to abate without significant change in plan fundamentals."

State that had the biggest improvement in funding include Idaho, whose, pension funding ratio rose 7.6 percentage points to 93.1 percent and Oklahoma, whose actuarial value of assets divided by actuarial accrued liabilities gained 6.5 percentage points to 73 percent.

In the last six years Idaho's pension funding has improved by 19.2 percentage points, the most of any state, according to data compiled by Bloomberg.

Michigan's pension funding ratio has declined the most during that period to 59.9 percent from 83.6 percent. Michigan is one of three states, including Alaska and Ohio that have more retired public employees than active members, according to Loop.

Bloomberg News

by Martin Z Braun

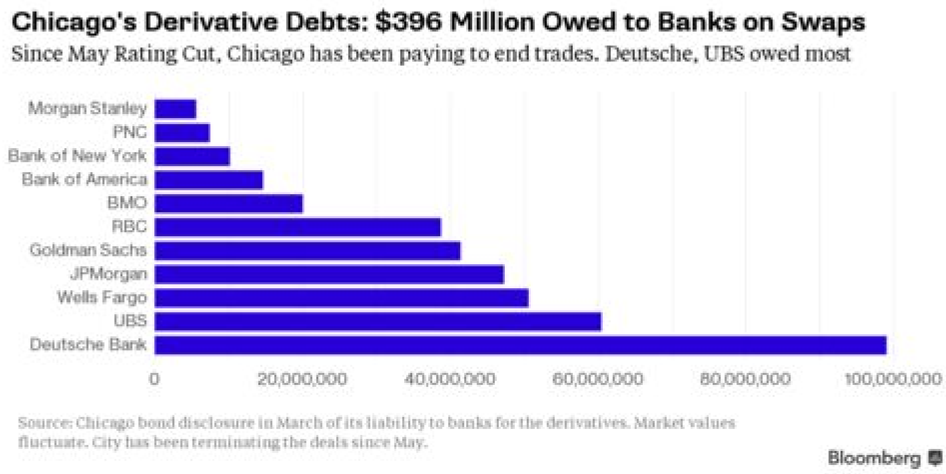
October 12, 2015 — 9:00 PM PDT Updated on October 13, 2015 — 5:01 AM PDT

Chicagoans' Cost to Exit Swap Agreements Approaches $300 Million.

Chicago's attempt to clean up a legacy of wrong-way bets on interest rates is costing taxpayers at least $270 million since Moody's Investors Service cut its rating to junk in May, city documents show.

The payouts to Wall Street banks, which come as the Windy City considers a record tax increase to cover pension costs, are more than the city spends a year to collect garbage at 613,000 homes, and could cover the cost of hiring more than 2,000 police officers. The pain isn't over yet as officials plan another round of debt restructuring that could cost $110 million to unwind derivatives on its water debt early next year.

"I don't think the public should be gambling with its funds," said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services, who has been analyzing municipal finance since the 1970s. "Save the speculation for people who risk their own money, not for taxpayers."



The city was forced to restructure obligations after decades of failing to address its rising pensions and borrowing to cover debt service, a legacy that began under former Mayor Richard M. Daley and continued until this year under Mayor Rahm Emanuel. Moody's downgrade of Chicago's general-obligation debt in May forced the city to begin a debt restructuring the mayor was already planning.

Chicago and other municipal borrowers in the past decade made bets on the future direction of interest rates through agreements with banks to swap interest payments. But when rates fell under the Federal Reserve's attempt to stimulate the economy after the financial crisis, many issuers ended up on the wrong side of the bets. Since then issuers have paid at least $5 billion to unwind the agreements.

Sewer Debt

The city sold about $419 million of bonds Wednesday, part of which will cover $70.2 million to end an interest-rate swaps tied to variable-rate debt for the city's sewer system. That's on top of $185 million paid to unwind swaps on general-obligation and sales tax debt since May. The estimated $270 million total also includes the cost to banks and other professionals to restructure, according to data Bloomberg compiled from city documents. Chicago owed as much as $396 million to banks in March, before the city started terminating the swap agreements, according to market values at the time. Chicago paid less than mark-to-market valuations, said Molly Poppe, a city spokeswoman.

While the city's refinancing and tax hike increase the burden on residents at a time when the city's finances are already squeezed, investors and credit raters have praised the move. One month after cutting Chicago's rating to speculative grade, Moody's called the refinancing a "credit positive." Now there's more certainty about how much the city may have to pay out, Matt Butler, a Moody's analyst in Chicago, said in a June 11 report.

Yields Decline

Chicago's bonds has rallied since Emanuel pitched his plan to raise property levies by $588 million over four years. Federally tax-exempt bonds maturing in 2038 traded last week for an average of $1.04, up from $1.01 five weeks earlier, before the tax hike was announced. That trimmed the yield to 4.5 percent from 5 percent, according to data compiled by Bloomberg.

"It felt like the market was not comfortable with the amount of risk that we were taking," Carole Brown, Chicago's chief financial officer, said in an interview Monday. The restructuring "demonstrates kind of a conservative and responsible financial practice to eliminate that risk by eliminating those swaps."

Wednesday’s deal will take care of the wastewater swaps, and the city will likely end the water-swap agreements in early 2016, according to Brown. Chicago will have to pay about $110 million to terminate the latter, according to the city.

About $332 million of the sewer issue is federally tax-exempt and was re-offered as fixed-rate obligations, and an additional $87 million of taxable debt will help cover the cost to terminate the agreements, according to bond documents.

A portion of federally tax-exempt securities due in January 2039 sold at a top yield of 4.4 percent, according to preliminary data compiled by Bloomberg. That’s about 1.5 percentage point more than 23-year benchmark municipal bonds. The taxable securities sold for as much as 6 percent yield, preliminary data compiled by Bloomberg show.

Borrowing Costs

The second-lien wastewater bonds, which are repaid from sewer-system revenue, won a higher rating from Standard & Poor’s this week, which raised its rating by one step to A, five levels above junk, and applauded the elimination of the liquidity risk. S&P has a stable outlook on the debt.

The wastewater credit faces “elevated volatility” because of its ties to the city, said Robert Amodeo, head of municipals for Western Asset Management Co., which has $452.5 billion under management, including some Chicago debt. He said he is considering buying the wastewater bonds given the strength of the underlying credit.

“There are some ongoing challenges there,” Amodeo said in a telephone interview from New York. “You can’t completely separate it from the city.”

The city’s ratings and borrowing costs are tied to its progress in getting the refinancing done, according to Brown. The hope is that credit companies will respond positively to the Emanuel administration’s steps to secure revenue for pensions, and eliminate the liquidity risk, leading to a higher rating and better borrowing costs, she said.

In the meantime, taxpayers in the city of 2.7 million are on the hook for the higher tab tied to deals made decades ago.

“We’re paying these fees at the same time the city is looking at the biggest tax increase in its history,” said Saqib Bhatti, a Chicago-based fellow at the Roosevelt Institute, which has been recommending that governments with swaps should push to cut the fees rather than pay Wall Street banks. “Working residents of the city are going to have to sacrifice for the city to pay these fees to the banks.”

Bloomberg News

by Elizabeth Campbell and Darrell Preston

October 13, 2015 — 9:00 PM PDT Updated on October 14, 2015 — 2:28 PM PDT

[Muni-Bond Buying Falls to Decade Low as Investors Balk at Yields.]

The buy-and-hold strategy that dominates the municipal-bond market is lacking the buying side of that equation.

Securities dealers' customers, including individuals and mutual funds, purchased less than $20 billion of state and local government debt in each of the last 27 trading days, according to a rolling five-day average compiled by research firm Municipal Market Analytics. That's the lowest level of trading in at least a decade, a sign that individuals are hesitant to buy more municipal debt with benchmark interest rates close to a five-month low.

"Yields are extremely low and so people who own bonds have reinvestment risk," said Matt Fabian, a partner at Concord, Massachusetts-based MMA. "You could trade it away, but what do you trade into? Spreads are so tight that you don't get much of a pickup in trading by extending maturity or buying lower-grade credits."

The $3.7 trillion municipal market has rallied since the Federal Reserve last month kept borrowing costs close to zero. That pushed the yield on AAA 10-year munis down to 2.07 percent from as much as 2.4 percent in July, data compiled by Bloomberg show.

It's not easy to find securities with yields that are much higher. Investors get an extra 1.04 percentage points of yield to buy 30-year debt instead of bonds due in a decade, a less attractive proposition than the 1.24-percentage-point average pickup over the past five years, Bloomberg data show. BBB rated 10-year bonds have interest rates 1.13 percentage point higher than top-rated munis, below the average spread of 1.33 percentage point since the start of 2013.

It doesn't help trading volume that the way individuals buy and sell munis is shifting, Fabian said. Fewer investors have brokers who are paid a commission for each trade, instead of a money-management fee, which is curbing the financial incentive for brokers to buy and sell bonds at a time of depressed yields, he said.

"There needs to be more opportunity in trading — we need at least more volatile spreads," Fabian said. "Higher yields would definitely help."

Bloomberg News

by Brian Chappatta

October 14, 2015 — 8:43 AM PDT

Illinois Will Delay Pension Payment Because of Cash Shortage.

Illinois will delay payments to its pension fund as a prolonged budget impasse causes a cash shortage, Comptroller Leslie Geissler Munger said.

The spending standoff between Republican Governor Bruce Rauner and Democratic legislative leaders has extended into its fourth month with no signs of ending. Munger said her office will postpone a $560 million retirement-fund payment next month, and may make the December contribution late.

"This decision is choosing the least of a number of bad options," Munger told reporters in Chicago on Wednesday. "For all intents and purposes, we are out of money now."

Munger said the pension systems will be paid in full by the end of the fiscal year in June. The state still is making bond payments, and retirees are receiving checks, she said.

“We prioritize the bond payments above everything else,” Munger told reporters.

The pension payment delay was inevitable, said some who have been watching the budget gridlock.

“This is just the tip of the iceberg,” said Ralph Martire, executive director of the Chicago-based Center for Tax and Budget Accountability, which monitors Illinois finances.

“Every month they go without resolving the impasse on the budget means it’ll cost more to ultimately resolve it,” Martire said. “This is a natural, predictable consequence if you do something called math.”

Bond Doldrums

Investors have long penalized the state for its fiscal woes. Illinois holds the lowest credit rating among U.S. states with an A3 from Moody’s Investors Service, four steps above junk, and an equivalent A- from Standard & Poor’s. Municipal investors demand an extra 1.9 percentage points to buy 10-year Illinois bonds instead of benchmark munis, according to data compiled by Bloomberg.

“We’re looking for signs that the we’re going to hit a level patch,” said Paul Mansour, head of municipal research in Hartford, Connecticut, at Conning, which holds Illinois debt among its $11 billion of municipal securities. “But this is an indication we’re still going down the hill.”

Bloomberg News

by Elizabeth Campbell and Tim Jones

October 14, 2015 — 11:39 AM PDT Updated on October 14, 2015 — 1:21 PM PDT

Muni Market Proving Haven for Buyers of Junk Issuers Amid Rout.

The corporate junk-bond rout loses its force when it comes to the U.S. municipal-debt market, where investors are snapping up securities backed by financially struggling businesses.

Consider the steel industry. Local-government bonds sold on behalf of U.S. Steel Corp., the nation’s second-largest producer, trade for more than 100 cents on the dollar, even after its corporate debt tumbled 17 percent since mid-July to 83 cents, according to data compiled by Bloomberg. Rival AK Steel Corp.’s munis trade almost 40 cents higher than its other securities.

The diverging prices highlight a disconnect in the high-yield market: While the corporate bonds had their biggest loss since 2011 during the third quarter, the tax-free debt rallied. That’s because money has been flowing into muni funds over the past two months as yields slid to the lowest since April, igniting demand for the riskiest securities.

“People can argue it’s way out of alignment in terms of the absolute levels on corporates these days,” said Jim Colby, who runs the $1.6 billion Market Vectors High Yield Municipal Index exchange-traded fund at Van Eck Global. He attributed the gap to the lack of munis available. “If you want these bonds, you have to pay the price.”

The corporate securities are a niche of the $3.7 trillion muni market, where state and local governments can sell bonds to subsidize airline terminals, pollution-controls for factories and other projects that are seen as having a public benefit. The companies repay the debt, which isn't guaranteed by the governments. About $25 billion of fixed-rate, federally tax-exempt economic and industrial-development bonds have been issued, according to data compiled by Bloomberg.

There has been a dearth of them lately. Only $299 million of the industrial-development securities were sold this year. By contrast, businesses have issued $1.7 trillion of new speculative-grade corporate bonds in the past five years, a binge that's fueled speculation that more borrowers will default if the U.S. economy slows.

U.S. Steel's munis, issued through agencies including Pennsylvania's Allegheny County Industrial Development Authority, have been largely sheltered from the losses felt by corporate-bond holders as the company faces pressure from declining prices and competitors abroad.

Prices Diverge

Among transactions over $1 million, securities due in 2024 traded Thursday at 103 cents on the dollar to yield 6 percent — equivalent to 10.6 percent on a taxable bond for the highest earners. The debt fell from 107 cents in previous exchanges at the end of September.

While the current price is down 8 percent from July, the company's corporate debt fell even more: Bonds due in 2022 last changed hands at 83 cents, down from par three months ago. That pushed the yield up to 11.4 percent.

AK Steel munis also due in 2024 last traded at 89 cents on the dollar. While that's down from about 100 cents in July, the company's taxable debt maturing in 2022 changed hands at 52 cents.

"We're seeing the spreads on those types of corporate names in our market widen out," said Steve Czepiel, who runs a $997 million high-yield muni fund for Delaware Investments in Philadelphia. "There may be a buying opportunity where they're just being yanked around by their corporate counterparts."

Moody's Investors Service rates AK Steel's senior unsecured debt, including the munis, Caa1, the fifth-lowest grade, signaling a high risk of default, and put it on review for downgrade on Oct. 8. Similar securities from U.S. Steel are ranked B1, four levels below investment grade. Shares of both companies have fallen this year to their lowest levels since 2003.

Such muni bonds aren't exempt from the risks faced by other investors. When American Airlines parent AMR Corp. declared bankruptcy in 2011, the tax-exempt securities it backed dropped as much as 68 percent. Two years later, the bonds rallied to above 100 cents from as low as 18.9 cents as American merged with US Airways Group Inc.

Other companies that have borrowed through the muni market include Alcoa Inc., Marathon Oil Corp., NRG Energy Inc., Southwest Airlines Co. and Westlake Chemical Corp., Bloomberg data show. All of their debt is either speculative grade or in the lowest investment-grade tier.

Louisiana Oil

Marathon tax-exempt bonds due in 2037 from Louisiana's Parish of St. John the Baptist traded this week at an average 102.4 cents on the dollar, down about 2 cents from July, Bloomberg data show. By contrast, corporate debt with a similar coupon that matures in 2045 changed hands at 88.5 cents, compared with an average of 96 cents three months ago. Moody's rates Marathon three steps above speculative grade. Its stock has dropped 33 percent this year.

Tax-exempt investors are willing to take the risk as the Federal Reserve keeps its benchmark lending rate near zero. Almost half of the Barclays Plc high-yield muni index is made up of Puerto Rico and tobacco securities, both of which are at risk of default. That's leaving bonds tied to some of the largest U.S. corporations as an alluring alternative.

"The most important thing to the muni-bond buyer is the after-tax return," said Ken Naehu, a managing director at Banyan Tree Asset Management in Los Angeles. "The taxable guys are looking more at dollar price and recovery risk."

Bloomberg News

by Brian Chappatta

October 14, 2015 — 9:01 PM PDT Updated on October 15, 2015 — 8:37 AM PDT

Puerto Rico Bonds Show Skepticism for Relief From Treasury.

Puerto Rico bond prices suggest that investors are doubtful of a proposal being floated that would have the U.S. Treasury assist the commonwealth in the restructuring of its debt.

General obligations maturing July 2035, the most actively-traded Puerto Rico securities in the last three months and originally sold at 93 cents on the dollar, changed hands at an average price of 74.7 cents, little changed from Wednesday, data compiled by Bloomberg show. Trades of at least $1 million on taxable pension bonds maturing July 2038 show the bonds changed hands Thursday at an average price of 30.5 cents, up from 25 cents on Tuesday, Bloomberg data show.

"It's still new," said Gary Pollack, who manages $6 billion of municipal debt, including Puerto Rico bonds, as head of fixed-income trading at Deutsche Bank AG's Private Wealth Management unit in New York. "It's still in its infancy, so you can't get too excited about it as a bond investor. I would hold and wait for this thing to play out more."

Puerto Rico and federal officials are discussing the possible issuance of new bonds administered by the Treasury to help restructure the commonwealth's debt, with federal officials overseeing a portion of the island's tax collections that would be used to repay the securities, a person familiar with the discussions said Wednesday. Treasury officials said in a statement Wednesday that while its inaccurate to suggest the U.S. is in talks to undertake any of Puerto Rico's obligations, it continues to work with island officials to help the commonwealth return to a sustainable economic path.

The plan would face obstacles. It may require Congressional approval and Puerto Rico's legislature would need to sign off on allowing the federal government to monitor its revenue collections and direct them to investors. Governor Alejandro Garcia Padilla's administration faced a backlash from investors after he said in June that the island could no longer afford to repay all of its obligations and would seek to delay principal payments for a number of years. Puerto Rico has also failed to gain support in Congress for legislation to allow some of its agencies to reorganize under Chapter 9 bankruptcy.

Such a restructuring plan may be too late to help Puerto Rico pay investors in December and January. Officials have said the island may run out of cash in November. The Government

Development Bank owes $354 million of principal and interest on Dec. 1, with $267 million of bonds maturing on that date guaranteed by the commonwealth. Another $357 million of general-obligation interest is due Jan. 1.

"It would probably take some kind of Congressional intervention in order to make this type of transaction take place," Daniel Hanson, an analyst at Height Securities, a Washington-based broker dealer, said Thursday. "And Congress certainly doesn't have the bandwidth between now and the end of the calender year to really seriously dig into Puerto Rico."

Garcia Padilla met with Treasury officials in Washington on Wednesday to discuss the commonwealth's debt crisis, Jesus Manuel Ortiz, the governor's spokesman, told reporters Thursday in San Juan.

"The governor emphasized the need for the government of Puerto Rico to reach some kind of structured agreement to organize its debt," Ortiz said.

Moody's Investors Service wrote in a report Thursday that the deepening crisis might prompt U.S. intervention at some point, though lawmakers remain wary of providing any assistance that resembles a bailout.

Bloomberg News

Michelle Kaske

October 15, 2015 — 11:21 AM PDT Updated on October 15, 2015 — 1:59 PM PDT

California Tech Boom Lures Muni-Bond Buyers as Deficit Era Ends.

Bond investors are betting that a resurgent tech-fueled boom in the Golden State isn't just California dreaming.

The state, which faced ballooning budget shortfalls after the housing crash, is selling about $961 million in general-obligation bonds next week, its last sale of the securities this year. California debt is outperforming amid a rally in the municipal market as the state's finances benefit from the fast-growing economy.

"If you invest in California, you're betting that their economic improvement is likely to continue," said Paul Mansour, head of municipal research at Hartford, Connecticut-based Conning, which holds California bonds among its $11 billion of tax-exempt debt. "I'm reasonably optimistic that we've got another few years to go of growing tax revenues and building up reserves."

Fueled by Silicon Valley's technology industry and a real-estate market revival, California's economy has outpaced the nation's since 2012. Along with tax increases backed by Governor Jerry Brown, that has halted the chronic shortfalls that once plagued the state, allowing it to pay off debt and add to its savings ahead of the next slowdown.

Wall Street has rewarded the turnaround. In July, Standard & Poor's lifted the state's grade to AA-, the highest California has had in 14 years. Bonds from the state have returned 2.47 percent this year, about half a percentage point more than the overall muni market, according to S&P Dow Jones Indices.

California has benefited from “increased revenues and some controls on spending in a time when they really needed it,” said Regina Shafer, senior portfolio manager of tax-exempt investments at USAA Investment Management, which holds $9.9 billion in munis, including California debt. “That bodes very well for the state and for the future.”

California’s economy should continue to expand faster than the country’s over the next couple of years because of the technology industry and growth in residential and commercial construction, economists at Wells Fargo Securities said in a report this month.

The home to companies including Alphabet Inc., Apple Inc. and Facebook Inc. has also been benefiting from stock-price gains pocketed by its wealthiest residents: In May, Brown’s administration forecast that its residents will reap $109 billion in capital gains next year, up from $79 billion in 2013. Such income has driven a jump in the state’s revenue.

The new bonds, some of which will refinance higher-cost debt, will be sold in an auction among underwriters Tuesday. All but $106 million of them are exempt from state and federal income taxes.

The demand for such securities has been heightened by a ballot measure passed in 2012, which boosted income taxes on the highest-earning households through 2018. Labor unions are among those pushing to make the increase permanent.

“With their state personal-income tax at higher levels, it certainly makes a California bond more compelling,” said USAA’s Shafer.

The difference between the yield on California bonds and top-rated securities has widened since the beginning of the year, when it dropped to the lowest since at least 2013, according to data compiled by Bloomberg. California 10-year bonds yield 2.36 percent, about 0.3 percentage point more than AAA rated securities. That gap was as little as 0.17 percentage point in January, one-fourth of what it was at the June 2013 peak.

Even with the increase, California’s yields are still lower than some comparable states — making the securities expensive in comparison. Ten-year securities issued by Pennsylvania, which has the same investment-grade ratings from S&P and Moody’s Investors Service, yield 0.54 percentage point more than top-rated debt. For Connecticut, whose S&P rating is one step higher, that gap is 0.46 percentage point.
Mansour at Conning, which might purchase the new bonds, said

California’s growing reserves and lower debt load may lead to another credit-rating increase.
“There is room for credit improvement in the coming year,” Mansour said.

An upgrade isn’t being signaled by Moody’s, S&P or Fitch, which have stable outlooks, indicating no changes are imminent.

Moody’s said in a report this month that the state has “significantly less flexibility” than others in budgeting and raising funds. Its revenue is volatile because it draws a large share of taxes from wealthy residents whose incomes are tied closely to the stock market, which has slipped from record highs.
Investors should weigh whether California’s economic pace will continue and if Brown, a Democrat, can resist pressure to spend the windfall, said Rob Amodeo, head of municipals for Western Asset Management Co., which has $25 billion of munis under management and may buy some of the new debt.

“The governor has done a good job in not permitting austerity fatigue to settle into their budget,” he said.

Bloomberg News

by Romy Varghese

October 15, 2015 — 9:01 PM PDT Updated on October 16, 2015 — 5:41 AM PDT

Bloomberg Brief Weekly Video - 10/15/15

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

Watch the video.

Moody's: U.S. Initiatives Could Help Puerto Rico's Fiscal Recovery and Debt Restructuring.

New York, October 15, 2015 — While the United States (Aaa stable) is unlikely to provide a financial bail-out for Puerto Rico (Caa3 negative) as the territory tries to restructure some of its $73 billion in debt, media reports suggest the US Treasury Department is considering taking a more active role, Moody's Investors Service says, as the deteriorating fiscal situation leads to increasing pressure on Congress to take actions to stabilize the island's economy or finances.

"A combination of federal initiatives could encourage Puerto Rico's return to solvency and market access with little or no incremental cost to US taxpayers beyond current levels of support," Vice President — Senior Credit Officer Ted Hampton says in "Puerto Rico (Commonwealth of):Deepening Fiscal Crisis Might Prod US Intervention."

Current proposed legislation to amend the bankruptcy law would authorize Puerto Rico's public corporations to file for Chapter 9 bankruptcy protection if they can demonstrate insolvency. While corporations like the Puerto Rico Electric Power Authority (PREPA — Caa3 negative) and Puerto Rico Highways and Transportation Authority (PRHTA — Ca negative) would likely qualify under the legislation, almost 80% of Puerto Rico's debt probably would be ineligible for restructuring under Chapter 9, unless the legislation was to be broadened in scope.

Some in Congress have also suggested implementing a federal financial control board to put the commonwealth on a path to fiscal health. However, this is likely to meet heated opposition in Puerto Rico since the commonwealth has governed itself for many years. Congress instituted a control board for the District of Columbia (Aa1 stable) in 1995.

The treasury is reportedly considering a "superbond" proposal, where the US Treasury would hold certain pledged commonwealth revenues in trust for payment on debt service on newly issued securities.

Hampton says if a "superbond" came to fruition along with a financial control board, it could accelerate the restructuring negotiations.

Other measures to provide relief for Puerto Rico without burdening US taxpayers include loosening federal minimum wage requirements, or granting the commonwealth's employers a reprieve in future minimum wage increases. Congress could also exempt Puerto Rico from Jones Act shipping restrictions.

Moody's says the largest and most immediate impact would be stabilizing current federal healthcare funding on the island, which is scheduled to decline in coming years even as the share of citizens participating in Medicaid is higher in Puerto Rico (48%) than in any US state.

"However, any actions by the federal government will take time to implement," notes Hampton, "given the current partisan gridlock in Congress and a lack of transparency on the commonwealth's finances."

Moody's also notes that even as the commonwealth faces a liquidity crisis and potential new defaults, Congress is less likely to offer Puerto Rico assistance if it encumbers US taxpayers.

The report is available to Moody's subscribers here.

Fitch: Funded Ratios Stabilize, Demographic Strains Grow for U.S. State Pensions.

Fitch Ratings-New York-15 October 2015: As funded ratios continue to stabilize, a combination of more people retiring and fewer state and local government employees being hired highlight the continued pressure on U.S. state pensions, according to Fitch Ratings in a new report.

The median funded ratio for major state pension systems was almost unchanged for the second straight year in 2014 at 71.5%. Several years of strong market gains have offset steadily rising liabilities. However, the recovery of systems' investment portfolios has not necessarily meant a recovery in their funded ratios, according to Senior Director Douglas Offerman. 'Unlike asset portfolios that are prone to year-to-year cyclicality, pension liabilities have risen steadily for all but a handful of closed systems because active employees continue to accrue benefits as they work,' said Offerman. 'Additionally, few pension systems have implemented benefit reforms that immediately reduce liabilities.' As a result, funded ratios have not returned to their pre-recession peaks.

States' median debt burdens total 2.4% of personal income in 2014 while the median pension burden is 3.7% of personal income. The debt burden in 2014 is a slightly lower percentage than Fitch's update from last year while the unfunded pension burden is slightly higher. Additionally, contribution practices are improving. Actual pension contributions relative to governments' actuarially-calculated levels are at their highest point since fiscal 2009. However, in nearly half of systems reviewed by Fitch, the contribution is inadequate relative to the levels calculated by actuaries. In fiscal 2014, 53% of major statewide systems received at least 100% of the actuarially-calculated contribution, up from 42% in fiscal 2011.

Eroding demographics are also increasingly weighing on state pension liabilities. The median major pension system's ratio of active employees to retirees and beneficiaries fell to 1.4 last year, a rather stark contrast to 1.9 in 2008, which according to Offerman is indicative of longer retirements and consequent higher benefit payment obligations. Moreover, 'headcount for numerous state and local governments has been stagnant while weakening demographics is shifting more of the contribution burden onto government employers,' said Offerman.

Fitch's '2015 State Pension Update' is available at 'www.fitchratings.com'.

Finra Fines Santander Unit Over Puerto Rico Bond Sales.

A unit of Spain's Banco Santander SA agreed to pay roughly $6.4 million in a settlement with Wall Street's self-regulator regarding supervisory failings tied to the sale of Puerto Rican municipal bonds, which have plunged in value in recent years.

The Financial Industry Regulatory Authority on Tuesday said Santander Securities LLC would pay a $2 million fine for supervisory failures related to sales of individual Puerto Rico bonds and closed-end funds, and for failing to reasonably supervise employee trading at the firm's Puerto Rico branch.

In addition, Santander agreed to pay about $4.3 million in restitution to certain customers, as well as $121,000 in restitution and an offer to buy back the securities sold to certain customers who were affected by the firm's failure to supervise employee trading, Finra said.

The securities industry's self-regulator found that for a 10-month period starting in December 2012, Santander didn't accurately reflect the dangers associated with the Puerto Rican paper in its risk-classification tool and failed to adequately supervise its customers' use of margin and concentrated positions in their accounts.

Finra added that Santander didn't revise the risk-tool classifications following Moody's Investors Service's downgrade of some of the island's municipal bonds to a notch above junk territory in December 2012. The day after the move, Santander allegedly stopped buying Puerto Rican municipal bonds being sold by customers and accelerated efforts to dump its inventory.

As is customary, Santander neither admitted nor denied the regulator's findings, according to the Finra disciplinary document, posted on the regulator's website.

A Santander spokeswoman said the firm "is pleased to resolve this matter and will comply with the terms of the Finra letter," adding that "the firm has taken steps to enhance its controls in connection with the activities described in the Finra letter."

