Bond Case Briefs

Municipal Finance Law Since 1971

IRS: Mailing Address for Notices of Defeasance and Certain Elections Required by Treasury Regulations.

The Treasury Regulations at 1.141-12(d)(3), 1.142(f)(4)-1(b)(1), and 1.142-2(c)(2) require that written notice be given to either the Commissioner [Internal Revenue Service] or the Internal Revenue Service within 90 days of the establishment of the defeasance escrows under Regs. 1.141-12 and 1.142-2, or the election under 1.141(d)(4)-1.

Treasury Regulations 1.150-5 provides that the notices required by these regulations be filed with the. Internal Revenue Service, 1111 Constitution Avenue, NW, Attention: T:GE:TEB:O, Washington, DC 20224.

Local Free Community College Plans May Be Template for U.S.

CHICAGO — An economic engine. A jumpstart for lower-income students. A partnership with businesses to groom a workforce. The idea of free community college has been touted as all these, by President Barack Obama, Democratic presidential candidates, and some Republicans.

The idea is to curb student debt and boost employment by removing cost barriers. Educators are split on its merits, with some worrying the push could divert students away from four-year schools. And some proposals could cost taxpayers tens of billions of dollars, and may still leave students with debt.

But thousands of high school graduates have just started community college for free, with the first batch enrolled in independent first-year programs in Tennessee, Chicago and soon Oregon doing so under different price tags and philosophies — offering templates of how a federal program might look and potential glitches.

"My family wasn't going to be able to support me financially," said 19-year-old aspiring doctor Michelle Rodriguez, who's taking classes for free in Chicago after concluding that even with in-state tuition and a scholarship a state university would be tough. "I'm the oldest. I'm the first generation to go to college."

Tennessee is at the forefront, with over 15,000 students enrolled in what's characterized as a jobs program. Chicago has just under 1,000 recent graduates in its City Colleges plan, with a push toward getting students into four-year schools at a discount. Oregon is accepting applications for next fall, with as many as 10,000 applicants expected. Other states are watching and considering their own programs.

Cost is bound to be a contentious issue, especially with strapped state and municipal budgets.

The Chicago's Star Scholarship — a signature Mayor Rahm Emanuel initiative — is the most generous. Beyond tuition, it picks up books and transportation. "All I have to worry about is ordering my books on time, getting my homework on time and studying," Rodriguez said. The price tops $3 million for the inaugural class.

Tennessee, which this year relies on roughly $12 million from lottery funds, is a "last dollar program" — paying what federal aid doesn't cover, with an average of $1,165 a person. Related costs are up to students. For now, Oregon has set aside $10 million, and will cover up to the average tuition of $3,500 annually per student.

Obama has floated a $60 billion nationwide plan calling for two years of free community college available to most anyone with a family income under $200,000 who can keep a 2.5 grade point average.

Republicans criticized the cost, and at least one presidential candidate, New Jersey Gov. Chris Christie, has said it's a bad concept. But Republican Jeb Bush likes the general idea and has supported Tennessee Promise. Democrats Hillary Clinton and Bernie Sanders both have proposed affordable college plans, and Sanders has introduced legislation to make four-year public universities free.

Using public dollars for such programs is relatively new. Organizers studied plans utilizing private dollars as a model. Graduates from Kalamazoo, Michigan, have had free tuition available at some public colleges for a decade. Philanthropists have run a similar Knoxville, Tennessee, fund since 2008.

Still, Democratic state Sen. Mark Hass, who pushed the Oregon Promise, had a hard time convincing his own party of benefits. He went to the economics.

"To make a business case out of it, you look at the social costs that some of those people would likely incur on the way to poverty," he said. "A year of community college is a lot less than a lifetime on food stamps."

GOP-led Tennessee, which has all 13 of its community colleges participating, saw an 18 percent enrollment bump at technical colleges, according to Mike Krause, executive director of Tennessee Promise.

"This is a jobs conversation," he said.

With most students in Tennessee and Chicago just finishing their first semesters, it's early for data on dropouts, higher degrees or job placement. Education experts, though, say the Tennessee and Oregon models could still leave students with debt.

"Students from low-income families, even when getting their tuition paid for, still have substantial shares of their cost of attendance to cover," said Debbie Cochrane, research director at the nonprofit Institute for College Access & Success. "They're not borrowing for tuition. They're borrowing for costs beyond tuition."

That organization says 69 percent of 2014 college graduates left school with outstanding student loans, which averaged $28,950.

Octavia Coaks, an 18-year-old in Chicago, said she feels lucky that her parents, a nursing assistant and railroad engineer, don't have to borrow more.

"I have a sister in college, they're (already) taking out loans. I don't want to put that kind of burden on them," said Coaks, who wants to study forensic science.

Setting the qualification parameters is one way to define the program. Unlike Obama's plan, the state and Chicago programs are limited to recent graduates.

Tennessee has no grade requirement. Oregon will require a 2.5 average. Chicago requires a 3.0 GPA.

City Colleges of Chicago Chancellor Cheryl Hyman said that level is a signal students "have the persistence and dedication to their studies needed to succeed in college."

Some researchers worry the program could divert students, at least initially, from four-year schools.

"Typically, students who have a 3.0 are already going to go to college," said Sara Goldrick-Rab, a University of Wisconsin-Madison professor who studies such programs. "It doesn't usually change who goes to college, it might change where they go."

But many in the Chicago program say they're trying to complete general requirements and then transfer. A dozen Chicago-area colleges say they'll offer scholarships to Star Scholars. Chicago graduate Oscar Sanchez, 18, says he's inspired by his older classmates in community college.

"If they're putting that much effort, why can't I?" he said.

By THE ASSOCIATED PRESS

NOV. 27, 2015, 12:25 P.M. E.S.T.

Puerto Rico's Dec. 1 Deadline: A Guide as Possible Defaults Loom.

Pensioners form a long queue to collect their pensions from a National Bank of Greece SA bank branch in T
Puerto Rico faces a dilemma: pay bondholders $354 million on Dec. 1 or hold on to the cash to ensure it can keep the government running.

The decision may mark a turning point in the long-simmering fiscal crisis for the Caribbean island, which is seeking to cut its $70 billion of debt by persuading investors to accept less than they're owed. While it began skipping payments on bonds backed only by legislative appropriations in August, next week's payment includes debt that the central government has guaranteed, giving investors legal recourse. Another $957 million is due from Puerto Rico and its agencies on Jan. 1.

If there's a default, bondholders may sue for repayment, igniting a legal battle that could upset efforts to negotiate a debt-restructuring agreement. Talks with creditors are only just beginning, and Puerto Rico has yet to disclose the terms it will offer investors to exchange their debt for new securities.

The commonwealth is doing "everything possible" to make the payment, according to Jesus Manuel Oritz, spokesman in San Juan for Governor Alejandro Garcia Padilla.

The payments Tuesday are all due on bonds sold by the Government Development Bank, which lends to the island's central government and its agencies. That includes $267 million of maturing debt that's guaranteed by the commonwealth. The securities are insured by MBIA Inc.'s National Public Finance Guarantee Corp., which would be on the hook if Puerto Rico doesn't pay.

The GDB is likely to default on at least a portion of what's due, Genevieve Nolan, a Moody's Investors Service analyst, wrote in a Nov. 11 report. That wouldn't be a surprise to the $3.7 trillion municipal-bond market: Puerto Rico's debt has been trading at distressed levels for more than two years and officials for months have said maintaining essential services and programs is the commonwealth's first priority.

Avoiding a default in December or January — the busiest months for debt payments until July — would give the commonwealth time to negotiate with investors and insurance companies that guarantee its securities. It may also cause prices to rebound, which would provide investors with an opportunity to sell ahead of a restructuring, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics.
Such a reprieve may only prove temporary. Standard & Poor's said in a September report that all of Puerto Rico's tax-backed debt is highly vulnerable to default.

One Island, Many Bonds

Here's a list of the island's debt, how much is outstanding, when major monthly payments are due, and the source of funds that back the securities, according to data compiled by Bloomberg. Also included are the bonds' most recent yields. A higher yield indicates that investors see more risk of non-payment:

Puerto Rico Sales Tax Financing Corp.: $15.2 billion. The bonds, known by the Spanish acronym Cofinas, are repaid from dedicated sales-tax revenue. A $6.2 billion portion of the debt, called senior-lien, is repaid first. The remaining $9 billion, called subordinate-lien, get second dibs. $1.2 million of interest is due in February and again in May. Senior Cofinas maturing in 2040 last traded for an average yield of 9.5 percent, while subordinate ones yielded 18 percent.

General-obligations: $12.6 billion. The debt backed by the commonwealth's full faith and credit. The island's constitution says general obligations must be repaid before other expenses. Puerto Rico owes $357 million of interest in January and an additional $805 million of principal and interest is due July 1. Securities due in 2035 last traded for an average yield of 11.5 percent.

Puerto Rico Electric Power Authority: $8.2 billion. Prepa, as it's called, is the island's main supplier of electricity and repays the debt from what it charges customers. The utility owes $196 million of interest in January and $420 million of principal and interest July 1. Prepa is negotiating with bond-insurance companies after reaching an agreement with some of its bondholders, who agreed to take a 15 percent loss.

Bonds maturing in 2040 last traded at an average yield of 9.2 percent.

Puerto Rico Government Development Bank: $5.1 billion. The GDB lends to the commonwealth and its localities. When those loans are repaid, the bank can pay off its debt. The bank owes $354 million in December and $422 million in May. Federally taxable bonds maturing in 2019 last traded for an average yield of 57 percent.

Puerto Rico Highways & Transportation Authority: $4.6 billion. The highway agency repays its debt with gas-tax revenue. It owes $106 million of interest in January and $220.7 million of principal and interest in July. The commonwealth has the ability to divert revenue that cover some highway bonds to pay its general-obligation securities, if there are no other available resources, according to the island's most recent financial disclosure. Bonds maturing July 2028 last traded for an average yield of 32 percent.

Puerto Rico Public Buildings Authority: $4.1 billion. The PBA bonds are repaid with lease revenue that public agencies pay for their office buildings. The agency owes $102.4 million of interest in January and $208 million of principal and interest in July. Bonds maturing 2042 last traded for an average yield of 10.4 percent.

Puerto Rico Aqueduct & Sewer Authority: $4.1 billion. The utility, called Prasa, supplies most of the island's water. The debt is repaid from water rates charged to customers. The water agency owes $86.5 million of interest in January and $135.1 million of principal and interest in July. Bonds maturing in 2042 last traded at an average yield of 8.7 percent.

Puerto Rico Pension-Obligation Bonds: $2.9 billion. The taxable debt was sold to bolster the island's nearly depleted pension fund. The bonds are repaid from contributions that the commonwealth and municipalities make to the retirement system. The system pays $13.9 million of interest every month in this budget year. Securities maturing in 2038 last traded for an average yield of 22 percent.

Puerto Rico Infrastructure Financing Authority: $1.9 billion. Called Prifa, the agency has sold the island's rum-tax bonds. These are securities repaid from federal excise taxes on rum made in Puerto Rico. Prifa owes $37.2 million of interest in January and $77.8 million of principal and interest in July. Bonds maturing in 2046 last traded for an average yield of 28 percent.

Puerto Rico Public Finance Corp.: $1.09 billion. The bonds are repaid with money appropriated by the legislature. The agency has defaulted every month since August on its debt-service payments because lawmakers failed to allocate the funds. It owes interest every month, the largest being a $24 million payment in February. Bond maturing in 2031 last traded for 7 cents on the dollar, according to trade reports. The yield wasn't disclosed.

Bloomberg Business

by Michelle Kaske

November 24, 2015 — 9:01 PM PST Updated on November 25, 2015 — 6:52 AM PST

Bloomberg Brief Weekly Video - 11/25

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

Watch the video.

November 25, 2015

Black Friday Finds Municipal Market Offering Very Few Bargains.

Looking for a Black Friday bargain? You won't find it in the municipal-bond market.

Benchmark 10-year munis yield about 2.1 percent, close to the lowest in a month and down from 2.22 percent two weeks ago, data compiled by Bloomberg show. The rally has kept yields below those on similar-maturity Treasuries for 22 straight trading days, the longest stretch since

November 2014.

With prices in the $3.7 trillion market climbing, “things become more foreboding for December” as the Federal Reserve decides mid-month whether to raise interest rates for the first time in almost a decade, Matt Fabian and Lisa Washburn at Municipal Market Analytics wrote in a report this week. Munis are “rich and likely primed to coast into month-end, assuming little turbulence from Treasuries,” they said.

Investors use the yield ratios of AAA munis to U.S. Treasuries to gauge relative value between the two assets, both of which are assumed to be close to risk-free. Historically the figure remained below 100 percent because state and local debt offers tax-exempt interest. For the highest earners, it would take a 10-year Treasury yield of 3.7 percent to match the equivalent tax-free rate from top-rated munis. It hasn’t been that high since February 2011.

Contrary to the historical trend, the ratio has averaged above 100 percent over the last five years as investors worldwide plowed into Treasuries because they offered higher yields than some other sovereign debt. That depressed yields relative to municipal securities, which don’t typically benefit from demand outside the U.S.

Taxable Equivalent

That’s what makes this four-week stretch unusual. The 10-year AAA muni index yield of 2.1 percent compares with 2.21 percent for Treasuries due in a decade. The ratio, at 95 percent, is down from as high as 110 percent in August.

Similarly, benchmark 30-year munis yield 107 percent of those on similar maturity Treasuries, down from as high as 122 percent in April. The ratio touched 102 percent on Nov. 10, the lowest this year, Bloomberg data show.

Across all maturities, munis appear too expensive, wrote Fabian, a partner at Concord, Massachusetts-based MMA, and Washburn, a managing director. “Investors should either solicit incremental spread or be prepared for the likelihood of near-term losses.”

Munis have outperformed in 2015 relative to other fixed-income assets. They’ve returned 2.7 percent this year, compared with 0.9 percent for Treasuries and 0.2 percent for investment-grade corporate bonds, Bank of America Merrill Lynch data show.

Historical Comparison

Fixed-income assets have fluctuated this year as investors watch for when the Fed will raise interest rates from near-zero, where they’ve been since the worst of the credit-market crisis in late 2008.

The market implied probability of a Fed move in its Dec. 15-16 meetings is 74 percent, close to the highest since August, based on the assumption that the effective fed funds rate will average 0.375 percent after liftoff, compared with the current range of zero to 0.25 percent.

Munis gained 5.5 percent in 2004, when the Fed last began raising rates, compared with 3.5 percent for Treasuries, Bank of America data show. It was a volatile year, with state and local debt losing 3.2 percent in the second quarter, the steepest three-month decline since 1994. Treasuries dropped 3.1 percent.

When the Fed looked prime to raise rates in mid-September, benchmark muni yields rose 0.1 percentage point over three weeks on bets the central bank would act.

If history repeats itself, muni-bond buyers may find better bargains if they skip Black Friday and make purchases with the last-minute holiday shoppers.

Bloomberg Business

by Brian Chappatta

November 26, 2015 — 9:00 PM PST Updated on November 27, 2015 — 5:05 AM PST

Moody's: Illinois' Inherent Credit Strengths Help Offset Pressures, But Do Not Create 'Rating Floor.'

New York, November 24, 2015 — Following its October downgrade, the State of Illinois (Baa1 negative) is the only state rated below single-A, exemplifying how a combination of pressures can offset typical sources of a state's credit strength, Moody's Investors Service says in a new report.

Illinois benefits from a diverse and wealthy economy as well as strong legal protections for general obligation (GO) bondholders, but these intrinsic strengths do not provide a credit quality "floor" that keeps the state's ratings at investment grade, Moody's says in "FAQ: The Future of Illinois' Credit Position."

"There is no floor for US state ratings, despite states' inherent credit strengths and typically very high ratings," Moody's VP-Senior Credit Officer Ted Hampton says. "The majority of states are rated either Aaa or Aa1, and this concentration at the top of our rating scale reflects states' powers — such as the ability to cut general spending — and positive features that include prudent governance practices, moderate debt burdens, and stable, diverse economies."

The factors that have eroded Illinois' credit standing in recent years could drive the state's credit closer to speculative-grade, Moody's says. These interrelated factors are governance weaknesses, bill payment deferrals, chronic structural budget gaps, and soaring unfunded pension liabilities.

The FAQ also says despite these pressures, Illinois has a significantly higher credit rating than Chicago (Ba1 negative) because the state's pension funding crisis is less immediate, its funding burden is significantly less in relation to its resources, and because of the state's broader fiscal powers including the ability to shift its funding burdens onto lower levels of local government with separate revenue sources.

"Chicago faces a near-term threat of pension plan asset depletion, while the state does not," Hampton says. The report notes that Chicago's pension plans face substantially higher annual outflows to pay benefits in relation to their assets.

The FAQ also discusses whether political division within a government creates credit-negative situations and if a budget compromise in Illinois improve the state's credit standing.

The report is available to Moody's subscribers here.

Why Did It Take So Long to Shut Down Brogdon?

WASHINGTON – Municipal market participants want to know why it has taken securities regulators so long to stop Christopher Brogdon from swindling investors by misusing for personal gain the proceeds of bonds and private placements that were supposed to finance the purchase and renovation of senior living facilities.

The SEC got a U.S. district court judge to freeze the assets of the Atlanta businessman on Friday and filed a lawsuit against him and his associates for misleading investors.

But sources said Brogdon's scams have been ongoing since the mid-1980s.

"It's incredible," said one lawyer who did not want to be identified but remembered a 1993 article on Brogdon in Forbes magazine entitled "Hello Sucker." The article described how Brogdon and his then-partner Edward (Gene) Lane, were still milking investors after being barred from the securities industry by regulators. Lane is now deceased.

In a complaint filed Friday against a firm involved with Brogdon's financings, the Federal Industry Regulatory Authority noted that Brogdon had twice been barred from the securities industry, once for "egregious misconduct" involving unauthorized transactions and later for a separate "scheme" involving financial misconduct. Brogdon had also been indicted for racketeering, theft, and Medicaid fraud, and had been found liable for breaching a stock repurchase guarantee agreement. In addition, several entities he controlled had filed for bankruptcy, according to FINRA.

Bondholders also contend the SEC's lawsuit against Brogdon and FINRA's complaint against the Cantone firm might be the beginning of a series of enforcement actions against Brogdon associates and accomplices.

Bernard Miskiv, a retired optometrist who lives in Kissimmee, Fla. and said he invested about $300,000 in bonds for Brogdon's projects, contends the action against Brogdon is "just the tip of the iceberg." Miskiv said he finds it hard to believe that Brogdon's alleged fraud didn't have additional help to go on for years without detection.

"How else could it go on for such a long time?" Miskiv asked. "It's impossible."

Miskiv said he and a confederation of about 40 other investors who also bought the bonds through a shared broker are currently "shopping around" for an attorney to bring a lawsuit against Bank of Oklahoma Financial, which was trustee for many of the Brogdon deals. Miskiv said he blames the bank for enabling Brogdon's conduct and wants it to make the investors whole.

"This stuff is unbelievable, what's going on," he said. "The bank has got to pay us off, has got to be forced to pay us off."

Bank of Oklahoma has filed its own suit against Brogdon and has said repeatedly that it is cooperating fully with regulators in regards to their business with him.

The SEC filed its complaint with the United States District Court for the District of New Jersey and is requesting a jury trial. It is also requesting that Brogdon return his ill-gotten gains with interest and penalties and be barred from serving as an officer or director of a public company. The SEC also wants the court to impose a receivership on the entities that Brogdon owns or controls.

The SEC found that since 1992, Christopher Brogdon raised more than $190 million for his nursing home and retirement community projects through 54 conduit municipal bond transactions and private placements. In total, the SEC alleged Brogdon committed fraud through at least 43 entities he owns or controls.

The offering documents given to investors for these projects said that the money to be raised would be used for purchasing, constructing, or renovating specific projects. The investors were supposed to receive interest from the revenues generated by the projects in which they believed they were investing. Instead, Brogdon, as early as 2000, commingled the investor funds and used the money for personal expenses and other business ventures, including restaurants and commercial real estate holdings, the SEC said.

Brogdon also consistently failed to file required financial statements and drew down on debt service reserve funds to make interest payments to his investors, without disclosing his actions or replenishing the funds. As a result, there were multiple times when interest or principal payments were due and he relied on third-party lenders to make his payments, according to the commission.

"As alleged, Brogdon deceived investors about the true nature of these investment opportunities," said Sanjay Wadhwa, senior associate director of the SEC's New York Regional Office. "Brogdon falsely promised investors they were investing in specific senior living projects when in reality they also were funding his personal expenses and other businesses, including some that are struggling financially."

Brogdon has been in the nursing home, assisted living, and retirement home community business for more than 25 years. He owns seven other real estate and restaurant business ventures throughout Georgia and the surrounding states and has been associated with retirement and healthcare companies since the early 1990s.

He was censured, fined, and barred from the securities industry by NASD, the predecessor to the Financial Industry Regulatory Authority, in 1986 when he was found to have effected transactions in securities while failing to maintain adequate net capital. NASD additionally found he had withdrawn cash and securities investments from the firm's accounts while the firm was deficient in net capital.

The SEC's complaint also names Brogdon's wife Connie Brogdon, who had a majority equity interest in many of the entities Brogdon uses to own, operate, or lease his facilities. His son Tygh Brogdon is named in the complaint as well because of his role as president of Brentwood Healthcare, which managed at least six facilities cited in the SEC's complaint. In addition to his family, the complaint also names several other business entities associated with Brogdon as defendants.

In total, Brogdon was found to have raised at least $168 million through municipal revenue bonds issued in conduit deals, or certificates of participation in the bonds. He also raised at least $22 million through private placement offerings, usually comprised of equity and debt. The SEC found that Brogdon continues to control the borrower entities in each of the offerings they cited.

The SEC cited several examples of Brogdon's misappropriation of offering proceeds.

In the spring of 2013 he raised money through two offerings for a retirement housing development referred to as the "Arcadia Project" in Conyers, Ga. The offerings included COPs in the Development Authority of Clayton County, Ga.'s revenue bonds and in the Savannah Economic Development Authority's subordinated mortgage healthcare facility revenue bonds, as well as Cherokee Financial's COPs in a 10% promissory note issued by Arcadia Partners.

The confidential disclosure memorandum given to investors, said that $1.4 million of the proceeds would be used to construct the Arcadia Project and that the private placement investors would be paid interest and principal from the revenues of the project. Instead $177,936 of the proceeds were used to make quarterly interest payments back to the investors in the Cherokee Financial private placement and $644,158 of the proceeds financed undisclosed expenses and payments, including some associated with his restaurants and his wife's personal account.

In another example, Brogdon raised $2.15 million through COPs in the Development Authority of Clayton County, Ga.'s first mortgage revenue bonds. Instead of using $425,000 of the proceeds as working capital for the facility that served as the source of payment of debt service on the bonds, Brogdon used the money to pay loans on an unrelated nursing home and commercial property owned by his Brogdon Family Company LLC. He also used the money to pay an employee's salary at one of the companies he co-founded and transferred $74,000 to his wife's personal account.

His misconduct continued through at least Oct. 8 of this year, according to the SEC. As recently as September 2015, he used commingled funds from unrelated facilities to satisfy debt service obligations on three outstanding bond offerings and as recently as November he used a personal line of credit to make debt service payments on two bond offerings that did not include that source of funding in their official statements.

"Unless the defendant is permanently restrained and enjoined, [he] will again engage in the acts, practices, transaction and courses of business set forth in this complaint," the SEC said.

The commission found Brogdon violated Section 17(a) of the Securities Act of 1933, which prohibits fraud and misrepresentations in the offer or sale of securities, and Section 10(b) of the Securities Exchange Act of 1934 as well as Rule 10b-5 in that section, which refer to manipulative and deceptive devices. He also violated Sections 20(e) of the Exchange Act, on liability of controlling persons, and Section 15(b) of the Securities Act, on registration of municipal dealers, according to the commission.

Meanwhile, FINRA charged Cantone Research majority owner Anthony Cantone, and his wife Christine, with making fraudulent misrepresentations and omissions of material facts in connection with the sales and extensions of more than $8 million of COPs in certain promissory notes that were executed on behalf of one of several entities controlled by Brogdon.

FINRA said they failed to disclose, among other things, Brogdon's past troubles with securities regulators and U.S. attorneys, as well as the bankruptcy filings of companies he controlled.

According to FINRA, four of five of the promissory notes have defaulted, resulting in about $6 million of losses to investors, while CRI and Cantone received commissions and other payments of more than $1 million from the offerings.

THE BOND BUYER

BY JACK CASEY and KYLE GLAZIER

NOV 23, 2015 4:09pm ET

Virginia Extends Existing P3 to Toll I-395 HOV Lanes.

DALLAS – Virginia will extend an existing transportation public-private partnership to add eight miles to its system of high-occupancy tolled traffic lanes near Washington, D.C.

Transurban has agreed to finance the $200 million to $250 million project to add a new high-occupancy lane to the existing two-lane HOV system on Interstate 395 and to convert all three to reversible HOT lanes, Virginia Transportation Secretary Aubrey Layne said on Nov. 20.

The Transurban-led 95 Express Lanes LLC, which includes Fluor Corp., maintains and operates the 28 miles of managed toll lanes on Interstate 95 that opened in late 2014 with a concession that extends to 2087. The $950 million project was financed and built under Virginia's Public-Private Transportation Act.

Motorists could use the existing free lanes on the I-395 segment or opt to pay a toll on the three reversible HOT lanes that increases as free-lane road congestion worsens, Layne said in a letter to local officials in Alexandria, Va., and Arlington and Fairfax counties. Vehicles with at least three passengers can continue to use the HOT lanes without charge.

"This proposal is not the same as proposals in the past," Layne said in his letter.

The state originally proposed extending the HOT system to the Potomac River, which separates the District of Columbia and Virginia, but dropped that plan when Arlington County filed an environmental lawsuit to block the project.

The tolled lanes on I-395 would connect with the I-95 high-occupancy lanes and extend to near the Pentagon under the new plan.

The revised proposal will provide funding for transit improvements and commuter parking lot expansions, but requires only minimal interchange construction, Layne said.

"The McAuliffe administration believes that this corridor needs new and expanded transportation options for drivers, sluggers, and transit users," he said.

Sluggers are commuters who congregate along the road to catch a ride with motorists seeking additional passengers so they can qualify for the high-occupancy lanes.

Jennifer Aument, general manager of Transurban's operations in North America, said the project will benefit residents and travelers for decades.

"By funding improvements through a public-private partnership, we are able to preserve scarce public transportation dollars to be used on other regional priorities and provide a revenue stream for transit that will continue to fund new options for travelers in the I-95 corridor for many years to come," she said.

The tolled HOV lanes will provide area motorists with new choices, said Joe Vidulich, vice president of government relations at the Fairfax County Chamber of Commerce.

"This innovative public-private partnership will result in a dedicated corridor for carpoolers and buses, while also providing new transportation choices for all motorists to reach their destination faster," he said.

The state will conduct an environmental assessment of the lane project and study other ways to improve travel along the I-95/395 corridor before construction begins, Layne said.

"The Commonwealth and its private partners are committed to a robust public engagement effort," he said.

Work could begin in 2017 and be completed in two years, Layne said.

Meanwhile, the Maryland Transit Administration last week received initial proposals from the four teams shortlisted as contenders for its Purple Line P3 light rail system. The 16-mile system in the northern suburbs of Washington is expected to cost more than $2 billion, but the project cost won't be known until the teams submit their financial plans on Dec. 8.

Maryland Gov. Larry Hogan in June cut the state's contribution to the Purple Line to $168 million from the original $700 million pledge and cancelled the Red Line light rail project in Baltimore.

The MTA plans to select a preferred partner for the Purple Line in February, subject to a review by the Maryland Board of Public Works in March. Work is expected to begin next year with completion in 2021.

THE BOND BUYER

BY JIM WATTS

NOV 24, 2015 2:07pm ET

- NABL Ethics Teleconference.
- MSRB Provides Implementation Guidance on Best-Execution Rule.
- MSRB Releases Long-Awaited Best Ex Guidance.
- GFOA 20th Annual Governmental GAAP Update (Encore Presentation)
- GASB: On The Horizon.
- Municipalities Pushing Out Payments Spur Balloon Debt Resurgence.
- Hawkins Advisory: Final Allocation & Accounting Regulations under Section 141 of the Internal Revenue Code.
- *Otay Mesa Property, L.P. v. United States* – Following landowners' successful takings claim against federal government for easement along the Mexican border, the Court of Federal Claims awards $1.1 million in attorneys' fees and $276k in costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act in very comprehensive, detailed, and informative ruling.
- And finally, Unclear On The Concept is brought to you this week by *City of Albany v. Pait*, in which a firefighter ran ye olde cost/benefit analysis, concluded that robbing the premises was definitely worth the risk, netted $200 in the heist, and promptly lost his job. The irresistible, pocketable, easily fenceable, untraceable object in question? Diamonds? Cash? Nope, a canoe. An honest-t--god canoe. We now invite you to close your eyes, imagine your favorite heist film, and insert canoes. Makes for a slightly different flick, no?

EMINENT DOMAIN - CALIFORNIA

Otay Mesa Property, L.P. v. United States

United States Court of Federal Claims - November 6, 2015 - Fed.Cl. - 2015 WL 6769105

Landowners, after succeeding on their claim against government for permanent physical taking of easement over certain property – a strip of land along the border with Mexico – moved for recovery of attorneys' fees and costs under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

Otay Mesa requested attorneys' fees in the amount of $1,705,631.59 and expenses in the amount of $397,943.01, plus costs of $85,242.82. The attorneys' fees were based on 5,725.50 hours billed by two firms. The total attorneys' fee amount included a ten percent contingency fee of $80,472.84. Otay Mesa's requested expenses range from early 2006 through September 30, 2015.

The Court of Federal Claims – in awarding $1.1 million in attorneys' fees and $276k in costs – held that:

- Flat fee of $10,000 for litigation strategy memorandum prepared prior to complaint was not reimbursable;
- Fees that landowners incurred for work by outside attorneys were reimbursable;
- Awarding landowners $11,860 for attorneys' fees on their motion for attorneys' fees and closing costs was reasonable;
- Including contingency fee due to landowners' counsel in attorneys' fees award was appropriate;
- Deducting any amount from attorneys' fees award based on partial success by certain of landowners' businesses was unwarranted;
- Landowners were entitled to recover 60% of fees and costs for period before first appeal; and
- Landowners were entitled to recover all fees and costs for period following first appeal.

Flat fee of $10,000 that landowners paid to law firm for litigation strategy memorandum that firm prepared prior to filing complaint was not reimbursable under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, even though firm may have used factual and legal knowledge it gained by drafting the preliminary report in litigating landowners' claim, this fee was not incurred "because of such proceeding," but rather preceded any such proceeding.

Fees that landowners incurred for work by outside attorneys were reimbursable under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where single firm represented landowners throughout nearly ten years of litigation in this case, and landowners' requests for fees it incurred by hiring specialized appellate attorney and expert on land use and zoning were neither excessive nor redundant.

Generally, when the Court of Federal Claims is determining reasonable attorneys' fees pursuant to a federal fee-shifting statute, costs associated with administrative services are more appropriately charged to overhead and should therefore be included within an attorney's hourly rate.

Reimbursing landowners for 1.6 hours at paralegal rate of $85, rather than at associate rate of $295, was appropriate under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where disputed time entries described required legal duties such as summarizing billing information for motion for award of attorneys' fees and costs.

Awarding landowners $11,860 for attorneys' fees on their motion for attorneys' fees and closing costs was reasonable under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, including $9,360 for 24 hours of time landowners' counsel spent on matter before oral argument and $2,500 incurred at oral argument, in light of government's comprehensive, if not excessive, objections to landowners' request for reimbursement.

Including $80,472.84 contingency fee due to landowners' counsel in attorneys' fees award to landowners was appropriate under the URA following success on their claim against government for permanent physical taking of easement over certain property, where landowners actually incurred such fee when it made payment and including contingency fee in calculating average hourly rate still produced billing rate well below average market rate in Washington, D.C. local market.

Reducing attorneys' fees award by $85,000 credit that counsel issued to landowners after landowners disputed fees already paid in another matter was unwarranted in determining reasonable fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where counsel issued landowners credit for disputed amount rather than writing check to landowners, and landowners then applied some of this credit toward amounts due in this case, but nothing in that scenario made those amounts due any less "incurred" than they would be had landowners paid with check.

Deducting any amount from attorneys' fees award based on partial success by certain of landowners' businesses was unwarranted in determining reasonable fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where all businesses involved in this case were owned and operated by landowners, as family, counsel represented family through its businesses from outset of litigation, court considered claims raised throughout litigation as belonging to common entity, and all businesses shared in damages award.

Reducing number of hours by 40% was appropriate for period of time between landowners' filing of initial complaint through first appeal, including discovery efforts leading to government's partial stipulation and first and second trials, under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where, except for stipulation, landowners' claims were timed-barred and reimbursement was not warranted for time spent pursuing such stale claims, although counsel's dogged efforts were important in obtaining stipulation.

Landowners were entitled to recover for all hours expended by their counsel during period of time covering remand trial on damages, second appeal, calculation of interest, and landowners' motion for attorneys' fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where only remaining issue during this period was amount landowners should recover as just compensation for easement to which government had stipulated.

Landowners were entitled to recover 60% of costs incurred during period of time between landowners' filing of initial complaint through first appeal, and all costs incurred for period of time covering remand trial on damages, second appeal, calculation of interest, and landowners' motion for attorneys' fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where first phase involved several claims that were time-barred, while second phase involved only remaining issue as to amount landowners should recover as just compensation for easement to which government had stipulated.

EMPLOYMENT - GEORGIA

City of Albany v. Pait

Court of Appeals of Georgia - November 18, 2015 - S.E.2d - 2015 WL 7270546

Firefighter sought review of decision of city manager terminating firefighter's employment. Firefighter also asserted civil claims against city, fire chief and deputy fire chief. The trial court reversed termination but granted summary judgment to fire chief and deputy fire chief as to certain of firefighter's civil claims. City, fire chief, and deputy fire chief appealed and firefighter cross-appealed.

The Court of Appeals held that:

- Evidence was sufficient to support finding of city manager that firefighter committed theft, as could warrant termination of firefighter's employment;
- Termination notice sent to firefighter before termination of firefighter's employment was sufficient to comport with due process; and
- Remand was required for trial court to reconsider all issues relating to attorney fee award.

Evidence was sufficient to support finding of city manager that firefighter committed theft, as could warrant termination of firefighter's employment. Firefighter entered guilty pleas to theft in relevant criminal prosecutions, even though pleas, as first offender pleas, did not constitute convictions at time of termination hearing, and firefighter himself admitted at termination hearing that he had taken the items in question from the property of another.

Termination notice sent to firefighter before termination of firefighter's employment was sufficient to comport with due process, where notice was written, and notice expressly informed firefighter that he was being terminated for theft and that he had the right to appeal the termination decision to the city manager in writing within ten days.

Remand was required for trial court to reconsider all issues relating to attorney fee award, in case in which trial court awarded firefighter a lump sum in fees as sanctions, in firefighter's action seeking review of decision of city manager terminating firefighter's employment, where order awarding fees did not indicate how the court apportioned the award based on the supposedly improper conduct and failed to articulate why it awarded that amount as opposed to any other amount.

LIABILITY - GEORGIA

Metropolitan Atlanta Rapid Transit Authority v. Morris

Court of Appeals of Georgia - November 16, 2015 - S.E.2d - 2015 WL 7162182

Motorists brought action against city transit authority, alleging that it was vicariously liable for negligence of unidentified bus driver who struck their vehicle. Following a trial in the trial court, jury returned a verdict for motorists. Transit authority appealed.

The Court of Appeals held that:

- Transit authority waived its challenge, on appeal, to admission of motorist's hearsay statement;
- Evidence supported finding that driver was a city transit authority employee acting in the scope of his employment at time he struck vehicle, as required to hold transit authority vicariously liable;
- Evidence supported finding that driver was negligent in striking motorists' vehicle, as required to hold transit authority vicariously liable; and
- Jury instruction on apportionment of liability was not warranted.

EMINENT DOMAIN - GEORGIA

[Fincher Road Investments, LLLP v. City of Canton]

Court of Appeals of Georgia - November 13, 2015 - S.E.2d - 2015 WL 7042602

City filed petition for condemnation and declaration of taking with respect to property owned by landowner. Landowner filed petition to set aside declaration of taking which the superior court denied. On interlocutory appeal, the Court of Appeals remanded for hearing on merits of petition. On same day remittitur was issued, city filed notice to dismiss its condemnation action. The Superior Court determined landowner was entitled to attorney fees and costs but was not entitled to any other compensation. Landowner applied for interlocutory appeal.

The Court of Appeals held that landowner was entitled to attorney fees and costs, as well as just compensation for the temporary taking.

While city's abandonment of its condemnation action undoubtedly entitled landowner to attorney fees and costs under statute governing reimbursement of condemned owner's costs and expenses, city's abandonment and obligation to pay those statutory damages in no way relieved it of the duty to provide just and adequate compensation for the period during which the taking was effective. Given the timing of the city's dismissal, trial court had not made a determination on issue of compliance and actually exercised its authority to set aside, vacate, or annul the declaration of taking.

PENSIONS - NEW JERSEY

Piatt v. Police and Firemen's Retirement System

Superior Court of New Jersey, Appellate Division - November 18, 2015 - A.3d - 2015 WL 7260608

State corrections officers, who were hired after they turned 35 years old and were enrolled in Public Employees Retirement System (PERS), brought action against Department of Corrections and Police and Firemen's Retirement System (PFRS), claiming that they should be transferred to PFRS.

The Superior Court granted summary judgment for Department and PFRS and denied partial summary judgment for officers. Officers appealed.

The Superior Court, Appellate Division, held that a person who becomes state corrections officer after age 35 is not age eligible for membership in PFRS.

Administrative rule setting forth age limitation of 35 years for membership in Police and Firemen's Retirement System (PFRS) did not conflict with statute governing requirements for county sheriff's membership in PFRS, which set age limit of 37 years, as to invalidate rule. Statute was part of amendment that permitted incumbent sheriff to transfer from Public Employees Retirement System (PERS) to PFRS under some circumstances and only created 37-year entry-age on transferees during 90-day period allowed and, thus, statute did not invalidate otherwise-applicable 35-year age limit set forth in rule and statute governing membership in PFRS.

LIABILITY - NEW YORK

Rusin v. City of New York

Supreme Court, Appellate Division, Second Department, New York - November 12, 2015 -

N.Y.S.3d - 2015 WL 6971574 - 2015 N.Y. Slip Op. 08155

Pedestrian brought action against city, seeking damages for injuries sustained when he slipped and fell on snow and ice while walking in the crosswalk across a roadway. City moved for summary judgment. The Supreme Court, Kings County, granted motion. Pedestrian appealed.

The Supreme Court, Appellate Division, held that under storm in progress rule, city could not be held liable for injuries sustained by pedestrian.

Under the storm in progress rule, the city generally cannot be held liable for injuries sustained as a result of slippery conditions that occur during an ongoing storm, or for a reasonable time thereafter. A “reasonable period of time” is the period within which the municipality should have taken notice of the icy condition and, in the exercise of reasonable care, remedied it.

City did not have reasonable opportunity to remedy allegedly dangerous condition that was created by extraordinary snowstorm that resulted in a total of approximately 20 inches of snow, after which temperature rose above, and fell below, freezing, and thus under storm in progress rule, city could not be held liable for injuries sustained by pedestrian when he slipped and fell on snow and ice while walking in the crosswalk across a roadway 57 hours after end of snow storm.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Diefenderfer v. Palmer Township Bd. of Sup'rs

Commonwealth Court of Pennsylvania - November 10, 2015 - A.3d - 2015 WL 6919451

Residents brought land use appeal against township board of supervisors and requested a declaration that an ordinance allowing digital advertising billboards was null and void. The Court of Common Pleas dismissed appeal. Residents appealed.

The Commonwealth Court held that:

- Proposed change to ordinance increasing the permitted hours of illumination from 17 to 24 hours per day was a substantial amendment, and thus township was required to re-advertise the change prior to enactment of ordinance, and
- Ordinance was void from its inception.

Proposed change to township ordinance allowing digital advertising signs and billboards, which increased the permitted hours of illumination from 17 to 24 hours per day, was a substantial amendment, and thus township was required to re-advertise the change at least ten days prior to enactment of ordinance, even though change appeared minor in grand scheme of ordinance. Light emanating from billboard interfered with adjacent residents’ sleep and impacted their use and enjoyment of property, residents would have enjoyed seven hours of darkness each night under earlier version of ordinance, and change significantly altered township’s regulation of nighttime billboard use.

Ordinance allowing digital advertising signs and billboards, including an amendment which increased the permitted hours of illumination from 17 to 24 hours per day, was void from its inception, in land use appeal that was filed more than 30 days but less than two years after enactment of ordinance. Billboard interfered with adjacent residents’ use and enjoyment of their property, and township did not comply with statutory procedure when it did not advertise amendment prior to its enactment, which prevented residents and similarly situated landowners from commenting on proposed amendment before it was enacted.

SCHOOL DISTRICTS - SOUTH DAKOTA

Schaefer v. Tea Area School Dist. 41-5

Supreme Court of South Dakota - November 10, 2015 - N.W.2d - 2015 WL 7074791 - 2015 S.D. 87

City residents petitioned to area school board to have school district boundary changed to exclude their residences. The board denied the residents' request, and they appealed. The Second Judicial Circuit Court affirmed. Residents appealed.

The Supreme Court of North Dakota held that:

- Notice of appeal was not rendered defective because it failed to individually name each of originally petitioning residents, and
- Substantial evidence supported school board's decision to deny petition.

Substantial evidence supported school board's denial of city residents' petition to have school district boundary changed to exclude their residences. Community alignment factor did not apply, given that more than one school district existed within community, and regardless, residents moved into district knowingly, school district provided bussing, and free parking, to area identified in petition, granting petition would serve to further blur otherwise clean district boundaries, no proof was offered to board regarding special needs, and residents who asserted on appeal that their children had special needs also indicated they were pleased with current instruction, new nearby school in district was being built, and all students at issue were in other district through open enrollment.

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Information for First Time Issuers of Tax Exempt Bonds – Introduction to Arbitrage

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Wednesday, September 16, 2015

Review of GASB Standards on Nonexchange Transactions.

Post-Implementation Review Concludes GASB Standards on Nonexchange Transactions Achieve Their Purpose.

News Release.

GASB Statement 33 and 36 PIR Report.

GASB Response to FAF PIR on Statement 33 and 36.

Decision Time in Puerto Rico.

Puerto Rico is facing another potential default in about a week as it has a $355 million debt payment due on Dec. 1. The troubled territory defaulted for the first time ever back in August when the government's Public Finance Corporation didn't meet a $58 million debt payment. This time, the Government Development Bank (which is Puerto Rico's main financier) is the one in trouble.

The GDB announced that it is meeting with bondholders who hold the majority of Puerto Rico's debt on Friday, Nov. 20 in New York. The meeting is not open to the public, although a statement issued by the GDB said they would be discussing a previously announced restructuring plan. That plan seeks to adjust the territory's debt in a way that maximizes creditors' recovery while "preserving the government's ability to serve its citizens."

It's hard to be hopeful that Puerto Rico will find a sustainable solution to its problem in the near future since lately the territory seems to just lurching now from one disaster to the next. It has been in a recession for nearly a decade and it has racked up debt of about $72 billion. It has less than $1 billion in cash — far less than it needs to run the government. Earlier this month, Moody's Investor Service issued a statement predicting the island would default on at least some of its debt due Dec. 1. Puerto Rico's credit rating is already well into junk bond territory.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 20, 2015

Christie Skeptical of Cost to 'Pay for Success.'

New Jersey Gov. Chris Christie recently vetoed a bill that would have created a fund to promote Pay for Success (PFS) programs in the state. Called the "New Jersey Social Innovation Act," the bill would have created a five-year social innovation loan program in the New Jersey Economic Development Authority to promote preventive health service programs. The fund would have been used for things like guaranteeing loans made by private financiers and paying for expenses related to the administration of the loan guarantees. (PFS programs seek private financing to fund preventative government programs. The financiers are paid back only if the program achieves the desired result.)

Christie didn't nix the entire bill but he did gut key parts and instructed staff to consider ways to use existing resources to accomplish the same goal. He noted that the fiscal note accompanying the bill was inconclusive about how much the program would cost (or save) the state. While noting the "possibility for cost savings through more efficient health care provision," the note went on to say that the details of the loan and loan guarantee agreements "will be significant factors in determining whether those cost savings may be realized."

In his veto, Christie said the finances were too vague. "While I agree that preventative health services are a valuable piece of the State's overall healthcare picture, I am concerned that establishing such a new financial structure requires further consideration before enactment," his letter said. "There have been mixed results concerning the true benefits of these programs in extensive studies conducted by the most respected experts." Indeed, PFS is still a nascent idea with just two projects in five years yielding results: one is working, and one didn't.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 20, 2015

Alaska Endowment Double-Check.

Alaska Gov. Bill Walker is moving forward with a rescue plan for the state's finances that would convert the state's Permanent Fund into an endowment that absorbs oil income and generates billions of dollars in annual revenue for the state's treasury. The state's $52 billion Permanent Fund was created via a constitutional amendment in the 1970s and automatically receives about one-quarter of the state's oil revenue each year. It's used solely to pay out annual dividends to residents and payments have averaged $1,400 for the past decade. The shift into one large endowment that the state government can access would reduce the resident payments to about $1,000, the governor's office estimates.

More than any other state, Alaska's budget has been hammered by the drop in oil prices. The state relies on oil revenues to fund nearly all of its operations. Last year it withdrew $2.7 billion out of its savings to close a budget gap and for this year's budget Walker relied on a similarly large withdrawal. His staff estimates that by moving all oil revenues into an interest-bearing endowment fund and withdrawing annually from that fund, the state would become less reliant on oil. His office estimates the fund would early about $3 billion in annual interest — a little larger than the amount the state withdrew from savings in the past two budgets.

But it doesn't hurt to double check. This week the administration said it had issued an RFP asking financial consultants to vet Walker's plan. It seems the governor's office wants as solid backing as it can get on a proposal that would overhaul the state's financial structure. Jerry Burnett, deputy revenue commissioner, told the Alaska Dispatch consultants would "vet our models, look at what we've done and what our assumptions are, and assuming that we go forward with this and that everything works out, be available to explain to the legislature that the Walker administration is telling you the truth."

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 20, 2015

Ballard Spahr: New Rules Encourage Use of P3s.

The recently released Internal Revenue Service (IRS) rules in the final allocation and accounting regulations encourage the use of public-private partnerships (P3s). Under these rules, a private party can form a partnership with a public party and use both tax-exempt bonds and equity to finance a facility. Previously the tax rules did not permit these types of partnership structures.

What do the final regulations do?

In general, allocation and accounting rules play a role in determining whether tax-exempt bonds, including tax-exempt bonds issued to pay a portion of the capital costs of a P3, are categorized as governmental bonds or private activity bonds (PABs) under the Internal Revenue Code. Governmental bonds are bonds where the proceeds are primarily used to finance governmental functions or which are repaid with governmental funds. PABs are bonds in which the state or local government serves as a conduit, providing financing to private businesses or individuals. Regulations already exist for measuring the extent of use by a party other than a state of local government (private business use) in a bond financed facility. The existing regulations provide that if a facility is financed exclusively with tax-exempt bonds, up to 10 percent private business use generally is permitted.

Mixed-use facilities. The accounting rules are relevant when a facility being financed with tax-exempt bonds is used by both governmental users and private users (referred to as a mixed-use facility). The final regulations provide guidance on when more than 10 percent private business use of a facility can be permitted in circumstances where there is less than 100 percent tax-exempt bond financing. The final regulations provide a method to identify the portion of a mixed-use project that is governmentally used. Mixed-use financing is permitted where the financing reflects the proportionate benefit derived by the users.

P3s and the partnership piece of the final rules

In a major step forward, the final regulations permit partnerships between private and governmental partners without jeopardizing the tax-exempt status of bond-financed facilities and provide rules for measuring the use of bond-financed property by a private partner. In doing so, the IRS and U.S.

Treasury Department specifically indicated that the change was made to accommodate pP3s and remove barriers to tax-exempt financing of the government's (or 501(c)(3) organization's) portion of the benefit of property used in joint ventures.

Measuring private business use. The final regulations set forth a method for measuring the private business use of a tax-exempt bond-financed property resulting from the use of the property by a partnership that includes a partner that is a nongovernmental person. The amount of the use by the private partner will be based on that partner's greatest share of the partnership items (income, gain, loss, deduction or credit) in any one-year period.

The final partnership rule is a great step forward for private parties seeking to enter into arrangements with public entities because it permits flexibility in structuring arrangements that will not jeopardize the tax-exempt status of the bonds. The need for this type of rule is evidenced both by the increased interest and the discussions regarding flexibility in structuring P3s for infrastructure projects. Moreover, the implementation of the Affordable Care Act has highlighted the need for recognition of the proportionate benefit to a governmental person or 501(c)(3) organization participating in a joint venture with private partners.

When can these regulations be applied?

The final regulations generally apply to bonds sold, and deliberate actions that occur, on or after January 25, 2016. Issuers also may elect to apply the partnership provisions and the allocation and accounting rules in whole but not in part to any bonds to which the current regulations apply.

by Vicky Tsilas, J. Brian Walsh, and Charles S. Henck

November 20, 2015

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

NABL Ethics Teleconference.

Ethics Teleconference: THE CONFLICTED BOND LAWYER: Conflict Analysis Considerations in the Post-Dodd-Frank/MCDC World

Date: Tuesday, December 8, 2015, 1-2:30pm EST

This teleconference will discuss and suggest an analytical framework for practitioners relating to (a) the effectiveness of conflict waivers embedded in engagement letters and whether certain conflicts are non-consentable, (b) balancing client expectations, particularly in light of increasing post-issuance requirements, with flat or lower fees, and (c) conflicts created by MCDC enforcement actions.

Panelists:

- Wayne D. Gerhold – Law Offices of Wayne D. Gerhold, Pittsburgh, PA
- Teri M. Guarnaccia – Ballard Spahr LLP, Baltimore, MD
- William L. Hirata (Chair) – Law Offices of William L. Hirata PLLC, Charlotte, NC
- G. Mark Mamantov – Bass, Berry & Sims PLC, Knoxville, TN

CLE Information: NABL has applied for and anticipates receiving ethics CLE credit for between 1.5 and 1.8 hours in most states that accredit teleconferences. Be sure to include your CLE states and identifying numbers on the registration form. Certificates of Attendance will be e-mailed to attendees following the program, and credit hours will be reported to those states that require sponsors to report credit, based on the telephone records, and where required, the attendance codes supplied during the program.

Registration Fees: $195 for NABL members; $295 non members. Registrations must be received by 5:00 pm EST, Friday, December 4. Materials and instructions will be sent to all registrants on Monday, December 7.

Online registration is currently only available to NABL members. Non-members may use the downloadable registration form.

Register Online

Registration Form

GFOA 20th Annual Governmental GAAP Update (Encore Presentation)

Training Type: Live-Streaming
Course Status: Repeat Offering
Date and Time: Dec. 3, 2015 – 1:00pm to 5:00pm EST
Region: Eastern
Level: Intermediate
Field of Study: Accounting – Governmental
CPE Credits: 4
Member Price: $180.00
Non-Member Price: $195.00
Prerequisite: Intermediate Governmental Accounting (or equivalent = basic understanding of

GAAP for state and local governments)
Speakers: Stephen J. Gauthier, Director Technical Services Center, GFOA & Steven A. Solomon, Deputy Director Technical Services Center, GFOA

Program Description: The Government Finance Officers Association (GFOA) will offer its 20th Annual Governmental GAAP update on November 5, 2015, and again on December 3, 2015, using the latest live video and audio streaming technology. The seminar offers an incomparable opportunity to learn everything you need to know about the most recent developments in accounting and financial reporting for state and local governments from the convenience of your own computer. Enjoy all the benefits of the highest quality continuing professional education without the time and expense of travel. Sign up with your colleagues and take advantage of special group rates.

Participate in interactive exercises to test your knowledge of the material being presented. Receive immediate feedback to your questions during the program from GFOA's Technical Services Center staff.

Coverage: This year's Annual Governmental GAAP Update will provide comprehensive coverage of the most recent developments in accounting and financial reporting for state and local governments, including:

- Final guidance from the Governmental Accounting Standards Board (GASB) on **fair value** and its application (GASB Statement No. 72);
- Final GASB guidance on **pension plans** not administered through qualifying trusts (GASB Statement No. 73);
- Final GASB guidance on other **postemployment benefits** (GASB Statement No. 74 and GASB Statement No. 75);
- Practical application of the **newest pension guidance** for employers (sample journal entries for the start and end of the first year of implementation, clarification regarding the calculation of covered payroll, audit impact, and explaining the change to the public);
- **Lessons learned** from the implementation of GASB Statement No. 68;
- Final GASB guidance on the **hierarchy of generally accepted accounting principles** (GASB Statement No. 76);
- Final GASB guidance on **tax abatement disclosure** (GASB Statement No. 77);
- Proposed GASB standard on **external investment pools** (exposure draft);
- Proposed GASB standard on **irrevocable split-interest agreements** (exposure draft);
- Proposed GASB standard on **blending requirements** (exposure draft);
- GASB proposals on leases, **fiduciary responsibility**, and **asset retirement obligations** (forthcoming exposure drafts);
- GASB **Technical Plan**; and
- Common **reporting deficiencies**.

Seminar Objectives: Participants in this year's GAAP Update should obtain a practical understanding of:

- How to measure and apply fair value in financial statements;
- How to make the appropriate employer journal entries for pensions in the year of transition to the GASB's new pension standards;
- How to account for pensions that are not administered through a qualifying trust;
- Which payroll number to use as a point of comparison for an employer's net pension liability;
- How to disclose tax abatements in the notes to the financial statements;
- How the GASB proposes to account for external investment pools and irrevocable split-interest agreements;

- How the GASB proposes to expand the use of blending for certain component units;
- Other issues the GASB is exploring; and
- How to avoid common reporting deficiencies.

Frequently Asked Questions

Agenda: Download
Registration Form: Download

White Cites Pros and Cons of Hedge Fund Disclosure Bill.

WASHINGTON – Securities and Exchange Commission chair Mary Jo White on Wednesday declined to take a position on a bill that would increase hedge fund reporting in the wake of fund purchases of Puerto Rico's debt, saying it has both pros and cons.

The bill, introduced on Nov. 5 by Rep. Nydia Velázquez, D-N.Y., would require hedge funds holding a 1% or more ownership stake in an entity's debt or equity securities to file quarterly reports with the SEC.

Current law requires hedge funds to report to the SEC within 10 days if they acquire 5% or more of an equity position, but it does not apply to derivative positions or government debt issues.

Velázquez asked White to comment on the bill, which is pending before the House Financial Services Committee, during a hearing held by the panel on the SEC's budget and operations.

White said she would have to study the precise parameters of the bill, but that it would likely provide benefits by increasing transparency and protecting private investors through more disclosure. However, she also noted it could have negative effects by exposing specific hedge fund strategies.

A day earlier, at a Capitol Hill event addressing hedge funds and private equity, Velázquez said that hedge funds holding Puerto Rico debt are using their leverage to lobby for "draconian cuts" that harm the island's residents. The commonwealth and its authorities currently have roughly $72 billion of debt.

Hedge funds hold about 30% of that debt, but the specifics of their holdings are unclear, Velázquez said.

The lawmaker said hedge funds, who invested in the island's debt as its fiscal situation deteriorated, are saying Puerto Rico can avoid defaulting on its debt by cutting spending in key areas like education. She called those suggestions "morally unacceptable" because they "will hurt working families and retirees."

She added that hedge funds are also opposing "sensible steps," like extending Chapter 9 bankruptcy protection to help Puerto Rico address its debt situation.

Hedge funds "would rather see the economic future of the island vanish than take a modest discount on the debt they bought, even though they knew the island's debt was in distress when they purchased it," Velázquez said.

She said her bill would not correct all the problems associated with hedge fund involvement in the troubled debt, but that “taking a clear-eyed look at how these funds function would be a good start.”

THE BOND BUYER

BY JACK CASEY

NOV 18, 2015 1:19pm ET

Dickinson Wright: Municipal Legal News: Volume 1, Number 2.

Employment Requirements for Building Officials

The Michigan Attorney General has interpreted a recent law requiring municipal building officials to be “employed” by a municipality to mean that building officials cannot be private independent contractors. The question of whether a worker is an employee is based on the “economic realities” of the arrangement, with consideration of the following factors: (1) control of the worker’s duties; (2) payment of wages; (3) right to hire, fire, and discipline; and (4) performance of the duties as an integral part of the employer’s business toward achieving a common goal. The Attorney General opined that state law does not permit arrangements where a private entity trains and oversees the building official, provides all of the official’s compensation and benefits, and retains authority to fire and replace the individual performing the building-official function.

In light of the Attorney General’s opinion, municipalities that use a private contractor as the building official face a number of legal risks. For one, the Department of Licensing and Regulatory Affairs could initiate enforcement actions against it. Also, property owners could challenge a building official’s decision if the official is unlawfully employed.

Municipalities have several options to comply with this new employment requirement. One cost-efficient option is to partner with neighboring communities to share a single building official. So long as the head building official is a municipal employee, the law permits private contractors to perform building-related services like inspections and plan reviews.

Speech Regulation After *Gilbert*: From Yard Signs to Panhandling and Beyond

The U.S. Supreme Court’s recent *Reed v. Town of Gilbert* decision involved a dispute over yard signs, but its consequences reach far beyond for local governments. Prior to *Gilbert*, many believed that the 1st Amendment permitted separate regulatory schemes for different types of messages, so long as each category was regulated reasonably without hostility to particular types of speech. The court in *Gilbert* rejected that understanding, holding that any regulatory scheme that categorizes speech based on content is subject to “strict scrutiny,” and is therefore presumptively unconstitutional. In other words, if a sign ordinance requires reading the sign to determine which regulations apply, it violates the 1st Amendment unless the regulations are narrowly tailored to a compelling government interest. The court struck down the ordinance at issue in *Gilbert* because it established three categories of noncommercial signs (political, ideological, and directional) and treated each category differently without sufficient justification.

Lower courts are beginning to apply *Gilbert’s* understanding of the 1st Amendment in other contexts, overturning existing case law on speech regulation. At least two federal courts in other jurisdictions have recently held that any ordinance that establishes special regulations for people soliciting donations is subject to strict scrutiny. If extended to Michigan, this reasoning could be used to challenge “aggressive panhandling” ordinances that regulate specific methods of panhandling (such as standing near ATMs) that are most likely to cause offense or create safety hazards. A federal district court in Colorado recently ruled that ordinances that prohibit panhandling near ATMs do not withstand strict scrutiny, because not all requests for money near ATMs are threatening in nature. Any community with an aggressive panhandling ordinance, or any ordinance that takes the message of speech into account, may wish to consider the impact of the *Gilbert* decision.

Freedom of Information Act: The Personal Privacy of Criminal Suspects

In *ESPN, Inc. v. Michigan State University*, the Michigan Court of Appeals issued an important decision regarding incident reports of uncharged crimes. The case involved a Freedom Of Information Act request for all incident reports mentioning one or more student athletes on a 301-person list. The university released the responsive reports, but used the “personal privacy” exemption to redact the names and identifying information of suspects who were never charged with crimes. The Court of Appeals deemed the redactions were improper in this context because the public interest in disclosure clearly outweighed the interest in nondisclosure. The court found that the public had a strong interest in knowing whether student-athletes were treated more favorably than the general student population, and in knowing whether the university accurately reported certain incidents to the news media.

Prior to the *ESPN* case, many police departments routinely redacted the names of uncharged suspects under the guidance of a Michigan Attorney General opinion. The Court of Appeals decision in *ESPN* indicates that, in at least some cases, the importance of a news story outweighs a suspect’s right to privacy and requires disclosure. Michigan State University has requested leave to appeal to the Michigan Supreme Court.

New HUD Regulations Impose Additional Requirements on Program Participants

The U.S. Department of Housing and Urban Development (HUD) has recently issued new regulations applicable to recipients of certain types of HUD funds. The new regulations mandate that recipients of certain funding – Community Development Block Grant funds, Emergency Solutions Grant funds, Home Investment Partnership funds, Housing Opportunities for Persons with AIDS funds, and Public Housing Agencies – engage in a four-step process to set fair housing priorities and goals every five years. The process, known as an Assessment of Fair Housing (AFH), is designed to replace the current “analysis of impediments” process (AI).

The AFH process includes questions designed to assist participants in better identifying fair housing issues, as well as the contributing factors for those issues. Once completed, HUD reviews the AFH for a determination as to whether the fund-recipient’s programs are consistent with fair housing and civil rights requirements. Unlike the AI process, AFH’s must receive HUD approval. The goals identified in the AFH must then be incorporated into various action plans, which also have extensive regulatory requirements.

Although it is unclear how the new regulations will be implemented, HUD could use the AFH process to investigate whether municipal housing and land-use regulations have a “disparate impact” on protected classes like race, religion, sex, familial status, national origin, and disability. This type of implementation could affect housing and zoning policies like minimum lot-size requirements, home density requirements, and caps on the number of homes that may be rented in a certain area. HUD’s implementation of the new regulations should be closely tracked. In the meantime, careful consideration should be given to accepting HUD funds.

Sixth Circuit Upholds Municipal Grass-Mowing Fees

In *Shoemaker v. City of Howell*, a federal appeals court issued an important decision regarding the legality of municipal fees. The ordinance in Shoemaker required property owners to maintain the grassy area in the public right-of-way between the sidewalk and the street. When the property owner refused to mow that area, the city performed the work at the owner's expense and then placed a lien on the property for the unpaid fees.