Tuesday's development comes as Puerto Rico's financial crisis continues to draw scrutiny from U.S. lawmakers and regulators. Last month, a measure to establish more robust federal oversight over Puerto Rico's mutual-fund industry was introduced in Congress, and a Senate committee held a hearing on Puerto Rico's financial problems.

In addition, a unit of UBS Group AG in September agreed to pay roughly $34 million in settlements with U.S. regulators for issues tied to the sale of Puerto Rico bond funds. That included $15 million to settle charges from the Securities and Exchange Commission, which said the unit failed to supervise a former broker who had customers invest borrowed money in the bond funds, and $18.5 million for a Finra fine and investor restitution.

The funds and municipal bonds sold by UBS and other brokerages were popular among island residents in part due to generous tax advantages.

But Puerto Rico has been facing a sluggish economy and high unemployment for years, and officials have been seeking to restructure the island's $72 billion debt load. Gov. Alejandro García Padilla has called the island's debt unpayable, and many Puerto Rico bonds are trading well below face value.

THE WALL STREET JOURNAL

By ANNA PRIOR And EZEQUIEL MINAYA

Updated Oct. 13, 2015 12:58 p.m. ET

Write to Anna Prior at anna.prior@wsj.com and Ezequiel Minaya at ezequiel.minaya@wsj.com

---

Puerto Rico, Treasury in Talks to Restructure Island's Debt.

Puerto Rico and U.S. officials are discussing the issuance of a "superbond" possibly administered by the U.S. Treasury Department that would help restructure the commonwealth's $72 billion of debt, people familiar with the plan said.

Under the plan, the Treasury or a designated third party would administer an account holding at least some of the island's tax collections. Funds in the account would be used to pay holders of the superbond, which would be issued to existing Puerto Rico bondholders in exchange for outstanding debt at a negotiated ratio.

Investors would receive less debt, likely taking an effective "haircut" on the value of their holdings, but would have higher expectations for getting repaid.

The proposal would mark an important change in Puerto Rico's relationship with the U.S. government, which has resisted wading into the island's debt morass. A superbond would need to clear high political hurdles in Washington and Puerto Rico to become a reality. Discussions with bondholders over the size of any haircut could present further challenges to reaching a deal.

Talks between Puerto Rico's representatives and Treasury officials are preliminary, and any plan wouldn't include financial aid or a U.S. guarantee of Puerto Rico debt, the people said. They said the proposed bond would be just one piece of a restructuring puzzle that the island's government is trying to assemble, after admitting this year that it cannot pay its debt in full.

The plan has no immediate precedent but echoes in some respects the Brady bonds used in Latin American debt restructurings of the 1980s. One major difference: Those bonds, named for former Treasury Secretary Nicholas Brady, were backed by Treasury-issued zero-coupon bonds, which guaranteed repayment of the principal and part of the interest of the Latin debt.

The Obama administration "has said repeatedly that it has no plans to provide a bailout to Puerto Rico," and the Treasury Department isn't engaged in talks to "undertake any of Puerto Rico's financial obligations," a Treasury spokesman said Wednesday.

The Treasury and the commonwealth are debating how much of Puerto Rico's taxes would be funneled to the account and who would collect the taxes, the people said. Puerto Rico's leaders may not be willing to surrender control of tax revenue as required by the deal, the people said. Depending on how it is structured, it could also require congressional approval.

Puerto Rico hasn't been able to sell bonds after years of issuing new debt to fund budget deficits. The commonwealth and its advisers have been working for months to develop a package of fiscal and financial overhauls.

A superbond could be appealing to creditors. Hedge funds that own billions of dollars of Puerto Rico debt have been pushing the idea of a superbond for months, hoping it would prevent a default and boost the value of their investments. Bondholders have been unwilling to swap the debt they hold for new bonds backed only by tax revenues under Puerto Rico's supervision because they fear the money could be diverted.

Puerto Rico is working with law firm Cleary Gottlieb Steen & Hamilton LLP, a specialist in government defaults, and Millstein & Co., a financial-advisory firm founded by the Treasury's former chief restructuring officer, Jim Millstein, who ran the successful turnaround of American International Group Inc.
Puerto Rico cannot restructure its bonds in bankruptcy court because it is a commonwealth, not a state. Democratic lawmakers have proposed bills making the island's municipal entities eligible for bankruptcy protection. Republicans in Congress have floated the idea of a federal control board and have said they want Puerto Rico to produce a more detailed plan to balance its budget before they support the legislation.

Concerns about a potential default intensified over the summer as it became clear Puerto Rico was using tax revenue earmarked for debt payments to plug budget gaps. The commonwealth disclosed in September that it expects a $205 million shortfall this year when large bond payments are due.

Government Development Bank of Puerto Rico bonds that mature in 2016 traded at 49 cents on the dollar this month compared with 77 cents on the dollar in June, according to data from Electronic Municipal Market Access.

Fears of a default are intensifying divisions between different types of bondholders who are splitting into various factions, each of which claims priority in the event of a restructuring.

"Our view has always been that there's a high probability of disorderly litigation here, and we see this looming now as imminent," said Ted Hampton, an analyst at Moody's Investors Service.

In September, a bondholder group represented by GLC Advisors & Co. with more than $5 billion in bonds of different stripes split into separate groups. Mutual funds managed by OppenheimerFunds Inc. and Franklin Advisers Inc. also own billions of dollars of Puerto Rico debt, while bond insurers Assured Guaranty Ltd., MBIA Inc. and Ambac Financial Group Inc. have guaranteed billions of dollars of bonds.

Puerto Rico is attempting to capitalize on the divisions by agreeing to negotiate only with bondholders who agree not to discuss terms with investors holding different types of bonds, a person involved in the talks said.

THE WALL STREET JOURNAL

By MATT WIRZ, NICK TIMIRAOS and AARON KURILOFF

Updated Oct. 14, 2015 8:47 p.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com, Nick Timiraos at nick.timiraos@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

Most California Cities Back New Pension Strategy Despite Cost.

SAN FRANCISCO — Most California cities support a new strategy by the nation's largest public pension fund to make its investment portfolio more conservative, even though the move could gradually increase how much employers pay into the fund.

Still, some cities expressed serious reservations about a California Public Employees' Retirement System plan to incrementally lower the $293 billion fund's assumed rate of investment returns following periods of strong performance.

The League of California Cities surveyed its members, which have been struggling to shoulder the burden of growing pension costs. The survey found that many cities prefer a more gradual increase in costs, as opposed to spikes following market downturns, said Bruce Channing, Laguna Hills city manager.

"As employers, more predictability and less spiking of rates from one year to the next is preferable," said Channing, who is also chair of the league's city managers pension reform task force.

Next week, the Calpers board will consider a new policy to gradually reduce the assumed return rate from 7.5 percent to 6.5 percent over a few decades. The average return rate across 126 funds tracked by the National Association of State Retirement Administrators was 7.68 percent as of May.

Calpers intends to reduce portfolio volatility as California's baby boomers retire and payouts exceed active workers' contributions. The idea is similar to that of an individual nearing retirement adopting a more conservative investment strategy.

But a lower, albeit less volatile, rate of return will necessitate higher contributions from local governments and public workers.

The league said 77 percent of those surveyed supported Calpers' strategy to reduce portfolio risk, even though the move would over time raise pension contributions more than currently planned. Ten percent of respondents opposed the strategy, and the rest were unsure, the survey of 115 cities found.

Opponents of higher contributions included Alameda, a city of nearly 76,000 near San Francisco. Its pension costs for safety workers like police and fire consume 48 cents of every dollar paid in salary and are expected to grow to 65 cents in five years.

"It's devastating on our bottom line," said Alameda Interim City Manager Liz Warmerdam. "We have very little input. Whatever they want to do, local governments have to sit here and deal with it. It's extremely frustrating."

Massive pension costs contributed to a handful of recent municipal bankruptcies across the country, including in the California cities of Vallejo, Stockton and San Bernardino.

Stockton and Vallejho have emerged from bankruptcy. Vallejo City Manager Daniel Keen said he supports actions to ensure Calpers' ability to pay benefits, but added it may require sacrifices.

"While this plan does cause us more pain on the part of our budget, it is pain we were anticipating," said Keen. "It is going to require adjustments in our budget and might result in cuts to some services."

"It's undeniable that we have to deal with the fact that there are significantly fewer active employees paying in," said Leyne Milstein, Sacramento's finance director. "We need to make sure this system is sustainable."

But like many cities across the state, Sacramento's budget is not keeping pace with rising pension costs. Next year, the city's expenses are expected to exceed revenues by $8.8 million, of which $5.8 million is pension growth, Milstein said. In five years, Sacramento expects to pay close to $80 million in pension costs from its general fund, up from $60 million today.

"This will be extremely painful on local government budgets, but it's the honest approach to address the large unfunded liabilities," said Senator John Moorlach (R-Costa Mesa), a pension reform supporter. "Unfortunately, it's the taxpayers who are on the hook as pension debt eats up public funds meant for police and fire protection, as well as other services."

By REUTERS

OCT. 16, 2015, 3:42 P.M. E.D.T.

(Reporting by Robin Respaut and Rory Carroll; Editing by David Gregorio)

GASB Proposes Changes to Pension Standards for Certain Governments.

Norwalk, CT, October 14, 2015 — The Governmental Accounting Standards Board (GASB) today proposed new guidance intended to assist governments that participate in certain multiple-employer pension plans to meet the reporting requirements of GASB Statement No. 68, Accounting and Financial Reporting for Pensions.

GASB Chairman David A. Vaudt said, "The GASB acted quickly in issuing this proposed guidance in response to stakeholder concerns regarding a situation that could make it difficult–or impossible–for some governments, through no fault of their own, to comply with the new pension standards."

The proposed guidance would apply to governments that participate in certain private or federally-sponsored, multiple-employer defined benefit pension plans, such as Taft-Hartley plans or plans with similar characteristics.

During the implementation of GASB Statement 68, stakeholders raised concerns regarding the inability of governments whose employees are provided pension benefits through such multiple-employer pension plans to obtain information related to pensions required under Statement 68. Specifically, stakeholder concerns focused on the inability of those governments to obtain measurements and other relevant data points needed to comply with the requirements of the Statement.

To respond to these concerns, the GASB has issued an Exposure Draft, Accounting and Financial Reporting for Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans, which proposes to assist these governments by focusing employer accounting and financial reporting requirements for those pension plans on obtainable information.

In lieu of the existing requirements under Statement 68, the proposed Statement would establish separate standards for employers that participate in pension plans that meet criteria set forth in the proposal. The guidance would establish separate standards for note disclosures of descriptive information about the plan, benefit terms, contribution terms, and required supplementary information presenting required contribution amounts for the past 10 fiscal years.

The full text of the Exposure Draft is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review the proposal and provide comments by November 16, 2015.

SIFMA Submits Comments to the SEC to Delay Effective Date of Best Execution Rule Proposal and Changes to SMMP.

SIFMA provides comments to the Securities and Exchange Commission's (SEC) approval of the MSRB's filing for a revised effective date for changes to the Best Execution Rule. The new effective date of Rule G-18 and the related amendments to Rules G-48 and D-15 will be 120 days from the date of publication by the MSRB of implementation guidance on those rules, but no later than April 29, 2016. Upon publication of the implementation guidance, the MSRB will announce the resulting specific effective date.

Read the comment letter.

October 14, 2015

SIFMA Submits Comment to the SEC on MSRB Rule G-20.

SIFMA provides comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) proposed amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, and Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance.

Read the letter.

October 13, 2015

- FHWA Drafts Model Contract Guide on Availability Payment P3s.
- SEC Official Corrects Municipal Advisor Misconceptions.
- SEC Weighs Providing Legal Guidance on Role of MAs in Bank Loans.
- MSRB Publishes Updated Documents Related to May 2016 Changes to RTRS.
- S&P: Bank Loans Pose Potential Credit Risks, But For Now Issuers' Liquidity Positions Help Support Most Ratings.
- GFOA Hosts Meeting to Discuss Implementing School Budgeting Best Practices.
- Ratings Agencies Diverge on Post-Default Approaches.
- Florida High Court Makes It Harder to Challenge Bond Validations.
- Swift Descent to Junk Shows Buried Risk as Municipal Loans Surge.
- MSRB Rule G-15 Webinar.
- NABL Municipal Bankruptcy Teleconference.
- And finally, BCB's Department of Comically Pyrrhic Victories this week brings you *Acciona*

Windpower North America, LLC v. City of West Branch, in which turbine manufacturer was granted specific performance of its TIF contract with city. Hooray! However, prior to ordering specific performance, the court had ruled that the city's only contractual obligation was to "consider" whether or not it wanted to appropriate funds for a tax rebate. So that's what the city was ordered to do – sit there and "consider." And so it did. Hooray!

CLAIMS - CALIFORNIA

J.M. v. Huntington Beach Union High School District

Court of Appeal, Fourth District, Division 3, California - September 30, 2015 - Cal.Rptr.3d - 2015 WL 5722839

Student petitioned for relief from the Government Claims Act presentation requirement for his claim against school district. The Superior Court denied petition. Student appealed.

The Court of Appeal held that:

- Student's application to present late claim was deemed denied when district failed to act on it within 45 days, and
- District's failure to give written notice of denial of application to present late claim did not estop district from invoking six-month limitation period.

PUBLIC UTILITIES - TENNESSEE

Town of Smyrna, Tenn. v. Municipal Gas Authority of Georgia

United States District Court, M.D. Tennessee, Nashville Division - September 10, 2015 - F.Supp.3d - 2015 WL 5306058

Town brought action against gas authority under the Tennessee Consumer Protection Act (TCPA) and the Tennessee False Claims Act (TFCA) and asserted claims for breach of fiduciary duty and breach of contract, arising out of gas authority's placing multi-year hedges on its behalf. Gas authority moved for dismissal and summary judgment.

The District Court held that:

- Doctrine of quod nullum tempus occurit regi, under which the sovereign is exempt from the consequences of its laches, did not apply to town's untimely claim under TCPA;
- Town knew or should have known of gas authority's actions regarding execution of hedges over a year before town brought action, and thus action was not timely;
- Town failed to meet its burden of proof under doctrine of equitable estoppel to toll statute of limitations on TCPA claim;
- Gas authority qualified as a person subject to TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority violated TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority was a fiduciary to town; (and
- Fact issues precluded summary judgment on towns breach of contract claim.

EMINENT DOMAIN - IOWA

Rasmuson v. U.S.

United States Court of Appeals, Federal Circuit - October 5, 2015 - F.3d - 2015 WL 5781506

Putative class of owners of real estate underlying or abutting allegedly abandoned railroad right-o--way brought action against United States, alleging that government effected Fifth Amendment taking of land by conversion of right-of-way to public use trail pursuant to National Trails System Act. The United States Court of Federal Claims determined in awarding damages that appraiser was not required to take physical remnants of railroad easement into account when determining value of land before taking occurred. Government appealed.

The Court of Appeals held that appraiser had to consider value of landowner's property before easement, which included physical remnants of railroad.

In Rails–to–Trails case, fair market value of land included physical remnants of railway that would have remained on landowners' property but for issuance of Notices of Interim Trail Use (NITUs) for corridors, since railway easements would have lapsed and land would have returned to landowners with physical remnants of railway but for government's easement, and proper appraisal methodology had to account for those physical conditions.

CONTRACTS - GEORGIA

Layer v. Barrow County

Supreme Court of Georgia - October 5, 2015 - S.E.2d - 2015 WL 5778796

Contractor who built sewer pumping station for county brought action against county, city, and county and city officials, alleging breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and an unconstitutional taking of his property without just compensation. The trial court dismissed action. Contractor appealed.

The Supreme Court of Georgia held that:

- Sovereign immunity barred contractor's contractual and quasi-contractual claims against county;
- Alleged oral contract between contractor and county was unenforceable;
- County officers, city, and city officers did not breach any alleged agreement; and
- City's use of pumping capacity was not unconstitutional taking.

ELECTED OFFICIALS - KANSAS

State v. Morrison

Supreme Court of Kansas - October 2, 2015 - P.3d - 2015 WL 5752472

State brought quo warranto action to oust city council member. The District Court entered order of ouster. Council member appealed. The Court of Appeals reversed and remanded. State petitioned for review, which was granted.

The Supreme Court of Kansas held that trial court was required to determine whether member's actions in providing homeless acquaintance access to city hall building for overnight shelter were, in addition to being unjustifiably illegal, the product of a bad or corrupt purpose.

ZONING - LOUISIANA

GBT Realty Corp. v. City of Shreveport

Court of Appeal of Louisiana, Second Circuit - September 30, 2015 - So.3d - 2015 WL 5717200 - 50, 104 (La.App. 2 Cir. 9/30/15)

Property developers brought action against city for wrongful denial of its site plan to build a thrift store, the construction and operation of which was a "use by right" within the property's zoning classification, after city's decision was overturned. The District Court entered judgment in favor of city. Developers appealed.

The Court of Appeal held that:

- City retained discretion to deny plan but denial was subject to strict scrutiny, and
- Denial of plan was a discretionary act that was genuinely based in city's attempt to ensure that use of property comported with the public interest, and thus city was immune from suit.

A municipality retains the discretion to deny a site or subdivision plan submitted in accordance with "use by right" zoning, but that denial is subject to strict scrutiny and the zoning ordinances and actions will be construed in favor of the use proposed by the owner.

City's action in denying developers' site plan to build a thrift store, construction and operation of which was a "use by right" within property's zoning classification, was a discretionary act that was genuinely based in its attempt to ensure that use of property comported with the public interest, and thus immunity applied to shield city from liability for claim of wrongful denial of plan, even though city's action was ultimately overturned. City's decision was based in part upon plan's provision for access into and out of store and the detrimental effect on traffic that the proposed access allowed, and store tenant did not approve plan after it was ultimately approved by trial court and instead asked developers to change plan's proposed access to property.

ZONING - NEW YORK

Roman Catholic Diocese of Rockville Centre, N.Y. v. Incorporated Village of Old Westbury

United States District Court, E.D. New York - September 3, 2015 - F.Supp.3d - 2015 WL 5178126

Non-profit religious corporation brought action against village, its board of trustees, and various individual village trustees and officials, challenging village's imposition of restrictions, pursuant to zoning law, on proposed cemetery. Defendants moved for summary judgment, and religious corporation moved for partial summary judgment.

The District Court held that:

- Zoning law was neutral with respect to religion;
- Zoning law was generally applicable;
- Zoning law was constitutional under rational basis analysis;

- Genuine issues of material fact existed as to whether zoning law created substantial burden on exercise of religious corporation's religious beliefs;
- There was no evidence that village treated any comparable secular assembly or institution more favorably;
- Genuine issue of material fact existed as to whether village would have denied religious corporation's permit to build cemetery regardless of religious corporation's prior state-court suit;
- Village's application of zoning law was not motivated by anti-religious intent; and
- Genuine issue of material fact existed as to whether official entered religious corporation's property, and whether he had warrant or sufficient cause to do so.

OPEN RECORDS - PENNSYLVANIA

Ali v. Philadelphia City Planning Com'n

Commonwealth Court of Pennsylvania - October 1, 2015 - A.3d - 2015 WL 5727701

Requestor appealed determination of the Office of Open Records (OOR) that copyrighted materials submitted to city planning commission as part of redevelopment project were exempt from disclosure. The Court of Common Pleas affirmed. Requestor appealed.

The Commonwealth Court held that:

- Materials were not exempt from disclosure under Copyright Act, but
- Copyright Act provided a basis for commission to limit access to copyrighted materials.

Copyrighted materials that were submitted as part of redevelopment project were not exempt from disclosure under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Copyrighted materials that were submitted as part of redevelopment project were not "nonpublic" materials under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Under Right to Know Law (RTKL), Copyright Act provided a basis for city planning commission to limit access to copyrighted materials that were submitted as part of redevelopment project. Materials could be redacted in response to RTKL request but were to be made available for inspection under RTKL.

TAX - NEW YORK

Level 3 Communications, LLC v. Erie County

Supreme Court, Appellate Division, Fourth Department, New York - October 2, 2015 - N.Y.S.3d - 2015 WL 5750574 - 2015 N.Y. Slip Op. 07104

Taxpayers brought hybrid article 78 proceeding and declaratory judgment action against city and school district, claiming that taxpayers' fiber optic cables did not conduct electricity and thus were not taxable real property. The Supreme Court, Erie County, dismissed the petition-complaint. Taxpayers commenced proceeding in the nature of mandamus.

The Supreme Court, Appellate Division, held that the Supreme Court could not dismiss taxpayers' hybrid article 78 proceeding and declaratory judgment action challenging a city's and school district's tax assessment on the basis of grounds not considered in administrative proceedings challenging the tax assessment, no matter how sound those grounds might be.

The appeals court remitted the matter to respondents for reconsideration of petitioners' applications, including determining whether the applications were timely and procedurally proper, whether the taxes that petitioners paid may be recovered despite the lack of protest by them, and whether the fiber optic cables at issue constitute taxable real property within the meaning of the RPTL.

SEC Official Corrects Municipal Advisor Misconceptions.

CHARLESTON, S.C. — Some municipal advisors have misconceptions about who can advise in the municipal market and who can be considered an independent registered municipal advisor, a Securities and Exchange Commission official told MAs meeting here.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, made the remarks at the National Association of Municipal Advisors annual conference here on Thursday. She said that not only MAs, but also other individuals like registered investment advisors, can give advice on bonds. She also said that some MAs need to stop "telling everyone they are the IRMA" when they have not met the necessary requirements.

"While a municipal advisor may have agreed to serve in the role of an IRMA for [a] particular client, a market participant cannot rely on that municipal advisor in that capacity until all the requirements of the exemption have been satisfied," Olsen said.

The IRMA exemption allows an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn't have ties to an underwriting firm, and agrees to rely on that MA's advice. An underwriter who gives bond advice to a state or local government without an exemption from the rule, such as the IRMA exemption, becomes an MA that has a fiduciary duty to put the municipality's interests before its own and is precluded from underwriting any bonds in that same transaction.

Olsen said the market participant relying on the IRMA exemption is the one who has to make sure all the requirements are satisfied, but that it is "something to keep in mind" for MAs moving forward.

MAs who falsely claim to be IRMAs are not violating any specific rules at this point, aside from Municipal Securities Rulemaking Board Rule G-17 on fair dealing if the behavior is egregious, but the SEC is "a bit concerned about the miscommunications and [is] encouraging people not to make them," she said.

There are also a number of MAs that are not permanently registered with the SEC Olsen said. The Bond Buyer's comparison of the SEC and Municipal Securities Rulemaking Board's lists of registered MAs shows approximately 80 firms or individuals still need to register with the SEC.

The deadline for registration was last year. "If a municipal market participant is engaging in municipal advisor activities and not registered on a permanent form, it would at this point be considered unregistered municipal advisory activity," Olsen said.

Later in the panel, Olsen updated the audience on a new SEC rating agency requirement that took effect in June. Paragraph "b" of the SEC's Rule 17g-8 on credit rating agencies stems from provisions laid out in the Dodd-Frank Act and requires rating agencies to have policies and procedures that are designed to take the probability that an issuer will default or fail to make timely payments into account when assigning ratings.

The rule responds to the long-time critique that muni ratings generally are not as high as corporate bond ratings, even though muni default rates are lower. Olsen said the rule change "appeared to have resulted in an upgrade for certain municipalities including general obligation bonds."

Dave Sanchez, an attorney at Sidley Austin in California and a former SEC muni office lawyer who moderated the panel, said rating agencies seem unaware of the rule. He also cited a study that referred to the absence of adequate default rate considerations as potentially a $2 billion problem for issuers.

Olsen said the study likely relied on data from before the rule took effect and emphasized that the rule requires rating agencies to look at the probability of default comparably with other factors they could have previously considered.

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:49am ET

SEC Weighs Providing Legal Guidance on Role of MAs in Bank Loans.

CHARLESTON, S.C. — The Securities and Exchange Commission's Office of Municipal Securities is weighing whether to provide legal interpretive guidance to help municipal advisors determine if they are acting as an adviser or broker-dealer when working with an issuer on a bank loan.

Rebecca Olsen, deputy director of OMS, told those attending the National Association of Municipal Advisors annual conference here that the role an MA plays in bank loans has raised legal issues because advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes. She said her office "could consider" providing the guidance, in close coordination with the SEC's division of trading and markets.

"We completely understand that the definition of municipal advisor contemplates advice with respect to structure, timing and terms of an offering of municipal securities that would typically require broker-dealer registration and that this is creating legal interpretive issues," Olsen said.

The issue, she said, is whether the bank loan should be considered a security and whether an advisor dealing with the bank loan is "acting only as an advisor in providing advice in the capacity of their advisory relationship with their client" or whether they are acting as a broker by entering into the business of effecting a transaction in the securities of others. The first question fits into an ongoing discussion best answered by the 1990 case Reves v. Ernst & Young. In that case, the court ruled that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that was not a security. The ruling said an instrument is a security if: it is motivated by investment or commercial purpose; it is traded for speculation and investments; the public views the transaction as a security; or it falls under other federal regulations which make applying the securities laws unnecessary.

If the test shows the instrument is not a security, the need to distinguish between MA and broker-dealer is moot because the Securities Exchange Act of 1934 rules for broker-dealers and the Municipal Securities Rulemaking Board rules only apply to municipal securities, Olsen said.

She said the issue of whether an individual is acting as an advisor or a broker-dealer is “more difficult” because “there is no bright line” and any answer requires “a very factually intensive analysis.”

Olsen suggested the trading and markets division’s guide on broker-dealer registration may help MAs determine whether they are acting as broker-dealers and participating in important parts of the securities transaction. Key parts of a securities transaction include: solicitation, execution of the transaction, conversations about the size of the transaction, and whether the MA handles the securities of others in connection with the securities transaction.

Bank loans also have raised other questions in the market, such as whether and how often an issuer should disclose them. They do not qualify as a material event under SEC Rule 15c2-12 on continuing disclosure, meaning any effort to disclose them requires an issuer to volunteer the information.

Allen Robertson, a managing partner at Robinson, Bradshaw & Hinson, said during a later panel that issuers’ or obligated persons’ decisions to disclose bank loans fall outside the scope of advice a lawyer advising them should give. Robertson, a former president of the National Association of Bond Lawyers, said NABL determined a lawyer’s job is to make sure issuers and borrowers understand the risks and considerations behind any type of voluntary disclosure. Armed with that information, their clients can make an informed business judgment.

The three concerns a lawyer might raise, according to Robertson, are whether voluntarily disclosing the bank loan: opens the issuer up to a continual liability to provide general updates; means the issuer is committing itself to provide information about all future bank loans; or requires the issuer to make a disclosure any time the loan is amended. While he said there are likely ways to avoid each of those concerns while still disclosing, he said that legally there is no “black and white answer.”

The two rating agency officials on the panel both advocated for disclosure whenever possible because it allows for a more complete picture of an issuer’s ability to pay its debt.

“I will never tell you not to disclose a bank loan,” said Tom Jacobs, senior vice president and manager of Moody’s municipal supported products group. “The more transparent the market is, the happier we will be.”

Loans are particularly worrisome when the banks have acceleration rights that allow them to seek immediate repayment if ratings or other indicators of an issuer’s ability to repay the debt diminish, Jacobs said. When acceleration rights are written into a loan, bondholders without the rights become subordinate and have to wait behind the banks for payment.

Diane Brosen, managing director for Standard & Poor’s corporate and government ratings, said that a few years ago, issuers questioned why rating agencies needed information about bank loans.

“We at Standard & Poor’s felt like we had to go to the issuers and let them know how important this was to the market,” Brosen said.

Many issuers now more readily supply bank loan information, but Brosen said there is still an issue, especially with smaller community banks that are harder to reach. She asked any MAs in the audience who are involved in bank loans with smaller banks to spread the message of the need for disclosure.

National Federation of Municipal Analysts industry and media liaison Bill Oliver mentioned NFMA's recent white paper urging issuers to disclose bank loans. He challenged the idea that issuers will always be able to access the capital market and that there is a good level of liquidity present regardless of their disclosure practices.

"The market does have a fragile side to it and I think disclosure and having a disclosure track record for your issuers is really important," Oliver told the audience. "This notion about disclosure being voluntary is outdated."

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:31am ET

NABL Municipal Bankruptcy Teleconference.

Not too many of us are municipal bankruptcy experts (and few of us want to be!). Most bond law issues are often litigated and settled before trial, in both bankruptcy and work-out situations. This last year has been no exception.

Join our panel of national experts, Patrick Darby, Ann D. Fillingham, and Allen K. Robertson, on **Thursday, November 12, 1-2:30 pm Eastern**, for their perspectives on what we need to know.

This free, NABL members-only teleconference will cover:

- Distressed Units – Common Causes and Warning Signs;
- Understanding the Basics of Access to the Bankruptcy Courts;
- Common Arguments Raised During Bankruptcy;
- State Law Remedies vs. Chapter 9 Bankruptcy;
- Understanding the Importance (and Limitations) of Lien and "Special Revenue" Status;
- Statutory Liens and Recent State Law Developments; and
- Disclosure Issues.

Click here to download the registration form.

ABA Submits Recommendations for Public-Private Partnerships.

The American Bar Association's (ABA) Section of Taxation sent its recommendation to the Treasury Department and the Internal Revenue Service concerning the guidance to facilitate the development of public-private partnerships (P3's). The ABA's recommendations include the creation of a new safe harbor to ensure that P3 arrangements won't give rise to private business use.

[The ABA’s recommendations can be seen here.]

[Attention Municipal Advisors: Enroll Today for the Series 50 Pilot Exam.]

The Municipal Advisor Representative Qualification Exam (Series 50) will be administered as a pilot exam January 15, 2016 – February 15, 2016.

Enroll using the Financial Industry Regulatory Authority’s [(FINRA) Form U10] by January 14, 2016 to participate.

For more information regarding the Series 50 pilot exam, see the MSRB’s [Regulatory Notice 2015-15].

[MSRB Rule G-15 Webinar.]

Request for Comment on Draft Rule Amendments to MSRB Rule G-15 Webinar.

October 29, 2015

3:00pm – 4:00pm EDT

During this free webinar, MSRB staff will provide an overview of the Request for Comment on Draft Rule Amendments to MSRB Rule G-15 to require municipal securities dealers to disclose the amount of the mark-up on retail customer confirmations for specified principal transactions. To support market participants’ submission of comment letters, this webinar will review the key provisions of the draft rule amendments.

[Register for the webinar.]

[S&P: Bank Loans Pose Potential Credit Risks, But For Now Issuers' Liquidity Positions Help Support Most Ratings.]

Standard & Poor’s Ratings Services continues to scrutinize the credit impact of bank loans assumed by issuers and their potential effects on Standard & Poor’s rated debt. This commentary updates our Jan. 28, 2015. report on bank loans (see “Standard & Poor’s Maintains Its Focus On Direct Loans After Evaluating $15.8 Billion In 2014”) to include our 2015 year-to-date experience. Through Sept. 25, 2015, and including all prior years, we have reviewed 513 bank loans totaling approximately $20 billion in par by applying the methodology detailed in our 2012 contingent risk criteria.

The overwhelming majority of these bank loans we have evaluated have not, for the most part, negatively affected the credit quality of the obligors’ debt rated by Standard & Poor’s. This is because in our view (1) the parties to the transactions negotiated terms that we consider to be consistent with existing credit quality and current liquidity positions vis-à-vis the direct purchase terms under which acceleration could occur, (2) the financing structures do not present material contingent liquidity risks, and (3) the loans do not explicitly or implicitly subordinate other liens but the loan documents often provide preferential rights to the bank, in the event of a covenant default, which may result in a credit concern if liquidity is insufficient.

Overview

- So far in 2015, Standard & Poor's evaluated the impact of 109 bank loans totaling $4.22 billion on the obligors' public debt ratings. Of that total, six loans negatively affected the credit quality of Standard & Poor's rated parity obligations due to lenient covenants and inadequate liquidity levels to handle a potential acceleration event.
- The overwhelming majority of bank loans generally haven't negatively affected U.S. public finance issuers' credit quality when the financing structures mitigate contingent liquidity risks and where liquidity is sufficient per our criteria.
- We continue to stress the importance of loan disclosures in our written analysis and communications with issuers as direct purchase debt is often not subject to disclosure rules like rated securities.

Often, the bank loan financing documents contained provisions that introduced additional risks that the obligors' current liquidity position may or may not fully have mitigated. If liquidity were to erode in our view, credit quality and ratings could be negatively affected and the magnitude of the rating decline could be greater than it would be absent these loans.

Looking at 2015 exclusively, Standard & Poor's evaluated the impact of 109 bank loans with a par amount totaling $4.22 billion on the obligors' public debt ratings. The loans ranged from less than $287,000 to $300 million. To date, the ratings or outlooks of six obligors have been negatively affected by bank loans. The 109 loans evaluated thus far in 2015 include:

- 19 loans totaling $641 million and an average par of $33.8 million secured by universities, independent schools, and not-for-profit institutions;
- 35 loans totaling $1.89 billion and an average par of $54 million secured by hospitals and other health care providers;
- 40 loans totaling $589.9 million and an average par of $14.7 million secured by a variety of special taxes, general obligation and appropriation pledges, and
- 15 loans totaling $1 billion and an average par of $73.1 million secured by transportation and utility systems.

Measuring the U.S. public finance bank loan market remains a challenge for various reasons, most notably because bank loans are not explicitly required to be disclosed as they are not deemed to meet the legal definition of securities. Nevertheless, Standard & Poor's observes that issuers across the municipal finance market continue to meaningfully use bank loans as an alternative financing product to manage their debt profiles for various reasons, including cost of capital, ease of issuance, and often to avoid the put features of various bonds.

Although the instances where we have adjusted ratings as a result of issuers' use of bank loans have been limited, Standard & Poor's continues to emphasize that disclosure of the loans and their terms is critical to identifying those cases where the loans do affect credit quality. Moreover, loan disclosure promotes transparency for all market participants, including the retail and institutional investors that use Standard & Poor's ratings. In our view, reviewing the loans is critical because each transaction is separately negotiated, the terms are not uniform, disclosure of the loans can be inconsistent, and the potential for contingent liquidity exposures or altering the relative priority of creditors' claims can be significant even for fixed-rate instruments. Consequently, we continue to underscore with issuers that carry Standard & Poor's ratings the importance of providing us with bank loan documents, irrespective of whether we assign ratings to the issuers' loans. Our view is that bank loans lacking the protections outlined in our criteria have the potential to meaningfully affect the credit quality of rated capital market instruments largely because of covenants that can trigger acceleration even in fixed-rate instruments.

06-Oct-2015

MSRB Publishes Updated Documents Related to May 2016 Changes to RTRS.

On Friday, September 18, 2015, the Municipal Securities Rulemaking Board (MSRB) published updated RTRS Specifications and RTRS Web User Manual reflecting the amendments to MSRB Rule G-14 described in MSRB Notice 2015-07. The rule changes, which will become effective on May 23, 2016, will enhance the post-trade price transparency information provided through the MSRB's Real-time Transaction Reporting System (RTRS) by:

- Expanding the application of the existing list offering price and takedown indicator to include distribution participant dealers and takedown transactions that are not at a discount from the list offering price;
- Eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades;
- Establishing a new indicator for customer trades involving non-transaction-based compensation arrangements; and
- Establishing a new indicator for inter-dealer transactions executed with or using the services of an alternative trading system (ATS).

A test environment reflecting the amendments to MSRB Rule G-14 was made available through the current RTRS BETA system on October 1, 2015. The MSRB encourages dealers to make necessary programming changes and complete testing prior to the May 23, 2016 effective date.

If you have any questions, please contact MSRB Support at 703-797-6668.

MSRB Proposes Four-Year Terms for Board Members.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing to lengthen board members' terms to four years from three, claiming this will make them more effective.

The MSRB proposed the changes to its Rule A-3 on board membership on Monday and is asking for public comments to be submitted by Nov. 19. The self-regulator had previously asked for comments on longer board terms as part of a controversial proposal earlier this summer to ease the standard of independence for the board's public investor representative. That proposal was shelved after it drew criticism, including from the Securities and Exchange Commission's Investor Advocate.

The new amendments are "primarily designed to improve the continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members," the MSRB said in its regulatory notice. Longer terms would be especially helpful when members work on more complex or unique rules that often take multiple years to formulate and implement, it said.

“As former board members frequently attest, there is a substantial learning curve when joining the board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB,” said the board’s executive director Lynnette Kelly.

The proposed new term structure would maintain the majority-public nature of the 21-member board, but would change the number of new board members every year to either five or six, instead of the current seven. The MSRB is proposing a transition period through 2020. In 2021 there would be six new members, the next year five, the next year five, and the next year five. The cycle would be repeated every four years. The MSRB currently considers the members that come on in the same year one “class” and names the class according to the year they end their terms.

The MSRB said each new class of five or six “would continue to be as evenly divided as possible between public representatives and regulated representatives.”

As part of the changes, the MSRB would eliminate a current Rule A-3 requirement that every board class have at least one municipal advisor representative not associated with a dealer. The MSRB said that keeping the requirement “would create an unintended obligation that the board always include four non-dealer municipal advisors” and thus possibly decrease representation of other regulated entities.

“Nothing in this change would reduce the representation of municipal advisors nor would it prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the board,” the MSRB said.

During the transitional period, different members of the board would be eligible for board-approved extensions each year.

In fiscal year 2017, one public representative from the class of 2016 would get a one-year extension and six new members would join the board. The next year, one public and two regulated representatives from the class of 2017 would receive a one-year extension and five new members would join. Then in 2019, three public and two regulated members from the class of 2018 would get one-year extensions and five new members would join the board. And by 2020, the board would have completed the transition and welcome a class of five new members who would serve four year terms.

A committee of board members not being considered for extensions would nominate the members eligible for extensions in each of the transition years and then the board would vote on each proposed term extension. The extensions and board composition during and after the transition period “would be consistent with the statutorily-required compositional requirements of the board,” the MSRB said.

While the MSRB said it recognizes there are numerous combinations of classes and members to achieve the change, it said it feels its specific recommendations would “achieve the transition expeditiously and efficiently while minimizing any disruption.”

However, the board included several alternatives for commenters to consider when responding to the proposal, including whether members should serve terms longer than four years and whether the MSRB should make it easier for members to serve consecutive terms, even though the self-regulator said it believes the regular turnover every four years has benefits.

It also listed alternatives, including: a new proposed lifetime cap on the number of years a member could serve; devoting more resources to educating board members; and changing to four-year terms but keeping the rotation of seven new people every year and having no new members every fourth year.

The MSRB also posed two questions at the end of its notice asking if the proposed amendments would give the board greater continuity and institutional knowledge as well as whether the amendments would impose costs or burdens on any industry participants.

Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said SIFMA thinks the proposed term limit extension is “a great idea” and although the dealer group is still looking at the proposal, a longer term will “make board members more effective in decision making.”

Jessica Giroux, Bond Dealers of America general counsel and managing director of federal regulatory policy, said BDA plans to discuss MSRB’s suggested changes to Rule A-3 “with an eye toward flushing out any of our concerns related to proposed details surrounding adjustments to classes and how the transition process will proceed.”

A spokesman for the National Association of Municipal Advisors said the group will be submitting comments. The Government Finance Officers Association could not immediately be reached for comment.

THE BOND BUYER

BY JACK CASEY

OCT 5, 2015 2:06pm ET

TAX INCREMENT FINANCING - IOWA

Acciona Windpower North America, LLC v. City of West Branch

United States District Court, N.D. Iowa, Cedar Rapids Division - September 4, 2015 - F.Supp.3d - 2015 WL 5189017

Wind turbine manufacturer brought action against city, alleging breach of tax increment development agreement for urban renewal project. Parties cross-moved for summary judgment.

The District Court held that:

- Manufacturer complied with agreement requiring it create approximately 110 new, full-time jobs within five-year period;
- Under terms of agreement, city did not have a legal obligation to appropriate funds for tax refund;
- City’s cancellation of agreement was without legal excuse, and thus constituted anticipatory breach of contract;
- Manufacturer was not entitled, as award of damages for city’s breach of agreement, to five years of unpaid tax rebates;
- Manufacturer was entitled to specific performance; and
- Genuine issue of material fact existed as to whether city had legal obligation to pay manufacturer a rebate obligated for appropriation in city resolution.

Under Iowa law, wind turbine manufacturer complied with terms of tax increment development agreement requiring it to create approximately 110 new, full-time jobs within a period of not to exceed five years, despite manufacturer’s failure to maintain that number of jobs during entirety of five year period, where manufacturer created more than 110 new, full-time jobs almost immediately, and nothing in the agreement required manufacturer to maintain a certain number of jobs over any particular length of time.

Under Iowa law, terms of tax increment development agreement between city and wind turbine manufacturer, which stated tax rebate payment would be subject to annual appropriation of the city council, did not create a legal obligation to appropriate funds for a tax rebate in any given year, despite moral or practical reasons for doing so.

Under Iowa law, city's cancellation of tax increment development agreement, based on wind turbine manufacturer's alleged breach of contract, was without legal excuse, and thus constituted anticipatory breach of contract, where manufacturer had, in fact, complied with agreement.

Under Iowa law, wind turbine manufacturer was not entitled, as award of damages for city's breach of tax increment development agreement, to five years of unpaid tax rebates. Agreement required only that city consider whether tax rebate would be paid in any given year, and automatically awarding tax rebates for remaining five years of contract would place manufacturer in a better position than if the contract had not been breached.

Under Iowa law, wind turbine manufacturer was entitled to specific performance of tax increment development agreement, which had been breached by city.

Genuine issue of material fact as to whether, under terms of tax increment development agreement, city had legal obligation to pay wind turbine manufacturer a percentage of incremental taxes paid by manufacturer to be rebated in later fiscal year, which had been approved by city resolution, precluded summary judgment on claim that failure to pay such amount constituted breach of agreement under Iowa law.

GFOA Hosts Meeting to Discuss Implementing School Budgeting Best Practices.

Alliance for Excellence in School Budgeting members met last week at GFOA's office in Chicago to develop a set of guiding principles for the budget process, based on GFOA's new best practices. These guidelines center on aligning district resources with the areas that will have greatest impact on student achievement. The Alliance members are from 35 school districts across the country, from the largest to some of the smallest, and from urban, suburban, and rural areas. They worked on developing communication ideas and analyzing goals and priorities (see below for more information about their process).

Alliance members will be implementing GFOA's new Best Practices in School Budgeting over the next year. GFOA will support their efforts in several ways through online training courses and eLearning sessions. In addition, resources available on GFOA's website – based on the best practices – help academic and finance staff align resources with student outcomes by incorporating research-proven practices into a cohesive budget process.

Working on Implementation

At the meeting, Alliance members – superintendents, chief finance officers, chief academic officers, budget directors, and more – worked on implementing best practices that GFOA staff has developed in conjunction with school district staff and other education finance experts. Specifically, they developed communication ideas and analyzed goals and priorities.

Communication. The components of a communication strategy start with an overview of the organizations' processes, which allows them to find ways of engaging stakeholders and explaining how and why decisions are made. Next, districts must identify who will deliver the message, and to whom. Messages should then be tailored to that target audience, but it's not that easy. Districts must also determine which communication channels will be most effective. And once the message is delivered, it's time to gather feedback and adjust the message accordingly.

Goals. Districts also need to develop goals. One way to approach this step is by using the SMARTER framework. Goals should be specific – that is, they specify a precise outcome or result. They should also be measureable (verifiable and, ideally, quantifiable); achievable (grounded in reality); relevant (focused on student achievement); time-bound (laying out both short- and long-term objectives); exciting (reaching for ambitious improvement); and resourced (aligning finances with goals).

To define goals for academic achievement and make those goals understood by the schools, districts need to assess their strategic environment; set SMARTER goals for multi-year, district-wide improvement; understand baseline performance at the school level; and set goals for each school. To take that first step, start with goals that include specific outcomes, and aim for outcomes that are significant but manageable. Establish what data will the district will use to show whether progress is being made on a goal, and begin collecting evidence. Next, identify the root causes of gaps between the district's goals and its reality.

Best Practices. Alliance members will be implementing GFOA's new Best Practices in School Budgeting, which was recently passed by GFOA's executive board, over the next year. The best practices center on aligning resources with areas of greatest impact on student achievement. GFOA will support these efforts with collaborative meetings, newly developed eLearning modules, and other resources. GFOA will begin recruiting members for the next phase of the Alliance in early 2016.

GFOA's best practices for school include steps that are organized in five major phases: plan and prepare, set instructional priorities, pay for priorities, implement a plan, and ensure sustainability. The best practices include specific examples and guidance on implementing the process. Alliance members have benefitted from adopting the process, and GFOA will document and share their successes over the course of the project.

Training. GFOA is developing eLearning courses to help districts with these steps. The courses are self-paced and take approximately 30 minutes and 1 hour to complete.

Budget Award. GFOA's Award for Best Practices in School Budgeting and Award for Best Practices in Community College programs are based on the best practices in school budgeting. GFOA is finalizing the award criteria, which will allow school districts and community colleges to demonstrate process excellence and receive deserved recognition. Applications will be available for budgets with fiscal years beginning in calendar year 2017.

Contact GFOA for More Information

To find out more about the alliance, the best practices, or any other information regarding the project, please contact Mike Mucha, director of GFOA's Research and Consulting Center. More information on the project is also available on GFOA's website.

Thursday, October 8, 2015

S&P’s Big Picture Look at U.S. Local Government Distressed Ratings, Bankruptcies, and Rating Correlations.

In this CreditMatters TV segment, credit analysts Lisa Schroeer and Jane Ridley discuss how we analyze U.S. local government distressed ratings, bankruptcies, and the correlation between rating pledges.

Watch the video.

Oct. 7, 2015

S&P: California's $961 Million GO Bonds Assigned 'AA-' Rating.

SAN FRANCISCO (Standard & Poor’s) Oct. 6, 2015–Standard & Poor’s Ratings Services has assigned its ‘AA-‘ long-term rating, and stable outlook, to California’s estimated $961 million of general obligation (GO) bonds, consisting of $855 million in tax-exempt various purpose GO refunding bonds and $106 million in taxable variable purpose GO bonds.

At the same time, Standard & Poor’s affirmed its ‘AA-‘ long-term ratings and underlying ratings (SPURs) on California’s $75.6 billion of GO bonds outstanding as of Sept. 1, 2015.

Finally, we affirmed the long-term component of the ‘AAA/A-1+’ and ‘AAA/A-2’ ratings on some of the state’s GO variable-rate demand bonds. The long-term component of the ratings is based jointly (assuming low correlation) on that of the obligor, California, and the various letter of credit (LOC) providers. The short-term component of the ratings is based solely on the ratings on the LOC providers.

“The GO rating is also based on our view of the state’s diverse economy, which is currently expanding faster than the nation’s; demonstrated commitment in five consecutive budgets to aligning recurring revenues and expenses while paying down budgetary debts; good budgetary reserves; strong enough overall liquidity that the state’s typical intra-year general fund cash deficits can be financed entirely from internal sources; and declining, but still moderately high debt ratios,” said Standard & Poor’s credit analyst Gabriel Petek.

“Somewhat offsetting these strengths, in our view, are the state’s persistently high cost of housing relative to other states that contributes to a relatively weaker business climate in California, volatile revenue base, large retirement benefit liabilities, limited prefunding of retiree health care benefits to date, and large backlog of deferred maintenance and infrastructure needs across the state,” added Mr. Petek.

Under current conditions, the state’s fiscal structure generates modest operating surpluses that translate to larger projected budget reserves, according to the state department of finance’s forecast, than the state has had in recent memory. Passage of Proposition 2 in 2014 helped institutionalize a more disciplined approach by requiring annual deposits to the reserve fund. In addition, the measure captures capital gains-related revenue spikes, thereby discouraging the state from building instances of extraordinary revenue growth into its budget base. The state has also restored considerable fiscal flexibility by retiring much of its budgetary debt.

S&P: Nevada's $344 Million GO Bonds Assigned 'AA' Ratings.

SAN FRANCISCO (Standard & Poor's) Oct. 6, 2015–Standard & Poor's Ratings Services assigned its 'AA' long-term rating and stable outlook to Nevada's planned approximately $334 million issue of general obligation (GO) debt. We simultaneously affirmed our 'AA' rating on Nevada's GO debt outstanding and our 'AA-' long-term rating and underlying rating (SPUR) on the state's appropriation-backed certificates of participation. The outlook on all ratings is stable.

"The state has taken steps to bring its fiscal structure into alignment," said Standard & Poor's credit analyst Gabriel Petek. "This, along with Nevada' s demonstrated commitment to adhere to its policy of achieving an ending balance equal to at least 5% of appropriations (even if it potentially fell short in fiscal 2015) helps underpin the state' s strong credit quality, in our view," added Mr. Petek. "Also adding to credit stability, in our view, is the state's recent record of good liquidity and a mechanism to prefund a significant portion of its annual debt service. In our view, these characteristics reduce the risk that an unanticipated revenue shortfall could result in strain on the state' s ability from a cash flow perspective, to fund its debt service."

The current bond offering consists of:

- $256.3 million of GO (limited-tax) capital improvement and refunding bonds, series 2015D;
- $20.94 million of GO (limited-tax) natural resources and refunding bonds, series 2015E;
- $47.1 million of GO (limited-tax) bonds (issued for Nevada Municipal Bond Bank Project Nos. 87, 88, and 89) series 2015F; and
- $10.1 million of GO (limited-tax) open space, parks, natural resources, and refunding bonds, series 2015G.

The 'AA' rating reflects our view of the state's:

- Demonstrated willingness to address budget gaps with both cuts to spending and increased revenue measures when necessary;
- Consistently good financial liquidity on both an intra- and inter-year basis;
- Good constitutional protections, which require balanced budgets and give tax preference to debt service;
- Commitment to and track record of maintaining positive ending balances;
- Nascent signs of employment diversification; and
- Low total debt relative to the state's economy and a low debt burden as a portion of the state's budget.

Partly offsetting the above strengths, in our view, are the state's:

- Depleted rainy day reserve fund, which it used during fiscal 2015 to address a biennium operating deficit that had emerged;
- Still slow economic growth despite population growth rates above the national average; and
- Still relatively narrow economy that relies on sectors sensitive to changes in discretionary consumer spending (tourism and gaming) and those with volatile performance (construction and real estate) — although we

see evidence that this has begun to change.

[Workshop Focuses on Best Leadership Practices in Conducting P3s.]

Successful delivery of a P3 project hinges not only on obtaining the necessary financing and following construction best practices, but on developing solid working relationships with project partners and the public. To spearhead a P3 smoothly and ensure that it is accepted by government leaders and the public requires the ability to anticipate and address challenges faced by both those who are developing the project and those who are affected by it.

The Virginia Tech School of Public and International Affairs is holding an event to help those who pursuing P3s to explore these challenges. The “P3 Leadership Workshop: Understanding Dimensions of Leadership that Impact Public-Private Partnerships,” will offer examples of how leadership has the greatest impact on the outcomes of P3 projects.

Current and former government officials and other experts from the metropolitan area will be on hand to share their insights.

This workshop is being held Nov. 6 in Arlington, Va. For more information, visit the event website.

NCPPP

October 9, 2015

FHWA Drafts Model Contract Guide on Availability Payment P3s.

The Federal Highway Administration has drafted a guide designed to assist in the development of contracts for availability payment-based highway public-private partnerships. The agency is inviting the public to comment on the draft before it is finalized.

The Availability Payment Concessions Public-Private Partnerships Model Contract Guide “is designed to provide industry-standard concepts, relevant common tools and mechanisms and situational examples applicable to availability payment-based P3 transactions,” FHWA explains in its introduction to the guide.

The document is similar to the two-part model draft contract guide for toll concession P3s that FHWA released for public review in 2014 and early 2015. The final version of the two drafts will be published as a single document.

These guides are part of a series of documents that describe terms and conditions that P3 concession agreements typically contain and are meant to be educational, not prescriptive.

FHWA has decided to add suggested labor standard best practices recommended by the Department of Labor to both the toll concessions and availability payment guides. As a result, the toll roads concession guide will be finalized after public comments have been received on the availability payments guide draft, the agency said in a Federal Register notice.

Comments on the availability payments guide draft are due Oct. 29.

NCPPP

October 9, 2015

Standard & Poor's Proposed Criteria For Rating Jointly Supported Financial Obligations.

In this CreditMatters TV segment, Senior Director Ekaterina Curry and Criteria Officer Liz Sweeney discuss our recent request for comment regarding proposed methodology revisions to our joint support criteria, including the implications for ratings and obligors.

Watch the video.

Oct. 6, 2015

S&P's Public Finance Podcast: (California's Redevelopment Sector and Bank Loan Market Trends).

In this week's Extra Credit, Associate Director Sarah Sullivant discusses what's driving California's redevelopment sector and Senior Director Lisa Schroeer reviews the trends shaping the bank loan market.

Listen to the Podcast.

Bill Includes AMT Exemption for PABs, But Also 28% Cap.

WASHINGTON – A lengthy tax relief and job creation bill recently introduced in the House would exempt private-activity bonds issued from 2015 through 2018 from the alternative minimum tax, repeal sequestration, and create an infrastructure bank. But it also would cap the value of the municipal bond tax exemption at 28%.

Muni experts were disappointed to see the 28% cap, saying it contradicts the bill's aim of increasing employment while improving the nation's infrastructure.

"It's very commendable that these members of Congress are proposing concrete, meaningful actions to promote infrastructure financing," said Chuck Samuels, a member of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. "Unfortunately, the 28% proposal may take away with one hand what they are trying to give with the other hand."

The 299-page bill, H.R. 3555 called "Jobs! Jobs! Jobs! Act of 2015," was introduced by Rep. Frederica Wilson, D-Fla., and has more than 30 Democrats as co-sponsors. It has been referred to nine committees, including the House Ways and Means Committee and the House Transportation and Infrastructure Committee.

The bill includes a number of provisions aimed at tax relief for workers and businesses, putting workers back on the job while rebuilding and modernizing the country and providing pathways for job-seeking Americans to get back to work. Several of these provisions relate to infrastructure.

The measure also would repeal federal spending cuts known as sequestration. The sequestration cuts have included reductions in the subsidy payments issuers receive from the Treasury Department for their direct-pay bonds, such as Build America Bonds.

But one of the offsets for the bill would be a 28% limit on certain deductions and exclusions, including the exclusion for tax-exempt interest. This offset is similar to a proposal in recent budget requests from President Obama.

Other offsets include taxing carried interest in investment partnerships as ordinary income, closing the loophole for corporate jet depreciation and repealing oil subsidies.

The bill would exempt PABs issued from 2015 through 2018 from the AMT. Generally, these types of bonds are subject to the AMT, increasing their yields, but PABs issued in 2009 and 2010 were exempted from the AMT under the American Recovery and Reinvestment Act.

By exempting PABs from the AMT, but subjecting all bonds to the 28% cap, PAB issuers may not be better off than they are under current law, and issuers of other types of bonds would be worse off, said Bill Daly, director of governmental affairs for the National Association of Bond Lawyers. The bulk of the muni market is governmental and 501(c)(3) bonds, which are not subject to the AMT.

“For the market as a whole, it is a negative,” Daly said.

Jessica Giroux, general counsel and managing director of federal regulatory policy for the Bond Dealers of America, said, “BDA believes the best way to finance infrastructure is to provide state and local governments access to numerous, cost-effective financing options and municipal bonds have been the best option for over a century and private-activity bonds also play an important role in many communities. However, Rep. Wilson’s recommendation to put limitations on the value of the federal tax-exemption tied to municipal bonds runs counter to the intent of her legislation and would drive-up not only the cost of bonds to state and local governments but also the billions of dollars in infrastructure financed by the bonds in the past year alone.”

The Council of Development Finance Agencies, whose members include issuers and borrowers in PAB transactions, does not support the bill on balance, said Jason Rittenberg, CDFA director of research and advisory services.

“Tax-exempt bonds are a proven and effective tool for infrastructure finance, and a cap on the exemption would cause unknown impacts on the market at a time when states and municipalities need access to stable and affordable financing,” he said.

Micah Green, co-chair of Steptoe & Johnson’s government affairs & public policy group, said that either the bill has an unintended consequence that needs to be fixed, or an intended consequence that makes it “far less attractive” to the muni market.

The bill also would create an infrastructure bank called the American Infrastructure Financing Authority that would provide loans and loan guarantees to facilitate transportation, water and energy infrastructure projects of regional or national significance.

Projects would generally need to have anticipated costs of at least $100 million to be eligible for assistance from the AIFA, but rural infrastructure projects would only need to have costs that are expected to be $25 million or more.

The AIFA could make up to $10 billion of loans and loan guarantees in each of its first two fiscal years of operation, up to $20 billion in each of fiscal years three through nine of its operations, and up to $50 billion in years after that.

The bill would appropriate $10 billion to the AIFA. In each of fiscal 2016 and 2017, no more than $25 million of those funds could be used for administrative costs, and in fiscal 2018, no more than $50 million could be used for administrative costs.

Also, the bill would make available $2 billion to the Secretary of Transportation to carry out airport improvements; $27 billion for certain surface transportation, passenger and freight rail, and port infrastructure projects; $4 billion for grants for high-speed rail and intercity passenger rail projects; $3 billion for grants for transit capital assistance; and $5 billion for capital investments in surface transportation infrastructure that would be distributed under a competitive grant program.