The 6th Circuit Court of Appeals rejected two constitutional challenges to the ordinance. First, the court said municipalities can lawfully require property owners to maintain the grassy area in adjacent public right-of-ways, since the property owner has a partial ownership interest in that area. The court also rejected the property owner's procedural due-process challenge, holding that municipalities are not required to initiate ordinance prosecutions or offer formal appeal proceedings before imposing grass-mowing fees. In reaching that conclusion, the court emphasized the relatively low monetary amount of the fees, as well as the relative urgency of abating the ordinance violation.

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.

Last Updated: November 17 2015

Article by Dickinson Wright

Dickinson Wright PLLC

MSRB: Muni Trading Plummets in Third Quarter.

WASHINGTON – Municipal market trading plummeted to $551 billion in the third quarter, the lowest level since at least 2005 when the Municipal Securities Rulemaking Board began recording the statistics, according to the board.

The 18% drop in the total par amount traded from $672 billion in the third quarter of 2014 is one of a series of findings from the MSRB's quarterly muni market statistics report released on Thursday. The report covers the period from July through September 2015.

The total par amount traded has steadily fallen from a peak of more than $1.8 trillion in 2007, according to the data. The largest drop occurred between the first quarter of 2008, when the amount was $1.8 trillion, and the first quarter of 2009, when the level fell to roughly $900 billion.

Matt Fabian, managing director at Municipal Market Analytics, said the decrease is mostly due to low yields and tight spreads in the market.

"The spreads are so tight that participants haven't seen much upside in trading," Fabian said. "In the sort of low-yield, low-supply environment that we have had, bonds have been going away in the primary market and not trading very much after."

He added that with market participants expecting the Federal Reserve to raise interest rates in the near future, it does not make sense for investors to buy bonds now when they could wait six months.

The MSRB report also shows that customer purchases of munis increased slightly in the third quarter of 2015 when compared to the same period last year. The average of 15,189 customer purchases per day is 9% higher than the roughly 13,953 customer purchases per day in last year's third quarter. Fabian said the third quarter of 2014 was a low-point for customer purchases and that it made sense that the quarter "would be an easy target to beat."

Retail-sized trades, roughly considered those of $100,000 or less, also increased slightly last quarter when compared to the same quarter the year before. The trades accounted for a daily average of $405 million, or 9% of all customer purchases in the past quarter. During the third quarter of 2014, the trades averaged $364 million, or 7% of all customer purchases, on a daily basis.

Puerto Rico bonds also remained some of the most actively traded bonds in the third quarter. Seven of the top 50 most actively traded bonds by par amount and six of the top 50 rated by number of trades were Puerto Rico bonds. A 2014 general obligation bond issue from the commonwealth ranked second among the par amount of trades and a 2012 GO issue ranked fourth among the number of trades.

The volume of interest rate resets also followed their multiyear trend by declining to 134,817 in the third quarter of 2015 compared to 155,182 in the third quarter of 2014. Fabian attributed the continued decline to the fact that some variable rate demand obligations were replaced by direct placements with banks.

THE BOND BUYER

BY JACK CASEY

NOV 19, 2015 3:14pm ET

MSRB Releases Long-Awaited Best Ex Guidance.

WASHINGTON – The Municipal Securities Rulemaking Board released its much-anticipated best execution guidance for dealers on Friday, providing answers to frequently asked questions about the rule as well as the exemption for sophisticated municipal market professionals.

MSRB Rule G-18 on best execution requires dealers, whether acting as agents or principals, 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 best execution standard does not necessarily mean a dealer must find the best price.

Dealers are exempted from the rule if their customer is considered an SMMP under both Rules D-15, which defines an SMMP, and Rule G-48 on transactions with SMMPs. The rule also does not apply to trades between dealers. But it covers customer trades that are cleared through another dealer.

The MSRB first filed G-18 with the Securities and Exchange Commission in August 2014 and received SEC approval later that year on Dec. 8. The rule was supposed to have been effective on Dec. 7 of this year, but dealers had questions about implementing it so the MSRB agreed to delay the effective date until after it issued the guidance. The effective date for the rule is now March 21, 2016. The MSRB has tried to ensure its rule and guidance align with the Financial Industry Regulatory Authority's rule on best execution for dealers trading corporate debt.

In its rule, the MSRB provides dealers with a non-exhaustive list of factors to take into account when using reasonable diligence to ascertain the best price for a muni, 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 guidance tries to answer dealers' questions about such issues as: what constitutes reasonable diligence; how they should document their compliance; how to meet best-ex requirements in extreme market conditions, and; how brokers' brokers or alternative trading systems can be used to show reasonable diligence in determining the best market.

"The MSRB is issuing this guidance to facilitate dealers' compliance with their new obligations and ensure that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities," said MSRB executive director Lynnette Kelly.

But the MSRB makes clear that it is somewhat limited in the guidance it can give on the rule. Rule G-18 is meant to be flexible to fit the diverse nature of different dealers' businesses, the board said, so determining whether a dealer exercised reasonable diligence "necessarily involves a 'facts and circumstances' analysis, and the actions that in one instance may meet a dealer's best-execution obligation may not satisfy that obligation under another set of circumstances."

The guidance urges dealers to develop written policies and procedures that both fit their specific business models and ensure documentation of their compliance. Even though the rule is meant to allow a broad range of policies and procedures, the MSRB recommends that dealers consider reviewing and including the existing practices of their trading operations, existing best practices within the municipal securities market, and existing best practices in the corporate debt securities market with respect to FINRA's best execution rule.

The MSRB suggests dealers pay attention to three requirements in the rule when documenting compliance. They should: have written policies and procedures for compliance; document periodic reviews of their written policies and procedures and the results of those reviews, and; consider documenting their adherence to the policies and procedures.

In the event of extreme market conditions, the MSRB said it expects dealers to have evaluated their procedures for such situations to make sure they: still treat customer orders fairly, consistently and reasonably; disclose to customers any differences in normal order-handling procedures, and; only implement different procedures designed to respond to extreme market conditions when warranted by market conditions.

The MSRB said there is no set number of either markets or dealers a dealer should check to meet its diligence requirement. A dealer should generally check more than one market or expose customer orders to multiple offerings or bids and show the external offerings or bids to retail customers, it said.

The rule also does not require dealers to use broker's brokers or ATS' as part of their diligence. The guidance said the rule is not designed to favor a particular type of venue over another and that the "expansive interpretation" of the term "best market" is meant to allow dealers to tailor their compliance with their specific areas of business. However, the guidance notes that electronic systems are becoming more available and dealers should periodically consider whether ATSs would provide benefits for their customer transactions.

Additionally, the guidance said using only one broker's broker pricing for a security or one ATS will not categorically qualify as reasonable diligence, but a dealer's policies and procedures can establish the facts and circumstances under which a dealer could be allowed to do so.

The self-regulator also received questions about what qualifies as a similar security under the rule. While not providing an exhaustive list, the MSRB said dealers could look at the issuer, source of repayment, credit rating, coupon, maturity, or a variety of other factors to determine similarity.

Leslie Norwood, associate general counsel and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA welcomes the guidance but still needs to review it carefully with its members. She added that SIFMA will review the guidance with an eye toward differences between the MSRB's and FINRA's, as well as any implications for the market or any implementation challenges.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said BDA also appreciates the MSRB's effort and work with FINRA and will be talking to its members about the changes.

"As always, the BDA continues to focus on the transparency and efficiency of the municipal securities market and we know the MSRB is implementing this (and other) rules for the same purposes," she said.

THE BOND BUYER

BY JACK CASEY

NOV 20, 2015 4:48pm ET

GASB: On The Horizon.

The GASB plans to issue two final Statements and three proposed Statements before the end of 2015. Here's what's coming:

STATE AND LOCAL GOVERNMENT INVESTMENT POOLS

In December, the GASB is scheduled to issue final guidance on local government certain investment pools operated by governments (also known as external investment pools). This proposal is intended to address rule changes recently adopted by the Securities and Exchange Commission (SEC) that will impact the related financial reporting requirements based on a reference to those rules in current GASB literature.

Some local government investment pools function much like money market funds. Typically, those government investment funds pool the resources of participating governments and invest in various securities as permitted under state law. By pooling their cash together, participating governments benefit in a variety of ways, including economies of scale, professional management, and enhanced liquidity.

Under the SEC's new rules that have been incorporated by reference in current GASB standards, which take effect in 2016, many of these pools and their participants are not expected to qualify for reporting investments on an amortized cost basis, which is currently allowed under the SEC's "2a7-like" pool provisions in the standards. After deliberating comments received on the June 2015

Exposure Draft, the GASB is completing final guidance that will establish criteria for pools and pool participants to qualify for reporting investments at amortized cost.

More information on the project can be found here.

PENSIONS

The GASB plans to issue guidance related to pensions through two separate standard-setting projects:

- Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans, and
- Pension Issues.

Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans

In December, the Board plans to issue guidance to assist governments participating in certain private-sector or federally sponsored multiple-employer defined benefit pension plans that do not have access to information required by the new GASB pension standards, which took effect this summer. Plans envisioned to be addressed by the guidance include Taft-Hartley plans and plans with similar characteristics.

Stakeholders alerted the Board that a small number of governments do not have access to the information required to comply with the new pension standards when they participate in certain private-sector or federally sponsored multiple-employer plans. To address this issue, the Board proposed in October to scope these governments out of GASB Statement 68 (Accounting and Financial Reporting for Pensions) requirements and to provide them with alternative guidance.

The forthcoming Statement will set separate standards for employers participating in certain multiple-employer pension plans that have specific characteristics. These standards will address recognition and measurement of pension expense and liabilities, note disclosures, and required supplementary information.

More information on the project can be found here.

Pension Issues

In December, the GASB expects to issue an Exposure Draft containing proposed guidance to address certain issues raised by stakeholders during the implementation of the new GASB pension standards.

The proposal addresses:

- Issues related to presentation of payroll-related measures
- Issues related to employer-paid member contributions
- Issues related to deviations from the guidance in Actuarial Standards of Practice.
- The Board plans to issue a final Statement in early 2016.

More information on the project can be found here.

ASSET RETIREMENT OBLIGATIONS

In December, the GASB is scheduled to issue an Exposure Draft containing proposed standards on asset retirement obligations (AROs) involving power plants, sewage treatment facilities, and other capital assets other than landfills.

One of the most common AROs encountered by governments involves closure and post-closure care for landfills. While existing GASB literature provides guidance for landfill AROs, it does not include guidance on AROs for other capital assets.

Through this project, the Board will establish recognition and measurement guidance for AROs relating to governmental capital assets other than landfills, which is meant to improve consistency and comparability in this area of financial reporting.

More information on the project [can be found here.]

FIDUCIARY ACTIVITIES

Finally, the GASB is also expected to issue an Exposure Draft in December on accounting and financial reporting for fiduciary activities.

Currently, governments are required to present financial statements regarding their fiduciary activities in their fiduciary fund financial statements. However, the concept of what constitutes fiduciary activity is not clearly defined. GASB research and inquiries from stakeholders have indicated there is diversity in practice in the current reporting of various types of fiduciary activities.

In the Board's forthcoming Exposure Draft, the Board will propose specific criteria for when and how a government would report a fiduciary activity. The proposal will also address classification of fiduciary funds and recognition of fiduciary fund liabilities.

The Board is scheduled to issue a final Statement in late 2016.

More information on the project [can be found here.]

GASB: What You Need to Know - The Financial Reporting Model Reexamination.

The Governmental Accounting Standards Board (GASB) is now considering how to improve the governmental financial reporting model—the blueprint of state and local government financial statements.

Guidance that could be impacted by this project includes Statement No. 34, Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments, and other related pronouncements.

Issued in 1999, Statement 34 set the contents of financial statements in place today, ushered in important innovations to general purpose external financial reporting, and made it possible to more fully assess a government's overall financial health.

WHY DID THE GASB EMBARK ON THIS PROJECT?

Once Statement 34 was implemented, users of financial statements had access to a comprehensive, big-picture view of a government's financial health along with information that would allow them to better assess how much it costs each year to provide services.

In recent years, reexamination of the model has become a high priority for the GASB's primary stakeholders. The Board's advisory group—the Governmental Accounting Standards Advisory Council—for a number of years ranked reexamination of the financial reporting model as a top priority. The Board added the topic to its slate of pre-agenda research activities in 2013.

In September 2015, the GASB decided that, based upon the results of two years of extensive research, it was important as part of its commitment to maintaining the effectiveness of its standards to reexamine the financial reporting model.

WHAT ARE POTENTIAL AREAS OF IMPROVEMENT?

While the results of the research conducted by the staff indicate that most components of the financial reporting model remain effective, they highlighted a number of areas that could be improved. The reexamination will consider several key areas of the model, including:

- Governmental Fund Financial Statements
- Government-Wide Financial Statements
- Major Fund Reporting
- Management's Discussion and Analysis
- Budgetary Comparison Information.

In conjunction with this reexamination, the Board's efforts to develop recognition concepts for information presented in governmental funds have resumed. The GASB's conceptual framework project on recognition, which had been put on hold pending a decision on whether the financial reporting model should be reexamined, recommenced in October.

WHAT'S AHEAD?

The overall objective of the many improvements being considered is to enhance the effectiveness of the financial reporting model in providing information essential for decision-making and assessing a government's accountability. The project also is intended to address application issues.

One of the primary criticisms of governmental financial reports is they are not available on a timely basis. Over the course of the project, the Board will keep a keen eye out for appropriate changes to the financial reporting model that could positively impact the timeliness of government financial reports.

Depending on how the Board ultimately elects to define the project's scope, the reexamination may continue into 2021. The Board began deliberations in October 2015 and anticipates issuing an initial due process document for public comment and feedback by the end of 2016.

As always, sharing your views with the Board will be a critical element of a successful outcome in this process.

GASB: Approaching Effective Dates.

Below is a listing of the upcoming effective dates for guidance issued by the Governmental Accounting Standards Board.

Effective Date	Statement

Fiscal years beginning after June 15, 2015	• Statement No. 72, *Fair Value Measurement and Application* • Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68* (provisions related to accumulated assets and amendments to Statements 67 and 68) • Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*
Fiscal years beginning after December 15, 2015	• Statement No. 77, *Tax Abatement Disclosures*

How Much Do You Pay for Muni Trades? Regulators Want You to Know.

At 2:26 p.m. one day in April, an investor bought $30,000 of bonds issued to finance a new stadium for the New York Mets at 106 cents on the dollar. Six minutes earlier, a broker paid 101 cents for the same securities.

Chances are, if the buyer was one of the individual investors who dominate the $3.7 trillion municipal market, he or she was unaware that the total markup on his or her bond could have been as high as $1,500. That will change if regulators adopt a new rule requiring brokers to disclose their profits on trade confirmations.

“A year’s of worth interest can be wiped away simply by buying or selling a bond,” Securities and Exchange Commission commissioner Michael Piwowar said in a telephone interview. “People should know what they’re paying.”

The proposal by the Municipal Securities Rulemaking Board, which is soliciting comments on it through Dec. 11, follows a push by the SEC to inject more transparency into the market for state and city debt to protect mom and pop customers. Such buyers own about 42 percent of the securities, according to the Federal Reserve’s figures. That’s six times more than their share of the Treasury market.

By requiring brokers to disclose how much they earn, regulators want to foster more competitive pricing among dealers and drive down trading costs. A study by the Securities Litigation & Consulting Group, a firm that advises on lawsuits, estimated that customers paid more than $10 billion in excessive markups and markdowns on municipal bonds between 2005 and 2013.

Little Guys Pay

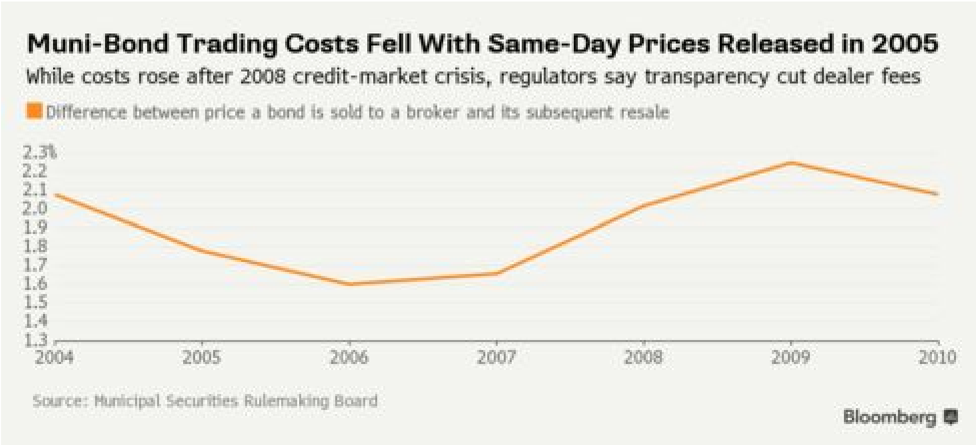
That’s mostly borne by small investors. Those who bought $100,000 or less of investment-grade muni debt in December 2013 paid brokers an average transaction cost of 1.73 percent, twice that of corporate bonds, according to a report by Standard & Poor’s.

The MSRB proposal has drawn criticism from some securities dealers, which said it would add costs and harm liquidity by driving brokers out of the market. Investors can also already find out what the markup was if they want: Since 2005 all trades have been reported within 15 minutes to a website run by the board.

“How about we spend more effort and time on other things that aren’t so transparent,” like the markup on a carton of milk at the gas station, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, a broker that also manages accounts on behalf of customers. “Should that have a label on it that says that this owner operator has marked up this gallon of milk by X amount?”

Many investors don’t know that trading prices are now disclosed, according to Piwowar, whose said the fee disclosure “is the next natural step” and won’t be costly for firms to implement. He said the same arguments were once made against the same-day trade reporting, which lowered customer costs without affecting the market’s liquidity.

“It’s the little guys who we’re talking about here,” he said. “If the argument is the information is already out there, what’s the argument against providing it?”



The MSRB proposal — similar to one the Financial Industry Regulatory Authority has proposed for the corporate market — applies to “riskless principal” transactions, which make up a large portion of muni trades. That’s when a broker buys a security only after locking in an order to resell it, instead of acquiring a bond and holding it in the hopes of selling it later. Dealers embed their fees in the purchase price but aren’t required to disclose them.

That arrangement is essentially the same as an agency trade, in which a dealer acts as matchmaker between customers but doesn’t use its capital to purchase the bond. Brokers must disclose commissions from those.

Two-Hour Window

The MSRB proposal, as currently drafted, would require dealers to disclose the markup or markdown for principal transactions if the dealer trades the same security within a two-hour window of the customer’s transaction. The dealer’s trade also has to equal or exceed the size of the customer trade to trigger disclosure.

Jessica Giroux, senior counsel at the Bond Dealers of America, said the group supports making the muni and corporate bond markets more transparent.

“We’d like to see coordination and harmonization between the two regulators,” said Giroux, whose Washington-based group represents regional firms. “What we don’t want to have is a whole other system being required, costing the dealer more — and then in turn, perhaps, passed onto the client.”

The regulators have already rolled back the scope of the proposal. When it was first introduced last year, the MSRB recommended disclosing markups for bonds that a firm traded on the same day as its client, instead of just two hours.

SEC Commissioner Piwowar said he would be “extremely disappointed,” if the MSRB keeps the narrower time frame in place. If so, he said, dealers could skirt the disclosure requirement by delaying trades. The MSRB’s rules have to be approved by the SEC.

“The two hour window is easily game-able,” he said. “The MSRB will ultimately get it right.”

Bloomberg Business

by Martin Z Braun

November 22, 2015 — 9:01 PM PST Updated on November 23, 2015 — 1:09 PM PST

SEC Charges Brogdon With Misleading Investors, Obtains Freeze on Assets.

WASHINGTON – The Securities and Exchange Commission has obtained an emergency freeze on the assets of an Atlanta-based businessman and filed a lawsuit charging him and his associates with fraud for misusing investor proceeds that were supposed to finance the purchase and renovation of senior living facilities.

The SEC filed its complaint with the United States District Court for the District of New Jersey and is requesting a jury trial. It is also requesting that Brogdon return his ill-gotten gains with interest and penalties and be barred from serving as an officer or director of a public company. The SEC also wants the court to impose a receivership on the entities that Brogdon owns or controls.

At the same time, the Financial Industry Regulatory Authority filed a complaint against Cantone Research Inc. in Tinton Falls, N.J. its majority owner and wife in connection with Brogan’s transactions.

The SEC found that since 1992, Christopher Brogdon raised more than $190 million for his nursing home and retirement community projects through 54 conduit municipal bond transactions and private placements. In total, the SEC alleged Brogdon committed fraud through at least 43 entities he owns or controls.

The offering documents given to investors for these projects said that the money to be raised would be used for purchasing, constructing, or renovating specific projects. The investors were supposed to receive interest from the revenues generated by the projects in which they believed they were investing. Instead, Brogdon, as early as 2000, commingled the investor funds and used the money for personal expenses and other business ventures, including restaurants and commercial real estate holdings, the SEC said.

Brogdon also consistently failed to file required financial statements and drew down on debt service reserve funds to make interest payments to his investors, without disclosing his actions or replenishing the funds. As a result, there were multiple times when interest or principal payments were due and he relied on third-party lenders to make his payments, according to the commission.

“As alleged, Brogdon deceived investors about the true nature of these investment opportunities,” said Sanjay Wadhwa, senior associate director of the SEC’s New York Regional Office. “Brogdon falsely promised investors they were investing in specific senior living projects when in reality they also were funding his personal expenses and other businesses, including some that are struggling financially.”

Brogdon has been in the nursing home, assisted living, and retirement home community business for more than 25 years. He owns seven other real estate and restaurant business ventures throughout Georgia and the surrounding states and has been associated with retirement and healthcare companies since the early 1990s.

He was censured, fined, and barred from the securities industry by NASD, the predecessor to the Financial Industry Regulatory Authority, in 1986 when he was found to have effected transactions in securities while failing to maintain adequate net capital. NASD additionally found he had withdrawn cash and securities investments from the firm's accounts while the firm was deficient in net capital.

The SEC's complaint also names Brogdon's wife Connie Brogdon, who had a majority equity interest in many of the entities Brogdon uses to own, operate, or lease his facilities. His son Tygh Brogdon is named in the complaint as well because of his role as president of Brentwood Healthcare, which managed at least six facilities cited in the SEC's complaint. In addition to his family, the complaint also names several other business entities associated with Brogdon as defendants.

In total, Brogdon was found to have raised at least $168 million through municipal revenue bonds issued in conduit deals, or certificates of participation in the bonds. He also raised at least $22 million through private placement offerings, usually comprised of equity and debt. The SEC found that Brogdon continues to control the borrower entities in each of the offerings they cited.

The SEC cited several examples of Brogdon's misappropriation of offering proceeds. In the spring of 2013 he raised money through two offerings for a retirement housing development referred to as the "Arcadia Project" in Conyers, Georgia. The offerings included COPs in the Development Authority of Clayton County, Ga.'s revenue bonds and in the Savannah Economic Development Authority's subordinated mortgage healthcare facility revenue bonds, as well as Cherokee Financial's COPs in a 10% promissory note issued by Arcadia Partners.

The confidential disclosure memorandum given to investors, said that $1.4 million of the proceeds would be used to construct the Arcadia Project and that the private placement investors would be paid interest and principal from the revenues of the project. Instead $177,936 of the proceeds were used to make quarterly interest payments back to the investors in the Cherokee Financial private placement and $644,158 of the proceeds financed undisclosed expenses and payments, including some associated with his restaurants and his wife's personal account.

In another example, Brogdon raised $2.15 million through COPs in the Development Authority of Clayton County, Ga.'s first mortgage revenue bonds. Instead of using $425,000 of the proceeds as working capital for the facility that served as the source of payment of debt service on the bonds, Brogdon used the money to pay loans on an unrelated nursing home and commercial property owned by his Brogdon Family Company LLC. He also used the money to pay an employee's salary at one of the companies he co-founded and transferred $74,000 to his wife's personal account.

His misconduct continued through at least Oct. 8 of this year, according to the SEC. As recently as September 2015, he used commingled funds from unrelated facilities to satisfy debt service obligations on three outstanding bond offerings and as recently as November he used a personal line of credit to make debt service payments on two bond offerings that did not include that source of funding in their official statements.

"Unless the defendant is permanently restrained and enjoined, [he] will again engage in the acts, practices, transaction and courses of business set forth in this complaint," the SEC said.

The commission found Brogdon violated Section 17(a) of the Securities Act of 1933, which prohibits fraud and misrepresentations in the offer or sale of securities, and Section 10(b) of the Securities Exchange Act of 1934 as well as Rule 10b-5 in that section, which refer to manipulative and deceptive devices. He also violated Sections 20(e) of the Exchange Act, on liability of controlling persons, and Section 15(b) of the Securities Act, on registration of municipal dealers, according to the commission.

Meanwhile, FINRA charged Cantone Research majority owner Anthony Cantone, and his wife Christine, with making fraudulent misrepresentations and omissions of material facts in connection with the sales and extensions of more than $8 million of COPs in certain promissory notes that were executed on behalf of one of several entities controlled by Brogdon.

According to FINRA, four of five of the promissory notes have defaulted, resulting in about $6 million of losses to investors, while CRI and Cantone received commissions and other payments of more than $1 million from the offerings.

FINRA said CRI and Cantone failed to disclose to investors, among other things, that Brogdon had twice been barred from the securities industry, once for "egregious misconduct" involving unauthorized transactions and later for a separate "scheme" involving financial misconduct.

They also did not disclose that Brogdon had been indicted for racketeering, theft, and Medicaid fraud, that he had been found liable for breaching a stock repurchase guarantee agreement, and that several entities he controlled had filed for bankruptcy.

THE BOND BUYER

BY JACK CASEY

NOV 20, 2015 7:11pm ET

Hawkins Advisory: Final Allocation & Accounting Regulations under Section 141 of the Internal Revenue Code.

The attached Advisory describes in brief final Treasury Regulations promulgated under section 141 of the Internal Revenue Code of 1986, as amended, for purposes of allocating the proceeds of tax-advantaged bonds to assets or portions of assets and accounting for the use of such assets or portions thereof.

Read the Advisory.

Hawkins Delafield & Wood LLP

November 18, 2015

TAX - CALIFORNIA

Carloss v. County of Alameda

Court of Appeal, First District, Division 3, California - November 12, 2015 - Cal.Rptr.3d - 2015 WL 7008872

Son of deceased former resident of tax-defaulted property brought action against county for declaratory relief challenging county's denial of son's claim for excess proceeds of the tax sale. The Superior Court sustained demurrer without leave to amend. Son appealed.

The Court of Appeal held that:

- Statute of limitations began to run when decision was mailed, and
- Recorded grant deed is not the exclusive means of proving a person's "title of record."

The 90-day statute of limitations for an action to review the decision of a board of supervisors on a claim for excess proceeds from a default tax sale begins to run from the date the decision is mailed.

A petition for writ of administrative mandamus was the proper method for the son of a deceased former resident of tax-defaulted property to challenge county's denial of son's claim for excess proceeds of the tax sale, even though son argued that the refund statute was facially unconstitutional, where son's complaint and appeal rested primarily on the contention that the statute, even if constitutional on its face, was interpreted too narrowly by the county when ruling on his claim.

While a recorded grant deed may be the best evidence of "title of record" establishing a claimant's right to excess proceeds from a default tax sale, a recorded grant deed is not the exclusive means of proving a person's title of record, and such proof may consist of recorded instruments of various types, the assessor's records, and testimony that, as a whole, establishes that the claimant or the claimant's predecessor in interest held title of record immediately prior to the tax-default sale.

California LAO's Report Confirms State's Favorable Credit Position.

SAN FRANCISCO (Standard & Poor's) Nov. 19, 2015—Standard & Poor's Ratings Services said that the upbeat report issued yesterday by the nonpartisan California Legislative Analyst's Office confirms our interpretation of the state's finances that we published in August.

The findings in the new LAO report coincide with what we said in our Aug. 18 analysis of California (AA-/Stable) that we anticipated. Most significantly, the rules around how much of new revenue growth are mandated by Proposition 98 to go toward education are set to relax a bit. Essentially, in recent years, the state has paid down large obligations left over from the financial crisis that it owed to the schools. Now that the state has funded most of those requirements, the rules under Proposition 98 change and provide lawmakers with considerably more discretion over how to allocate revenues in the budget.

The fact that the state is in this position is favorable. Lawmakers have managed the state's finances well over the past several years, taking advantage of the requirement to allocate new revenues to education to reverse payment deferrals and pay down funding gaps dating to 2009. But it's clear that the sense of urgency in Sacramento is shifting away from ensuring the state's fiscal solvency toward addressing some of California's pressing needs in other policy areas. With high rates of poverty and a chronic shortage of affordable housing, there is an understandable demand from some in the legislature and other policy advocates for increased spending on various social services.

When we look at the state's credit profile overall we still see some meaningful long-term challenges. From a credit perspective, Governor Jerry Brown's first few budget proposals appropriately focused on stabilizing the patient, so to speak. California had deep cash and budgetary deficits that amounted to financial crisis. As time has passed, the governor's priorities have gradually evolved, from focusing on the immediate fiscal crisis to the longer-term issues facing the state. He has pushed for and achieved certain pension reforms and the rainy day fund measure—which voters approved last November. He also called a special session of the legislature to try to identify a source of funding for the backlog of deferred maintenance on the state's transportation infrastructure. The administration has also been working with the labor unions to try to get agreement on prefunding the state's retiree health care liability.

Some of those longer term liabilities and other challenges—along with the state's underlying propensity for revenue volatility—still weigh on California's credit rating. There is a zero-sum element to the upcoming budget negotiations. To the extent the state makes new spending commitments on the social service front, they would crowd out some of its fiscal capacity to address the longer term impediments to a higher rating. This dilemma is in a way the optimistic scenario. It's in the context of an ongoing economic expansion—now in its seventh year. The choices would become much more difficult if the economy—or stock market—were to go into a slide.

While the LAO report paints a relatively sanguine picture of the state's fiscal condition, the budget process is not likely to be any easier and may be even more complicated now. In a few years we might look back at this period as having been pivotal. The tradeoffs that lawmakers face are difficult. They can place a newfound dollar in the state's OPEB trust for retiree health care or they can spend it on expanded social services. In other words, does the state follow through on its multiple-year fiscal recovery project or does it turn its attention to addressing other policy priorities? While we recognize that it's far from the only consideration, the resilience of California's credit rating under certain potential stress scenarios could hang in the balance.

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee. Standard & Poor's Ratings Services, part of McGraw Hill Financial (NYSE: MHFI), is the world's leading provider of independent credit risk research and benchmarks. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information and independent benchmarks that help to support the growth of transparent, liquid debt markets worldwide.

Primary Credit Analyst: Gabriel J Petek, CFA, San Francisco (1) 415-371-5042; gabriel.petek@standardandpoors.com

Secondary Contact: David G Hitchcock, New York (1) 212-438-2022; david.hitchcock@standardandpoors.com

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Study Predicts Increasing Use of P3S to Meet Transportation Needs.

The transportation landscape is likely to change dramatically over the next five to 15 years in response to technological advances, changing driver demographics and continuing uncertainty over how much federal support will be available for road construction, a new study conducted by the National League of Cities indicates. These developments are likely to influence how cities, states and even the federal government finance, build and maintain large public transportation projects, the study, "City of the Future: Technology & Mobility," released Nov. 6, indicates.

New approaches to funding and conducting these projects will be necessary as a continuing decrease in the number of drivers on the nation's roadways, coupled with increased fuel efficiency, further reduce the amount of gas tax revenue that is funneled into the Highway Trust Fund. Still, an analysis of city and regional transportation planning documents from 68 large communities nationwide indicates that half of these plans include recommendations for new highway construction.

As a result, states will increasingly turn to public-private partnerships to fund major road projects, including toll roads, parking structures and other types of infrastructure "that fall outside the traditional purview of city management," the study predicts. One example is the Chicago Regional Environmental and Transportation Efficiency program, through which federal, city and state agencies, Amtrak and six private freight railroads are making improvements to the regional rail system to increase Chicago's rail capacity and ease congestion.

States and the federal government are also likely to consider establishing infrastructure banks (I-banks), which "typically consist of revolving investment funds that can provide fiscal support to different types of infrastructure projects within the state" to meet transportation infrastructure needs. "Currently, 32 states and Puerto Rico have established some variation of a state I-bank and some states that do not have them, such as Connecticut and Maryland, are considering them," the report states.

The report also presages a rise in the number of cities that adopt "paid road models"— user fees — to pay for such projects. Oregon started a pilot system in July that charges drivers for vehicle miles traveled and will test various collection mechanisms and Washington, Nevada, Minnesota, California and university transportation centers are exploring their feasibility. "… [G]iven the perpetually depleted nature of the Highway Trust Fund, many more states will feel pressure to consider this model," the report says.

States and cities can use these approaches to identify and pursue financing and expertise from private sources, reducing the need for federal support, which experts view as a positive direction for future infrastructure development.

"There is a great deal of innovation coming out of the private sector and government has started embracing it and applying it in ways that meets civic needs and goals," Gabe Klein, who formerly headed Chicago's and Washington, D.C.'s transportation departments, says in the report.

Klein's comments are echoed elsewhere in the report. "Public-private partnerships have experienced a surge in popularity in the last couple of years and they will continue to become more common as success stories in this vein become more and more prevalent. Effective partnerships between the public and private sectors heed possibilities for improved service delivery, more effectively developed and maintained infrastructure and incorporation of new and innovative modes and technologies into the existing mobility network," the report concludes.

NCPPP

By November 19, 2015

S&P: Upgrades Have Outpaced Downgrades in U.S. Public Finance for 12 Consecutive Quarters, Article Says.

SAN FRANCISCO (Standard & Poor's) Nov. 20, 2015–The third quarter of 2015 marked 12 straight quarters in which Standard & Poor's Ratings Services upgraded more U.S. public finance (USPF) ratings than were downgraded, making these three years the longest quarterly streak of upgrades outpacing downgrades since the first quarter of 2001, said an article published today by Standard & Poor's, titled "U.S. Public Finance's Positive Ratings Streak Reaches Three Years."

"Despite the difficulties in a handful of specific sectors and isolated jurisdictions, the broad, ongoing U.S. economic recovery has generated higher fees, tax revenues, and job growth, benefiting many public finance issuers, and we expect this macroeconomic climate to last at least through early 2016," said Standard & Poor's analyst Larry Witte. Among the other highlights of the USPF rating changes in the third quarter:

- It was the seventh consecutive quarter in which upgrades outpaced downgrades among both nonhousing and housing ratings;
- Upgrade-to-downgrade ratios for USPF as a whole and for nonhousing bonds were essentially unchanged from the second quarter;
- That same ratio was, however, higher for housing bonds, climbing to four to one from three to one last quarter; and
- There were seven defaults in the quarter, bringing the count for 2015 to nine, surpassing the total for all of 2014.

The leading cause of the improvement in the three most active public finance categories–local government, state government, and utilities–was stronger finances, spurring 198 of 285 upgrades in those areas and 223 upgrades in USPF as a whole. Conversely, deteriorating finances–the main reason for the 71 downgrades during the quarter–affected more issues in local government, state government, and higher education than any other factor. Standard & Poor's cited inadequate liquidity as the main cause of lowered ratings in the case of 42 downgrades.

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: Lawrence R Witte, CFA, San Francisco (1) 415-371-5037; larry.witte@standardandpoors.com

Secondary Contact: Jason M Ontko, New York (1) 212-438-2784; jason.ontko@standardandpoors.com

Media Contact: John J Piecuch, New York (1) 212-438-1579; john.piecuch@standardandpoors.com

LBJ Express a P3 Benchmark.

Cintra's LBJ Express managed lanes toll road was opened to traffic in north Dallas three months ahead of schedule on Sept. 10, marking another major P3 milestone in Texas for developer-operator Cintra and its sister company, Ferrovial Agroman.

According to Russell Zapalac, Chief Planning & Project Officer for the Texas Department of Transportation (TxDOT), neither TxDOT nor Ferrovial requested any change orders to the $2 billion design-build contract signed in 2011 to rebuild 16 miles of I-635 and I-35E north of Dallas. Among other things, 10 miles of cantilevered structures were built under traffic that peaked in the corridor at about 270,000 vehicles per day.

Likewise, Cintra opened 13.5 miles of its North Tarrant Express managed lanes project in Dallas on Oct. 4, 2014, almost nine months ahead of schedule and with contractor change orders of only $5 million, according to Zapalac. Ferrovial started construction in May 2014 on a second segment of the North Tarrant Express on I-35W north of Fort Worth.

The on-time completion of LBJ is significant in many ways. It is one of the most technically complex transportation projects ever attempted in the U.S. under a fixed-price contract. The dynamically priced managed lanes will double the capacity of the corridor, and operate in direct competition with eight general-purpose lanes, which are being rebuilt next to and, in some sections, above the managed lanes.

LBJ Express is the largest greenfield toll road project financing P3 ever closed in the United States. Cintra assembled $2.2 billion in nonrecourse debt and investor equity for a financial close in July 2010. Including a TIFIA loan, those private funds were supported by $490 million in public grants committed by TxDOT.

LBJ's timely completion vindicates a big bet made by TxDOT and Ferrovial in 2009 that a large segment of the project could be built in a narrow section of the existing right of way without putting it in an expensive tunnel.

TxDOT conceived of LBJ as a tunneling project. In discussions with TxDOT, Ferrovial proposed instead to put the managed lanes in a trench and cantilever the general purpose lanes above them. Many U.S. contractors believed that Ferrovial had made a $1-billion mistake — the difference between Dragados's tunnel price and Ferrovial's price to stay above ground and work around the relentless traffic there. Its on-time completion suggests Ferrovial was up to the traffic management challenge.

The DBFOM contract price of $2.485 billion includes 47 years of O&M by Cintra, including dynamic toll operations and most back office functions. Billing will be done by the North Texas Tollway Authority, which operates most of the region's toll roads along with TxDOT. Total cost of the project including ROW and other owner costs is $2.983 billion.

NCPPP

November 16, 2015

By William Reinhardt

DC Project May Unlock PACE Funding For Affordable Housing Across U.S.

Property-assessed clean energy (PACE) funding has typically been reserved for commercial buildings or well-off homeowners, but Washington D.C. may have just set a precedent for PACE to bring clean energy's economic benefits to affordable housing across America.

Last week the District of Columbia's Property Assessed Clean Energy (DC PACE) Program announced $700,000 in financing to add solar, highly efficient energy and water, and LED lighting to the Phyllis Wheatley YWCA housing complex as part of a $17 million dollar renovation.

While the project will reduce utility bills for the 100-year old community institution and ensure it remains affordable housing for at least 40 years, the larger meaning is much deeper. This investment is the first PACE financing approved by the U.S. Department of Housing and Urban Development (HUD) for a HUD-assisted public housing property, and could become "a model for the nation" to spread sustainability across America's disadvantaged communities.

Continue reading.

CleanTechnica

November 13th, 2015 by Silvio Marcacci

California Launches Debt Data Website.

LOS ANGELES — California's treasurer has launched an open data website that he says will make it easier to analyze $1.5 trillion in debt issued in the state since 1984.

State Treasurer John Chiang said during a presentation in Sacramento Monday that his aim is to empower Californians to hold the government accountable for its borrowing decisions. Chiang said he also wanted to make the information available to researchers, journalists and investors.

"I never want another Bell to happen," Chiang said.

The treasurer was referring to the city that saw eight former city leaders prosecuted in 2014 for stealing millions from city coffers. The city also defaulted on a $30 million private activity bond to Dexia, a Belgium bank. Current city leaders reached a settlement agreement that cured the default last year by selling the property the bond had been issued to purchase.

The DebtWatch website brings the data "out of the shadows and presents it in an easy-to-use, more accessible way," Chiang said.

The California Debt and Investment Advisory Commission has offered some of the debt data for years, but in more of a raw data format.

The new website includes debt issued by the state, local governments, cities, special districts, K-12 schools, community colleges and public universities. The cost of issuance, and bond and tax election results are also available.

A user can download raw data into a spreadsheet format or screen for a multitude of characteristics and run comparisons on debt sold by different issuers. It also allows users to create charts.

For instance, a user could compare the volume of pension obligation bonds issued by three cities during a set time frame or compare issuance costs among different issuers drilling down to costs by underwriters, bond attorneys, financial advisors and insurers.

"It allows anyone to slice and dice the data and get to the heart of the matter," said Jan Ross, the treasurer's chief of information technology.

The 2.8 million points of data on the website are currently constrained to what was available when the bond sale closed, and proposed debt.

The data will be updated monthly, but the information is fairly static at this point in that it only includes data through the closing of a bond deal, said Robert Berry, CDIAC's deputy executive director.

It doesn't contain information on how much of that debt has been paid down, what is outstanding or whether defaults have occurred.

Describing the DebtWatch website as an early 1.0 version, Chiang said issuers are not currently required to provide that information to the state. He plans to sponsor a bill that will change that, he said. If it passes, and the state is able to collect that information, it would be added to the website, he said.

The project grew out of a conversation the treasurer and others at the treasurer's office had with investors during a trip to New York City, Chiang said.

Referring to a trio of websites Chiang launched during his eight years as controller that make information about revenue and taxes available, the investors asked him why not credit and debt?

The websites Chiang launched as controller include one that tracks public employee salaries; another that shows how tax revenues from temporary Proposition 30 tax increases are being spent; and the "By The Numbers" site that tracks revenues, expenditures, liabilities, assets, and fund balances for each city and county.

The Bond Buyer

by Keeley Webster

NOV 17, 2015 12:08pm ET

[S&P 2014 U.S. Public Finance Transportation Rating Transitions and Defaults.]

Although ratings in the U.S. public finance transportation sector tend to be lower than in other areas of U.S. municipal finance, the sector is among the most stable in terms of the level and number of ratings. Transportation projects financed with municipal debt help meet a variety of the nation's critical transportation needs, even while those projects sometimes face significant exposure to economic cycles and competitive pressure from other providers of similar services. For example, a toll road could contend with non-toll roads that serve the same routes. The ratings on transportation bonds therefore reflect these two forces. Many ratings are stable, and less likely than other U.S. public finance (USPF) issues to move to Standard & Poor's Ratings Services' higher rating categories, but transportation ratings also tend to skew lower than most USPF issues, providing a greater cushion against economic and competitive pressures. Most ratings are in the 'A' category, while only 20% are in the 'AA' or 'AAA' category, compared with about 45% of USPF ratings overall. Reflecting the lower ratings relative to USPF as a whole, transportation ratings are more susceptible to default than other municipal bonds, although the number of actual defaults has been small.

The overall stable, but low investment-grade, ratings in the transportation sector mask significant differences among the various asset types within it. Debt ratings for assets such as airport facilities and transit facilities trended upward in recent years, despite the revenue volatility that can sometimes affect these projects. Conversely, ratings on other asset types, like toll roads and bridges, or port facilities, are generally lower than the rest of the transportation sector because revenues can be more dependent on economic factors beyond the control of issuers. Nevertheless, we see the USPF transportation sector debt as generally resilient, with a mild upward trend in overall ratings over the past 30 years, partly because the mix of ratings has changed toward more highly rated asset types such as grant-supported transactions.

Overview

- USPF transportation ratings saw steady movement into the 'A' category over the past 30 years, as more highly rated asset classes entered the sector.
- But several factors, including the volatility of revenue sources, constrain a high percentage of ratings in the sector from reaching the 'AA' category.
- Ratings in transportation have been more stable than ratings for U.S. public finance overall, in part because of the small percentage of transportation ratings that moved to the 'AA' category from the 'A' category.

Continue reading.

17-Nov-2015

Muni-Bond Deals Stage Comeback After Falling Behind Record Pace.

The $3.7 trillion municipal-bond market is about to face the biggest wave of new deals this year. It probably won't be enough to catch up to 2010's record year.

Even though issuers have $16.5 billion of sales set for the next 30 days, that pales in comparison to the $54 billion borrowed over the same period in 2010, when municipalities rushed to sell federally subsidized Build America Bonds before the program expired. Last week, 2015's pace fell behind where it was five years earlier for the first time since January, with states and cities issuing $345 billion of debt through Nov. 13, data compiled by Bloomberg show.

With money flowing into municipal-bond mutual funds, the offerings should be sold without putting added pressure on prices as the Federal Reserve draws closer to raising interest rates for the first time in more than nine years, said Peter Hayes, head of munis at BlackRock Inc., the world's largest money-management company.

"There's not going to be that pent-up issuance that we thought might come to market and severely elevate supply," said Hayes, who manages $111 billion of munis. "It seems the market has a better overall fundamental tone coming into year-end.”

As interest rates held near half-century lows, states and cities already rushed earlier this year to refinance debt amid speculation that the Fed would tighten monetary policy in the second half of the year, Mikhail Foux, head of muni strategy at Barclays Plc, wrote in a Nov. 13 report. That led to a flood of supply in February that made it appear that sales were poised to set a record.

By September, issuance plunged to lowest monthly total since February 2014, Bloomberg data show. The reason: localities tend to put offerings on hold when the Fed appears poised to raise rates, said Vikram Rai, head of muni strategy in New York at Citigroup Inc. That could cause a similar slowdown next month ahead of the Fed’s next decision on Dec. 16, he said.

“In September we saw refunding supply drop off a cliff because none of the issuers wanted to fall on the Fed hike,” Rai said. “The hopes of a Fed hike in December have gone up, and that’s impacting refunding supply again.”

Most of this week’s biggest deals are for construction projects, not refinancing. The New Jersey Transportation Trust Fund Authority borrowed $627 million Tuesday to fund the state’s highways and bridges, while Connecticut issued $650 million of general obligations. The San Diego Unified School District is selling $450 million of voter-approved debt Wednesday to finance building improvements.

Municipal-bond yields have been volatile this year amid speculation about when the U.S. central bank will ease off the zero interest rate policy that’s been in place since the worst of the credit-market crisis in late 2008.

When the Fed opted to keep borrowing costs unchanged in mid-September, 10-year AAA muni yields plunged 0.25 percentage point in two weeks. After hovering near six-month lows in October, they climbed 0.15 percentage points in early November to as much as 2.22 percent, before easing back over the past week to 2.19 percent.

As yields edged higher, muni-bond mutual funds received cash for six straight weeks, the longest streak of inflows since March, Lipper US Fund Flows data show.

Most of December’s issuance will take place before the Fed’s Dec. 15-16 meetings, Chris Mauro, head of muni strategy at RBC Capital Markets in New York, wrote in a Nov. 16 report. That will make it difficult to match the average $32 billion of offerings for the month, he said.

“The Fed has introduced enough volatility to cause muni issuers, who are pretty risk-averse, to delay or defer some of their refundings,” Phil Fischer, head of muni research at Bank of America Merrill Lynch in New York, said in a telephone interview. “It doesn’t look like we’ll get the full-fledged rush to market that we thought we’d get and the one we probably should have. But we’re still going to have a big year.”

Bloomberg Business

by Brian Chappatta

November 17, 2015 — 9:01 PM PST Updated on November 18, 2015 — 5:58 AM PST

Gundlach Joins Lasry Scooping Up Puerto Rico Debt as Prices Fall.

Even though Puerto Rico may be just weeks away from defaulting on some of its $70 billion of debt, a couple of the biggest names in the bond market are swooping in to buy its securities.

Jeffrey Gundlach of DoubleLine Capital LP and Avenue Capital Group's Marc Lasry both said this week that they're buying bonds from the commonwealth as prices take a new turn lower. Puerto Rico owes a combined $1.4 billion on those securities and others in the next six weeks, compared with just $209 million of payments since Sept. 1.

The purchases show how some distressed-debt investors are betting that prices have fallen too far and Governor Alejandro Garcia Padilla will have trouble following through on his pledge to prioritize public services and force losses on bondholders with constitutionally protected securities. Puerto Rico's benchmark general obligations traded Wednesday near the lowest price since August, data compiled by Bloomberg show.

"Entering at this point, the risk-reward calculus may make sense because it's pricing in as much of the downside risk possibility that there is," said David Tawil, who manages $80 million as co-founder of hedge fund Maglan Capital LP in New York.

"Distressed buyers have to be buyers when things are super out of favor — that's how they make real money," said Tawil, who used to own Puerto Rico debt but doesn't anymore. "A lot of time has passed, a lot of rhetoric has come and gone, and we're at do-or-die time."

Payment Schedule

Puerto Rico bond prices have plunged over the past two years as the commonwealth's economy staggered under its debt load. They fell to new lows after Garcia Padilla said in June that he wants investors to take a loss and delay principal payments. About one month later, the island defaulted for the first time on appropriation bonds from its Public Finance Corp.

Investors are watching to see if Puerto Rico will pay $467 million due Dec. 1, its biggest obligation since August, and then $958 million owed on Jan. 1.

Those funds focused on the $3.7 trillion municipal market who purchased the bonds at full value for their high tax-free yields have fared the worst as bond prices plunged. Speculative-grade Puerto Rico bonds have lost another 11 percent this year, according to Barclays Plc data.

General Obligations

Puerto Rico's benchmark 8 percent general obligations due in July 2035 traded Wednesday at an average 71.6 cents on the dollar, near the lowest price in three months, data compiled by Bloomberg show. Similarly, uninsured sales-tax and highway bonds that were the most-traded of the past month fell to the weakest since mid-September.

Those declines have lured hedge funds and distressed-debt buyers, who now own about one-third of the commonwealth's securities, according to Mikhail Foux, head of municipal strategy at Barclays.

There's "a substantial probability" that the island makes payments on general-obligation, general-obligation-guaranteed and sales-tax debt in the coming months, Foux wrote in a report Tuesday. Other issuers are at risk.

Lasry, the co-founder of hedge fund Avenue Capital, is buying more bonds because "it's hard to get hurt now in Puerto Rico," Reuters quoted him as saying at a conference it hosted Tuesday in New York.

Avenue Capital owned some Government Development Bank debt as of last month, people familiar with the holdings told Bloomberg News. Lasry didn't say which Puerto Rico bonds his firm was buying, according to Reuters. He said he thinks he knows all the different options at the commonwealth's disposal.

Todd Fogarty, a spokesman for Avenue Capital, said the company had no further comment.

Gundlach, DoubleLine's chief investment officer, said in a conference call Tuesday that he was buying more Puerto Rico securities, though not large amounts and not for his core funds.

'Smart Money'

He purchased $45 million of the commonwealth's benchmark general-obligation debt for his $2 billion Income Solutions Fund in the first three months of 2015, according to data compiled by Bloomberg. He hasn't reported adding any more since, though it remains the sixth-largest part of his fund by market value.

Loren Fleckenstein, an analyst at Los Angeles-based DoubleLine, didn't respond to an e-mail or phone call seeking comment on the firm's purchases.

Puerto Rico's general obligations are where the "smart money" is going, said Mark Palmer, a managing director at BTIG LLC, a brokerage firm. Those bondholders can go on the offensive to divert money from highway and sales-tax debt, while investors in those securities have to defend their claims, he said.

"We think that ultimately the defenses the creditors have are going to be sufficiently strong," Palmer, who analyzes the bond insurers backing some Puerto Rico securities, said in an interview at Bloomberg's New York headquarters Wednesday.

"It's becoming clear that it's going to be extremely difficult, outside of U.S. government intervention, to bring upon its creditors any sort of restructuring that's going to involve deep haircuts without their consent," Palmer said. "And they're not inclined to accept that."

Bloomberg Business

by Brian Chappatta

November 18, 2015 — 9:00 PM PST Updated on November 19, 2015 — 5:57 AM PST

Bloomberg Brief Weekly Video - 11/19

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

Watch the video.

November 19, 2015

Municipalities Pushing Out Payments Spur Balloon Debt Resurgence.

U.S. cities and school districts struggling to keep up with expenditures are increasing sales of debt that delays interest until the bonds mature, often resulting in ballooning final payments that are many times the amount originally borrowed.

Issuance of capital-appreciation bonds, known for their balloon payments due at maturity, is on pace to increase 54 percent this year to $2 billion, the largest amount since 2012, according to data compiled by Bloomberg. The surge has come as states including Texas and California, which have the highest volumes of the securities, have passed laws restricting its use because of mushrooming amount of debt and interest that must be paid when the bonds mature.

Use of the debt, also known as zero-coupon bonds, had been declining since coming under fire in recent years for letting officials postpone paying for schools, roads and other capital projects. Texas passed a law this year that limits governments to only having one-fourth of their debt in capital appreciation bonds.

“It allows local governments to borrow and shift the burden to future generations of taxpayers,” said James Quintero, director of local governance at the Texas Public Policy Foundation in Austin, which pushes for restrained taxes and spending.

Higher Payments

The risk with capital-appreciation bonds is that by delaying annual payments for principal and interest they can result in sharply higher payments when the debt matures, forcing government officials to scramble to come up with funds needed to pay bondholders. The $91 million of capital appreciation bonds sold by the Wylie Independent School District near Dallas in February will cost about $268 million when they come due in 2050.

Puerto Rico’s capital appreciation bonds threaten to saddle the commonwealth’s bond insurers, Ambac Financial Group Inc. and MBIA Inc., with much higher liabilities then is reflected in the principal amount borrowed. Once interest is included, Ambac said its Puerto Rico exposure increases to $10.5 billion from $2.4 billion. For MBIA’s National Public Finance Guarantee Corp., it more than doubles to about $10.5 billion.

Most of the increase has come in California, where borrowing through capital-appreciation debt so far has more than doubled to $900 million this year. It’s still well under the $2.1 billion that state’s municipalities borrowed using the debt in 2007. California Governor Jerry Brown signed legislation in 2013 designed to limit use of the debt structure. That was after reports that one district that borrowed $179 million from 2008 to 2011 with capital-appreciation debt would have to repay $1.27 billion of debt service by 2051.

Tax Avoidance

Zero-coupon debt accounts for about $253 billion of the outstanding securities in the $3.7 trillion municipal market, data compiled by Bloomberg show.

The debt is seen as a way around limits on tax rates and debt service that may keep borrowers providing needed capital improvements or services. In Texas, where borrowers are expected to sell about the same $700 million they did last year, a cap on the amount of property tax that can be levied for debt payments has pushed many of the fastest-growing school districts in the state to adopt the structure. It lets them borrow without collecting the property tax until earlier borrowings have been repaid.

The Wylie schools used them in response to a 173 percent increase in the number of people in the city from 2000 to 2010, making it the one of the fastest-growing suburbs in the country, said Michele Trongaard, the chief financial officer. Her district did refinance $20 million of capital-appreciation bonds to achieve a present-value savings of about $4 million in October, she said.

Texas Sales

“I understand the issues people have with it, but when you have the kind growth we did, you really don’t have any choice,” Trongaard said. “We do everything we can to get the most we can for taxpayers’ money, but sometimes you have to let your enrollment catch up with your buildings.”

Companies that rate municipal debt have been expressing concern about the increasing use of the bonds in Texas. In 2012, Fitch Ratings cut the Leander Independent School District’s rating one level to AA-, in part because of the district’s increasing reliance on capital-appreciation bonds, which slow the district’s ability to pay down its debt.

When Texas’s new law took effect, Moody’s Investors Service praised it as a “credit positive because it will deter school districts from issuing debt based on uncertain future taxable value growth projections.”

Besides limiting the amount of capital-appreciation borrowers can issue, the law limited maturities to 20 years, half 40-year terms many school districts previously used, Moody’s said.

In Texas, the Leander school district near Austin refinanced $101 million of the $114 million in capital-appreciation bonds it had outstanding in June, leaving $13 billion of the debt outstanding, said Lucas Janda, chief financial officer.

“It’s for savings for our taxpayers,” said Janda.

Bloomberg Business

by Darrell Preston

November 19, 2015 — 9:00 PM PST Updated on November 20, 2015 — 6:02 AM PST

Fitch: Revenue Bond Loss Would Slow California's Infrastructure.

Fitch Ratings-New York-19 November 2015: A proposed California ballot initiative could limit financing for the state’s major infrastructure projects, Fitch Ratings says. The measure to amend California’s constitution to require voter approval of revenue bonds for projects with total costs exceeding $2 billion will likely appear on the November 2016 ballot.

Fitch has often cited voter initiatives as a key factor limiting California’s budgetary flexibility. This legislation would also delay infrastructure policy and expose it to the political process.

If the measure becomes state law, it would constrain infrastructure financing and likely result in reduced investment over time, particularly for major water projects. Revenue bonds have played a limited role in the state’s infrastructure financing overall but have been essential for financing water projects. In the absence of revenue bonds, water projects have few other funding options.

Water projects have gained importance during California's historic drought. In addition, the ongoing rise in the state's population (approaching 40 million) and deferred maintenance has left an estimated $750 billion in funding needs over the next ten years. California's 2015 Five-Year Infrastructure Plan (a portion of the state budget) proposed investing just $57 billion over that term.

The proposed ballot measure is an effort to halt the California Water Fix (formerly known as the Bay Delta Conservation Plan). The project is a controversial effort to construct twin tunnels through California's Sacramento-San Joaquin Delta. Agricultural and residential ratepayers would finance a large share of the project's estimated $25 billion cost if necessary regulatory approvals and political support can be obtained. The proposed initiative would present an additional hurdle of statewide voter approval and would extend this requirement to other large infrastructure projects supported by revenue bonds as well.

Contact:

Stephen Walsh
Director
US Public Finance
+1 415 732-7573
650 California Street
San Francisco, CA

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

Fitch: Texas School Districts Should Weather Tax Revenue Drop.

Fitch Ratings-New York-10 November 2015: A decline in Texas school district revenue streams of approximately $1.2 billion per biennium should not affect their bond ratings, Fitch Ratings says.

Texas voters last week approved an increase in the residential homestead exemption from $15,000 to $25,000 for public school purposes. The impact will likely be largest for suburban school districts that are primarily residential. The legislation includes a requirement that the state make whole any revenue shortfall and the fiscal 2016-2017 state budget includes this additional funding amount.

Most Texas school districts levy taxes at the maximum statutory amount for operations of either $1.04 or $1.17 per $100 of taxable assessed value (TAV), depending on prior voter approval of an additional $0.13. Districts typically have more flexibility on debt service, although a number of districts levy debt service tax rates at or near the statutory cap of $0.50 for new issuance approval. Nine districts rated by Fitch currently levy at the $0.50 cap. The debt service make whole provision applies only to debt issued (and first payment made) prior to Sept. 1, 2015, so any declines in taxable value from the increased exemption may affect the timing and size of new borrowings for those districts with tax rates at or near the statutory cap.

Generally strong economic conditions in Texas over the past several years have contributed to solid gains in TAV for local governments (the exceptions being those areas with large mineral value concentrations). These TAV gains, along with funds made available through the make whole provision, will cushion the blow from the homestead exemption increase. For the many districts with limited debt service tax rate flexibility, TAV gains will shorten or eliminate delays in borrowings that might have otherwise occurred.

Contact:

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

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

Fitch: U.S. Military Housing Bonds Facing Longer Term Pressures.

Fitch Ratings-New York-18 November 2015: Recently announced details on personnel cuts by the U.S. Army should not affect ratings for military housing bonds for now, though they could come under pressure longer term if the force continues to shrink, according to Fitch Ratings in a new report on military housing.

This round of cuts stands to affect 30 Army installations, according to Senior Director Maura McGuigan. 'Of the 25 bases throughout the military branches that secure Fitch rated bonds, five are on the list planned for changes,' said McGuigan. 'One base will gain a small amount of personnel in the plan and the other four will lose approximately 5%-6% of its respective Army military personnel.'

The prospects of prolonged military personnel cuts and the shrinking of the force is a longer term trend Fitch will keep a close eye on over time. For the time being, though, they should not affect military housing bond rating performance, which has been largely stable. Fitch has affirmed 23 military housing bonds against just two downgrades while three bonds maintain Negative Outlooks. Helping the stable outlook has been the construction of military housing which has progressed as originally planned with no project missing original initial development phase end dates.

What is likely to continue to be affected next year is the Basic Allowance for Housing (BAH), with the Department of Defense (DoD) introducing modifications to BAH designed to slow its growth. This will ultimately reduce the rental revenue stream to MHBs. 'The fiscal 2016 proposal for the defense budget gradually slows the annual BAH increases by another 4% over the next two to three years until rates cover 95% of housing rental and utility costs,' said McGuigan.

Fitch: Cook County, IL Budget Includes Novel Pension Funding Approach.

Fitch Ratings-New York-19 November 2015: The Cook County, IL ('A+'/Negative Outlook) fiscal 2016 budget, which was approved by the county commission yesterday, includes an alternative pension funding mechanism that Fitch Ratings believes has the potential to advance the discussion on appropriate funding of public pensions in Illinois.

The county's pension strategy is notable, as it includes actuarially determined funding of the pension liability, but appears to ignore the restrictions imposed by the current pension statute, leaving the county vulnerable to potential litigation from taxpayers challenging the increased payments.

Fitch will monitor these developments closely to assess the impact on long-term credit quality. The Negative Outlook incorporates Fitch's concerns including those surrounding the county's ability to implement an affordable plan to shore up pension funding. This plan, if it survives legal testing, could address those concerns; but if legal challenges invalidate it, the county will again become reliant upon state legislative action to improve pension funding.

County administrators drafted a pension reform proposal, which included changes to the benefit structure and actuarial funding of pensions, but were unable to gain state legislative support for passage. Structural changes to pension plans, including changes to funding, require state legislation in Illinois. The fiscal 2016 budget includes a modified version of the pension reform plan, excluding the benefit structure changes, but retaining the actuarial funding aspect. Fitch occasionally sees local governments seeking to pay more than their legally required amount, but rarely significantly more, as Cook County is doing.

Under an intergovernmental agreement between the county and the pension fund, the county contracts to make payments on an actuarial basis, using a 30 year layered amortization structure, with future payments subject to annual appropriation by the county board of commissioners. The statutory pension payment required under existing law of $195 million for fiscal 2016 is payable from a separate property tax levy dedicated to pensions. The county is planning to make an additional payment of $270.5 million in fiscal 2016 and $340 million in fiscal 2017. After that, it anticipates the amount of the additional payment will rise by a manageable 2% annually through 2046.