THE BOND BUYER

BY NAOMI JAGODA

OCT 2, 2015 11:12am ET

Bill Would Create Clean Energy Tax-Advantaged Bonds.

WASHINGTON — An energy bill offered by Senate Democrats would create Clean Energy Bonds that could be used as either tax-credit or direct-pay bonds with an initial 28% subsidy rate and that would not be subject to volume cap.

The bill, S. 2089 or the "American Energy Innovation Act," was introduced late last month by Sen. Maria Cantwell, D-Wash., the ranking minority member of the Senate Energy and Natural Resources Committee. It is co-sponsored by 30 Senate Democrats, including Senate Finance Committee ranking minority member Ron Wyden, D-Ore., and Senate Minority Leader Harry Reid, D-Nev.

The bill contains a number of provisions, including some aimed at encouraging investment in clean energy technologies.

The measure's proposed creation of Clean Energy Bonds would build upon current law. At present, several tax-advantaged bonds can be used to finance certain clean renewable energy facilities and conservation improvements. These include Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, tax-exempt bonds for public power providers and tax-exempt private-activity bonds for certain green buildings.

Like New CREBs, the proposed Clean Energy Bonds would be tax-advantaged bonds that could be issued by state, local and tribal governments, public power providers and electric cooperatives. But there would be some differences between the two types of bonds. A key difference is that Clean Energy Bonds would not be subject to volume cap. New CREBs have a national volume cap, and issuers have to request allocations of it from the Internal Revenue Service. Congress has not provided any new national volume cap for New CREBs since 2009, so issuers can only issue these bonds from allocations of the existing cap.

The American Public Power Association is appreciative that Cantwell and Wyden created a program that's longer-term and has no volume cap. The bill is a "step in the right direction," said John

Godfrey, senior government relations director for the group.

He added that APPA also likes the fact that Clean Energy Bonds would supplement, rather than replace, tax-exempt bonds.

However, the bill does not appear to address the sequester cuts to subsidy payments to issuers of direct-pay bonds. Given how long it will take to pass an energy bill, "it would be a shame for it to be undermined from the start by the threat of sequestration," Godfrey said.

Clean Energy Bonds could be used for both facilities that produce clean electricity and those that produce clean transportation fuels. New CREBs are to be used for renewable energy projects. They cannot be used to finance clean transportation fuel projects.

The credit and subsidy rate for Clean Energy Bonds would start at 28% of interest costs, which is less than the 70% subsidy rate for New CREBs. If federal officials determine that the annual greenhouse gas emissions from electrical production or transportation fuel produced and sold at retail are equal to or less than certain percentages, the credit rate would be phased out for bonds issued for facilities producing that type of product in calendar years after the determination is made. The credit and subsidy rate would be zero for any bond issued more than three calendar years after the determination is made. Regardless of the emission levels, the phase outs would start in 2026.

Susan Collet, president of H Street Capitol Strategies, pointed out proposals to revive the Build America Bond program would do so at a 28% subsidy rate. That percentage is thought to be revenue neutral.

While issuers might choose to issue tax-exempt bonds over Clean Energy Bonds because tax exempts are simpler, the bill recognizes that there is a need for financing tools that can be used by nonprofit electric utilities, which can't take the production tax credit or investment tax credit.

Collet said that the legislation is "a message bill at this point" and reflects the priorities of Democrats. The Senate Energy Committee has approved a bipartisan energy bill, and the Democrats' bill includes items that the Senators could not get included in the bipartisan bill, she said.

The energy committee doesn't have jurisdiction over taxes, so Godfrey said he would expect Cantwell to offer an amendment to the bipartisan bill that includes tax provisions when the bill is considered on the Senate floor. However, the specifics of that amendment are unclear, he said.

The Democrats' energy bill could also be discussed in the context of a bill that would renew expired tax provisions known as extenders, Godfrey said. Some of the expired provisions relate to energy.

THE BOND BUYER

BY NAOMI JAGODA

OCT 6, 2015 2:37pm ET

Ratings Agencies Diverge on Post-Default Approaches.

Kroll Bond Rating Agency last week weighed in on post-default ratings, a subject of increasing interest in the municipal industry.

Four of the five biggest municipal bankruptcies in United States history have taken place in the last four years. And the Puerto Rico Electric Power Authority will almost certainly create the greatest municipal default in U.S. history within the next few months.

Kroll noted the “changing landscape” in its Oct. 2 report, “Shouldn’t Defaulting on Debt Have Rating Consequences.”

While predicting defaults will remain low, the rating service said, “we do expect there will be a higher default rate going forward with substantially lower recoveries than has been experienced historically.”

When an issuer defaults the agencies lower its rating, though not necessarily to the lowest grade. Kroll, like Moody’s Investors Service would take into account recovery prospects. So even if the issuer has already defaulted, they may give the issuer something better than their lowest ratings based on prospects for a strong recovery on the debt.

Fitch Ratings and Standard & Poor’s do not take into account recovery expectations in determining their lowest ratings.

The ratings agencies also vary in how they treat defaulted issuers in the years following defaults. Moody’s and Fitch are flexible. S&P and Kroll take more systematic approaches.

Moody’s doesn’t have a general policy on how it deals with issuers in the years after default because the situation of credits vary so greatly, said Moody’s spokesman David Jacobson.

At Fitch, “We consider the credit fundamentals of the issuer as it emerges, the restructured financial profile and the degree to which the forces triggering bankruptcy have been addressed,” said Jessalynn Moro, head of U.S. local government ratings. “If the credit fundamentals leading to an issuer’s default are unchanged post-default, the rating will remain low, in non-investment grade territory,” she said in an email. “Conversely, if an issuer is able to restructure its revenue, expenditure and/or debt profile in a way that makes default less likely in the future, Fitch’s rating will reflect those new fundamentals.”

Kroll said it “will generally view a decision by a municipal issuer to default on its debt as the basis for assignment of a non-investment grade rating for an extended period of time. KBRA will take this rating approach both for general obligation and non-general obligations debt which has been placed into default.” Adoption of a plan to repay bondholders in full may mitigate Kroll ‘s position. “KBRA will not take this long term position of assigning a non-investment grade rating in a situation where a municipality has been through a Chapter 9 bankruptcy but has not defaulted on its debt, although KBRA may assign a non-investment grade rating during the bankruptcy process,” the report added.

“It is KBRA’s view that the decision to default on a municipal debt payment reflects an essential unwillingness to pay its obligations on the part of the municipal issuer,” Kroll said. “In KBRA’s view, the decision to upgrade a credit to investment grade post-default would be based on successful implementation of a long term plan to maintain fiscally balanced operations and pay its obligations as well as fund the ongoing operations of the local government.”

Before considering an upgrade, KBRA would need to see evidence of “significant progress towards these goals over an extended period of time.”

S&P explained its position on defaulted issuers in a September 2013 report on U.S. local government general obligation ratings:

"While the issuer credit rating of a local government would fall to 'D' or 'SD' following a default on an actual debt obligation, the payment prospects for other GO debt may remain stronger (such as when the default results from insufficient funds for limited-tax GO debt and other GO debt enjoys an unlimited-tax pledge)," wrote S&P analyst Jeffrey Previdi and eight others. "Consistent with our criteria for appropriation-backed obligations, a failure to pay a capital lease obligation also caps the GO rating."

S&P didn't immediately respond to a request for details on how it treats ratings of defaulted obligations in the years that follow a default.

THE BOND BUYER

BY ROBERT SLAVIN

OCT 6, 2015 11:02am ET

Florida Supreme Court Decision Allows Municipalities to Issue Bonds Funding Green Energy for Commercial Properties.

TALLAHASSEE, Fla., Oct. 6, 2015 /PRNewswire/ — An important ruling by the Florida Supreme Court last week will allow Florida municipalities to issue bonds to fund "property assessed clean energy" (PACE) programs, which provide up-front financing to commercial property owners who want to use green energy in their buildings.

Representing the winning side of the case were Leon County Attorney Herbert W.A. Thiele; Elizabeth "Ellie" Neiberger, Susan H. Churuti, and JoLinda L. Herring of Bryant Miller Olive PA; Jon C. Moyle, Jr. and Karen Putnal of Moyle Law Firm; and Assistant State Attorney Georgia Anne Cappleman.

"The ruling is a big win for commercial property owners in Florida and a major victory for the state's environment," said Ellie Neiberger of Bryant Miller Olive. "The ruling gives local municipalities bonding authority that can make clean-energy projects more financially viable for commercial properties around the state."

Giving local municipalities the bonding authority to pay for PACE programs is expected to help expand the use of the program in Florida, where it has only been used on a limited basis for commercial properties.

The PACE program is entirely voluntary. Commercial property owners who choose to participate enter financing agreements with a local municipality, agreeing to repay the improvement costs over the long-term through special assessments added to their property tax bills. The bonds are repaid with the assessment revenues, and there is no personal liability for the property owner.

Commercial property owners could tap into this financing source for green energy-related improvements such as doing energy-efficiency retrofits to buildings or adding solar structures.

The programs have gained traction around the country over the past four years and are proving to be popular in a number of other states, such as California, Connecticut and Ohio, said David

Gabrielson, Executive Director of PACENow, a Pleasantville, N.Y.-based foundation-funded nonprofit that serves as an advocate and information provider for PACE financing.

The decision, announced Oct. 1, was the outcome of an appeal of a bond validation judgment in the Leon County Energy Improvement District's favor. The District has been seeking the authority to issue $200 million in bonds to fund a PACE program, and appeals of validation hearing judgments go directly to the Florida Supreme Court.

Dean Minardi, CFO of Bing Energy International, LLC in Tallahassee, was hoping to use PACE financing last year for a green energy project he was working on personally on Gaines Street in Tallahassee. He applied for $200,000 in PACE financing with the Leon County Energy Improvement District, but had to finish the project without it as the case wound through the courts. But now, he sees opportunities around Leon County for similar projects.

"There will be significant demand for this financing, with the need to make older buildings more energy efficient," Minardi said. "Because the return on investment on green energy is longer-term, many traditional lenders don't want to finance such projects. Having access to this fund is a game changer."

Around the state, the Florida Supreme Court's decision is an important step in achieving the state's energy conservation objectives, as outlined in Florida Statute, said Leon County Attorney Herb Thiele. "By enabling Leon County with this type of bonding authority, we can now help developments and buildings become more energy efficient," he said. "This is good for business, good for government, and good for the environment."

The case was Reynolds v. Leon County Energy Improvement District et al., case number SC14-710, in the Supreme Court of Florida.

About Bryant Miller Olive

With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tallahassee, Tampa, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

Florida High Court Makes It Harder to Challenge Bond Validations.

BRADENTON, Fla. — In validating $700 million of clean energy bonds, the Florida Supreme Court overturned 60 years of case law and made it harder to challenge future bond validations.

The Florida justices overturned a 1955 precedent set in the case *Meyers v. City of St. Cloud*. The Meyers case held that a party that does not appear in a bond validation proceeding in circuit court, where the cases are initiated, still had the right to appeal from the trial court's decision directly to the state Supreme Court.

From now on, litigants must appear in the initial circuit court validation case to preserve their right to appeal, the justices said in an Oct. 1 ruling.

The decision benefits issuers and bond attorneys because it can speed up the validation of bonds in Florida, a legal process that insulates the debt from future legal challenges, experts said. Bob Jarvis, a professor at Nova Southeastern University's Shepard Broad College of Law, said justices got it wrong in 1955.

"If you want to challenge a case at the Florida Supreme Court, you'd better get involved at the trial court level and make sure you have standing," he said.

The new ruling is a major change in state law that has benefitted litigants who disagreed with an issuer's decision to issue debt or who simply used the fast-tracked appeal process to point out a procedural or constitutional deficiency, said a Florida attorney who asked not to be identified. "It's not good public policy," the attorney said. "If someone broke the law, you should be able to simply take the record and appeal."

The court ruled last week on two bond validation cases, affirming them both but remanding both for some changes. They were brought under a Florida bill passed in 2010 establishing a property assessed clean energy program.

Under the PACE law, local governments can issue revenue bonds to provide financing for residents and businesses that voluntarily agree to make energy conservation, renewable energy, and wind resistance improvements, and have non-ad valorem assessments placed on their property tax bills to repay the debt.

In the case that overturned the 1955 precedent, the justices confirmed the circuit court's validation of up to $200 million of commercial PACE revenue bonds for the Leon County Energy Improvement District in north Florida.

In a second ruling, the court validated up to $500 million of bonds for the Clean Energy Coastal Corridor, a PACE program established by the village of Biscayne Park and the towns of Bay Harbor Islands and Surfside in Miami-Dade County.

In Florida, bond validation appeals go directly to the state Supreme Court "so as to provide assurance of the marketability of the bonds," according to the ruling.

Litigants appealing both validation cases argued that the financing agreements for the PACE programs included the unlawful use of judicial foreclosure if the assessments could not be collected.

The Supreme Court agreed, and ordered the judicial foreclosure language struck from the financing agreements.

The appellant in the Leon County case failed to appear in the circuit court validation case, and lacked standing to appeal, the justices wrote.

Their ruling backtracked from six decades of Florida case law established in the Meyers case and three other bond validation cases since then based on Meyers.

"Under the plain terms of the statute, any person wishing to participate in bond validation proceedings must appear in the circuit court," the justices wrote.

The ruling provides clarity to the bond validation process going forward, Jarvis said.

“You have to be personally affected by the court’s decision and therefore you have skin in the game,” Jarvis said, explaining why it is appropriate for parties to appear in the lower court case.

Jarvis also said the new ruling could potentially increase costs for litigants, if they choose to hire attorneys when the validation case begins before the circuit court.

If an issuer makes a mistake preparing bond documents, a citizen is now precluded from taking the record from the circuit court validation proceeding and pursuing an appeal, said the attorney who asked to remain anonymous.

The attorney said he would want appeal options open to ensure that bond validations are complete, and that bond documents are prepared properly.

Since a Florida validation case also involves the local state attorney as a participant, Holland & Knight partner and bond attorney Michael Wiener said his firm typically waits to close on a bond issue until after the 30-day appeal period ends.

The new Supreme Court ruling limits the universe of potential appellants, Weiner said. “You would have some certainty that during the 30day period no other parties could appear to appeal the decision,” he said.

The decision to validate Leon County’s bonds and overturn the standing law was hailed by Elizabeth Neiberger, an appellate attorney with Bryant Miller Olive PA who represented the county.

“I think the court did reach the correct decision on both points,” she said. The ruling is a big win for commercial property owners in Florida and a major victory for the state’s environment, she added.

“In Leon County where I live there is a lot of redevelopment and a lot people are interested in taking advantage of this [PACE] program,” Neiberger said.

While the justices ordered Leon County to remove judicial foreclosure from bond documents, Neiberger said the court’s order clears up any ambiguity in the paperwork even though the county did not intend to use foreclosure unless it was allowed by law.

“We got the remedy we asked for,” she said. “This doesn’t have to go back to another bond validation hearing.”

Neiberger also said the court’s prior determination about standing ran counter to Florida law, basic principles of litigation, and appellate review.

“It’s incredible as an appellate attorney to see a case where somebody doesn’t have to show up at the trial court and can tie things up in an appeal, especially one that goes directly to the Supreme Court,” she said.

Several attorneys, including Neiberger, said the Supreme Court’s decision last week to validate the clean energy bond issues tends to support Florida’s 2010 PACE law – though the law itself was not at issue in either case.

The constitutionality of the 2010 PACE law, however, is pending before the Florida Supreme Court in a separate case.

The Florida Bankers Association has appealed the validation of $2 billion of PACE bonds sought by the Florida Development Finance Corp.

The FBA has argued that the PACE law is unconstitutional because it gives the special assessment on a tax bill a lien that supersedes the payment of a mortgage on the property. Oral arguments in the FDFC case were heard in May.

PACE – related bonds have already been validated in Florida, including a $2 billion court-approved authorization for the Florida PACE Funding Agency in 2011 that is believed to be the first of its kind for the Sunshine state.

The ruling in the Leon County case overturning the Meyers precedent came on a 6 to 1 vote, with Charles Canady, who agreed with the majority's reasoning on Meyers, dissenting only because he believed the entire case should have been dismissed. The justices ruled unanimously in upholding the Clean Energy Coastal Corridor validation.

THE BOND BUYER

SHELLY SIGO

OCT 7, 2015 3:15pm ET

Muni Managers Get Busy After Fed Stands Pat.

Asset managers are keeping active in the municipal market as they prepare their portfolios for a prolonged period of uncertainty over interest rates. Some are adding risk to boost their fourth-quarter yields following the Federal Reserve Board's decision on Sept. 17 to keep rates unchanged, while other are playing a more defensive game.

Sean Carney, head of municipal strategy at BlackRock Inc. said year-end posturing includes looking more favorably at duration in the near-term and focusing on the trajectory and destination of future rate hikes, as well as the potential impact on the municipal market.

"Where appropriate, we will look to add marginal duration and/or credit so to be able to harvest greater returns as seasonals turn more positive," he said.

For some managers, that means exploring the high-yield sector. Carney, however, favors the A-rated space at a time when many managers are clinging to higher quality.

"When you look at returns in the market over time, it becomes evident that one must add some credit to their portfolio" to boost returns, he said.

The A-rated portion of the market "has grown from less than 10% to 30% of the overall outstanding universe, and since 2009, has outperformed the broad market by 10% when measuring total return," Carney said.

Others, however, believe the risks outweigh the benefits in lower-rated sectors, and as a result are being highly defensive and choosing securities from tax and revenue-backed governments and entities that are less susceptible to credit issues.

"We are concerned about risks, such as underfunded pensions, Chapter 9 bankruptcy, and shake-outs in certain non-essential service enterprise sectors," said David Litvack, managing director and head of tax-exempt research at U.S. Trust, Bank of America Private Wealth Management.

Some of those concerns dominated the headlines in 2015 and speculative issuers gave investors and money managers reason for great concern – especially cash-strapped municipalities like Puerto Rico, Detroit, Illinois, and New Jersey.

As a result of the highly visible, yet isolated, credit situations, Litvack said he prefers tax-backed bonds of governments with stable economies, solid finances, and manageable debt and pension liabilities, as well as revenue bonds of utilities and transportation authorities.

"We are selective in higher risk sectors, such as higher education and health care," he said. U.S. Trust manages more than $380 billion in total client assets.

Others who are concerned about the future of interest rates are still seeking high-quality investments as the year comes to a close.

Mark Tenenhaus said his low expectations for Fed movement in 2015 means no major changes in the municipal strategy through year end at RSW Investments, where he is the director of municipal research.

"We have positioned our holdings well in advance as we did not and do not foresee the Fed taking any action during the course of the year," he said. The Summit, N.J.-based asset management firm oversees $2 billion of separately-managed municipal bond client accounts.

"The Fed's lack of action, to us, highlights the inherent weakness in both the domestic and global economies, supporting our emphasis on highest credit quality investments," Tenenhaus said.

Janney Montgomery Scott Inc. is also maintaining its strategic approach when it comes to municipal investments, according to Alan Schankel, municipal bond strategist at the Philadelphia-based firm.

"We do not expect [the rate hike] to translate into significantly higher long term interest rates," Schankel said. That's led the firm to advise municipal investors to focus on the six- to 14-year range of the tax-free yield curve, with 5% range coupons, as well as higher quality paper in the double-A and higher spectrum.

Schankel said he recommends larger, non-profit healthcare issuers as the growth in the insured population increases demand, as well as the toll road and airport sectors because they benefit from the lower energy prices and improving economic conditions.

Stephen Winterstein, managing director of research and chief strategist at Wilmington Trust Investment Advisors, Inc., said that rather than making interest rate bets, his firm is focused on maintaining adequate exposure in the municipal portfolios to mid-grade and high-grade securities that are extremely liquid, frequent-to-market, and actively traded.

All the volatility and uncertainty over the Fed tightening put the market in a tailspin – with the latest expectations for a potential rate hike in March 2016.

"The market's antics over the past several months only provide support for our agnostic view of interest rates," Winterstein said.

Wilmington manages $4 billion in tax-exempt municipal assets consisting of separate accounts for ultra-high net worth individuals.

"The sensible way to manage the unknown is to prepare for adverse volatility in the event that we do experience a material increase in tax-exempt yields," he said.

The firm continues to give clients full exposure to the term structure of their respective benchmark indices notwithstanding an interest rate forecast.

“We do not express a view in our portfolios of the future shift in, or shape of the curve,” Winterstein said.

Like his peers, he is steering clear of riskier sectors for now, but won’t rule them out entirely, as he said relative value is a key component to his overall strategy.

He is currently avoiding “precarious” sectors, such as resource recovery, tobacco settlement, life care, and nursing homes until spreads widen out. “We may be interested in certain names in the BBB category at some point, but with 10-year spreads at about 114 basis points, lower investment-grade yields still have quite a distance to cover to even get to the 152 basis point spread where they were in the beginning of 2014.”

“While we do not wilt from risk, we travel into the BBB arena, not in search of a higher yield, but for opportunities where credits may be improving,” Winterstein added. “As a total return manager, we are focused as much on price performance as yield, and so any potential upgrade or other progress in a credit may be the catalyst to spark our curiosity.”

Overall, the managers said they are well prepared for the remainder of 2015 — and optimistic about the arrival of 2016, even with interest rate volatility.

“We do not fear the Fed in the sense that we believe the muni market holds up rather well in most scenarios,” Carney of BlackRock said.

“Our conviction around a September lift-off was low, and in many cases below market expectations,” he added. Following what he referred to as the Fed’s “dovish” comments in September — and subsequent data indicating lower-than-projected growth outlooks – Carney expects a “lower for longer” interest rate environment to continue going forward.

“Even if the Fed does go, their accommodative stance coupled with low inflation expectations should keep the long-end of the curve well bid,” Carney said.

THE BOND BUYER

BY CHRISTINE ALBANO

OCT 8, 2015 10:07am ET

Social Impact Bonds: Cha-Ching! Success!

Nothing talks like money does and this week, the financiers of a Utah preschool program became the first Social Impact Bond (SIB) investors to see a return on their investment. The United Way of Salt Lake announced it had cut a check for $267,000 to investment bankers who funded public-preschool expansion in Utah. The early payment came because initial results showed the program is working already at reducing the number of kids who need special education in grade school.

Of the 595 low-income three- and four-year-olds who attended preschool financed by the SIB in the 2013-14 school year, 110 of the four-year-olds were identified as likely to use special education in grade school. Results showed that of those 110 students identified as at-risk, only one used special education services in kindergarten. That equals a $281,000 cost savings for the school district, the state and Salt Lake County. The so-called success payment is 95 percent of that cost savings.

Goldman Sachs and J.B. Pritzker committed $7 million to the pay-for-success program, which will fund expanded preschool services for five years. Researchers will continue to monitor the 110 students through sixth grade. Investors will get more success payments based on the number who avoid use of special education in each year.

The news comes two months after the first-ever social impact bond program in the United States shut down early. An evaluation nearly three years in on a program aimed at reducing recidivism at Rikers Island Prison in New York City found the project had no impact on the number of repeat offenders.

GOVERNING.COM

BY LIZ FARMER | OCTOBER 9, 2015

How to Save Billions on Public Construction.

The ways we calculate pay scales for labor on government projects dramatically inflate the costs.

A recent Wall Street Journal op-ed column called for repeal of the Davis-Bacon Act, which sets a floor for wages on federally funded construction projects. Thirty-two states have their own prevailing-wage laws, and while the goal of making sure that those working on public construction projects are fairly compensated is too important for the laws to be repealed, some simple reforms for how prevailing wages are calculated could save state and local taxpayers billions of dollars.

According to a 2008 study by Suffolk University's Beacon Hill Institute, state and local governments spend about $300 billion annually on public construction. Labor accounts for about half the cost of those projects. How each of the states with prevailing-wage laws calculates the wage, which various by region within states, is determined by state law.

Some, such as Texas and Connecticut, simply use the amounts determined by the U.S. Department of Labor's Wage and Hour Division (WHD) that are used on federal projects. Five states — Massachusetts, Michigan, New Jersey, New York and Ohio — calculate wages based on the amounts negotiated in local collective-bargaining agreements. The problem is that both approaches dramatically inflate prevailing wages.

WHD determines prevailing wages by surveying construction unions and large employers. But the surveys are so complex and time-consuming that most contractors — especially small ones — don't complete them.

Unions and union contractors, on the other hand, are far more likely to fill out the surveys. Union wages tend to be above market, and these entities want to see the prevailing wage set as high as possible to minimize their competitive disadvantage (disclosure: an association of open-shop construction contractors is among my clients). As a result, the Beacon Hill Institute study found that the WHD approach inflates wages by an average of about 22 percent, which adds about 10 percent to overall project costs.

The cost problem is even worse in the five states that base prevailing wage on collective-bargaining agreements. In recent years, New York State has debated whether to extend the prevailing wage to cover Industrial Development Agencies, the state's public economic-development authorities. A Center for Governmental Research report estimated that doing so would increase the cost of the agencies' construction projects by 36 percent.

Using collective-bargaining agreements to determine prevailing wage is also unfair because such a small portion of construction workers belong to unions. According to Unionstats.com, membership ranges from 2 percent in Alabama to about 38 percent in Hawaii, and the number is in single digits in about half the states.

A far better approach would be to simply base prevailing wage on Bureau of Labor Statistics data. BLS, which like WHD is within the U.S. Department of Labor, is the gold standard for employment data. BLS calculates wage data by industry (including construction) in 80 metropolitan and 170 non-metropolitan areas. It is far more transparent about its methodology than WHD and most states are. In addition, its methodology is more sophisticated and its conclusions are based on much larger samples.

And the wage differences are significant. A 2012 Columbia University study found that current New York state prevailing wages ranged from 10 percent to more than 70 percent higher than BLS rates.

Like so much of government, prevailing-wage laws are a balancing act. Done right, they ensure that those who work on public construction projects receive a reasonable wage, and they also are fair to the taxpayers who fund those projects. Using Bureau of Labor Statistics data to determine prevailing wages is the best way to strike that delicate balance.

GOVERNING.COM

BY CHARLES CHIEPPO | OCTOBER 7, 2015

The Top 10 Counties Where People Are Moving.

Migration rates are near historic lows, but some places are still attracting large numbers of new residents. View data for every county.

More people moved to Travis County, Texas, home to Austin, than anywhere else in the United States.

With migration rates near historic lows, not many Americans have been changing addresses in recent years. A few larger jurisdictions, however, are welcoming large numbers of new residents from all across the country.

Last week, the Internal Revenue Service (IRS) published updated migration data based on income tax returns, showing where taxpayers are moving to and from at the county level. We've compiled the data, shown in the interactive, and have highlighted the areas experiencing the highest population gains from migration.

Numbers of exemptions claimed on tax returns are commonly used to approximate population totals. Using this metric, only about 15 million Americans relocated to a new county between 2013 and 2014. For most counties, net migration gains or losses are fairly small — typically less than 1,000 tax returns — in a given year.

Several of the nation's largest counties do, though, experience significant shifts from year to year. As one would expect, it's the larger counties in the Sun Belt that generally register the highest migration gains. The following counties saw the top 10 migration increases, as measured by net changes of numbers of exemptions, between 2013 and 2014:

1) Travis County, Texas, had nearly 123,802 new residents move in — by far the most of any county nationally. To put that in perspective, it's more than three times the tally of the next highest county. The region, home to Austin, has seen significant population and economic growth in recent years. Data suggests people are moving from long distances into the area (those migrating from out of state account for nearly all of the net increase).

2) Jefferson County, Colo., gained 34,205 new residents (compared to less than 4,000 over the previous two years), with nearly all movers coming from neighboring Broomfield County. We've reached out to the county for an explanation and will update when we hear back. (It's possible that the IRS data contains an error.)

3) Maricopa, County, Ariz., recorded a net migration increase of 17,827. The county, which includes Phoenix and its surrounding suburbs, has long benefited from retirees moving in.

4) Fort Bend County, Texas, welcomed a net total of 17,462 residents — a figure that's increased over the previous two years. Unlike Travis and Maricopa counties, migration coming from within the state accounted for the majority of its increase.

5) Clark County, Nevada, recorded a net gain of 14,292 residents for the year. The vast majority of its new residents migrated from out of state, particularly from neighboring California. The county has also seen net migration jump quite a bit in recent years, up from 8,613 for 2011-2012.

6) Collin County, Texas, which comprises the northern part of the Dallas-Fort Worth-Arlington metro area, added a net total of 13,428 residents. The county's newcomers also tend to be relatively wealthy, with their adjusted gross incomes averaging $73,930 per tax return.