The additional contributions will be funded by a 1% increase in the county sales tax. With this change, the county's portion of the 10.25% sales tax will be 1.75%. The increase will be effective Jan. 1, 2016 and is budgeted to provide $308 million in fiscal 2016 (representing eight months of collections) and $473.8 million in fiscal 2017 (full year of collections). In addition to the supplemental pension payments, the sales tax increase is budgeted to provide funding for several other priorities, including highway funding to address deferred maintenance, increased debt service costs, and pay-go technology implementation. Total general fund expenditures, net of the supplemental pension payment, are budgeted to increase by a modest 2.2%.

Contact:

Primary Analyst
Arlene Bohner
Senior Director
+1-212-908-0554
Fitch Ratings, Inc.

33 Whitehall Street
New York, NY 10004

Secondary Analyst
Eric Friedman
Director
+1-212-908-9181

Tertiary Analyst
Shannon McCue
Director
+1-212-908-0593

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com.

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

BDA Submits Comment Letter: MSRB Proposal to Lengthen the Term of Board Member Service.

The BDA submitted a comment letter to the MSRB regarding their proposal to lengthen the term of service for Board members.

BDA's letter generally supports the MSRB's proposal but also asks the MSRB to consider implementing a training program during year one of service with the expectation that board members will be municipal market experts by year four thereby maximizing the benefits of the proposed fourth year of service.

You can find our final letter here.

11-19-2015

Houston's Conundrum: Closing Its Pension-Funding Gap.

Houston is weathering a prolonged plunge in oil prices, but the city may have an even bigger problem: its pensions.

Though economic growth has only slowed, not stalled, in Texas' largest city, its finances are showing what several investors and analysts describe as warning signs.

Those include a rapidly growing gap in funding its retirement plans for public workers and a limit on its revenue-raising capabilities imposed by a voter-approved cap on property taxes.

The $3.2 billion pension-funding gap is threatening Houston's Aa2 credit rating from Moody's Investors Service, hurting demand for its debt and emerging as an issue in the city's mayoral race.

Moody's this summer warned it may downgrade the city's debt if Houston fails to address its pensions, noting the cap limits the city’s financial flexibility.

A downgrade could lower prices for outstanding bonds and increase Houston’s borrowing costs at a time when it needs improved infrastructure.

Some investors are backing away from the city’s debt, saying there are better deals on similarly rated municipal bonds elsewhere. Guy Davidson, director of municipal investments at AllianceBernstein LP, said his firm trimmed its holdings of Houston’s debt earlier this year.

“We want to be compensated for those pension liabilities and at current levels, we don’t think we are,” he said.

Houston is the latest U.S. city to face threats from credit-rating firms and investors over bulging pension obligations. Investors have grown concerned about state and local governments’ ability to address unfunded retirement costs. Examples include Chicago and the states of Illinois and Connecticut, whose unfunded retirement costs have ballooned after investing losses from the 2008 financial crisis and chronic underpayments by policy makers.

Houston’s predicament also shows how the decline in oil prices is forcing some U.S. state and local governments to re-evaluate their spending priorities.

Houston residents are reluctant to support any tax increases, including raising the property-tax cap, said Mark Jones, a political-science professor at Houston’s Rice University.

At the same time, unsustainable pension costs have contributed to reductions in hiring of police officers and spending on pothole repairs, which have become issues in the mayoral race.

Houston’s unfunded pension liabilities grew at a faster clip relative to its revenue than in any of the other 50 largest U.S. local governments rated by Moody’s, the firm said in a July report, citing data from fiscal 2013.

The city also projects deficits in coming years despite revenue growth, Moody’s said in October.

Before 2001, Houston had enough assets to fund future retirement payouts. But an across-the-board boost to retirement benefits around that time, plus losses from two recessions, have weighed on the city’s pension funding. The city now only has about 75% of the funds it needs. That places Houston at the average level of funding among city and county plans, according to Wilshire Consulting.

While the city has paid contractually required amounts to plans for municipal employees and police officers over the past five years, the total falls short of fully funding the systems. A state law overseeing the firefighters’ plan has resulted in better funding while reducing the city’s financial flexibility, Moody’s said.

City officials have argued for greater control over pensions and revenue. Ronald Green, Houston’s controller, said that while investors in the city’s debt can remain confident they will get paid, the city should act soon to improve its finances.

“You don’t fix the roof when it’s raining, you fix it when it’s dry,” he said.

Absent a concerted effort to adjust course, the city is headed toward Chicago-level distress, forced to choose between benefit cuts, tax increases and reduced public services, according to a report by the Houston-based Laura and John Arnold Foundation, which funds research on the fiscal health of public pensions.

Houston's pension parameters are set by state law, adding to the complexity of seeking a solution, while the drop in oil prices could magnify problems more quickly than expected, said Josh McGee, a vice president at the foundation.

Among other concerns, the city's plans assume relatively high investment returns of 8% or above, meaning the funding gap may be understated, said Marc Watts, chairman of the Greater Houston Partnership's Municipal Finance Task Force.

"The new mayor, unless this is addressed, isn't going to have any resources to work with," he said.

Some plan officials said retired city workers aren't the problem. Max Patterson, executive director of the Texas Association of Public Employee Retirement Systems, called such warnings "grossly misleading" and said any discussion of pension changes should be considered in a broader conversation about city finances.

Todd Clark, chairman of the Houston Firefighters' Relief and Retirement Fund, said the plan has met and exceeded its assumed returns historically and the board will make any needed adjustments in consultation with an actuary going forward.

The issue is playing into the mayoral runoff between State Rep. Sylvester Turner, a Democrat, and former Kemah Mayor Bill King, a fiscal conservative.

Mr. Turner, running with the support of the city's three major public-sector unions, said the pension issues should be debated with all stakeholders in concert with the city's other fiscal concerns.

After that, he would consider raising the property-tax cap for public safety or paying down debt.

"In order to be successful in addressing the pension issue, you have to engage in comprehensive financial reform," he said.

Mr. King favors adjusting pensions by offering 401(k)-style defined-contribution plans for new hires. He supports maintaining the cap, saying the city raises plenty of tax money and needs to spend less.

"We've got time to turn the boat around and not go over the falls, but we don't have a long time," he said.

Houston's situation highlights the need to address pensions and other fixed costs before they become an economic drag, said John Bonnell, senior portfolio manager of tax-exempt investments with San Antonio-based USAA Investments, which doesn't own the city's bonds.

"If they end up doing nothing to address this budget issue, 10 years from now Houston could be facing the same problem Chicago is now," he said. "I think they have the ability to address their issues prudently, it just hasn't gotten to the point where they've been forced to do it."

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Nov. 15, 2015 9:48 p.m. ET

—Timothy W. Martin contributed to this article.

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com

Pension Blues in the Bluegrass State.

Kentucky now carries a dubious distinction: home to the worst-funded U.S. pension in at least 14 years.

On Thursday, Kentucky officials presented the dire financials of its large state-employee fund. It has just $2.4 billion in assets to cover $12.4 billion in future liabilities for the year ended June 30.

The Kentucky Employees Retirement System plan, covering the benefits of around 120,000 state workers, has a funding ratio—the basic measure of assets against liabilities—of just 19%.

That puts it in historically woeful shape versus other large state and local pension funds tracked by the Public Plans Database since 2001. A national database of pension-fund finances doesn't exist for years prior to then.

"It's very bad. I don't think (Kentucky) has a peer in terms of this low level of funding," said Jean-Pierre Aubry, an assistant director at the Center for Retirement Research at Boston College.

Kentucky's 19% is one-tenth of a percentage point lower than the 2003 status of the West Virginia Teachers plan. Other grim years at public-pension plans, according to the Public Plans Database, are: Chicago Police's 29.7% in 2013, the Illinois State Employees Retirement System's 34% in 2014; and the Chicago Municipal Employees' 37% in 2013.

A decade of Kentucky lawmakers short-changing on pension contributions, plus investing losses from the most recent financial crisis, have pummeled a state-employees plan that was close to fully funded in the early 2000s.

In the prior year, the Kentucky fund only had 23.9% of assets needed to cover future liabilities—making it the then-second lowest ever recorded by the Public Plans Database.

A spokeswoman for the Kentucky Retirement Systems, which oversees the state-employees plan, did not respond to a request for comment.

Pension experts say a funding ratio of 80% is an indicator of relative fiscal strength.

At 19%, the Kentucky state workers' plan can't easily make bets in private equity or real estate, because their finances are so tight they need assets that can be quickly converted into cash—in case those funds are needed to cut pension checks to retirees, Mr. Aubry said.

"You're getting close to a pay-as-you-go status, where the money coming in needs to paid out immediately," Mr. Aubry said.

The Public Plans Database is produced by the Center for Retirement Research and partners with the Center for State and Local Government Excellence and the National Association of State Retirement Administrators. It tracks 150 state and local plans.

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN

Nov 19, 2015 FUNDS

Chicago in Tough Battle to Overturn Ruling on Pension Reforms.

CHICAGO — Chicago tried to convince a sometimes skeptical Illinois Supreme Court on Tuesday that a 2014 law deserves to survive a constitutional challenge because it aims to save two of the city's retirement funds from insolvency by guaranteeing adequate funding.

The city, which is struggling with a $20 billion unfunded pension liability in its four retirement systems, is appealing a Cook County Circuit Court judge's July decision voiding the law.

In oral arguments on Tuesday, Chicago's top city attorney, Stephen Patton, said while the law includes "modest reductions in future automatic increases" in retiree pensions, it differs from a 2013 law that unilaterally cut benefits for Illinois' retirement systems and was struck down as unconstitutional by the state high court in May.

"This case is unique, it is different because the act here overwhelmingly benefits fund participants and avoids insolvency. It does not diminish or impair benefits under the plan language of the (Illinois Constitution's) pension clause," Patton told the court.

The supreme court in May tossed out the 2013 law that reduced retirement benefits for state workers to ease Illinois' $105 billion unfunded pension liability. All seven justices agreed that the Illinois Constitution protected public sector workers against pension benefits cuts.

At Tuesday's proceeding, some of the justices appeared to key off that ruling in questions posed to Patton and attorneys for Chicago's municipal and laborers' pension funds.

Justice Robert Thomas questioned how guaranteeing to fund existing promised pension benefits constituted an enhancement for workers. "How is that a plus?" he asked.

Patton contended that without the law, the legal responsibility to pay out pensions lies with the two funds alone and not with the city.

"What use is a benefit unless the money is there to pay it?" the attorney said, noting that under the law the city assumes an obligation it never had before to pay pensions.

John Shapiro, an attorney at Freeborn & Peters representing some of the unions and retirees who filed challenges to the 2014 law last December, told the justices that Chicago merely wishes to avoid paying for benefits promised to its workers, in violation of the pension protection clause.

"The city wants to use monies that would otherwise be contributed to these funds for other services," he said.

Cook County Judge Rita Novak in July rejected the city's argument that the law provided a net benefit by saving the municipal and laborers' retirement systems from insolvency in the next decade.

She also rejected the city's argument that the law should stand because it was backed by a majority of labor unions.

The law required Chicago and affected workers to increase their pension contributions and replaced an automatic 3 percent annual cost-of-living increase for retirees with one tied to inflation. The increase would be skipped in some years.

Chicago Mayor Rahm Emanuel's fiscal 2016 budget incorporates the law, as well as pending legislation that would reduce city contributions to its two public safety worker funds. The budget was approved by the city council on Oct. 28.

By REUTERS

NOV. 17, 2015, 2:15 P.M. E.S.T.

(Editing by Peter Cooney and Matthew Lewis)

SIFMA Submits Comments to the MSRB on Regulatory Notice 2015-18 Regarding Amendments to Rule A-3.

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) on their Notice 2015-18, "Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service".

Read the comments.

November 19, 2015

SIFMA U.S. Municipal Credit Report, Third Quarter 2015.

The municipal bond credit report is a quarterly report on the trends and statistics of U.S. municipal bond market, both taxable and tax-exempt. Issuance volumes, outstanding, credit spreads, highlights and commentary are included.

Summary

According to Thomson Reuters, long-term public municipal issuance volume totaled $86.0 billion in the third quarter of 2015, a decline of 22.4 percent from the prior quarter ($110.9 billion) but an 18.9 percent increase year-over-year ($72.4 billion). Including private placements ($2.4 billion), long-term municipal issuance for 3Q'15 was $88.4 billion.

Tax-exempt issuance totaled $75.5 billion in 3Q'15, a decline of 24.7 percent q-o-q but an increase of 15.3 percent y-o-y. Taxable issuance totaled $7.9 billion in 3Q'15, nearly unchanged q-o-q and a 68.5 percent increase y o y. AMT issuance was $2.7 billion, a decline of 2.3 percent q-o-q but an increase of 21.0 percent y-o-y. Year-to-date, municipal issuance totaled $301.0 billion, up 39.7 percent from last year and well above the 10-year average of $271.2 billion.

By use of proceeds, general purpose led issuance totals in 3Q'15 ($23.0 billion), followed by primary & secondary education ($16.8 billion), and higher education ($8.0 billion). Other notable sectors that saw an increase in issuance were mass transportation ($4.1 billion, an increase of 124.5 percent and 56.7 percent q-o-q and y-o-y, respectively), civic and convention centers ($1.1 billion, an increase of 370.9 percent and 583.9 percent q-o-q and y-o-y respectively), and single-family housing ($2.4 billion, an increase of 70.7 percent and 113.7 percent q-o-q and y-o-y, respectively).

Refunding volumes as a percentage of issuance increased slightly from the prior quarter, with 48.9

percent of issuance refunded compared to 49.7 percent in 2Q’15 and 50.4 percent in 3Q’14.

Read the Full Report.

NFMA Municipal Analysts Bulletin.

The Municipal Analysts Bulletin is now available online.

Click Here to Read the Bulletin.

CUSIP Request Volume Reverses 5-Month Slump, Forecasts Surge in U.S. Corporate and Municipal Bond Issuance.

“What we’re seeing in the current CUSIP issuance numbers is a ‘dash for debt’ among U.S. corporate and municipal issuers who are looking to raise fund ahead of an interest rate increase from the Fed,” said Richard Peterson, Senior Director of Global Markets Intelligence, S&P Capital IQ. “CUSIP request volumes will be instructive as we draw closer to a rate rise, offering us an early look at how capital markets might respond in a rising rate environment.”

Read the Full Press Release.

FINRA Publishes Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets.

Executive Summary

In light of the increasingly automated market for equity securities and standardized options, and recent advances in trading technology and communications in the fixed income markets, FINRA is issuing this Notice to reiterate the best execution obligations that apply when firms receive, handle, route or execute customer orders in equities, options and fixed income securities. FINRA is also issuing this Notice to remind firms of their obligations, as previously articulated by the Securities and Exchange Commission (SEC) and FINRA, to regularly and rigorously examine execution quality likely to be obtained from the different markets trading a security. FINRA also welcomes comments on whether there are other topics related to best execution for which additional guidance would be helpful. Any such comments can be emailed to pubcom@finra.org.

Questions concerning this Notice or FINRA Rule 5310 should be directed to:

Brant Brown, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6927 or by email; or

Andrew Madar, Associate General Counsel, OGC, at (202) 728-8056 or by email.

Read the Full Notice.

MSRB Provides Implementation Guidance on Best-Execution Rule.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published implementation guidance to assist municipal securities dealers in complying with the MSRB's new rule on "best execution" for municipal securities transactions, taking effect March 21, 2016.

MSRB Rule G-18, approved by the Securities and Exchange Commission (SEC) in December 2014, requires dealers to seek the most favorable terms reasonably available for their retail customers' transactions. The adoption of this key investor protection provision supports existing MSRB fair-pricing rules, promotes fair competition among dealers, and aligns with recommendations in the SEC's 2012 Report on the Municipal Securities Market.

"The MSRB is issuing this guidance to facilitate dealers' compliance with their new obligations and ensure that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities," said MSRB Executive Director Lynnette Kelly.

The MSRB's guidance addresses how best-execution concepts, including the standard of "reasonable diligence," applies to municipal securities transactions. The guidance also addresses the exemption from the new obligation for transactions with sophisticated municipal market professionals (SMMPs). Read the implementation guidance.

As part of its effort to promote regulatory efficiency and consistency across the fixed income markets, the MSRB coordinated with the Financial Industry Regulatory Authority (FINRA) on the finalization of the implementation guidance.

Date: November 20, 2015

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

Municipal Securities Trading Volume Falls to Lowest Level in 10 Years.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released municipal market statistics for the third quarter of 2015, showing the lowest par amount traded since at least 2005, when the MSRB first began collecting real-time trade data. Total par traded of municipal securities fell 18 percent to a total of $551 billion in third quarter 2015, compared to $672 billion traded in the same period one year ago. The number of trades for the quarter, 2.33 million, is up compared to the 2.19 million trades in the third quarter of 2014.

The MSRB, which regulates the municipal market, is the official source of municipal market trading and disclosure data, and operates the free Electronic Municipal Market Access (EMMA®) website that disseminates the information in real time. The website also houses aggregate trading, disclosure and new issuance data.

Other third quarter 2015 municipal securities trading highlights:

- Customer buying activity increased 9 percent, with an average of 15,189 customer purchases each

day in third quarter 2015, compared to 13,953 daily trades in the same quarter last year.
- The volume of interest rate resets on municipal variable rate demand obligations (VRDOs) continued to decline compared to previous years, with 134,817 VRDO rate resets in the third quarter 2015. VRDO rate resets totaled 155,182 in the comparable quarter of 2014.
- Trades of $100,000 or less, generally viewed as retail-sized trades, increased slightly in the third quarter of 2015, with a daily average par amount traded of $405 million, or 9 percent of all customer purchases. This is up from the $364 million daily average, or 7 percent of all customer purchases, in the same quarter of 2014.

The MSRB's quarterly statistical summaries include aggregate market information for different types of municipal issues and trades, and the number of interest rate resets for variable rate demand obligations and auction rate securities. The data also include statistics pertaining to continuing disclosure documents received through the MSRB's EMMA website.

The EMMA website is a centralized online database operated by the MSRB that provides free public access to official disclosure documents and trade data associated with municipal bonds. In addition to current credit rating information, the EMMA website also makes available real-time trade data and primary market and continuing disclosure documents for over one million outstanding municipal bonds, as well as current interest rate information, liquidity documents and other information for most variable rate municipal securities.

Date: November 19, 2015

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

- MSRB Publishes Compliance Advisory for Municipal Advisors.
- MSRB Issues First-of-a-Kind Compliance Advisory for MAs.
- MSRB Proposes Amendments for Move to T+2 Settlement Cycle.
- Hawkins Advisory (GASB 68)
- Ballard Spahr: Where We Stand on Issue Price for Tax-Exempt Bonds.
- NABL: IRS Issues Guidance on Student Loan Bonds.
- Intro Property Assessed Clean Energy (PACE) Finance WebCourse.
- *Glynn County v. Coleman* – Court of Appeals holds that statute governing tax refund actions against counties and municipalities permitted class action certification of taxpayers.
- *Texas Transportation Commission v. City of Jersey Village* – Court of Appeals holds that costs incurred by City in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project did not constitute compensable utility relocation costs under the utilities relocation statute.
- And finally, we experienced an epiphany this week upon encountering *City of Sparta v. Page*, a landmark ruling on the rights of homeowners to raise chickens in their backyards. Therefore, we hereby notify you that this publication will no longer cover public finance (which, let's face it, wasn't going so well anyway) and will instead be devoted solely to the field (no pun intended) of poultry-related jurisprudence. We apologize for any inconvenience.

ELECTION LAW - ARIZONA

Public Integrity Alliance, Inc. v. City of Tucson

United States Court of Appeals, Ninth Circuit - November 10, 2015 - F.3d - 2015 WL 6875310

Voters and advocacy organization brought action alleging that city's system for electing members of its city council violated state and federal constitutions by depriving voters of their right to vote in primary elections for individuals who would ultimately serve as their at-large representatives.

The United States District Court for the District of Arizona entered judgment in city's favor, and plaintiffs appealed.

The Court of Appeals held that:

- City's hybrid system for electing members of its city council designated single geographical unit, and
- System discriminated among residents of same governmental unit by excluding out-of-ward voters from primary elections.

City's hybrid system for electing members of its city council, pursuant to which candidates were nominated in partisan primaries held in each of city's six wards, but all city residents voted for one council member from each ward that held primary during same election cycle, designated single geographical unit, for purposes of determining its constitutionality, where each city council member represented entire city, not ward from which he or she was nominated.

City's hybrid system for electing members of its city council, pursuant to which candidates were nominated in partisan primaries held in each of its six wards, but all city residents voted for one council member from each ward that held primary during same election cycle, discriminated among residents of same governmental unit, in violation of Equal Protection Clause, by excluding out-o--ward voters from primary elections.

ANNEXATION - ARIZONA

Nation v. City of Glendale

United States Court of Appeals, Ninth Circuit - November 6, 2015 - F.3d - 2015 WL 6774044

Indian tribe brought action against city and State of Arizona, challenging the constitutionality of a law that allowed a city or town within populous counties to annex certain surrounding, unincorporated lands, as preempted by the Gila Bend Indian Reservation Lands Replacement Act.

The United States District Court for the District of Arizona granted summary judgment to the tribe. City and State appealed and tribe cross-appealed.

The Court of Appeals held that the Gila Bend Indian Reservation Lands Replacement Act preempted the Arizona annexation law.

The effect of an Arizona law, which allowed a city or town within populous counties to annex certain surrounding, unincorporated lands when a landowner submitted a request to the federal government to take ownership or hold the lands in trust, was an obstacle to the accomplishment and execution of the Gila Bend Indian Reservation Lands Replacement Act, and thus the Arizona law was preempted under obstacle preemption, where the Act sought to compensate an Indian tribe for the destruction of tribal land from flooding created by federally constructed dam, but the Arizona law would allow a city to effectively veto the tribe's application for land to be taken into trust under the Act, as the city could immediately annex the land in response to the tribe's application for the federal government to hold the land in trust, rendering the land ineligible to be held in trust.

PUBLIC RECORDS - FLORIDA

Economic Development Com'n v. Ellis

District Court of Appeal of Florida, Fifth District - October 30, 2015 - So.3d - 2015 WL 6567677

County clerk of courts brought action against private economic development company that contracted with county to provide services, seeking disclosure of company's records under Public Records Act.

The Circuit Court entered judgment requiring company to provide records to clerk. Company appealed, and clerk cross-appealed court's denial of his request for attorney's fees.

The District Court of Appeal held that delegation of function test did not apply to determine whether company was an agent of the county.

Delegation of function test did not apply to determine whether private economic development company that contracted with county to provide services was an agent of the county subject to the Public Records Act, but rather, remand was required for application of Schwab factors; company was county's primary, but not sole, agent for economic development activity, county continued to carry out economic development activities itself, and economic development activities were not traditional governmental obligations or functions.

CHICKENS - ILLINOIS

City of Sparta v. Page

Appellate Court of Illinois, Fifth District - October 22, 2015 - Not Reported in N.E.3d - 2015 IL App (5th) 140463-U - 2015 WL 6440338

The City of Sparta brought an ordinance violation action against defendant, Tim Page, alleging that Page was conducting an unpermitted use in a residential district, contrary to the provisions of the local zoning ordinance.

The appeals court upheld the trial court's ruling that raising of chickens in a residential district was not an agricultural use and was merely incidental to the permitted residential use of the property.

MUNICIPAL ORDINANCE - MINNESOTA

Working America, Inc. v. City of Bloomington

United States District Court, D. Minnesota - November 4, 2015 - F.Supp.3d - 2015 WL 6756089

Advocacy organization focusing on labor issues brought action challenging city ordinance that required certain door-to-door solicitors to obtain a solicitor's license prior to soliciting and that imposed an 8:00 p.m. curfew, and seeking a declaratory judgment that city's ordinance unconstitutionally infringed on organization's First and Fourteenth Amendment rights. Organization and city cross-moved for summary judgment.

The District Court held that:

- Ordinance was content based restriction on speech;
- Ordinance was not narrowly tailored to further compelling government interest, and thus ordinance could not withstand strict scrutiny;
- Ordinance vested city's licensing authority with subjective discretion to deny someone solicitor's license on grounds that applicant was not of good moral character or repute, and thus was facially unconstitutional;
- Under First Amendment, curfew ordinance facially discriminated based on content of message being spoken and thus was content based restriction on speech; and
- Ordinance imposing curfew restriction was not narrowly tailored to further compelling government interest, and thus ordinance could not withstand strict scrutiny.

ZONING - NORTH CAROLINA

Morningstar Marinas/Eaton Ferry, LLC v. Warren County

Supreme Court of North Carolina - November 6, 2015 - S.E.2d - 2015 WL 6777106

Neighbor filed petition for writ of mandamus, seeking to compel county planning and zoning administrator to place, on Board of Adjustment's agenda, neighbor's appeal from administrator's determination that easement connecting landowner's residential and commercial properties did not constitute a commercial use of residential property.

The Superior Court issued a writ of mandamus, and zoning administrator appealed. The Court of Appeals affirmed. Zoning administrator petitioned for discretionary review, which was denied. Zoning administrator then appealed as of right.

The Supreme Court of North Carolina held that neighbor had clear legal right to have its appeal transmitted to Board and placed on Board's agenda, thus warranting issuance of writ of mandamus to compel administrator to take such action.

Neighbor had a clear legal right to have its appeal, from determination by county planning and zoning administrator that easement connecting landowner's residential and commercial properties did not constitute a commercial use of residential property, transmitted to Board of Adjustment and placed on Board's agenda, thus warranting issuance of writ of mandamus to compel administrator to take such action after he refused to do so based on his judgment that neighbor lacked standing to appeal. Statute governing Board of Adjustment appeals specifically stated that the officer from whom the appeal was taken "shall" forthwith transmit to the board all the papers constituting the record upon which action appeal from was taken, and no exceptions were established.

UTILITIES - TEXAS

Texas Transportation Commission v. City of Jersey Village

Court of Appeals of Texas, Houston (14th Dist.) - October 15, 2015 - S.W.3d - 2015 WL

6081972

City brought action against transportation commission and its commissioner in his official capacity, seeking reimbursement for costs incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, claiming acquisition of replacement easements constituted compensable utility relocation costs.

The District Court denied defendants' plea to the jurisdiction, which was based on an assertion of sovereign immunity, and entered summary judgment in City's favor. Defendants appealed.

The Court of Appeals held that:

- City's claim did not qualify for exception to sovereign immunity as a challenge to validity of utilities relocation statute;
- Costs associated with obtaining replacement easements did not constitute compensable utility relocation costs; and
- City's claim did not qualify for ultra vires exception to sovereign immunity.

City's claim against transportation commission and its commissioner in his official capacity, seeking reimbursement for costs incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, did not qualify for exception to sovereign immunity as a challenge to validity of utilities relocation statute under which it sought reimbursement. Instead, it constituted an ultra vires claim contending that the commission, a state agency, and its commissioner, a state official, had refused to perform a ministerial act by refusing to pay the relocation costs as required by the statute.

Costs incurred by City in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project did not constitute compensable utility relocation costs under the utilities relocation statute. Although City had a compensable property interest in its easements, whether they be private or public, so as to entitle it to make a relocation of its utility facilities at the expense of the State. the replacement of those easements themselves was not a cost that was "properly attributable to the relocation," as contemplated by the statute.

Commissioner of transportation commission did not fail to perform a ministerial act in refusing to reimburse City for costs it incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, and thus, City's claim against commissioner did not qualify for ultra vires exception to sovereign immunity. Although utilities relocation statute entitled City to reimbursement for costs associated with relocating its utility lines, the replacement of easements was not a cost that was "properly attributable to the relocation," as contemplated by the statute.

EMINENT DOMAIN - TEXAS

In re Electric Transmission Texas, LLC

Court of Appeals of Texas, Corpus Christi-Edinburg - November 2, 2015 - Not Reported in S.W.3d - 2015 WL 6759238

This petition for writ of mandamus arose from an eminent domain proceeding instituted by Electric Transmission Texas, LLC (ETT) for the purpose of acquiring an easement and right of way access across a 6.420 acre of land owned by the real party in interest, Wyatt Agri Products Corporation, LLC ("Wyatt"). ETT sought the easement in order to install a double-circuit-capable electric transmission line for the purpose of transmitting and delivering electricity.

At a subsequent hearing, the trial court granted a Wyatt's motion for a continuance. At the haring, counsel for ETT reiterated its position that the trial court lacked jurisdiction to grant a continuance

ETT then brought this mandamus petition. ETT contended that the trial court did not have jurisdiction to hear or rule on the matters raised by Wyatt in its plea in abatement because the trial court's jurisdiction to act was limited to that conferred by statute. ETT further specifically contended that the trial court's failure to appoint the three special commissioners constituted an abuse of discretion and the trial court's orders issued to date were void.

The Court of Appeals agreed with ETT, concluding that the trial court abused its discretion in failing to appoint the special commissioners and in scheduling a hearing on Wyatt's plea in abatement.

TAX - GEORGIA

Glynn County v. Coleman

Court of Appeals of Georgia - November 16, 2015 - S.E.2d - 2015 WL 7162162

Taxpayers filed three class action lawsuits against county seeking a refund of ad valorem taxes, declaratory judgment, and equitable, injunctive, and mandamus relief. The trial court granted class action certification. County appealed.

The Court of Appeals held that statute governing tax refund actions against counties and municipalities permitted class action certification of taxpayers.

Motion to dismiss asking trial court to dismiss taxpayers' class action claims because complaint generally was subject to dismissal based upon sovereign immunity, limitation periods in tax refund statute, and alleged flaws with taxpayers' claims for non-monetary relief, was not proper procedure to avoid certification of a class action, in taxpayers' action against county for refund of ad valorem taxes; rather, issue to be resolved was whether requirements of class action statute had been met.

Statute governing tax refund actions against counties and municipalities permitted class action certification of taxpayers in action against county seeking refund of ad valorem taxes. While general assembly had modified a different tax refund statute to disallow class action certification, it left statute in question intact.

Fitch: Texas School Districts Should Weather Tax Revenue Drop.

Fitch Ratings-New York-10 November 2015: A decline in Texas school district revenue streams of approximately $1.2 billion per biennium should not affect their bond ratings, Fitch Ratings says.

Texas voters last week approved an increase in the residential homestead exemption from $15,000 to $25,000 for public school purposes. The impact will likely be largest for suburban school districts that are primarily residential. The legislation includes a requirement that the state make whole any revenue shortfall and the fiscal 2016-2017 state budget includes this additional funding amount.

Most Texas school districts levy taxes at the maximum statutory amount for operations of either $1.04 or $1.17 per $100 of taxable assessed value (TAV), depending on prior voter approval of an additional $0.13. Districts typically have more flexibility on debt service, although a number of districts levy debt service tax rates at or near the statutory cap of $0.50 for new issuance approval. Nine districts rated by Fitch currently levy at the $0.50 cap. The debt service make whole provision applies only to debt issued (and first payment made) prior to Sept. 1, 2015, so any declines in taxable value from the increased exemption may affect the timing and size of new borrowings for those districts with tax rates at or near the statutory cap.

Generally strong economic conditions in Texas over the past several years have contributed to solid gains in TAV for local governments (the exceptions being those areas with large mineral value concentrations). These TAV gains, along with funds made available through the make whole provision, will cushion the blow from the homestead exemption increase. For the many districts with limited debt service tax rate flexibility, TAV gains will shorten or eliminate delays in borrowings that might have otherwise occurred.

Moody's: Chicago's Possible Pension Funding Paths Examined in New Scenario Analysis.

New York, November 10, 2015 — Today, Moody's Investors Service released a scenario analysis of the City of Chicago's (Ba1 negative) possible pension funding paths. The scenarios incorporate the city's recently adopted property tax increase as well as the outcomes of two key decisions pending with the State of Illinois (Baa1 negative) and the Illinois Supreme Court. The analysis indicates that, despite significantly increasing its contributions to its pension plans, Chicago's unfunded pension liabilities could grow, at a minimum, for another ten years.

"Chicago's statutory pension contributions will remain insufficient to arrest growth in unfunded pension liabilities for many years under each scenario," Moody's AVP-Analyst Matthew Butler says in the new report, "Chicago's Pension Roadmap: A Scenario Analysis."

The scenario that Moody's views as having the most positive credit impact for Chicago consists of a favorable Illinois Supreme Court decision, as the city's budget assumes, but state legislative action that does not conform to the city's adopted plan. Senate Bill 777 has been passed by the Illinois General Assembly, but requires the governor's approval to become law. The bill lowers Chicago's current statutory public safety pension contributions relative to existing statute, granting the city more time to meet statutory funding targets. Without Senate Bill 777, the city's 2016 statutory pension contribution will be much higher than the city has budgeted.

"This scenario is the most credit positive over the long term. Although it would require larger pension contributions than currently budgeted, the higher payments would achieve the slowest and least extensive growth in unfunded liabilities among the four scenarios," Butler says.

The city's adopted budget assumes the governor signs Senate Bill 777 and the Illinois Supreme Court reinstates PA 98-0641, the latter of which would preserve benefit reform of Municipal and Laborer pensions and reduce the plans' risk of insolvency. While the adopted budget notably increases the city's pension contributions relative to prior years, the amounts contributed under these assumptions could enable unfunded pension liabilities to grow for up to 20 years.

Two other scenarios assume an unfavorable ruling from the Illinois Supreme Court, which would raise the possibility of substantial cost growth for the city over the next decade, with or without Senate Bill 777.

"This would exert additional negative credit pressure on Chicago's credit quality because it would likely remove all flexibility to reduce unfunded liabilities through benefit reform and raise the probability of plan insolvency," Butler says.

The report is available to Moody's subscribers here.

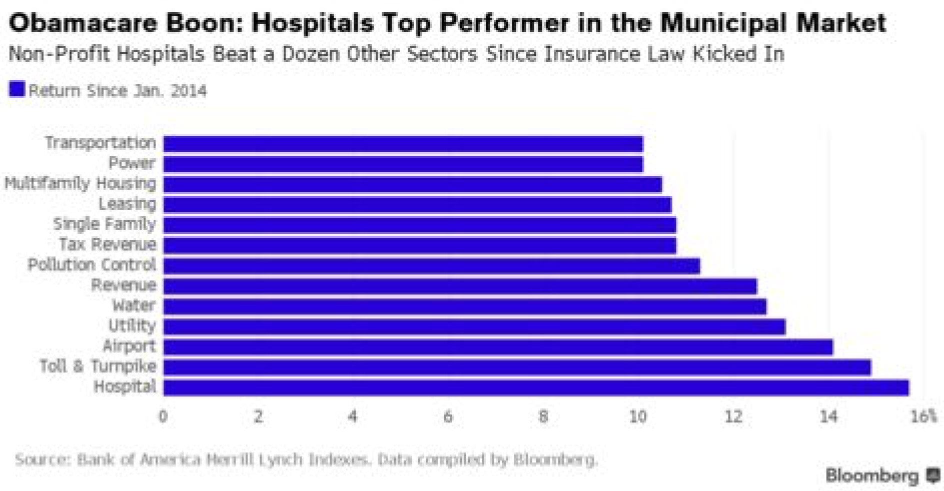
Fading Obamacare Gains Put Drag on 16% Hospital Muni-Bond Rally.

For municipal-bond buyers, the boost from Obamacare is waning.

Quarterly results from U.S. hospital chains such as HCA Holdings Inc. — which make more frequent disclosures than non-profit competitors — suggest financial gains from the federal law are growing more limited, according to Barclays Plc. That provides an early look at a trend that may also affect non-profit hospitals, whose municipal bonds have rallied, delivering 16 percent returns in the past two years as the providers were stuck with fewer unpaid bills.

"The effect of the Affordable Care Act is fading," said Mikhail Foux, the head of municipal strategy at Barclays in New York. "We don't really have any new states adopting Medicaid so you don't have that expansion."

The federal law has provided health-care coverage to 17.6 million Americans as a majority of states expanded access to the Medicaid program for the poor and others bought subsidized insurance. The factors that have driven that growth are now weakening: only one state, Montana, is set to expand Medicaid in 2016, while rising premiums may cause some consumers to go without or lose their policies for not paying their bills.



About 9.9 million people were paying for coverage purchased on the exchanges created by the law as of June 30, a decline of 300,000 from March 31, according to the Centers for Medicare & Medicaid Services. The U.S.
Department of Health & Human Services estimates that about 9.1 million people will be enrolled by

the end of the year. The Obama administration is targeting a range of 9.4 million to 11.4 million by the end of 2016.

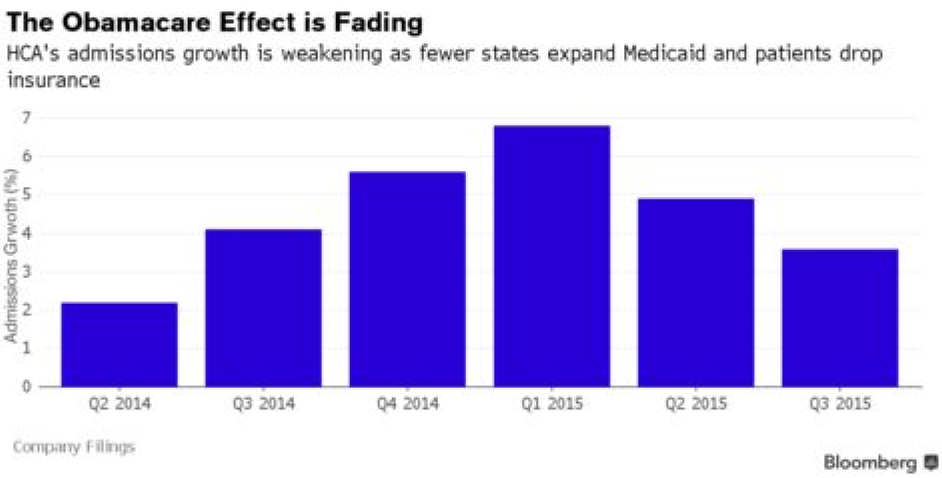
Mergers and acquisitions in the insurance industry — such as Anthem Inc.'s proposed purchase of Cigna Corp. — could strengthen the ability of companies to cut payments to hospitals for treatments, according to Foux.

"It's very safe to bet that a lot of hospitals across the country are not going to see as many people getting insurance as they had expected," said Jason McGorman, an analyst with Bloomberg Intelligence.

Consumers may be dropping plans purchased on exchanges because they don't cover their preferred provider, he said.

The law, which took full effect in January 2014, has been a boon to investors who hold tax-exempt bonds sold by hospitals: The securities have delivered outsized returns since then, beating a dozen other revenue-bond sectors, including toll roads, airports and utilities, according to Bank of America Merrill Lynch's indexes. The bonds' prices have slipped 0.4 percent over the past month amid speculation that the Federal Reserve will raise interest rates as soon as December.

The potentially diminished fiscal benefits were highlighted when HCA, whose 168 hospitals make it the largest system in the U.S., reported earnings for the quarter ended Sept. 30. Uninsured admissions increased 13.6 percent from a year earlier, boosting its costs for charity care and patients without insurance by $525 million, the Nashville, Tennessee-based company said.



Tenet Healthcare Corp. reported charity and uninsured admissions increased 3.7 percent in the quarter. Both HCA and Tenet said the growth was coming from uninsured patients in Florida and Texas, two states that haven't expanded their Medicaid programs.

For-profit corporations can serve as bellwethers for the industry. Unlike publicly traded hospital companies, non-profit and government-run systems aren't required to report financial information quarterly.

Last year, an improved economy and Obamacare boosted hospital admissions and revenue. With coverage expanding, hospitals didn't need to write off as much charity care. In 2014, their unpaid bills for treating the uninsured and those with little coverage dropped by $7.4 billion, $5 billion of which came from states that expanded Medicaid, according to a March estimate by the Obama administration.

Growing Very Rich

On Nov. 5, BBB rated tax-exempt hospital bonds — or those with the lowest investment-grade ratings — yielded 0.03 percentage point less than the index of like-rated revenue bonds, according to Barclays. That's a shift from May 2014, when hospital debt yielded 0.15 percentage point more.

Lower-rated hospitals "got very rich," Foux said. "I think that they're vulnerable when we start seeing financial results."

The spread, or extra yield, that hospitals offer over benchmark municipal debt has narrowed by more than 0.7 percentage point since early 2014, said Tom DeMarco, fixed income strategist with Fidelity Capital Markets, the trading arm of Fidelity Investments.

"That's been a heck of a run," he said. "I don't think, from a relative value perspective, the sector is that compelling."

The slowing gains from Obamacare may affect smaller hospitals the most, analysts said. That's because they have fewer resources to invest in technology, don't have as much clout to negotiate better prices for drugs and medical equipment and pay more to borrow.

"You're certainly seeing more haves versus have nots," said Emily Wadhwani, a Fitch Ratings analyst. "By a growing proportion, the have nots tend to be smaller providers."

BloombergBusiness

by Martin Z Braun

November 12, 2015 — 9:01 PM PST Updated on November 13, 2015 — 8:05 AM PST

Canadian Pension Funds Buy Chicago's Toll Road for $2.8B.

Three of Canada's largest pension plans have agreed to buy Chicago toll-road operator Skyway Concession Co. for $2.8 billion from a group led by Spain's Ferrovial SA.

Canada Pension Plan Investment Board, Ontario Municipal Employees Retirement System, and Ontario Teachers' Pension Plan said they will each own a third of Skyway under the terms of the deal, contributing $512 million each.

"Skyway represents a rare opportunity for us to invest in a mature and significant toll road of this size in the U.S.," Cressida Hogg, Canada Pension's head of infrastructure, said in a statement Friday. "This investment fits well with CPPIB's strategy to invest in core infrastructure assets with long-term, stable cash flows in key global markets."

The Canadian pension funds, which collectively have about C$499 billion ($374 billion) in assets under management, have been acquiring alternative assets, such as toll roads, ports, and other infrastructure, for the long-term, stable returns they offer.

Canada Pension, for example, is currently part of a group led by Qube Holdings Ltd. that is trying to acquire Australian rail and port operator Asciano Ltd.

Madrid-based Ferrovial is selling its 55 percent stake alongside its partners Macquarie Atlas Roads Group and Macquarie Infrastructure Partners, which own the remaining stake. The transaction is expected to close after it receives the necessary approvals from the City of Chicago, Ferrovial said in a statement. Ferrovial said the sale will return roughly $269 million to the company.

Skyway is a 7.8-mile (12.6-kilometer) toll road that forms a link between downtown Chicago and its south-eastern suburb. The Chicago Skyway Concession was awarded to Ferrovial and its partners for $1.83 billion in 2005. The concession was the first privatization of a highway in the U.S. and the sale process began in June, Ferrovial said.

Ferrovial, through its subsidiary Cintra, manages 1,300 miles of highway across 28 concession in Canada, the U.S., Europe, Australia and Colombia, including the 407 ETR concession, which it owns in partnership with Canada Pension and SNC-Lavalin Group.

BloombergBusiness

by Scott Deveau

November 13, 2015 — 10:09 AM PST Updated on November 13, 2015 — 10:43 AM PST

Philanthropies Rise as Source of Revenue for Pressed U.S. Cities.

Flint, Michigan, faces a $12 million cost to replace its lead-contaminated water system, and the Charles Stewart Mott Foundation will pay a third of the price.

“When we saw blood levels in children exceeded safety standards, we just said we have to come to the table,” said Ridgway White, president of the foundation, which has for decades supported educational and community development programs in this impoverished birthplace city of General Motors Co.

The aid from the 89-year-old Flint-based philanthropy last month demonstrates the changing role of nonprofit foundations. Where once they might have spent on a symphony hall or museum, they now pick up the tab for health, safety and infrastructure in U.S. cities that have seen their tax bases erode and state assistance dwindle.

As part of Detroit’s exit from bankruptcy a year ago, foundations pledged to contribute about $360 million over 20 years to shore up public-employee pensions. A growing number of cities are relying on private money for the purchase of police surveillance cameras and other equipment. Madison, Alabama, for instance, received $320,000 from the Huntsville-based Alpha Foundation Inc. for eight patrol cars.

“It’s the new way of doing business,” said Mayor Zachary Vruwink of Wisconsin Rapids, where the Incourage Community Foundation bought an abandoned downtown newspaper building with plans to open a microbrewery, a cafe and other shops.

“Government-funded programs will go only so far, and philanthropic support is required,” said Vruwink, whose city of 18,000 in central Wisconsin still deals with the impact of three paper-mill closings in the past decade.

Basic Functions

While there’s nothing new about charitable giving to public institutions, such as Facebook founder Mark Zuckerberg’s $100 million gift in 2010 to public schools in Newark, New Jersey, more recent grants have moved nonprofit foundations into spending that, in more prosperous times, would have been handled by taxpayers.

“Government gridlock has left many communities looking for solutions to some of the big challenges they face,” said Vikki Spruill, president and chief executive officer of the Council on Foundations, in Arlington, Virginia. “The limitations of political leaders to address the pressing needs of communities have increased pressure on foundations to assume roles that government has historically taken.”

Municipalities have shown modest improvement in their fiscal conditions, according to a September report from the National League of Cities. Still, the gains have “not been substantial enough to restore revenue declines” from the 18-month recession that began in 2007.

Eight years hence, cities are operating at about 90 percent of 2006 revenue levels, the report said. Since 2010, 30 states have reduced aid to local governments at least once, according to the National Association of State Budget Officers.

The risk for cities receiving foundation assistance is that they become reliant on the kindness of strangers rather than the taxpayers they serve. Rob Collier, president and chief executive officer of the Council of Michigan Foundations, said there is “a huge problem of sustainability” because municipalities can’t assume support will continue.

“Philanthropy cannot replace government,” Collier said.

In important ways, it has. In Flint, the Mott Foundation has also provided dollars to hire police officers.
“We’re starting to see more foundations step up and provide government services,” said Jim Ananich, a Democratic state senator who represents his hometown of Flint. “It’s a trend that’s going, in my opinion, in the wrong direction. It’s supplanting large amounts of what government used to do.”

Poverty Town

Flint, an industrial ruin about 68 miles (109 kilometers) northwest of Detroit, has lost almost half its population since 1960. It was “Buick City,” once the home base of GM’s Buick and Chevrolet divisions. Now, 42 percent of its 99,000 residents live in poverty. The city has twice been under the direction of a state-appointed emergency manager because of chronic financial distress.

The Mott foundation is a descendant of Flint’s glory days. Charles Stewart Mott, an original founding partner of GM, created the organization in 1926. In recently picking up one-third of the water-system improvement cost — Michigan is paying half, or $6 million — the foundation is changing out of necessity, said White, its president.

“Some of the traditional role that philanthropy is trying to play has been to stay out of government,” White said. “But when you look at some hard-hit communities, it’s a challenge to stay out of it.”

After samples taken in September from the Flint River showed lead exceeded federal safety standards in the city’s main source of drinking water, officials decided to switch to the Detroit water system. That water comes from Lake Huron and is treated by the Detroit Water and Sewerage

Department.

The philanthropic contributions in Flint and Detroit may raise the expectations of other municipalities in financial trouble.

“You will see more pressure from cities to do that sort of thing, especially with foundations in their backyard,” said Bill Schambra, a senior fellow at the Hudson Institute, a Washington-based research organization.

Seeking help is one thing; getting it another.

“America’s foundations and charities can complement the work of government, not replace it,” said Spruill.

BloombergBusiness

by Tim Jones

November 13, 2015 — 2:00 AM PST

Puerto Rico Electric Extends Bondholder Restructuring Pact.

Puerto Rico’s main electricity provider extended an agreement with some bondholders to Nov. 20, giving the utility more time to negotiate with insurers that guarantee a portion of its debt against default.

The Puerto Rico Electric Power Authority, known as Prepa, is trying to restructure $8.2 billion of debt to reduce its costs and free up cash for plant upgrades. Investors holding about 35 percent of its debt on Nov. 5 agreed to take losses of as much as 15 percent by exchanging their bonds for new securities.

The deal was set to lapse Thursday if Prepa couldn’t win the support from companies that insure about $2.5 billion of the utility’s debt. The new deadline is Nov. 20, Prepa said in a statement.

“Prepa will use the extension to continue discussions with its monoline bond insurers, while the legislative process to approve the Prepa Revitalization Act continues,” according to the utility.

The restructuring would be the largest ever in the $3.7 trillion municipal-bond market and mark a first step by Puerto Rico to reduce a $70 billion debt load that Governor Alejandro Garcia Padilla says the island can’t afford to pay.

Debt Exchange

If MBIA Inc., Assured Guaranty Ltd. and Syncora Guarantee Inc. don’t sign on to the Nov. 5 agreement, the negotiations between Prepa, its fuel-line lenders and bondholders may ultimately be resolved through the courts, according to a notice posted on the Municipal Securities Rulemaking Board’s website.

Prepa bonds maturing July 2040, the utility’s most-actively traded uninsured security by volume in the past three months, changed hands Thursday at an average 58.6 cents on the dollar, for an average yield of 9.7 percent, according to data compiled by Bloomberg. The bonds traded at an average 50 cents at the start of the year.

The debt exchange would need to be approved by Puerto Rico lawmakers, who have until Nov. 17, the end of the current legislative session, to vote on Prepa's Revitalization Act, which would change Prepa's operations and allow it to restructure debt. Garcia Padilla could call a special session of the legislature to give lawmakers more time to work on the Prepa bill.

The new bonds must receive an investment-grade rating, and the exchange will be voided if more than $700 million of the utility's uninsured bonds aren't sold back, according to the terms of the agreement. The three largest rating companies grade Prepa at junk-bond levels.

BloombergBusiness

by Michelle Kaske and Laura J Keller

November 12, 2015 — 12:57 PM PST Updated on November 13, 2015 — 6:09 AM PST

Bloomberg Brief Weekly Video - 11/12

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

Watch the video.

11:02 AM PST
November 12, 2015

Puerto Rico Is Running Out of Options.

Puerto Rico doesn't look as if it's on the verge of economic disaster. Tourists are still flocking to its beach resorts. Malls, anchored by department stores like Macy's and JCPenney, are full of shoppers. At rush hour, roads are clogged with late-model luxury SUVs. But after years of borrowing to prop up the island's stagnant economy, the government faces $720 million in debt payments in the next two months, and it may run out of cash as early as December.

Government officials say meeting those obligations may leave them short of the cash they need to cover payroll, retirement benefits, and Christmas bonuses. Governor Alejandro García Padilla has said he'll consider cutting hours for public workers to keep essential functions running. García Padilla has already closed some schools, delayed tax rebates, and suspended payments to government suppliers.

The Obama administration has offered a way out. On Oct. 21 the Treasury Department put forward an assistance package that would sustain the island's medical system by increasing reimbursement rates for Medicaid, the public-health program for the poor. It serves 46 percent of Puerto Ricans and is paid at rates 70 percent lower than in any U.S. state, according to the Puerto Rico Healthcare Crisis Coalition, a group of doctors, hospitals, and insurers. It would also offer some bankruptcy protections to help the government restructure more than $70 billion in debt—more than any state's except New York and California. In return, Congress would gain more say over the island's finances.

“The situation in Puerto Rico is urgent,” says Brandi Hoffine, a White House spokeswoman.

So far, Congress, which would have to approve the changes, hasn’t responded. A bill that New York Democratic Senator Chuck Schumer introduced in August to equalize Medicaid and Medicare rates has stalled. So has a bill by Connecticut Democratic Senator Richard Blumenthal that would allow Puerto Rico’s municipalities to file for bankruptcy protection. A bill introduced on Oct. 8 in the House by Puerto Rico’s nonvoting member, Democratic Representative Pedro Pierluisi, would guarantee some of the island’s debt, but it hasn’t attracted any co-sponsors. “We are fast approaching a catastrophe,” says Melba Acosta, president of the Government Development Bank, which oversees the island’s finances and debt. “We cannot wait any longer.”

Republicans say they won’t approve assistance to Puerto Rico unless its government provides audited financial statements giving a complete picture of its finances. Puerto Rico, a self-governing U.S. territory, missed a self-imposed Oct. 31 deadline for submitting statements from fiscal year 2014 and hasn’t yet prepared documents for the 2015 fiscal year, which ended June 30. Congress “is waiting for some good-faith effort from Puerto Ricans,” says Iowa Republican Chuck Grassley, chairman of the Senate Judiciary Committee.

Alaska Republican Senator Lisa Murkowski, whose Energy and Natural Resources Committee oversees U.S. territories, says she’s still reviewing the administration’s proposals. “The one thing we all agreed on is that Puerto Rico is in a world of hurt right now,” she says. Utah Republican Orrin Hatch, who as chairman of the Senate Finance Committee held a hearing on the island’s travails in September, says he’s receptive to the administration’s proposal to establish a control board to oversee the island’s finances. “We’re not moving very fast on that,” he says. “I’m not sure what we should do there.”

Democrats say hedge funds, which hold as much as a third of Puerto Rico’s debt, have discouraged action that would make it harder for them to get paid. “It has become increasingly clear that hedge funds, which have purchased a sizable part of Puerto Rico’s debt, are exacerbating the crisis,” says Representative Nydia Velázquez, a New York Democrat who introduced a bill on Nov. 4 that would increase disclosure requirements for hedge funds’ debt holdings.

Investors and hedge funds holding bonds from the Puerto Rico Electric Power Authority, or Prepa, agreed on Nov. 5 to a restructuring plan that would require them to take losses of up to 15 percent. “Blanket statements criticizing the role of bondholders aren’t just factually inaccurate, they are a clear example of damaging political rhetoric,” says Stephen Spencer, a managing director at Houlihan Lokey who is advising Prepa bondholders.

Puerto Rico’s economy has shrunk about 15 percent since 2006, when Congress ended tax breaks for manufacturers there. The unemployment rate stands at 11.4 percent, more than twice the national average. Forty-five percent of families live below the poverty line. Last year the island lost an average of 1,200 people each week to the mainland, the most since the U.S. Census Bureau began tracking departures a decade ago. “We’re on the verge of becoming a ghetto of old poor people,” says Elías Gutiérrez, an economics professor at the University of Puerto Rico.

Marielys Feliciano, a single mother of four who works in construction, sees no reason to stay. This summer, her neighborhood school outside the well-off city of Manatí was closed to cut costs. Now she has to wake up at 4 a.m. to get her children to another school and pays for a baby sitter to pick them up. When she called to ask about government assistance, she was told she’d be better off moving to the U.S. “I see the future here, and the doors are closing,” she says, folding her hands together. “I can’t limit my kids to a place where there’s no future.”

The bottom line: Puerto Rico's government says it could run out of cash to pay its debts in December, and Congress has yet to offer assistance.

Bloomberg Businessweek

by Ezra Fieser, Michelle Kaske, Kasia Klimasinska, and Jim Rowley

—With Angela Greiling Keane

November 12, 2015 — 2:00 AM PST

Junk Deals Derailed as High-Yield Muni Funds Pull in Less Cash.

The municipal-bond market is forcing high-yield borrowers to scrap their junk.

The Florida Development Finance Corp. this week postponed a $1.75 billion unrated bond sale for All Aboard Florida, a passenger railroad backed by Fortress Investment Group LLC, that underwriters have been marketing since August. A Texas agency has delayed pricing $1.4 billion of speculative debt for a methanol plant since releasing offering documents Oct. 19. And the Puerto Rico Aqueduct & Sewer Authority, struggling to access capital as the island staggers toward default, couldn't lure buyers even with yields of 10 percent.

The struggle to sell the munis mirrors the slowdown in the corporate-debt market for much of the year amid signs of a weakening Chinese economy and declining commodity prices. With speculation growing that the Federal Reserve will raise interest rates for the first time in nearly a decade and Puerto Rico's fiscal crisis escalating, the flow of money into funds that invest in the riskiest munis has slowed to $1.2 billion this year, compared with $8.8 billion in 2014, Lipper US Fund Flows data show.

"You're not seeing a tremendous amount of money coming in and really burning a hole in people's pockets," said Mark Paris, who runs a $7.3 billion high-yield muni fund from New York at Invesco Ltd. He said he or a colleague visited Florida and Texas to analyze the rail and methanol offerings, though he declined to say whether he'll buy the bonds. "Size is becoming an issue — you're not going to have every high-yield fund in these. There are only a certain amount of bonds funds can take."

Large junk-bond deals are rare in the $3.7 trillion municipal market, which is mostly made up of states, cities, counties and school districts at little risk of defaulting. Until Puerto Rico issued $3.5 billion of general obligations last year, the biggest speculative-grade deal was $1.2 billion.

There are only 12 open-end funds focused on high-yield munis that have more than $1 billion in assets, data compiled by Bloomberg show. Many have large stakes in investment-grade borrowers like California, which has had its credit rating raised repeatedly since the recession as its finances improved.

By contrast, All Aboard Florida's bonds are unrated, which is an indication they'd receive a junk rating. It's parent, Florida East Coast Industries, was ranked seven steps below investment grade by Standard & Poor's last year. The methanol-plant bonds for OCI N.V.'s Natgasoline LLC will probably have a rank three steps below investment grade, according to David Ambler, who analyzes high-yield munis at AllianceBernstein Holding LP in New York. The Puerto Rico agency, known as Prasa, has the third-lowest mark, Caa3, from Moody's Investors Service.

Size An Issue

"The biggest issue that's postponing these deals is just the absolute size of each one, and they're certainly speculative," said Mike Petty, manager of the $1.8 billion MainStay High Yield Municipal Bond Fund. "It'll be difficult to get that many bonds done within our space. The underwriters have been trying to get crossover interest as well."

With Puerto Rico veering toward default, some hedge funds and distressed-debt buyers may be leery of buying more high yield munis, said Invesco's Paris. Such investors, know as crossover buyers because they're not limited to specific markets the way mutual funds frequently are, hold as much as a third of the island's $70 billion of debt, according to Mikhail Foux at Barclays Plc. Puerto Rico's bonds have slumped more than 10 percent this year.

"There's a lack of crossover hedge fund buyers who can come in and take up the slack of what the tax-exempt buyers don't buy, and that's slowed down the order process," said Paris, whose fund has gained 3.8 percent this year, beating 93 percent of its high-yield peers. "I've been surprised at how long people have talked about these deals."

High-yield munis have delivered lackluster gains this year. They've returned 0.8 percent, about half what was seen in the broad municipal market, Barclays data show. That's partly because of Puerto Rico, whose bonds make up at least 25 percent of the index.

Gauging Risk

The offerings that have struggled to find buyers carry more risk than typical munis.

Puerto Rico's sewer agency, which shelved a $750 million sale, could be swept up in the commonwealth's debt restructuring, with Governor Alejandro Garcia Padilla seeking to persuade investors to accept less than they are owed. All Aboard Florida would be the first new privately run U.S. passenger railroad in more than a century, a project whose success will hinge on travelers' willingness to abandon their cars in favor the 235-mile (378-kilometer) train line running from Orlando to Miami. The methanol plant is an effort to break into a business dominated by foreign competitors.

All Aboard Florida spokeswoman Melissa Shuffield didn't return phone calls seeking comment. Omar Darwazah, a spokesman for OCI, didn't respond to a phone call and e-mail seeking comment.

With interest rates near generational lows and the Federal Reserve signaling it may end its almost seven-year policy of keeping borrowing costs close to zero, investors are rightfully slow to commit to new deals, said Jim Murphy, who manages T. Rowe Price's $3.3 billion high-yield fund from Baltimore.

"It's that much more important to be careful when spreads are tight and rates are low like the environment we're in," Murphy said. "People are being really careful and that's refreshing."

BloombergBusiness

by Brian Chappatta

November 11, 2015 — 9:01 PM PST Updated on November 12, 2015 — 5:59 AM PST

Airbnb to Work With Cities Amid Efforts to Regulate Home Sharing.

Airbnb Inc. pledged to join with local governments and improve transparency as it faces scrutiny from hotels and policy makers who argue the home-sharing startup is driving up rental prices and failing to pay taxes like the hotel industry.

The company on Wednesday released the “Airbnb Community Compact,” a statement outlining its plan to cooperate with cities, and defending the positive economic impacts of its business.

“We will partner with individual cities to address their policy needs, and work with cities to help ensure the efficient collection of tourist and hotel taxes,” the company said in its statement. “We will also release regular economic activity reports in key markets.”

Airbnb said its short-stay home rental service has contributed $5.82 billion in economic benefits in five of its most-active cities: $1.96 billion in New York, $1.95 billion in London, $890 million in Los Angeles, $510 million in Berlin and $510 million in San Francisco. The company said those calculations include money that hosts make on Airbnb and its estimates for guest daytime spending during their visits.

Hosts’ Benefits

The San Francisco-based business, founded in 2008 and now operating in more than 34,000 cities globally, said it is “expanding the economic pie” for ordinary Americans by allowing the average host to generate the equivalent of a 14 percent annual raise.

The startup said it will release economic data to demonstrate the value of its home-sharing model. The annual reports will include information such as the company’s total economic activity, the average income earned by hosts and the geographic distribution of listings.

Airbnb defeated a San Francisco ballot measure last week to limit its service as a surge in highly paid technology workers has driven up housing prices and sparked protests over income inequality and evictions.

The legislation would have imposed a 75-day-per-year limit on Airbnb rentals and forced hosts to register with the city. The company spent $8.4 million to defeat the measure and hired Chris Lehane, a former White House crisis manager, to spearhead efforts to block regulations that could impede its business.

The startup has mostly gotten along with municipal officials. Airbnb has struck deals with Paris, Chicago, San Francisco and others to collect taxes on behalf of the hosts using its platform. In the community compact, the company said it will share more data with cities, prevent some hosts from renting out multiple units and make sure taxes are paid.

BloombergBusiness

by Lily Katz and Eric Newcomer

November 11, 2015 — 8:53 AM PST Updated on November 11, 2015 — 11:18 AM PST

How Much Will San Diego, St. Louis, Oakland Pay to Keep NFL?

In the 21 years Los Angeles has been without an NFL franchise, plenty of cities have gone into debt to keep their teams from relocating to the second-biggest American media market. Today, delegations from St. Louis, San Diego, and Oakland will make their case to the NFL that they should be allowed to do the same.