7) Denton County, Texas, which borders Collin County, experienced a similar net gain of 12,461 residents. Migration from within Texas and outside the state accounted for roughly equal portions of the county's net migration gain.

8) Montgomery County, Texas, saw a net increase 11,652 for the year, with about half of its new residents moving from neighboring Harris County. Households migrating into the county reported average gross incomes of $82,316.

9) Palm Beach County, Fla., is known as a top destination for wealthy retirees, a fact reflected in the county's migration data. Many of its new residents, who made up a net gain of 11,303, moved in from other parts of Florida or the New York Metro area. Gross incomes for new Palm Beach County residents averaged $95,030 per tax return, one of the highest amounts nationally.

10) Lee County, Fla., another hot area for retirees, welcomed a net total of 10,609 residents. Its new households also tend to be wealthy, (but not quite as wealthy as Palm Beach County) with incomes averaging $82,884.

Counties recording the largest net migration losses were Los Angeles County, Calif., (-53,670); Cook County, Ill., (-49,142); Manhattan, N.Y., (-28,123); and Brooklyn, N.Y., (-27,416). Population losses for these counties are largely offset by international migration, most of which is not reflected in the

IRS data.

GOVERNING.COM

BY MIKE MACIAG | OCTOBER 7, 2015

Rainfall to Results: The Future of Rainwater.

Evolving techniques for managing stormwater aren't only cost-effective. They hold the promise of multiple urban benefits.

It's been said that if you live on a street, you live on a stream: Water that runs off our streets when it rains ultimately makes its way into creeks, rivers and other waterways.

Impervious surfaces such as roadways and rooftops prevent rain and snowmelt from filtering into the ground as they do in natural landscapes. In most areas, storm sewer systems exist to collect this runoff. But that's not all they collect. Oil, dirt, industrial chemicals, lawn fertilizers and other pollutants that harm the quality of our waterways all find their way into the storm drain. Stormwater runoff and the pollution it carries with it can discourage recreation, degrade aquatic habitats and contaminate water supplies.

Now more than ever, increased urbanization and more intense rainfall caused by climate change are creating burdensome challenges for cities and towns. But within these challenges lie new opportunities to build systems that improve the vibrancy and climate resiliency of our urban areas.

Certainly the challenges loom large. Superstorm Sandy and other major weather events may come to mind when we think of flooded streets. But due to impervious surfaces, even small storms can generate vast amounts of runoff. The city of Baltimore, for example, could generate 1,060 Olympic-sized swimming pools' worth of runoff from a storm that produced only one inch of rain.

Stormwater is the only growing source of water pollution in many watersheds throughout North America. This is why stormwater regulations are growing increasingly strict. While no one argues the importance of protecting water quality for public health and the environment, city planners, government managers and elected officials must balance this responsibility with competing priorities and limited funding.

Just how can that be accomplished? A new report from the Water Environment Federation's Stormwater Institute, "Rainfall to Results: the Future of Stormwater," details how communities can address their growing stormwater challenges in ways that not only are cost-effective but also create multiple community benefits. Developed with input from the nation's leading stormwater experts, the report describes the challenges, opportunities and pathways to achieving sustainable stormwater management.

As the report makes clear, strong and vibrant communities rely on stormwater management techniques that continually evolve based on new science, experience, technical innovation and responsive regulations.

The report envisions a future in which stormwater is considered a reusable resource and managed through an optimized mix of affordable and sustainable green, gray and natural infrastructure. Green infrastructure, such as ground and rooftop rain gardens, combined with natural systems, such as wetlands and open spaces, can reduce the cost of and burden on the gray infrastructure of catch basins, pipes and other engineered systems. Green spaces can provide value beyond stormwater management, improving human health and wellness, reducing crime and increasing property values.

As a complement to these green and gray stormwater controls, the sector also must cultivate new partnerships to focus on pollution prevention. Keeping pollutants out of stormwater is much more effective than trying to remove them after the fact.

However, paying for stormwater infrastructure is one of the top challenges facing communities. Sustainable stormwater management requires a dedicated funding source and governance structure best supported by stormwater utilities.

Essential to fully funding innovative stormwater initiatives is cultivating community understanding and appreciation for the value of this vital infrastructure. Achieving this vision requires attention and action from stormwater professionals as well as all others within the community — from the general public to city planners to elected officials. With the support of the full community, we can feel more confident facing the next storm.

GOVERNING.COM

BY EILEEN O'NEILL | OCTOBER 8, 2015

eoneill@wef.org | @EileenJONeill

New Jersey Uses Eminent Domain Against One of Its Own Beach Towns.

A week after calling this well-heeled beach town "selfish" for refusing to give up land needed for the state's dune project, Gov. Christie on Thursday moved to give Margate no choice.

The state said it had filed an eminent domain action against the City of Margate to gain access to city-owned beachfront easements needed for the project. The city's opposition has caused the Army Corps of Engineers to abort plans for dunes for Ventnor, Margate, and Longport.

Prior to the filing, the state had offered Margate $29,000 for nine beachfront easements, based on an appraisal, the city said. When that was rejected, the Christie administration took the action in Superior Court, saying it was seeking 87 municipally owned lots. Margate officials could not explain what 87 referred to. "I am aware of nine," said Richard Deaney, city business administrator.

Margate voters have twice passed questions in referendums opposing dunes and authorizing their government to wage a legal battle against the state.

The state had been threatening to file eminent domain against Margate since January, when a federal judge in Camden told the state that eminent domain would be the proper, and perhaps only, way to get control of the easements. The state had attempted to take the land through an administrative order, which prompted Margate to file a lawsuit in U.S. District Court.

Thursday night, the city issued a response saying it was "prepared to defend in any court at any time the legal rights of the people of Margate to provide the best, safe and most effective storm protection."

“The people of Margate know and love their community . . . and appreciate the need for the best protection against the storms,” the statement said. The city contends that its bulkhead system is sufficient and that dunes “eventually wash out to sea.”

“Margate’s opposition to the dunes is not based on a vain desire to preserve oceanfront views,” the statement said.

Deaney said the city had requested to negotiate the terms of the shore protection project in response to the $29,000 offer, but that the state had filed for eminent domain as soon as a 14-day time required by law following an offer had passed.

“We sent them a letter saying we’d like to negotiate with them,” Deaney said. “They ignored it.”

Deaney said the city was not against shore protection but wanted a chance to discuss changes in the technicalities of how that is done. Residents argue that dunes will be a costly, unsightly, and ineffective way of protecting the town. Most of the flooding issues from past storms have been from the back bay.

The Army Corps of Engineers had to put aside its Absecon Island protection project last winter after Margate fought the state to essentially a stalemate in federal court. Longport voluntarily gave the state access to its easements following Hurricane Sandy, after opposing the dunes for years. Ventnor has long cooperated with the state and federal agencies, and has had dunes on most of its oceanfront for years.

The release, issued directly from the governor’s office, tallies the amount of property at 87 lots owned by Margate, saying action “builds upon the ongoing work the Christie administration has been undertaking to secure easements necessary to construct these vital coastal protection projects.” The filing covers easements “over all city-owned properties east of the Margate bulkhead, south of Ventnor and north of Longport.”

Of 4,279 beachfront easements statewide, 366 are outstanding, owned by 239 property owners. Environmental Protection Commissioner Bob Martin said in the release that the state was “very disappointed” that Margate forced the state to go to court to protect its citizens and promised to “continue to be very aggressive in using eminent domain as a tool to obtain the easements.”

Also holding out in Margate are 10 private owners with beachfront easements. Those properties are being appraised, the state said.

Margate has been represented by former U.S. Rep. Robert E. Andrews of the Dilworth Paxson law firm. The state had been reluctant to take the case to state court, where eminent domain fights can drag on. The state will argue that the project is necessary “to protect lives, homes, businesses, and infrastructure.”

“We’ve never been happy with the design and proposal for shore protection,” Deaney said of the city. “We’re willing to negotiate the concept of shore protection. We have a lot of ideas as to how that can be accomplished. We don’t believe in their single arbitrary project.”

He called the $29,000 offered for access to the easements “low” but said price was not the issue.

The state declined to comment beyond the news release. The release noted that property owners in other municipalities voluntarily provided easements to allow the Army Corps to erect dunes. It said Longport and Margate both suffered “significant overwash” of its beaches and “damage to its bulkhead” during Sandy, “which required Federal Emergency Management Agency funds for the cleanup."

The state's release also notes a New Jersey Supreme Court ruling in July 2013 in which the Borough of Harvey Cedars acquired an easement through eminent domain, but the parties could not agree on fair compensation. The court reversed a jury ruling valuing the easement at $375,000, saying homeowners "were not entitled to a windfall" for a project they also benefit from. The couple subsequently settled for $1 as compensation.

In addition to the Absecon Island project, beach and dune construction projects are stalled in Monmouth County and in northern Ocean County, where residents are also fighting the state's efforts to use their properties to construct dunes.

BY TRIBUNE NEWS SERVICE | OCTOBER 9, 2015

By Amy S. Rosenberg

Swift Descent to Junk Shows Buried Risk as Municipal Loans Surge.

In a routine review of Lawrence, Wisconsin's credit rating last month, Standard & Poor's analysts discovered something troubling.

The 4,600-person town eight miles (13 kilometers) south of Green Bay had borrowed $4.6 million, about three times its annual revenue, from local banks, and tucked into the agreements was a potentially costly clause: The banks could demand immediate repayment if they decide the town has turned into a mounting financial risk. The finding triggered an eight-level downgrade to Lawrence's rating, which went from the third-highest grade to junk.

"Anyone could have these deals," said Geoffrey Buswick, a managing director at S&P in Boston. "Until it's disclosed or someone reads the documents and considers the credit risk, you don't know if you're holding double A paper or double B plus paper."

How many Lawrence's are there in the $3.7 trillion U.S. municipal-bond market? It's impossible to know.
The proliferation of such loans since the credit-market crisis seven years ago has added fresh uncertainty to the state and local-government debt market, where the financial disclosure rules are already more lax that those that apply to businesses. Because the loans aren't securities, states and cities aren't immediately required to disclose them — despite the risks they may pose to bondholders if a government is pushed toward default.

"Nobody knows how many loans there are, nobody knows the total volumes of those loans, nobody knows the terms of those loans," said Lynnette Kelly, executive director of the Municipal Securities Rulemaking Board, the industry's regulator. "I'm frustrated by it."

The loan terms can favor banks over bondholders and add to a city's financial risk, credit-rating companies said. For example, banks can demand accelerated principal and interest if a payment is skipped or a government's cash falls below a specific target, which could push the borrower into a liquidity crisis if it can't cover the bills.

“Most local government bond investors don’t have the right to be paid back upon default,” said Tom Jacobs, a senior vice president at Moody’s Investors Service. “A private financing can jump to the head of the queue when it matters.”

Financial Wreckage

The municipal bank-loan business rose from the wreckage of the financial crisis, when cities and states used them to escape from floating-rate bond deals that turned costly when credit markets seized up. The business has continued to grow because hospitals, universities and others can borrow at rates comparable to those in the bond market, without the fees tied to a public-debt offering.

The push has made U.S. banks a growing presence in local-government finance. They held about $477 billion, or 13 percent, of the municipal debt outstanding by the end of June, twice what they had five years earlier, according to Federal Reserve data.

S&P estimates that loans account for as much as one-fifth of municipal borrowing. In 2014, S&P evaluated 404 direct loans of about $16 billion. Of those, 13 credit ratings were affected by them.

Lawrence, Wisconsin, followed on Sept. 17, when S&P cut its rating from AA to BB+.

Jennifer Messerschmidt, the town’s finance director, criticized the decision. She said one of its banks said it rarely, if ever, has invoked the ability to demand repayment by deeming itself “insecure,” a clause that protects a lender if a borrower’s finances deteriorate. She said the town is working with its banks to remove the provision in an effort to have its previous rating restored.

“S&P wouldn’t even give me a day to talk to the bank,”’ she said.

While states, cities and non-profits disclose the amount of bank loans in their annual financial statements, those reports often aren’t released until months after the year’s end and don’t reveal key terms.

Even though municipal issuers are required under federal securities rules to disclose all material information when they sell bonds, it’s up to them to decide whether the loans fit that bill, said Kelly, the MSRB director. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online repository, where bond documents for investors are now posted.

Full Picture

Lawrence hasn’t publicly sold debt since 2012. Instead, it borrowed $4.6 million from local lenders The Business Bank and Greenleaf Wayside Bank. The loans account for more than 60 percent of the town’s debt.

“If there was an acceleration how would they be actually be able to cover that?” said S&P’s Jane Ridley, a senior director. “Without a requirement to disclose, we can’t get a full picture of what the rating looks like.”

Messerschmidt, the Lawrence finance director, said the size and interest rates on the loans are disclosed in its annual financial reports. She said Lawrence is in a better financial position than when it last issued debt in 2012, when many cities’ tax collections were still being squeezed by the effects of the housing-market collapse and the recession that followed.

“I don’t think it was handled properly,” she said of the downgrade.

Caroline West, an S&P analyst, said the company can’t give a city such as Lawrence advice or help it structure documents or deals.

“We have to proceed with evaluating the information we have at hand,” she said. “That’s what we did.”

Bloomberg News

by Martin Z Braun

October 4, 2015

[Americans Are Smoking Again, a Boon for Municipal Tobacco Bonds.]

Americans are boosting spending on cigarettes for the first time in almost a decade. While that may raise health concerns in a nation that’s worked for decades to cut smoking, it’s fueling a rally in one of the riskiest corners of the municipal-bond market.

High-yield tobacco bonds, which are repaid from legal-settlement money that state and local governments receive from cigarette companies, returned 9.4 percent this year through Monday, almost five times the broader municipal market, Barclays Plc data show. That adds to a 19 percent gain last year, when investors plowed into the high-interest-rate securities that have been imperiled for years by the decline in smoking.

U.S. cigarette shipments that back the debt are now on track for the first annual increase since 2006, spurred in part by a gas-price drop that’s given consumers more to spend. Deliveries rose 2.8 percent through June from the same period a year earlier, according to data from the U.S. Treasury Department. That’s altering return expectations among investors and pushing some bonds to their highest prices in two years.

“Smoking shipments on the year have marginally increased — that’s obviously a big change from historical trends,” said David Hammer, manager of the high-yield municipal-bond fund at Pacific Investment Management Co. The firm, which oversees $40 billion of state and local debt, eased the constraints on its investment-grade funds last month so they could hold more of the tobacco bonds, he said.

The debt allowed governments to borrow against the money they will receive under the 1998 settlement with Philip Morris USA, Reynolds American Inc. and Lorillard Inc. The securities are among the riskiest in the $3.7 trillion municipal market because smoking has declined more rapidly than expected since they were issued, cutting into the payouts used for interest and principal bills.

The debt isn’t guaranteed by the governments that sold them, and much of the $91 billion of bonds are rated below investment grade. Moody’s Investors Service projects that a 4 percent annual decline in cigarette shipments would cause 80 percent of them to default. The deliveries have dropped by an average of 4.7 percent a year since 2007.

Waiting Game

Investors could be forced to wait for years after the scheduled maturity to recoup all that they’re owed if sales fall short of initial forecasts. Because the tobacco settlement continues in perpetuity, bondholders will eventually be repaid.

“Positive shipments of even 1 or 2 percent — that’s significant,” said Steve Czepiel, who runs a $992 million high-yield municipal mutual fund for Delaware Investments in Philadelphia. He said he’s keeping his holdings of tobacco bonds steady.

“If you sold them last year because you thought they had an overly aggressive run, you’ve missed out,” he said. “We still think they provide pretty good value versus other types of high-yield municipal credits.”

The tobacco bonds have outperformed the high-yield municipal market, which has been little changed this year. Securities issued by California’s Golden State Tobacco Securitization Corp. are among those that have rallied.

The debt, which matures in June 2047 and carries a 5.75 percent coupon, traded last week for as much as 89.4 cents on the dollar, the highest for trades of at least $1 million since June 2013 and up from about 83 cents at the start of 2015, data compiled by Bloomberg show. That size is common among institutional investors and is considered the most accurate reflection of a bond’s market value. The securities are rated six steps below investment grade by Moody’s and Standard & Poor’s.

Pimco is the second-largest holder of those bonds, with about $141 million, while Delaware is seventh with $27.3 million, according to the latest company filings compiled by Bloomberg. The funds have bested 92 percent and 68 percent of their peers this year, respectively, Bloomberg data show.

Some investors have doubts that the rally is justified. This year’s increase in shipments is probably an anomaly and unlikely to persist, said Timothy Milway, an analyst at New York-based BlackRock Inc., the world’s largest money manger. He speculates that the rise may have been caused by the decline of fuel prices, which has left consumers with extra cash.

Negative Outlook

“In the very short term, the number looks pretty good,” he said at a Smith’s Research & Gradings conference on Oct. 2. “Looking out longer-term, we’re still negative and we think the declines are going to be above trend.”

Other factors may continue driving demand for the debt even if shipments start falling again, said Bill Black, who runs Invesco Ltd.’s $7.4 billion high-yield municipal fund.

Fewer localities are issuing the bonds, driving down supply at a time when investors are searching for higher yields, Black said. They’re also among the most frequently traded municipal securities, which reduces the premium investors demand to hold debt that’s difficult to sell, he said.

The liquidity benefits were part of the reason why Pimco altered its prospectuses, effective last month, to allow for lower-rated bonds than before, Hammer said. They can now own bonds rated as low as Caa by Moody’s, eight steps below investment grade, according to an August supplement.

“Tobacco has been a strong conviction trade we’re looking to incorporate in other portfolios,” Hammer said. “We expect some maturity and principal return extension, but you’re being well-compensated even if consumption declines are worse than they have been in the last 10 years.”

Bloomberg News

by Brian Chappatta

October 5, 2015 — 9:01 PM PDT Updated on October 6, 2015 — 7:20 AM PDT

61,064 Failing Bridges Must Wait as Cities Borrow at Decade Low.

States and cities rely on the $3.7 trillion U.S. municipal-bond market to pay for roads, commuter trains and water works. Yet even with a growing backlog of projects, 61,064 deficient bridges and interest rates near a half-century low, such borrowing has dropped to the slowest pace in at least a decade.

About $14.8 billion of municipal debt has been sold this year for highway, airport and mass-transit projects, on pace for the smallest amount since at least 2005, data compiled by Bloomberg show. The population has grown by 7.5 percent since then, placing an increasing demand on America's infrastructure: The Federal Highway Administration estimates that when it comes to bridges alone, one in 10 is structurally deficient. The American Society of Civil Engineers reckons that more than $3 trillion of work should be done.

"It's a pretty deteriorated backbone," Marc Lipschultz, head of energy and infrastructure at KKR & Co., said in an interview at Bloomberg Markets Most Influential Summit 2015 in New York on Tuesday.

"There's not enough capital in the public domain," he said. "It's trillions of dollars of capital that has to be invested."

One reason for the lack of borrowing: officials at local governments that were stung by budget shortfalls after the recession have been leery of taking on new debt. Instead, they've been seizing on low interest rates to refinance higher-cost bonds. About two-thirds of the $312.5 billion issued through Sept. 30 has been for that purpose, Bank of America Merrill Lynch data show.

Federal subsidies briefly spurred work on infrastructure, though the program has since lapsed. Borrowing for new highway, airport and mass transit projects reached a record $65 billion in 2010, the last year of the federal Build America Bonds program, Bloomberg data show. The initiative paid a share of the interest bills on taxable debt sold for public works, which prodded governments to borrow.

Private investment should be encouraged as a way to find new sources of funds, Lipschultz said. KKR struck a 40-year deal in 2012 with Bayonne, New Jersey, in conjunction with the United Water unit of Suez Environnement to operate the city's water system. He said such deals, however, haven't been widely embraced.
"It's slow in the making," he said.

Bloomberg News

by Brian Chappatta

October 6, 2015 — 10:48 AM PDT

[O'Hare Bonds Avoid Chicago Stain in City's Biggest Offering Ever.]

Even as Chicago confronts a fiscal crisis, investors are looking beyond its turbulent finances with anticipation toward the city's biggest bond deal ever.

Chicago sold about $2 billion of securities for O'Hare International Airport, backed by revenue from the nation's busiest airport and sheltered from the mounting pension obligations squeezing the third-most populous U.S. city. Fund managers at Wells Fargo Asset Management and Conning say any yield premium resulting from the city's tainted reputation is likely a buying opportunity given the airport's rising traffic and hub status.

"Just looking at the nuts and bolts of the deal, it's been pretty impressive what's going on there," said Paul Mansour, head of municipal research at Hartford, Connecticut-based Conning, which holds O'Hare debt among its $11 billion of tax-exempt securities and is reviewing the deal. "There will be a certain amount of firms, individuals who say no Chicago under any circumstance. That will add some value for those that look through to the underlying credit."

Chicago has the worst-credit rating of all major U.S. cities except Detroit, and had to pay yields approaching 8 percent for a taxable offering in July. Wednesday's issue is raising $1.6 billion to refinance higher-cost bonds and about $330 million to cover costs of projects such as terminal improvements.

A portion of federally tax-exempt securities due in January 2046 were sold with a yield of 3.9 percent, according to preliminary data compiled by Bloomberg. That's about 0.7 percentage point more than 30-year benchmark municipal bonds.

During the city's last bond sale for O'Hare in November 2013, 20-year securities were issued for yields as high as 5.53 percent, about 1.7 percentage point more than benchmark debt, according to data compiled by Bloomberg. That premium has since narrowed by almost a third, trading for an average yield of 4.1 percent on Sept. 11.

The offering follows sales from the city and related agencies such as the Chicago Park District that have had to pay up to borrow. The O'Hare bonds are rated as much as two levels higher than the city's general-obligation debt. The sale comes as U.S. airport bonds are outperforming the broader $3.7 trillion tax-exempt market for a fifth consecutive year amid an improving economy and falling energy costs.

Mayor Rahm Emanuel is working to ease Chicago's fiscal challenges and convince the city council to pass the biggest property tax increase ever to help cover retirement costs. O'Hare is sheltered from the fallout of the city's $20 billion pension hole because the Federal Aviation Administration limits the use of airport revenue to facility purposes. That prevents the city from taking excess O'Hare monies to fix its finances, Standard & Poor's said in a Sept. 30 report.

Historical Premium

Even so, issuers associated with distressed situations typically have to pay up, and that's what Merritt Research Services expects.

"It's just a historical premium that they'll have to pay because of their association with Chicago," said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services, which analyzes municipal finance. "It may end up for a yield investor more attractive than an average airport."

That wasn't the case with Michigan's Wayne County Airport Authority, which runs the airport serving once-bankrupt Detroit. The authority wasn't penalized when it sold about $522 million last month despite the county's fiscal distress. Wayne is in a consent agreement with the state because of its ongoing budget deficit.

Airliner Hub

S&P raised its outlook on O'Hare general revenue bonds last month by one level to A, five steps above junk and two levels higher than its rating on the city's GO debt. The credit rater cited the airport's high traffic. Fitch Ratings assigned an A- ranking to the debt, four steps above junk, and notes the airport general revenue bonds are secured by a first lien on airport net revenues.

O'Hare is a hub for American Airlines Group Inc. and United Continental Holdings Inc., the largest carriers. The airport is the biggest worldwide when measured by operations, according to bond documents. In 2014, O'Hare had the busiest airport measured by flight operations, according to FAA data.

Municipal airport bonds have climbed 2.2 percent this year, compared to a 1.8 percent gain in the broader market, according to Bank of America Merrill Lynch data. Crude-oil prices have tumbled 8.6 percent in 2015, and sliding fuel costs have benefited municipal airports in particular, Janney Fixed Income Strategy said in an Oct. 5 report.

Chicago is expecting more than $150 million in present-value savings from the refinancing with interest rates near generational lows, said Molly Poppe, a city spokeswoman.

O'Hare's capital projects have shown progress and been within budget, according to bond documents. Three of four runways and one runway extension for the O'Hare modernization project are complete as of this month. Airfield improvements funded by the 2015 bonds include installation of runway status lights, maintenance of terminals, and fixes to roadways.

"Airport debt has had a strong bid from investors looking for income, and that should certainly benefit the pricing on this Chicago transaction," said Gabe Diederich, a Menomonee Falls, Wisconsin-based money manager at Wells Fargo Asset Management, which holds some O'Hare's bonds among its $39 billion of munis, and is considering buying the deal. "The essential nature of the airport and the size of it are going to overwhelm any bias against the city of Chicago."

Bloomberg News

by Elizabeth Campbell

October 6, 2015

Puerto Rico Claw Back Wouldn't Pay Debt Costs, Barclays Says.

Puerto Rico wouldn't be able to repay the $5.5 billion of principal and interest due on its general-obligation bonds in the next five years even if the commonwealth diverted sales-tax revenue pledged to cover payments elsewhere, according to Barclays Plc.

The general obligations due through fiscal 2020 surpasses the $4.2 billion of revenue, including sales-tax receipts, that commonwealth officials calculate Puerto Rico will have to pay down central government and some agency debt during that period, Mikhail Foux, a municipal-debt strategist at Barclays in New York wrote in a report Wednesday. The island's sales-tax collections repay bonds, known as Cofina because of their Spanish acronym, that are backed by that revenue stream.

"Even if Cofina's cash flow stream is invaded, there would still not be enough value to fully cover principal and interest for GOs and commonwealth guaranteed debt in fiscal year 2016 through fiscal year 2020," Foux wrote in the report. "This suggests that some type of haircut would be needed," over those five years, he wrote.

Puerto Rico officials haven't said that they plan to redirect, or "claw back," sales-tax collections to pay down general-obligation debt before Cofina bonds. The island's constitution states that general-obligations must be repaid before other expenses. The commonwealth on Sept. 25 said it would take into account the constitutional priority given to general-obligation bonds as it seeks to restructure $73 billion of debt.

Prices on some Cofina debt would fall if the government uses the sales-tax receipts to repay general obligations first, Foux said. Subordinate Cofinas, which are repaid after senior-lien sales-tax bonds, would drop in value, he said.

"If Cofina is pierced, subs would be severely affected, allowing for more downside even at current depressed levels," Foux wrote.

Subordinate Cofinas maturing August 2039 traded Wednesday at an average price of 44.5 cents on the dollar, to yield of 12.9 percent, data compiled by Bloomberg show.

Puerto Rico had $13 billion of general obligation debt and $15 billion of sales-tax bonds, as of March 31.
Commonwealth general obligations sold in March 2014 and maturing July 2035 traded Wednesday at an average price of 75.3 cents on the dollar for a yield of 11.1 percent, according to data compiled by Bloomberg.

Bloomberg

by Michelle Kaske

October 7, 2015 — 2:35 PM PDT Updated on October 8, 2015 — 6:20 AM PDT

Scandals Leave Port Authority Bondholders Undaunted Before Sale.

To Wall Street, the scandals engulfing the Port Authority of New York & New Jersey are nothing but noise.

As the agency sold $2 billion of bonds Thursday, its biggest offering since 2012, investors weren't focused on the federal and state investigations that spurred the resignation of United Continental Holdings Inc.'s chief executive officer and tarnished Governor Chris Christie's presidential bid. Instead, they looked at a near monopoly on getting into New York that brings in more than $12 million a day.

The upheaval at the agency may even have a financial upside: It's searching for a CEO to replace the two top officials who were hired by political appointment and faces pressure to improve its management of the region's bridges, tunnels and airports.

"They certainly have a lot of work to do," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees $6 billion. "But the hope is that this additional scrutiny will make the organization more transparent and better able to provide for its core mission."

The Port Authority's bonds have the fourth-highest rating from Moody's Investors Service, Standard & Poor's and Fitch Ratings with a stable outlook, indicating no changes are imminent. The agency's 10-year tax-exempt bonds were sold at yields of 2.33 percent, or 0.25 percentage point more than top-rated munis, according to data compiled by Bloomberg.

The Port Authority receives revenue from almost everyone who comes to the biggest U.S. city, as well as from cargo ships. It runs a commuter train, bridges and tunnels connecting New York and New Jersey, the world's busiest bus depot in Manhattan, marine terminals, and the region's three major airports — John F. Kennedy International, LaGuardia, and Newark Liberty International. It also owns the World Trade Center site.

Major Projects

Even with a constant stream of revenue, the Port Authority is facing financial challenges in the coming decades. In addition to its usual upkeep, the agency is moving to replace its bus terminal, which may cost $10 billion, as well as a bottleneck-prone rail tunnel under the Hudson River. Christie and New York Governor Andrew Cuomo want the federal government to pay half of the $20 billion cost of the tunnel.

The agency's current operating results have been on the upswing. Operating revenue rose 8 percent to $2.3 billion during the first six months of the year, according to Moody's, as New York's strong economy fueled an increase in plane travel. At the same time, its operating expenses climbed by 1.3 percent to $1.4 billion.