This is as close as Los Angeles has come to getting a team back, as the owners of three teams have stated their intentions to move. The Chargers and the Raiders have proposed a $1.7 billion stadium in the Los Angeles suburb of Carson, which they would share, and Wednesday announced that Robert Iger, CEO of Walt Disney Co., would lead the joint venture. Rams owner Stan Kroenke, who is worth $5.6 billion, in January put forward plans to build an 80,000-seat stadium on land he owns in Inglewood, California.

Whether Los Angeles gets one or two new teams, or none at all, is up to the rest of the NFL owners, who could vote on relocation as soon as January. In general, the NFL prefers teams to stay put, as long as the host cities can craft a generous-enough plan for a new stadium.

Missouri: $388 Million

At Missouri Governor Jay Nixon's request, a statewide task force created a plan for a $1 billion stadium and the redevelopment of 88 acres of blighted property along the Mississippi River. To finance the project, Missouri would issue $135 million in state bonds, St. Louis would issue $66 million in city bonds, and the Rams would get $187 million in tax credits and other incentives, according to state documents.

With $388 million in public funding, the Missouri plan is the most generous of all the cities trying to keep a team, but a group of state legislators is demanding that Nixon take his proposal to the voters, or to the legislature, or else.

"We're not going to pay on those bonds," said state Senator Rob Schaaf, Republican from St. Joseph, in a phone interview. "They're going to have to find buyers who are just so gullible to believe we won't play the game of chicken with them."

San Diego: $350 Million

The city and county of San Diego have offered $350 million toward a new $1.1 billion stadium near Qualcomm Stadium, where the Chargers have played since 1967. Both would finance their contributions — $200 million from the city, $150 million from the county — with municipal bonds. Standard & Poor's rates San Diego AA, its third-highest rank. The city still owes $52 million for the team's current home.

"Our best chance to keep the Chargers from moving to L.A. is to show San Diego's proposal is real and ready to move forward in 2016," San Diego Mayor Kevin Faulconer said in an e-mail. "We have a fair and common-sense plan and can break ground on a new stadium as soon as 2017 – if the Chargers work with us in good faith."

Chargers spokesman Mark Fabiani has said the team will file paperwork with the NFL to relocate to Los Angeles. The Chargers broke off negotiations with San Diego in June after contending that the city had run out of time to conduct a legal environmental review for a new stadium.

Oakland: $0

In Oakland, Mayor Libby Schaaf isn't proposing public subsidies to build a replacement for the Raiders' O.co Stadium. Taxpayers in the Oakland area still owe $99 million on the coliseum the Raiders share with the Major Baseball League's Athletics. Through a spokeswoman, Schaaf (no relation to the Missouri state senator) said the city would pay for infrastructure improvements that would serve a new stadium, but she plans to make a case to team owners that Oakland is still the best place for the team.

"Everything from Oakland's growing economic momentum and urban vitality to the team's die-hard regional fan base make it clear that there is no better time for a major league team to be located in, or associated with Oakland," Schaaf said in a Nov. 3 statement.

And the winner is …

The NFL owners will convene in December to get updates from the various committees focused on L.A. None of the proposals are obvious winners. Sports economist Victor Matheson of College of the Holy Cross said teams outside of major media markets generally want subsidies of up to $500 million, a threshold all the cities in question fail to meet by more than $100 million.

"No one is really wild about coming up with $400 million to $500 million to keep a stadium," said Matheson. "That's proving to be very difficult."

If Los Angeles does finally get a team, NFL owners may lose their strongest leverage.

"Having Los Angeles in play has brought the NFL hundreds of millions of dollars in stadium subsidies," said Matheson. "If they finally get a team, they will no longer have that bargaining chip."

BloombergBusiness

by Darrell Preston, Tim Jones and James Nash

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Puerto Rico Electric Needs Insurers on Board by Thursday

The Puerto Rico Electric Power Authority needs to get insurance companies that guarantee a portion of the utility's debt against default to endorse a conditional restructuring agreement by Thursday to avoid the risk of the deal with bondholders falling apart.

If MBIA Inc., Assured Guaranty Ltd. and Syncora Guarantee Inc. don't sign on to the debt exchange finalized with some investors last week, then the utility known as Prepa, its fuel-line lenders and the bondholder group will work to implement a recovery plan "through a mechanism to be agreed among the parties that may include, without limitation, a judicial process, including an enforcement proceeding under applicable law," according to the Nov. 5 agreement posted on the Municipal Securities Rulemaking Board's website.

"It produces some pressure on Prepa to hurry up," said Philip Fischer, head of municipal research for Bank of America Merrill Lynch in New York. "The insurers would have a disproportionate amount of insurance liability and they're trying to negotiate their way around that."

The insurers run the risk being liable for the repayment of about $2.5 billion of bonds if Prepa fails to make payments and the restructuring is viewed as a default. Under the agreement, about 35 percent of the utility's bondholders agreed to absorb losses of as much as 15 percent and delay repayment to give the struggling utility more breathing room to restructure its finances as well as time to improve operations.

The agency is hampered by its inability to reorganize in bankruptcy court as utilities in the mainland U.S. can.

Possible Extension

A restructuring of Puerto Rico's main electricity provider would be the largest ever in the $3.7 trillion municipal-bond market. The utility has $8.2 billion of debt. It would be the first commonwealth entity to reduce its obligations. Puerto Rico and its agencies racked up $70 billion in part by borrowing to balance budgets. Governor Alejandro Garcia Padilla is seeking to cut that debt load and revive an economy that's struggled to grow since 2006.

An extension beyond Thursday wouldn't be a surprise, Fischer said. Bondholders and fuel-line lenders extended a forbearance accord 13 times since August 2014 until reaching the Nov. 5 pact. That contract kept discussions out of court. Bond insurers also participated in those extensions through September.

"All of these agreements have been extended repeatedly," Fischer said. "The idea that this one might also be extended is realistic."

Insurer Talks

A bondholder or fuel lender can withdraw from the agreement if insurers fail on Thursday to reach an accord with Prepa. The bondholder pact will automatically terminate if there's no monoline plan and also no strategy for how to implement a recovery plan without the insurers, according to the restructuring support agreement.

"While no agreement has yet been reached, negotiations are productive and ongoing," Lisa Donahue, Prepa's chief restructuring officer, said Tuesday before a Senate hearing in San Juan about talks with the bond insurers. "Any agreement that is ultimately reached with the monolines is contemplated to become part of the existing RSA."

Greg Diamond, a spokesman for MBIA and Michael Corbally, a spokesman for Syncora, declined to comment. Ashweeta Durani, spokeswoman for Assured, declined to comment.

Possible Liability

A compromise with bond insurers is taking longer to reach than with the bondholder group because many of those investors purchased Prepa's securities at distressed levels and are willing to accept less than 100 cents on the dollar, Fisher said. Monolines would be required to make up to investors whatever principal or interest the utility fails to pay on time and in full. The bondholder plan includes delaying certain payments for five years.

MBIA insures almost $770 million of Prepa debt-service payments in the next five years, Edwin Groshans, an analyst at Height Securities, a Washington-based broker dealer, wrote in a Nov. 9 report. Assured guarantees payment on $262 million of Prepa principal and interest due in the next five years.

Bondholder Group

Prepa faces a $196 million interest payment due Jan. 1. The proposed debt exchange involves bondholders of uninsured debt swapping their existing securities for new securitization bonds that pay, for the first five years, only interest at a rate of 4 percent to 4.75 percent. Or investors can exchange for other securities, called capital-appreciation bonds, that will accrue interest for the first five years. The bondholder group will negotiate with Prepa to backstop a cash tender for bonds held by non-forbearing investors.

Members of the bondholder group include Angelo, Gordon & Co., BlueMountain Capital Management LLC, D.E. Shaw & Co., Knighthead Capital Management LLC, Marathon Asset Management LP, Franklin Advisers Inc., Goldman Sachs Group Inc. and OppenheimerFunds Inc., according to the restructuring support agreement. The group held about $3 billion of uninsured Prepa bonds, as of Nov. 3, according to forbearance documents.

Along with legislative approval, the new bonds must receive an investment-grade rating and the exchange cannot leave more than $700 million of the agency's current uninsured debt remaining. The utility's debt is rated at junk-bond levels.

Prepa "would like help from the insurers to essentially allow the restructuring bonds to be investment grade," Fischer said. "That appears to be a very sticky thing for them to get resolved. What is clear to us is they simply need to move forward."

Prepa bonds maturing July 2040, the utility's most-actively traded uninsured security in the past three months by volume, changed hands Monday at an average 60.5 cents on the dollar, to yield of about 9.4 percent, according to data compiled by Bloomberg. The debt traded at about 50 cents at the start of 2015.

BloombergBusiness

by Michelle Kaske

November 10, 2015 — 9:17 AM PST Updated on November 10, 2015 — 10:15 AM PST

California Bonds Lose Allure as AIG Stake Cut by Most Since 2010.

The Golden State is losing its luster to municipal-bond buyers such as American International Group Inc. and Principal Global Investors.

AIG's California debt holdings were reduced by $764 million, or 17 percent, to $3.86 billion in the three months ended Sept. 30, the steepest quarterly decline since at least 2010, company filings show. As a result, the state makes up just 14 percent of the New York-based insurer's $27.5 billion municipal portfolio, the smallest share in two years.

Following a five-year run when California bonds outperformed the $3.7 trillion municipal market, investors are starting to retreat: They're demanding the highest yields in 16 months to own the state's 10-year securities instead of benchmark debt. The shift is threatening the rally ignited by a wave of good financial news that's led to eight upgrades to its credit rating since the end of the recession.

“We’re pretty much at the top” of the California rally, said Mark Wuensch, senior fixed-income analyst in New York at Principal Global Investors, which manages $5.3 billion in munis as the asset-management arm of Principal Financial Group. It decided against buying in California’s most recent sale. “It can’t continue to get better than this. It’s just not enough spread for institutions and even retail to get involved.”

California, the most-indebted U.S. state, with about $76 billion of general-obligation bonds, has turned its finances around since the end of the recession in 2009, thanks to the growth of technology industry, a real estate rebound and Governor Jerry Brown’s successful push for a tax increase on the highest earners.

The influx of revenue has allowed the state to put an end to once-chronic deficits, pay off debt and save ahead of the next slowdown, with California projecting that its rainy-day fund will more than double this fiscal year to $3.5 billion. That’s in stark contrast to states like Illinois, New Jersey and Pennsylvania, which have been besieged by rating cuts as they struggle to balance their budgets.

In a sign of the market’s favor, California bonds traded near parity with those from AAA rated Texas as recently as August after Standard & Poor’s upgraded the Golden State to AA-, the fourth-highest rank.

Moody’s Investors Service raised it in June 2014 to an equivalent Aa3, the highest since 2001. When California sold $972 million of debt on Oct. 20, general obligations due in 10 years were priced to yield 2.14 percent, compared with 2.06 percent for an index of AAA munis, according to data compiled by Bloomberg.

The tide has turned, with investors starting to demand higher yields relative to top-rated securities. The yield difference between 10-year California bonds and AAA munis is 0.32 percentage point, near the highest since July 2014 and up from as little as 0.17 percentage point at the start of the year, Bloomberg data show.

Jennifer Hendricks Sullivan, a spokeswoman for AIG, declined to comment on why the company reduced its California bond holdings. Overall, the company trimmed $116 million from its municipal exposure during the quarter.

Too Expensive

Principal Global Investors didn’t buy bonds in California’s October offering because they were too expensive, said Wuensch, the analyst. The Des Moines, Iowa-based company isn’t seeking additional state debt to buy, he said, though it also isn’t selling what it already owns.

Other money managers are betting the rally will resume because the recent rise in yields will draw investors, who are seeking higher returns as the market’s rates hover near five-decade lows.

“The credit story will be stable to positive, the economy is still chugging along, and the revenue growth will be there,” said Paul Brennan, a portfolio manager in Chicago at Nuveen Asset Management, which oversees about $100 billion of munis and bought some bonds in the October sale.

“Conditions are pretty favorable for potentially more tightening” because California isn’t scheduled to issue more general obligations in 2015, Brennan said.

With the state gaining financial momentum, its bond yields have held well below two like-rated states, Connecticut and Pennsylvania, leaving California debt expensive in comparison.

Connecticut's 30-year securities yield 0.59 percentage points more than top-rated debt, while Pennsylvania's are 0.64 percentage point higher. That's more than twice the premium demanded of California.

The upgrades that have sustained California's rally may also be subsiding: Moody's, S&P and Fitch Ratings all have stable outlooks on the state, indicating no changes are imminent.

"We like the story" of its improved financial situation, Wuensch said. But when it comes to the value of California bonds, "how much richer can they get?"

BloombergBusiness

by Brian Chappatta and Romy Varghese

November 9, 2015 — 9:01 PM PST Updated on November 10, 2015 — 6:38 AM PST

David Beckham Seeks Assist From Miami Schools for MLS Soccer Stadium.

Trying to close a stadium deal with local governments, David Beckham this week greeted the man who would be his landlord: Miami-Dade School Superintendent Alberto Carvalho.

The Wednesday meeting was at Miami Beach's SoHo Beach House, the luxe hotel and private club that is Beckham's regular base of operations during visits to the Miami area.

"We spent a lot of time talking about kids," Carvalho said Thursday night. "I came away feeling very comfortable about the decency of this guy."

The unannounced meeting was one stop on Beckham's Miami swing, which included filming part of a soccer documentary for UNICEF and a nighttime visit with the University of Miami women's soccer team. Beckham, a global fashion icon, was photographed wearing an orange T-Shirt emblazoned with "The U" in photos posted on Twitter from the encounter.

Beckham's appearances come as his two-year stadium quest has never been closer to a final deal, but also as his negotiators warn it could still fall apart over real estate prices.

The plan is for his investment group to pay for a $200 million stadium to rise next to Marlins Park on a mix of privately-owned land and parcels currently owned by the city of Miami. Beckham's group has agreed to pay Miami for the real estate, while negotiating separate deals with the private owners.

The stadium and site would be transferred to the school system in order to shield it from property taxes, and in exchange Beckham's group would provide free space for large school events and some form of sports-related education for visiting classes and students. The Beckham group would also sponsor some school activities, including buying band uniforms and supplies.

Carvalho said Beckham's people contacted him early in the week about a meeting.

The sit down marks something of a do-over for the Beckham group, which failed to invite school officials to a VIP reception with the soccer star in early 2014. The who's-who event launched Beckham's extended pursuit of a stadium site, and the stream of party pics of politicians and business leaders posing with the soccer celebrity came to represent the limits of star power to overcome political complications and commercial interests in Miami.

Carvalho said no photos were taken at his afternoon meeting with Beckham. “When I met Mr. Beckham, I was clear in telling him that I’ve seen how he comes to town, and everybody wants a Beckham kiss and a hug and a Beckham selfie. I said I’ll take a Beckham handshake. He laughed.”

A Beckham representative confirmed the meeting, but declined to provide other details. Carvalho said the 45-minute conversation mostly involved the two outlining their visions for the stadium: Carvalho on what it could do for the local school system, and Beckham on why he wants to bring Major League Soccer to Miami.

“He told me this is the one place in the world where he wants to have his name associated with a soccer team,” Carvalho said.

Carvalho had initially sought a magnet school within the stadium itself, but that provision has been publicly rejected by Beckham’s local negotiators. Carvalho said the alternative is a large amount of “educational” space within the stadium. Carvalho said the total benefits to schools would top $1 million, roughly equal to what the stadium would pay to the school board if subject to property taxes. Beckham’s group also agreed to continue paying the same amount of property taxes the current land owners pay to local governments.

Insiders say the bulk of the deal with Carvalho is done, and that approval by the elected school board is considered a certainty. But people involved in the talks say there is significant concern that negotiations with the site’s private land owners could fail as the would-be sellers demand higher prices than the Beckham group is willing to pay.

After resisting a stadium next to Marlins Park since early 2014, Beckham partner Marcelo Claure and Miami Mayor Tomás Regalado summoned reporters to City Hall in July to announce the site next to the baseball park had become the top choice for soccer.

That’s left Beckham’s real estate team to negotiate sales prices for land targeted for a stadium deal that’s attracting global attention.

Even if the landowners come to terms with Beckham, another hurdle remains: a referendum in the city of Miami. It would be held March 15, the same day as the presidential primary.

BY TRIBUNE NEWS SERVICE | NOVEMBER 13, 2015

By Douglas Hanks

What America’s Biggest Counties Have in Common.

If people are willing to move long distances to an area, it’s a good sign that things there are going well.

New migration data published by the Internal Revenue Service, based on tax returns filed in 2013 and 2014, shows where Americans are moving to or from at the county level. We’ve identified the top migration flows occurring over more than 200 miles.

Nationally, domestic migration rates remain near historic lows, and when Americans do move, they generally stay within a metropolitan region. But some of the nation's most populated counties attract large numbers of people from far away each year. For example, more than 9,800 people moved from Los Angeles County, Calif., to Clark County, Nev. (Las Vegas) — the top year-over-year migration flow over a long distance — while about 5,700 moved in the opposite direction.

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GOVERNING.COM

BY MIKE MACIAG | NOVEMBER 2015

The Hidden Cost to 'Pay for Success'.

Nonprofits have discovered a hidden cost in preventative social programs that's keeping many from even trying to start one.

Lili Elkins spends a lot of time planning and negotiating. It's her job as chief strategy officer of the Boston-area youth nonprofit Roca. But nothing could have prepared Elkins for the project that came across her desk in 2012: It was to help design what is so far the country's largest social impact bond.

The "bond" funds a program to help reduce recidivism and increase employment among young ex-offenders. Over seven years, Roca will provide counseling and job training to 929 young men in the probation system or exiting the state juvenile justice system.

In Elkins' prior experience at Roca negotiating grants, project design was generally ironed out in a few meetings over the course of a month. The social impact bond project for Massachusetts, however, took two years of negotiating. "I teach financial management to graduate students and I'm a lawyer," said Elkins," and I still needed help understanding the financing."

Social impact bonds, which many are now calling pay for success programs, work like this: Private funders pay a government to establish a preventative social program aimed at achieving a certain measurable result. The only way investors get their money back is if the program meets those results.

The Massachusetts project, which launched in late 2014, rounded up more than $20 million from investors. But the time and cost it took to design the project exposes a major, potential deterrent to other nonprofits interested in developing a pay for success project for a government.

Part of the problem is that each pay for success project — and there are only eight up and running across the country — is unique. That means that project designs aren't easily transferrable from one government to another. So each project requires a nonprofit to surrender their best talent for great lengths of time. To help with the burden, Roca was able to utilize $250,000-worth of free legal aid to help with the negotiating. Still, Roca ended up devoting more of its top staff time than it bargained for when it started.

It's because of this that Living Cities, one of the funders of the Massachusetts recidivism program, is creating a new funding option for nonprofits interested in getting involved in pay for success projects. The foundation has secured investors for a revolving loan fund that would help nonprofits pay for designing a project, which includes things like data gathering, analysis of that data, economic modeling, evaluation design and program training.

Called a "construction loan," it would be paid back by the nonprofit only if a pay for success project moves forward. The cost of the construction loan could be built into the overall financing of the project by private funders. If the project launches, part of the money the nonprofits receive in funding could be used to pay back the loan. Living Cities has so far advanced a total of $350,000 to support projects in Illinois, New York and Salt Lake County, Utah.

Eileen Neely, Living Cities' director of capital innovation, hopes it will help governments recognize the full cost of paying for social preventative programs. "Currently they just assume the service provider will find grant money for the other costs and that's part of the reason we don't have as many projects," she said. "This is another way to make sure we are being honest about the entire cost of pay for success."

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 12, 2015

Florida Faces Second Suit Over Conservation Spending.

BRADENTON, Fla. — A second Florida environmental group is suing to block spending decisions by the Legislature related to a 2014 constitutional amendment earmarking funds for conservation purposes.

The Gainesville-based Florida Defenders of the Environment filed a lawsuit Nov. 9 in Leon County Circuit Court seeking an injunction to prevent state agencies from spending what the group considers misappropriated funds.

At issue is the fiscal 2016 state budget, and how the Legislature allocated the revenues authorized by Amendment 1, a ballot measure passed by 75% of those voting last year.

The amendment directs 33% of taxes collected on real estate sales to the Land Acquisition Trust Fund to acquire and improve conservation and recreation lands. The revenues can be used as cash for related expenditures, or to pay debt service on bonds.

The Florida Defenders' suit argues that the Legislature improperly allocated $237 million from the $740 million in the Trust Fund to offset expenses normally be supported by the general fund, such as salaries, benefits, vehicles, insurance and certain capital projects.

Thomas Hawkins, executive director of the organization, said that his group fundamentally supports the protective environmental measures that Amendment 1 was designed to achieve.

"Environmental conservation in Florida is strongly supported by the voters," Hawkins said in an interview. "We want the will of the voters implemented."

The suit names as defendants the heads of the Florida Department of Environmental Protection, Department of State, Department of Agriculture and Consumer Services, and the Florida Fish and Wildlife Conservation Commission.

A day after Gov. Rick Scott signed a record $78.4 billion fiscal 2016 state budget into law on June

23, Earthjustice filed a lawsuit charging that lawmakers “defied” voters and the constitution by wrongfully diverting the $237 million.

The suit was filed on behalf of the Florida Wildlife Federation, St. Johns Riverkeeper, Environmental Confederation of Southwest Florida, the Sierra Club, and Manley Fuller, who is president of the Florida Wildlife Federation.

The Earthjustice suit, which names the Legislature and Chief Financial Officer Jeff Atwater as defendants, also seeks an injunction ordering Atwater “to remedy the Legislature’s misappropriations” by transferring the misspent revenues from agency budgets to the Land Acquisition Trust Fund.

Attorneys for the Legislature and Atwater have filed motions to dismiss the Earthjustice suit. A hearing is scheduled Dec. 3 in Tallahassee.

Florida Defenders takes a different legal tack than Earthjustice by arguing that certain state agencies should be forbidden to spend what the group believes are misappropriated funds, Hawkins said.

While the group believes that the Legislature violated the state’s constitution, it also accuses lawmakers of improperly using the appropriations bill to impermissibly spend Amendment 1 revenues, he said.

“What we have done is complementary to the Earthjustice suit,” Hawkins said. “We think there is a greater likelihood of success for what we are asking, and that is for agency heads to stop spending the misappropriated money.”

Scott, a Republican, signed the fiscal 2016 budget into law after vetoing $461.4 million of line-item expenditures sought by lawmakers.

In a letter accompanying the budget, Scott wrote that the spending plan fully complied with Amendment 1 by including more than $740 million to support land and water programs. The program’s expenses included debt service on outstanding conservation bonds.

Scott and the GOP-led Legislature did not authorize the issuance of bonds for any new environmental programs under Amendment 1.

The Bond Buyer

by Shelly Sigo

NOV 12, 2015 2:29pm ET

[Funding for Public Private Partnership Projects – of Significant Interest to Public Officials and Prime Contractors.]

The success of public-private partnerships (P3s) over the past decade has demonstrated emphatically that government can collaborate successfully with private sector partners. And in the niche world of the EB-5 Immigrant Investor Program, these collaborations not only succeed, they are quickly growing in numbers.

Interestingly enough however, too few public officials and prime contractors who collaborate with government understand the program. Since the EB-5 Program has become a valuable alternate financing tool, it seems timely to raise the visibility and explain how it works.

Congress created the EB-5 program in 1990 “to stimulate the U.S. economy through job creation and capital investment by foreign investors.” Administered by the United States Citizenship and Immigration Services, the program allows foreign nationals willing to invest $1 million in a commercial enterprise in America to acquire U.S. citizenship. The money is then made available for projects that create at least ten jobs for American workers.

Government interest in the EB-5 program has grown steadily as a result of tightening budgets and the need to launch critically-needed large public projects.

Critics say the program essentially allows foreign investors to buy their citizenship. That may be true, but the program is now more than 25 years old and while it was used primarily for commercial projects in the beginning, governmental entities are now benefitting as well. And, thousands of jobs for American workers have resulted. The Brookings Institute estimates the EB-5 program has created 85,500 full-time jobs and attracted approximately $5 billion in investments since 1990.

Unlike conventional capital providers—such as investment banks, private equity funds, REITs, life insurance companies, and pension funds—the EB-5 investor’s prime reason for investing is to secure a visa. Because these investors are highly motivated, the program provides extraordinary flexibility and attractive terms for financing projects. As long as foreign investors believe the project will allow them to qualify for the visa and safely regain their capital over time, they are often willing to accept a below-market, if not minimal, return on investment.

Financing through the EB-5 program can be used for all types of projects and capital invested has ranged from $500,000 to more than $600 million. Over the past five years, EB-5 funds have played a key role in financing several large-scale public projects, particularly in major urban areas.

Many public officials and prime contractors have become quite adept at accessing this alternative funding source. In Miami, the city’s planning and zoning commission, along with a panel of EB-5 experts, is actively involved in vetting EB-5 projects. The City has a P3 office for EB-5 projects and just announced plans to use money from Chinese investors to build affordable housing.

In Vermont, EB-5 projects are reviewed carefully before they go to market, and the state oversees transparently and ensures regulatory oversight. The fact that the state is involved provides credibility and security to cautious investors.

The city of Dallas has also been successful in launching public-private partnership projects using EB-5 funding. Some of these projects have included assisted living facilities, call centers, and multi-family apartments in the Dallas area.

The bottom line: EB-5 funds are available to governmental entities, private sector contractors and commercial developers. It is reasonable to assume that, whether entities choose to use this type of investment capital or not, the program deserves a look.

With thousands of critical projects languishing for lack of funds, the EB-5 federal program may be an attractive option. Who knows – it might even provide the impetus for the nation to begin repairing its crumbling infrastructure.

MASS TRANSIT

BY MARY SCOTT NABERS ON NOV 10, 2015

Mary Scott Nabers is president and CEO of Strategic Partnerships Inc., an Austin-based business development company specializing in government contracting and procurement consulting throughout the U.S.

Intro Property Assessed Clean Energy (PACE) Finance WebCourse.

Intro Property Assessed Clean Energy (PACE) Finance WebCourse

December 1-2, 2015
Daily: 12-5pm (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.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Start down the road to personal and professional advancement today.

To learn more, and to register, click here.

The Bond Buyer Names Finalists for 14th Annual Deal of the Year Awards.

The Bond Buyer this week announced the finalists for its 14th annual Deal of the Year Awards. These issuers were honored for Deal of the Year in eight categories, revealed online Nov. 2-6 in a series of posts at BondBuyer.com.

Each category award winner is a finalist for the national Deal of the Year Award, which will be announced at a Dec. 3 ceremony at the Waldorf Astoria in New York City and posted later that evening at BondBuyer.com.

For more than a decade, the editors of The Bond Buyer have selected outstanding municipal bond transactions for recognition. The 2015 awards, which considered deals that closed between Oct. 1, 2014, and Sept. 30, 2015, drew nominations that represent the diverse range of communities and public purposes served by the municipal finance market.

"Nominees this year faced stiff competition from many eminently qualified deals," said Michael Scarchilli, Editor in Chief of The Bond Buyer. "We chose the finalists for innovation, the ability to pull complex transactions together under challenging conditions, the ability to serve as a model for other financings, and the public purpose for which a deal's proceeds were used."

The finalists are:

NORTHEAST REGION

The Pennsylvania Economic Development Financing Authority's $721.5 million Pennsylvania Rapid Bridge Replacement Project transaction, which is the biggest Private Activity Bond financing of a public-private partnership in U.S. history — and the first P3 in the U.S. to bundle multiple bridges into a single procurement. This approach is projected to save 20% on the average cost to design, construct and maintain each of the 558 bridges for 28 years.

SOUTHWEST REGION

The North Texas Tollway Authority's strategic refinancings of more than $2 billion, which provided an opportunity for the issuer to dramatically improve its debt profile seven years after more than doubling its debt for a major expansion of its toll system. The transactions enabled NTTA to lower its maximum annual debt service to a level that brought multiple credit rating upgrades, its first since the 2008 recession.

MIDWEST REGION

The Gary/Chicago International Airport Authority's debut issuance, a sale small in size but big in its aim to serve as a game-changer for the struggling Northwest Indiana city. The $30 million tax increment-backed airport development zone revenue bonds marked the final essential piece in the financing scheme for a $174 million runway expansion needed to meet FAA standards on wider jets and keep the airport open.

SOUTHEAST REGION

The Kentucky Economic Development Finance Authority's $232 million public-private partnership to bring high-speed Internet to all 120 of its counties. The deal forged new territory in the P3 market as a unique, first-of-its-kind approach to broadband connectivity on a statewide basis, and was the first non-transportation P3 to use a novel tax-exempt governmental purpose bond structure that achieved full risk transfer.

FAR WEST REGION

The Regents of the University of California's giant of a bond deal to save the system hundreds of millions of dollars. The university refunded $2.3 billion of tax-exempt debt and raised about $650 million in new money for capital projects in a series of deals notable for their size, scope and complexity. The 2015 transaction was the largest ever in the higher education sector.

NON-TRADITIONAL FINANCING

Hawaii's $150 million sale of Green Energy Market Securitization Bonds, which took advantage of a financing structure that has been demonstrated to the market: rate reduction securitization. The debt service coverage created by that structure landed the deal triple-A ratings across the board, creating a low-cost pool of capital that can be used to issue loans to fund distributed solar and other green energy investments.

HEALTHCARE FINANCING

The New York and Presbyterian Hospital's first-ever transaction in the public finance market, a $750 million issuance of taxable bonds. This was the first time a hospital with Federal Housing Administration-insured debt had issued unsecured, rated debt in the public markets. The bond issue was 2.3 times oversubscribed, receiving nearly $2 billion in orders from about 60 investors and achieved a better-than-expected yield of 4.023%.

SMALL ISSUER FINANCING

The newly-created Alamito Public Facilities Corp.'s $125 million sale to repair and rehabilitate the El Paso Housing Authority's aging public housing. The transaction marked the largest single issuance of housing tax credits ever approved by the Texas Department of Housing and Community Affairs and mapped a new path toward saving public housing for El Paso's neediest population.

The Deal of the Year gala will also include the presentation of the Freda Johnson Award for Trailblazing Women in Public Finance. This year marks the second in which the organization is honoring two public finance professionals; one from the public sector and one from the private. The 2015 honorees are New York City deputy comptroller for public finance Carol Kostik and Boston-based public finance section head at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, Meghan Burke.

THE BOND BUYER

NOV 6, 2015

Hawkins Advisory (GASB 68)

This issue of the Advisory describes in brief the principal accounting changes resulting from GASB 68, and considers how official statement disclosure may be impacted.

Read the Advisory.

Ballard Spahr: Where We Stand on Issue Price for Tax-Exempt Bonds.

The U.S. Treasury Department and the Internal Revenue Service (IRS) held a public hearing on the definition of issue price for tax-exempt bonds on October 28, 2015. The hearing is another step in the process of changing what issuers of tax-exempt and tax-advantaged (tax credit bonds) will need to review and consider in structuring bond issues and executing various closing documents.

Since 1993, the general rule has been that the issue price was the first price at which a substantial amount (10 percent) of the bonds was sold to the public. With respect to those maturities in a publicly marketed transaction that did not meet the 10 percent actual sales, the issuer was permitted to rely on the reasonably expected issue price. The practice under these long-standing regulations has been for issuers to rely on underwriter certificates as to the reasonable expectations of the issue price of bonds.

Beginning in 2006, the IRS started challenging the issue price of bonds by questioning whether the information provided in underwriter certificates to the issuer regarding issue price was accurate.

IRS agents routinely cited pricing information from the database maintained for securities law purposes by the Municipal Securities Rulemaking Board as proof that the issue price provided by the underwriter had not been correctly reported. The uncertainty caused by the IRS audits led the IRS to publish proposed regulations changing the definition of issue price. These regulations were widely criticized and then withdrawn and a new definition of issue price was re-proposed on June 24, 2015 (the 2015 Proposed Regulations). On October 28, 2015, the IRS held a hearing on the 2015 Proposed Regulations on the definition of issue price for tax-exempt bonds.

What do the Re-proposed Regulations Say About Issue Price?

The 2015 Proposed Regulations which were the subject of the public hearing generally provide the following:

- The general rule for determining issue price remains the same as under existing regulations: the issue price of bonds issued for money is the first price at which a substantial amount (10 percent) of the bonds is sold to the public.
- The issuer cannot rely on reasonable expectations as to the issue price of those maturities that have not met the 10 percent actual sales requirement. Instead, the 2015 Proposed Regulations provide an “alternative rule” whereby an issuer may treat the initial offering price to the public as the issue price provided that the underwriter provides certifications to the issuer with respect to certain matters. This includes a certification that no underwriter will fill an order received from the public after the sale date and before the issue date at a price higher than the initial offering price, unless the higher price is the result of a market change for those bonds after the sale date, and that it will provide the issuer with supporting documentation concerning such market change.
- The term “underwriter” includes any person who contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form a syndicate and any person who, on or before the sale date, directly or indirectly enters into a contract or other arrangement to sell the bonds.

All four speakers at the hearing, including Linda Schakel from Ballard Spahr, speaking on behalf of the National Association of Bond Lawyers, agreed that 2015 Proposed Regulations present a number of challenges for issuers and several issues need to be addressed to make the rules workable:

- **What documentation should issuers review and retain?** One of the challenges with the re-proposed regulations is that they do not spell out what documentation an issuer can rely on to substantiate that 10 percent of the bonds are sold in a public offering. As written, the regulations provide no specific examples of reasonable supporting documentation that will be sufficient with respect to the general rule. The audits make it clear that a pricing wire in addition to the certifications of the underwriter have not been and will not be enough. The EMMA database has proven not to be a real-time source of pricing data that can be used to determine or support an issue price determination. The question remains what other information can issuers turn to when asked to justify their pricing and whether they need to be requesting other forms of data from underwriters. In response to this observation, John Cross III, associate tax legislative counsel at Treasury, noted that IRS and Treasury have not received suggestions as to what documentation would be useful and stated that regulators were open to hearing from the industry.
- **When has an issuer done sufficient due diligence?** One of the conditions for using the alternative method to determine issue price is that the issuer exercise due diligence in reviewing certifications as to issue price. The due diligence standard used in the alternative rule within the 2015 Proposed Regulations is more stringent than the standard applied under the regulations for all other arbitrage rules. It implies that the issuer must perform independent verification of the certifications and documentations provided by the underwriters. Speakers noted that providing examples in the regulations of the type of documentation that an issuer should review and retain to

verify certifications it receives would go a long way toward assisting issuers in meeting their due diligence obligation and dealing with IRS agents who may challenge issue price during an audit.

- **Why do the Proposed Regulations not accommodate small issuers and competitive sales?** Another critique of the proposed regulations is that there is no separate rule for small issuers or issuers who sell bonds pursuant to competitive bids. Speakers pointed out that because bonds in competitive bid transactions are not presold prior to the award, a smaller percentage of the issue will meet the 10 percent actual sales requirement on the sale date. To avoid the time and expense of the alternative rule, bidders will look to increase yields or reduce bond prices to heighten their ability to sell 10 percent of each maturity, thus increasing the cost of borrowing to issuers. The IRS and Treasury questioned why the alternative rule is not the approach for dealing with competitive sales, but encouraged municipal market participants to submit to them the types of safe harbors that could work for competitive bids.

Treasury and the IRS gave no timetable for finalizing the issue price regulations. While as a technical matter an issuer could elect to apply the 2015 Proposed Regulations to bonds issued before the regulations are finalized, the unanswered questions, including those described above, may not provide the certainty as to issue price an issuer would prefer. The existing regulations from 1993, including the ability to rely on reasonable expectations, continue to apply.

Attorneys in Ballard Spahr's Public Finance Group have participated in every kind of tax-exempt bond financing. These financings include bond issues for hospitals and health care institutions, as well as universities, colleges, and student housing.

November 9, 2015

by Linda B. Schakel, Vicky Tsilas, and Adam Harden

S&P Webcast Replay: U.S. Not-For-Profit Health Care Median Ratios.

Standard & Poor's Ratings Services held an interactive, live Webcast and Q&A on Thursday, September 10, 2015, at 2:00 p.m. Eastern Time where the discussion included the U.S. not-for-profit health care median ratios reports.

Listen to the webcast.

Download the slides.

Sep. 10, 2015

Pennsylvania's Rapid Bridge Repair Project Shows Promising Early Results.

The Pennsylvania Department of Transportation's (PennDOT) public-private partnership with Plenary Walsh Keystone Partners to repair 558 of the state's rural bridges over three years is moving along at a brisk clip.

Plenary Walsh is designing, financing, replacing and maintaining the project through a 25–year agreement. The consortium is funding the work upfront and will be repaid in six installments once it meets specific project benchmarks.

Thus far, the project is moving quickly, in part because many of the bridges have similar design features. As a result, the contractors can rely on one of three basic designs and use prefabricated parts that can be altered to suit each site, officials at PennDOT and Plenary Walsh Keystone Partners said.

"Due to the similar designs, many of the bridges can be built in 75 days from closing the old one to opening the new one. For example, 496 bridges are less than 100 feet long and builders know they will use about 2,900 pre-stressed concrete beams on 417 of them over the life of the contract," the Pittsburgh Post-Gazette reported Nov. 9.

"For the most part, a lot of the parts are interchangeable. It allows you to work faster once you get used to working with them," Plenary Walsh's public information manager, Dan Galvin, told the newspaper.

The ability to move small crews of workers efficiently from one site to another also expedites the process. Most crews consist of four to 12 workers and can shift among projects quickly if one incurs delays. Plenary Walsh has about 250 people working on the P3 throughout the state in addition to subcontractors who are rebuilding some of the bridges.

PennDOT also worked to expedite the project launch by preparing to obtain environmental and other necessary approvals for the first 87 bridges to be repaired quickly after the developer was selected, which could allow Plenary Walsh to replace many of those that need major repair or are vital to their communities in year one. Several bridges already have been repaired in as little as one to two months, project blog entries indicate.

Other counties and municipalities in the state are inquiring about this P3's approach to bridge repair, which PennDOT is considering using for other projects.

"At PennDOT, we're in the bridge-building business. The counties and local municipalities aren't, so something like this might be attractive to them," said Michael Bonini, director for the PennDOT Office of Public-Private Partnerships.

Although pleased with the progress Plenary Walsh has made to date, he hopes the pace of construction will move even faster during the next two years.

"We're hoping there is some learning that goes on this year that leads to running even more smoothly in the future," Bonini said.

NCPPP

November 12, 2015

TAX - NEW JERSEY

Fields v. Trustees of Princeton University

Tax Court of New Jersey - November 5, 2015 - N.J.Tax - 2015 WL 6859580

Taxpayers filed a complaint challenging property tax exemptions that had been granted by municipal tax assessor for twenty-one individual parcels owned by university. University moved for a determination as to which party had burden of proof.

The Tax Court held that:

- Appealing taxpayer has burden of proving that assessment is erroneous;
- Presumption of validity afforded property tax assessor's original tax assessments does not extend to tax exemptions; and
- Taxpayers had right to appeal property tax exemption.

When challenger of a property tax exemption is the municipality proper, burden of proving tax-exempt status is always upon the claimant, even when taxing district initiates the action to overturn a county board judgment.

Burden of persuading Tax Court that a tax exemption is merited is on claimant even when county board has granted exemption and appeal is by municipality.

TAX - MICHIGAN

Hartland Glen Development, L.L.C. v. Township of Hartland

Court of Appeals of Michigan - October 20, 2015 - Not Reported in N.W.2d - 2015 WL 6161517

In 2005, the Township of Hartland levied a $792,000 Special Assessment for 144 Residential Equivalent Units ("REUs") for residential unit sewer taps on property owned by Hartland Glen Development.

The special assessment district originally allocated the REUs to the various ownership groups in the district, which were then divided equally across the various tax parcels each group owned. However, in 2011 the REUs were reallocated across the various tax parcels based on acreage, along with creating an additional supplemental assessment district to assess additional costs incurred by the district. This reallocation resulted in the transfer of 459.14 REUs to Hartland, for a total of 603.14 REUs, a levy of $2,364,596.85 for those REUs, and a Supplemental Special Assessment of $199,488.76.

The Michigan Tax Tribunal affirmed the special sewer assessments, including the Township's changes in 2011 to the initial assessments that were made in 2005. Hartland appealed.

The Court of Appeal held that:

- Hartland was not entitled to relief on the basis of either collateral or judicial estoppel;
- The Township possessed the statutory authority to reallocate the REUs; and
- The special assessment was valid because the benefits of the special assessments to the subject property outweighed the costs.

Muni Bonds: Preparing for Rising Rates.

Income investors have few good options, but munis offer relative safety if rates rise. They provide attractive yields for investors in higher tax brackets.

Income investors have grown accustomed to making the best of a bad situation. Even the pros have grown weary of the will-they-or-won't-they game regarding the Federal Reserve's action on interest rates. Falling stocks and weak global growth only exacerbate a bad situation.

Matt Freund, chief investment officer at USAA Mutual Funds, concedes there are not many great options for income investors. Instead, he says, there are investments with acceptable levels of risk. First on his list: tax-free municipal bonds.

That's not to say munis are terrific buys now. But high-quality munis are a good place to ride out the expected volatility in rates. Investors who stick with top-rated bonds can expect to earn a yield of around 2.4% with little credit risk. That works out to an attractive 4% tax-equivalent yield for high-income investors.

In the last month, Treasury yields have risen about 22 basis points (0.22%), while muni yields inched up just a few basis points. "Munis will be much more defensive in a rising-rate environment than Treasuries are," says Jim Robinson, manager of Robinson Tax Advantaged Income (ticker: ROBAX), a fund made up of closed-end muni funds.

Gary Lasman, a portfolio manager at MFS Investment Management, says as Fed communications continue to indicate a slow and gradual pace of rate hikes, returns should be stable. "You'll earn the coupon, a little less if rates rise modestly," says Lasman. "That should be fine for investors looking for stability and tax-exempt income."

Short-term munis will fall in price if the Fed hikes rates, says Vikram Rai, municipal strategist at Citi Research. But prices of long-term munis might rise. That's what happened during the last period of rate hikes, from 2004 to 2006, as the yield curve flattened and long rates came down, says R.J. Gallo, who heads the muni group at Federated Investors. He believes the yield curve will flatten again, mainly because inflation risks, which drive the long end of the curve, have been muted.

IF THESE EXPERTS ARE WRONG, there's some built-in protection: If muni yields do start to rise, retail investors may start buying more. Gallo says there is an old muni investor saying, "Retail loves a 5% coupon around par." But this time around, he thinks a 4% coupon would bring in retail demand—not that he expects it to get that high anytime soon. Now 30-year triple-A rated munis, callable after 10 years, are issued with yields of about 3.25%.

Citi Research published a report last month arguing that individual investor portfolios are too short in maturity—where yields are lower—and investors should put more money to work at the longer end of the yield curve.

Of course, long-term munis are vulnerable if rates rise more than expected. This is a particular risk for closed-end muni funds. Funds that use leverage to boost yields have even longer durations (a measure of how much a fund could lose if interest rates rise by 1%) and also face higher borrowing costs as rates rise. To hedge against this risk, Robinson uses short positions in Treasury futures, which he calls his fund's "value-add" since that's hard for individual investors to do. But Robinson believes selling in muni closed-end funds will be limited because discounts are already much wider than average—now at the 7.5% level. If discounts get to 9%, he says institutional buyers typically come in.

Investor flight has been a problem for the muni market in the past, even if it doesn't seem imminent now. Freund says muni investors should make sure they won't be forced to sell in a downturn. While munis look good relative to most other income investments (he also thinks some high-yield bonds and dividend-raising stocks offer decent reward relative to risks), investors still need to be cognizant of the risks.

BARRON'S

By AMEY STONE

November 14, 2015

Oakland Mayor Turns to Old Playbook to Fund Raiders Stadium.

The type of municipal bonds that Oakland Mayor Libby Schaaf says she is examining to pay for a new Raiders stadium are the same kind the city used in 1996 to build Mount Davis, an expansion of the Coliseum that left the city and county with millions of dollars in debt.

Municipal bond experts say "lease revenue bonds" are a form of raising revenue for public projects that could ultimately expose taxpayers to risk, because, as with any municipal bond, the debt falls back on the city if the revenue stream dries up.

But with pressure mounting to make a deal with the Raiders, Schaaf says she is contemplating lease revenue bonds as a tool to fund a new football stadium — only on the condition, she says, that taxpayers never wind up holding the bag.

If a city were to default on its municipal bond, it would see its credit rating slump — and that itself could cost taxpayers down the line when they want to borrow money for another project, said Matt Fabian, managing director of the independent research firm Municipal Market Advisors.

For taxpayers to truly be shielded, he said, it has to be clear "that there's no connection to Oakland."

Schaaf incorrectly insisted on Thursday that the type of bonds used for Mount Davis were general obligation bonds, but a check of records show they were indeed lease revenue bonds.

Although the mayor has steadfastly claimed she would never allow a public cent to be spent to build a new Raiders stadium, she told NFL owners Wednesday in a presentation that she was studying the use of lease revenue bonds and an incremental tax. In a statement released Friday afternoon, she said she has never changed her position against "publicly subsidizing stadium construction."

In the same statement, she acknowledged that she is studying the lease revenue bond approach but would support it only if it "would not pose any risk to the City's General Fund."

Mount Davis debacle

Lease revenue bonds made up the financing scheme for Oakland's disastrous 1996 renovation to the Coliseum's east end, which left both the city and Alameda County saddled in debt. It was given the name Mount Davis in an allusion to Raiders then-owner Al Davis — father of current owner Mark Davis — who negotiated the reconstruction before moving the team back to Oakland from Los Angeles. Oakland had pledged to pay off the debt by selling personal seat licenses, but it overestimated the number of licenses it could sell. Both the city and county to this day pay $11 million a year for that renovation.

"I'm not going to repeat mistakes of the past," Schaaf said, noting that the Mount Davis debt was secured by the general fund. She wants the new debt to be secured by a private entity, perhaps the Raiders themselves. Such setups helped finance new facilities for the NFL's Atlanta Falcons and MLB's Miami Marlins, she said.

The Falcons stadium is still under construction, and the Marlins stadium's funding plan prompted controversy because it left Miami-Dade County on the hook for hundreds of millions of dollars, according to the Miami Herald.

Schaaf told The Chronicle on Friday that she's still analyzing these funding methods and trying to draft an iron-clad agreement that would put all the debt burden on the Raiders.

Stanford University sports economist Roger Noll says there's no way the Raiders could pay a "plausible" rent that would cover the cost of building and operating a stadium.

Schaaf said she's still weighing her options.

"If after the analysis I'm not satisfied, then that's not a tool we'd use," she said.

Fabian cited several examples of cities tethering their debt to future revenue streams and winding up in the hole, even when they had no contractual obligation to pay back investors.

He recalled a case in which the city of Vadnais Heights, Minn., financed a sports facility with lease revenue bonds, on the hope that the venue would ultimately pay for itself.

The facility tanked, and so did Vadnais Heights' credit rating, after officials claimed the city wasn't legally obligated to pay, Fabian said.

"Bondholders flipped out," he said. "Vadnais Heights may never borrow again."

Golf course fiasco

In another case, the city of Buena Vista, Va., used lease revenue bonds to build a golf course, and pledged the mortgage for Buena Vista City Hall as collateral. The golf course failed to pay for itself, Fabian said.
"So the bondholders have been trying to foreclose on City Hall for two years," he said. "But the courts that they would use to foreclose are also inside City Hall."

Sports facilities that aren't privately financed tend to be bad deals for cities, and there's no evidence they lead to economic growth, said David Berri, an economics professor at Southern Utah University.
"That's been pretty consistently shown," Berri said.

Levi's Stadium in Santa Clara, which is financed partly by a "payment in lieu of taxes" scheme that requires the 49ers to pay $24.5 million in annual rent instead of property taxes, is a prime example of taxpayers subsidizing a private facility, said Vanderbilt University economist John Vrooman.

Raiders owner Davis, who is currently pursuing a $1.7 billion stadium in the Los Angeles suburb of Carson that the Raiders would share with the San Diego Chargers, said none of Oakland's funding tools amount to much, since Schaaf still hasn't unveiled a concrete plan.

"Even if we had the funding, I don't know where it would be," Davis said.

SFGATE

By Rachel Swan

Updated 10:31 pm, Friday, November 13, 2015

Chronicle staff writer Vic Tafur contributed to this report.

Rachel Swan is a San Francisco Chronicle staff writer. E-mail rswan@sfchronicle.com

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Puerto Rico Electric Extends Bondholder Restructuring Pact.

Puerto Rico's main electricity provider extended an agreement with some bondholders to Nov. 20, giving the utility more time to negotiate with insurers that guarantee a portion of its debt against default.

The Puerto Rico Electric Power Authority, known as Prepa, is trying to restructure $8.2 billion of debt to reduce its costs and free up cash for plant upgrades. Investors holding about 35 percent of its debt on Nov. 5 agreed to take losses of as much as 15 percent by exchanging their bonds for new securities.

The deal was set to lapse Thursday if Prepa couldn't win the support from companies that insure about $2.5 billion of the utility's debt. The new deadline is Nov. 20, Prepa said in a statement.

"Prepa will use the extension to continue discussions with its monoline bond insurers, while the legislative process to approve the Prepa Revitalization Act continues," according to the utility.

The restructuring would be the largest ever in the $3.7 trillion municipal-bond market and mark a first step by Puerto Rico to reduce a $70 billion debt load that Governor Alejandro Garcia Padilla says the island can't afford to pay.

Debt Exchange

If MBIA Inc., Assured Guaranty Ltd. and Syncora Guarantee Inc. don't sign on to the Nov. 5 agreement, the negotiations between Prepa, its fuel-line lenders and bondholders may ultimately be resolved through the courts, according to a notice posted on the Municipal Securities Rulemaking Board's website.

Prepa bonds maturing July 2040, the utility's most-actively traded uninsured security by volume in the past three months, changed hands Thursday at an average 58.6 cents on the dollar, for an average yield of 9.7 percent, according to data compiled by Bloomberg. The bonds traded at an average 50 cents at the start of the year.

The debt exchange would need to be approved by Puerto Rico lawmakers, who have until Nov. 17, the end of the current legislative session, to vote on Prepa's Revitalization Act, which would change Prepa's operations and allow it to restructure debt. Garcia Padilla could call a special session of the legislature to give lawmakers more time to work on the Prepa bill.

The new bonds must receive an investment-grade rating, and the exchange will be voided if more than $700 million of the utility's uninsured bonds aren't sold back, according to the terms of the agreement. The three largest rating companies grade Prepa at junk-bond levels.

Bloomberg Business

by Michelle Kaske and Laura J Keller

November 12, 2015 — 12:57 PM PST Updated on November 13, 2015 — 6:09 AM PST

Progress on T+2 Settlement.

The U.S. securities industry is applauding progress by regulators in support of the move to shortening settlement cycles over the next couple of years.

The U.S. Municipal Securities Rulemaking Board (MSRB) on Wednesday issued a proposal for certain rule changes designed to facilitate the move to a T+2 (trade date plus two days) settlement cycle from T+3.

"The MSRB is supportive of transitioning to a shorter settlement cycle as a means of both reducing risk and saving costs," said MSRB executive director, Lynnette Kelly, in a statement. "To ensure we can address any areas in MSRB rules that would present challenges to a shortened settlement cycle, we encourage municipal market participants to provide input on this potential change."

The Securities Industry and Financial Markets Association (SIFMA) issued a statement endorsing the initiative. "Regulatory action is critical for the industry to achieve its goal of a two-day settlement cycle by third quarter 2017. We fully support recent actions by regulators to identify rule changes needed to facilitate the move to T2 and are committed to working with them to move this process forward," said Tom Price, managing director, technology, operations and BCP at SIFMA, and co-head of the T2 Industry Steering Committee.

Earlier this year, the Canadian Capital Markets Association (CCMA) also struck its own steering committee to help guide the Canadian industry's move to T+2 on the same timetable as the U.S.

Investment Executive

By James Langton | Thursday November 12, 2015

MSRB Issues First-of-a-Kind Compliance Advisory for MAs.

WASHINGTON — In a first-of-a-kind action, the Municipal Securities Rulemaking Board released a compliance advisory for municipal advisors on Thursday to help them understand and implement new regulations.

The MSRB said the advisory should serve as a tool for MAs to understand a number of compliance risks associated with the rules the MSRB has written in accordance with the Dodd-Frank Act.

"As the regulatory framework for municipal advisors takes shape, the MSRB believes it is important to assist [MAs] with evaluating their compliance programs in light of newly effective rules," said MSRB executive director Lynnette Kelly.

Each of the five potential risk areas the MSRB identifies in the advisory are broken down into three sections: a summary of the rule or rules that apply, a list of potential violations, and a list of points MAs should consider when evaluating their compliance.

One section tackles MSRB Rule G-44 on supervisory and compliance obligations of municipal advisors. Under the rule, MAs are required to develop a supervisory system and compliance program, as well as to designate a chief compliance officer. The CCO can either be a part of the MA firm, or the firm can outsource the job. If the MA chooses to outsource, it still maintains ultimate responsibility for meeting its obligations under the rule.

The advisory warns MAs that they can violate the rule if they do not designate a CCO or have a CCO that does not have enough knowledge, experience, or training for the position. If a firm does not keep general business records, as mandated under MSRB Rules G-8 and G-9, or does not have a process to at least annually review, test, and modify its written compliance policies and procedures, it also could violate the rule. The MSRB included ten bullet points with questions MAs should ask themselves to determine if they are meeting the G-44 standards.

Another section addresses MSRB Rule A-12 and the need to properly register with the MSRB as an MA. The board reminds MAs that they must also register with the Securities and Exchange Commission, which requires completion of SEC Form MA, as a pre-requisite to MSRB registration. The advisory also includes information about supplying the MSRB contact information for key people, such as a master account administrator, a billing contact, and a compliance contact.

Possible violations, aside from not registering before acting as an MA, include the failure to update Form A-12 within 30 days of a change in material information, not paying applicable registration fees, and failing to affirm the registration information on Form A-12 during the affirmation period that starts on Jan. 1 of each year.

The advisory also discusses Rule G-3 on professional qualifications, on which MAs will be tested through a Series 50 Pilot Exam offered from Jan. 15 to Feb. 15. The board advised MAs and firms to make sure that any person engaged in MA activities meets the professional qualification requirements in G-3. A violation of the rule would include failing to identify each individual who is directly engaged in the management, direction, or supervision of MA activities as well as not having a process that identifies those individuals.

The advisory also urged MAs to recognize if they are acting as a placement agent and may be engaging in brokerage activity in violation of several MSRB rules.

An MA that acts as a placement agent, engaging in a securities transaction with a possible investor and getting transaction-based compensation, may actually be a broker-dealer, the MSRB said. MAs could also cross over to broker-dealer activity when they help facilitate bank loans evidenced by notes and do not recognize the notes are municipal securities and the bank is actually an investor, the board added.

An MA that acts as a broker-dealer, without being registered as one, risks violations and also fails to follow other MSRB rules that are applicable to broker-dealers, the advisory warned. MAs should have controls in place that ensure that they are only conducting municipal advisor activities, the MSRB suggested. The advisory also encourages MAs to look at several MSRB notices on crossing over into broker-dealer activities, as well as the Supreme Court's "Reves test," which provides guidance for evaluating whether something is a security.

The advisory also covers MSRB Rule G-17 on fair dealing. When MAs consider fair dealing risks, they should avoid violative behavior like splitting municipal advisory fees with a third-party under a fee arrangement that is not disclosed to the client or falsely stating they are an independent registered MA (IRMA) for a municipal entity.

The MSRB's suggestions for complying with G-17 include developing a process to review advertising and other promotional materials, as well as statements found on the MA's website, to ensure the information is not false or misleading. An MA should also monitor whether everyone in the firm is fairly dealing with municipal entities and obligated persons.

The MSRB ended its advisory notice by encouraging MAs to explore past webinars and publications dealing with compliance that can be found on the MSRB's website.

THE BOND BUYER

BY JACK CASEY

NOV 12, 2015 3:30pm ET

MSRB Proposes Amendments for Move to T+2 Settlement Cycle.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing amendments to move the municipal securities market to a T+2 rather than the current T+3 settlement cycle in the wake of continued calls from across the securities industry and support from regulatory officials.

The amendments would modify MSRB Rule G-12 on uniform practice, G-15 on confirmation, clearance, settlement, and other requirements with respect to transactions with customers to allow them to be settled within two days of execution instead of three. The last time the settlement timeframe changed was in 1995, when it shifted to T+3 from T+5.

The changes to T+2, which the MSRB is asking commenters to weigh in on by Dec. 10, would be tied to the Securities and Exchange Commission making the same revision to the settlement cycle under SEC Rule 15c6-1(a), the MSRB said in its regulatory notice.

"The MSRB is supportive of transitioning to a shorter settlement cycle as a means of both reducing risk and saving costs," said MSRB executive director Lynnette Kelly.

A spokesperson for Investment Company Institute, which along with Securities Industry and Financial Markets Association currently co-chairs the Industry Steering Committee spearheading the change, said ICI is reviewing the MSRB's proposed amendments and that the fund industry "generally supports regulators' efforts to adopt rules governing T+2 implementation as a necessary first step."

The idea for a change to a T+2 settlement cycle started in 2012 when the Depository Trust and Clearing Corporation started an effort to shorten the U.S. settlement cycle and sponsored a cost-benefit analysis of shortening the settlement cycle to T+2 or T+1. It released a white paper in 2014 that gave its reasoning for a T+2 cycle.

It also formed the ISC in 2014 to lead the move to a shorter settlement timeframe. The ISC later sent a letter to the SEC laying out the necessary steps the commission and other regulatory agencies would need to take to make the changes. In the letter, the ISC recommended relevant regulatory organizations confirm their support for the transition by the third quarter of 2015 and adopt the necessary rule changes by the second quarter of 2016. That timeline allows the transition to T+2 by the third quarter of 2017, the ISC said.

The MSRB said in its regulatory notice it believes it is on schedule to meet those deadlines.

SEC Commissioners Michael Piwowar and Kara Stein released a statement in June applauding the industry's leadership on the issue and saying they were interested in having the settlement cycle shortened "as soon as possible." SEC chair Mary Jo White said in a September letter to SIFMA and ICI that she would work to make regulatory and other changes to support shortening the settlement cycle by 2017.

The MSRB is specifically asking commenters to discuss any additional MSRB rule changes that might be needed for the transition as well as any unique impacts the transition could have on municipal securities transactions.

THE BOND BUYER

BY JACK CASEY

NOV 10, 2015 3:05pm ET

MSRB Requests Comment on Shortening the Settlement Cycle for Municipal Securities.

The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to facilitate shortening the settlement cycle for transactions in municipal securities in response to a securities industry-led initiative to shift the current settlement cycle for all fixed-income and equity securities from T+3 (trade date plus three days) to T+2 (trade date plus two days).

Read the full press release.

Comments should be submitted to the MSRB no later than December 10, 2015.

View the request for comment.

Fitch Ratings Updates Criteria for Water and Sewer Bonds: Butler Snow

On September 3, 2015(1), Fitch Ratings updated its sector-specific rating criteria for water and sewer bonds. The new report replaces Fitch's existing rating criteria published July 31, 2013, but Fitch does not anticipate changes to existing ratings as a result of the update. The report sets forth Fitch's four key credit rating drivers for municipal water and sewer systems and explains what Fitch refers to as the "10 Cs," specific factors included in the key rating drivers.

The four key rating drivers, as well as the specific factors included therein, that Fitch has determined affect the credit quality of water and sewer revenue bond issuers are as follows:

1. Governance and Management: Fitch assesses the management, staff and management policies to measure a utility's operating and fiscal health.

Crew: Management practices should seek to maximize expenditure stability by anticipating future regulatory and growth/supply demands, implementing necessary rate increases, ensuring sufficient liquidity and operating relatively free from day-to-day political interference.

2. Financial Profile: Fitch evaluates both historical and forecast financials to judge the utility's ability to fund operating and capital needs and meet its debt obligations.

Coverage and Financial Performance (Primary indicator of a utility's ultimate credit rating): Fitch reviews coverage of all the utility's debt to provide a complete assessment of its ability to pay operating and debt obligations. Fitch employs a number of stress analyses and financial performance indicators.

Cash and Balance Sheet Considerations: Fitch assesses a utility's cash and balance sheet to measure its ability to meet near-term liabilities, unforeseen hardships or difficult operating conditions.

Charges and Rate Affordability: Fitch emphasizes the importance of rate flexibility. Utilities should consider the impact of operational and capital programs on rate affordability, thus necessitating a balance between raising rates to preserve financial strength and maintaining sustainable and affordable rates. A major credit strength of municipal utilities is local control of rate-setting, free from external oversight.

3. Debt Profile: Fitch analyzes the level and structure of a utility's debt in determining overall creditworthiness.

Capital Demands and Debt Burden: Fitch evaluates a utility's outstanding debt on customer and per capita bases, as well as projected customer and per capita debt levels five years into the future. Fitch also evaluates the amortization of all debt payable from system revenues because it may show how much future strain will be put on a utility's financial flexibility and borrower capacity for potential capital needs.

Covenants: Fitch views standard bond covenants as those that limit parity bond issuances to instances when historical and/or projected revenues cover 120% of annual debt service, require rate-setting annually to cover 120% of operating and debt service costs and create debt service reserve funds at the maximum levels allowed under tax law.

4. Operating Profile: Fitch evaluates the utility's operations to ascertain the utility's ability to provide service to its customers and generate revenues sufficient to meet its financial obligations.

Customer Growth and Concentration: Fitch views as a central component of a utility's operating profile the level of growth of its customer base and the level of customer concentration.

Capacity: Fitch evaluates a utility's plans to maintain existing facilities and replace aging or obsolete assets. Fitch also assess whether a water utility has adequate water supplies to meet customer demands.

Compliance with Environmental Laws and Regulation: Fitch assesses whether a utility proactively stays ahead of increased regulatory requirements. If a utility currently faces regulatory enforcement, Fitch evaluates the events that led to such action and the utility's plans for corrective action.

Community Characteristics: Fitch analyzes the service area's employment statistics, wealth levels, poverty rates and major employers relative to the total employment base.

Butler Snow serves as bond counsel and disclosure counsel for municipal water and sewer utilities across the country.

Footnotes

1 For greater detail on each of the factors Fitch uses to rate the creditworthiness of a municipal water and sewer utility, you can access the complete report at www.fitchratings.com.

Last Updated: November 5 2015

Article by Michael W. Russ and Ryan L. Pratt

Butler Snow LLP

[IRS Changes to the EO Determinations' Additional Information Request Process Beginning September 2015.]()

We're making changes to how we ask for additional information in the Exempt Organizations (EO) determination letter program. The revised procedures will generally apply to determination letter requests and will improve the program's efficiency and consistency. General application processing procedures are described in Revenue Procedure 2015-9.

These revised procedures will be effective for letters requesting additional information mailed on or after the effective date of an Interim Guidance memorandum to be issued in early September 2015.

EO Determinations reviews every request

EO Determinations reviews every determination letter request to determine if it meets applicable requirements.

1. If the request contains sufficient information, we consider the request and issue a determination letter.

2. If additional information is needed to make a determination, we'll ask for it by letter and give you a period of time (generally 28 days) to submit the information. We'll also attempt to contact you or your designated representative by telephone to alert you to the coming letter.

3. If you don't respond within the provided time frame, we'll close your request without making a determination. We won't return any submitted documents or any portion of your user fee. However, we'll attempt to contact you or your designated representative by telephone before closing the request. We'll no longer place requests that have no response in a suspense status for a period of time before closing the request.

What if my request is closed?

If your application is closed because you didn't respond within the allowable time frame, you'll need to submit a new determination letter request and user fee.

IRS Changes to the EO Determinations Process: Rejecting Incomplete Applications Beginning November 2015.

We continue to make changes to our Exempt Organizations (EO) determination letter program to improve the program's efficiency and consistency.

EO Determinations will no longer process substantially incomplete applications

Effective November 18, 2015, if you submit a substantially incomplete determination letter request (Form 1023, Form 1024, Form 1028, Form 8940 or other letter request), we'll return the application package and user fee to you with a letter of explanation.

Revenue Procedure 2015-9, Section 3.08 (updated annually), lists the requirements of a substantially complete application as:

- The current version of the application form found at www.irs.gov
- The correct user fee
- A signature by an authorized individual
- An employer identification number
- A statement of receipts and expenses
- A copy of your organizing document that meets the requirements of a conformed copy
- A detailed narrative of your proposed activities
- A copy of your bylaws or similar governing rules, if adopted

Note: If your particular letter request doesn't require a listed element, we won't consider that element when determining whether your application is substantially complete.

If we return your application package, our records won't show a pending application for a determination letter. If you still want a determination letter, you must resubmit your entire application package, including the missing information, and the correct user fee.

If your request is substantially complete, we'll review it to determine if it meets the requirements for the type of request and ask for any additional information needed. You can find information on case processing in Revenue Procedure 2015-9 as well as on the website at IRS processing of exemption applications.

Non-acceptance of Form 1023-EZ

We continue to not accept/reject an incomplete Form 1023-EZ. Generally, if you attempt to electronically submit an incomplete Form 1023-EZ, www.pay.gov won't accept the submission. Also, once submitted, if we determine your Form 1023-EZ is incomplete or otherwise not accepted for processing based on Revenue Procedure 2015-5, Section 4 (updated annually), we'll send you a letter of explanation, and we'll refund your user fee (certain exceptions apply).

Final Report on Connecticut State Retirement Systems.

Connecticut is considering an overhaul of its largest pension system as the retiree fund careens toward insolvency. The state employee fund, SERS, has less than half of the assets it needs to meet liabilities and many believe that its generous accounting standards hide something even worse. The plan has started paying out more to retirees than it is receiving in contributions. Meanwhile, observers expect state payments to SERS to balloon to $6 billion — a third of the current state budget — by 2032. Lawmakers are now asking for some creative solutions to the problem.

On Nov. 10, the Center for Retirement Research presented its recommendations to the state. The main suggestions were to lower the plan's assumed rate of return it uses to calculate its overall pension liabilities. Connecticut's 8 percent return assumption is higher than the median 7.75 percent across all state pension plans. Many experts also say the past decade of slightly lower investment returns than the historical average should force plans to lower their return assumptions to at least below 7 percent so that governments and employees will put in more money now to keep the fund from running out of money. The other main recommendation is something that Gov. Dannel Malloy supports — splitting the plan in two. The pension fund would keep workers hired after 1984, who have less expensive benefits than the pre-1984 hires. The older hires' benefits would be paid for directly out of the state's annual budget. The split would essentially remove the unfunded liabilities from the pension plan's overall liabilities.

The plan has received unenthusiastic reviews. The state's treasurer has questioned the legality of the split. Pension blogger Mary Pat Campbell pointed out splitting the plan into one part that is funded and one part that isn't (as opposed to having one big underfunded pool) won't to make the pensions more secure. "I love these plans where the already accrued pension promises aren't affordable right now will somehow magically become affordable in the future," she wrote.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 13, 2015

DiNapoli Expands State Pension Fund's In-State Investment Program.

New York State Comptroller Thomas P. DiNapoli today announced the creation of the $200 million New York Credit Small Business Investment Company (SBIC) Fund to provide credit financing to eligible companies and deliver attractive returns to the state pension fund.

New York's $184.5 billion state pension fund, the third largest public pension fund in the country, is one of the first to offer credit financing through an in-state-focused fund. The new fund will be managed by Hamilton Lane. Additional investors in the SBIC fund are TD Bank, Bank of NY Mellon, HSBC Bank, Deutsche Bank and First Niagara Bank.

"The state pension fund is helping New York's growing businesses move to the next level," said DiNapoli. "By working with Hamilton Lane, we've joined with five major banks to bridge the gap between New York's companies and the financing they need to excel. These investments are in line with our priority of generating returns for the pension fund, while helping to boost our state's economy."

Many banks have been reluctant to lend smaller businesses capital due to scale, efficiency and risk requirements. The SBIC fund will provide capital to businesses that are implementing growth strategies, expanding operations or transitioning ownership. The state pension fund has committed $50 million to the program, which, combined with funding from Hamilton Lane and participating banks, will deliver $200 million in debt and mezzanine financing. The program is targeted at New York companies with revenue between $5 million and $50 million. Capital for the program is leveraged by the U.S. Small Business Administration.

New York's state pension fund is now one of few public pension funds across the country offering multiple sources of capital for in-state companies, which include credit (SBIC), equity (In-State Private Equity Investment Program) and small business loans (New York Business Development Corporation).

"Through the continued support of and partnership with State Comptroller Thomas DiNapoli and the New York State Common Retirement Fund, Hamilton Lane is excited about the expansion and growth of our investment mandates," said Hamilton Lane CIO Erik Hirsch. "We see significant, attractive opportunities to support growing businesses in the state through both equity and debt investments."

Hamilton Lane has a long-standing relationship with the state pension fund. The firm has invested in 27 companies on behalf of the state pension fund through the In-State Private Equity Investment Program. Investments managed by Hamilton Lane's Hudson River Co-Investment Fund include Sleepy's and Autotask.

Companies interested in the SBIC program can contact NYSCRFInvestmentproposals@osc.state.ny.us.

About the In-State Private Equity Investment Program

The In-State Private Program partners with private equity managers investing in New York-based companies. The program provides investment returns consistent with the risk of private equity while also expanding the availability of capital for New York businesses. As of June 2015, the In-State Program has invested $820 million in 310 companies, created or supported more than 4,500 jobs, and achieved $322 million in returns for the state pension fund. There is $472 million available for new investments. Learn more about the In-State Program.

About the New York Business Development Corporation Partnership (NYBDC)

The state pension fund provides the NYBDC with funds to make loans to New York small businesses for working capital, equipment or real property. With its focus on small business lending, NYBDC can frequently offer more favorable terms than other financial lenders. To date, $362 million has been loaned to 1,082 small businesses across the state. Almost $50 million remains available. Learn more about the partnership with NYBDC.

About the New York State Common Retirement Fund (CRF)

The New York State Common Retirement Fund is the third largest public pension fund in the United States ($184.5 billion, as of March 31, 2015). The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than one million state and local government employees and retirees and their beneficiaries. The Fund has consistently been ranked as one of the best managed and best funded plans in the nation. The Fund's fiscal year ends March 31, 2016. Learn more about the CRF.

About Hamilton Lane

Hamilton Lane is an independent alternative investment management firm providing innovative private markets solutions to sophisticated investors around the world. The firm has been dedicated to private markets investing for more than two decades and currently has more than 250 employees operating in offices throughout the U.S., Europe, Asia, Latin America and the Middle East. With more than $239 billion in total assets under management and supervision*, Hamilton Lane offers a full range of investment products and services that enable clients to participate in the private markets asset class on a global and customized basis. Learn more about Hamilton Lane.

As of September 30, 2015

Moody's: Vulnerable U.S. Public School Districts Can Experience Credit Pressure from Competition.

New York, November 11, 2015 — Some US public school districts are facing heightened fiscal pressure owing to competition over enrollment from charter schools and school-choice programs, leaving the most vulnerable districts at risk for additional revenue loss, Moody's Investors Service says. This competition can quickly and unpredictably depress public schools' revenues, which can lead to a "downward spiral."

"Depending on how these competing entities are funded, the competition can represent severe credit pressure for the most vulnerable K-12 school districts," Moody's Assistant Vice President — Analyst Dan Seymour says in a new report on public schools, "Competition Creates 'Downward Spiral' for Vulnerable School Districts."

Publicly funded, independently operated charter school revenues are often shared from the same mix of property taxes and state aid that fund area public schools. Additionally, in some states school-choice programs allow students to attend schools in other districts. In both instances, the per-pupil funding follows the participating students, depriving the original public school district of the revenue.

Charter schools and school-choice programs do not affect school districts uniformly across the country, Moody's says. Many urban school districts with high percentages of students in charter schools, such as Cleveland Municipal School District (A2 stable) and Indianapolis Public Schools (Aa2 stable) remain highly rated. Generally, districts most reliant on state aid tied to enrollment are the most exposed.

The loss of students and revenue due to charter schools or school-choice programs can cause a downward spiral as districts react by cutting costs, which may, in turn, weaken their educational product and encourage more students to seek alternatives.

"The downward spiral happens when a district loses students to charters or school choice, then loses the revenues associated with those students," says Seymour. "The district cuts expenditures to cope, which weakens its educational product, encouraging more students to attend schools outside the district. The loss of those students results in additional revenue loss, and the spiral continues."

The most vulnerable school districts in Michigan (Aa1 stable) and Pennsylvania (Aa3 negative) are examples of those facing mounting credit pressures due to competition. In Michigan, the loss of revenue to charter schools and from students moving to other districts has led to 46 school district downgrades this year, while Pennsylvania's charter schools are the primary driver of credit strain for the state's most exposed districts, including the Philadelphia School District (Ba3 negative).

Despite these pressures, the majority of public school districts experience minimal fiscal stress due to competition, a testament to the solid nature of the sector's institutional framework. However, the fact that charter schools operate heavily in poorer, urban areas means that competition frequently exerts itself on the districts with the weakest demographics and lowest resilience against fiscal stress.

The report is available to Moody's subscribers here.

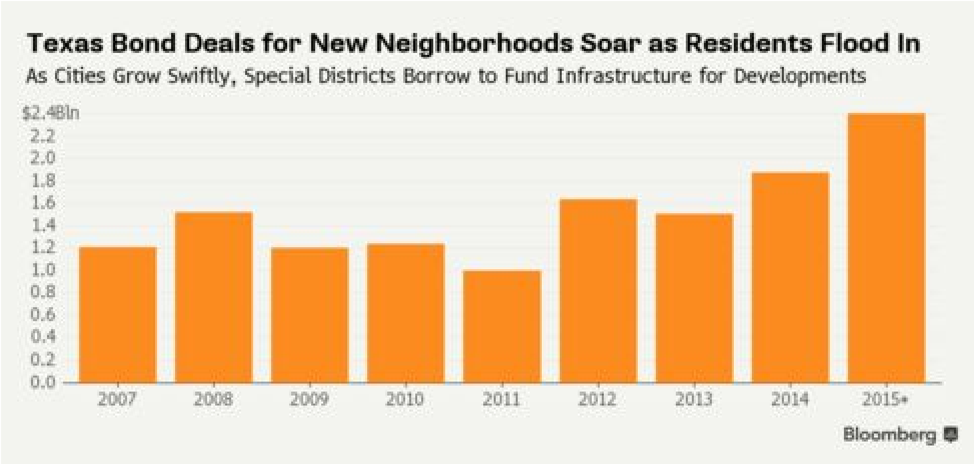
Texas Selling Dirt Bonds at Record Pace as Residents Flood State.

On Election Day this month, just two Conroe, Texas, voters were the entire electorate for one of the biggest bond proposals on U.S. ballots, a $468 million sale that will transform the pinelands around a former Boy Scout camp into a sprawling community. Both of them approved.

The small-scale referendum is part of a record-setting trend in the Lone Star State, which has been picking up more than a thousand new residents a day. Texas special districts like the one in the Houston suburb, drawn up around virtually unpopulated tracts owned by developers, are borrowing billions to build roads, sewers and water lines needed for new houses. It'll be repaid — eventually — by property owners.

With its population growing more than any other state, Texas is awash in the type of municipal bonds that flourished in Florida and California during the housing bubble, only to burn investors with losses after real estate prices crashed. Its districts are on pace to sell more than $2.5 billion of the securities this year, the most since at least 2007, according to data compiled by Bloomberg. At least $1.7 billion more were approved on Nov. 3.

"It's been a busy 10 years," said Richard Muller Jr., a lawyer in Sugar Land, Texas, who works with about 20 districts, including the one in Conroe. "We're still catching up to all the new jobs the state added."



The securities have been a draw to tax-exempt bond buyers who are looking for higher yields as interest rates in the municipal market hold near a five-decade low. When the Fort Bend County Municipal Utility District No. 194, some 23 miles (37 kilometers) southwest of Houston, sold $5.1 million of bonds on Nov. 5, the 10-year debt yielded 3.2 percent. That's a percentage point more than top-rated securities.

"If you have the skill set you can pick up some additional yield, as long as you do your homework," said Colby Harlow, president of the hedge fund Harlow Capital Management in Dallas. "You have to be super selective and look at them on a case by case basis."

So-called dirt bonds are paid through a special tax levied on the property, which is typically covered by the developer until the homes are sold. The risk: That the homes never sell or tax bills aren't paid.

While sales of the bonds shriveled in Florida and other states after the housing-market rout left new developments vacant, they've continued in Texas, home to five of the 10 fastest-growing cities last year.

After the oil-industry bust of the early 1980s pushed more than a dozen districts into bankruptcy, Texas lawmakers provided safeguards for investors: It required developers to begin paying for the infrastructure up front. They're reimbursed later when bonds are sold.

"Dirt districts are dirt districts no more," said Omar Tabani, an analyst with Standard & Poor's in Dallas. "The developer fronts the cost and doesn't get reimbursed until the district results in enough taxpayers to pay the debt."

Surviving Recession

In March 2009, S&P raised the ratings on 250 of the Texas districts because few homeowners were falling behind on their tax bills, even though the recession still hadn't ended. Since then, property values have continued to rise in the Houston area, where 80 percent of the districts are based, to more than $500 billion from a little over $300 billion in 2007.

"MUDs were the ugly stepsister of the municipal-bond market for many years," said David Jaderlund of Jaderlund Investments in Santa Fe, New Mexico, who invests in Texas debt for clients. "The debt was issued, but there weren't any buyers for the property. Now that's not true any more."

In Conroe, a city with some 66,000 residents about 40 miles north of downtown Houston, the debt will help build a 2,046-acre planned community called Grand Park Central, which will include residential neighborhoods, retail shops, office space, hotels, restaurants and a conference center. It's not far from one of Exxon Mobil Corp.'s offices.

Oil's Impact

One risk looming over the Texas real estate boom is the oil-price bust. A sustained decline in crude would eventually hurt employment and drive down property values, said Tabani, the S&P analyst. In the Houston area, home prices have continued to rise, even though oil is trading for about $40 a barrel, less than half what it was about a year ago. New home construction in the state rose 7.5 percent in August, according to the Federal Reserve Bank of Dallas.

"Today the land developer has skin in the game before they even sell bonds," said Doug Benton, senior municipal credit manager for Cavanal Hill Investment Management, a Tulsa, Oklahoma-based company that handles about $6 billion, including Texas municipal bonds. "If we feel there is value that can be had, it is definitely a bond we will look at."

Bloomberg Business

by Darrell Preston

November 15, 2015 — 9:01 PM PST Updated on November 16, 2015 — 6:39 AM PST

Equity Shortage Plagues Partnerships.

High leverage keeps pension funds out of many public-private deals

U.S. public pension funds looking to follow their peers in Canada, the U.K. and Australia into public-private infrastructure partnerships face yet another hurdle to direct investing.

The lack of infrastructure equity available through PPPs, or P3s, which in most cases are vastly debt-heavy, compounds cultural and some political hurdles that remain.

That lack of equity hinders even veteran pension fund players in infrastructure like the C$154.4 billion Ontario Teachers' Pension Plan, Toronto. "It's frustrating," said Andrew Claerhout, senior vice president at Teachers' Infrastructure Group, the C$14 billion ($10.7 billion) infrastructure investment unit of OTPP. Ontario Teachers has participated in public-private partnerships for years, Mr. Claerhout said, "but … it's hard for us to do. These deals are highly leveraged — as much as 95% of a partnership vs. only 5% equity. For $1 billion in the partnership, that's $50 million in equity — that's too small for an investor like us. There's no way for equity to outperform our cost."

In addition to political or legal restraints that still exist in about half of the states, U.S. public plans face other roadblocks, sources said.

"There are two limitations in the U.S. market," said David Altshuler, partner and co-head of infrastructure and real assets at StepStone Group LP, a San Diego-based private markets consultant with $70 billion in assets under advisement. "It's at a nascent stage in the U.S., more because of the traditional mode of financing through municipal bonds, and because of the capital structure of PPPs, transactions tend to be more debt than equity, which limits how much opportunity there is for investment.

“There are relatively few PPPs in the U.S. vs. other markets. Part of the reason is that the U.S. has had a successful bond market to finance public infrastructure. … More than half of states have passed legislation to enable PPPs, so we think interest will increase. But the other aspect is that the equity requirements tend to be on the lower side.”

Sources said they were unaware of any U.S. public pension fund doing direct investing in P3s; instead pension plans are investing through infrastructure managers in separate accounts that include the partnerships as part of their portfolios.

“These are new to the U.S.,” said Brian Budden, executive vice president of Plenary Group USA, Los Angeles, a brokerage that has been facilitating P3 deals in Canada and Australia. “Canada is 10 years ahead of the U.S. in its P3 approach. The political regime in the U.S. makes it pretty challenging to get investors there. But the market there is almost identical to Canada. We started 10 years ago buying off the underwriter, and now Canadian funds go in directly. That’s how I suspect (U.S. plans) will eventually go.”

Mr. Budden said Plenary has four large public funds waiting to invest in infrastructure equity via P3s. He would not identify the plans.

Added Thomas Robinson, senior managing director and portfolio manager, private fixed income, at Sun Life Investment Management, Toronto: “Local infrastructure investing is at an early stage in the U.S. We’re not seeing the same level of sponsorship as we are in Canada.”

For the year ended Oct. 31, 14 public-private partnerships closed in Canada with a total long-term financing value of C$3.7 billion, according to Sun Life.

That’s not to say there aren’t opportunities in the U.S. Mr. Budden pointed to the recent P3 deal in Pennsylvania to repair and reconstruct 558 bridges overseen by the state’s Department of Transportation. However, the partnership, which closed in March, included only $58 million in infrastructure equity as part of the overall $1.1 billion deal; the remaining funds came from tax-exempt private bonds ($793 million) and government payments.

Added issue

Such a dearth of equity in P3s is an added issue to other restraints to U.S. pension plans participating in direct infrastructure investing — not the least of which is the tradition of funding U.S. infrastructure work through the issuance of municipal bonds.

“The reasons it’s at an early stage include the availability of municipal bonds and the political allotment of private capital, and the difficulty faced by local institutional investors such as pension plans other than the largest ones in having the illiquidity budget and/or capability or resources to do this,” said Toby Buscombe, partner and global head of infrastructure, Mercer LLC, London. “Consequently, there’s not a lot of activity. It’s not for a lack of providers, whether infrastructure managers or brokers, but more a lack of political will.”

Canadian specialists in P3s have an advantage in looking for U.S. business because of their experience with such partnerships, sources agreed.

“Canada just happened to be an early adopter of the P3 model, and its institutional investors were early into the private placement game,” said Sid Vittal, senior infrastructure specialist at Mercer in Toronto. “Definitely, Canadian firms have been working with P3 markets for 10-plus years. Naturally, they understand the process and have that competitive advantage.”

U.S. pension funds can also follow the process that's been successful for Canadian retirement plans, said Sun Life's Mr. Robinson: Find the opportunities, select the most optimal kind of infrastructure available for investment — social infrastructure like roads, hospitals and courthouses, and operational infrastructure like airports and water-processing systems — and find like-minded investors.

"There's a huge demand from the institutional market," Mr. Robinson said. "They need to assess what's out there. They have a big role to play to let their governments know that there's capital available."

Mr. Claerhout at Ontario Teachers said that more opportunities, not just for U.S. pension funds but all institutional investors, could be generated by P3s that broaden their investments beyond social infrastructure. "We're arguing that P3s should continue but be ambitious with other investments, like toll roads, ports and other infrastructure with operating risk and the ability to generate revenue. Instead of availability payments from sponsors, you own it, and market forces determine what your return on investment is."

PENSIONS & INVESTMENTS

BY RICK BAERT | NOVEMBER 16, 2015

This article originally appeared in the November 16, 2015 print issue as, "Equity shortage plagues partnerships".

— Contact Rick Baert at rbaert@pionline.com | @Baert_PI

Municipal Securities Issuers to Face Enforcement Actions.

Nov. 13 — The Securities and Exchange Commission crackdown on municipal securities disclosure violations is poised to enter a new phase of enforcement cases targeting the issuers of those securities, practitioners and others told Bloomberg BNA.

The agency's Municipalities Continuing Disclosure Cooperation (MCDC) initiative encouraged municipal securities underwriters and issuers to self-report prior violations of federal securities laws by Dec. 1, 2014. In exchange, participants could expect to receive less severe, more uniform sanctions in any subsequent enforcement action. Industry observers concede underwriters and issuers often didn't fully comply with SEC rules regarding the accuracy of disclosures intended to enhance investor protections for years, and the initiative sought to address that deficiency.

After announcing a single MCDC enforcement case in 2014, the SEC launched two waves of enforcement cases in June and September against 58 underwriters participating in the initiative. Now, municipal securities lawyers said the agency is preparing its first cases against issuers.

"I had initially thought that, while the SEC came down hard on underwriters, they may not even meaningfully look at issuers who had self-reported because of the volume of issuer self-reports. But now it appears to be clear that the SEC is going to fully review all issuer self-reports too," Daniel Deaton, Nixon Peabody LLP partner and municipal finance specialist, said.

SEC spokeswoman Judith Burns declined to comment on the matter.

Report or Else

The SEC announced an enforcement action less than four months after the program was launched, alleging that the Kings Canyon Joint Unified School District in California misled investors about its failure to provide contractually required financial information and notices (148 SLD, 8/1/14).

Perhaps to spur participation in the initiative, the school district was neither fined nor required to admit wrongdoing.

In June 2015, the SEC announced a group of enforcement actions against 36 municipal-securities underwriters, alleging they sold municipal bonds between 2010 and 2014 using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations (118 SLD, 6/19/15).

In September, the SEC announced enforcement actions against an additional 22 municipal-securities underwriters for allegedly selling municipal bonds using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations. The firms also allegedly failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to customers. The firms paid a collective $4.12 million in fines.

The initiative and its resultant enforcement cases should not come as a total surprise. One of the SEC enforcement division's five specialized units, created in 2010 by former SEC enforcement division director Robert Khuzami, focuses on municipal securities and public pensions. LeeAnn Ghazil Gaunt is the unit's current chief.

Sooner or Later

If underwriters fully disclosed the information required to participate in the MCDC initiative, the SEC likely possesses data that could help construct enforcement cases against issuers, and practitioners predicted the SEC is now preparing those cases. The practitioners said the initiative was more popular with the municipal securities industry than the SEC expected, and the agency has had to spend more time than expected analyzing the mounds of data disclosed by the underwriters and issuers.

"The SEC got hit with a lot of material, so I think they just have to dig through it all," Ballard Spahr LLP partner and municipal securities enforcement specialist Norman Goldberger told Bloomberg BNA in November.

As the agency digests the MCDC disclosures, cases against issuers will be announced, Goldberger said. "Sooner or later," he said.

While there was broad agreement the SEC will launch future enforcement cases against issuers, there was dispute about additional cases being brought against underwriters.

"My view is the SEC will likely bring a third wave of settlements against underwriters prior to bringing the first wave of issuer settlements," Elaine Greenberg, Orrick, Herrington & Sutcliffe LLP partner and a former chief of the SEC enforcement division's municipal securities and public pensions specialized unit, said.

"Although I believe that the SEC has begun contacting issuers who have self-reported under MCDC, I think it probably makes sense to finish up with the underwriter settlements prior to embarking on the first wave of issuer settlements," she told Bloomberg BNA Nov. 13.

Terms of Program

Under the MCDC program, underwriters and issuers had to provide the SEC with information about past municipal securities offerings with which they were involved that contained potentially inaccurate statements, including the identities of the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel.

The program was launched in March 2014 and issuers had to self-report no later than Sept. 10, 2014, in order to receive the relatively less severe sanctions for any violative behavior, while issuers were required to self report by Dec. 1, 2014.

The 1933 Securities Act and the 1934 Securities Exchange Act include broad exemptions for municipal securities, but not from antifraud provisions such as Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. In 1975, Congress enacted amendments to that program, including the Tower Amendment that expressly limits the SEC authority to require municipal securities issuers to file any application or document with the agency prior to any sale of municipal securities by a municipal issuer.

Under that program, the SEC has direct regulatory supervisory authority over underwriters, but only has authority over issuers under its antifraud provisions.

SEC Endgame?

That the SEC lacks statutory authority to supervise muni-market disclosures may be another motivation behind the initiative, at least according to Ben Watkins, director of the Florida division of bond finance and a vocal critic of the MCDC initiative. The MCDC initiative is less concerned with promoting investor protections and more aimed at gathering information to argue that Congress needs to give the SEC statutory authority to oversee disclosure in the municipal securities.

"I think that's their endgame," he told Bloomberg BNA Nov. 12.

"I do not know one single issuer that intentionally set out not to file information they agreed to provide to investors. That's not the issue. The issue is, because of the composition of our markets and the diversity of issuers and their different responsibilities and their level of sophistication and all of that, that inevitably things slipped through the cracks. Now, does that rise to the level of a securities fraud? I think not," Watkins said.

The Securities Industry and Financial Markets Association also concluded that using the blunt instrument of enforcement cases instead of issuing guidance to the financial community may have been misguided.

"SIFMA members fully support the SEC's goal of improving disclosure and transparency in the municipal market. It is disappointing that the SEC chose to bring violations under authority that includes mandatory statutory disqualifications when other authority was available, especially as firms that participated in the MCDC program did so voluntarily and in good faith," Michael Decker, managing director and co-head of municipal securities at SIFMA, said in a Nov. 13 statement

BNA Bloomberg

By Stephen Joyce

November 17, 2015

To contact the reporter on this story: Stephen Joyce in New York at sjoyce@bna.com

To contact the editor responsible for this story: Heather Rothman at hrothman@bna.com

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Investors Demand Greater Premium from Connecticut in Bond Sale.

Nov 17 – The premium Connecticut pays to borrow money in the municipal bond market rose on Tuesday as the state tapped investors for $650 million amid concerns about its weakening revenues and underfunded public pension system.

Investors have been penalizing states with poorly funded pension systems this year and recent news that Connecticut will see a budget shortfall of over $600 million over the next two years has added an extra layer of scrutiny.

Connecticut paid a premium of 0.56 of a percentage point over top-rated states to borrow for 10 years compared to a spread of 0.47 of a percentage point in the secondary market, according to Thomson Reuters data. Connecticut is paying interest of 2.72 percent on the ten-year bonds.

Lyle Fitterer, a fund manager at Wells Capital Management, said the wider spreads were “not a surprise based on what’s happened to other states that have pressing pension issues.”

Fitterer said he had not brought the bonds as the yield was still not attractive enough given the risk.

“In all honesty I’d rather own something like Illinois where, while it’s lower rated and has similar pension issues, at least your getting paid to take that risk,” he said.

The state’s Treasurer’s office, which is responsible for organizing bond sales, did not immediately return a request for comment.

REUTERS

NEW YORK | BY EDWARD KRUDY

(Reporting by Edward Krudy; Editing by Bernard Orr)

Houston's Conundrum: Closing Its Pension-Funding Gap.

Houston is weathering a prolonged plunge in oil prices, but the city may have an even bigger problem: its pensions.

Though economic growth has only slowed, not stalled, in Texas largest city, its finances are showing what several investors and analysts describe as warning signs.

Those include a rapidly growing gap in funding its retirement plans for public workers and a limit on its revenue-raising capabilities imposed by a voter-approved cap on property taxes.

The $3.2 billion pension-funding gap is threatening Houstons Aa2 credit rating from Moodys Investors Service, hurting demand for its debt and emerging as an issue in the citys mayoral race.

Moodys this summer warned it may downgrade the citys debt if Houston fails to address its pensions, noting the cap limits the citys financial flexibility.

A downgrade could lower prices for outstanding bonds and increase Houstons borrowing costs at a time when it needs improved infrastructure.

Some investors are backing away from the citys debt, saying there are better deals on similarly rated municipal bonds elsewhere. Guy Davidson, director of municipal investments at AllianceBernstein LP, said his firm trimmed its holdings of Houstons debt earlier this year.

We want to be compensated for those pension liabilities and at current levels, we dont think we are, he said.

Houston is the latest U.S. city to face threats from credit-rating firms and investors over bulging pension obligations. Investors have grown concerned about state and local governments ability to address unfunded retirement costs. Examples include Chicago and the states of Illinois and Connecticut, whose unfunded retirement costs have ballooned after investing losses from the 2008 financial crisis and chronic underpayments by policy makers.

Houstons predicament also shows how the decline in oil prices is forcing some U.S. state and local governments to re-evaluate their spending priorities.

Houston residents are reluctant to support any tax increases, including raising the property-tax cap, said Mark Jones, a political-science professor at Houstons Rice University.

At the same time, unsustainable pension costs have contributed to reductions in hiring of police officers and spending on pothole repairs, which have become issues in the mayoral race.

Houstons unfunded pension liabilities grew at a faster clip relative to its revenue than in any of the other 50 largest U.S. local governments rated by Moodys, the firm said in a July report, citing data from fiscal 2013.

The city also projects deficits in coming years despite revenue growth, Moodys said in October.

Before 2001, Houston had enough assets to fund future retirement payouts. But an across-the-board boost to retirement benefits around that time, plus losses from two recessions, have weighed on the citys pension funding. The city now only has about 75% of the funds it needs. That places Houston at the average level of funding among city and county plans, according to Wilshire Consulting.

While the city has paid contractually required amounts to plans for municipal employees and police officers over the past five years, the total falls short of fully funding the systems. A state law overseeing the firefighters plan has resulted in better funding while reducing the citys financial flexibility, Moodys said.

City officials have argued for greater control over pensions and revenue. Ronald Green, Houstons controller, said that while investors in the citys debt can remain confident they will get paid, the city should act soon to improve its finances.

You dont fix the roof when its raining, you fix it when its dry, he said.

Absent a concerted effort to adjust course, the city is headed toward Chicago-level distress, forced to choose between benefit cuts, tax increases and reduced public services, according to a report by the Houston-based Laura and John Arnold Foundation, which funds research on the fiscal health of public pensions.

Houstons pension parameters are set by state law, adding to the complexity of seeking a solution, while the drop in oil prices could magnify problems more quickly than expected, said Josh McGee, a vice president at the foundation.

Among other concerns, the citys plans assume relatively high investment returns of 8% or above, meaning the funding gap may be understated, said Marc Watts, chairman of the Greater Houston Partnerships Municipal Finance Task Force.

The new mayor, unless this is addressed, isnt going to have any resources to work with, he said.

Some plan officials said retired city workers arent the problem. Max Patterson, executive director of the Texas Association of Public Employee Retirement Systems, called such warnings grossly misleading and said any discussion of pension changes should be considered in a broader conversation about city finances.

Todd Clark, chairman of the Houston Firefighters Relief and Retirement Fund, said the plan has met and exceeded its assumed returns historically and the board will make any needed adjustments in consultation with an actuary going forward.

The issue is playing into the mayoral runoff between State Rep. Sylvester Turner, a Democrat, and former Kemah Mayor Bill King, a fiscal conservative.

Mr. Turner, running with the support of the citys three major public-sector unions, said the pension issues should be debated with all stakeholders in concert with the citys other fiscal concerns.

After that, he would consider raising the property-tax cap for public safety or paying down debt.

In order to be successful in addressing the pension issue, you have to engage in comprehensive financial reform, he said.

Mr. King favors adjusting pensions by offering 401(k)-style defined-contribution plans for new hires. He supports maintaining the cap, saying the city raises plenty of tax money and needs to spend less.

Weve got time to turn the boat around and not go over the falls, but we dont have a long time, he said.

Houstons situation highlights the need to address pensions and other fixed costs before they become an economic drag, said John Bonnell, senior portfolio manager of tax-exempt investments with San Antonio-based USAA Investments, which doesnt own the citys bonds.

If they end up doing nothing to address this budget issue, 10 years from now Houston could be facing the same problem Chicago is now, he said. I think they have the ability to address their issues prudently, it just hasnt gotten to the point where theyve been forced to do it.

Reporter Esthi Maharani – November 16, 2015

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com

Fitch Replay: Prop 39 / San Diego Unified School District.

'AAA' rating recently assigned to San Diego Unified School District could set a precedent for other school district ratings throughout California.

Listen to Fitch's US Public Finance team discuss their rating of SDUSD and their opinion on Prop 39.

Chicago Pension Payments Will Lag Despite Legal Outcomes: Moody's

CHICAGO — Chicago's contributions to its four retirement systems will be too skimpy to curb unfunded pension liability growth in the next 10 years regardless of how state lawmakers address the problem and how the court system rules, Moody's Investors Service said on Tuesday.

The third-biggest U.S. city has been mired in a financial crisis largely fueled by its $20 billion unfunded pension liability.

Moody's, which dropped Chicago to the "junk" level of Ba1 with a negative outlook in May, laid out four scenarios facing Chicago based on the fiscal 2016 budget it passed last month.

That spending plan for the fiscal year beginning on Jan. 1 includes a record $543 million, phased-in property tax increase dedicated to public safety worker pensions.

Mayor Rahm Emanuel linked the size of the tax hike to an Illinois bill reducing the city's contribution to its police and firefighter retirement systems initially by $220 million. Senate bill 777 passed the House and Senate, but is on hold due to an ongoing budget battle between Democratic lawmakers who control the legislature and the Republican governor, who has been critical of that measure.

If the bill fails to become law, the city would remain subject to a 2010 state law that mandates an immediate $550 million increase in contributions, leaving the property tax hike initially $220 million short.

Emanuel's budget also assumes the Illinois Supreme Court will find a 2014 state law that boosted contributions and reduced benefits for the city's municipal and laborers' retirement systems constitutional after a lower court tossed out the law.

Moody's said the most positive outcome would be a high court ruling in favor of the 2014 law without the enactment of SB 777.

"Although it would require larger pension contributions than currently budgeted, the higher payments would achieve the slowest and least extensive growth in unfunded liabilities among the four scenarios," said Moody's analyst Matthew Butler.

Negative outcomes would involve the state supreme court's rejection of the 2014 law with or without the enactment of SB 777.

"This would exert additional negative credit pressure on Chicago's credit quality because it would likely remove all flexibility to reduce unfunded liabilities through benefit reform and raise the probability of plan insolvency," Butler said.

The city plans to defend the 2014 law before the Illinois Supreme Court next week, claiming that without it the police and firefighter retirement systems will run out of money in the next decade.

By REUTERS

NOV. 10, 2015, 11:55 A.M. E.S.T.

(Editing by Matthew Lewis)

Illinois Agency Readies Bond Issue for Unpaid State Vendors.

CHICAGO — The Illinois Finance Authority took steps on Thursday to speed funds to local emergency call centers and providers of essential state services that are in dire need of cash due to the state's ongoing budget impasse.

A stalemate between Republican Governor Bruce Rauner and Democrats who control the legislature has left Illinois without a budget for the fiscal year that began on July 1. While various court orders and ongoing appropriations have kept money flowing to some services, bond payments and worker salaries, other items have not been funded, prompting Rauner's office to enlist the IFA's assistance.

The IFA board agreed to move forward with a plan to pay vendors for essential state goods and services through the authority's issuance of up to $115 million of bonds backed by Illinois' moral obligation pledge. The IFA would pay off the bonds through a state appropriation based on the amount of money Illinois owes the vendors.

IFA Executive Director Chris Meister said critical services would include snow plow repair companies and food suppliers for veterans' facilities and prisons.

In the case of a debt service shortfall on the IFA bonds, the moral obligation pledge requires the governor to request an appropriation from the legislature, which is not legally obligated to act.

IFA Chairman R. Robert Funderburg noted the irony in the risk that money for the bonds might not be appropriated.

"An agency of the state of Illinois is discussing the relative risk of doing business with the state of Illinois," he said at a board meeting.

Meister said that once structured, the bond deal would need final approval from the IFA board at or before its December meeting. The board approved Citigroup Capital Markets as the underwriter for the bonds, which could be sold in the U.S. municipal market or structured as a direct purchase or private placement.

Meanwhile, the IFA will tap in to its $12 million of available cash to immediately loan at no interest up to $3 million to local 911 call centers relying on a state pass through of revenue from a phone surcharge that has been held up due to the lack of an appropriation, according to Meister. Another allotment of up to $3 million would be made available to state vendors "at the end of their rope" in return for their state receivables and a 1 percent per month late payment penalty that kicks in after 90 days, he added.

By REUTERS

NOV. 12, 2015, 4:12 P.M. E.S.T.

(Editing by Matthew Lewis)

SIFMA Applauds Regulatory Action to Support T2 Settlement Cycle.

Washington, D.C., November 11, 2015 – SIFMA today issued the following statement after the Municipal Securities Rulemaking Board (MSRB) announced it is seeking public comment on a proposal to facilitate the industry's move to a two-day settlement cycle by modifying certain MSRB rules:

"Shortening the time it takes to settle a trade will improve the overall efficiency of securities markets, reduce risk and align the United States with other global markets. We thank the Securities and Exchange Commission for directing the self-regulatory organizations it oversees to take action to support a shortened settlement cycle and appreciate the work the MSRB is doing to help make T2 a reality by third quarter 2017," said Kenneth E. Bentsen, Jr., SIFMA president and CEO.

Tom Price, SIFMA managing director, technology, operations and BCP, and co-head of the T2 Industry Steering Committee, added, "Regulatory action is critical for the industry to achieve its goal of a two-day settlement cycle by third quarter 2017. We fully support recent actions by regulators to identify rule changes needed to facilitate the move to T2 and are committed to working with them to move this process forward."

MSRB Publishes Compliance Advisory for Municipal Advisors.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published its first *Compliance Advisory for Municipal Advisors*, developed to assist municipal advisors with understanding and implementing the regulatory framework created by the MSRB as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act in 2010 expanded mission of the MSRB to include the protection of municipal entities, in addition to investors, and charged it with developing regulations for municipal advisors, in addition to municipal securities dealers.

The new compliance advisory highlights fundamental regulatory requirements for municipal advisors as developed by the MSRB and identifies potential risks associated with a failure to implement adequate compliance controls. The advisory does not include all municipal market risks and is not intended to address all the requirements of each MSRB rule or other federal securities laws applicable to municipal advisors.

The MSRB encourages municipal advisors to review the Compliance Advisory for Municipal Advisors in light of their business practices and in assessing the adequacy of their compliance programs. The advisory is intended to help ensure that municipal advisors are fulfilling their duties with respect to their interactions with municipal entities, obligated persons and investors in support of a fair and efficient municipal market.

Additional news and resources for municipal advisors are available on the MSRB's website, including companion publications on *Preparing for Regulation* and *Participating in the Rulemaking Process*.

Date: November 12, 2015

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

NABL: IRS Issues Guidance on Student Loan Bonds.

The IRS today issued Notice 2015-78 providing guidance on qualified student loan bonds under Section 144(b) of the Code. The Notice addresses (1) the eligibility of parents to borrow for their child's education; (2) how the student nexus requirement applies in the context of refinancing loans; (3) the loan size limitation; and (4) the types of student loans that may be refinanced with a State Supplemental Loan. The Notice applies to loans originated on or after February 11, 2016, but issuers may apply this notice to loans originated before February 11, 2016.

The Notice will be published in the Internal Revenue Bulletin on November 30, 2015 (IRB 2015-48). The text of the Notice is available here.

- MSRB Files Exception to MA Conduct Rule's Principal Transaction Ban.
- MSRB to Implement Gifts Rule for Municipal Advisors.
- Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently.
- House Committee Approves Legislation to Classify Muni Bonds as High-Quality Liquid Assets.
- How Safe are Municipal Bonds from a Fed Interest Rate Hike?
- Foley: New IRS Regulations For Mixed Use Projects Financed With Tax-Exempt Bonds Have Practical Importance.
- McCarter & English: At Long Last – Allocation and Accounting Rules.
- *Joseph B. Doerr Trust v. Central Florida Expressway Authority* – Supreme Court of Florida holds that, when condemning authority causes excessive litigation, the trial court shall utilize section 73.092(2) – which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award – and is not limited to the benefits achieved formula in section 73.092(1).
- And finally, our deeply held assumptions regarding the subterranean municipal milieu were shaken to the core this week when the court, in *Metropolitan Water Dist.*, dropped this bombshell on us, "[the pipelines] have peacefully coexisted underground for more than sixty years." Is peaceful coexistence not the natural state of underground pipelines? Are there roving gangs of lead down there beating up on the PVC? Snooty copper patronizing the cast iron? U.N. Pipekeepers?

EMINENT DOMAIN - FLORIDA

Joseph B. Doerr Trust v. Central Florida Expressway Authority

Supreme Court of Florida - November 5, 2015 - So.3d - 2015 WL 6748858

The Orlando–Orange County Expressway Authority, now the Central Florida Expressway Authority (the Authority), began a condemnation proceeding to acquire 9.81 acres of land identified as Parcel 406. Parcel 406 was owned by Joseph B. Doerr. On June 5, 2006, the Authority submitted to Doerr a presuit written offer to purchase Parcel 406 for $4,914,221. Doerr rejected the offer, and in August 2006, the Authority filed an action to condemn the property. In February 2008, a jury trial was held to determine the value of Parcel 406. The jury found that the land had a fair market value of $5,744,830.

Thereafter, Doerr filed a motion for attorney’s fees. The Authority sought to limit the fees to the benefits achieved formula under section 73.092(1), which generated an award of $227,652.25. On the other hand, the Landowners asserted that they were entitled to attorney’s fees under section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

The trial court awarded fees under subsection (2) because it concluded that the Authority’s presuit written offer was insufficient to calculate the benefits achieved by each Landowner in the final judgment so as to permit a fee award under subsection (1). Applying the factors listed in section 73.092(2), the trial court awarded the Landowners $816,000 in attorney’s fees for the proceedings that involved the valuation of Parcel 406.

The District Court of Appeal reversed and remanded, concluding that the attorney’s fees for the valuation proceedings were limited to those allowed by section 73.092(1), it remanded to the trial court for consideration of the Landowners’ claim that the application of the benefits achieved formula violated their constitutional right to full compensation because the Authority caused excessive litigation.

The Supreme Court of Florida held that when condemning authority causes excessive litigation, to calculate attorney fees, trial court shall utilize section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

Although the Legislature may establish reasonable parameters for the award of attorney fees in eminent domain proceedings, a statute cannot operate in a manner to so reduce a fee award that it runs afoul of the constitutional guarantee that private property owners receive full compensation for a taking of their property.

Where private property owners are forced to defend against excessive litigation caused by a condemning authority, a mandatory statutory formula that generates a fee award below that which is considered reasonable denies those property owners their right to the full compensation that is guaranteed by the state constitution.

When a condemning authority engages in tactics that cause excessive litigation, to calculate a reasonable attorney fee, a trial court shall utilize provision setting forth considerations in assessing attorney fees incurred of statute governing attorney fees for eminent domain matters, but only for those hours incurred in defending against the excessive litigation or that portion that is considered to be in response to or caused by the excessive tactics. Remainder of the fee shall be calculated pursuant to benefits achieved formula in statute and the two amounts added together shall be the total fee.

Landowners were not required to pursue sanctions in lieu of challenging constitutionality of benefits achieved formula in statute governing attorney fees for eminent domain matters as applied to excessive litigation by county expressway authority. Sanctions were not sufficient to protect landowner’s constitutional right to full compensation for taking of private property, which included reasonable attorney fee.

UTILITIES - INDIANA

Citizens Action Coalition of Indiana, Inc. v. Southern Indiana Gas and Elec. Co.

Court of Appeals of Indiana - October 29, 2015 - N.E.3d - 2015 WL 6550654

Citizens group and Office of Utility Consumer Counselor (OUCC) sought review of decision of the Indiana Utility Regulatory Commission granting the petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects.

The Court of Appeals held that:

- Request for judicial review was not rendered moot by substantial work on projects;
- Portion of proposed modification was clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN);
- CPCN granted under different statutory section was insufficient;
- Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity needs; and
- Commission was not required to make findings regarding utility’s delay in filing petition.

Request for judicial review of decision of Indiana Utility Regulatory Commission granting petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects was not rendered moot by utility’s completion and use of many of projects due to objectors’ failure to obtain stay pending appeal. Utility began work on projects while appeal was pending at its own risk, and appellate court had power to grant relief sought, which included remand to Commission with instructions to make additional findings.

Public electric utility’s proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards constituted clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN). Statutory definition of CCT applied to technologies which reduced emissions of sulfur or nitrogen based pollutants, and utility proposed two injection systems designed to mitigate sulfur emissions.

Certificate of public convenience and necessity (CPCN) granted under statutory section governing a utility seeking to recover federally mandated costs was insufficient to satisfy requirement of CPCN for approval of clean coal technology (CCT) project requested by public electric utility, where different sections governing different types of CPCNs had different requirements in order to issue CPCNs thereunder, and different sections served different purposes.

Indiana Utility Regulatory Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity need of utility’s customers in considering public electric utility’s petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where Commission specifically addressed issue of electricity demand when it found that retiring certain facilities prematurely would have resulted in reliability risks for consumers based on capacity shortfall projections, and utility did not request approval of any project tied only to specific unit.

Indiana Utility Regulatory Commission was not required to made findings regarding whether utility’s delay in filing its petition was unreasonable in considering public electric utility’s petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where there was no evidence that delay was effort to reduce feasibility of alternative compliance options.

PENSIONS - NEW YORK

Pitzel v. Dinapoli

Supreme Court, Appellate Division, Third Department, New York - November 5, 2015 - N.Y.S.3d - 2015 WL 6741039 - 2015 N.Y. Slip Op. 08015

Retired police officer brought article 78 proceeding challenging determination of State Comptroller denying officer's application for recalculation of his final average salary. The Supreme Court, Albany County, transferred proceeding.

The Supreme Court, Appellate Division, held that substantial evidence supported determination that wages earned on special-duty details were properly excluded from officer's final average salary calculation.

Substantial evidence supported State Comptroller's determination that police officer did not provide service to police department while he was on special-duty details, as would preclude consideration of wages earned for those details in calculation of officer's final average salary for retirement purposes. Private entities paid police department so that officers would provide services to them on special-duty details, officer acknowledged that he volunteered to perform services on special-duty details, and there was no evidence that the department had ever ordered officer or his fellow officers to perform special-duty details.

UTILITIES - NORTH CAROLINA

Point South Properties, LLC v. Cape Fear Public Utility Authority

Court of Appeals of North Carolina - October 20, 2015 - S.E.2d - 2015 WL 6142998

Developers who paid water and sewer impact fees brought actions against water and sewer authority and county, seeking refunds. The Superior Court entered summary judgment in favor of developers. County and authority appealed. Appeals were consolidated.

The Court of Appeals held that:

- Claims were not subject to statute of limitations for claims based upon a liability created by statute;
- Statute of limitations for action against a local unit of government upon a contract did not apply;
- Catch-all statute of limitations applied;
- Doctrine of laches did not apply; and
- Fees were not "to be furnished" to developer's properties as would have authorized the fees.

Developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that authority and county lacked authority to impose the fees were not based on authority's and county's breach of a duty or liability established by statute that granted authority and county the power to levy fees for water and sewer services furnished or to be furnished and, thus, were not subject to three-year statute of limitations for claims based upon a liability created by statute.

Two-year statute of limitations for action against a local unit of government upon a contract, obligation, or liability arising out of a contract did not apply to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees, where developers, who retained private utility company to provide water and sewer service, did not assert that authority and county were obligated to immediately provide them with sewer services.

Ten-year catch-all statute of limitations applied to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees.

Doctrine of laches did not apply to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees. Claims were legal, rather than equitable, and water and sewer authority and county failed to show that they were prejudiced by delay in bringing claims.

Water and sewer impact fees that were imposed by county and water and sewer district were not for service "to be furnished" to developers' properties, for purposes of statute permitting county water and sewer districts to collect fees for use of services to be furnished, although county and authority expressed a goal of extending service to areas including the properties, where county and authority had not decided or planned for service to be furnished to the properties, agency plans going three years ahead did not include any specific commitment to extend service to any of the properties, and a private utility company had continuously provided water and sewer service for the properties.

ZONING - PENNSYLVANIA

Scott v. City of Philadelphia

Supreme Court of Pennsylvania - October 29, 2015 - A.3d - 2015 WL 6675465

Objector to proposed condominium development sought review of zoning board of adjustment's decision granting developer variances to construct development. The Court of Common Pleas granted developer's motion to quash appeal. Resident appealed. The Commonwealth Court reversed. Allowance of appeal was granted.

The Supreme Court of Pennsylvania held that developer's first opportunity to challenge standing of objector before board was when objector took appeal to trial court, rather than when objector appeared before board, disapproving *South of South Street Neighborhood Ass'n v. Philadelphia Zoning Bd. of Adjustment*, 54 A.3d 115.

UTILITIES - SOUTH DAKOTA

Pesall v. Montana Dakota Utilities, Co.

Supreme Court of South Dakota - November 4, 2015 - N.W.2d - 2015 WL 6750305 - 2015 S.D. 81

Utility and power company applied for permit to construct a high-voltage electrical transmission line. Farmer objected because he was concerned that excavating and moving soil to construct the project might unearth and spread a crop parasite. Public Utilities Commission granted permit on conditions, including condition to identify and mitigate the potential parasite problem. Farmer sought judicial review. The Circuit Court affirmed. Farmer appealed.

The Supreme Court of South Dakota held that:

- Commission did not delegate its regulatory authority to applicants, and
- Commission did not exceed twelve-month time limit for rendering complete findings on the application.

Decision to grant permit to construct high-voltage electrical transmission line subject to crop parasite mitigation conditions, rather than requiring utility company and power company to reapply in order to provide more specificity regarding mitigation proposal, was expressly authorized by legislature and within Public Utilities Commission's area of expertise and therefore within the Commission's discretion.

Modified condition of permit to construct high-voltage electrical transmission line, requiring applicants to identify and mitigate potential crop parasite problem, did not improperly delegate Public Utilities Commission's authority to a private party. On the contrary, the permit and the Commission's modifications of the condition reflected that the Commission retained its authority to make the ultimate decision regarding the crop parasite mitigation, and applicants did not have ultimate authority to choose final mitigation plan.

Public Utilities Commission did not exceed statutory twelve-month time limit for rendering complete findings on application for permit to construct high-voltage electrical transmission line, which was subject to crop parasite mitigation conditions, even though it did not order a specific mitigation plan within the twelve-month statutory period. Fact that the Commission retained jurisdiction to enforce its conditions did not mean it had failed to render complete findings on the permit.

UTILITIES - UTAH

Metropolitan Water Dist. of Salt Lake & Sandy v. Questar Gas Co.

Court of Appeals of Utah - October 29, 2015 - P.3d - 2015 WL 6567671 - 2015 UT App 265

Local water district brought action against public utility that operated natural gas pipeline on district's easement, seeking a declaratory judgment that district had statutory authority to require a licensing agreement for utility's continued occupancy in the easement, and that the utility's continued presence in the easement amounted to trespass, interference with waterway, and public nuisance as a matter of law.

District filed motion for summary judgment. The Third District Court denied the motion. District appealed.

The Court of Appeals held that:

- District enjoyed no express or implied statutory authority to regulate utility's pipeline, and
- Utility's pipeline did not unreasonably interfere with district's water pipeline.

Local water district had no express statutory authority to regulate public utility's natural gas pipeline located within its non-exclusive easement, since nothing in the relevant statutes expressly authorized local districts to regulate any public utility.

Local water district had no implied statutory authority to regulate public utility's natural gas pipeline located within its non-exclusive easement. Existence of gas pipeline on opposite side of street from water pipeline did not affect district's ability to carry out its duties, even if gas pipeline crossed the water pipeline in four locations, and authority exercised by other government entities in regulating utilities was with express statutory grants of power, which district lacked.

Public utility's gas pipeline located within local water district's non-exclusive easement did not unreasonably interfere with district's water pipeline so as to justify removal. District's concerns about costs of future rehabilitation and replacement for its pipeline being affected by the existence of the gas pipeline were speculative since it had no present construction plans, and pipelines had peacefully coexisted underground for more than 60 years.

PUBLIC RECORDS - WASHINGTON

West v. Washington State Ass'n of Dist. and Mun. Court Judges

Court of Appeals of Washington, Division 1 - November 2, 2015 - P.3d - 2015 WL 6680205

Requester brought declaratory judgment action alleging violations by District and Municipal Court Judges' Association (DMCJA) of the Public Records Act, as well as the Fair Campaign Practices Act. The King County Superior Court granted DMCJA summary judgment. Requester appealed.

The Court of Appeals held that:

- DMCJA was part of judiciary and was therefore not an "agency" subject to the Public Records Act;
- Requester was required to comply with statutory notice procedures to attorney general and local prosecutor prior to bringing action against DMCJA for alleged violation of the Fair Campaign Practices Act; and
- Judge's recusal was not warranted by her status as former member of DMCJA.

Largest Muni Sale Next Week is $1.75 bln for Florida Rail.

The largest deal to hit the U.S. municipal market next week is $1.75 billion of private activity bonds to help fund All Aboard Florida, a 235-mile (378 km) passenger rail project that will connect Miami to Orlando.

The bonds will be sold by the Florida Development Finance Corporation, a state authorized issuer of industrial revenue bonds, and the sale will be managed by Bank of America Merrill Lynch.

All Aboard Florida is a privately owned, operated and maintained passenger rail system with stations planned in Miami to Fort Lauderdale, West Palm Beach and the Orlando International Airport.

The express train is expected to take approximately three hours, move at speeds up to 125 mph (201 kph), and be completed by early 2017.

A handful of express and high-speed rail projects are currently planned to be built across the country, including projects in California, Texas, and Nevada.

Siemens Corporation will manufacture All Aboard Florida's trains in Sacramento, California. Archer Western is upgrading rail infrastructure along the corridor.

Altogether, U.S. municipal bond issuers are expected to offer over $6 billion of municipal bonds and notes next week, according to Thomson Reuters preliminary data.

Reuters

Nov 6, 2015

(Reporting by Robin Respaut; Editing by Alan Crosby)

Moody's Withdraws 3 U.S. Public Finance Local Government Obligors for Lack of Sufficient Information.

New York, November 04, 2015 — Moody’s Investors Service has withdrawn the ratings of 3 U.S. public finance local government obligors, affecting approximately $30.5 million of outstanding debt, due to insufficient information.

The affected obligors are:

- Canton, MS
- Lamar County, TX
- Mabank, TX

SUMMARY RATING RATIONALE

Moody’s has withdrawn the ratings because it believes it has insufficient or otherwise inadequate information to support the maintenance of the ratings. Please refer to the Moody’s Investors Service’s Policy for Withdrawal of Credit Ratings, available on our website, www.moodys.com.

REGULATORY DISCLOSURES

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Please see www.moodys.com for any updates on changes to the lead rating analyst and to the Moody’s legal entity that has issued the rating.

Please see the ratings tab on the issuer/entity page on www.moodys.com for additional regulatory disclosures for each credit rating.

Sarah Jensen
Associate Analyst
Public Finance Group
Moody’s Investors Service, Inc.
600 North Pearl Street
Suite 2165
Dallas, TX 75201
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Vanessa Youngs
Analyst
Public Finance Group
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

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

How Safe are Municipal Bonds from a Fed Interest Rate Hike?

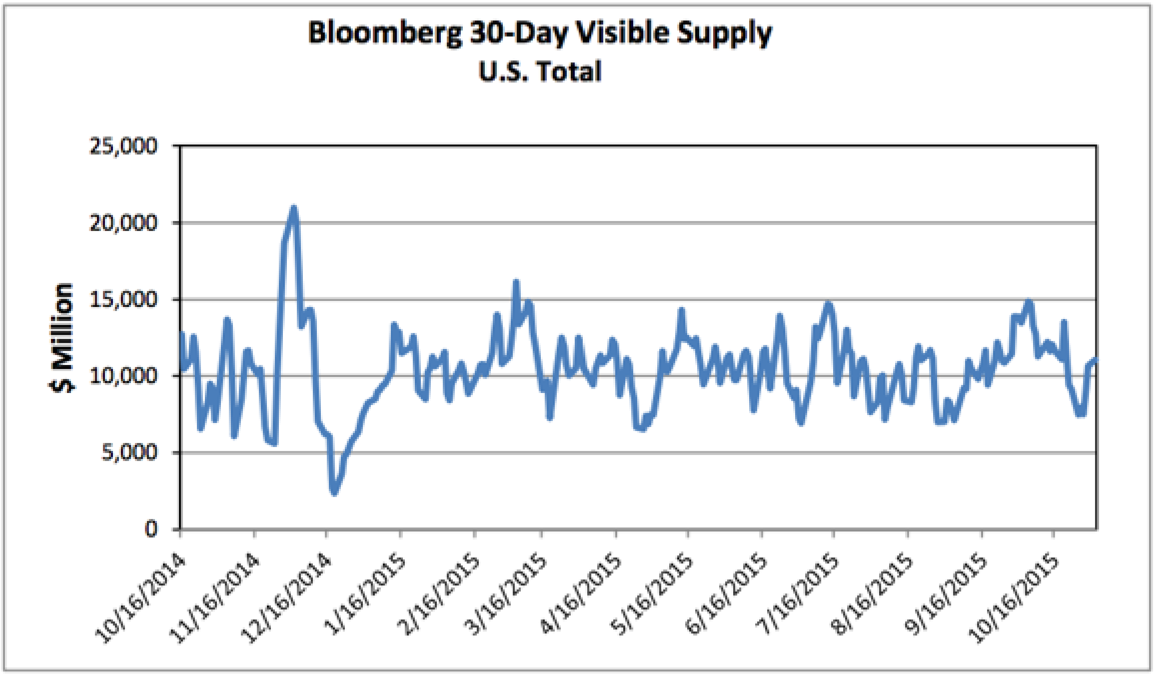
Summary

- The supply of new issues will likely fall as rates rise, creating an imbalance between supply and demand.
- Historically municipal bonds have avoided losses in a rising interest rate environment.
- Municipal bonds currently are trading at attractive historical levels relative to taxable bonds.

The bond market (NYSEARCA:BND) is bracing for a smackdown when the Federal Reserve hikes interest rates. The CME Group’s FedWatch Tool shows the Fed-funds futures market is pricing in a 52% chance of a 50 basis point increase at the Fed’s Dec. 16 meeting. That’s a sharp rise from a 34% reading last week before the Fed’s policy statement. The probability gauge rises to 61% for the January meeting next year and 75% for March 2016. Intermediate and long duration bonds of all stripes will lose principal when rates rise. Municipal bonds (NYSEARCA:MUB), however, are relatively safe from a rate hike. The stars seem to be aligning in their favor. Here are five reasons why.

1. The supply of new issues will likely fall as rates rise, creating an imbalance between supply and demand. New issue volume has been falling since June. September new issue volume was the lowest in one and half years, according to Janney Montgomery Scott’s monthly municipal bond report from October. Municipalities will likely issue less debt in a rising rate environment.

Refundings fell 38.3% in October 2015 from the year-ago period, according to RW Baird, citing Bond Buyer data. Total issuance declined from October 2014. Sept. 2015 issuance also dropped year over year.