The agency's finances stand in contrast to the agency's battered political reputation. In May, former Deputy Executive Director Bill Baroni and former Christie aide Bridget Kelly were indicted for snarling traffic leading onto the George Washington Bridge in 2013 to punish a New Jersey mayor who didn't back Christie's re-election. David Wildstein, a former Christie ally at the agency, pleaded guilty to participating in the scheme. Baroni and Kelly are fighting the charges.

Widening Investigation

Last month, United CEO Jeff Smisek stepped down amid an investigation into whether the airline ran a money-losing flight from Newark, New Jersey, to South Carolina, where former authority Chairman David Samson had a vacation home, in an effort to secure funding for projects. Prosecutors haven't alleged wrongdoing.

The Securities and Exchange Commission, which polices fraud in the municipal-bond market, is also investigating the agency's disclosures to investors.

The Port Authority's finances show that the management turmoil hasn't hurt its operations, said Dan Solender, head of municipal debt at Lord Abbett & Co. in Jersey City, New Jersey. In an Oct. 6 report, S&P said the agency has kept expenses below its target during the first eight months of the year while revenue exceeded forecasts.

“We really care about the finances and how much leverage they’re taking on, how they’re controlling expenses and things like that,” said Solender, who owns some agency bonds. “For us, those are the bigger issues than the political headlines.”

Bloomberg

by Romy Varghese

October 7, 2015 — 9:01 PM PDT Updated on October 8, 2015 — 11:17 AM PDT

Muni Funds Draw $714 Million, Largest Inflow Since January.

Investors added the most money to municipal-bond mutual funds since January in the past week as state and local government bond yields fell to the lowest level in five months.

Individuals poured $714 million into muni funds in the week through Wednesday, Lipper US Fund Flows data show, marking the second inflow in three weeks. Those funds investing in the longest-dated debt fared the best, capturing $685 million of the cash, as the Federal Reserve continued its almost decade-long policy of keeping borrowing costs close to zero.

Benchmark 10-year munis yield 2.09 percent, close to the lowest level since April, data compiled by Bloomberg show. That’s pushed the return on state and local debt to 1.9 percent this year, better than the 1.6 percent gain for Treasuries and 0.1 percent for investment-grade corporate securities, Bank of America Merrill Lynch data show.

In the four weeks through Sept. 16, the day before the Federal Open Market Committee released its policy statement leaving its benchmark rate unchanged, individuals withdrew $1.4 billion from muni mutual funds, Lipper data show.

Bloomberg

by Brian Chappatta

October 8, 2015 — 2:49 PM PDT Updated on October 9, 2015 — 6:39 AM PDT

Bloomberg Brief Weekly Video - 10/08/15

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

Watch the video.

October 8, 2015

Moody's: U.S. Academic Medical Hospitals 2014 Medians Show Stability and Solid Balance Sheets.

The 2014 fiscal year medians show US academic medical center hospitals (AMCs) benefit from operational stability, high revenue and expense growth as well as increases in cash and investments. The not-for-profit AMCs also benefitted from important strategic and financial relationships with top-tier medical schools and highly-rated universities, which bolstered joint fundraising an investment management…

The full report is available to Moody's subscribers here.

Moody's: U.S. Municipal Water and Sewer Medians Demonstrate Stable and Positive Trends.

The full year 2013 US water and sewer utility medians show larger utilities enjoy greater financial resources and flexibility, while service area wealth correlates to stronger operating performance. Across the sector, debt service remains consistent and liquidity has modestly improved. Leverage is down for higher-rated utilities, but grew for lower-rated utilities…

The report is available to Moody's subscribers here.

Down Payment on Detroit: Charting the Next Steps in the Detroit Housing Recovery.

As Detroit continues a journey toward economic recovery, the housing market in many parts of the city remains a serious challenge. In particular, mortgage activity is stuck at historically low levels, even as jobs and investment continue to grow throughout the city and the region. What steps—policies, programs, and products—should we take to stabilize and improve the homebuying market while ensuring affordable options for homeowners and renters alike?

Continue reading.

Connecticut, America's Richest State, Has a Huge Pension Problem.

The state with the richest population may not have enough money in its own pockets.

Connecticut has roughly half of what it needs to pay future retirement benefits for its workers, meaning the home to scores of hedge funds and some of the country's wealthiest towns is wrestling with financial distress rivaling that of Kentucky or Illinois.

Some investors concerned about the size of Connecticut's pension hole are backing away from bonds issued by the Constitution State or demanding bigger rewards to hold them. Investors in some Connecticut state bonds now get a premium of about half a percentage point above benchmark bonds from other states, up from 0.28 percentage point a year ago, according to Thomson Reuters

Municipal Market Data. Only four other U.S. states are now priced as riskier bets.

Still, some in the state say Connecticut's affluence is making it difficult to overcome complacency about fiscal problems. Yields on the state's debt would be even higher and budget problems would be worse if not for a deep pool of wealthy in-state investors willing to gobble up Connecticut's tax-deductible debt, according to analysts.

"There's almost limitless money to buy Connecticut bonds," said Matt Fabian of research firm Municipal Market Analytics. Investors "are getting less of a risk premium than I think you deserve because of the high demand created by the wealth of the taxpayers in the state," added Paul Mansour, head of municipal research at Hartford, Conn.-based Conning.

Connecticut's surprising pension predicament shows how even the wealthiest parts of the U.S. are struggling to keep pace with ballooning retirement obligations that now amount to $1 trillion nationally.

Connecticut's unfunded pension liabilities more than doubled over the past decade to $26 billion as the state's retirement system reeled from inadequate state contributions, a subpar investment record and longer lifespans for its retirees.

The state, boosted by wealth concentrated in towns such as Greenwich and New Canaan, has a per capita income of $64,864, the highest in the U.S., according to a Fitch Ratings analysis of Bureau of Economic Analysis data. But the state still finished the fiscal year ended June 30 in the red as tax revenues fell below expectations, and has projected annual deficits of $650 million or more after its current two-year budget cycle ends, according to a report by the state's Office of Fiscal Analysis.

The state's pension problems represent "a ticking time bomb," said State Sen. L. Scott Frantz, a Republican whose district includes the wealthiest section of the state. He is worried residents will leave and Connecticut will "end up as another Detroit," a city that filed for bankruptcy protection in 2013, absent more dramatic changes.

Some Connecticut officials and union leaders said they are unfazed by the pension problems and pledge to reverse the deficit in the coming decades. Their strategy hinges partly on predictions the various state retirement systems will be able to earn 8% or more annually, a goal that is more optimistic than most public pensions across the U.S. The average target for all state plans is 7.68%, according to the National Association of State Retirement Administrators.

"The truth of the matter is that the state of Connecticut can afford to make up the difference over time," said Dan Livingston, a Hartford-based labor attorney who has negotiated on behalf of the state's public workers for decades.

Connecticut's pension gap developed as a result of decisions made over decades to scrimp on payments when the economy sputtered and to cut taxes, according to state leaders and public-finance experts. And there is a quirk: Connecticut officials contributed almost no money to the state's various public pensions from the late 1930s until the early 1980s, meaning little had been saved up because the state had chosen not to prefund the retirement system for future payouts.

The smaller base of assets hurt Connecticut during the 1990s when a run up in the stock market pushed most pensions around the U.S. to fully funded status—meaning they had more assets than liabilities, according to Gregory Mennis, director of Pew Charitable Trusts' public-sector retirement-systems project. Connecticut's ratio of assets to liabilities, meanwhile, was just 72% in 2001, according to Pew, which tracks pension-fund finances.

Furthermore, according to the Center for Retirement Research at Boston College, Connecticut's annual investing returns have trailed the national average by a full percentage point since 2000, because of a heavy allocation to stocks that inflicted deep losses first during the dot-com bust and then the 2008 financial crisis. Connecticut pensions eventually shifted some bets to nontraditional investments, like hedge funds, but those produced lower returns as the equity markets rallied in recent years.

Connecticut only has 51.9% of the assets it needs to pay future obligations to workers, lower than all states except for Illinois and Kentucky, according to the National Association of State Retirement Administrators.

Connecticut has scaled back pension benefits in recent years, reducing cost-of-living adjustments for retirees and pledging to make the appropriate annual payments to fully fund the system by 2032. State officials have raised taxes twice since 2011 as a way of covering some liabilities, reduced its workforce by more than 3% and held back on deeper spending on education and local aid.

Connecticut now allocates 10% of its budget to paying down unfunded pension obligations, up from about 7% four years ago, according to Connecticut Office of Policy and Management Secretary Ben Barnes, who oversees the budget.

"We have plenty of resources to address whatever shortfalls, or whatever fiscal crisis might develop in the short run," Mr. Barnes said.

But there are signs that the pressure on Connecticut could intensify absent deeper changes. Standard & Poor's Ratings Services lowered the outlook on Connecticut's bonds in March to negative from stable, meaning they could be downgraded from their current double-A rating. Moody's Investors Service already has placed Connecticut among the lowest-rated states. And Fitch Ratings, although it removed Connecticut's negative outlook in July, warned the state has a "narrow margin of flexibility."

States rarely default and generally carry higher ratings as a result. Moody's, which changed the way it calculates pension costs two years ago, has been more aggressive at downgrading states and cities with sizable unfunded obligations, while S&P and Fitch have generally taken a more optimistic view.

Fredrena deGraffenreaidt, a 61-year-old state retiree from East Hartford, is worried about whether future benefit cuts would force her to sell her house and move to a cheaper state, she said.

"Everyone sees us as this very wealthy state and yet our pension isn't 100% funded," Ms. deGraffenreaidt said. "How is that possible?"

THE WALL STREET JOURNAL

By AARON KURILOFF and TIMOTHY W. MARTIN

Updated Oct. 5, 2015 12:36 p.m. ET

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com and Timothy W. Martin at timothy.martin@wsj.com

Problems Mount for the 'Other' College Debt.

The bond markets are giving a new grade to America's small colleges: A gentleman's C.

Spooked by bad news out of the higher-education sector in recent months, including unexpected campus closures, potential mergers and poor enrollment projections, some prospective buyers are steering clear of bonds being sold by small, private colleges that don't have national reputations, schools that rely heavily on tuition revenue, and those in regions facing population declines.

Moody's Investors Service Inc. in September warned investors to expect closures at public and not-for-profit colleges to triple by 2017 from an average of five a year over the past decade, concentrated among the smallest schools. Some small schools have experienced several years of shrinking class sizes, which leaves fewer students paying for their relatively high fixed costs, and have lost market share to larger universities, Moody's said.

Concerns about market forces were at play at Roseman University of Health Sciences in Henderson, Nev., when the school of about 1,500 students sought $67.5 million worth of bonds to pay for a new office and research building last spring. The process took two to three times longer than usual, said Ken Wilkins, the school's vice president for business and finance. Standard & Poor's had downgraded the 16-year-old school's debt in February, and investors were asking about everything from the market viability of the school's academic programs to its possible responses to increasingly far-fetched disaster scenarios.

"It felt excessive at times, especially those questions which we affectionately began to call the 'asteroid questions,'" he said.

Roseman ultimately sold the bonds at an average yield of 5.68% in April, about three percentage points more than highly rated municipal bonds, according to Thomson Reuters Municipal Market Data.

Roseman joined colleges and universities that are selling more bonds than ever. Schools including highly rated Stanford, Northwestern and the California State University System have sold a record $32.7 billion worth of debt through September, almost twice as much as in the same period of 2014, according to data from Thomson Reuters. This "other" college debt still is small compared with the market for student-lending debt, which is $1.2 trillion.

Yet as many colleges and universities are eager to tap the bond market to take advantage of low interest rates, bond investors have grown wary of their debt.

Yields on the S&P Municipal Bond Higher Education Index this week reached 2.55%, up from a low of 2.12% in February, and ahead of the broader market's 2.38%. Yields rise as prices fall. Investors often find some extra yield in the higher education sector, which contains many high-quality bonds but has grown increasingly risky when compared with debt backed by essential services such as power or water, said Howard Cure, director of municipal research at Evercore Wealth Management.

"You can't just buy bonds from your alma mater anymore, because you might end up getting the short end of the stick," said Hugh McGuirk, head of the municipal bond team at T. Rowe Price Group Inc. He said his firm is generally avoiding small liberal-arts colleges and is sticking with schools that have national brands and strong student demand, either public or private.

Colleges and universities are selling more bonds, but investors have grown wary of those from smaller, private colleges. In contrast, Stanford University has a AAA debt rating. ENLARGE

Colleges and universities are selling more bonds, but investors have grown wary of those from smaller, private colleges. In contrast, Stanford University has a AAA debt rating. PHOTO: PAUL SAKUMA/ASSOCIATED PRESS

Concerned about volatility in the public markets, some low-rated colleges and universities have been pursuing alternatives to bond issuance, such as placing debt privately or borrowing directly from banks, says Lorrie DuPont, head of the higher education finance group at RBC Capital Markets.

Hawaii Pacific University, a private school with campuses in Honolulu and Kaneohe, Hawaii, opted in January for short-term bonds to finance the renovation of a waterfront property, hoping that it can refinance the debt once its credit rating—currently BB-plus by Standard & Poor's—improves. The school expects that the renovation will yield new retail and housing revenue.

The school borrowed $32.5 million in a five-year deal at a 4.48% yield. Bruce Edwards, vice president and chief financial officer, estimates that had the institution opted for a more traditional 30-year bond, it would have paid "a little bit north of 6%."

All the school's new debt was bought by Nuveen, which had acquired a chunk of the school's $42 million issuance in 2013. While other investors expressed interest, "they were going to need to do some lengthy due diligence" and the school was looking for a fast close since construction was already under way, Mr. Edwards said, and construction deadlines outweighed questions over potential improvement in market conditions later in the year.

For schools without strong financial footing—or those in categories perceived to be susceptible to financial pressure—the timing is far from ideal. Many such institutions have put off facility upgrades since the financial crisis and now face massive deferred maintenance backlogs, or need cash to pay for capital projects that could make them more attractive to potential students.

Moody's has been seeing undiminished demand to initiate ratings on smaller colleges this year, the firm says, as schools fret about higher interest rates on the horizon and look to access money through one outlet or another.

McDaniel College in Westminster, Md., is planning a private placement this fall to cover about $3 million in new energy-saving and infrastructure upgrades. That school last issued a bond in the public markets in 2006 and has funded renovations and a new stadium with donations and cash on hand.

W. Thomas Phizacklea, vice president for administration and finance, said a private placement was more attractive because it allows the school to avoid the upfront costs of issuing a bond in the public markets—including fees for lawyers, accountants and ratings companies—and provide more freedom when structuring debt-service payments. Mr. Phizacklea said the school is near a 10-year bank deal and has begun its cost-saving projects using available cash.

"I don't think we'll get a better rate" with a private placement, he said, "but I do think we'll get more flexibility."

THE WALL STREET JOURNAL

By MELISSA KORN and AARON KURILOFF

Updated Oct. 8, 2015 5:45 p.m. ET

Write to Melissa Korn at melissa.korn@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

[GASB: Understanding Costs and Benefits - Other Postemployment Benefits.]

[Read the GASB report.]

[CUSIP Request Volume Shows Fifth Consecutive Monthly Decline Among Corporate and Municipal Bond Issuers.]

"The phrase 'don't fight the Fed' has become something of a mantra on Wall Street over the last several years and corporate and municipal debt issuers are clearly heading that advice right now," said Richard Peterson, Senior Director of Global Markets Intelligence, S&P Capital IQ. "While CUSIP request volume has made it clear that there will be declines in new debt issuance in the coming weeks and months, we're anxious to see whether that trend will continue once the first rate hike takes place."

[Read the Press Release.]

October 7, 2015

[MSRB Requests Comment on Lengthening Board Member Terms.]

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to lengthen the term of Board member service to four years from three. The draft amendments to MSRB Rule A-3, on Board membership, are primarily designed to improve the continuity and institutional knowledge of the Board, while retaining the benefits of the regular addition of new members.

"As former Board members frequently attest, there is a substantial learning curve when joining the Board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB," said MSRB Executive Director Lynnette Kelly. "Given the complexity of many MSRB initiatives, we think a four-year Board term is more appropriate and would enhance the Board's overall effectiveness and institutional knowledge."

The MSRB Board of Directors establishes regulatory policies and oversees the operations of the MSRB and has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors. Each year, seven individuals join the Board as seven others complete their three-year terms.

The MSRB's request for comment includes a draft transition plan that would implement the proposed changes in an expeditious but minimally disruptive manner. Comments should be submitted no later than November 19, 2015.

Date: October 5, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

- **Ed. Note:** Please note that our weekly newsletter is simply a collection of links to the articles posted on our website that week, and not a stand-alone publication. Consequently, we do not have the ability to forward past "issues." However, the underlying website – bondcasebriefs.com – contains all our archived postings (6k+), where you can scroll through the items posted to a particular category to catch up on articles you may have missed and/or use the search function to conduct more focused research.
- GASB Proposes Implementation Guidance Designed to Clarify Recent Pronouncements.
- 22 MCDC Settlements With Firms to be Followed by Another Round.
- Butler Snow: Fed's Proposed Treatment of Municipal Securities as High-Quality Liquid Assets.
- Junk or AAA? Rating Split Plagues Chicago as It Borrows Billions.
- Webcast: Understanding Proposed IRS Rules on Issue Price and the Industry Impact.
- *Reynolds v. Leon County Energy Improvement Dist.* – Supreme Court of Florida holds that objector who failed to appear at trial level lacked standing to appeal validation of proposed bond issue, as full party status was granted only to those who appeared and pleaded in the circuit court proceeding and thus only such parties were permitted to avail themselves of the statutory right of appeal; receding from *Meyers v. City of St. Cloud, Rowe v. St. Johns County*, *Lozier v. Collier County*, and *Bruns v. County Water–Sewer Dist.*
- *Thomas v. Clean Energy Coastal Corridor* – Supreme Court of Florida validates bond issuance, but also holds that references to judicial foreclosure as a remedy for collecting unpaid non-ad valorem assessments contained in financing agreement securing bonds for qualifying improvements to real property under Property Assessed Clean Energy (PACE) Act, required remand to circuit court to amend the financing agreement to remove those references, as judicial foreclosure was not a remedy for such collection authorized by Florida law.
- And finally, BCB's Department of Perhaps Understandable NIMBYism this week brings you *Neighbors for Preservation of Big and Little Creek Community v. Board of County Com'rs of Payette County*, in which the neighbors kicked up the predictable fuss at the prospect of a minor alteration to their community. But then again, we suppose that the prospect of glow-in-the-dark pets could have that effect. "Turn right at the big cooling tower. We're the first house on the left."

IMMUNITY - ALABAMA

Ex parte Hampton

Supreme Court of Alabama - September 30, 2015 - So.3d - 2015 WL 5725102

In underlying litigation, school employee brought action against county board of education members and superintendent for declaratory and injunctive relief, asserting employee had been improperly terminated. After the Circuit Court denied defendants' motion for summary judgment, defendants brought instant petition for writ of mandamus to compel trial court to vacate denial of summary judgment motion.

The Supreme Court of Alabama held that board members and superintendent did not have legal, nondiscretionary duty to recall employee to a position following her termination, and thus members and superintendent had sovereign immunity from employee's action.

School board members and superintendent did not have legal, nondiscretionary duty to recall school employee to a position following her termination, and thus members and superintendent had sovereign immunity from employee's action for declaratory and injunctive relief, seeking monetary relief for allegedly improper termination, despite argument that board's reduction in force (RIF) policy compelled employee's recall. A RIF was never implemented by board, employee did not receive correspondence from board or superintendent that her employment was being terminated as result of RIF, and adoption of RIF policy did not mandate its implementation whenever there was a termination based on lack of funding, particularly when the decrease in jobs was employee's part-time position.

BOND VALIDATION - FLORIDA

Reynolds v. Leon County Energy Improvement Dist.

Supreme Court of Florida - October 1, 2015 - So.3d - 2015 WL 5727823

The Circuit Court validated proposed bond issue. Objector appealed.

The Supreme Court of Florida held that objector who failed to appear at trial level lacked standing to appeal validation of proposed bond issue, as full party status was granted only to those who appeared and pleaded in the circuit court proceeding and thus only such parties were permitted to avail themselves of the statutory right of appeal; receding from *Meyers v. City of St. Cloud*, 78 So.2d 402, *Rowe v. St. Johns County*, 668 So.2d 196, *Lozier v. Collier County*, 682 So.2d 551, and *Bruns v. County Water–Sewer Dist.*, 354 So.2d 862.

In addition, faced in this case with a virtually identical financing agreement to that in *Thomas v. Clean Energy Coastal Corridor*, the court remanded with instructions for the circuit court to require Leon County Energy Improvement District to amend the financing agreement to remove all references to judicial foreclosure and to file the amended agreement in the circuit court following its approval by the district's governing board.

BOND VALIDATION - FLORIDA

Thomas v. Clean Energy Coastal Corridor

Supreme Court of Florida - October 1, 2015 - So.3d - 2015 WL 5727810

Energy authority filed complaint to validate proposed bond issue and non-ad valorem assessments securing them. The Circuit Court validated the bonds. County residents appealed.

The Supreme Court of Florida validated the bonds, but also held that references to judicial foreclosure as a remedy for collecting unpaid non-ad valorem assessments in financing agreement securing proposed bond for qualifying improvements to real property under Property Assessed Clean Energy (PACE) Act, required remand to circuit court to require amendment of the financing agreement to remove those references, as judicial foreclosure was not a remedy for such collection authorized by Florida law.

IMMUNITY - IDAHO

Hayes v. City of Plummer

Supreme Court of Idaho, Coeur d'Alene - August 2015, September 30, 2015 - P.3d - 2015 WL 5721600

Spectator injured at sporting event held at park maintained and operated jointly by city and school district brought premises liability action against city. City filed motion for summary judgment, claiming immunity under Recreational Use Statute. The District Court granted summary judgment in favor of city. Spectator appealed.

The Supreme Court of Idaho held that school district's payment of utilities, property insurance, and other maintenance expenses, pursuant to joint service agreement with city governing district and city's joint operation and use of a park, which was freely accessible to the public, was neither a "charge" nor "compensation" under immunity exception of Recreational Use Statute, and thus city was entitled to immunity in premises liability action brought by spectator who was injured at a sporting event at the park. The statute expressly provided immunity when a city leased land for recreational purposes and made it available for the public's free use, and city's joint service agreement with district was analogous to a land-lease agreement.

ZONING - IDAHO

Neighbors for Preservation of Big and Little Creek Community v. Board of County Com'rs of Payette County

Supreme Court of Idaho - September 25, 2015 - P.3d - 2015 WL 5655521

Neighboring landowner sought judicial review of decision of the county board of commissioners approving conditional rezone of parcel of land from agricultural to industrial in connection with project to build nuclear power plant. The District Court, Third Judicial District affirmed. Neighboring landowner appealed.

The Supreme Court of Idaho held that:

- Supreme Court had authority to review amended comprehensive plan;
- Amended comprehensive plan complied with general plans requirement of Local Land Use Planning Act (LLUPA);
- Conditional rezone did not constitute illegal spot zoning; and
- Landowner's procedural due process rights were not violated.

EMINENT DOMAIN - ILLINOIS

Enbridge Pipelines (Illinois), L.L.C. v. Troyer

Appellate Court of Illinois, Fourth District - September 22, 2015 - N.E.3d - 2015 IL App (4th) 150334 - 2015 WL 5560369

Gas utility that had obtained eminent-domain authority from the Illinois Commerce Commission (ICC) over certain real property upon which it was constructing a liquid petroleum pipeline brought action seeking preliminary injunction granting it right to access permanent and temporary easements it had obtained in condemnation proceedings. The Circuit Court granted injunction. Landowners filed interlocutory appeal.

The Appellate Court held that:

- Trial court had equitable authority to issue preliminary injunction, and
- Utility was entitled to grant of preliminary injunction.

Trial court had equitable authority to issue preliminary injunction prohibiting property owners from obstructing gas utility's access to easements after utility had been granted right to exercise eminent domain, but before jury had determined amount of just compensation due. When proceedings terminated, property owners would continue to hold title and possession of their tracts, and injunction simply prevented property owners from impeding utility's access to the tracts for the purpose of installing, operating, and maintaining a petroleum pipeline, rights which had been approved by the Illinois Commerce Commission (ICC) and judicially upheld.

Prior to jury determination of just compensation due, gas utility that had been granted right to exercise eminent domain in order to install petroleum pipeline was entitled to preliminary injunction prohibiting property owners from obstructing access to property, where utility had already succeeded on merits of condemnation proceeding, and utility had posted bond to cover full amount claimed by property owners as value of easements at issue.

UTILITIES - MONTANA

Gateway Village, LLC v. Montana Dept. of Environmental Quality

Supreme Court of Montana - September 29, 2015 - P.3d - 2015 WL 5714594 - 2015 MT 285

Real property owner petitioned for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district, and also alleged that discharge of wastewater into groundwater extending under owner's surface property constituted trespass. The District Court determined further environmental analysis was necessary, did not grant summary judgment to district on trespass claim, declined to entertain district's claim that it held a prescriptive easement, and denied owner's claim for attorneys' fees. District and DEQ appealed, and owner cross appealed.

The Supreme Court of Montana held that:

- The District Court should have declined to address trespass issue, and
- The District Court did not abuse its discretion in denying request for attorneys' fees.

Issue of whether discharge of wastewater into groundwater extending under owner's surface property constituted a trespass was not a justiciable controversy divisible from district court's remand of case for preparation of environmental impact statement regarding county water and sewer district's entitlement to discharge permit, and therefore district court should have declined to address issue. Preparation of statement would have resulted in substantial changes and additions to administrative record, and it was speculative whether district was entitled to discharge permit and whether trespass claim would have been reasserted.

District court did not abuse its discretion in denying real property owner's request for attorneys' fees under private attorney general doctrine in its petition for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district. Eown-gradient land owners were a relatively narrow class of persons, private attorney general doctrine has been invoked only sparingly, and DEQ neither mounted a frivolous defense nor acted in bad faith.

HOUSING - NEW YORK

County of Westchester v. U.S. Dept. of Housing and Urban Development

United States Court of Appeals, Second Circuit - September 25, 2015 - F.3d - 2015 WL 5616304

County brought action against United States Department of Housing and Urban Development (HUD) challenging its decision to withhold funds under grant programs as a violation of the Administrative Procedure Act (APA). The United States District Court granted summary judgment to HUD. County appealed.

The Court of Appeals held that:

- HUD’s decision to reject county’s analysis of impediments, submitted to HUD as required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, was not arbitrary or capricious, and
- HUD’s decision to reject county’s analysis of impediments did not ever condition the release of grant funds on certain municipalities changing their zoning laws, and thus did not violate statutes that prohibiting HUD from denying funds based on the adoption, continuation, or discontinuation of any policy or law.

Department of Housing and Urban Development’s (HUD) decision to reject county’s analysis of impediments, submitted to HUD as a required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, was not arbitrary or capricious under Administrative Procedure Act (APA), and thus HUD’s decision to withhold county’s funds based on rejection of the analysis of impediments was also permissible under APA, where exclusionary zoning could violate the Fair Housing Act (FHA), HUD was required to further the policies of the FHA, HUD’s conclusion that the county’s analysis of impediments was flawed and incomplete was based on detailed reports of consent decree monitor that determined that several municipalities’ ordinances were exclusionary, and HUD provided a written explanation grounded in the evidentiary record, giving county multiple opportunities to make changes and submit a revised analysis of impediments.

Department of Housing and Urban Development’s (HUD) decision to reject county’s analysis of impediments, submitted to HUD as a required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, did not ever condition the release of grant funds on certain municipalities in county changing their zoning laws, and thus HUD’s rejection of county’s analysis and withholding of grant funds on that basis did not violate statutes that prohibited HUD from denying funds based on the adoption, continuation, or discontinuation of any policy or law. HUD’s rejection of county’s analysis was based on the county’s failure to assess and analyze whether certain zoning laws in the jurisdiction impeded fair housing, its refusal to acknowledge the connection between zoning restrictions and the availability of affordable housing, and its failure to identify a plan to overcome the effects of such impediments.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Kuziak v. Borough of Danville

Commonwealth Court of Pennsylvania - September 29, 2015 - A.3d - 2015 WL 5687678

Landlord sought judicial review of decision of borough residential rental registration and property maintenance hearing board, which directed him to pay rental registration fees. The Court of Common Pleas denied appeal. Landlord appealed.

The Commonwealth Court held that:

- Trial court did not abuse its discretion by failing to conduct a de novo hearing;
- Trial court did not abuse its discretion in dismissing landlord's argument that ordinance requiring payment of fees was not properly advertised; and
- Ordinance specifying due date of fees for the next calendar year was not retroactive, and thus borough could proceed under new or prior ordinances to collect outstanding fees.