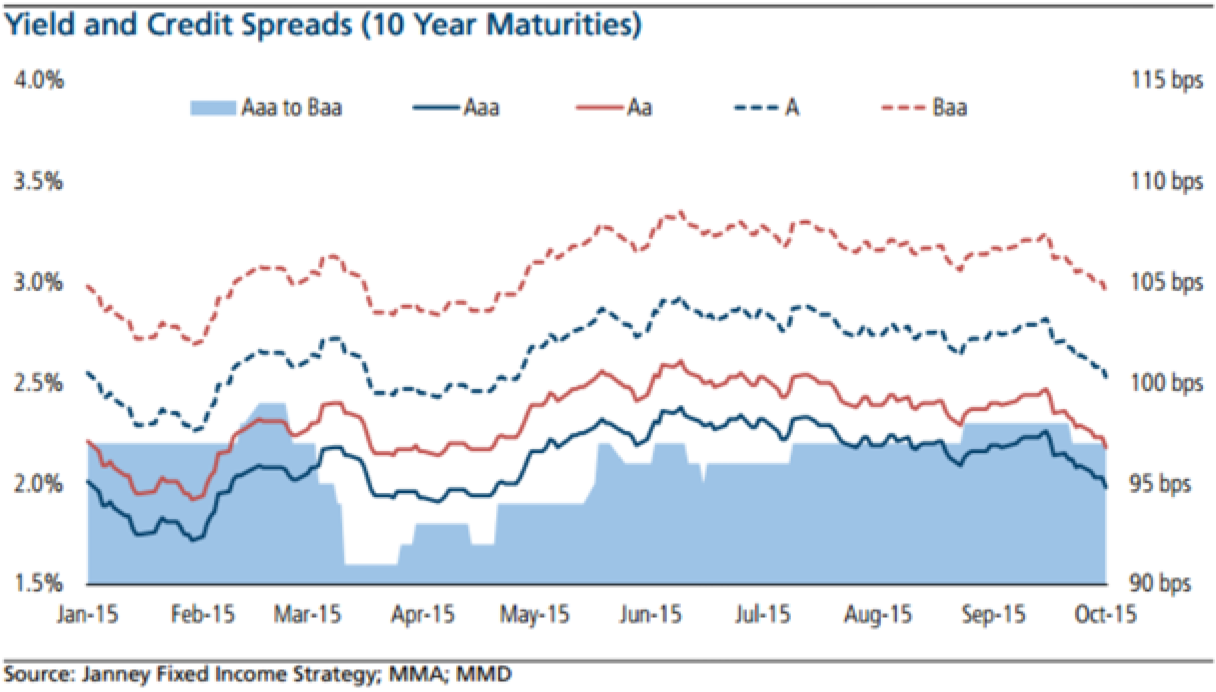


(Robert W. Baird Municipal Bond Market Weekly, Nov. 2, 2015)

“Because so much issuance this year has been refunding of older debt due to current low rates there could be a reduction in new issuance making munis more valuable as a result of better supply/demand technicals,” says John Donovan, senior vice president of municipal trading at Drexel Hamilton in New York City. “And somewhat counterintuitively, the start of tightening could lead to lower equities and add to the demand for munis in a rotation type trade.”

Matthew Carbray, CFP®, ChFc®, a certified financial planner and partner at Carbray Staunton Financial Partners LLC in Avon, Conn., says: “With reduced new supply coming to market and the likelihood that there will be less refinancing activity on existing muni debt due to higher rates, the fundamentals for municipal bond investing look strong.”

Carbray recommends buying high-yield munis (NYSEARCA:HYMB) because spreads have widened enough to justify the credit risk in many cases.

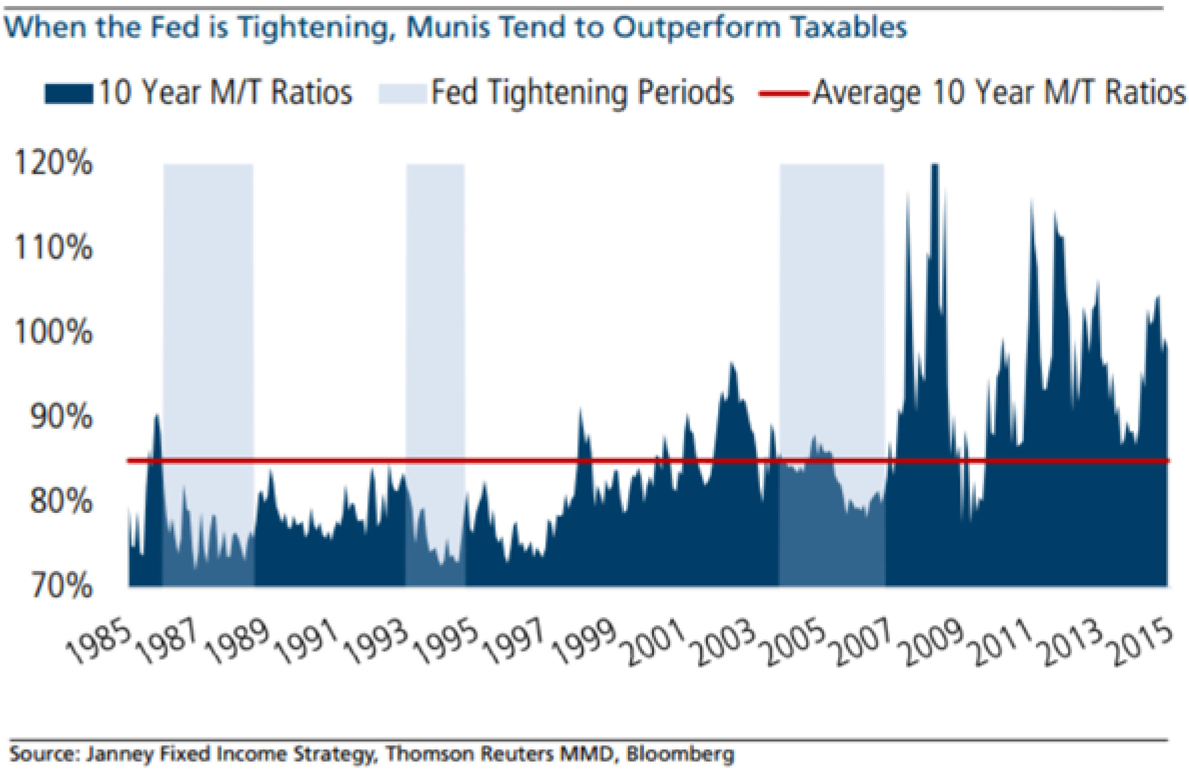


(Janney Montgomery Scott, "Municipal Bond Market Monthly," Oct. 6, 2015)

2. Historically municipal bonds have avoided losses in a rising interest rate environment. It's doubtful that longer-term rates will rise dramatically when the Fed lifts the policy rate. The yield curve will likely flatten. Long-term rates (NYSEARCA:BLV) are more sensitive to expectations of inflation, which is basically non-existent thanks to falling commodity prices. Energy prices are expected to remain low for the foreseeable future because of the fracking boom.

A primary indicator of municipal relative value is the ratio of 10-year AAA yields to like maturity Treasury yields (NYSEARCA:IEF). Janney Montgomery Scott's graph below shows during rising interest-rate periods in the late 1980s, the mid-1990s and the mid 2000s, muni ratios fell. That means muni yields fell (as prices rose) relative to Treasuries.

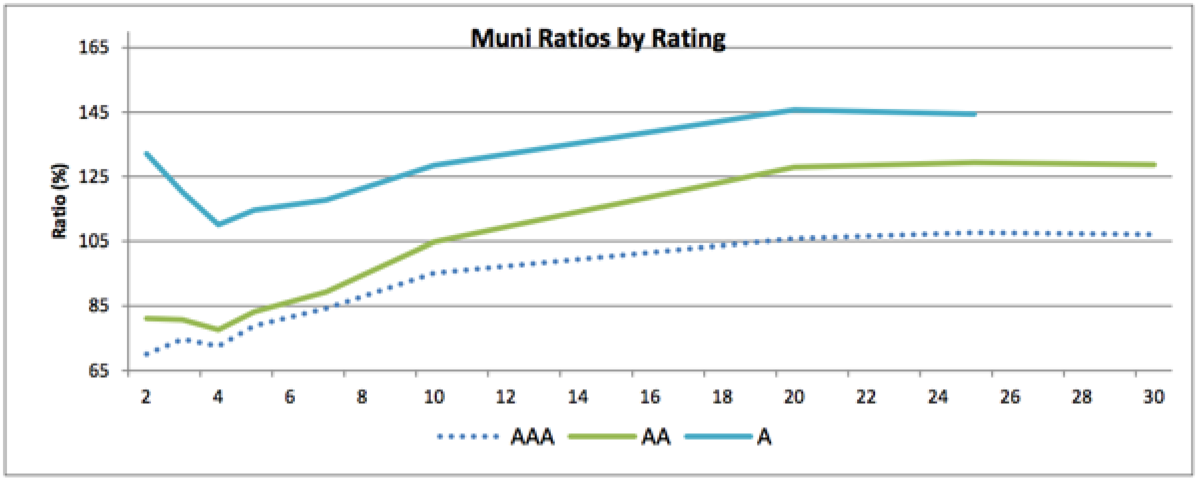
"With ratios currently hovering around 100%, despite high marginal income tax rates, we see more downside bias to M/T ratios than upside likelihood," Alan Schankel, managing director at Janney, wrote in a client note issued Sept. 17.



(Janney Montgomery Scott, "Munis in a Tightening Cycle," Sept. 17, 2015)

3. Municipal bonds currently are trading at attractive historical levels relative to taxable bonds. The lower the credit rating and the longer the duration, the higher the muni valuation relative to equivalent Treasuries as this chart from RW Baird shows.

Muni Index Ratios by Maturity and by Credit Rating



(Data Source: Bloomberg; Baird Municipal Bond Market Weekly Nov. 2, 2015)

"This has a very important implication for investors, as it means that despite the fact that municipal bonds' income is tax-free – consequently, their rates should be lower. But their yields on maturities greater than 20 years are higher than those on treasury bonds," Keith Lanton, president of Lantern Investments with $1 billion in client assets in Melville, N.Y. "Of course, the latter are backed by the full faith and credit of the United States. Nevertheless, municipal bonds levels over 100% are high by historical standards."

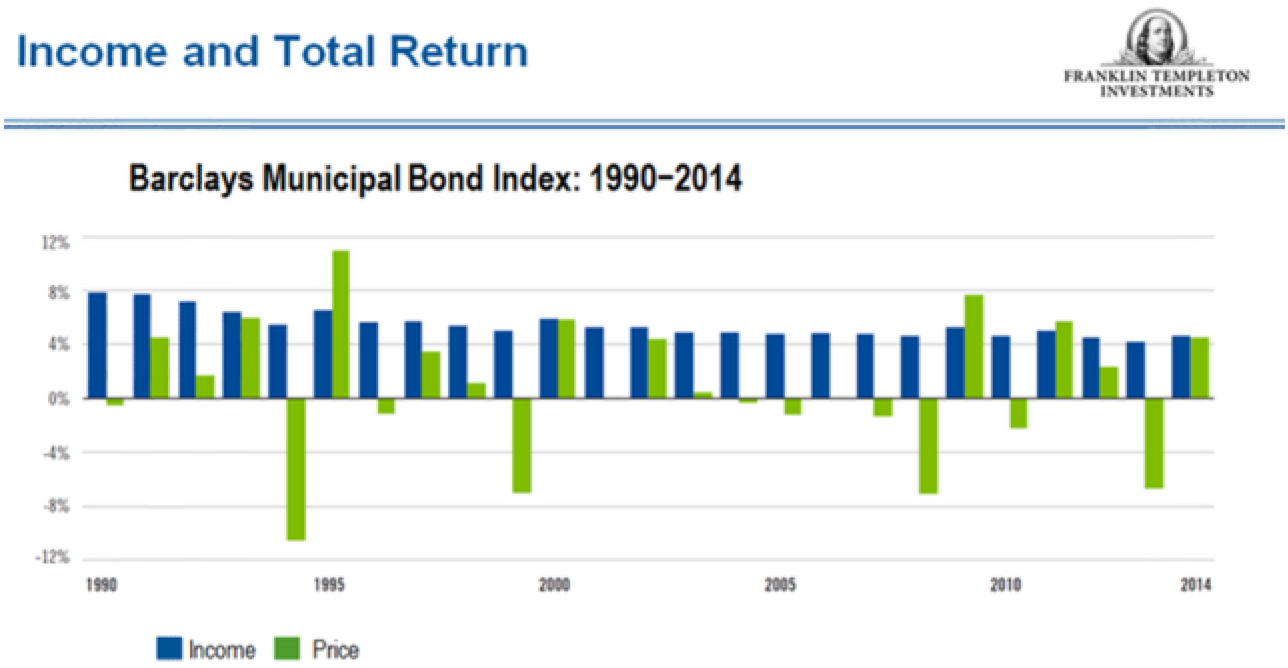
4. Arguably, muni bond prices have already priced in an interest rate hike because it has been anticipated for so long. Jefferies' team of economists and analysts used a handful of complicated models to conclude there will be a December liftoff. They project a 2% Fed funds rate at year-end 2015. They forecast the Fed funds to reach at least 3% by year-end 2016 and 3.75% or higher in late 2017.

"The rate normalization process, of course, will depend upon the economy and inflation continuing down the path toward more normal economic and inflation conditions," Ward McCarthy, managing director and chief financial economist at Jefferies and his colleagues wrote in a client note Oct. 30. "Consequently, the projected fed funds rate in all of these models is based on the same projections for a continued decline in the unemployment rate to as low as 4.5% and a gradual rise in inflation back toward the Fed's 2% target."

Jefferies' model does not factor in overseas uncertainty. Crude oil prices and import prices are huge wild cards that could affect the inflation rate.

5. Knee-jerk market reactions present a chance to take advantage of volatility. When bonds sell off, yields rise. Therefore, educated investors can swoop up higher-yielding bonds to increase income. Over the past two decades, muni yields have typically fallen from their highs. Over the long term, yields are the primary contributor to total returns than price appreciation for muni bond investors. Over the short term, income helps cushion price declines. Unless credit quality deteriorates, bond prices usually stabilize relatively quickly as the yield rises.

Franklin Templeton's chart below shows that although prices of municipal bonds dropped in 12 out of the 24 calendar years between 1990 and 2014, the bonds' yield income helped offset losses in price. After factoring in income, municipal bonds only saw negative total returns in four out of the 24 years.



(Franklin Templeton, "In the Know: Seven Myths About Municipal Bonds," May 7, 2015)

Seeking Alpha

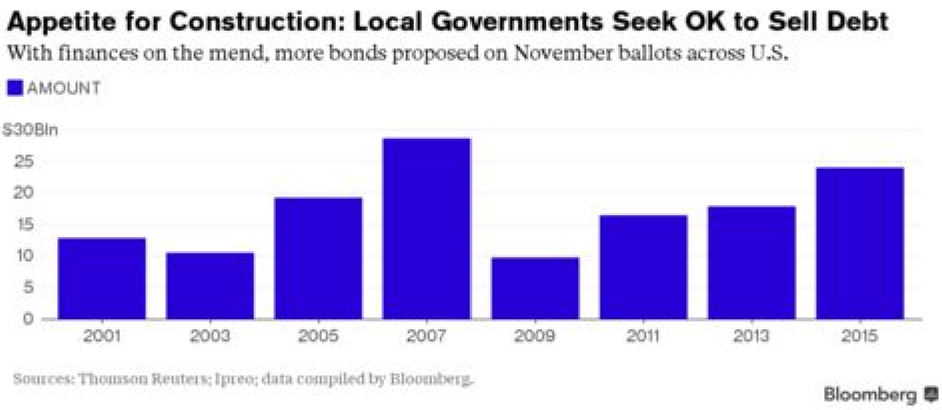
Robert Kane, BondView
Research analyst, municipal bonds, event-driven, macro

Nov. 5, 2015 4:48 PM ET

[U.S. Voters Approve $10 Billion of Bonds in Top Ballot Contests.]

U.S. voters approved more than $10 billion of new municipal bonds for local governments, with returns showing strong support for large debt issues for Dallas schools, Houston roads and Denver's stock show and convention facilities.

With interest rates near 50-year lows, localities nationwide sought authority Tuesday to issue $24 billion of debt for water systems, roads and economic development, according to Ipreo, a New York-based financial-market data provider. It was the most in an odd-year November election since 2007, before the worst recession since the 1930s cut tax revenue and pushed states and cities into a period of austerity.



While municipalities have been borrowing to take advantage of low rates to cut the cost of existing debt, they've been reluctant to take on new obligations. Borrowing costs have averaged just under 4 percent since 2012, the lowest since the mid-1960s, according to the Bond Buyer's index of 20-year yields.

"The best case would be a wave of supply that pushes yields and spreads meaningfully higher," said Matt Fabian, a managing director at Concord, Massachusetts-based research firm Municipal Market Advisors. "Unfortunately we are probably stuck with low yields for a while, regardless of what supply might come."

Dallas Schools

A strengthening economy gave government officials confidence to ask voters for permission to borrow. The approved borrowings would make a small contribution toward some of the $3.6 trillion of investment in infrastructure that the American Society of Civil Engineers estimates the U.S. needs by 2020.

For Dallas Independent School District, the $1.6 billion of new debt will be used to replace and renovate schools that are more than a half-century old. Denver voters approved $778 million of debt to upgrade a facility for the National Western Stock Show and for improvements to a convention center. Meanwhile in Harris County, where Houston is located, voters approved $848 million of debt for road improvements, parks and flood control, according to county election returns.

Debt sales were also approved for the Aldine Independent School District, North East Independent School District and Conroe Independent School District, all in Texas, and the Fairfax County schools in Virgina. Nine Texas districts were among the largest approved.

Voters in Maine, the only state with bond questions on its ballot, also supported $100 million of debt for transportation and senior housing.

Rejected Proposals

Two of the largest issues that failed to pass included $816 million of bonds in Pima County, Arizona, which sought to use the proceeds for roads and highways, economic development and tourism, and other purposes. In Travis County, Texas, voters rejected $287.3 million for a new courthouse in downtown Austin.

Six years after the recession ended, state tax revenue is only 5 percent over the prior peak and far lower than in past recoveries, according to data released in July by the Nelson A. Rockefeller Institute of Government, which tracks state and local revenue and spending. The long recovery from the recession that began in late 2007, followed by a sustained decline in investment by state and local governments in infrastructure, has created demand, said Donald Boyd, director of fiscal studies at the Rockefeller Institute.

The record for bond proposals in a November general election was in 2006, when municipalities asked for $78.6 billion and voters approved $69.6 billion, according to Ipreo. November general-election ballots typically contain more debt in even years, when congressional and presidential elections are held, than in odd-numbered ones. Last year voters were asked to decide on $44 billion of bonds, more than twice the amount sought in 2010, and passed about 85 percent, according to Ipreo.

Bloomberg

by Darrell Preston

November 3, 2015 — 8:57 PM PST Updated on November 4, 2015 — 9:35 AM PST

[House Committee Approves Legislation to Classify Muni Bonds as High-Quality Liquid Assets.]()

Earlier today, the House Financial Services Committee voted overwhelmingly to favorably report legislation (H.R. 2209) that would allow large banks to count some of their municipal bond investments as high-quality liquid assets under federal bank liquidity standards. The legislation, which was introduced by Representative Luke Messer (R-IN), was approved by a vote of 56-1, with Democrat Stephen Lynch of Massachusetts casting the lone opposition vote.

H.R. 2209 would modify a regulation the Federal Reserve, the Department of Treasury, and the Federal Deposit Insurance Corporation (FDIC) released in October 2014 to ensure that large banks hold enough liquidity to continue making payments during periods of financial stress. Under the rule, banks with at least $250 billion in assets (or $10 billion in foreign exposure on their balance sheet) must maintain a minimum liquidity coverage ratio (LCR) comprised of certain financial investments that are considered “High-Quality Liquid Assets (HQLAs).” The rule will permanently take effect on January 1, 2017.

Despite the urging of NCSHA and other advocates, the agencies did not include municipal bonds as HQLAs in the final rule. This means that large banks cannot currently use any municipal bond investments they hold towards meeting their LCR. H.R. 2209 would require that all investment-grade municipal bonds that are “liquid and readily marketable” be classified as level 2A HQLAs. This would allow banks to count such municipal bonds towards their LCR, but only at a value that is 15 percent below each investment’s market value. In addition, banks cannot use level 2 assets to account for more than 40 percent of their HQLAs. Regulators would have three months to incorporate these changes into the current regulations.

In May, the Federal Reserves issued a proposed rule that would allow some municipal bonds to be considered as HQLAs. However, the proposed rule would only apply to uninsured general obligation bonds. This means that housing bonds, and other private-activity bonds, would still not be considered HQLAs. Further, because the Federal Reserve issued this proposed rule unilaterally instead of jointly with Treasury and the FDIC, it would only apply to the large banks the Federal Reserve oversees.

H.R. 2209 has not been scheduled yet for full House of Representatives consideration.

National Council of State Housing Agencies

November 04, 2015

[Puerto Rico Debt Tragedy's Second Act is Close. Here is the Cast.]

NEW YORK – The second act of Puerto Rico’s long- building debt drama is about to begin, and waiting in the wings is a veteran cast. It includes an embattled politician, his foe, the former executive of a failed bank, and those with roles in the Wall Street bailout, Argentina’s default and America’s biggest municipal bankruptcies.

Locked out of the capital markets as it edges toward a record-setting default, the Caribbean island of 3.5 million people may run out of cash as soon as this month. With $354 million of debt payments due on Dec. 1, Gov. Alejandro Garcia Padilla would have to decide whether to pay bondholders or conserve whatever funds he can find to keep the government running.

While Puerto Rico has already defaulted on securities backed by legislative appropriations, it may mark the first time the government has failed to make good on obligations guaranteed by its full faith and credit — a pivotal moment that could haunt it for years.

With a debt load of $73 billion, more than any state but California or New York, and an economy that’s contracted in all but one year since 2006, Garcia Padilla says the island can’t afford to pay back what it owes. Puerto Rico expects to have a negative cash balance of $30 million this month, the governor told a U.S. Senate committee on Oct. 22, and the administration may cut civil servants to a three-day work week to conserve cash. The debt restructuring the governor wants to push through would be by far the largest ever in $3.7 trillion municipal market.

Here are the men and women who will chart the way:

-Alejandro Garcia Padilla, governor. Before becoming governor in January 2013, Garcia Padilla, a graduate of the Interamerican University of Puerto Rico School of Law, served in Puerto Rico’s senate. The 44-year-old is a member of the Popular Democratic Party, which is aligned with Democrats in the U.S. and favors keeping the island a territory over pushing for statehood. He raised excise taxes, increased the retirement age for government workers, and pushed to change the sales tax to a value-added tax, a step aimed at cracking down on widespread evasion.

He’s been unable to revive the economy or eliminate chronic deficits that have left the government reliant on borrowed money. In April, Garcia Padilla said it would be “folly” to default. By late June he reversed course, saying the deep spending cuts or tax increases that would be required to pay its debts would be too much to bear.

His administration plans to offer investors a chance to exchange their bonds for new securities that will be less costly to the government, though no details have been released and it’s unclear how many bondholders will go along. Facing re-election next year, Garcia Padilla hasn’t said whether he’ll run again. El Nuevo Dia, the island’s biggest newspaper, reported that he won’t so that his handling of the debt crisis is freed from the pressure of election-year politicking. About 12 percent of Puerto Ricans approve of Garcia Padilla’s performance, according to a poll published by El Nuevo Dia.

– Pedro Pierluisi. Puerto Rico’s sole representative in Congress since 2009 and president of the New Progressive Party that favors statehood, Pierluisi, 56, is planning his own gubernatorial run and has been critical of Garcia Padilla, giving the island a somewhat divided voice in Washington. With Garcia Padilla’s support, he proposed a bill that would allow the government-run power company and other struggling agencies to file for bankruptcy protection in U.S. court.

It’s gone nowhere for lack of a single Republican co-sponsor. In testimony prepared for a September hearing, he said debt guaranteed by the central government should be “sacrosanct” and that the governor had “badly tarnished” the island’s reputation by not standing firmly behind it.

A graduate of Tulane University, he has a degree from George Washington University Law School and worked as a lawyer in private practice before taking office.

– Melba Acosta, Government Development Bank. A Harvard University MBA, Acosta has been president of the GDB, which handles the commonwealth’s financial affairs, since October 2014 and previously worked as Puerto Rico’s Treasury Secretary. From 2004 to 2010, she was a vice president, chief operating officer and chief financial officer with R&G Financial Corp. and its subsidiary R-G Premier Bank, one of three Puerto Rico lenders that closed following the island’s severe recession. While at the GDB, she attempted to negotiate a restructuring of some of the agency’s debt in a trial run of what may be attempted on a larger scale. The talks collapsed last month.

In addition to her MBA, Acosta, 49, has degrees in accounting and law from the University of Puerto Rico.

– Jim Millstein, Millstein & Co. Millstein, the founder and chief executive officer of the financial advisory firm that’s serving as Puerto Rico’s main debt adviser, has experience with high-profile financial messes. Before starting his firm, from 2009 to 2011 Millstein served as the U.S. Treasury’s chief restructuring officer, responsible for monitoring the financial-industry bailouts from the 2008 credit- market crisis. He was the principal architect of American International Group Inc.’s recapitalization.

Millstein, 60, is a former co-head of Lazard's restructuring group and before that was head of the corporate turnaround practice at Cleary Gottlieb Steen & Hamilton. At Lazard, he represented Argentina in connection with the exchange offer for its international bonds, which may serve as a template for Puerto Rico. A Princeton University graduate, he has a law degree from Columbia Law School.

– Antonio Weiss, Treasury Dept. After his nomination to serve as undersecretary for domestic finance was blocked by Sen. Elizabeth Warren over his long career on Wall Street, Weiss joined Treasury as an adviser to Secretary Jack Lew and serves as the point person for Puerto Rico. The Obama administration has suggested that Congress give Puerto Rico's entire government the power to file for bankruptcy to allow for an orderly workout in court, a broader scope than Pierluisi's stalled bill. It's also proposed increasing health-care spending and tax credits for the island to help boost the economy.

At Lazard, Weiss was the head of investment banking, advising Walgreen in its acquisition of Alliance Boots and cigarette maker Reynolds American in its takeover of rival Lorillard. He was formerly publisher of the storied literary magazine The Paris Review, where he worked as assistant to founder George Plimpton just after graduating from Yale University. Weiss, 49, also has an MBA from Harvard.

– Lee Buchheit, Cleary Gottlieb. Buchheit, 65, who worked on the restructuring of Greece's debt, is partner in the sovereign practice group at the firm, which is serving as legal adviser to Puerto Rico. Over three decades his clients have included Russia, Mexico, the Philippines, Iraq and Iceland. Buchheit received International Financial Law Review's inaugural Lifetime Achievement Award for his contributions to international finance. Buchheit earned an undergraduate degree from Middlebury College and a law degree from the University of Pennsylvania Law School.

– Harrison Goldin, Goldin Associates. Harrison Goldin, 79, the firm's managing director, was involved in one of the biggest municipal financial crises: New York City's mid-1970s meltdown. Known as "Jay," he served as the city's comptroller when it was pushed to the brink of bankruptcy by years of unsustainable borrowing to pay bills, just like Puerto Rico. Goldin's firm was hired to advise a group of investors holding some of Puerto Rico's $13 billion of general- obligation bonds, the second biggest chunk of the island's securities. He's a graduate of Princeton and Yale Law School.

Bondholders, however, are far from unified. That's because some 17 arms of the commonwealth have sold securities that are backed by different legal protections and revenue streams, setting up a clash between various bondholders over who will be saddled with the steepest losses. Case in point: a group formed to represent more than three dozen hedge funds holding $5 billion of Puerto Rico bonds disbanded, with the firms breaking into smaller alliances that would better represent their interests.

– Lisa J. Donahue, AlixPartners. Donahue, a managing director of the advisory firm's turnaround practice, serves as the chief restructuring officer for the Puerto Rico Electric Power Authority, the government-run electric company that's been negotiating for over a year in an effort to cut its $8 billion of debt. She was appointed in September 2014. She previously served as executive vice president and CFO at Calpine Corp., an independent power producer, and CFO for the Atlantic Power Corp. The authority has reached an agreement with some bondholders to restructure the agency's debt, which would leave investors taking losses of as much as 15 percent. Finishing the rest of the deal has proved difficult. The utility still needs to get agreements with insurers that guarantee the debt against default. Donahue has a degree in finance and accounting from Florida State University.

– David Brownstein, Citigroup. Brownstein is head of public finance at the New York-based bank, the third-largest underwriter of U.S. municipal bonds during the first half of the year. Citigroup was hired to be the lead banker for the restructuring of Puerto Rico's debt and hosted a July meeting between investors and officials at its Manhattan headquarters. Brownstein was the top banker to Jefferson County, Alabama, on the water and sewer refinancing that brought it out of the second-biggest U.S. municipal bankruptcy. He also worked with Detroit following its financial collapse. Brownstein has a bachelors degree from Beloit College.

Bloomberg

by Martin Z. Braun

Contributors: Michelle Kaske and Laura J. Keller in New York and Catarina Saraiva in Washington.

Nov. 6, 2015

Vanguard Steps Into Muni-Bond Indexing.

Long associated with index funds, Vanguard Group didn't launch its first municipal-bond index fund until this past August.

At an annual cost of 0.12%, Vanguard Tax-Exempt Bond ETF (VTEB) tracks the S&P National AMT-Free Municipal Bond Index, the same one tracked by iShares National AMT-Free Muni Bond ETF (MUB), which has a 0.25% expense ratio .

Vanguard, which already had active mutual funds for the sector, hasn't set off fireworks with the ETF so far. The iShares fund dwarfs the Vanguard ETF in assets ($5.6 billion to $60 million) and average daily volume, where differences in expense ratio can be made up in trading spreads.

Yet, Vanguard's launch is sure to bring added focus to muni-bond indexing and passive-investing strategies. Through Sept. 30, actively managed municipal-debt funds held $573 billion, compared with just $20 billion for index funds, the largest active/passive discrepancy for eight distinct fund types tracked by Morningstar Inc. And 85% of those passive funds were in ETFs.

Muni bonds (and funds) are typically held by investors in higher marginal tax brackets, those who benefit the most from the state, federal and local tax-exempt status of interest income from munis. Moreover, the muni market isn't nearly as large or as liquid as those for federal or corporate debt—so trading individual bonds can be a challenge.

"In a more fragmented market, the sampling approach a manager uses to align with an index is extremely important," says Peyton Studebaker, managing director of Caprin Asset Management in Richmond, Va. His clients are invested in the $1.2 billion Market Vectors Intermediate Municipal ETF (ITM). The fund, which costs 0.24%, has an effective duration of 7.1 years compared with 4.7 years for the more broadly based MUB.

"Intermediate muni ETFs offer a more-reasonable risk/reward in today's interest-rate environment," adds Mr. Studebaker. ITM yields 2.1%, or 3.52% tax equivalent at the 39.6% marginal federal rate. MUB yields 1.63%, or 2.89% tax equivalent as of Nov. 2, according to each company.

It remains to be seen whether Vanguard's entry into the market will win over customers from existing funds, including the $1.5 billion SPDR Nuveen Barclays Municipal Bond ETF (TFI), or expand interest in muni-bond indexing generally.

THE WALL STREET JOURNAL

By ARI I. WEINBERG

Updated Nov. 8, 2015 10:02 p.m. ET

Mr. Weinberg is a writer in New York. He can be reached at reports@wsj.com.

California Private Placement Market May Be Pivoting.

PHOENIX – The relatively opaque private placement market, which has been very strong in California, may be slowing down after years of growth and shifting from a totally bank-dominated market to a more diverse range of purchasers, market participants believe.

The line between a private placement of municipal securities and a more traditional bank loan is sometimes fuzzy and full of ambiguity over disclosure, but issuers have turned increasingly to both techniques in recent years because of the relative simplicity of dealing with only one investor or lender.

The limited disclosure requirements that apply to non-public offerings of municipal bonds, particularly to loans, make it difficult to pin down exactly how big the multi-billion dollar market is nationally or in the Golden State. Observers described evolving practices in California.

Banks have been ramping up their muni holdings, with Federal Deposit Insurance Corporation data showing that bank holdings of municipal bonds have risen from just over $270 billion in June 2013 to about $325 billion in June this year.

Banks have been attracted to the strong performance munis have provided and the better risk profile attached to municipal securities compared to other kinds of debt.

Data provided by Thomson Reuters shows that private placements of munis totaled about $24 billion in 2014, with California accounting for some $4.4 billion of that total.

That was up from just $1.8 billion nationwide in 2005, of which $277 million were in California.

As of Nov. 4, Reuters data shows that neither the nation nor California are on pace to reach last year’s levels, with California’s activity slowing more.

Total private placement volume through Nov. 4 sat at $15.4 billion nationally and at $850 million in California.

Roger Davis, a partner at Orrick, Herrington & Sutcliffe in San Francisco, said he and other lawyers at his firm have been involved in California private placements, sometimes as counsel to the issuer and sometimes as counsel to the purchaser of the securities.

He said such deals occur as they traditionally have, with unrated or lower-rated credits, but have also broadened to include more types of transactions and include all sectors.

“They’re occurring both where you would expect them to and replacing more traditional financing,” Davis said. “We see it in the general government area, we see it in healthcare, we see it in K-12 education.”

Davis said private placements have long been a bank-dominated market, but in his experience may be pivoting a bit away from that.

“It may be the case that there are somewhat fewer of those,” Davis said of bank direct purchases.

He said that he has seen an increasing number of purchases made by hedge and infrastructure funds.

Davis said it’s not clear from his perspective whether the direct placement market in California is losing steam.

“I can’t say that it’s shrinking or growing,” he said. “They’re still a material factor in the market. It’s hard to tell how material a factor they are.”

Several market participants discussed the California private placement market in at The Bond Buyer’s California Public Finance Conference last month in San Francisco, saying the market may have peaked a year or two ago.

Those discussions also indicated that between 15 and 20 banks are consistently active with private placements in the state.

Dmitry Semenov, vice president and commercial relationship manager at Umpqua Bank in Roseville, Calif., said he has seen a number of smaller commercial banks getting involved in the private placement market over the last couple of years.

The new competition has given issuers more access to inexpensive borrowing, but it is unclear how long that will last, Semenov said.

“They’re aggressive,” Semenov said of the new market entrants, adding that he has seen some examples of very loose covenants and a potential lack of due diligence. “Lots of cheap money.”

Semenov said that his bank is very active in the private placement market, totaling about $500 million in the last five years. Private placements are used for almost everything now, he said.

“At this point it covers pretty much the entire spectrum of issuers,” Semenov said.

Some private placements are more of a one-off from banks who generally don’t do them.

C.J. Johnson, chief financial officer at Mechanics Bank, a community bank in the San Francisco Bay Area, said his bank’s recent decision to purchase $3 million of social impact bonds in a private placement was not a normal part of Mechanics’ business.

In that deal, Richmond, Calif. is issuer of $3 million of bonds with a 0% coupon for the Richmond Community Foundation to use to acquire abandoned houses and sell them to qualified low-income homebuyers. The deal is risky, as Mechanics only gets its potential 10% annual return on its $3 million of the project is a success.

The bank gets credit under the Community Reinvestment Act, which encourages financial institutions to meet the credit needs of their communities. Regulators take a bank’s CRA performance record into account when considering an institution's application for deposit facilities.

"I would say we're not really active in this market at all," Johnson said when asked about private placement activity. "It's a little bit of a one-off."

Johnson said the bank was motivated more by the local community angle, calling the situation "unique."

"We're a community bank, and this is our community," he said of Mechanics, which has three Richmond branches.

Regulators are in the midst of trying to bring clarity to the private placement sector, where there is significant confusion and controversy.

Issuers and banks are often unsure of whether an instrument is a loan or a security subject to Securities and Exchange Commission and Municipal Securities Rulemaking Board Rules, and broker-dealer groups have said repeatedly that some municipal advisors are acting improperly as placement agents soliciting banks to participate in these types of non-public transactions.

Analysts have called for more prompt voluntary disclosure by issuers of all their debts.

The Government Finance Officers Association executive board recently approved a best practice document recommending voluntary disclosure of information on direct placements, loans, and other credit arrangements with private lenders or commercial banks.

THE BOND BUYER

BY KYLE GLAZIER

NOV 5, 2015 1:30pm ET

Sizing Up Dallas' Massive Pension Problem.

The short of it is this: Dallas' pension fund for police and firefighters is in big trouble. This week, the City Council heard from an outside auditor that the fund has $5 billion in commitments that it doesn't have assets to pay, based on the new way the Governmental Accounting Standards Board will begin calculating pension liabilities. Previously, those commitments were calculated to be $1 billion.

In light of the $4 billion reassessment, both the Moody's and Standard and Poor's ratings services downgraded the city's credit rating. Moody's downgraded the city's bond rating from its second highest level, Aa1, to its third highest Aa2. S&P did the same, using a slightly different lexicon — Dallas went from AA+ to just AA. The downgrades come less than a week after the city released $227 million in capital improvement bonds. Matt Fabian, a municipal finance analyst with Municipal Market Analytics, said that the credit downgrades in and of themselves shouldn't cause an immediate crunch for the city, thanks to a friendly bond market and the high perch from which Dallas' bond rating has only slightly dropped.

"Right now [municipal bond] yields are at or near an all-time low. That means that there aren't enough bonds available for all the investors that want to buy them. They're falling all over each other to buy bonds, to buy income for their municipal bond accounts, and so the penalty that Dallas is apt to pay is minimal," Fabian says. "[Dallas'] ratings are still very solid in the AA category. That's still an excellent rating. Typically, a city with a rating in the AA category or above receives minimal credit scrutiny from anyone."

The ratings themselves, as they stand, are not a big problem, but things could get worse, Fabian says, if the city doesn't show the political will to deal with the massively underfunded system.

"Investors are becoming a lot more sensitive to headline risks related to pensions, because pensions can create political instability. The debate about pensions can have a meaningful impact on how the city does business. Investors have been far more cautious on this topic than almost any other," he says. "If the city lets things fester and get worse, a penalty that it pays could easily become much larger and the rating downgrades could accelerate. [The ratings cut] is a clarion call to the city to take action."

Unfunded pension liabilities pile up, in part, because cities defer current costs (salaries) and take on future costs (pensions), Fabian says. Dallas pays its police officers some of the lowest salaries in North Texas but has one of the most generous pension systems. Given appropriate circumstances, it is possible for Dallas cops and firefighters to retire as millionaires, something Dallas police representatives have cited as one of the few things that can keep officers in the department. No matter how much retirees expect to get paid, it won't matter if the pension system goes broke, something Moody's warns could happen by 2038. Dallas can come out of the mess no worse for the wear, Fabian says, if it takes aggressive action to limit new liabilities and pay off old ones.

"Dallas could be a poster boy for fiscal management if it addresses this problem aggressively, but more likely than not, how these situations work out is that the large liabilities are very difficult to service," he says.

So far, Dallas has hired a new executive director, Kelly Gottschalk, for the pension fund and suspended enrollment in the lucrative "DROP" program, which allowed police officers and firefighters to collect and reinvest retirement benefits at high rates while they were still on the job. According to Fabian, one way or another, the only way to save the fund is to cut benefits, potentially through negotiations with the city's uniformed personnel, or increase income, which could happen through increased taxes or better performance from the funds investments.

THE DALLAS OBSERVER

BY STEPHEN YOUNG

FRIDAY, NOVEMBER 6, 2015

Congress Shouldn't Provide A 'Super Chapter 9' Escape For Puerto Rico.

Puerto Rico's Governor, Alejandro García Padilla, confirmed everyone's worst fears recently when he testified before a Senate committee that "Puerto Rico will have no choice but to default. Nobody wants this, but it is a reality, and the consequences will be grave."

Indeed, with each passing week, it is looking more and more likely that Puerto Rico will run out of funds before year's end, becoming the first major U.S. jurisdiction to default on all its bonded debt. Such a widespread and indiscriminate default could have a damaging effect on the U.S. municipal bond market, given that the island is the third-largest issuer in the country after the states of California and New York. Moreover, such a default will make it extremely hard for Puerto Rico to return to the capital markets after the current financial storm eventually passes.

As someone who was involved in multiple restructurings of government debt in an earlier career on Wall Street, and as a keen academic observer of fiscal crises during the past decade, I fail to understand the governor's preemptive surrender to the forces pushing him downriver into an all-out bankruptcy.

The importance of respecting the seniority structure

In workouts involving corporate or government entities, it is standard procedure to observe the established hierarchy of creditors. Each security issued, whether debt or equity, has a specific seniority or ranking which determines the order of repayment in the event of a reorganization or bankruptcy. Everybody knows that preferred stock is higher-ranking than common stock, and that senior debt must be repaid before subordinated debt.

Even sovereign governments in financial difficulty prioritize their payments, though they do not operate under a formal bankruptcy regime. For example, governments will keep servicing debts to official multilateral agencies such as the International Monetary Fund and the World Bank, widely regarded as senior creditors, even as they stop paying their bondholders or bank creditors. This is what Greece did in 2012, and even what Argentina has done in the past dozen years in which it has been in and out of default to bondholders.

Besides, Puerto Rico's laws and bond indentures spell out exactly what is to be done should revenues ever prove insufficient to cover debt-service payments. At the top of the proverbial totem pole stand the General Obligations (GOs), which are backed by the Commonwealth's full faith and credit. As per Article VI, Section 8 of the island's Constitution, "interest on the public debt and amortization thereof shall first be paid and must be serviced by the government prior to any other government obligation."

About $13 billion of these GOs are outstanding, plus some $5.5 billion in debts guaranteed by the Commonwealth's good faith and credit, and together they account for roughly one-quarter of total obligations. The first of these payments due consists of $355 million which Puerto Rico's Government Development Bank must pay on December 1, a portion of which is guaranteed by the Commonwealth's good faith and credit.

At the bottom of the totem pole are the debts of the Public Finance Corporation, on which Puerto Rico has already defaulted, which did not constitute an obligation of the Commonwealth or any of its instrumentalities (other than the corporation itself). Low-priority debts have been racked up also by the island's Highways and Transportation Authority, Infrastructure Financing Authority and Municipal Finance Agency, among others. These have the weakest protections and thus lowest likely recovery rates in any scenario in which creditor seniority is respected.

It boggles the mind that Governor García Padilla is willing to rip up the well-worn playbook of debt restructurings and allow all obligations to go unpaid. The selfish reason why corporations and governments observe established payment priorities is because, in an eventual return to the markets, they can start out by issuing the type of obligations which were respected in the worst of moments. But who is ever going to invest in a Puerto Rico GO again—never mind in any lower-ranked obligation—if they are disrespected now? Only some risk-prone speculators, perhaps, but at usurious interest rates and short maturities, at best.

Congress should not provide a "Super Chapter 9" escape hatch

Governor García Padilla would also be violating the Constitution and laws of Puerto Rico if he were to allow for a generalized default. He could be impeached for doing so, and never make it to the end of his mandate in January 2017—and his government would certainly be inundated with lawsuits seeking to enforce the legal obligations the island previously assumed.

This is why he has proposed to the Obama Administration, and now he has appealed directly to the U.S. Congress, that he be provided with a "get out of jail free" card: He wants Congress to mandate a broad legal framework that goes well beyond the scope of Chapter 9 to allow for a comprehensive restructuring of all of Puerto Rico's outstanding debt in one fell swoop.

Since the laws passed in Washington trump those approved in San Juan, and they can even override the island's constitution, the governor would be able to disregard every now-lawful obligation and get away with it because "the devil (in Washington) told him to do it."

It is unfortunate that even the U.S. Treasury, which should know better, has endorsed a Super-Chapter 9 "solution" to the island's financial woes—a legislative overreach which would set a dreadful precedent for states, municipalities and other territories in trouble.

In essence, the Administration is asking Congress to compound the mistake it made a century ago, when Puerto Rico was allowed to sell its debt throughout all 50 U.S. states on a triple-tax-free basis, by now having Congress authorize Puerto Rico to disavow its obligations to the millions of investors who believed that the constitutional and other legal pledges made by Puerto Rico were inviolable.

The Obama Administration, instead, should be brokering a new compact with Puerto Rico: reasonable cuts in spending that reflect downward demographic and economic trends, combined with pension reforms and a new business model (to include privatizations and concessions) for the island's money-losing public utilities and agencies, in exchange for an increase in budgetary transfers on account of Medicaid, tax credits and other help to treat the island more like a state than a territory.

And this compact should be enforced by the establishment of a federal Financial Control Board, to ensure that whatever funds are provided by Congress, and debt relief is granted by bondholders, go hand-in-hand with greatly improved management of the island's public finances. At present, the Administration proposes merely "fiscal oversight in a way that respects Puerto Rico's autonomy"—namely, something completely toothless. The whole idea behind these boards is for them to be empowered to take the tough decisions on management, spending, revenues and assets for which there was no local political support. As I've argued before, the control board set up by Congress in the mid-1990s for the District of Columbia, without authority to impair creditors, is the kind that would be most helpful to Puerto Rico right now.

Forbes Opinion

Guest Post Written by Arturo C. Porzecanski

Dr. Porzecanski is a distinguished economist in residence at American University.

Nov. 6, 2015

Kroll Firm to Expand Bond Rating Coverage.

With an infusion of new capital from a private-equity investor, Kroll hopes to double in size in the next three years.

Competition may be heating up in the credit rating business as Kroll Bond Rating Agency, armed with an infusion of new capital, expands its coverage of corporate and municipal bonds.

KBRA, which was founded by CEO Jules Kroll five years ago, has specialized in coverage of the structured finance market. Last week, it announced private-equity investor Wharf Street had acquired a majority stake, positioning it to pursue future growth and challenge the "Big Three" agencies — Moody's, Standard & Poor's, and Fitch Ratings.

"The last five years we've really built a name for ourselves in the structured finance market and are beginning to build a name for ourselves in municipals and financial institutions," KBRA president Jim Nadler told Reuters. "There is a real need for research in the band from A down to BB within the corporate finance sector, where we are not currently as active."

KBRA hopes to double in size in the next three years. "Everywhere we go, we need to prove ourselves and so far investors have been our best allies," Kroll said.

The firm has so far published more than 600 ratings linked to over $400 billion of issuance. The "Big Three" rating agencies issue around 95% of credit ratings globally, a total unchanged since the financial crisis.

According to Kroll, KBRA's goal is to offer deeper insight than competitors in areas where there is such a need. One possible area is airports where, Kroll said, other agencies have stuck to single-A ratings for the sector despite evidence that some airports were much more creditworthy.

Wharf Street now owns around 90% of KBRA after buying out early investors and much of Kroll's stake.

by Matthew Heller

November 9, 2015 | CFO.com | US

MSRB Files Amendments to Proposed Rule G-42 to Establish Core Standards of Conduct for Municipal Advisors.

Today the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) an amendment to proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors. If approved by the SEC, proposed Rule G-42 would establish core standards of conduct and duties of non-solicitor municipal advisors when engaging in municipal advisory activities, including their fiduciary duty to municipal entity clients. Today's amendment adds, in response to commenters, a narrow exception to the specified prohibition in the proposed rule of certain principal transactions with municipal entity clients, and also makes minor, technical amendments. The exception generally would cover transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent.

View the filing.

MSRB Files Exception to MA Conduct Rule's Principal Transaction Ban.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing a limited exception to the controversial principal transaction ban in its proposed municipal advisor core conduct rule.

The MSRB filed the proposed amendment to its Rule G-42 on core duties of municipal advisors, with the Securities and Exchange Commission on Monday and asked that it become effective six months after SEC approval. The SEC previously published the MSRB's G-42 proposal for comment on May 8, but asked for an extension of up to 90 days on Aug. 6. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12.

Commenters were most concerned about the proposed rule's ban on an MA acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. They said it would make the rule overly burdensome and anti-competitive.

The MSRB said the proposed amendment responds to concerns that, without an exception for certain transactions, "the proposed ban would restrict the access of municipal entities to trusted financial advisors, limit their ability to obtain certain financial services and products, create undue burdens on competition, and impose unjustified costs for issuers."

Under the core portion of Rule G-42, MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients and be required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

It also mandates a less stringent "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The amendment filed with the SEC draws from the procedures under which investment advisors are allowed to engage in principal transactions with clients.

The changes filed Monday describe three requirements for MAs to qualify for the principal ban exception and the types of transaction that fall under the exception.

MAs can only use the exception if they are registered broker-dealers under the Securities and Exchange Act of 1934 and that the accounts they want to use it for are brokerage accounts subject to the Exchange Act, as well as the rules of self-regulatory organizations of which they are a member. MAs also can only use the exception if they use their investment discretion on a temporary or limited basis, at their clients' discretion.

The MSRB allows for the exception to carry over to future principal transactions following an original principal transaction that met the amendment's requirements. For example, if an MA uses the exception for one principal transaction with a municipal client, it can then use the exception for future principal transactions with the same municipal client that are directly related to the first transaction.

The third requirement in the amendment would limit an MA's principal transactions under the exception to sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt security, or corporate debt security.

If an MA is in compliance with those three requirements, it can then choose whether to pursue a transaction-by-transaction process or a process that is more complex but gives the MA the flexibility to obtain oral consent on a transaction-by-transaction basis instead of written consent.

If it chooses transaction-by-transaction, the MA must tell its municipal client in writing the capacity in which it is acting and get the client's informed written consent for the transaction, either before executing the transaction or after execution but before settlement.

If an MA opts not to pursue a transaction-by-transaction process, it must follow a six-step process. Neither the MA nor any of its affiliates can be the issuer or underwriter of a security that is the subject of the principal transaction and an MA also must get an executed written, revocable consent from its municipal client that would prospectively authorize the MA to directly or indirectly act as principal for its own account in selling a security to, or purchasing a security from, the client. The written consent must have been obtained after the MA explains to the client in writing the circumstances under which the MA may engage in principal transactions, the nature and significance of conflicts with the client's interests and how the MA will address those conflicts.

The process then requires the MA to inform its client either orally or in writing of the capacity in which it may act and get the client's consent either orally or in writing before executing each subsequent principal transaction. The MA would also have to send a written confirmation to the client saying that it disclosed that is may be acting in a principal capacity, the client authorized the transaction, and the MA sold or bought the security for its own account.

Finally, MAs would be, at least annually, required to send clients a list of all executed transactions in the client's account that relied on the exception, complete with the date and price. Each written disclosure would also have to include a statement about the client's ability to revoke its consent without penalty at any time by written notice.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said the proposal is "very encouraging" and that BDA is pleased the MSRB has responded to industry comments.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA is very pleased with the amendment and thinks it is helpful for issuers in the marketplace.

But executive director of National Association of Municipal Advisors Susan Gaffney disagreed with BDA and SIFMA, calling the amendment "a step backwards."

"The proposed amendment is further compromised by its complexity," Gaffney said. "The disclosure and consent model has been shown not to work well in other municipal market rulemaking. It is therefore surprising that such a structure has come forward, especially this late in the game, for Rule G-42."

THE BOND BUYER

BY JACK CASEY

NOV 9, 2015 3:07pm ET

Nonprofit-Government Contracts and Grants: The State Agency Perspective.

Public agencies, at all levels, increasingly rely on nonprofit organizations to address social issues and deliver publicly funded human and cultural programs and services. Therefore, strengthening relationships between nonprofits and government is essential to enhancing the quality of service delivery. This report provides information and insights on the nonprofit-government contracting and grants relationships from the state government perspective. The findings convey challenges administering government contracts and grants and strengthen the need for state government policymakers to strategize with their nonprofit and government partners about how to better align their efforts to address specific problems and improve nonprofit-government relations.

Read the full report.

The Urban Institute

by Saunji D. Fyffe

October 29, 2015

Texas Approves New Road Funding Plan.

Voters approved a way to increase transportation funding without raising taxes or tolls. But some say it's a bad approach.

Texas voters approved a measure Tuesday to provide more money for roads without raising taxes, adding debt or adding toll roads. The measure could add as much as $2.5 billion a year for the next decade toward building and repairing the state's congested roads, and even more after 2019.

The voters' approval is a major victory for Republican Gov. Greg Abbott, who vowed in his campaign last year to address the traffic problems that have come along with the state's recent population surge. Legislators ultimately crafted the measure that went to the voters, which was called Proposition 7.

When it became clear that Prop. 7 and six other ballot measures passed Tuesday night, the governor expressed his gratitude on Twitter. "THANKS Texans for making Texas freer & stronger with lower taxes & better roads. Texas remains best state in U.S.," he wrote.

The measure is the latest effort by Texas leaders to cope with the stresses more residents put on the state's transportation networks without raising taxes. After all, part of the reason to move to Texas is that the state has low taxes. Texas hasn't raised its gas tax since 1991.

But more than 1,000 new people a day mean bigger traffic jams in the Austin, Dallas and Houston regions. The additional taxes they pay don't cover the cost of expanding and maintaining roads. The recent increase in oil production, which began with widespread adaption of fracking technologies, also strained roads that connect oil fields to the rest of the state.

Texans have turned increasingly to toll roads to handle the increase in traffic. But toll roads are unpopular. Voters may not way to pay higher taxes, but they also don't want to have to pay just to drive on their roads (which explains a prohibition on Prop. 7 money going toward toll roads). Last year, the state used its flush rainy day fund to direct up to $1.7 billion more a year toward transportation. But that still fell short of the $5 billion a year that state transportation officials say is needed to maintain current levels of congestion. And the gap grew even bigger after oil prices fell this year, because oil tax revenues fund the rainy day fund.

So rather than adding new taxes, Prop. 7 will pull new money from certain existing taxes and direct it toward transportation. So, for example, once the sales tax — the state's main source of tax revenue — brings in more than $28 billion a year, the next $2.5 billion will be devoted exclusively for transportation every year for the next 10 years. A similar mechanism will apply to the vehicle sales tax starting in 2019: Once collections reach $5 billion a year, 35 percent of the receipts beyond that will go toward roads.

It's a more complicated solution than simply raising the gas tax or increasing vehicle registration fees, acknowledged Jack Ladd, the president of Move Texas Forward and the treasurer of a related political action committee backing Prop. 7. "There is no political will in Austin to do that" among Democrats or Republicans, he said. Conservatives don't want to increase taxes at all, while liberals worry that gas taxes and registration fees hurt poor people.

"It's also a question of priority: How big of a priority is transportation funding in Texas?" Ladd said. "You have to say, if you know the facts, it's a really big problem and it should be addressed." Prop. 7 puts transportation funding ahead of other priorities, like health care and education. But Ladd said those areas would also benefit from better roads.

"You can't get to a hospital, you can't get to a school without roads," he said. "It's not just a quality of life issue, it's also a jobs issue." There was little organized opposition to the measure, but critics worried that the measure will be too strict, because it puts roads ahead of schools, health care and even other kinds of transportation for new state money.

Jay Crossley was one of those who expressed doubts. Crossley, executive director of Houston Tomorrow, which promotes urban issues such as walkable neighborhoods, worried the ballot measure would promote bad transportation policy for a decade, because Prop. 7 specifies that the designated money could only be spent on roads — not on public transportation, bike paths or sidewalks.

The Texas Department of Transportation "has made it very clear that, if they could have a decade of guaranteed funding, it makes all the finances work better to build a lot of unnecessary roads," Crossley said before the vote. According to Crossley, supporters of the measure essentially said, "We don't want people to be able to change their mind.

We don't want the people of Texas to be able to say, 'Maybe we want transit. Maybe we would rather have safe streets. Maybe we want a transportation system that doesn't subsidize sprawl.'"

(Crossley stressed that he was speaking for himself; Houston Tomorrow did not take a position on Prop. 7.)

But Ladd, the proponent of Prop. 7, said lawmakers made sure the measure would expire after 10 years, so lawmakers will review the approach later. "Future legislators who may not have been around when Prop. 7 passed … could look at it and say we want to raise taxes instead, we want to do something else, we don't want to do this anymore," he said. "There are other ways to solve this problem, but we have to fix it now."

GOVERNING.COM

BY DANIEL C. VOCK | NOVEMBER 4, 2015

[A Simple (But Hard) Way for Governments to Stay Out of Pension Trouble.]

Chicago's fiscal 2016 budget is like a cautionary tale about what happens when state and local governments fail to deal with long-festering pension problems. A policy brief published in September by the libertarian Reason Foundation offers sound advice about one of the ways to avoid Chicago's fate.

The city's $7.8 billion spending blueprint includes an historic $543 million property-tax increase to be phased in over four years, along with fee increases and spending cuts. The fact that Mayor Rahm Emanuel would propose such a budget and that the City Council would approve it — and by a 35-15 margin — is testament to the lack of viable options in the face of a state-mandated $550 million payment to Chicago's police and firefighter pension systems, each of which is less than 30 percent funded.

Draconian as it may seem, Chicago's budget may not go far enough. It assumes that the Illinois Supreme Court will find the city's 2014 pension reforms constitutional when it takes up the matter this month. It also assumes that the state will pass legislation allowing the city to spread out the mandated pension payment over a longer period.

There's no silver bullet when it comes to helping state and local governments avoid what has happened to Chicago, but one thing that would certainly help would be for them to base their pension contributions on more realistic investment assumptions. The Reason brief proposes several options, such as tying assumed pension-fund returns to the yield on the jurisdiction's own bonds or on the expected rates of return on municipal or high-grade corporate bond indexes.

As I have written previously, another reasonable approach would be to base assumed returns on actual long-term pension-fund returns; to avoid manipulation, the period on which historical returns are calculated should include at least two economic downturns.

Whichever approach is used, the Reason brief wisely recommends phasing in the change in anticipated returns over a period of years. A typical assumed rate of return for pension investments is around 8 percent. Cutting that to 5 or 6 percent, as one of the approaches mentioned above would likely do, would require state and local governments to significantly increase their pension contributions.

Calculating reasonable pension investment return assumptions is simple. Actually adopting them is hard because it runs contrary to human nature. Why should an elected official make painful budgetary decisions now when the benefits — or the harm from kicking the can down the road — won't likely be felt until he or she is long out of office?

Yes, the solution is simple. The hard part is finding courageous public officials who will implement it.

GOVERNING.COM

BY CHARLES CHIEPPO | NOVEMBER 6, 2015

[Foley: New IRS Regulations For Mixed Use Projects Financed With Tax-Exempt Bonds Have Practical Importance.]

On October 27, 2015 the U.S. Treasury Department and Internal Revenue Service published final regulations concerning the treatment of "mixed-use" projects financed with tax-exempt bonds. These new regulations have significant and immediate importance for tax planning and tax compliance of tax-exempt bond issuers and borrowers.

A copy of the new final regulations can be obtained here. See 80 FR 65637.

The new regulations, which are published as "general allocation and accounting regulations" most importantly provide rules for the measurement of private use of a project that is financed in part with proceeds of tax-exempt bonds and in part with other funds of an issuer or borrower. The new regulations also facilitate the use of tax-exempt bonds in certain "public-private partnerships." In addition, the new regulations clarify the rules for taking "remedial actions" to correct noncompliance.

The new regulations apply to both bonds issued for the benefit of State and local government projects ("governmental bonds") and bonds issued for the benefit of borrowers that are section 501(c)(3) exempt organizations ("qualified 501(c)(3) bonds").

For convenience, references in this alert to "issuers" of tax-exempt bonds refer to both State or local government issuers of governmental bonds and borrowers that are section 501(c)(3) organizations. Reference to "private persons" in this alert refer to nongovernmental persons, in the case of governmental bonds, and to nongovernmental persons and persons that are not governmental persons or section 501(c)(3) organizations, in the case of qualified 501(c)(3) bonds.

Background

The Internal Revenue Code generally restricts the amount of "private business use" of projects to small amounts (generally, 10% for governmental bonds and 5% for qualified 501(c)(3) bonds, although other limitations apply in some circumstances). Although tax-exempt bond issues technically fail to comply only if the bond issue also fails to comply with a second "private security or payment" test, in most cases issuers rely on the private business use test to comply. Over the years, application of these "private business tests" has become increasingly burdensome and complex. In particular, in 1997 the Treasury Department published final regulations that require private use compliance to take into account "deliberate actions" after the date of issuance, which rule requires tax compliance monitoring throughout the term of a bond issue.

One of the most helpful strategies that issuers use to manage compliance with these complex rules is to finance the costs of a project that will be used for private uses with funds other than proceeds of tax-exempt bonds. Under that approach, the proceeds of the tax-exempt bonds are not treated as used for private uses, because the portion of the project paid with the "equity carve out" is instead treated as privately used. The new regulations set forth detailed new rules for how and when this commonly-used "equity carve out" approach works.

The Treasury Department published proposed regulations on this topic on September 26, 2006. Since the publication of the proposed regulations in 2006, issuers and practitioners have looked to the proposed regulations for general themes about how mixed-used projects should be treated, but have not been bound to follow all the specific details of the proposed regulations.

The 2006 proposed regulations also suggested that the Treasury Department would consider permitting projects financed with tax-exempt bonds to be used by a partnership including private persons. The Service has historically taken the position that use of projects financed with tax-exempt bonds by a partnership including private persons results in private business use.

Summary of the Final Regulations

Rules for equity contributions that are generally more flexible, but not in all cases more favorable. The new regulations provide that private business use of a project is allocated first to the portion of the project financed with "qualified equity."

The rules for "qualified equity" contain important limitations. Qualified equity generally means proceeds of taxable bonds (other than taxable bonds that are tax-advantaged, such as tax credit bonds) and funds that are not derived from proceeds of a borrowing. For example, qualified equity includes an issuer's cash derived from revenues and cash donations. Qualified equity does not include equity interests in real property or personal property. This approach is consistent with prevailing practice and the proposed regulations.

The rules for "qualified equity" also contain new limitations that may be problematic in some cases. Qualified equity must be contributed to a project as part of the "same plan of financing" as the tax-exempt bonds and must pay for capital expenditures of the project on a date that is not earlier than the date on which the expenditures would be applicable to reimbursement by proceeds of the applicable tax-exempt bonds. Among other things, this appears to mean that the tax-exempt bonds generally can qualify for the "qualified equity" benefits only to the extent bonds are issued no later than 18 months after the date of the expenditure (or 18 months after the placed in service date of the project, if later, but no more than three years after the date of the expenditure), although a definitive interpretation of certain aspects of this timing limitation may require clarification from the Service. This timing rule is new, and may raise a number of problems, including particular problems for projects that have a long construction period. Similarly, the new regulations may present difficulties in some cases where a single project is financed with a series of bond issues.