Trial court did not abuse its discretion by failing to conduct a de novo hearing on landlord's appeal from decision of borough residential rental registration and property maintenance hearing board directing him to pay rental registration fees. Landlord testified at hearing before board and was provided with a full opportunity to address any arguments he wished to raise and to present evidence, landlord opted to limit his testimony regarding allegations of illegality and unconstitutionality of ordinances requiring payment of fees and did not present any evidence during hearing, and trial court conducted its own hearing and directed parties to address issues by way of briefs.

Trial court did not abuse its discretion in dismissing landlord's argument, on appeal of decision of borough rental registration and property maintenance hearing board, that ordinance requiring payment of residential rental registration fees was not properly advertised as required by the Sunshine Act and thus was void ab initio. Landlord failed to present any evidence in support of argument, record did not contain any allegation that hearing at which ordinance was enacted was closed to the public, and landlord was aware of ordinance but first challenged its validity well in excess of the 30-day limitations period in the Act or the Judicial Code.

Ordinance specifying due date of residential rental registration and rental occupancy license fees for the next calendar year was not retroactive, and thus borough could proceed under new or prior ordinances to collect outstanding fees against landlord. New ordinance merely provided that any owner of a residential rental unit must register unit and pay appropriate fee beginning with the calendar year, new ordinance did not impose retroactive fees on new units or give different effect to landlord's obligations with respect to his units, and prior ordinance imposed identical registration requirements and fee schedules, which remained enforceable through and to its date of repeal.

UTILITIES - WASHINGTON

Singh v. Covington Water Dist.

Court of Appeals of Washington, Division 1 - September 28, 2015 - P.3d - 2015 WL 5681614

Real estate developer brought action against water district, seeking to recover amounts paid in incremental connection charges after developer abandoned project. The Superior Court granted summary judgment to district. Developer appealed.

The Court of Appeals held that:

- District's authority to charge connection fees and require performance security includes the authority to make fees nonrefundable;
- District's inclusion of nonnegotiable terms in system extension agreement (SEA), including nonrefundable incremental connection charges, did not constitute exercise of unlawful monopoly power; and
- Nonrefundable connection charges constituted fee rather than tax.

GASB Proposes Implementation Guidance Designed to Clarify Recent Pronouncements.

Norwalk, CT, September 30, 2015 — The Governmental Accounting Standards Board (GASB) today issued a proposed Implementation Guide containing questions and answers intended to clarify, explain, or elaborate on recent GASB Statements.

The proposed implementation guide focuses on questions that have been raised related to GASB's new standards on pensions, retiree healthcare benefits, and fair value reporting. The proposed guide also addresses a wide array of practice issues on other topics that have been brought to the GASB's attention. The Exposure Draft of Implementation Guide No. 20XX-X, Implementation Guidance Update—20XX, is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by November 30, 2015.

SEC Charges Municipal Underwriters With Making False Statements.

WASHINGTON — The Securities and Exchange Commission charged and fined 22 municipal-bond underwriting firms, including units of UBS Group AG and PNC Financial Services Group Inc., for giving investors inaccurate information. It was the second batch of penalties this year for such firms under the U.S. agency's voluntary self-reporting program.

Regulators said Wednesday that the firms paid a total of about $4.1 million for violating federal securities laws between 2010 and 2014, by selling municipal debt using offering documents that contained "materially false statements or omissions" about the borrowers' compliance with disclosure obligations.

The SEC, in a news release, also said the firms failed to conduct adequate due diligence to identify the problems before selling the bonds on behalf of states and localities.

The agency launched the crackdown—dubbed the "Municipal Continuing Disclosure Cooperation Initiative," or MCDC—last year in a bid to pressure underwriting firms and state and local borrowers to admit voluntarily to lapses in investor disclosures in exchange for favorable settlement terms. The lapses include such issues as failing to disclose missed filings of annual financial reports or credit-rating changes.

Investors and analysts cite the missing disclosures as a factor curtailing the ability to trade securities in the vast, nearly $4 trillion municipal-debt market.

The program stems from a 2013 settlement with a southern Indiana school district and its underwriter for falsely stating to bond investors that the district had been providing investors with annual financial information and required disclosure notices. Without admitting or denying the charges, the West Clark Community Schools agreed not to repeat the violations and the district's underwriter, City Securities Corp., agreed to a $300,000 penalty.

Wednesday's announcement comes after the agency charged and fined 36 large and medium-size banks a total of about $9 million over similar violations in June. The earlier charges involved units of Bank of America Corp. and Citigroup Inc.

In the latest enforcement round, the largest firms will pay civil penalties up to $500,000 and smaller firms will pay up to $100,000, based on the number and size of the offerings. They also agreed to retain an independent consultant to review policies and procedures for underwriting municipal bonds.

The firms settled without admitting or denying the findings, and agreed to cease and desist from such actions in the future, the SEC said.

A spokeswoman for PNC, which paid the maximum $500,000, declined to comment. A spokeswoman for UBS, which paid $480,000, said in a written statement it is pleased to have resolved the matter.

"The MCDC Initiative has revealed that in recent years, a large number of municipal bond underwriters failed to conduct adequate due diligence before selling municipal bonds to their customers," Andrew Ceresney, director of the SEC's enforcement division, said in a statement. "In addition to effectively addressing this past misconduct, we believe the initiative has been effective in improving underwriter due diligence in municipal securities offerings on a going forward basis."

Robert Doty, president and proprietor of AGFS, a litigation consulting firm specializing in municipal-bond cases in Annapolis, Md., said the SEC's program is successfully motivating banks to avoid underwriting municipal bonds unless the issuers have complied with disclosure promises in prior offerings.

"The mind-set in the market has changed," Mr. Doty said.

In future enforcement actions under the MCDC, the SEC also is expected to expand the scope and bring charges against state and local borrowers, according to people familiar with the SEC's thinking.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

Updated Sept. 30, 2015 1:05 p.m. ET

—Aaron Kuriloff contributed to this article.

UBS Unit to Pay $34 Million in Settlements Over Puerto Rico Bond Funds.

A unit of UBS Group AG agreed to pay roughly $34 million in settlements with U.S. regulators regarding the sale of Puerto Rico bond funds that plunged in value in recent years.

Tuesday's settlements come as Puerto Rico's financial crisis is drawing increased scrutiny from U.S. lawmakers and regulators. A measure to establish more robust federal oversight over Puerto Rico's mutual-fund industry was introduced in Congress last week and a Senate committee held a hearing on Puerto Rico's financial problems on Tuesday.

UBS Financial Services Inc. of Puerto Rico agreed to pay $15 million to settle charges from the Securities and Exchange Commission, which said the unit failed to supervise a former broker who had customers invest borrowed money in the bond funds. The SEC said the money will be placed into a fund for investors who had losses.

The Financial Industry Regulatory Authority, which oversees securities firms, also said the UBS unit would pay a $7.5 million fine for failure to supervise, and $11 million in restitution to 165 customers who had losses on their funds.

The settlements are in line with other recent enforcement action by the SEC, which has focused on supervisory failures, said Elaine Greenberg, partner in the securities litigation, investigations and enforcement practice at Orrick Herrington & Sutcliffe LLP.

The SEC is “continuing to pursue actions against broker-dealer firms with regards to their policies and procedures, and whether or not those policies and procedures are reasonably designed to prevent and detect violations of federal securities law,” Ms. Greenberg said. She previously was head of the SEC’s specialized unit on municipal securities and public pensions.

A UBS spokeswoman said: “We’re pleased to have resolved these matters with the SEC and Finra with respect to separate inquiries initiated in early 2014. We remain dedicated to serving our customers during this difficult economic time for the commonwealth.”

Separately, the SEC said it sued the former broker, Jose Ramirez Jr., in federal court. It alleges Mr. Ramirez increased his compensation by at least $2.8 million by having customers improperly borrow money to invest in the Puerto Rico bond funds.

In addition, a former branch manager, Ramiro L. Colon III, agreed to pay a $25,000 penalty and be suspended from supervisory roles for a year. Mr. Colon is currently employed by UBS in Miami, according to his broker records.

An attorney for Mr. Ramirez, who was fired by UBS in early 2014, said he was examining the lawsuit and had no further comment.

Hundreds of investors who owned the bond funds sold by UBS have filed legal claims with Finra seeking to recoup their losses. UBS has settled some of the cases, at times for millions of dollars. In cases that made it to a hearing, Finra arbitrators have awarded damages in six of them and found in favor of UBS in two cases, according to UBS.

The funds were popular among island residents in part due to generous tax advantages. Many investors say they invested in the funds because their UBS brokers told them the funds, which were heavily invested in Puerto Rico municipal securities, were safe.

Puerto Rico has been facing a sluggish economy and high unemployment for years, and officials under Gov. Alejandro Garcia Padilla are seeking to restructure the island’s $72 billion debt load. Mr. Garcia Padilla has called the island’s debt unpayable, and many Puerto Rico bonds are trading well below face value.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Updated Sept. 29, 2015 6:45 p.m. ET

—Aaron Kuriloff contributed to this article.

MarketAxess Looks to Crack Muni-Bond Code.

The firm at the front of the pack in electronic corporate bond trading is trying to crack the code on an even more antiquated corner of the fixed-income market: municipal bonds.

MarketAxess Holdings Inc. is laying the groundwork to connect municipal bond dealers and investors electronically early next year, according to people familiar with the matter. The firm's executives have met with clients and municipal bond dealers in recent months to gauge interest in electronic municipal bond trading including so-called "all to all" trading, which means different types of buyers and sellers trade with each other.

If successful, the New York-based firm would join a small group of existing municipal bond trading platforms and could benefit from its heft in investment grade and high-yield bond trading.

It is the latest attempt to speed trading and transparency in the $3.7 trillion market for debt sold by U.S. state and local governments, which the SEC described in a 2012 report as "illiquid and opaque."

The market poses challenges for electronic trading because it has a larger number of securities and a greater number of dealers than the corporate bond market.

MarketAxess's talks come as regulators have increased efforts to disclose prices, transaction costs and dealer markups to the retail investors who own about 70% of municipal bonds, either individually or through mutual funds, and who typically buy the bonds seeking tax-exempt income, often to fund their retirements.

The Municipal Securities Rulemaking Board last week proposed new rules that would require municipal bond dealers to disclose the mark-ups they charge retail investors on trades. Comments on those proposals are due Nov. 20.

For MarketAxess, the work resurrects pre-crisis efforts to build an electronic municipal bond trading system. Success in the municipal bond market would help diversify its product mix and it is aiming to attract institutional dealers and investors, the people said.

Analysts at Keefe, Bruyette & Woods wrote in a note this month that the potential for MarketAxess to expand into municipal bonds or structured products would require minimal investment because the firm could use existing trading technology. The firm currently has a market capitalization of about $3.5 billion.

"This makes sense to us strategically given that these are also illiquid markets – similar to that of corporate bonds where [MarketAxess] has already had success," the KBW analysts wrote of potential expansion.

THE WALL STREET JOURNAL

By SARAH KROUSE and AARON KURILOFF

Sep 29, 2015

Supreme Court Preview for Local Governments – October 2015

The Supreme Court's last term was big for local governments because the Court decided a number of important cases against them, most notably Reed v. Town of Gilbert, Arizona (2015), holding that strict scrutiny applies to content-based sign ordinances. The October 2015 term is one to watch, and not just because the Court has accepted numerous cases on controversial topics affecting local governments. Adding to the intrigue, many of the Court's decisions this term are likely to be discussed by the 2016 presidential candidates as the election heats up. Here is a preview of the most significant cases for local governments that the Court has agreed to decide so far.

Public Sector Collective Bargaining

In Friedrichs v. California Teachers Association the Court will decide whether to overrule a nearly 40-year old precedent requiring public sector employees who don't join the union to pay their "fair share" of collective bargaining costs. More than 20 states have enacted statutes authorizing "fair share."

In Abood v. Detroit Board of Education (1977) the Supreme Court held that the First Amendment does not prevent public employees who do not join the union from being required to pay their "fair share" of union dues for collective bargaining, contract administration, and grievance adjustment. The rationale is that the union may not discriminate between members and nonmembers in performing these functions. So, no free-riders are allowed.

In two recent cases, the Court's more conservative Justices, including Justice Kennedy, have criticized Abood.

If the Court doesn't overrule Abood, it may instead rule that public employees may be allowed to opt-in rather than required to opt-out of paying "nonchargeable" union expenditures, in which case presumably fewer will opt-in.

"Fair share" and opt-out are foundational principles for public sector collective bargaining in the United States. Overturning either of them would mean a major change in the law that would substantially weaken public sector unions.

Redistricting

The U.S. Constitution Equal Protection Clause "one-person one-vote" principle requires that voting districts have roughly the same population so that votes in each district count equally. But what population is relevant — total population or total voting population — and who gets to decide? The Court will answer these questions in Evenwel v. Abbott.

Over the last 25 years the Supreme Court has repeatedly refused to decide (in cases all involving local governments) whether total voter population must be equalized in state and local legislative districts.

Plaintiffs claim that total voter population must be the metric. They argue their votes are worth less than other voters because they live in districts that substantially deviate from the "ideal" in terms of number of voters or potential voters.

The lower court disagreed because the Supreme Court has never held that any particular population metric is unconstitutional. Most state legislatures use total population, not total voting population data.

Asset Forfeiture

The question in Luis v. United States* is whether not allowing a criminal defendant to use assets not traceable to a criminal offense to hire counsel of choice violates the Sixth Amendment right to counsel.

Local law enforcement often receive asset forfeitures related to drug crime.

This case comes on the heels of Kaley v. United States (2014) where the Supreme Court held 6-3 that defendants may not use frozen assets which are the fruits of criminal activities to pay for an attorney.

Luis argues that it is “inconceivable” that she may not use “her own legitimately-earned assets to retain counsel.” The federal government responded that per her reasoning criminal defendants “could effectively deprive [their] victims of any opportunity for compensation simply by dissipating [their] ill-gotten gains.”

The Eleventh Circuit ruled against Luis, who was indicted on charges related to $45 million in Medicare fraud.

Local Governments Sued Out-of-State

In Franchise Tax Board of California v. Hyatt* the Court will decide whether states must extend the same immunities that apply to them to foreign local governments (and states) sued in their state courts. Hyatt is important to local governments who are often sued out-of-state.

The Franchise Tax Board (FTB) of California concluded that Gilbert Hyatt didn’t relocate to Nevada when his tax returns indicated he did and assessed him $10.5 million in taxes and interest. Hyatt sued FTB in Nevada for fraud among other claims.

In Franchise Tax Board of California v. Hyatt (2003) the Supreme Court held that the Constitution’s Full Faith and Credit Clause does not require Nevada to offer FTB the full immunity that California law provides.

A Nevada jury ultimately awarded Hyatt nearly $400 million in damages.

The Nevada Supreme Court refused to apply Nevada’s statutory cap on damages to Hyatt’s fraud claim, reasoning that Nevada has a policy interest in ensuring adequate redress for Nevada citizens that overrides providing FTB the statutory cap because California operates outside the control of Nevada.

Hyatt has also asked the Supreme Court to overrule Nevada v. Hall (1979), holding that a state may be sued in another states’ courts without consent. If the Court overrules this case, the question of whether the immunities a state enjoys must be offered to a foreign local government (or state) will be moot.

Affirmative Action

For the second time the Court has agreed to decide whether the University of Texas at Austin’s race-conscious admissions policy is unconstitutional in Fisher v. University of Texas at Austin.

Even though this case arises in the higher education context, the Supreme Court decides relatively few affirmative action cases so all are of interest to local governments that use race as a factor in decision-making.

Per Texas's Top Ten Percent Plan, the top ten percent of Texas high school graduates are automatically admitted to UT Austin, which fills about 80 percent of the class. Most other applicants are evaluated through a holistic review where race is one of a number of factors.

Abigail Fisher claims that using race in admissions is unnecessary because, in the year she applied, UT Austin admitted 21.5 percent minority students per the Top Ten Percent Plan.

The Supreme Court has held that the use of race in college admissions is constitutional if race is used to further the compelling government interest of diversity and is narrowly tailored.

In Fisher I the Court held that the Fifth Circuit, which upheld UT Austin's admissions policy, should not have deferred to UT Austin's argument that its use of race is narrowly tailored.

When the Fifth Circuit relooked at the plan again it concluded that it is narrowly tailored.

Only time will tell whether the Court agrees.

Conclusion

The Court's docket is only about half full right now. Interestingly, the Court hasn't accepted a Fourth Amendment or qualified immunity case yet — but no term would be complete without a few such cases. Of interest to the Court may be a case involving whether cell phone location data may be obtained without a warrant.

The National League of Cities

About the Author: Lisa Soronen is the Executive Director of the State and Local Legal Center and a regular contributor to CitiesSpeak.

Munis Cheapest in 5 Weeks to Treasuries as Payrolls Fall Short.

Prices in the $3.6 trillion municipal-bond market are the cheapest in five weeks relative to Treasuries after U.S. payrolls rose less than projected in September, spurring a rally in federal government debt on signs the global slowdown is affecting the world's largest economy.

Benchmark 10-year munis yield 2.09 percent, compared with 1.92 percent on similar-maturity Treasuries, data compiled by Bloomberg show. The ratio is a measure of relative value between the asset classes. It reached 109 percent Friday, the highest since August, signaling that tax-free bonds are cheap relative to their federal counterparts.

Ten-year Treasury yields plunged 0.11 percentage point after a Labor Department report showed the U.S. added 142,000 jobs, lower than the median forecast of 201,000 from a Bloomberg survey of 96 economists. Weakening foreign markets, a stronger dollar and lower oil prices raise the risk that employers will hold off on adding workers.

Munis rallied to a smaller degree. As prices rose, the yields on both 10-year and 30-year AAA bonds fell 0.02 percentage point to the lowest since April, data compiled by Bloomberg show.

The 10-year muni-Treasury ratio was as low as 94 percent in July. Over the past decade, the figure has averaged 97 percent.

Bloomberg News

by Brian Chappatta

October 2, 2015 — 6:49 AM PDT

Puerto Rico Electric Utility Wins Extension From Bondholders.

Puerto Rico's main electric provider won a two-week extension from bondholders to negotiate how to restructure $8.3 billion of debt.

Investors holding about 35 percent of the utility's debt and its fuel lenders agreed to delay until Oct. 15 the expiration date on an agreement that was set to end Thursday, Lisa Donahue, the power provider's chief restructuring officer, said in a statement. The contract, called a forbearance agreement, keeps discussions out of court. The parties first signed the accord in August 2014. It is the ninth extension.

Puerto Rico Electric Power Authority, known as Prepa, and the bondholder group on Sept. 1 reached a tentative agreement that would require investors to take losses of about 15 percent in a debt exchange. Bond insurers Assured Guarantee Ltd., Syncora Guarantee Inc. and MBIA Inc. have balked at the plan and declined to continue the forbearance.

"We continue to work with the monolines in an effort to reach a consensual agreement on terms that would be beneficial to all parties involved," Donahue said.

Below Proposal

A Prepa restructuring would be the largest-ever in the $3.6 trillion municipal-bond market. Puerto Rico and its agencies, including Prepa, owe about $73 billion after years of borrowing to delay debt payments and fill budget deficits. The utility restructuring is the first step toward Puerto Rico's goal to lower its debt burden.

Prepa bonds maturing July 2040 traded Friday at an average of 59.2 cents on the dollar, according to data compiled by Bloomberg. That's higher than an average 53.5 cents on Aug. 28, the last time the bonds traded before the Sept. 1 agreement. But that's still lower than the 85 cents that bondholders would receive in a proposed debt exchange.

The bonds yielded 9.59 percent.

Bloomberg News

by Michelle Kaske

October 1, 2015 — 3:46 PM PDT Updated on October 2, 2015 — 9:32 AM PDT

[Bloomberg Brief Weekly Video - 10/01/15]

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

[Watch the video.]

October 1, 2015

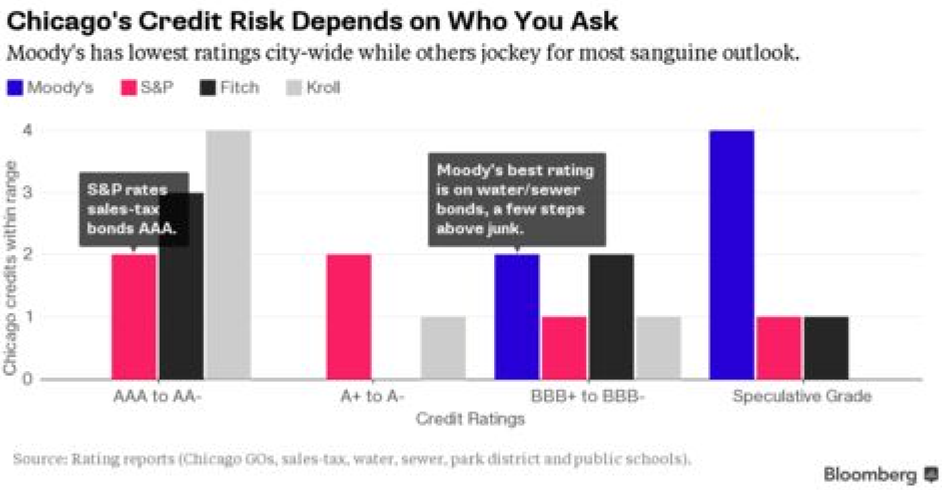
[Junk or AAA? Rating Split Plagues Chicago as It Borrows Billions.]

What's Chicago's risk to municipal-bond investors? It depends on which credit-rating company you ask.

In the eyes of Moody's Investors Service, most of the $20 billion of bonds tied to Chicago are junk, as speculative as a charter school or regional hospital that could shut down. To Standard & Poor's, the city's park district is as credit-worthy as the U.S. government, and its sales-tax-backed debt is even safer. Only Kroll Bond Rating Agency deems the public schools worthy of an investment grade.

No U.S. city has caused a larger difference of opinion in the municipal-bond market than Chicago, which is being squeezed by soaring bills to its underfunded retirement system. The city's sales-tax, motor-fuel-tax, water, sewer and park bonds all have at least a six-level gap between the lowest and highest ratings, data compiled by Bloomberg show. The discrepancy has led investors to err on the side of caution by demanding higher yields, threatening to saddle Chicago with added costs as it prepares to issue about $3 billion of debt.

"The dispersion in ratings just doesn't make sense," said Mikhail Foux, head of municipal research at Barclays Plc in New York. "Moody's is too conservative and S&P is too relaxed about this. The truth is probably somewhere in the middle."



Chicago illustrates a rift in the approaches that rating companies use to assess municipalities, whose securities are backed by varying revenue sources and legal safeguards. Those can leave some bondholders sheltered if a city faces a budget shortfall or collapses into bankruptcy, as Detroit did two years ago.

The views on Chicago have become more divergent since May, when Moody's lowered its general obligations to Ba1, one step below investment grade. While S&P and Fitch Ratings followed with their own downgrades to those securities, the companies have been at odds over how to gauge the rest of the city's bonds.

Moody's was the only one to downgrade all of Chicago's other major securities: It reduced the park, sales-tax and motor-fuel-tax debt to the same level as the city, while the water and sewer bonds were cut to the lowest investment-grade tier. S&P and Fitch left some of those ratings unchanged, despite their more dour assessment of the city's finances.

Buying Opportunity

The inconsistency has created pockets of value, Foux said. In particular, water and sewer bonds are trading at higher yields than they should, he said. The city plans to sell $439 million of the securities this month, the latest in a wave of offerings from Chicago.

"The market really does trade a lot of times to the worse-case scenario," said Dan Solender, who oversees $17 billion, including Chicago debt, as head of munis at Lord Abbett & Co. in Jersey City, New Jersey. "Most of the market isn't really looking at the higher rating anymore."

Moody's analyst Rachel Cortez said its Chicago ratings are so closely aligned because the securities draw from the same tax base or aren't separated sufficiently from the city's grasp to warrant a higher grade.
S&P said in a Sept. 24 report that a Chicago agency won't be penalized just because of the pressure on the budget, given that some bonds are sheltered from those strains. Jane Ridley, the analyst who wrote the report, said sales-tax bonds have the first claim on that money, which gives them less risk that general obligations.

Karen Daly, a senior managing director at Kroll, said the rating differences can be explained by the separate security pledges backing Chicago's bonds.

The analysis has been complicated by the risk of bankruptcy, a tool that Republican Governor Bruce Rauner has so far unsuccessfully sought to extend to Illinois municipalities. Were Chicago able to write down its debts in court, water and sewer bondholders wouldn't stand to lose as much as owners of other securities, Fitch analyst Amy Laskey wrote in a Sept. 22 report. Hence the higher rating.

"All the different operating entities have differing bankruptcy risks," Laskey said in an interview. Though Illinois currently doesn't allow it, she said, "we always believe that if there were an entity that was in need of filing, that the state would find a way to allow them to."

Market's View

Trading in Chicago bonds shows the market is siding with Moody's, which assigned the lowest ratings, said Justin Land, who oversees $4 billion of munis as director of tax-exempt management at Wasmer Schroeder & Co. in Naples, Florida.

The most-traded Chicago sales-tax bonds changed hands Thursday at an average yield of 4.6 percent, compared with 3 percent for munis with a similar 23-year maturity and the same top grade from S&P, data compiled by Bloomberg show.

Park district debt due in 2024 traded last week at an average 3.86 percent, compared with about 2.1 percent for AAA munis, Bloomberg data show. Sewer bonds due in 2021 changed hands last week at a yield of 3.2 percent, or 1.58 percentage points above the benchmark, while water bonds maturing in 2032 traded at 4.5 percent, a difference of 1.75 percentage points.

"Typically we'll be on the side of caution and kind of lean our viewpoint toward the weaker credit rating," said Dan Heckman, senior fixed-income strategist in Kansas City, Missouri, at U.S. Bank Wealth Management, which oversees about $127 billion. "People are very well aware of the issues, and they want to have substantial compensation."

Bloomberg News

by Brian Chappatta and Elizabeth Campbell

September 30, 2015 — 9:01 PM PDT Updated on October 1, 2015 — 12:08 PM PDT

Muni Junk Bonds Are Outperforming Other High-Yield Options.

Investors are finding an unlikely haven amid the rout in corporate junk bonds: their tax-exempt counterparts sold by municipalities.

The riskiest local-government bonds returned 2.9 percent through Sept. 29, heading for their best month since August 2014, Bank of America Merrill Lynch data show. That's more than four times the gain in the broader municipal market and stands in contrast to the shift away from debt sold by struggling businesses. High-yield corporate securities have lost 2.7 percent this month.

"People are looking for income streams, and at the same time they want some level of safety," said Dan Heckman, senior fixed-income strategist in Kansas City, Missouri, at U.S. Bank Wealth Management, which oversees about $127 billion of assets, including high-yield municipal bonds. "They view the high-yield muni as a little safer place out of other risk areas that contain higher yields."

After the Federal Reserve decided not to raise interest rates at its Sept. 17 meeting, money flooded into mutual funds focused on high-yield municipals. The funds pulled in $178 million in the week ended Sept. 23, the first in a month, Lipper US Fund Flows data show.

The municipal bonds, which are sold for specific projects or by strained governments such as Puerto Rico and Chicago, have skirted the turmoil in other financial markets over the past two months, when stocks tumbled amid speculation that the world's economy will slow.

Their relative security has been a draw to investors seeking to ride out the volatility, said Heckman. High-yield munis had a default rate of 7.5 percent over the last decade, compared with 32 percent for comparable corporate debt, according to a July 24 report from Moody's Investors Service.

The recent gains stem the losses that came this year as Puerto Rico's fiscal crisis escalated. The commonwealth defaulted on some securities for the first time in August and plans to ask investors to restructure debt that Governor Alejandro Garcia Padilla says the government can no longer afford.

The default didn't trigger an exodus from the municipal-bond market because the long-brewing crisis is seen as limited to the island. After initially pulling money from high-yield funds amid speculation about the potential ripple effects, investors have been adding money back, seeking higher yields as interest rates hold near generational lows.

With “the low-rate environment, there’s demand for incremental yield,” said Dan Solender, who helps manage $17 billion as head of state and local debt at Lord Abbett & Co. in Jersey City, New Jersey. “The credits have been holding in well. There’s not been significant issues so the credits are performing well.’

Chicago bonds, which were cut to junk by Moody’s in May, have pared their losses as Mayor Rahm Emanuel proposed a record property-tax increase to help cover the city’s rising pension-fund bills. Federally taxable Chicago bonds maturing in 2042 traded Wednesday for an average of $1.02 on the dollar, up from 96.7 cents on Aug. 31.

Puerto Rico securities have also rebounded since June. Garcia Padilla’s administration plans to ask investors to voluntarily exchange their securities for new ones with lower interest rates or longer maturities, a process that could shelter some bondholders from losses. Puerto Rico debt maturing in 2035 traded for an average of 74 cents on the dollar Wednesday, up from as little as 64 cents on June 30. That pushed the yield down to 11.2 percent from 13.1 percent.

“The Puerto Rico influence in the high yield indexes could be as much as 20 percent,” said Jim Colby, who manages about $1.6 billion of high-yield municipals at Van Eck Global in New York. “So that I think it is a very significant element of why we’ve had such good performance.”

Bloomberg News

by Elizabeth Campbell

September 29, 2015 — 9:00 PM PDT Updated on September 30, 2015 — 9:49 AM PDT

Puerto Rico Debt Crisis Eludes U.S. Fix, Top Republicans Say.

Top Senate Republicans showed no intention of acting soon to rescue Puerto Rico from its escalating financial crisis, saying there’s no easy way for the federal government to steady the Caribbean island pushed to the brink by $73 billion of debt.

Republicans who lead both chambers of Congress have signaled little urgency in aiding Puerto Rico, and the White House has made it clear it won’t bail out the commonwealth. The reticence was on display Tuesday at a Senate Finance Committee hearing, the first in Congress since Governor Alejandro Garcia Padilla said the island can’t afford to repay what it’s borrowed.

While Puerto Rico officials are pushing for more funding for some federal programs, Senator Orrin Hatch of Utah, the chairman of the finance committee, expressed skepticism that additional money would be sufficient. He noted that it’s received billions in additional federal funds since 2009.

“Even with those boosts in federal funding and the related increases in commonwealth spending, all we see is added commonwealth debt,” he said at a hearing in Washington Tuesday.

Providing more money for health-care programs, for example, “would necessarily mean reduced funding for other priorities, increased taxes, or even more federal debt,” he said. “That is the unpleasant budget arithmetic that we face. There are no easy answers.”

The commonwealth of 3.5 million people is teetering because of years of borrowing to cover budget shortfalls as the economy stumbled and residents left for the U.S. mainland. Garcia Padilla is seeking to postpone or reduce the government’s debt bills, moving the island toward what would be the biggest restructuring ever in the $3.6 trillion municipal-bond market.

Senator Charles Grassley, the Iowa Republican who chairs the judiciary committee, during the hearing stopped short of endorsing legislation Puerto Rico is seeking that would allow its publicly owned corporations, such as the power company, to file for bankruptcy, as U.S. cities can.

Instead, he recommended exempting Puerto Rico from the minimum wage and shipping laws that drive up the cost of goods. He also suggested setting up a federal board to oversee its finances, though he said any Congressional steps would depend on whether Puerto Rico moved to eliminate deficits at the root of the crisis.

“Congressional help without meaningful reform by the Puerto Rican government won’t work,” Grassley said at the hearing.

The commonwealth is rapidly draining its cash. Unless it can raise money in the capital markets, it could run out of money by the end of the year, just before a large payment is due on its general-obligation bonds, Government Development Bank President Melba Acosta said.

She told the senators that “federal action is essential,” including giving it the same access to the Medicaid and Medicare health-care programs that states have and extending municipal bankruptcy access to the island.

“Puerto Rico has passed the tipping point and faces an immediate liquidity crisis,” she said. That’s “threatening the ability of the government to continue to provide essential services to its residents and to pay its debts when due.”

In addition to approximately $73 billion of public debt, Acosta said Puerto Rico has a $45 billion shortfall in its workers’ retirement system that’s threatening to put more strain on the budget.

Bankruptcy Bill

Puerto Rico, which has already defaulted on some bonds, wants Congress to approve the legislation giving some entities access to Chapter 9 bankruptcy protection. That could avoid a protracted legal fight by allowing the government to restructure some debt in court, rather than through individual negotiations. That bill has yet to advance for lack of Republican support.

With bonds sold through more than a dozen agencies, Puerto Rico has yet to say which securities could be affected and by how much, which has left investors speculating about the scale of losses they may be asked to take. The administration plans to ask investors to exchange their bonds for new debt with lower interest rates or longer maturities. Such a plan may come in the next few weeks.

Going Alone

During the hearing, Puerto Rico’s representative in Congress, Pedro Pierluisi, said lawmakers should end the disparate treatment that applies to the island with respect to federal programs.

“Any notion that the territory alone got itself into this situation and the territory alone must extricate itself from this situation is totally false,” he said. “The truth is that the federal government bears tremendous responsibility for the crisis in Puerto Rico, and so Congress and the president must be part of any solution.”

Bloomberg News

by Kasia Klimasinska

September 29, 2015 — 7:13 AM PDT Updated on September 29, 2015 — 11:39 AM PDT

Stalemate Over Tax Increases Pushes Pennsylvania Yields Higher.

As Congress races to avert a government shutdown, what may be a more prolonged political fight over the budget is dragging on in the state capital 120 miles (193 kilometers) to the north.

In Harrisburg, Pennsylvania, the state government is almost three months into the fiscal year without an agreement on what it can spend because of a divide between the Republican-led legislature and Governor Tom Wolf, a Democrat. At least two school districts say they may soon have to close. Some debt has been downgraded. And investors have pushed yields on the Keystone State's bonds close to recent highs over top-rated securities, a measure of the perceived risk.

Pennsylvania is the only state aside from Illinois that's still locked in a stalemate over the budget, a standoff reminiscent of those that once played out in statehouses around the nation after the recession. While public finances have recovered along with the economy, Pennsylvania lawmakers are contending with a $53 billion pension-fund shortfall that's threatening to hit the state with rising bills, as well as pressure to steer more money into schools.

As a result, investors are demanding yields on 10-year Pennsylvania bonds of 2.71 percent, 0.56 percentage point more than AAA municipal securities, according to data compiled by Bloomberg. That's just shy of the 0.61 percentage point reached in June, which was the highest since the data began in 2013. Only Illinois and New Jersey, which have even larger pension shortfalls, pay more, according to data on 20 states.

"Pennsylvania is not in as bad a situation as New Jersey or Illinois," said Scott McGough, director of fixed income for Glenmede Trust Co. in Philadelphia, who is reducing his holdings of Pennsylvania debt. "But clearly, the trend is poor at this point."

The legislature took a step to temporarily ease the crunch last week, when it passed a budget to provide about four months of funding to schools and other agencies. Wolf, who took office in January, rejected it on Tuesday, saying he wants a comprehensive spending plan.

"The citizens of Pennsylvania want more than half measures, and they deserve better than the status quo," Wolf said in his veto message to the legislature. The temporary budget locks in human services cuts and is "an avoidance maneuver that fails to adequately fund education."

Pension Politics

Since March, Wolf and Republicans have been at loggerheads over how to shore up the retirement system, which has less than two-thirds of the assets needed to cover the benefits promised to about 700,000 employees. Wolf vetoed a Republican bill that would have put new workers into defined-contribution plans similar to 401(k)s. He wants to sell $3 billion of debt to inject cash into the retirement system to make up for years of shortchanging it.

Republicans have also balked at his proposal to implement a new tax on natural-gas drillers and raise levies on income and retail sales to fund schools.

The effects are starting to be felt beyond the capital. This month, Moody's Investors Service lowered the credit ratings of schools that sell bonds through a program that diverts state aid to investors if the districts default. The credit rater said the lack of a budget has cast uncertainty over the funding, heightening the risks to bondholders. Standard & Poor's has put the districts' ratings on watch, a first step toward a downgrade.

School Closings

School districts in Carbondale, in the northern part of the state, and to the west in Erie, have warned that they may temporarily close without funds if the budget impasse continues. By October, 41 school districts may see "significant cash-flow difficulties," according to a senate Republican committee memo. Another 120 would be added to the list by December.

By next month, school districts would be running without more than $3 billion in state aid that was anticipated for the year, according to the Pennsylvania Association of School Business Officials. Administrators have been tapping reserves and lines of credit to compensate, the Harrisburg-based group said.

Schools have borrowed at least $347 million so far and may run up an additional $122 million of debt in October to keep classrooms open, State Auditor General Eugene DePasquale said Tuesday.

Some are pushing down the pain to charter schools. About 24 school districts have eliminated or reduced payments to charter schools, said Tim Eller, executive director of the Keystone Alliance for Public Charter Schools.

Pennsylvania is graded two steps below the state average, in part because of the deficit in its retirement system. S&P and Fitch Ratings cut the state last year to AA-, the fourth-highest level. Moody's grades Pennsylvania Aa3, the same rank.

Glenmede's McGough said investors may continue to demand higher yield premiums if the Pennsylvania's leaders don't repair the government's finances.

"You have to address the budget as is, given the revenue coming in, and really right-size your budget," he said.

Bloomberg News

by Romy Varghese

September 28, 2015 — 9:01 PM PDT Updated on September 29, 2015 — 9:25 AM PDT

Connecticut Tax Bonds Draw Buyers Losing Faith in State Pledges.

Connecticut bond investors have more faith in the tax man than in the full faith and credit pledge of the state.

Though the extra yield investors demand to own the state's general obligations instead of top-rated debt is almost the highest on record, its $840 million bond sale this week is drawing interest from Conning, Eaton Vance Management and Nuveen Asset Management. That's because the debt, which will pay for transportation projects, is backed by dedicated taxes on motor fuels, oil companies and retail sales — none of which can be touched by lawmakers until bondholders are paid.

“If you’re going to make an investment in Connecticut, this is a credit that should be strongly considered,” said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of the debt, including some state bonds. “There’s no appropriation required. So if there’s ever a budget stalemate, there’s less risk of a delay in getting paid.”

Connecticut reflects a shift in the $3.6 trillion municipal market, where investors have given greater scrutiny to securities backed only by a government’s promise since Detroit foisted losses on bondholders following its 2013 bankruptcy. This year, debt funded by legislative appropriations was tarnished when Puerto Rico chose to default and Illinois’s budget stalemate caused the credit rating of Chicago’s convention center agency to be cut from AAA to near junk.

Malloy’s Maneuver

Connecticut Governor Dannel Malloy signed a law that boosted the share of the sales tax for transportation-project bonds this year and walls it off from the money spent by the legislature, an effort to spur spending on public works. As a result, oil company and sales taxes are being sent to a special fund, providing added security to investors.

Connecticut, the wealthiest U.S. state, has an Aa3 credit rating from Moody’s Investors Service. Only Illinois and New Jersey are ranked lower. That’s because the state’s economy has rebounded slowly from the recession, its pension system is the third-most underfunded nationwide and it has the most debt per resident.

The extra yield investors demand to buy 10-year Connecticut general obligations rather than benchmark municipals has climbed to 0.47 percentage point from as little as 0.27 percent in January, data compiled by Bloomberg show. That spread is near the widest since at least January 2013, when the data begin, signaling that the debt is viewed as relatively riskier.

The transportation bonds have retained their value. Debt issued a year ago that’s due in September 2026 traded last week at a spread of 0.49 percentage point, unchanged from the average over the past five months, data compiled by Bloomberg show.

“We do prefer this type of revenue stream versus the state of Connecticut G.O. pledge,” said Michael Hamilton, who runs a $284 million Connecticut open-end mutual fund at Nuveen Asset Management. He owns some of the transportation debt. “I have some room to buy if the deal comes a little wider, given the state has widened out as well.”

Malloy made improving Connecticut’s infrastructure a focus of his budget, which also cut spending and raised taxes on corporations and the highest earners. To fund his initiative, 0.3 percent of the 6.35 percent sales tax will be funneled toward the revenue bonds this year. The share will ramp up to 0.5 percent by the 2018 fiscal year, according to bond documents.

Railway, Roads

Proceeds from the new bonds, which are set to be sold Thursday, will fund improvements to the New Haven Rail Line, the I-84 expressway and the Pearl Harbor Memorial Bridge.

Fitch Ratings last week ranked the bonds AA, the same as Connecticut’s general obligations. The credit rater in July raised the state’s outlook to stable from negative, pulling it back from the brink of a downgrade, citing a budget for the next two fiscal years that appears balanced.

Carl Thompson, an analyst at Eaton Vance, said he agrees with Fitch's more optimistic assessment. Mansour, the analyst at Conning, said his outlook for the state is still negative: His company's May ranking of the fiscal health of states put Connecticut sixth-to-last.

Yet both agree the transportation bonds are a potential buying opportunity.

"Despite similar ratings as the state, I think that Connecticut's special tax bonds are a much stronger credit," Mansour said. "The state has accelerating debt service and pension obligations. With these bonds, you have much more predictable and stable expenses."

Bloomberg News

by Brian Chappatta

September 27, 2015 — 9:01 PM PDT Updated on September 28, 2015 — 6:13 AM PDT

Ohio Firefighter and Police Pension Fund to Put Spending Records Online.

The Ohio Police and Fire Pension Fund volunteered to put its spending records online as part of a partnership with State Treasurer Josh Mandel's online checkbook program.

The announcement comes exactly a week after Mandel criticized the Ohio Public Employees Retirement System for not joining his initiative, which can be accessed at OhioCheckbook.com.

Mandel accused OPERS of trying to hide information from the public, which OPERS officials quickly denied.

"The executive director of OPERS feels that taxpayers do not have a right to see this information and she's just flat out wrong," Mandel said today during a press call. "It's dumfounding that they still refuse to volunteer to put their finances online."

OPERS officials have continued to say they support transparency, as evidenced by "extensive financial information" provided on their own website.

"It's disappointing to be continually mischaracterized by the treasurer of state," said Julie Graham-Price, a media representative from OPERS. "We intend to evaluate the online checkbook initiative; unfortunately, it's not on the treasurer's timeline."

OPERS and Mandel have a history of disagreement. The two sides have clashed over who should control where the multibillion-dollar pension fund's resources should be invested among other disagreements over reforms.

The police and fire fund is the first pension fund in the United States, according to Mandel, to volunteer to put their financial information online.

"We see no reason why our members as taxpayers should not be able to see what vendors we use, what services we use, what consultants we use, how much we're paying for our paperclips and pencils, things like that," said John Gallagher, executive director of the fund. Gallagher added that confidential information would not be put on the website.

The pension fund joins more than 100 state and local government entities that have volunteered to put their spending habits online.

“Obviously we’re a huge fan of the local government stuff … but it really is important for the pension funds to step it up,” said Greg Lawson of the Buckeye Institute, a Columbus-based free market think tank. “It’s just a great example of good government.”

Mandel’s initiative helped the state jump from No. 46 to No. 1 on a U.S. Public Interest Research Group list of transparent states providing online access to government spending.

BY TRIBUNE NEWS SERVICE | OCTOBER 2, 2015

By Dina Berliner

Government’s Continuing Budget-Buster: Paid Sick Leave.

While paid sick leave is critical to economic security and health for employees and their families, its impact is even more far-reaching — even contagious: When ill employees go to work, co-workers, clients and employers can get sick as well. But there is another health factor associated with paid sick leave: employers’ fiscal health.

For governments and the private sector alike, overly generous sick-leave policies can lead to unexpected back-end costs and potentially significant unfunded liabilities. In terms of employer costs, paid sick leave ranks only behind medical and retirement benefits. This issue is particularly acute for governments: While in the private sector almost 40 percent of employers do not offer paid sick leave, nearly all full-time public-sector employees receive some form of coverage.

So how are local governments managing their paid-sick-leave programs? And are cities and counties making the types of post-recession reforms that we have seen in other benefit areas such as pensions and retiree health care?

The answer is that paid sick leave (PSL) appears to still be quite generous, with few local governments seeking to reform longtime practices. In a national survey of human-services professionals for large cities and counties, Michael Thom of the University of Southern California and I found that only 14 percent of local governments had sought to reduce their cost exposure by enacting post-recession PSL reforms.

Most local governments have continued to offer generous sick-leave policies, including allowing employees to accrue more than 120 hours of PSL annually (53 percent) and having no limit on the number of PSL hours that can be rolled over from year to year (77 percent). Further, over 50 percent allowed employees to cash out unused paid sick leave upon leaving their jobs, while 40 percent allowed unused PSL to be used in calculating retiring employees’ service credits for pension purposes — one form of “pension spiking.”

Allowing paid sick leave for family members was widespread (89 percent), but other practices, such as sharing programs (allowing employees to donate unused sick leave to needier co-workers) and converting unused sick leave to vacation time, were not as prevalent (42 percent and 13 percent, respectively). While the percentage of local governments requiring a doctor’s note for prolonged sickness was quite high (over 70 percent), the number that perform sick-leave audits and have incentive programs to avoid unnecessary use of sick leave were quite low (both less than 25 percent).

Collective-bargaining status and employee classification — such as public safety vs. general staff — were both significant factors in determining certain practices. In local governments with collective bargaining, the practice of allowing employees to include unused PSL in pension calculations was more likely. Further, public-safety employees were less likely to be affected by budget-savings reforms after the recession, less likely to be required to have a doctor's note for prolonged absences, and more likely to have sharing programs.

When governments elect to allow PSL to be accrued and rolled over from year to year with no limit, and either be cashed out when employees leave or used in pension calculations, the costs and impact can be substantial. That's because much of the paid sick leave may have been earned during years in which an employee had a lower salary, while payouts at termination and for pension determinations are calculated at the highest salary levels. Also, many local governments treat PSL costs as a pay-a--you-go item, which means these expenses are seldom included as fixed items in their budgets.

As local governments recover from the recent recession and continue to grapple with unfunded pension and retiree health-care costs, their focus undoubtedly will turn to other cost drivers such as paid sick leave. Serious consideration for cost-containment measures should include ending the practice of applying unused PSL hours in pension-benefit calculations; limiting the amount of hours that can be accrued and rolled over from year to year; and limiting unused-PSL payouts to a nominal or fixed amount paid annually instead of allowing it to accumulate until retirement.

With such fundamental change on the horizon, local governments should work with their employees to adopt more sustainable, fair and innovative paid-sick-leave practices that also will provide employees with incentives to avoid unnecessary absenteeism.

GOVERNING.COM

BY THOM REILLY | OCTOBER 1, 2015

Thom.Reilly@asu.edu

Louisiana Election 2015: Should Governments Pay Taxes to Other States?

Louisiana is letting voters decide whether local governments should be allowed to tax property in their borders that's owned by other governments.

For four years, West Carroll Parish in the northwest corner of Louisiana billed the Memphis Light, Gas, and Water Division about $100,000 per year in property taxes for storing some of its natural gas in the parish limits.

But in 2013, Memphis stopped paying its bill. The Tennessee city argued that the natural gas storage site was government-leased property and used for a public purpose and therefore exempt from a property tax. Two years and a few court battles later, West Carroll Parish lost the argument and had to refund Memphis more than $400,000.

The problem? Louisiana's constitution doesn't clarify that the public-use exemption only applies to property owned by a Louisiana government, so outside state and local governments don't have to pay a tax either.

Many state exemptions are silent about this issue. Only 11 expressly allow local governments to tax property that's owned by another government, according to the Lincoln Institute on Land Policy. The bad news for Louisiana is that it is literally surrounded by states that do specify that other state and local governments have to pay property taxes in their state.

The state is trying to remedy the situation with a proposed constitutional amendment that would allow Louisiana to tax property owned by out-of-state governments like the Memphis utility.

"This will basically level the playing field for Louisiana and mirrors the current law in Texas, Arkansas, Mississippi and Tennessee," said State Rep. Charles Chaney, whose district includes West Carroll Parish.

Among the handful of states with laws about this issue, Ohio has a unique approach. Its law says that property in Ohio used for public purposes out-of-state can be tax-exempt only if that state can offer Ohio the same exemption.

Chaney said he won't push for the issue again if the ballot measure fails next month. Still, he's concerned the measure won't survive voter fatigue — Louisiana voters must choose a new governor, state legislators and other local officers. By the time they get to the statewide ballot measures, voters could be more inclined to vote "no" or leave the box blank, rather than decide for the measure on its merits, said Chaney.

"It's a down ballot issue and placement and that is very worrisome to me," he said.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 29, 2015

S&P's Public Finance Podcast (Garden City Schools, Michigan, And The Town Of Lawrence, Wisconsin)

In this week's Extra Credit, ratings analysts Anna Uboytseva and Michael Furla discuss what spurred our rating actions on Garden City Schools, Michigan, and the Town of Lawrence, Wisconsin.

Listen to the Podcast.

Oct. 2, 2015

Expert Urges Expanded Use of P3s to Protect Water Resources.

More than 2,000 U.S communities are using public-private partnerships to meet pressing water-related infrastructure needs and many more localities should pursue them, argues the head of a water company trade association.

Municipalities can negotiate P3s to gain access to capital and technical, management and process-improvement expertise. These partnerships also will help them to apply new technologies that they could not take advantage of without such support, wrote Michael Deane, executive director of the National Association of Water Companies, in a Sept. 30 American City and County magazine column.

P3s can step in to offer fund system repairs and upgrades that the budget-strapped federal government cannot, he argues, citing the Environmental Protection Agency's findings that more than 240,000 water main breaks occur each year. To make matters worse, the agency says it lacks the $384 billion needed to maintain drinking water systems through 2020.

On the other hand, the federal government is committed to fostering infrastructure P3s, Deane wrote, offering as examples, President Obama's Build America Investment initiative and the EPA's recently launched Water Infrastructure and Resiliency Finance Center. The center "will help ensure that communities have the information and tools to explore all opportunities for innovation in project finance, delivery and operations," Deane wrote.

He singled out several examples of successful water-related P3s: A 40-year concession agreement through which United Water and investment firm KKR are investing in and operating Bayonne, N.J.'s water and wastewater systems and a similar 30-year deal Rialto, Calif., negotiated with Veolia North America. Meanwhile, CH2M and Spacient Technologies are improving communication between the city's water distribution and wastewater collection personnel to improve operations, services and customer support.

Other success stories include a P3 through which United Water is, for 20 years, operating, managing and maintaining Nassau County's wastewater plants that were damaged by Hurricane Sandy and Prince George's County, Md.'s collaboration with Corvias Solutions to install infrastructure that will capture stormwater runoff and prevent it from polluting the Chesapeake Bay.

The Prince George's stormwater P3 and others will be discussed during the CBP3 Sustainable Stormwater Infrastructure Summit to be held Dec. 7 in Philadelphia. For more information, visit the event website.

NCPPP

By Editor

October 1, 2015

High Coverage and Strong Legal Provisions Contribute to Strong U.S. Lottery Revenue Bond Ratings in 2015, Report Says.

NEW YORK (Standard & Poor's) Sept. 30, 2015–Even in a period of expansion in casino gambling, national lottery sales continue to grow and to remain stable said a report published today by Standard & Poor's Ratings Services.

"We attribute this to the monopolies states enjoy on lottery sales, relatively modest prices, and consumers' ability to purchase a product instantly at diverse retail establishments," said Standard & Poor's credit analyst David Hitchcock. "We also don't see a lottery ticket bought at a retail checkout counter as necessarily representing direct competition to or from a casino visit," Mr. Hitchcock added.

Standard & Poor's maintains ratings on lottery bonds issued by four states– Arizona, Florida, Oregon, and West Virginia–under its lottery revenue bond criteria (see “Lottery Revenue Bonds,” published June 13, 2007, on RatingsDirect). In our sector review, entitled “Why The Odds Favor Continued Strong Credit Quality For U.S. Lottery Revenue Bonds,” we discuss the reasons why we rate these bonds ‘AA’ or higher.

Under Standard & Poor’s policies, only a Rating Committee can determine a Credit Rating Action (including a Credit Rating change, affirmation or withdrawal, Rating Outlook change, or CreditWatch action). This commentary and its subject matter have not been the subject of Rating Committee action and should not be interpreted as a change to, or affirmation of, a Credit Rating or Rating Outlook.

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.

Primary Credit Analyst: David G Hitchcock, New York (1) 212-438-2022; david.hitchcock@standardandpoors.com

Media Contact: April T Kabahar, New York (1) 212-438-7530; april.kabahar@standardandpoors.com

---

TAX INCREMENT FINANCING - COLORADO

1405 Hotel, LLC v. Colorado Economic Development Commission

Colorado Court of Appeals, Div. I - September 10, 2015 - P.3d - 2015 WL 5259813 - 2015 COA 127

Hotels brought judicial review and declaratory judgment action challenging decision of Colorado Economic Development Commission (CEDC) to award city a tax increment subsidy under the Regional Tourism Act (RTA). The District Court dismissed action. Hotels appealed.

The Court of Appeals held that:

- As a matter of apparent first impression, point of administrative finality of award to city under RTA, as would trigger time period for filing of judicial review action, was time when CEDC adopted resolution memorializing terms of award;
- Hotels’ premature filing of judicial review complaint did not render complaint untimely; and
- Hotels’ alleged injury was indirect and incidental, and therefore hotels lacked standing to bring action.

Point of administrative finality of grant to city by the Colorado Economic Development Commission (CEDC) under the Regional Tourism Act (RTA), as would trigger time period for filing of action for judicial review, was time when CEDC adopted resolution memorializing terms of grant, not when CEDC gave it preliminary approval. Preliminary approval contained conditions which city had 120 days to fulfill, and to hold that conditional approval constituted final agency action would require parties affected by a conditional approval of a grant under the RTA to commence litigation before knowing whether the recipient of the RTA grant would fulfill those conditions and receive final approval.

Hotels' alleged injury from decision of Colorado Economic Development Commission (CEDC) to make grant to city for hotel and conference center development project, pursuant to the Regional Tourism Act (RTA), was indirect and incidental to city's alleged wrongdoing, and therefore hotels lacked standing to bring judicial review and declaratory judgment action challenging CEDC's and city's alleged failure to comply with RTA, including failure to require city to make new application for grant following change in developer. Even assuming project would cause hotels economic harm by drawing away some of their existing customers, such harm was not directly caused by CEDC's or city's alleged failure to comply with RTA but rather would result from development project's subsequent lawful conduct of competing in the tourism marketplace.

TAX - CALIFORNIA

Myers v. State Board of Equalization

Court of Appeal, Second District, Division 3, California - September 25, 2015 - Cal.Rptr.3d - 2015 WL 5656124

A taxpayer brought a mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were "insurers." The Superior Court sustained state officials' and health care service plans' demurrers without leave to amend. Taxpayer appealed.

The Court of Appeal held that:

- On issue of first impression, health care service plans were "insurers" subject to gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of their businesses;
- Prior final judgment denying declaratory and injunctive relief on same issue was within public interest exception to res judicata rule; and
- Taxpayer's action did not improperly seek to prevent or enjoin the collection of any tax.

Two taxpayers were "insurers" subject to the state constitution's gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of taxpayers' businesses, even if the taxpayers were designated as "health care service plans" for regulatory purposes under the Knox–Keene Health Care Service Plan Act.

Trial court's prior final judgment denying declaratory and injunctive relief to compel a health care service plan to pay the state constitutional gross premium tax as "insurers" was within the public interest exception to the res judicata rule, in a new mandamus and declaratory judgment action against the same health care service plan and another plan, since the applicability of the gross premium tax presented a pure question of law, the matter affected public finances, and the prior judgment did not result in an appellate opinion.

The constitutional provision stating that no legal or equitable process shall issue to prevent or enjoin the collection of any tax did not bar taxpayers' mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were "insurers," since the action did not seek to enjoin the state from collecting any other taxes or fees. Whatever effect the "in lieu of" clause of the gross premium tax provision would have on the corporate franchise taxes the state had previously collected from the health care service plans was a matter for the plans to raise in a subsequent tax refund action.

TAX - ILLINOIS

Hertz Corp. v. City of Chicago

Appellate Court of Illinois, First District, Second Division - September 22, 2015 - N.E.3d - 2015 IL App (1st) 123210 - 2015 WL 5578591

Car rental companies brought declaratory judgment actions against city, asserting that ruling by city's department of revenue as to tax on use of vehicles leased by city residents was unconstitutional. The Circuit Court declared ruling facially unconstitutional and entered permanent injunction. City appealed.

The Appellate Court held that:

- Tax which ordinance imposed on any lessee of personal property who entered into any lease transaction in the city, irrespective of where leased property was used, and on lessees who used leased personal property more than 50 percent of the time in the city, irrespective of where lease transaction took place, was a use tax rather than a transaction tax, and therefore tax did not exceed city's home rule authority by taxing non-city vehicle lease transactions, even though ordinance imposing tax was titled "Personal Property Lease Transaction Tax." Taxable event was the privilege of using leased personal property inside the city. and
- Ruling did not exceed scope of ordinance.

Ruling by city's department of revenue requiring car rental companies to maintain records relating to whether vehicles were used within city and whether customers were residents of city, as proof of claimed exemption for vehicles used outside of city for more than 50% of time, was not unreasonable, in declaratory judgment action brought by companies challenging ruling, which was promulgated pursuant to ordinance which taxed use of vehicles within city even if lease transaction took place outside city but within three miles of city's border, where companies already obtained such records from its customers in form of driver license information and form requiring customer to check box next to question on intended use of vehicle.