The new regulations also state that qualified equity contributions must be made before the placed in service date of the financed project, except for reasonable retainage.

"Floating use" is expressly permitted. The new regulations expressly and helpfully permit "floating" use of the portion of a project treated as financed with qualified equity. For example, suppose the costs of a 10-story building are funded 70% with tax-exempt bonds and 30% with an issuer's cash. The new regulations generally provide that private use of three floors will not be treated as private use of the tax-exempt bonds, even if the particular three floors change from year to year. The new regulations remove certain limitations on "floating" use that were set forth in the proposed regulations.

A "project" that may be treated as funded in part with qualified equity is defined very broadly. One of the most favorable rules in the new regulations is a very flexible definition of a "project." These rules are particularly important in light of the rules that permit private use to "float" within a mixed-use project. The new regulations permit an issuer to treat as a single "project" one or more facilities or capital projects, including land, buildings, equipment, or other property financed in whole or in part with the proceeds of a bond issue. The proposed regulations generally permitted only certain functionally related facilities, such as adjacent buildings, to be treated as part of the same project. The more flexible rule in the new regulations may present significant tax planning opportunities and tax compliance relief, although it may in some cases be complex to apply.

Annual measurement is required, except for output facilities. The final regulations expressly provide that the "qualified equity" rule must be applied on an annual basis, except for "output facilities." In an example in the new regulations, a building is funded 70% with tax-exempt bonds and 30% with the issuer's cash. In one year, 44% of the building is used for a private business use. The example states that the amount of private business use for that year is 20% (that is, 14% divided by 70%), regardless of whether there is any private business use in any other year.

The rules for "output facilities" are significantly more flexible. Output facilities generally consist of electric and gas generation, transmission, distribution and related facilities and water collection, storage and distribution facilities. In the case of output facilities, the benefits of "qualified equity" may generally be applied on an average basis over the term of a bond issue. This more flexible approach is consistent with the special treatment in the regulations for output facilities, including more flexible rules for how private business use is measured.

No special elections or recordkeeping requirements. The new regulations helpfully do not require any special elections or record retention requirements to make use of the "qualified equity" rules. The proposed regulations contained a number of such requirements that could have been traps for the unwary. Thorough and rigorous identification of qualified equity contributions to projects and retention of records relating to such contributions and identifications, however, will continue to be important in practice. In addition, the time limits for making allocations of bond proceeds in the existing final regulations may have relevance for taking actions under the new regulations. The existing regulations generally require that an issuer must allocate proceeds to expenditures no later than 18 months after a project is placed in service.

Favorable treatment of partnerships. The new regulations facilitate "public-private partnerships" by permitting tax-exempt bonds to be used to finance an issuer's contribution to a partnership which includes private persons. Under this new rule, the amount of private business use by a private person resulting from the use of property by a partnership is the nongovernmental partner's greatest percentage of any partnership item of income, gain, loss, deduction, or credit attributable to the period the partnership uses the property during the period private use needs to be taken into account. The rule generally requires that a State or local government (or, in the case of qualified 501(c)(3) bonds, a 501(c)(3) organization) be one of the partners.

This favorable rule for partnerships expressly applies to qualified 501(c)(3) bonds issued to benefit 501(c)(3) organizations. For that purpose, ownership by a partnership does not violate the requirement that all bond-financed property needs to be owned by a 501(c)(3) organization or a State or local government.

This rule can be expected to make tax-exempt financing eligible to some extent for public-private partnerships not previously eligible for tax-exempt bond financing to any extent.

Clarification of "remedial action" rules. Since 1997, the regulations have permitted certain remedial actions to correct noncompliance with the private use rules. One remedial action is the redemption or defeasance of "nonqualified bonds." The new regulations make important revisions and corrections to these remedial action rules.

The most important "remedial action" rule in the new regulations concerns "anticipatory" remedial actions. The prior regulations expressly permitted remedial actions only in response to a deliberate action that resulted in noncompliance. Prevailing practice has been to permit redemption or defeasance in anticipation of such a deliberate action, but practice standards have varied. The new regulations permit redemption or defeasance of bonds in an anticipatory remedial action, but only if the issuer first declares an official intent on or before the date on which it defeases or redeems such bonds which identifies the financed property or loan with respect to which the anticipatory remedial action is being taken and describes the deliberate action that potentially may result in the private business tests being met. This rule states that it applies in a manner "similar" to the rules for declarations of intent for tax-exempt bond reimbursements. The required degree of specificity for declarations of intent for these anticipatory remedial actions will require consideration on a case-b--case basis.

Subsequent to 1997, the Treasury Department has published proposed regulations to make certain technical corrections to make the remedial action rules more readily administrable. The final regulations adopt in final form these favorable technical provisions. First, the final regulations confirm that an issuer may pick and choose the maturities of the nonqualified bonds that are required to be redeemed or defeased, provided that the weighted average maturity of the nonqualified bonds is not less than the weighted average maturity of the other bonds of the bond issue. Second, the new regulations confirm that the amount of nonqualified bonds does not need to correct all private use, but only an amount so that the remaining bond issue is compliant.

Clarification of "multipurpose allocation" rules. The new regulations include additional examples explaining how the rules for "multipurpose allocations" apply. The "multipurpose allocation" rules permit an issuer to break a bond issue into different portions, and to apply the private activity bond rules separately to each portion. The most helpful new example clarifies that an issuer may make a multipurpose allocation to treat governmental bonds and qualified private activity bonds for airport facilities as separate issues, even when sold on the same date pursuant to the same plan of finance.

The multipurpose allocation rules can be applied at any time and can be an important and useful tax planning and tax compliance tool, but may be complex to apply in many contexts.

Effective dates. Issuers are generally required to apply the new regulations to bonds that are sold on or after January 25, 2016, although certain special effective date rules apply.

Issuers are generally required to apply the rules for remedial actions to any "deliberate actions" that occur on or after January 25, 2016, even if the bonds were sold before that date. In this regard, it is important to note that, although the remedial action rules in the new regulations are generally favorable, the new regulations contain certain new requirements. In particular, the new rule for "anticipatory" remedial actions will generally apply to any deliberate action occurring on or after January 25, 2016. The new regulations also contain a special transition rule for remedial actions that is intended to accommodate existing bond indentures that require optional redemptions of a portion of a term bond to be applied first to reduce the earliest mandatory sinking fund payments on that bond; that special transition rule only applies to bonds issued before January 25, 2016.

Issuers may apply the new regulations to bonds sold before that date, but the effective date rules impose certain limitations on such retroactive application. An important limitation is that the effective date provisions provide that retroactive application is generally permitted only if all of the provisions of the new regulations are applied in whole. The clarification in the new regulations for "multipurpose allocations," however, may be applied separately.

Except as described above, the application of the new regulations to bonds sold before the effective date is expressly permissive. There is no implication that bonds sold before the effective date need to comply with the new regulations, although as a practical matter issuers and practitioners may look to principles in the new regulations in taking positions with respect to pre-effective date bonds.

Implications for tax-exempt bond compliance procedures. Many issuers may wish to consider whether to revise their tax-exempt bond compliance procedures to reflect certain provisions of the new regulations. For example, an issuer may be able to make best use of the favorable provisions in the new regulations by adopting a formal process to review how those provisions can be applied to particular bond issues.

Expected future developments. In 2014, the Treasury Department published Notice 2014-67, which provided for more flexible safe harbors for management contracts for use of property financed with tax-exempt bonds that have a term not exceeding five years. Accordingly, the new regulations are the second significant recent action by the Treasury Department to facilitate more flexible public/private arrangements involving projects financed with tax-exempt bonds. In that light, there is reason to anticipate that the Treasury Department may follow the new regulations with guidance that provides additional safe harbors for longer-term management contracts involving projects financed with tax-exempt bonds.

Last Updated: October 29 2015

Article by Michael G. Bailey, David Y. Bannard, Chauncey W. Lever and Mark T. Schieble

Foley & Lardner

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.

Fox Rothschild: Cong. Committee Considers Bill Limiting Eminent Domain for Power-Line Projects.

Members of the Arkansas Congressional Delegation have introduced legislation aimed to give more leverage to states faced with new interstate power-line projects. Sen. John Boozman and Rep. Steve Womack have submitted matching versions of the Assuring Private Property Rights Over Vast Access to Land, or APPROVAL, Act, which would rewrite Section 1222 of the 2005 Energy Policy Act in the House and Senate. They recently testified before a house subcommittee in support of their bills

The bill is a response to a proposal by Clean Line Energy Partners of Houston to construct a $2 billion, 700-plus-mile, 3,500 megawatt, high-voltage-direct-current power line from Great Plains wind farms to the Tennessee Valley Authority. The APPROVAL Act would require the Department of Energy to obtain approval from a governor and state public service commission prior to approval of any Section 1222 transmission project and subsequent use of federal eminent domain, as well as the approval of any tribal government for the affected lands.

“States and local communities must know their voices will be heard in the transmission siting process and that a transparent process will be followed,” Boozman said Wednesday to the House Natural Resources Committee’s Subcommittee on Water, Power and Oceans.

Last Updated: November 2 2015

Article by David B. Snyder

Fox Rothschild LLP

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

[Orrick: Obama Administration's Legislative Proposal to Address Puerto Rico's Fiscal Crisis.]

On October 21, 2015, U.S. Treasury Secretary Jacob J. Lew, National Economic Council Director Jeff Zients, and Health and Human Services Secretary Sylvia Mathews Burwell unveiled a legislative proposal, a copy of which is attached, to help Puerto Rico address its serious fiscal challenges. The Administration has requested Congress to act promptly to amend chapter 9 of the Bankruptcy Code authorizing the troubled public corporations to file bankruptcy petitions. More than twenty Democrats have become co-sponsors of that proposed amendment, but no Republicans making passage of the proposed amendment unlikely.

The Administration's proposal has four central elements:

- Legislative amendments to provide Puerto Rico with an orderly restructuring regime to comprehensively address its financial liabilities by restructuring its debts.
- Establishing an independent fiscal oversight to certify that Puerto Rico adheres to the recovery plan it is implementing in a credible and transparent way.
- Reforming the Commonwealth's Medicaid program to ensure that the program provides better access to healthcare services.
- Providing the Commonwealth with access to the Earned Income Tax Credit (EITC).

As part of the bankruptcy proposal, the Administration has proposed a "Super Bankruptcy" for the Commonwealth itself. The Administration's proposal contemplates a "Super Bankruptcy" that would be reserved for U.S. territories to allow a comprehensive restructuring of all of the territory's liabilities. The outline states that:

The restructuring regime should provide the basic protections of bankruptcy: a stay on creditor collection actions, priority for new private short-term cash flow financing, and voting by creditor classes on any proposed restructuring. Such an approach would, among other things, provide breathing space for consensual negotiations and ensure the uninterrupted provision of essential public services.

[View the proposal.]

Last Updated: November 3 2015
Article by Editorial Board
Orrick

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

[MSRB to Implement Gifts Rule for Municipal Advisors.]

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to limit the size and nature of gifts given by municipal advisors in their professional capacity advising state and local governments. The new restrictions seek to address conflicts of interest that may arise from gift-giving in connection with municipal advisory activities. The SEC also approved extending to municipal advisors related recordkeeping requirements. The new regulations, which are effective May 6, 2016, largely conform to existing MSRB regulations on gifts and related recordkeeping for municipal securities dealers.

"Applying the MSRB's existing gifts rule for dealers to municipal advisors will help ensure that municipal advisory business is awarded on the basis of merit and not special favors," said MSRB Executive Director Lynnette Kelly. "The changes approved today to MSRB Rule G-20 establish common standards for all municipal financial professionals and, together with MSRB's rules on fair dealing, help preserve the integrity of the municipal market."

Amended MSRB Rule G-20 will apply to municipal advisors and their associated persons: the general prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities or municipal advisory activities of the recipient's employer; the exclusions contained in existing Rule G-20 from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and the existing exclusion relating to contracts of employment or compensation for services. In addition, Rule G-20 will explicitly prohibit both dealers and municipal advisors from receiving reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities.

The MSRB will host a webinar on the amendments to Rule G-20 on Thursday March 24, 2016 at 3:00 p.m. ET. Amended MSRB Rule G-20 is effective May 6, 2016. Register for the webinar.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors. The MSRB has implemented supervision and compliance requirements for municipal advisors, and is continuing to develop standards of conduct, including fiduciary duties, for municipal advisors. The MSRB also plans to amend its existing rule on political contributions to address the potential for pay-to-play activities by municipal advisors. Read more about the status of the MSRB's rulemaking for municipal advisors.

Date: November 9, 2015

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

TAX - OHIO

Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - November 3, 2015 - N.E.3d - 2015 WL 6742213 - 2015 -Ohio- 4522

School board sought review of valuation of property by the Board of Tax Appeals.

The Supreme Court of Ohio held that:

- Board had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser's valuation, and
- Evidence supported appraiser's methodology.

Board of Tax Appeals had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser's valuation of property. Board determined a value based on record that contained owner's appraisal as the only substantive evidence of value, and Board predicated its determination on that value and said so.

Evidence supported appraiser's methodology, which lumped together automobile service center and mall department store in order to create one building that was then valued as a mall department store. Appraiser advanced several grounds in support of her method, school board that opposed method did not remotely negate appraiser's reasons, and appraiser had valued analogous properties using same method.

S&P: Atlantic City, NJ GO Rating Remains On Watch Neg Pending Key Report, Action On Approved Bills.

NEW YORK (Standard & Poor's) Nov. 4, 2015 — Standard & Poor's Ratings Services today said that its ratings on Atlantic City, N.J. remain on CreditWatch with negative implications, pending the release of an updated report from the city's Emergency Manager and action on several bills approved by the state legislature. Standard & Poor's expects to resolve or update its CreditWatch within the next 60 days.

We lowered the general obligation (GO) bond rating to 'B' and placed it on CreditWatch with negative implications on Aug. 3, 2015 (for more information on the GO rating, please see the summary analysis on Atlantic City, published on Aug. 3, 2015, on RatingsDirect).

While the state's Local Finance Board approved the city's fiscal 2015 budget last month, an anticipated updated report from the city's Emergency Manager has not been released and there has been no action yet on several bills passed by the state legislature.

In compliance with state law, the city's 2015 budget is balanced. However, this is achieved through anticipated revenues of $33.5 million in redirected casino taxes and $38.9 million in deferred pension and health care expenses. The governor hasn't signed into law the legislature-approved redirection of casino taxes. The Atlantic City budget fully funds its annual requirements for settled tax appeals and was adopted in time for the mailing of fourth-quarter tax bills. The city reports that it will be able to make its $11 million December 2015 debt service payment if it does not receive the anticipated redirected casino tax revenue.

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

Primary Credit Analyst: Timothy W Little, New York (212) 438-7999;
timothy.little@standardandpoors.com

Secondary Contact: Lisa R Schroeer, Charlottesville (1) 434-220-0892;
lisa.schroeer@standardandpoors.com

S&P: Dallas GO Debt Rating Lowered to 'AA' on Rising Pension Costs.

DALLAS (Standard & Poor's) Nov. 4, 2015 — Standard & Poor's Ratings Services said today it lowered to 'AA' from 'AA+' its long-term rating and underlying rating (SPUR) on Dallas' parity general obligation (GO) bonds. We also assigned our 'AA' rating to the city's series 2015 GO refunding and improvement bonds. The outlook is stable.

In addition, Standard & Poor's lowered to 'A' from 'A+' its long-term rating and SPUR on the Downtown Dallas Development Authority's (DDDA) tax increment contract revenue bonds, issued on behalf of the city of Dallas. We also lowered to 'A' from 'A+' the rating on the Dallas Convention Center Hotel Development Corp.'s series 2009A, B, and C hotel revenue bonds, issued on behalf of Dallas. The outlook for both ratings is stable. (For more information, see the summary analyses on DDDA and Dallas Convention Center Hotel Development Corp. published Nov. 4, 2015.)

Standard & Poor's also affirmed its 'A-1+' short-term rating on Dallas' series 2010A and C GO commercial paper notes The rating reflects our view of the city's strong general creditworthiness and liquidity.

"The GO debt downgrade is due to the city's rising pension liabilities and lack of a sufficient plan to address them in the near term," said Standard & Poor's credit analyst Jennifer Garza. "The stable outlook reflects our view of the city's consistent financial performance and economy, which is supported by very strong management."

The pledge of an ad valorem property tax, limited to $2.50 per $100 of assessed valuation (AV) by state law, secures the GO bonds. In our opinion, the city has ample flexibility under the tax cap given its current tax rate of 79.7 cents per $100 of AV.

The GO debt rating reflects the city's:

- Adequate economy, with access to a broad and diverse metropolitan statistical area;
- Very strong management, with "strong" financial policies and practices under our Financial Management Assessment methodology;
- Adequate budgetary performance, with an operating surplus in the general fund but an operating deficit at the total governmental fund level;
- Strong budgetary flexibility, with an available fund balance in fiscal 2014 of 14.4% of operating expenditures;
- Very strong liquidity, with total government available cash of 46.0% of total governmental fund expenditures and 1.8x governmental debt service, and access to external liquidity we consider exceptional;
- Very weak debt and contingent liability position, with debt service carrying charges of 14.6% of expenditures and net direct debt that is 145.3% of total governmental fund revenue, as well as a large pension and other postemployment benefit liability and the lack of a plan to sufficiently address the obligation; and
- Strong institutional framework score.

'Smart Poles' Will Earn City Money While Improving Quality of Life.

Los Angeles is starting to host a new type of hybrid infrastructure — a street light that doubles as a mini-cell tower — through a public-private partnership.

Royal Philips, which makes energy-efficient LED light bulbs, has teamed up with communications technology firm Ericsson to create the “smart pole,” which features energy-efficient lighting and 4G LTE wireless service, reported Los Angeles Magazine. The poles also can “monitor and regulate energy usage in real time,” reported Annenberg TV News.

Philips will cover the costs of providing and installing the poles on city streets and pay Los Angeles a portion of the rent it charges wireless carriers to use the cell towers. The city expects to receive $1,200 per year from each of the 100 poles to be installed this year. Revenues will rise to $720,000 annually from a network of 600 poles by 2018, said Ed Ebrahimian, director of the city’s street lighting bureau.

Ebrahimian hopes to negotiate additional P3s to continue expanding coverage. “I would think two or three thousand over the next five years. We are working with other carriers, not just Philips or Ericsson,” he said.

San Jose is preparing to install this infrastructure as well.

The smart pole concept is just one of the P3-based approaches states and cities are using to provide universal access to wireless technology. Kentucky is conducting a partnership to install statewide broadband and Lake Oswego, Ore., is considering a deal to install its own network as well.

NCPPP

November 6, 2015

Orrick Opinion Helps SDUSD GOs to AAA.

Changes Rating Prospects for other California General Obligation Bonds

For the last several years, Orrick’s General Obligation Bond Group has led an effort to improve the rating agencies’ understanding of the special character of California local agency general obligation bonds. The purpose of the effort was to improve the ratings and reduce the borrowing costs associated with California General Obligation Bonds for all school and community college district, city, county, and other local governments that issue General Obligation Bonds. Today that effort has borne fruit.

In partnership with San Diego Unified School District, Orrick drafted and assisted in the enactment of Senate Bill 222, which established a statutory lien for the benefit of bondholders on the property taxes levied to pay general obligation bonds. SB 222 was signed into law on July 13, 2015. Several rating agencies reacted by saying that while SB 222 was positive, it was not likely sufficient to change the ratings on California General Obligation Bonds because, while the property taxes levied to pay California General Obligation Bonds would ultimately be required to be applied to pay the bonds, the application of the taxes to the payment of the bonds could be temporarily interrupted by the automatic stay in the event of an issuer bankruptcy.

In response to the ratings agencies, Orrick drafted and delivered an opinion to certain rating agencies addressing whether the property taxes levied to pay general obligation bonds would be considered “special revenues,” and thereby not subject to the automatic stay.

Orrick and San Diego Unified School District presented the opinion and its bankruptcy analysis to several rating agencies. On November 4, 2015, Fitch assigned a "AAA" rating to $550 million of San Diego Unified School District 2016 General Obligation Bond (Dedicated Unlimited Ad Valorem Property Tax Bonds). Fitch's announcement refers to and concurs with the opinion it received that the property taxes levied to repay the bonds would be "special revenues" in the event of a district bankruptcy, and states that "as a result, the rating is based on special tax analysis without regard to the District's financial operations."

This signals what should become a sea change in the rating and sale of school district, community college district and other local agency general obligation bonds in California.

Please contact any of the following members of the Orrick General Obligation Bond Group with questions or for further discussion:

Mary Collins
415-773-5998
marycollins@orrick.com

Eugene Clark-Herrera
415-773-5911
ech@orrick.com

Don Field
213-612-2287 / 949-852-7727
dfield@orrick.com

John Palmer
415-773-4246
jpalmer@orrick.com

11-04-2015

[S&P's Public Finance Podcast: (How Climate Change Could Affect Ratings and the Outlook for the City of Los Angeles).]

In this week's segment of Extra Credit, Managing Director Geoff Buswick discusses how climate change could affect ratings and Director Jennifer Hansen explains what's behind our outlook on the City of Los Angeles.

[Listen to the Podcast.]

Nov. 6, 2015

[Hawkins Delafield & Wood LLP Opens Michigan Office.]

Hawkins Delafield & Wood LLP, a national leader in municipal finance and public law, announced today that it will open a new office in Ann Arbor, Michigan. The new office will be the firm's first office in the Midwest region. A new partner, Lisa Hagan, will be resident in the Ann Arbor office. She previously was a senior principal in the Ann Arbor office of Miller, Canfield, Paddock and Stone, P.L.C.

Howard Zucker, a member of the Hawkins management committee, commented on the new office and the lateral hire: “For many years, Hawkins has enjoyed an active public finance practice in the Midwest. The opportunity to welcome a new lawyer to our firm, and to open an office near so many of our valued clients at the same time, is extraordinarily exciting. For existing Hawkins clients, this represents yet another example of Hawkins’ continued commitment to public finance and public projects.”

Lisa Hagan received her LL.M. in Taxation from Georgetown University Law Center, her J.D. from Michigan State University College of Law, and her B.A. from Michigan State University. Her practice is focused primarily on health care, higher education and housing financings.

Hawkins is of the municipal industry’s more storied law firms. Founded in 1854, the firm gained a reputation in the 19th Century for specialized expertise in the area of governmental finance. The firm continues to break new ground for its clients in finance transactions, including public power, transportation, housing, health care, higher education, cultural institutions and public contract representation, including public/private partnerships. Hawkins is perennially rated among the very top bond counsel and underwriters’ counsel nationally.

Hawkins has more attorneys (approximately 100) devoted to public finance and public projects than any law firm in the nation. The new Ann Arbor office will be the firm’s ninth office, joining New York, Washington D.C., Newark (NJ), Hartford, Los Angeles, San Francisco, Sacramento and Portland (OR).

CDFA // BNY Mellon Webcast Series: Exploring the Newark Development Renaissance.

Exploring the Newark Development Renaissance

November 17, 2015
@ 1:00 pm Eastern

In the past few years, Newark, New Jersey has become a showcase for urban revitalization demonstrating how public and private financing can help build thriving communities. Hundreds of properties have been recreated through multi-million dollar capital projects financed through successful partnerships, tax credits, and tax-exempt bonds. During this installment of the CDFA//BNY Mellon Development Finance Webcast, hear from the public sector officials and financiers behind Newark’s downtown renaissance and learn how building strong partnerships has created a competitive and dynamic atmosphere that has attracted investment and spurred economic development.

Moderator:
Rena Nakashima
Senior Product Manager
The Bank of New York Mellon

Speakers:

Scott Blow
Executive Vice President & Chief Business Development Officer
Newark Community Economic Development Corporation

Carmelo Garcia
Executive Vice President & Chief Real Estate Officer
Newark Community Economic Development Corporation

Jorge Santos
Vice President of Economic Development
Newark Community Economic Development Corporation

Mat Abraham
Program Manager
New Jersey Economic Development Authority

Click here to confirm your participation and receive login information.

Registration is free and open to all interested stakeholders.

USDA Provides $314 Million in Water and Waste Infrastructure Improvements in Rural Communities Nationwide.

WASHINGTON, Nov. 2, 2015 – USDA Secretary Tom Vilsack today announced loans and grants for 141 projects to build and improve water and wastewater infrastructure in rural communities across the nation.

"Many rural communities need to upgrade and repair their water and wastewater systems, but often lack the resources to do so," Vilsack said. "These loans and grants will help accomplish this goal. USDA's support for infrastructure improvements is an essential part of building strong rural economies."

USDA is awarding $299 million for 88 projects in the Water and Waste Disposal Loan and Grant Program and $15 million for 53 grants in the Emergency Community Water Assistance Grant (ECWAG) program.

ECWAG grants enable water systems that serve eligible rural communities to prepare for, or recover from, imminent or actual emergencies that threaten the availability of safe drinking water. Water and Waste program recipients can use funds to construct water and waste facilities in rural communities.

The Big Sandy Rancheria Band of Western Mono Indians in Fresno, Calif., has been selected to receive a $494,300 ECWAG grant to drill a well and connect it and another well to the water system.

The Columbia Heights Water District in Caldwell, La., has been selected to receive a $736,000 water and waste loan to upgrade the water storage tank and related equipment at the wastewater treatment plant. The community is in an area of persistent poverty that USDA has targeted for special assistance through the StrikeForce for Rural Growth and Opportunity Initiative.

Three recipients receiving funding today were given priority points through a provision in the 2014

Farm Bill that encourages communities to adopt regional economic development plans. These projects are centered on regional collaboration and long-term growth strategies. They leverage outside resources and capitalize on a region's unique strengths.

The recipients are the West Stewartstown (N.H.) Water Precinct, the Lowcountry Regional Water System in Hampton, S.C., and the city of Waubun, Minn. All three projects involve upgrades to water and wastewater systems. The Hampton, S.C., project is in a high-poverty area designated as a Promise Zone. In areas designated as Promise Zones, federal, state and private-sector partners work with local communities and businesses to create jobs, increase economic security, expand educational opportunities, and increase access to quality, affordable housing.

Six of the projects announced today will provide $3.9 million to benefit Native American areas. These water and waste awards include the Red Lake Band of Chippewa Indians in Minnesota and five projects in California, including Big Sandy Rancheria, two awards to the Cortina Band of Wintun Indians, the Grindstone Indian Rancheria and the Yurok Tribe.

Two projects will provide $9.1 million for colonias in New Mexico. The recipients are the Garfield Mutual Domestic Water Consumers & Mutual Sewer Works Association and the La Luz Mutual Domestic Water Association. Colonias are unincorporated, low-income, mostly Hispanic U.S. communities along the Mexico border that lack adequate housing, drinking water and wastewater infrastructure.

Since 2009, USDA has helped provide improved water and wastewater services to nearly 18 million rural residents by investing $12.3 billion in 5,174 projects.

Funding of each award announced today is contingent upon the recipient meeting the terms of the grant and loan agreement.

Here is an example of how a previously funded project has helped improve water service in a rural community. In Sparta, Tenn., antiquated equipment could not handle rainwater runoff, causing sewage to spill out of drains. In 2011, USDA provided $2.9 million to Sparta to build a new wastewater system, ending the major sewage problem.

USDA Rural Development is accepting applications for loans and grants to build rural water infrastructure. Applications may be completed online through RDAPPLY, a new electronic filing system, and at state and local Rural Development offices. Public entities (counties, townships and communities), non-profit organizations and tribal communities with a population of 10,000 or less are eligible to apply. Interest rates for this program are at historically low levels, ranging from 2 percent to 3.25 percent. Loan terms can be up to 40 years.

President Obama's plan for rural America has brought about historic investment and resulted in stronger rural communities. Under the President's leadership, these investments in housing, community facilities, businesses and infrastructure have empowered rural America to continue leading the way – strengthening America's economy, small towns and rural communities.

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McCarter & English: At Long Last – Allocation and Accounting Rules.

Good things come to those who wait. The tax-exempt bond industry has waited 18 years for a missing reserved section of the private activity bond regulations, the allocation and accounting regulations, Treas. Reg. Section 1.141-6. The regulations released by the IRS in final form October 27, 2015, (the "Regulations") provide welcome guidance on allocation of bond proceeds and equity to expenditures and to particular uses within a financed project. The Regulations also take steps to accommodate public-private partnerships by providing for aggregate as opposed to entity treatment of a partnership that includes governmental entities or 501(c)(3) organizations and private persons. In addition, the Regulations amend Treas. Reg. Section 1.141-12 to provide a rule for anticipatory remedial action that permits bonds to be redeemed or defeased prior to an expected action that would cause the private activity limits to be exceeded.

The promulgation of the Regulations gives issuers and conduit 501(c)(3) borrowers the opportunity to rethink relationships with private entities as potential users of bond-financed property and consider the use of different, non-tax-exempt bond funding sources as part of a financing package to accommodate these relationships. The Regulations also provide planning opportunities relating to disposition of bond-financed property and remedial action. At the heart of all of these changes continues to be the IRS' focus on effective post-issuance compliance procedures. The efforts by the IRS to provide simpler and more straightforward rules should make post-issuance compliance more manageable.

Undivided Portion Allocation

The Regulations provide a special, undivided portion allocation method as the exclusive method of allocation of sources of funding to expenditures and uses for eligible mixed-use projects. Under this method, qualified equity is allocated first to private business use of the eligible mixed-use project and then to governmental use, and tax-exempt bond proceeds are allocated first to governmental use and then to private business use. This allocation method inherently permits "floating private use"—private use that may move within a building from time to time.

An eligible mixed-use project is a project wholly owned by one or more governmental persons (or 501(c)(3) organizations) or by a partnership with at least one governmental partner that is financed with governmental bonds (or qualified 501(c)(3) bonds) and with qualified equity pursuant to the same plan of financing. Qualified equity includes proceeds of taxable bonds other than tax-credit bonds, and funds not derived from a borrowing. The qualified equity is treated as financing the project under the same plan of financing if it pays for capital expenditures of the project on a date no earlier than the date on which such expenditures would be eligible for reimbursement under the reimbursement regulations and no later than the date the measurement period begins, generally the placed-in-service date.

Read in conjunction with the allocation timing rule of Treas. Reg. Section 148-6(d)(1), which requires allocation of proceeds to expenditures not later than the later of 18 months after the expenditure is paid or the date the project is placed in service, and in no event later than 60 days after the fifth anniversary of the issue date, the issuer will at that time be able to identify qualified equity that was part of the plan of finance and allocate private business use to that equity.

Partnerships

In response to recent pressure for the development of tax-exempt bond rules that accommodate the participation of private entities in partnership with governmental entities in financing major projects, the Regulations permit the governmental share of a project used in joint ventures to be financed with governmental bonds by treating the partnership of governmental entities and private entities as an aggregate of the partners rather than as a separate taxable entity. The private business use by a private entity partner will be determined based on that partner's greatest percentage share of any of the specified partnership items, income, gain, loss, deduction or credit attributable to the partnership during the measurement period. Taken together with the undivided portion allocation method, this treatment will permit qualified equity to be allocated to the private entity partner's private business use.

Anticipatory Remedial Action

The Regulations provide a rule that would permit an issuer to redeem or defease bonds in advance of an action that would cause the private activity limits to be violated, a remedial action not addressed by current regulations. To meet this new remedial action rule, an issuer must declare its official intent to redeem or defease all the bonds that would become nonqualified bonds as a result of a subsequent deliberate action and redeem or defease such bonds prior to the action occurring. The declaration of intent must precede the redemption or defeasance, identify the financed property with respect to which the remedial action is being undertaken and describe the deliberate action that is expected to occur. The redemption or defeasance of the nonqualified bonds must not result in an extension of the weighted average maturity of the bonds, subject to a limited transition rule.

Effective Dates

The Regulations generally apply to bonds sold on or after January 25, 2016, and the new remedial action rule applies to deliberate actions that occur on or after January 25, 2016. The partnership rules and the allocation and accounting rules may be permissively applied in whole, but not in part, to any bonds to which the private activity bond regulations apply.

McCarter & English LLP

by Jeannette M. Bond

November 3, 2015

With Risks, P3s and Design-Build Seen as Beneficial to Infrastructure Planning.

At an Urban Land Institute conference last week, two panels of transportation experts – one from the public sector, the other from the private sector – discussed the issues plaguing tri-state transportation systems and the potential of public-private partnerships to address them.

"Transportation agencies are great at delivering state-of-good-repair projects, delivering normal replacement projects," former New York State Department of Transportation Commissioner Joan McDonald said during the first panel. "I'm not so sure that transportation agencies are the entities best-suited to do some of these mega projects that are not just about transportation."

With transportation infrastructure, a public-private partnership, or P3 agreement, is used most often in a design-build contract – design-build is a method of project-delivery in which a private contractor wins a bid to design and construct a project. Ongoing regional public-private infrastructure projects include the construction of a new Port Authority Bus Terminal and an MTA project to build a Long Island Rail Road station beneath Grand Central Terminal (known as East Side Access).

Organized by the Urban Land Institute's New York, New Jersey and Westchester/Fairfield chapters, the forum was hosted at Shearman & Sterling's East Midtown headquarters, drawing a crowd of around one hundred.

During the panel of current and former public officials, moderated by CityLab New York bureau chief Eric Jaffe, the speakers disagreed on the role of public-private partnerships in terms of their potential for improving transportation infrastructure.

"The bigger you get, when you have many more stakeholders, many more local zoning laws, then it becomes more difficult," Steve Santoro, New Jersey Transit's assistant executive director of capital planning, said of expansive P3 projects.

All agreed, however, that area transportation infrastructure is in a state of crisis.

"The term 'transportation Armageddon' has been used," Jaffe said, referring to Senator Chuck Schumer's remarks about the potential results of the damaged Hudson River tunnels. If the existing New York-to-New Jersey tunnels close – a plausible scenario given their age, deterioration and the fact that they have reached current capacity – it would be disastrous for commuters and the regional economy.

In remarks after the panel, Drew Galloway, Amtrak's Northeast Corridor chief of planning and performance expressed openness to working with a private sector contractor on the Gateway Project, a proposed high-speed rail corridor planned to help solve a potential crisis with the tunnels, which are used by NJTransit and Amtrak and bring many commuters into New York City.

"We absolutely intend to consider [public-private partnerships] and will welcome the proposals as it goes forward," Galloway told Politico New York.

After the conference's 15-minute networking break, the private sector panel convened to discuss the best P3 business practices globally, as well as the potential hazards and benefits of P3s.

"You have competition among entities of the private sector to come up with the best and most cost-effective design," Karen Hedlund, national P3 advisor for Parsons Brinckerhoff, said at the panel, which was moderated by Urban Land Institute's senior vice president, Rachel MacCleery.

For underfunded tri-state transportation agencies, design-build can be an attractive method of cutting project costs. As Mike Parker, of Ernst & Young Infrastructure Advisors, LLC, pointed out, the Port Authority of New York and New Jersey estimated that it saved ten percent by using a P3 for the Goethals Bridge reconstruction versus a public plan.

In the case of Amtrak's Northeast Corridor, Hedlund explained, its dire need for infrastructure repair may repel potential private partners.

"Would they be willing to accept the cost of bringing the Northeast Corridor up to a state-of-go-d-repair?" Hedlund asked. "It's a much more complicated question than sometimes some politicians would like you to believe."

Last year, P3s, especially as design-build, were recommended by the MTA Transportation Reinvention Commission, a team of 24 local, regional, and international transportation experts. In July, New York State Budget Director Mary Beth Labate again endorsed their use in a letter to MTA

Chair Thomas Prendergast, calling design-build and other P3 tools a means of reducing the agency's capital program costs and achieving "faster project delivery."

Certainly, the MTA needs faster project delivery – a recent report by the Citizens Budget Commission (CBC), a nonpartisan watchdog group, estimated that MTA repair and upgrade projects will be finished by 2067 at their current rate. The Second Avenue Subway extension is notoriously behind schedule and beyond budget.

But though public-private partnerships are recommended for MTA repair projects, the CBC report warns that a "P3 can leave public agencies at risk when private parties fail to perform adequately," as they did in the early 2000s with a London Underground repair project.

"The London experience showed that there's some problems with P3s that dealt with a lot of maintaining existing assets and bringing existing infrastructure up to a state-of-good-repair," Jamison Dague, the report's author, told Gotham Gazette. "And that's not to say that you can't have a P3 that does those things successfully, but that was one challenge that they saw there."

Meanwhile, design-build contracts for New York infrastructure, Dague added, have proven successful in the past. The newly approved (and controversial) MTA five-year capital plan was reduced by billions of dollars after the agency accounted for increased use of design-build and other cost-saving strategies.

From a policy standpoint, measures can be taken to prevent private sector malfeasance when engaging companies in major infrastructure projects. In his remarks, Galloway emphasized the need for transportation officials to independently estimate a project's cost before private sector involvement.

"Otherwise, they will price their own investment in such a way to cover that risk," Galloway said. "And you very quickly lose some of the advantages that you would otherwise see in a public-private partnership."

Transportation officials and others have suggested oversight mechanisms as a means of preventing similar problems before. Independent evaluation of projects before private-sector involvement was recommended by New York State Comptroller Thomas DiNapoli in a 2013 report, which also calls for the creation of an oversight entity for public-partnership agreements and other changes to the state's P3 policies.

Jaffe mentioned the ongoing concern: "The fear is always that in the long run, the public will end up paying more than they said they would pay up front."

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by Ryan Brady, Gotham Gazette

Nov 04, 2015

@GothamGazette

Experts Offer Strategies for Educating Stakeholders, Public on Benefits of

[P3s.]

Never underestimate the importance of educating key stakeholders and the public about the benefits of using public-private partnerships to develop social infrastructure both before and after project launch. Failure to convey the advantages of P3s to those who will be affected by such projects could lead to pressure on public agencies to reject this procurement method in the future. This message was delivered repeatedly by a broad range of successful P3 partners during NCPPP's second annual P3s for Public Buildings Summit, Oct. 22-23 in Washington, D.C.

The list of people who should be educated thoroughly on the advantages of P3 procurement is extensive. It includes investors, public agencies, local and state residents, legislators and the media. It equally is important to engage with individuals and organizations located near the project, unions and local contractors, session participants stressed.

All descriptions of P3s also should simply and thoroughly define the procurement method, which often is poorly understood, these experts added. Confusion over what P3s are abounds even in Canada, where unlike the United States, they are used to build a range of public buildings, including schools and hospitals.

"When we talk about P3s, we're not talking about privatization. The government owns, controls and is accountable for that asset. But we also have to dispel the notion many government officials have that P3s don't involve any government funding. They don't know what private financing means. We have a saying: 'P3 — not P-free,'" said Mark Romoff, president and CEO of the Canadian Council for Public-Private Partnerships, who moderated a session on how to garner community and stakeholder support for P3.

He described other myths that surround P3s in Canada, such as the assumption that unions universally distrust them. "Several large unions, such as Laborers' International, are part of a P3 group and all of the collective bargaining agreements we have negotiated with them are observed," he explained.

Romoff also stressed the importance of publicizing the beneficial effects P3s have on people's quality of life. "It's not enough to keep saying that a project has been completed on time and under budget. Tell a story simply and connect emotionally. You'll make more headway."

The highly successful Long Beach, Calif. courthouse P3 is a case in point, recounted Stephen Reinstein, director of integrated delivery at AECOM and former CEO of Long Beach Judicial Partners. "Judges' complaints about the poor condition of the facilities they'd been working in didn't make a difference. What was compelling was hearing about someone who had a heart attack and died on the sixth floor because the elevators weren't working," he said.

Reinstein also stressed the importance of attracting support from public officials at various levels of government for such projects. Then-Gov. Arnold Schwarzenegger, who sent aides to Canada to study its P3 procurement models, endorsed the courthouse project, as did officials at the county and city levels, in part because the new construction was seen as the first step in rehabilitating a blighted neighborhood.

The developers also heeded the concerns expressed by influential members of the community in designing the project. When administrators at a nearby school questioned the safety of having a courthouse next door, developers promised that no doors would be built on the side of the building that faced the school, which eased the school officials' misgivings, reported Reinstein.

“We also signed a good agreement with the public union that was afraid its members would be negatively impacted by developing the courthouse as a P3. The union became a big supporter and we were able to the message across that, ‘No public jobs were harmed in building this project,’” he added.

Reinstein took pains to communicate with all of the local newspapers and the other Los Angeles media about the project and the P3 concept but acknowledged that he found it difficult to explain the procurement method “in a sound bite.”

“I used simple language and analogies that I thought people would easily understand, such as likening it having a house mortgage that includes the services of a gardener and a handyman for 39 years,” he explained.

Jessica Murray, who recently joined Walsh Construction as vice president of strategic initiatives, recalled state officials’ reluctance to educate the media to counteract the effects of negative stories about a P3 to expand Interstate 70 in northeast Denver. While working for Skanska, which is part of a consortium that is bidding for the project, she reached out to reporters and created an informational video about the P3. As a result, “reporters started calling me to check on the accuracy of what other people were saying,” she recalled. She urged state officials to capture the media’s attention in a project’s early stages, especially if they anticipate negative reactions. “If you can’t do that, talk to the cab drivers who talk to everyone on the planet. Bad word-of-mouth snowballs,” she warned.

The importance of engaging internal and external stakeholders early in the planning process also is vital, stressed participants in the summit’s opening general session.

When The College of New Jersey decided to build a multi-use development that included student housing as a P3, faculty and students expressed concern that they no longer would be dealing solely with the college, a trusted agent, over quality-of-life issues. Some faculty members criticized the decision to allow a tanning salon to locate on retail space in the complex, for example, said Stacy Schuster, the college’s associate vice president for college relations. The school was pleased with the pace at which work and approval processes were conducted, however, and ultimately, “the campus community came on board,” paving the way for development to enter into a second phase. “People on campus had trouble at first accepting that an external company would manage the project and handle maintenance. Now everyone is comfortable with this project, but if we take on another P3, we might hold internal conversations differently,” she said.

“Agencies need to pay attention to the facility user — the customer. You need to explain how it will be used and how it will accommodate changes in the future,” advised Douglas Koelemay, director of the Virginia Office of Public-Private Partnerships (VAP3). Agencies used to convey this information through public hearings but that avenue alone is no longer sufficient, he noted.

“It’s not just about telling people what is going to happen but answering their questions. You have to, as the saying goes, ‘get sticky’ with them. Social media is a big help with that,” Koelemay said, adding that it is important to know what citizens want, value and will support. “They can give you permission to proceed, even if they’re not actually promoting a project.” With this in mind, VAP3 adopted a new set of guidelines to conduct risk management and to engage the public.

P3 developers should make the time to reach out to their elected legislators to educate them on the benefits of using this procurement model to build public infrastructure as well, said Timothy Merriweather, president of the Texas Infrastructure Council. “We’re represented by U.S. senators and representatives, and state, county and city officials. Take the time to make calls, visit their offices, leave a flyer and tell them, 'If you have a question about P3s, ask me. I'm your constituent and this is what I do.' My county judge calls me to ask questions about P3s."

One woman "with an extensive e-mail list" advocated so tirelessly against a proposed P3 that she "killed it singlehandedly," he recalled. "The people who don't understand what P3s are and can do and complain, they're the squeaky wheel. They are heard. We're the larger group but we're not making that noise. We have to counter misinformation and misunderstanding with facts," he said.

NCPPP

November 2, 2015

Here's Why RIDOT Says a Truck-Toll Bond Would Save RI $612M.

PROVIDENCE, R.I. (WPRI) – The debate over Gov. Gina Raimondo's toll proposal is actually multiple debates rolled into one.

Among the questions: Should the state spend more money on bridge repairs, and if so, how much should it spend? Should the state institute a toll on large trucks, and if so, how should it work? Should the state float a bond backed by the toll revenue and get the money up front, even though it will have to pay interest?

It's that last debate – whether toll revenue should be promised in exchange for a big infusion of capital, or used on a pay-as-you-go basis as it comes in each year – that may be the wonkiest.

The current version of RhodeWorks, as the governor has dubbed her big transportation plan, calls for the state to float a roughly $600-million bond on July 1 to be repaid by toll revenue. The bond proceeds would yield $500 million for bridge repairs, with the rest of the money covering toll-gantry construction, financing costs, and a debt reserve fund.

Borrowed money has to be repaid with interest, of course, and the RhodeWorks bond is no exception: the R.I. Department of Transportation says the state would need to make $578 million in interest payments over 30 years to pay off the bond in full, bringing its full cost to $1.16 billion. Critics have choked on that number, noting the bond will cost the state more in interest ($578 million) than it yields for bridge repairs ($500 million).

RIDOT officials don't dispute that $578 million in interest payments is a lot of money. But they argue critics are being penny-wise, pound-foolish, because they're not including what RIDOT estimates will be $1.2 billion in construction savings from floating the bond. The reason, they say, is that it will let bridges get fixed before they deteriorate further and become much more costly to repair.

Officials compare the concept to a homeowner who borrows money to repair a roof, or an individual who borrows money to fill a cavity, avoiding a future root canal.

"We're engineers," RIDOT Director Peter Alviti told WPRI.com. "If giving money to the lending institutions ends up costing taxpayers less during that same 10-year period, then we should do it that way."

RIDOT has developed a list of all 827 bridges that would be tackled under RhodeWorks, ranked by priority based on what the agency calls its Bridge Improvement Program (BIP) scores. The score includes factors such as condition, size, average traffic, weight limits, route importance, and the cost of detours. The projects would be tackled in roughly the same order under either the bond plan or the pay-as-you-go plan, officials said.

(The worst-ranked bridge in Rhode Island, according to RIDOT: the Huntington Avenue Viaduct in Providence, which carries the Olneyville Expressway section of Route 6 over Troy and Westminster streets.)

RIDOT's engineers calculate that if the $500 million in bond money is available immediately, it will cost $1.7 billion to do all the projects, and the state's bridges will be 90% structurally sufficient by 2025. However, they say, if the bond money is not available and toll revenue can only be used as it comes in, the same projects will cost $2.9 billion, and the state's bridges won't be 90% structurally sufficient until 2034.

RIDOT attributes that $1.2 billion in savings to the benefits of a "surge" in bridge projects that the bond will allow. By using the infusion of borrowed money, the level of construction spending on bridges is forecast to quickly hit a peak of $266 million in 2017-18 before falling, versus a gradual increase under the pay-as-you-go budget:

RIDOT Bridge Repair Budget w Tolls paygo vs bond Oct 2015

RIDOT Deputy Director Peter Garino said that "surge" would allow the agency to preserve a large group of bridges that will otherwise deteriorate to the point where they need to be rehabilitated or even reconstructed, which is far more expensive to do. That is the reason his team recommended a bond rather than a pay-as-you-go approach, he said.

"What we looked at is, how do we compress things so they cost the least amount of money?" Alviti said.

The bottom line: RIDOT says even after making the $578 million in interest payments on the toll-backed bond, the "surge" approach will still save taxpayers a net $612 million thanks to the $1.2 billion in construction savings due to projects happening earlier.

"It's only because we have a one-time upfront cost to get us to a regular place where we can normalize bridge repair that it makes sense," Garino said. "If we did a deep dive on bridges when we first got here and if that was a flat curve, then you need an ongoing revenue source. But it wasn't a flat curve. It was a bell upfront. And because of that, this is really the only reason why it makes sense to bond."

Alviti said part of the reason for the "bell curve" in RIDOT's projected needs is because so many of Rhode Island's bridges were all built during the same period, the postwar era of major transportation expansions nationwide in the 1950s and '60s. That's left many of them falling into worse shape on roughly the same schedule, he said.

"More than 70% of our infrastructure is over 50 years old," said Dave Fish, RIDOT's acting chief engineer. "We've got so many of those bridges that are on the brink."

As an example of how the cost of a bridge changes depending on how long it takes to tackle it, RIDOT offered four internal estimates: the Greenwich Avenue Bridge in Warwick, which would need $2.6 million in 2017 while it's still a preservation project, but $10.4 million in 2025 when it would be a reconstruction project; the Concord Street Bridge, a $1.9-million preservation project in 2018 but a $7.5-million reconstruction project in 2028; the Phenix Avenue Bridge East in Cranston, a $3.8-million rehabilitation project in 2022 but an $8.1-million reconstruction project in 2032; and the

Goat Island Bridge in Newport, an $8-million rehabilitation project in 2017 but an $11.9-million rehabilitation project in 2025.

The infusion of bond money would allow RIDOT to do those lower-cost projects for each bridge, while the pay-as-you-go plan would require the more expensive ones, according to Alviti. “The real savings is getting the ones that we can get preserved,” he said.

Alviti acknowledged the “surge” plan – and the costly bond – only make sense if RIDOT goes on to invest the necessary money to maintain the bridges once they’re back in good shape. The agency is beefing up its maintenance department by hiring 40 new employees there and is budgeting more money for those projects in the future, he said.

“If all we were doing was planning to do the surge, fix the bridges and leave everything else the same, you’re right, it would be cyclical,” Alviti said. “By increasing maintenance, we’ll get that capability up so that now instead of these 30-year cycles we get into, of having to reconstruct the bridges, we’re making them last longer.”

If bridges are properly maintained going forward, RIDOT officials think they could potentially last for 80 to 100 years, if not indefinitely. “If we can even just extend from 50 years to 80 to 100 years, we’re cutting the cost of these bridges in half over time,” Alviti said.

Critics have also questioned the type of bond called for under RhodeWorks. The governor wants to float what’s known as a revenue bond, with repayment directly tied to the money from tolls, as opposed to a general-obligation bond. Choosing the former is more costly: RIDOT is projecting an interest cost of roughly 5% for the toll-backed revenue bond, compared with an average rate of 2.4% on a general-obligation bond the state floated earlier this year.

From the Raimondo administration’s perspective, there are multiple benefits to the revenue bond: the governor can continue to argue taxpayer money will never be used to pay the bond, and unlike with a general-obligation bond, no voter referendum is required to approve the borrowing.

Garino also said the revenue bond provides a safeguard to prevent future governors or lawmakers from redirecting toll revenue to other types of spending. “We really want to make sure that the revenue from the tolling goes to those bridges,” he said.

RIDOT hasn’t won over critics with those arguments, however. Rep. Patricia Morgan, a leading Republican opponent of the toll bond, tweeted Monday: “Governor’s gift to Wall St banks: Revenue bonds with no voter approval carry higher Interest rates. Make repairs more expensive.” She has called for bridge repairs to be funded out of existing state revenue, and does not include the same “surge” RIDOT wants.

Other groups have also called for alternatives to RIDOT’s proposal, with the Rhode Island Trucking Association suggesting about $13 million a year in new revenue last week, and the Rhode Island Center for Freedom & Prosperity suggesting a public-private partnership modeled on Pennsylvania that could cost $570 million with interest.

State House leaders have suggested the General Assembly will take up the toll proposal next year, and could act on it within the first few months of the annual legislative session. If that happens, RhodeWorks-funded projects could begin next summer, Alviti said.

WPRI.com

By Ted Nesi

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Ted Nesi (tnesi@wpri.com) covers politics and the economy for WPRI.com. He hosts Executive Suite and writes The Saturday Morning Post. Follow him on Twitter: @tednesi

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Beer Bonanza Has Virginia Capital Backing Bonds for Craft Brews.

Virginia's capital is raising beer money — $23 million of it.

Richmond will sell bonds next week to build a brewery for Escondido, California-based Stone Brewing Co., the ninth-largest U.S. craft-beer maker, on property that's been vacant for four decades. Stone will pay the 218,000-person city to lease the facility and won't be on the hook to repay investors. Taxpayers will.

It may be the first time a U.S. city has put its credit on the line for a maker of the beverage Americans swill millions of barrels of, and it shows how the craft-beer boom has been drafted into the long-running bidding wars among states and cities for businesses. Elsewhere, the decision to stand behind less-flourishing corporations hasn't always panned out: Rhode Island is stuck with debt that lured a now-bankrupt video game startup, while Moberly, Missouri, was burned by issuing bonds for an artificial-sweetener plant that was never built.

"There's a growing movement for craft brewing, and if there are cities and states out there trying to encourage it, it's a way of creating a new revenue base," said Howard Cure, managing director of municipal research in New York at Evercore Wealth Management, which oversees $6 billion. "These companies are smart and they play one city against another."

Craft beer, which comes from breweries that make no more than 6 million barrels a year, is the fastest-growing segment of the $102 billion U.S. market.

With the deal, Richmond is counting on the popularity of Stone's brands such as Arrogant Bastard Ale and Stone Cali-Belgique IPA. The 19-year-old company's production jumped 35 percent last year, twice as fast as craft breweries nationwide, despite a surge in competition from upstarts and behemoths such as Anheuser-Busch InBev NV.

With 22 million barrels produced in 2014, such small-scale producers account for 11 percent of the U.S. beer market, up from 5 percent in 2010, according to the Boulder, Colorado-based Brewers Association.
The growth of the industry — and its power as a tourist draw — has caught the attention of elected officials across the country, said Bart Watson, the chief economist for the association, which represents more than 2,800 companies.

"As the craft beer market has grown and these companies have grown into bigger job creators and bigger sources of economic impact, the reception from government officials has grown as well," Watson said. "We've entered this era of second facilities in different parts of the country. There's a lot more courting going on."

Sierra Nevada Brewing Co. and New Belgium Brewing Co., the third- and fourth-largest craft brewers, have begun operating East Coast facilities in North Carolina after receiving government incentives. Lagunitas Brewing Co., the sixth-largest, set up its second facility in Chicago, though it rebuffed the junk-rated city's offers of assistance.

Job Creator

Stone picked Richmond over more than 300 other potential sites for the brewery, which will also have a restaurant and beer garden. It's projected to create 288 jobs.

Economic incentives were available at all of its other top sites, said Pat Tiernan, Stone's chief operating officer. What set Richmond apart was the opportunity to revamp an area near the James River that was never rebuilt after flooding in the 1970s, he said.

"We wanted to gauge where we got the most buzz and enthusiasm and excitement, not just with fans, but with the community, the governments at the state and local level," Tiernan said. "How they decided to fund it really had nothing to do with the selection of the site."

Tammy Hawley, a spokeswoman for Richmond Mayor Dwight Jones, said no one from the city finance department was available to comment until after the bond sale, which is scheduled for next week. Moody's Investors Service rates the $23 million of taxable debt Aa2, its third-highest grade. The credit-rating company said Stone's payments to lease the brewery will match or exceed what the city will spend on principal and interest.

"The dollar amount for the city of Richmond is not particularly burdensome, and the city of Richmond is budgeting to pay for debt service every year," said Julie Beglin, a Moody's analyst. The city has $740 million of general obligations. "That's different from other projects that we've occasionally seen where the anticipation is the project will pay and the city may or may not have available funds to pay debt service if that project failed."

One example of a bust: Key West Brewery Inc. Based near the southernmost point of the continental U.S., it defaulted in 2001 on $7.4 million of revenue bonds that it was responsible for repaying. That company was tiny in comparison to Stone: By borrowing the money, it was seeking to boost production to 39,600 barrels a year from 3,000.

By contrast, the California brewer's output will exceed 300,000 barrels for the first time in 2015, Tiernan said. He said the Richmond facility will eventually be able to make 700,000. Stone is also planning to open a brewery in Berlin.

Beer Lovers

In a sign of Stone's influence in the industry, it has the fourth-most-popular India pale ale on the website BeerAdvocate and the three most-noted American strong ales. The brewery is known for flaunting the superiority of its beers with names like Sublimely Self-Righteous.

Stone even taunts its customers, questioning whether they should drop the bottle and pick up something a bit more banal.

"It is quite doubtful that you have the taste or sophistication to be able to appreciate an ale of this quality and depth," says the Arrogant Bastard label.

Richmond is betting on the opposite.

Bloomberg

by Brian Chappatta

November 1, 2015 — 9:01 PM PST Updated on November 2, 2015 — 7:31 AM PST

Hedge-Fund State Stung as Stock-Price Swings Leave Budget Gap.

Connecticut passed a budget in June that boosted funding for transportation projects, made required pension contributions and scaled back a tax increase on businesses. It appeared balanced, removing the risk of a downgrade from Fitch Ratings.

The good news didn't last long.

Four months into the fiscal year, Connecticut is facing a $118 million deficit, thanks in part to a stock-market slide that erased more than $3 trillion from share prices before it ended in late September. With just $406 million in its rainy-day fund, about one-third of the pre-recession peak, Democratic Governor Dannel Malloy and lawmakers are working this week to figure out how to shore up the finances of a state that's home to more hedge-fund money than any state but New York.

With Illinois and Pennsylvania still without budgets for the year that began July 1, Connecticut's struggle shows that passing a spending plan isn't enough if projected revenue doesn't materialize. To stabilize the state's finances, Malloy, who has already cut funding for hospitals and welfare programs, is aiming to eliminate 500 government jobs, overhaul the retirement system and change the way businesses are taxed to keep companies from leaving.

"That a budget gap has opened up so early in fiscal 2016 is definitely concerning," said Paul Mansour, head of municipal research in Hartford, Connecticut, at Conning, which holds the state's bonds among its $11 billion of local debt. "You have revenue coming in below projections, low reserves and political pressures not to cut social services. It's when you combine all these things together that you get concerned."

Connecticut is the wealthiest U.S. state by per-capita income, with an economy fueled by the finance industry. It had some 250 hedge-fund companies overseeing about $335 billion in 2013, according to the Connecticut Hedge Fund Association. Only New Yorkers rely on capital gains for a greater share of their income, said Carl Thompson, a municipal analyst in Boston at Eaton Vance Management, which oversees about $30 billion of local debt.

That leaves the government's revenue sensitive to market routs like the one in August, when the Standard & Poor's 500 index lost 11 percent in six days. The bout of selling, the worst in four years, wreaked havoc with the Connecticut's tax-collection forecasts, despite the rebound that's left stocks with gains for the year.

Rippling Down

That volatility is one reason tax collections will likely fall short of expectations, Office of Policy and Management Secretary Ben Barnes said in a letter to Comptroller Kevin Lembo last month. Lembo said the state's economy has also been restrained by the disappearance of 14,900 financial-services jobs since the recession, which has weighed on wage growth.

"Until the overall growth in the state employment numbers results in higher wage growth, which is consistent with an expanding economy, the withholding portion of the income tax will continue to present significant budget challenges," Lembo wrote.

Municipal-bond investors are demanding higher yields to hold Connecticut debt instead of other securities. Ten-year Connecticut general obligations yield 2.61 percent, about half a percentage point more than benchmark debt. That gap is near the most since Bloomberg data begin in January

2013 and up from as little as 0.27 percentage point in January.

Stable Outlook

Fitch took Connecticut away from the brink of a downgrade in July, when it lifted the outlook on its AA rating to stable because of the balanced budget. Under that plan, Malloy kept his pledge to maintain full pension contributions. He also won a higher sales-tax rate for transportation projects, one of his biggest initiatives, and reduced business-tax increases after companies including General Electric Co. threatened to move.

Connecticut has ample time in the current year to make adjustments to the deficit, said Douglas Offerman, the Fitch analyst in New York who monitors the state. It's easier to tweak a passed budget than govern without one, like Illinois and Pennsylvania, he said.

"This was from all perspectives a pretty decent budget that happens to be in a state that has very volatile revenue streams," said Thompson, the analyst at Eaton Vance, which owns Connecticut bonds. "With the stock market, their revenue projections change and that can really be a very sudden, unpredictable thing."

Faced with the latest deficit forecast, Malloy said Oct. 28 that the state should cut its workforce by 500 in the current fiscal year. Connecticut is also deferring scheduled raises for 1,600 managers and negotiating over contracts with most bargaining units, according to a presentation titled "Connecticut's Economic and Budgetary Reality."

Barnes, Malloy's budget official, is involved in negotiations over curbing the deficit and wasn't available to comment, said Christopher McClure, a spokesman for the office of policy and management. Connecticut will release new revenue estimates on Nov. 10.

"Our plan is to set priorities and make smart, pragmatic decisions about spending cuts now, so that Connecticut continues to live within its means," McClure said in a statement.

Bloomberg

by Brian Chappatta

November 3, 2015 — 9:01 PM PST Updated on November 4, 2015 — 5:58 AM PST

Alaska Dusts Off Plans for $1.6 Billion Pension-Obligation Bond.

Alaska may double this year's supply of pension obligation bonds as it considers borrowing $1.6 billion to help fund its cash-strapped retirement trust.

As of 2013, Alaska had the fourth-worst funded pension among U.S. states, reporting it had 52.3 percent of the money needed to pay retirees, better than only Illinois, Connecticut and Kentucky, data compiled by Bloomberg show.

Since then, the state has done some one-time fixes — like a $1 billion cash injection into the trust last year — but hasn't made strides to permanently fix the fund, said Deven Mitchell, the state's debt manager at the Alaska Department of Revenue.

Prompted by Governor Bill Walker, Alaska is looking into the possibility of a $1.6 billion general obligation pension bond, Mitchell said. “It appears that this interest rate environment provides an opportunity for us to get in on the leveraging side at a low rate,” Mitchell said. “We’re thinking it’s not a bad time to consider this alternative.”

The state’s plan isn’t new. Alaska almost issued pension obligation bonds in 2008, back when its funded ratio was at 75.7 percent, Mitchell said. At the time, the state legislature created the Pension Obligation Bond Corporation, a conduit that the securities could be issued through, and approved up to $5 billion of debt, Mitchell said.

The deal team published a preliminary offering statement, gave rating company presentations and was in the process of picking a sale date when the stock market started to crash. The pension obligation bond dreams were over.

“The funny thing is, if we had bitten the bullet and ate the high interest rates [in early 2009], we would have been doing great now,” Mitchell said. For a pension obligation bond to be “in the money,” the eventual investment returns made with the proceeds have to exceed the initial borrowing rates.

This time around, Governor Walker has asked Mitchell to pick up from where they left off in 2008 and see if the economics still make sense. Mitchell said the deal will be ready to come to market if Governor Walker gives the green light. Because of the work done in 2008, the governor won’t need legislative approval to issue the potential bonds.

Selling bonds to pay back other debts may not seem intuitive, but it’s becoming a regular occurrence for those struggling to fund their pension systems. This year, state and local governments have sold the most GO pension obligation bonds since 2008 even as sentiment against them has grown.

The Government Finance Officers Association recommended, in a January advisory, that state and local governments refrain from issuing the bonds, reminding its 17,500 members that the proceeds from the deal might not return as much as the interest rate on the bond itself.

“People really don’t know what’s going to happen in the market, a lot of folks in the market don’t know what’s going to happen in the market,” said Dustin McDonald, a director at the federal liaison division of the GFOA. “Ultimately you’re betting on positive market outcomes that you may or may not see.”

Fitch reiterated the concerns in an Aug. 13 report, telling investors the debt “won’t fix U.S. public pensions” and the issuance of these types of bonds will only ever be neutral or negative for a credit. According to Matt Fabian, a partner at Municipal Market Analytics, “they’re always a bad idea.”

If Alaska goes through with its deal, this year’s total pension obligation bonds issues will be more than $3 billion, almost ten times last year’s supply, according to data compiled by Bloomberg.

Issuers have argued that not all pension obligation bonds are equal. If the bond proceeds go directly to the pension trust and just reduce rather than replace annual payments, then there’s nothing for investors to be concerned about, said Kansas State Treasurer Ron Estes. Kansas sold $1 billion of pension obligation bonds in August, raising its funded ratio to 65 percent from 62, Estes said.

“There are risks in doing this, but the biggest risk is not funding your pension,” Estes said. Mitchell said he’s framing Alaska’s potential deal to mimic Kansas’s. So far Mitchell has arranged an underwriting syndicate and put together a “shell” of a preliminary offering statement.

As Alaska considers ways to repair its pension system, it also faces a $3.5 billion structural budget deficit, equal to about 55 percent of general fund expenditures, according to a note from Standard & Poor's from Nov. 2.

Bloomberg

by Kate Smith

November 4, 2015 — 6:52 AM PST

Puerto Rico Governor Submits Electric Utility Restructuring Bill.

Puerto Rico Governor Alejandro Garcia Padilla's administration sent to the island's legislature a bill that would give its main electricity provider power to restructure about $8.3 billion of debt.

The Puerto Rico Electric Power Authority, known as Prepa, has been negotiating since August 2014 with its creditors on how to ease the utility's debt payments and modernize a system that relies heavily on crude oil to produce electricity. Prepa faces a $1 billion shortfall for the fiscal year ending June 30, 2016, according to the governor's legislation. The utility has a $196 million interest payment due to bondholders on Jan. 1.

"With this legislation we can realize the debt relief and savings offered by the creditor compromises and make the changes and investments needed to ensure that Prepa can provide the people and businesses of Puerto Rico with reliable power, stable rates and outstanding customer service for generations to come," Javier Quintana Mendez, Prepa's executive director, said Wednesday in a statement.

The utility has been hindered in its attempts to reorganize its finances because the commonwealth's agencies don't have access to bankruptcy, as do their counterparts in the U.S. A restructuring of the utility's debt, which would be the largest ever in the $3.7 trillion municipal market, would serve as a key first step in Garcia Padilla's plan for the island to reduce its $73 billion debt burden. The governor said in June that the island's debt is unsustainable and has sought to gain concessions from creditors.

Electric Rate

The legislation will seek "a reasonable and stable electric rate" Jesus Manuel Ortiz, a spokesman for Garcia Padilla, told reporters Wednesday in San Juan.

Prepa should submit a request to change energy rates so revenue will cover annual debt servicing, "including principal, interest, reserves and other requirements imposed by the accords with creditors," according to the legislation. Revenue should also cover costs such as the purchase of fuel, investments and general administration, according to the bill.

The legislation would enable Prepa to invest $2.4 billion to upgrade plants and give Prepa the authority to enter into public-private partnerships to help finance infrastructure improvements. Prepa's new board would consist of seven members, including two people to represent citizens, Ortiz said.

The bill also seeks to improve Prepa's process for collecting outstanding bills from public and private entities and change the utility's ability to collect payments from municipalities.

Prepa and some of its bondholders reached a temporary agreement in September that would require investors to take a 15 percent loss in a debt exchange. The utility is also negotiating with bond-insurance companies that guarantee about $2.5 billion of Prepa debt against default.

The bill would give legislative authority to a deal that may emerge from the negotiations.

Bloomberg

by Michelle Kaske and Alexander Lopez

November 4, 2015 — 10:22 AM PST Updated on November 4, 2015 — 1:31 PM PST

Puerto Rico Crisis Spurs U.S. Bill Seeking Hedge Fund Disclosure.

Hedge funds' involvement in the Puerto Rico debt crisis is leading U.S. Representative Nydia Velazquez, a New York Democrat born on the island, to propose legislation that would force the firms to reveal more about their investments.

Velazquez, who sits on House Financial Services Committee, wants hedge funds to file with the Securities and Exchange Commission whenever they acquire at least 1 percent of a company's stock, down from the current 5 percent threshold. The bill she has drafted would apply the same disclosure requirement to debt and derivatives.

Hedge funds have drawn scrutiny for snapping up Puerto Rico bonds, whose prices have tumbled as the island's fiscal crisis escalated. Velazquez said the funds may be advocating for spending cuts that would hurt Puerto Ricans and against legislation that would let some agencies file for bankruptcy, which would allow them to cut their debts in U.S. court.

"It has become increasingly clear that hedge funds, which have purchased a sizable part of Puerto Rico's debt, are exacerbating the crisis and profiting from the island's misery," she said in an e-mailed statement. "This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy."

Hedge funds hold as much as $25 billion, or about a third, of Puerto Rico's debt, according to an estimate by Mikhail Foux, Barclays Plc's municipal-debt strategist in New York. Funds that invested in Puerto Rico debt include Brigade Capital Management, Fir Tree Partners and Monarch Alternative Capital. The funds were part of a group that in July released a study challenging Governor Alejandro Garcia Padilla's contention that the government can't afford to repay what it owes.

Velazquez's bill follows calls from Democrats on the House Natural Resources Committee for a hearing on the funds' role in Puerto Rico's crisis.

Bloomberg

by Kasia Klimasinska

November 4, 2015 — 5:00 PM PST Updated on November 5, 2015 — 4:45 AM PST

The Teacher Who Could Gut Unions.

Rebecca Friedrichs's challenge to mandatory fees could reduce labor's political clout.

A Supreme Court decision coming by the end of June could be devastating for organized labor. The case, *Friedrichs v. California Teachers Association (CTA)*, challenges a 1977 ruling allowing public-sector unions to charge nonmembers covered by union contracts mandatory fees to pay for the costs of collective bargaining. The lead plaintiff, Rebecca Friedrichs, is an elementary school teacher. She claims that being forced to pay money to California's politically powerful and overwhelmingly Democratic teachers' union as a condition of her employment violates her First Amendment rights.

Conservatives want the court to ban the mandatory fees. That would create a crisis for organized labor, about half of whose members are in the public sector; dues and fees made up $174 million of CTA's reported $186 million in revenue in 2013. It could also cause trouble for Democrats, who depend on union support during elections. CTA reported spending $211 million on campaigns and lobbying from 2000 to 2009, according to Friedrichs's suit, including $26 million to oppose a school-voucher proposition.

The Supreme Court has already said government workers can't be required to fund union activities if they're unrelated to collective bargaining. But the plaintiffs argue that collective bargaining is inherently political when the government is the employer. "One of the things people fight about in politics is, should you spend more money on teachers or police?" says Ronald Cass, a former dean of Boston University School of Law, who co-wrote an amicus brief in support of Friedrichs.

Unions' best hope of winning rests with an unlikely ally: Antonin Scalia. He wrote in a 1991 case that, because the government requires public-sector unions to provide equal representation to nonmembers, it has an interest in making sure that service is paid for. "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them," he wrote.

Scalia has also argued that the government has much more leeway to exercise control over its employees than over private citizens, a view that could help unions. "Private citizens perhaps cannot be prevented from wearing long hair, but policemen can," he wrote in a 1990 dissent involving public employees in Illinois.

Scalia brought up police officers' First Amendment rights again last year in a union fees case involving home-health-care workers supported by Medicaid. In oral arguments, Scalia posited a discontented cop who insisted on meeting over and over with the police commissioner to bug him for a raise: "The commissioner finally is fed up and tells his secretary, I don't want to see this man again—has he violated the Constitution?" In that case, Scalia ended up joining the 5-4 majority opinion, which found that "quasi-public employees," like home aides, can't be required to pay union fees.

The biggest public-sector unions, including the American Federation of State, County & Municipal Employees (AFSCME), are already canvassing workers, asking them to become dues-paying members before the court rules on the case. Even pro-union workers may be tempted by the chance to have their representation for free, says Lee Saunders, president of AFSCME. "That's going to be a hard choice for some people."

by Josh Eidelson

Bloomberg Businessweek

November 5, 2015 — 4:06 AM PST

Puerto Rico Exodus a Boon for Florida Counties, Moody's Says.

The migration of Puerto Ricans to the U.S. mainland in search of work and better living conditions is proving to be an economic benefit to growing Florida municipalities such as Orange and Hillsborough Counties, according to Moody's Investors Service.

The number of employed Puerto Rican workers in Orange County increased by almost 18 percent between 2010 to 2014, according to a Moody's report released Tuesday. Coastal Hillsborough's work force from the commonwealth has increased 31 percent during the period. The state's September unemployment rate was 5.2 percent, less than half Puerto Rico's 11.4 percent rate.

"With the in-migration feeding the ongoing expansion of industries in Orange County, the resulting dynamic is positive for the county's credit strength," Nisha Rajan, a Moody's analyst in New York wrote in the report. "This expansion further increases the need for goods and services, augmenting sales tax and other local government revenues."

Puerto Rico's out-migration has increased by 40 percent from 2010 to 2014, according to Moody's. The island's economy has struggled to grow since 2006. Officials have increased taxes, curbed government hiring and cut social programs to help fix budget deficits. The commonwealth is seeking to reduce its $73 billion debt load by negotiating with bondholders to accept losses.

Transportation and tourism-related jobs in Orlando, the center of Orange County and home to Disney World, are attracting Puerto Ricans to the area. Puerto Ricans comprised 14 percent of the population of Orange County and 8.4 percent of Hillsborough, Moody's said.

Residents of Puerto Rico are U.S. citizens and many are bilingual, making it easy to leave the island for work on the mainland. Moody's estimates the commonwealth's negative migration will continue through at least 2020. About 5 million Puerto Ricans lives in the U.S., compared with about 3.65 million in the island.

Bloomberg

by Michelle Kaske

November 3, 2015 — 2:54 PM PST

Illinois Faces Millions in Extra Debt Costs From Budget Fiasco.

When Illinois returns to the municipal market after its unprecedented 18-month borrowing drought, it may find its budget impasse will cost taxpayers millions of dollars in the coming decades.

On a $1 billion offering of 25-year tax-exempt bonds, it would cost about $175 million more now than if an equal amount was issued with spreads at 2014 levels, based on data compiled by Bloomberg that assumes the yield equals the interest rate paid. Now in its fifth month without a spending plan, signs are mounting that debt sales for cash-strapped Illinois are only going to get more expensive.

After initially planning to sell $1.25 billion in general obligations for capital needs, the governor's office said in September that it wasn't ready to announce any amounts or sale dates. The state's credit rating has been cut by two of the three largest rating companies, it's missing pension payments, and yield premiums demanded by investors are hovering near the highest since 2013. Illinois last sold debt in April 2014 for a top yield of 4.5 percent, about 1.1 percentage points more than benchmark securities. That spread has widened by about 70 basis points.

"Investors are going to ask for wider spreads over the near term if there's not a resolution for this budgetary crisis," said Dennis Derby, a money manager in Menomonee Falls, Wisconsin, at Wells Fargo Asset Management, which holds some of the state's bonds among its $39 billion of municipal debt. "It's a headline risk. It's the potential for spreads to widen out even further."

The Land of Lincoln's lack of borrowing contrasts with localities nationwide that are selling bonds at the fastest pace since at least 2003. That's saving states and cities millions of dollars as interest rates are near the lowest in half a century. Meanwhile, Illinois is sidelined by political gridlock. Republican Governor Bruce Rauner and the Democrat-controlled legislature are showing no signs of nearing an agreement for a spending plan.

Catherine Kelly, Rauner's spokeswoman, said Illinois plans to sell bonds this fiscal year, which ends June 30. She declined to comment on why the state has gone so long without borrowing. Illinois can legally still borrow.

"Speaking very generally, state law allows bond sales in these circumstances," according to an e-mailed statement from the Office of the Attorney General Lisa Madigan.

Kelly Hutchinson, formerly of A.C. Advisory Inc., started Monday as Illinois's director of capital markets and will handle bond sales for the state.

But returning to the market would come at a cost, and the state doesn't have extra money to spend these days. Investors demanded 1.7 percentage points more yield to own Illinois 30-year bonds on Nov. 3 versus benchmark munis. That's the most of all 20 states tracked by Bloomberg.

Debt Service

Illinois is running out of funds on a daily basis, according to Comptroller Leslie Geissler Munger. Unpaid bills totaled $6.8 billion, as of Nov. 3. Still, debt service remains a priority "above everything else," Munger said Oct. 14, after announcing the delay of a $560 million monthly pension payment in November because of the cash crunch. The December payment may also be postponed.

The postponed contributions led the State Employees' Retirement System to request the largest-ever sum of cash from the Illinois State Board of Investment to cover retiree benefits. Its pensions are already underfunded by more than $100 billion after years of skipped contributions.

Moody's Investors Service slashed Illinois's rating to Baa1, three steps above speculative grade, on Oct. 22, following a downgrade from Fitch Ratings three days earlier to an equivalent BBB+. Moody's also lowered the ratings of six public universities less than a week later, citing their exposure to the budget turmoil.

"The state's low rating and trading levels preclude them from taking much advantage, if any, of lower interest rates," said Paul Mansour, head of municipal research in Hartford, Connecticut, at Conning, which holds Illinois debt among its $11 billion of state and local securities. "It does hurt that way."

Market Access

In the past, credit downgrades have delayed bond deals for the state. Illinois had to cancel a planned $500 million general-obligation bond sale in January 2013 because Standard & Poor's dropped its rating five days before. Yet about two months later it returned with an even bigger $800 million offering that had narrower 10-year yield spreads than the market average.

Not everyone expects Illinois will stay a stranger to the $3.7 trillion municipal market despite its financial woes.

"We've seen them in the past when market access seemed to be somewhat tenuous come to market with a big deal that they priced very cheap," said Jason Diefenthaler, who runs a high-yield muni fund at Wasmer Schroeder & Co. in Naples, Florida. The company owns Illinois bonds. "Problem issuers tend to come to market more often."

Long-term, the budget situation is fixable, according to Ty Schoback, a senior analyst in Minneapolis at Columbia Threadneedle Investments LLC, which holds some Illinois debt among its $30 billion of municipal holdings.

"As long as there's adequate compensation in price, in addition to us having a view that they will ultimately come to a fix and get past this political gridlock, we certainly would consider additional purchases," said Schoback. "You need to be compensated for the headline risk and the political uncertainty and these BBB+ downgrades."

Bloomberg

by Elizabeth Campbell and Brian Chappatta

November 4, 2015 — 9:00 PM PST Updated on November 5, 2015 — 6:30 AM PST

Munis Least Attractive to Treasuries Since 2014 as Payrolls Jump.

Prices in the $3.7 trillion municipal-bond market are the most expensive of 2015 relative to Treasuries after U.S. payrolls increased by the most this year, causing yields to jump on federal government debt on bets that stronger employment data will spur the Federal Reserve to raise interest rates.

Benchmark 10-year munis yield 2.18 percent, compared with 2.31 percent on similar-maturity Treasuries, data compiled by Bloomberg show. The ratio is a measure of relative value between the asset classes. It touched 93.7 percent Friday, the lowest since December 2014, signaling that tax-free bonds are pricey relative to their federal counterparts.

Ten-year Treasury yields jumped as much as 0.1 percentage point after a Labor Department report showed the U.S. gained 271,000 jobs, the most this year and higher than all estimates in a Bloomberg survey of economists. Average hourly earnings climbed from a year earlier by the most since July 2009, signaling Fed officials may move forward with a December rate increase.

Muni yields rose 0.05 percentage point to 2.18 percent on Thursday, the largest increase since July, data compiled by Bloomberg show. The figure, which was little changed as of 9:09 a.m. in New York, is the highest since Sept. 24.

The 10-year muni-Treasury ratio was as high as 111.3 percent in March. Over the past decade, the figure has averaged 97 percent.

Bloomberg

by Brian Chappatta

November 6, 2015 — 6:34 AM PST

Bloomberg Brief Weekly Video - 11/05/15

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

Watch the video.

9:28 AM PST
November 5, 2015

Puerto Rico Government Development Bank at Risk of Receivership.

Puerto Rico's Government Development Bank, which oversees the island's finances, said it may fail to comply with legal reserve requirements by the end of December, putting the bank at risk of falling into receivership.

Puerto Rico's Commissioner of Financial Institutions is examining the financial condition of the GDB, according to the commonwealth's most recent financial disclosure, posted on the bank's website late Friday.

The GDB serves as a source of liquidity for the Caribbean island and its municipalities. The bank estimates it may fall short of its legal reserve requirement by the end of 2015, according to the filing. That would put the bank in danger of operating under a receiver and further limit the commonwealth's access to funds.

"If GDB is not in sound financial condition or becomes insolvent, the Secretary of Treasury may file a petition to a Puerto Rico court for the appointment of a receiver to suspend GDB's operations and settle its obligations," according to the filing.

The bank's net liquidity as of Sept. 30 was $875 million, down from $1.1 billion in March. The GDB faces a $354 million debt-service payment on Dec. 1 and is working to raise funds to meet that obligation, according to the filing.

Outstanding Debt

Puerto Rico and its agencies had $70 billion of debt, including $12.7 billion of general-obligation bonds, as of Sept. 30, according to the filing. Commonwealth officials are seeking to reduce that debt load by asking bondholders to take losses or wait longer for repayment through a voluntary debt exchange. The island's economy has contracted every year since 2006. It has $357 million of general-obligation interest due Jan. 1, yet the commonwealth's cash flows show a negative balance in November, according to the filing.

Some investors believe general-obligation bonds would receive the strongest repayment because the commonwealth's constitution stipulates that those securities must be repaid before other expenses. Yet bondholders cannot require Puerto Rico to raise taxes and no physical assets of the commonwealth may be foreclosed on to raise cash to pay general obligations, according to the filing.

Available Resources

If Puerto Rico failed to make a general-obligation payment, "the bondholders are only entitled to require the Secretary of the Treasury to apply available resources according to the constitutional priority provisions and do not have the right to compel the exercise of any taxing power of the commonwealth," according to the filing.

Puerto Rico may take revenue currently used to repay certain highway bonds and convention center debt and redirect it to pay down general-obligation securities, if there are no other available resources, according to the filing.

"It is not certain what steps a commonwealth bondholder would be required to take or what proof such bondholder would be required to produce to compel the diversion of such funds from any such instrumentality to the payment of public debt," according to the filing.

Bloomberg

by Michelle Kaske

November 6, 2015 — 7:20 PM PST

Voters Approve 79% of U.S. Municipal Debt Ballot Measures.

U.S. voters approved 79 percent of the $23.8 billion in municipal debt that local governments sought permission to sell on Tuesday's ballots, according to Ipreo, a New York-based financial-market data provider.

The $18.9 billion included new bond authorizations for roads and water systems, economic development and other capital projects. The amount sought was the most in an odd-year November election since 2007, before the worst recession since the 1930s cut tax revenue and pushed states and cities into a period of austerity.
In this year's biggest proposal, the Dallas Independent School District, won approval to sell $1.6 billion of debt to be used to replace and renovate schools that are more than a half-century old. Denver voters approved $778 million of debt to upgrade a facility for the National Western Stock Show and for improvements to a convention center. Meanwhile in Harris County, where Houston is located, voters endorsed $848 million of debt for road improvements, parks and flood control, according to county election returns.

Voters last year approved about 85 percent of the $44 billion on the ballot, more than twice the amount sought in 2010, according to Ipreo.

Bloomberg

by Darrell Preston

November 5, 2015 — 8:31 AM PST

Discerning the True Policy Debate over Donor-Advised Funds.

This brief summarizes discussion at a June 2015 Tax Policy and Charities Project session where the nation's leading Donor Advised Fund (DAF) providers, nonprofit leaders, and policy experts sought to clarify and distinguish the policy issues and debates surrounding DAFs, as well as to lay out a research agenda for the DAF field. This brief also contains a useful summary comparison, prepared by Victoria Bjorklund, retired partner of Simpson Thacher, of major differences in the laws and regulations applicable to public charities providing DAFs, other public charities and private foundations.

Download the brief.

Tax Policy Center

by C. Eugene Steuerle, Ellen Steele

Published: October 21, 2015

Fitch: CA School District Special Revenue Recognition Could Have Broader Rating Implications.

Fitch Ratings-New York-04 November 2015: Fitch Ratings' assignment of an 'AAA' rating to San Diego Unified School District's (SDUSD) upcoming general obligation bonds recognizes that tax revenues supporting repayment of debt would be considered 'special revenues' under the bankruptcy code. As such, Fitch believes the revenues and timely debt service payments would be uninterrupted in the unlikely event of a bankruptcy filing by the district.

Fitch's conclusion was supported by legal opinions applying specifically to SDUSD bonds but many California school district GO bonds have been issued under constitutional provisions similar to SDUSD's proposed bonds. Fitch is in the process of determining its protocol for applying the special tax analysis to other California school district bonds with the same legal construct, and expects to provide further guidance to the market in the near term.

Contact:
Amy Laskey
Managing Director
+1-212-908-0567
Fitch Ratings, Inc.
33 Whitehall St.

New York, NY 10004

Laura Porter
Managing Director
+1-212-908-0575

Fitch: Nevada School District Reorg Plan May Hike Credit Risk.

Fitch Ratings-New York-06 November 2015: Clark County, NV, School District's ('A', Stable Outlook) reorganization plan presents mid-term risks, Fitch Ratings says. District reorganization plans might present uncertainties for bondholders – as a 2010 restructuring in Utah did – because the resulting distribution of property taxes, potential limits of future bond issuance, and operating environments of the smaller districts are unknown. Several steps must occur for a reorganization to take effect. Therefore in the short term we expect there to be no impact on Clark County School District.

Nevada Assembly Bill 394 requires that an advisory committee submit a plan to reorganize the Clark County School District to the State Board of Education by Jan. 1, 2017. The bill requires the committee to consider a number of issues, including equitable funding, the authority to issue bonds and raise revenues, and personnel contracts and collective bargaining. The school district superintendent has outlined a proposal to break the district into seven local precincts. The plan calls for continued centralization of operational departments with each precinct having flexibility on instructional issues. Under either a true district division or a hybrid scenario, Fitch expects outstanding debt to continue to be payable from the current levy that includes the taxable property of the entire school district.

However, new entities could emerge, each with a portion of the tax base and with potentially different tax rates. Depending upon the size and scope of the potential reorganization, precincts could have different operational aspects, including management and financial policies and practices. A reorganization plan could also affect the recent reauthorization of the district's 10-year, $4.1 billion rolling bond program under which taxable property is assessed at $0.55 per $100 of AV. The program comes after several years in which the district lacked the capacity to issue bonds and in response to continued deferred maintenance and a backlog of new construction needs.

A district reorganization occurred in Utah when voters approved a ballot measure to break up the previous Jordan School District (ULTGO rated 'AAA' Stable Outlook) into two districts in 2007. The new district, Canyons School District (ULTGO rated 'AAA' Stable Outlook), began operations in fiscal 2010 under a separate school board. Following modest credit uncertainty at the time of the break-up, Fitch's ratings recognize the strength of each district's operations and the tax base from which the bonds are repaid.

Bonds issued prior to the breakup continue to be payable from the proceeds of unlimited ad valorem taxes levied on the taxable property of the prior combined district. Each district's separate tax levy for the debt is set according to the size of their respective annual debt service repayment. The resulting revenues are restricted solely for the purpose of repaying those bonds, alleviating bondholders' mid-term risks of the reorganization. Any other use would be against state law.

Contact:

Shannon Groff

Director
US Public Finance
+1 415 732-5628
650 California Street
San Francisco, CA

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

Bond Dealers of America Hires Federal Policy Advisor.

October 29, 2015 – Washington, D.C. – The Bond Dealers of America is pleased to announce the hiring of Justin Underwood to serve as Federal Policy Advisor, an internal staff position at the BDA. Justin comes to the BDA from FINRA where he served as Regulatory Analyst – Market Regulation, Trading Analysis. Justin will work in conjunction with current policy staff, Jessica Giroux and John Vahey, to advance member's interests, both among federal regulators and on Capitol Hill. In particular, Justin will be responsible for analyzing federal regulatory and legislative policy and will staff the BDA's newly formed Fixed Income Technology and Operations Committee.

Justin has analyzed trading activity and has experience in monitoring, reviewing and investigating unusual market activity for evidence of violations of relevant rules and regulations enforced by FINRA across NYSE, NASDAQ, and other U.S. stock market exchanges.

"The hiring of Justin to compliment the work Jessica and John are doing to represent our membership at the BDA simply means the BDA is better resourced and more equipped to provide the exceptional representation that we have worked hard to deliver since being founded in 2008," said BDA CEO Mike Nicholas.

About the Bond Dealers of America

Since its founding in 2008, the Bond Dealers of America has been the Washington, DC based organization that represents securities dealers and banks predominantly focused on the U.S. fixed income markets. The BDA remains the only organization representing the unique interests of national, middle-market dealers. In addition to federal advocacy and formulation of market practice guidelines, the BDA hosts a series of meetings and conferences specific to domestic fixed income, in addition to industry surveys and reports. For more information, visit www.bdamerica.org

For more information please contact Jessica Giroux at jgiroux@bdamerica.org or 202- 204-7905.

National League of Cities Local Jobs Report.

NLC's monthly analysis of the jobs report released by the Bureau of Labor Statistics, with a specific focus on local government employment.

October 2015

City and county governments gained 2,400 jobs in October, marking the 10th month in the past 11 that local government employment (excluding education) has increased. September's jobs report was revised up to reflect the 12,100 jobs that were added in local government and the highest increase since October 2014. NLC's recently released [City Fiscal Conditions 2015]() report showed that city fiscal conditions are stabilizing in the wake of the Great Recession, and the local employment gains provide further evidence of an economic recovery in cities. In the past year, city and county governments have gained 45,000 jobs, although employment remains approximately 170,000 jobs below the post-recession peak in December, 2008.

New Report from the National League of Cities Explores the Future of Mobility and Technology in Cities.

NASHVILLE, TENN.—A new report released today from the National League of Cities (NLC) explores trends in mobility and technology in cities and identifies what cities can do to move seamlessly and efficiently into the future of mobility. City of the Future: Technology & Mobility explores how transportation will change with coming technological disruptions, draws on knowledge from leading experts in the field and delves into city and regional transportation planning documents from the 50 most populous U.S. cities—as well as the largest cities in every state—providing an unprecedented look into what is happening next.

"Transportation is critical for our cities. This report is part of a multi-year research project that focuses on five different factors affecting cities: technology, economics, climate resilience, culture and demographics," said National League of Cities CEO and Executive Director Clarence E. Anthony. "By exploring mobility and the impact technology is having on how we all get around, NLC is highlighting specific issues that will help cities anticipate changes in the urban landscape and prepare accordingly."

The report finds widening gaps between innovation in the private sector, the expressed preferences of citizens and the visions of city planners regarding transportation investment. The mobility environment in cities is rapidly shifting-primarily due to technology-and this will impact cities' future land-use decision-making, as well as infrastructure planning. Specifically, a majority of cities do not have concentrated efforts to prepare for new transportation innovations. Though half of the cities surveyed have explicit plans for new highway and infrastructure construction and maintenance, the majority of cities are not taking into account the effect of driverless technology or private transportation network companies.

"Our collective thoughts on the future of transportation have moved from Deloreans to driverless cars in what seems like the blink of an eye," said Brooks Rainwater, director, NLC Center for City Solutions and Applied Research. "With the mobility environment rapidly changing, cities are central and leading the effort toward better, more seamless and equitable transportation systems."

The report also outlines a forecast for 2020, 2030 and beyond:

Forecast for 2020

- There will be extensive demographic and workforce changes that will impact transportation

networks, such as changing commuting choices, office location and workspace changes, decreased vehicle miles traveled and an increase in contract jobs.
- More states will establish infrastructure banks, paid road models will be on the rise in cities and there will be an increase in public-private partnerships for mobility projects.
- There will be more modal and transit options available to cities, with optimized bus lines and integration of apps and fare payment systems.
- Transportation network companies will be the main modes of personal and freight transportation in cities of all sizes, and there will be an increase of driverless cars and electric cars on the roads.

Forecast for 2030 and Beyond

- Urban areas will continue to grow, commuting patterns will change and rush hour will be dispersed over longer periods of time.
- A national infrastructure bank and other public/private financing options will change the way transportation projects are evaluated.
- Public transportation will begin to go driverless and cities will see a reduction in single occupancy vehicles.
- Bike communizing will become more attractive, though electric assist technology, and high-speed rail systems will be constructed in the east and west coast travel corridors.
- Additional modes of transportation, such as inner-city rail and air travel, will expand and there may also be first-class amenities on some public transportation services as well.

Click here read the full report.

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans.

NOVEMBER 6, 2015

Municipal Bonds Shine in Bleak Landscape.

Investing in boring bridges and sewers is paying off once again.

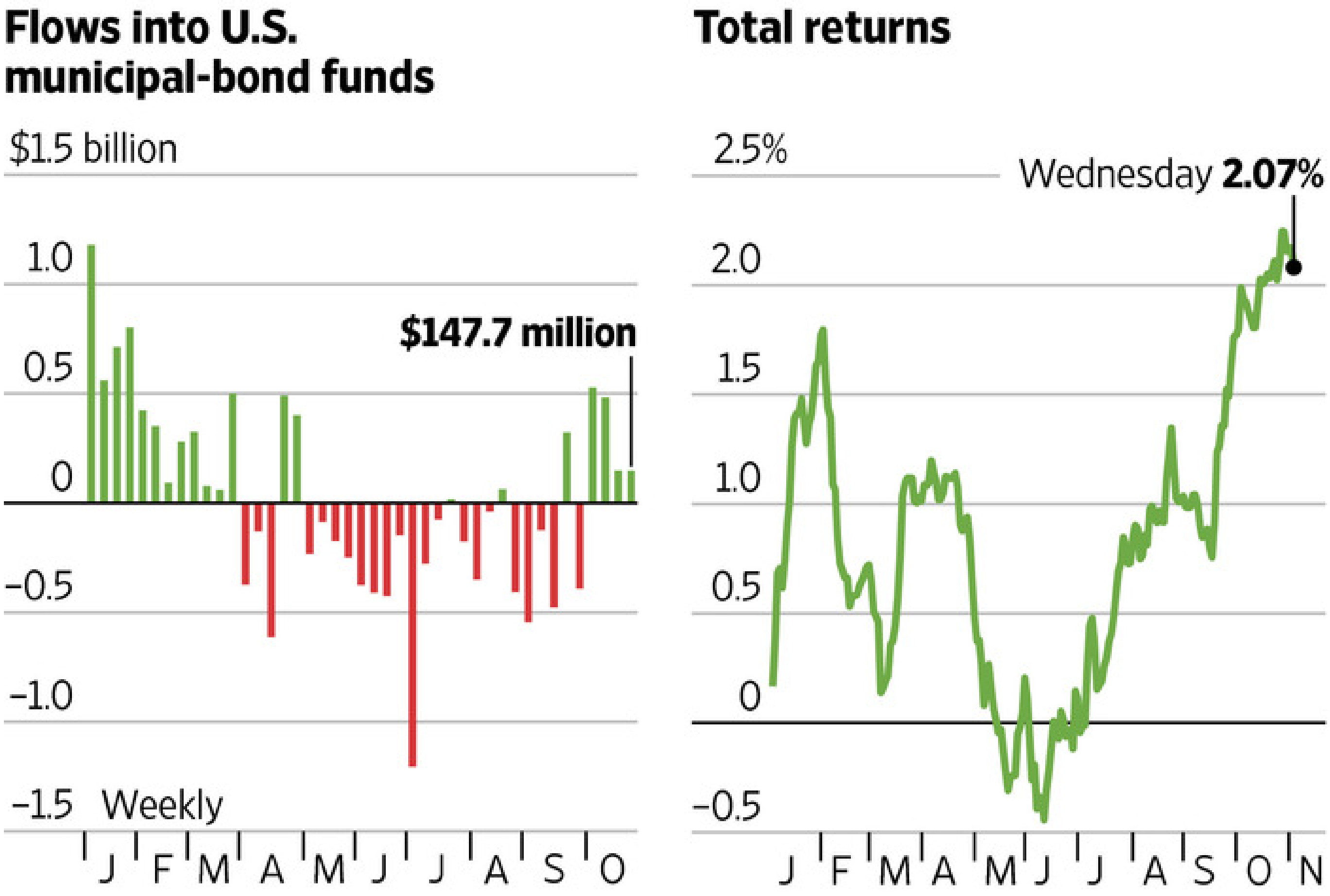
Municipal bonds sold by U.S. state and local governments are returning about 2% this year, according to Barclays PLC data, beating corporate bonds and many other supposedly higher-performing asset classes.

It is the second year of near market-leading returns from a sector typically prized for its low, steady performance. Muni bonds last year posted a total return of 9%, which comprises price appreciation and interest payments, approaching the S&P 500's total return of 14%.

At a time of low returns and high volatility in other markets, the concerns facing muni bonds—including the threat of defaults from Puerto Rico, the U.S. commonwealth that has some $72 billion of debt outstanding—seem relatively manageable to many investors, compared with the risk of a steep pullback in stocks or other riskier assets.

Bouncing Back

Municipal bonds have drawn renewed interest from investors, following a second-half rally that has pushed up returns.



Sources: Lipper (flows) Barclays (returns)

THE WALL STREET JOURNAL.

Municipal bonds are considered nearly as safe as Treasurys because they are backed by tax revenue or fees on critical public services, such as water. The debt also is boosted by interest payments that are typically tax-free, often used to fund peoples' retirements.

Even buyers who can't enjoy the tax breaks are purchasing municipal debt, said David Kotok, chief investment officer at Sarasota, Fla.-based Cumberland Advisors. "If you look around the world, the forces in the advanced economies that would drive interest rates lower, or keep them low, are in place," he said.

Investors have struggled to find better performance.

Total returns in 2015 amount to about 1% for Treasury debt and near-flat returns for highly rated corporate bonds. The S&P 500 has returned 3.9%.

Other market sectors have fared worse. Hedge funds were down an average of about 1.5% in 2015 through September, according to research firm HFR Inc. Commodities are down 17% year to date as measured by the Bloomberg Commodity Index.

The durability in the $3.7 trillion sector persisted even as municipal debt faced challenges throughout the year, including the first default from Puerto Rico and concerns about the financial health of Chicago and states such as Illinois. Investors also spent several months on the sidelines, concerned about possible interest-rate increases earlier in the year.

Those worries diminished when the Federal Reserve didn’t move rates, and demand for municipal debt increased. Investors have added money to municipal-bond mutual funds in five of the past six weeks, after withdrawing more than they put in every month from May to September, according to Lipper data. About $2 billion has flowed into municipal-bond mutual funds this year through October.

“Investors began to get more comfortable with the fact that we weren’t going to see increased interest rates, which led to more robust demand, and that’s helped recent performance,” said Peter Hayes, head of municipal bonds at BlackRock Inc., which manages about $111 billion in tax-exempt debt. Mr. Hayes also noted rates have begun to tick up of late.

Investors have returned to munis after a 2013 selloff spurred by fears of a Fed rate increase and another that began after analyst Meredith Whitney predicted widespread defaults in a December 2010 television interview. There were no defaults on debt rated by Moody’s Investors Service in 2014, and several analysts said the market includes thousands of diverse municipal entities, many of which have improving resources after the recession.

Meanwhile, the supply of bonds for new borrowing has dwindled, even as state and local governments rushed to take advantage of low rates, according to research firm Municipal Market Analytics. Though issuers have sold almost one-third more debt than during the same period of last year, most refinanced outstanding bonds, constricting the total available.

A supportive foundation leaves municipal bonds poised to benefit as rates increase, said David Hammer, executive vice president and municipal bond portfolio manager at Pacific Investment Management Co. Historically, the debt has outperformed other bonds when interest rates rise, and with state and local finances improving along with the U.S. economy, investors are facing less risk than in recent years, he said. “That creates a pretty attractive backdrop,” Mr. Hammer said.

Some analysts said persistent demand has driven up prices, reducing the tax-free income that makes the debt attractive. Many in the market would prefer lower prices and higher yields, which would make it easier to sell bonds or mutual funds, said Matt Fabian, partner at Municipal Market Analytics. Bond yields fall as prices rise.

“You don’t buy an income-producing asset if it doesn’t produce income,” he said.

Still, several investors said the market has provided enough income relative to other assets to shrug off concerns about potential defaults from Puerto Rico, which skipped its first debt payment in August.

Lyle Fitterer, managing director for Wells Fargo Capital Management, which oversees about $39 billion in municipal bonds, said he is still concerned about the impact of possible Puerto Rico defaults. Still, such risks are low marketwide, and once investors consider their tax bill, municipal debt still looks compelling, he said. “Sometimes, superboring can be good,” he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Nov. 4, 2015 7:05 p.m. ET

Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently.

A bill requiring hedge funds to disclose their holdings more frequently was introduced in Congress on Wednesday, a move that if signed into law would represent a seismic change for the hedge-fund industry.

Rep. Nydia Velazquez, a Democrat from New York who introduced the bill, tied the effort to the fiscal crisis in Puerto Rico, which has battled a sluggish economy and high debt load for years. Hedge funds and other investors who own the island's bonds have negotiated with island officials over a possible debt restructuring and cost-cutting measures.

"This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy," Rep. Velazquez said in a statement.

The measure would require hedge funds to disclose positions where they own 1% or greater of a company's stock within five days, compared with the current requirement of 5% within 10 days. The bill would also create a new requirement for hedge funds to disclose investments with a 1% or greater stake—in either stocks or corporate and municipal bonds—every quarter.

Labor groups like the AFL-CIO and the American Federation of State, County and Municipal Employees are supporting the bill, called the Hedge Fund Sunshine Act of 2015, according to Ms. Velazquez's office. Another supporter is Hedge Clippers, a group that seeks to "expose the mechanisms hedge funds and billionaires use to influence government and politics," according to its website.

It wasn't immediately clear whether the bill, introduced in the U.S. House of Representatives and expected to be referred to the House Financial Services Committee, would muster enough momentum to become law. Even some supporters of the bill said it could be an uphill climb.

"It's always difficult to do things that large and powerful financial institutions don't like," said Lisa Donner, executive director at Americans for Financial Reform, an advocacy group. Still, Ms. Donner said the bill is a "very valuable proposition to have on the table," given the size of the hedge-fund industry and how little is disclosed compared with other institutions.

Hedge funds will likely balk at the proposal because frequent disclosures of smaller stakes could make it more costly for managers to build their positions. With more disclosure, other investors would know sooner that a manager is buying certain stocks or bonds, allowing them to mark up the price before selling.

"Given how low the 1% threshold is, the proposal could have a chilling effect on managers employing their optimal strategy," said George Silfen, a partner at Kramer Levin Naftalis & Frankel LLP who represents hedge funds and mutual funds.

A spokesman for the Managed Funds Association, which lobbies for hedge-fund interests in Washington, didn't immediately respond to a request for comment.

Ms. Velazquez, who represents parts of Manhattan, Brooklyn and Queens, is the first Puerto Rican woman elected to Congress. In September, she introduced another bill, the Puerto Rico Investor Protection Act of 2015, that would bring federal oversight for Puerto Rico's mutual-fund industry in line with mainland funds. The bill was referred to the House Financial Services Committee.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Nov. 4, 2015 8:00 p.m. ET

— Rob Copeland contributed to this article.

Illinois Bond Sale Drought Hits Schools, Mass Transit.

ALGONQUIN, Ill. — District 300, Illinois' sixth-largest public school system, has been waiting a decade for state dollars to complete a construction and improvement project that began with voter approval of $185 million of bonds in 2006.

The 21,000-student district in Chicago's far northwest suburbs sold the bonds and was able to build, expand and update schools, officials said.

But not all of the projects that the district promised to parents, teachers and students were completed, and hopes for state money any time soon have been dampened by Illinois' prolonged absence from the bond market and exacerbated by an ongoing state budget impasse.

District 300 had been counting on $30 million to $40 million in state construction grant money intended for roofs, asbestos abatement and heating and cooling systems for schools.

"There is part of us that feels we haven't fulfilled the obligation to the community 100 percent," said district Superintendent Fred Heid. "We were counting on leveraging those (state) dollars."

A budget stalemate between Illinois' new Republican governor and Democrats who control the legislature has led to gridlock and fed into last month's downgrades of the state's general obligation bond ratings to just three steps above the "junk" level by Fitch Ratings and Moody's Investors Service.

Illinois, once a top issuer of municipal bonds, has been absent from the debt market for a year and a half despite having more than $4.8 billion of untapped bond authorization left from a $31 billion, partially bond-funded "Illinois Jobs Now!" program the state enacted in 2009.

Money on hand from state bond sales shrank to $552 million at the end of fiscal 2015 from $2.68 billion at the end of fiscal 2014, according to Moody's.

Bruce Rauner, the state's first Republican governor in 12 years, had pledged to pour "billions" into infrastructure. He has signaled Illinois will be resuming debt sales despite the lack of a state budget five months into fiscal 2016.

BIG SCHOOL CONSTRUCTION GRANT BACKLOG

In 2006, District 300 passed a "fairly contentious" referendum, and wants to avoid going back to voters for more money, Heid said.

He added that going back to voters could impede the district's ability to finance future growth in students.

District 300 is one of 52 Illinois school systems on a 2004 list for grants funded through state bond sales. Lists maintained by the Illinois State Board of Education show 228 additional and unfulfilled grant requests made by schools between 2005 and 2015.

INFRASTRUCTURE PROJECTS STALLED

Metra, the Chicago area's commuter train operator, said about $400 million of projects, including improvements to 16 stations, two rail yards and a major bridge replacement program, are on hold due to the lack of state bond money.

The transit agency, which is in the midst of a multiyear fare increase, said fares may have to rise even higher than expected in 2017 if it does not obtain proceeds from state bond sales next year.

"If you don't take care of things in the beginning stage, they tend to need more comprehensive work done on them," Metra Executive Director Donald Orseno said.

Illinois' finances are sagging under a $105 billion unfunded pension liability and a chronic budget deficit that have left it with the lowest credit ratings and highest borrowing costs among the 50 states.

While the budget battle will delay a pension contribution, state bond payments are continuing.

A package of fees and taxes meant to pay off the "Jobs Now" bonds has fallen short of its revenue target. This is largely due to underperformance of a video gambling tax as some communities, most notably Chicago, blocked the gaming machines.

The package is expected to generate $830 million this fiscal year, short of legislative projections from 2009 that it would raise $943 million to nearly $1.2 billion annually, according to the Chicago-based Civic Federation.

By REUTERS

NOV. 3, 2015, 5:48 P.M. E.S.T.

(Editing by Daniel Bases and Matthew Lewis)

Federal Lawsuit Questions St. Louis Suburb's Municipal Fines.

ST. LOUIS — A federal lawsuit filed Wednesday alleged a St. Louis suburb whose population is largely black relentlessly tickets for things such as mismatched curtains, walking on the wrong side of a crosswalk and barbecuing in front of a house.

The Arlington, Virginia-based Institute for Justice, a public interest law firm, filed the suit on behalf of two Pagedale residents and is seeking class-action status. The lawsuit also asks a judge to halt the 33,000-resident suburb that's just north of St. Louis from future enforcement of codes that the suit considers an unconstitutional tactic to feed city coffers.

The number of non-traffic municipal fines issued in Pagedale, which has a roughly 93 percent black population, has soared by nearly 500 percent in the past five years, the lawsuit said, with revenue from non-traffic tickets making up nearly one-fifth of the city's budget.

Last year, the lawsuit said, 2,255 non-traffic tickets were doled out under the municipal code that authorizes citations for such things as having mismatched curtains, walking on the left side of a crosswalk, wearing saggy pants, having holes in window screens and having a barbecue in front of a house, according to the lawsuit.

"This case demonstrates that property rights are fundamentally civil rights," said William Mauer, the law firm's senior attorney and the plaintiffs' lead counsel. "Pagedale treats its residents like walking, talking ATMs, making withdrawals by issuing tickets for ridiculous things that no city has a right to dictate."

An Associated Press message seeking comment from Pagedale Mayor Mary Louise Carter was not immediately returned.

The lawsuit comes four months after Missouri Gov. Jay Nixon signed into law a measure that limits cities' ability to profit from traffic tickets and court fines. That marked the first significant step taken by state lawmakers to address concerns raised after the August 2014 police shooting in the St. Louis suburb of Ferguson. Eighteen-year-old Michael Brown, who was black, was unarmed when he was shot to death by white Ferguson police officer Darren Wilson during a confrontation in a street.

A St. Louis County grand jury and the U.S. Justice Department cleared Wilson in Brown's death, concluding evidence backed his claim that he shot Brown in self-defense after Brown first tried to grab the officer's gun during a struggle through the window of Wilson's police vehicle, then came toward him threateningly after briefly running away.

But the Justice Department issued a report in March, saying there was racial bias and profiling in Ferguson's policing as well as a profit-driven municipal court system that frequently targeted blacks, who make up about two-thirds of Ferguson's populace.

Since then, practices of many municipal court systems throughout the St. Louis area came under increased scrutiny.

Wednesday's lawsuit was filed on behalf of Valarie Whitner and Vincent Blount, housemates who the suit alleges have received more than $2,800 in fines for such alleged infractions as having a downspout with chipping paint, not having a screen door behind their home and having weeds in their vegetable garden.

By THE ASSOCIATED PRESS

NOV. 4, 2015, 5:43 P.M. E.S.T.

Long Lives and Rocky Markets Have Some Pension Systems Recalibrating.

For decades, state and local pension systems thought of themselves as America's ultimate long-term investors.

Companies could go bankrupt by the thousand; corporate boards could show C.E.O.s the door. But the states and cities would be there forever. That meant their pension funds — and the local taxpayers who guarantee them — could invest aggressively, even if that meant taking more risk. In an infinite time frame, today's loss would always be offset by tomorrow's gain.

Or so the thinking went. Now, a long-living baby boom generation, rapidly fluctuating global markets and municipal bankruptcies are blowing holes in the notion that for public pension funds, time is infinite. It turns out that the short term matters too.

And it matters now more than ever. According to the National Association of State Retirement Administrators, virtually all public pension funds are in what is called a "cash-flow negative" state. That means that every year, they pay more in benefits to retirees than they receive in contributions. And that signals, for some at least, an urgent need to reconsider traditional investment strategies.

The trustees of California's giant pension system, known as Calstrs, are among them.

"It's really very simple," said Allan Emkin, co-founder of Pension Consulting Alliance, in a recent presentation to the board of the organization, officially the California State Teachers' Retirement System.

"The actuary is saying that you're going to get 7.5 percent every year," he said, referring to the grail-like investment assumption that virtually all public pension boards factor into their decisions, which affect millions of people and trillions of dollars.

"And that may well be your average," he said. "But getting to that average, if you take a really big hit in the early periods, you may not be able to recover."

He paused to let the heresy sink in: It is possible to hit your long-term actuarial target and still go insolvent. And the long term will not matter if you run out of money in the short. Think Central Falls, R.I., or Prichard, Ala. Think Puerto Rico.

It is possible for two funds, each starting with the same balance, and with the same average return over 20 years, to have vastly differing performances over the period. In the two cases below, the annual returns are the same, but occur in the opposite chronological order. When losses happen in the early years, as for Fund B below, the balance can be wiped out well before the 20 years are up.

Mr. Emkin was helping Calstrs's trustees with an asset-allocation review, a monthslong process in which the board was examining its investment approach in detail and considering changes. The board is scheduled to vote on a proposed new approach, called Risk Mitigating Strategies, this month. The general idea is to cut back on stocks and increase investments that are expected to rise when the stock market falls.

It was necessary, Mr. Emkin said, because reducing the $194 billion pension fund's exposure to another stock-market rout is "the single most important decision you'll make on the investment side."

Indeed, cutting back on stocks means backing away from the approach that virtually all public pension funds have taken for decades. Some of the trustees seemed concerned that none of their peers were going this way, but Mr. Emkin told them that company pension funds had been moving away from stocks for years.

Public pension funds have "matured," and that means doing things differently, he urged. Plans that were young in the 1950s or 1960s now have lots of retirees, who are living longer, healthier lives than their actuaries assumed they would. Assuming shorter life spans meant setting aside less money, and this is one reason so many state and local pension funds have shortfalls today.

This is not a death knell, but it means investment losses have outsize impact.

"When you've got negative cash flow, the math gets wicked bad," said Sean McShea, president of Ryan Labs Asset Management, an investment management firm that specializes in bonds. "Poor performance gets amplified."

Since annual contributions do not cover the payouts, pension funds with negative cash flow generally rely on investment income to close each year's gap. They need every year to be a good year, but they tend to invest heavily in equities, and the stock market can, of course, fall. A couple of back-to-back bad years — like 2001 and 2002, or 2008 and 2009 — can wreak havoc.

"If the pension fund has a bad sequence of returns, all of a sudden it's, 'How are you going to pay this?'" Mr. McShea said. "You can't grow your way out. It's almost mathematically impossible to close the gap."

The crash of 2008 showed what can happen. Public pension funds in growing, relatively prosperous places could fall back on their local taxpayers to fill the giant holes that opened. But not all "mature" pension funds are sponsored by wealthy states or cities. In many places, the obligations that workers and retirees have earned now dwarf the jurisdictions that sponsor them.

Many of the roughly 1,700 California school districts paying in to Calstrs are like that. And there is an added complication: The annual pension contributions are set by state lawmakers in Sacramento, not by Calstrs.

From Wall Street to Washington and in the towers of academia, people are buzzing about what some say is the pernicious focus in corporate America on short-term profits.

For years, lawmakers set Calstrs's rates far too low to cover what its promised benefits cost. Time passed, the system matured, cash flow went negative and then came the crash of 2008.

Calstrs lost $54 billion and could not bounce back. By 2014, it was paying out $12 billion to roughly 270,000 retired teachers and surviving spouses, and taking in only $6 billion a year in contributions. By conservative measures, it had an $80 billion shortfall. Even if it achieved its long-term investment-return assumption of 7.5 percent, its actuary said, it would probably run out of money around 2047. And if it missed its target, it would run out of money even sooner.

In 2014, Gov. Jerry Brown signed a law to substantially increase the money going to Calstrs every year, starting at $450 million a year and rising to $4.5 billion. The biggest increase, about $3.2 billion, is to come from California's school districts, community colleges and other local governments. Additional amounts are to come from the state, and from Calstrs's 480,000 teachers and other school employees.

If everyone does their share, Calstrs projects it will close the gap in about 30 years as long as the invested money returns an average 7.5 percent per year over the long term. It is not going to be easy. Fitch Ratings has warned that less affluent school districts may have a hard time keeping up as the amounts rise. Until 2014, they were expected to contribute 8.25 percent of each payroll to Calstrs; by 2021 it will be 19.1 percent.

And for the state, a temporary tax increase that helps cover the increase will expire in 2019.

It was hard to get the promised billions, and the last thing Calstrs wants is to put the money into stocks, then see it vanish in another stock crash.

Calstrs still aspires to 7.5 percent average annual returns — otherwise everybody would have to kick in even more — but it now wants to "reduce downside risk" at the same time. The idea behind Risk Mitigating Strategies is to attempt that by selling off as much as $20 billion of its equities and placing the money instead in Treasury securities, two types of hedge funds and possibly infrastructure projects.

Specifics were deferred until later. Much of the board meeting was devoted to comparing the results of modeling various hypothetical portfolios. Calstrs's current portfolio was shown to have about a 30 percent chance of another big fall by 2019 — the year, ominously, when the state tax increase is scheduled to expire.

Other modeled portfolios seemed to have a lower probability of a crash in the near term.

"I'm putting on my skeptic's hat," said one trustee, Paul Rosenstiel. "This sounds too good to be true, that we have figured out a way to eliminate downside risk, without sacrificing return, but no one else has."

But Mr. Emkin quickly countered: "We're not talking about eliminating risk. We're talking about reducing it at the margin," he said. "What we're trying to do here is to minimize potential for there to be increased costs to the employer, or the employee, going forward. That's the goal."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

NOV. 4, 2015

Lawsuit Accuses Missouri City of Fining Homeowners to Raise Revenue.

PAGEDALE, Mo. — This spring, officials in this tiny city near St. Louis ordered Valarie Whitner to replace her siding; repaint her gutters, downspout and foundation; and put up screens or storm covers outside every window and blinds or curtains on the inside.

And that was before the list of demands moved on to her roof, fence and yard.

Ms. Whitner, 57, who works nights at a hospital, said she and her longtime partner felt swamped beneath the costs of paying for the city-mandated repairs and for fees, fines and court costs, which her lawyers say included at least $2,400 in violations. She took out a high-interest payday loan, which she still owes hundreds of dollars on and calls her "Pagedale money."

"It was horrible," Ms. Whitner said the other day from her living room, which she has decorated with do-it-yourself vases and paintings. "Pagedale just kept coming back to us, bothering us. At some point, this is all just a way for the city

In the aftermath of the fatal shooting of an unarmed teenager named Michael Brown by a white police officer in Ferguson, residents in this region described a pattern of mounting traffic fines, fees and arrests in the 90 municipalities that make up St. Louis County. Many such abuses were described in a scathing Justice Department report about Ferguson.

But the problems facing Ms. Whitner in Pagedale represent another issue: what many residents consider the abusive levying of fines or fees for minor nontraffic ordinances, often involving unsightly lawns or houses.

On Wednesday, lawyers from the Institute for Justice, a libertarian public-interest firm based in Arlington, Va., filed a civil rights complaint against Pagedale, which like Ferguson is in north St. Louis County. The complaint, filed in United States District Court for the Eastern District of Missouri, accuses the city of violating due process and excess-fines protections in the Constitution by turning its code enforcement and municipal court into "revenue-generating machines" to go after residents.

The complaint, which seeks class-action status, calls for an injunction against the city's reliance on such fines.

"We hope that if the court agrees with us, the residents of Pagedale will no longer be treated as walking cash machines by their city government and that the city will limit its regulatory authority to things that actually affect health or safety," said William R. Maurer, the managing attorney of the Institute for Justice's office in Washington State. The three named plaintiffs in the lawsuit include Ms. Whitner and her partner, Vincent Blount.

Sam Alton, the city attorney for Pagedale, said the city strongly disagreed with any assertion that it had pursued housing violations to make money. The portion of revenue the city derives from such tickets is small, Mr. Alton said, adding: "It's got nothing to do with driving up revenue. And it's got everything to do with making the properties code compliant and safe."

After the Justice Department's report, which asserted that Ferguson was using law enforcement to generate revenue for its budget, Missouri lawmakers enacted legislation that lowered a cap on how much of a city's revenues may come from traffic fines; in St. Louis County, cities were limited to 12.5 percent of their revenues.

But that law addresses only traffic violations, and some here worry that St. Louis County municipalities are turning to nontraffic fees and fines to make up the lost revenue. In the case of Pagedale, Mr. Maurer said he believed the city had begun doing that years ago when an earlier limit on traffic revenues was imposed. In the mid-1990s, the traffic-fine cap had been 45 percent until legislation began gradually reducing it.

"I think it's appropriate for policy makers to be mindful that there may be another wave of profiteering that manifests itself in a different form, and continues to create a cycle of poverty," Eric Schmitt, a Republican state senator who had pressed for the tougher limits on traffic fines, said in an interview. "If we see that, all options are on the table."

The practice of many St. Louis County municipalities of using traffic and nontraffic fines and fees to finance their budgets has also led to calls for some of those towns to consolidate operations as a means of reducing government costs. A commission assigned by Gov. Jay Nixon to study the underlying causes of the Ferguson unrest issued a long list of recommendations that included consolidating some of the 60 police departments and 81 municipal courts that serve the county.

Residents here say leaders in Pagedale, a predominantly black city of trim homes and about 3,300 people a few miles south of Ferguson, pride themselves on the city's appearance and on a recent burst of new development, which includes a grocery store and a movie theater that was set to open this week. Some spoke with pride of the city's Police Department and carefully kept sidewalks.

Yet in recent years, some here say, warning notices have begun appearing on house after house. In 2013, the city generated 17 percent of its $2 million in revenue from all fines and fees, documents show, though Mr. Alton said the portion was lower now. According to an article in The St. Louis Post-Dispatch that first described the rise in nontraffic cases in the region's municipalities, Pagedale officials issued 495 percent more tickets and citations unrelated to traffic in the years since 2010. City officials dispute that claim, saying the increase was smaller.

To hear residents here tell it, the violations can seem endless: having a wading pool in front of the front line of the house; having a dish antenna on the front of the house; wearing pants below the waist in public; having a hedge above three feet in the front yard.

Mildred Bryant, who has lived here for nearly 47 years, got a warning letter in May. Her house is old, she says, but not unsafe. Still, she was given no more than 30 days to fix a dozen violations, the letter said, or face a court summons.

"I've never really gotten in trouble before," said Ms. Bryant, 84, the third plaintiff in the class-action lawsuit. "I wasn't sure what to think. What is this all about all of the sudden? Is it about wanting more money?"

Ms. Bryant said she found several of the violations baffling, not to mention beyond her limited retirement income. "All windows need screens and window treatment such as blinds and or matching curtains, slats, etc.," the letter said. She also was ordered to repaint her porch and building foundation, "touch up paint or repaint entire house," cut back weeds and "treat fence line with brush killer."

In the months since, Ms. Bryant said, her sons have helped her try to meet the requirements.

Mr. Alton said that the city was working with Ms. Bryant to help her get her home up to code, as it is with other residents. She has not been fined, only warned. The point, Mr. Alton said, is to make sure properties are safe and code compliant, not to collect money.

"You have a city that's trying to live within the law and to make the city nice for its residents and make its properties safe," he said.

THE NEW YORK TIMES

By MONICA DAVEY

NOV. 4, 2015

U.S. Voters OK 81.6 Percent of Bonds in Tuesday Elections.

(Reuters) – U.S. voters gave the green light on Tuesday to the sale of $18.9 billion or 81.6 percent of the about $23 billion of bonds cities, schools, parks and other issuers in the municipal debt market placed on ballots, according to results on Thursday compiled by data company Ipreo.

Nearly $3.2 billion of proposed bond issuance was rejected by voters while election results for about $1 billion of bond issues were still pending, Ipreo data showed.

Chris Mier, a muni analyst at Loop Capital Markets, said while the approval rate was a little higher than in recent years, the amount of bonds put up for voter approval has been dropping from a peak of over $100 billion in 2006.

The biggest issue winning approval was $1.6 billion of bonds for the Dallas Independent School District, while the biggest single referendum to lose was $287 million of bonds for a courthouse project in Travis County, Texas. Voters in Arizona’s Pima County rejected seven bond referendums totaling $815.7 million.

Issuance of muni bonds in 2015 totaled $332.5 billion as of the end of October, up 32.9 percent from the same period in 2014, according to Thomson Reuters data.

By REUTERS

NOV. 5, 2015, 5:30 P.M. E.S.T.

(Reporting By Karen Pierog; Editing by Bernard Orr)

House Committee Approves Bill to Classify Investment Grade Munis as High Quality Liquid Assets.

On November 3, 2015, the House Financial Services Committee approved HR 2209, bipartisan legislation that would require federal regulators to classify all investment grade municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, which classifies foreign sovereign debt securities as HQLA while excluding investment grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

The next stop for HR 2209 is the House floor, but the date for its consideration has not been determined yet. GFOA is urging its members to send letters to their congressional delegations urging support for this bill. A draft letter has been developed for your use which is available here. Please reach out to your House members today and urge them to support HR 2209.

GFOA

Thursday, November 5, 2015

- Treasury, IRS Seem Open to Changes to Proposed Issue Price Rules.
- Orrick: Another Round of Favorable SEC Settlements, But Only for Underwriters that Self-Reported.
- Municipal Bond Regulator Pushes SEC for Direction on Bank Loans.

- Foley & Lardner: Recent MCDC Settlements Provide Guidance Concerning Scope of Materiality in Continuing Disclosure Obligations.
- MSRB Mandates Regulated Entity Participation in Business Continuity Testing.
- IRS Official Tells Issuers to Monitor Compliance.
- Mixed Use Projects, Public/Private Partnerships and Anticipatory Remedial Actions: Applying the New IRS Regulations.
- *Borders v. City of Atlanta* – Supreme Court of Georgia holds that members of city defined benefit pension plans did not acquire vested contractual rights to plans unaltered by increase in annual contributions, and therefore city ordinance increasing members' annual contributions did not breach members' employment contracts or violate impairment clause of state constitution.
- And finally, Great Moments in Air Quotes is brought to you this week by *Brown v. City of Hartford*, which included the following, "Although the court found the plaintiff to be credible as to how 'he saw things,' the plaintiff's view of the facts did not conform to 'the reality of the facts.'" Is there a patron saint of the sincerely delusional? If not, there certainly should be.

REFERENDUM - ARIZONA

Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna

Court of Appeals of Arizona, Division 1 - September 18, 2015 - P.3d - 2015 WL 5474447 - 721 Ariz. Adv. Rep. 33

Citizen filed application for writ of mandamus seeking to compel city and city clerk to accept and file referendum petitions challenging the city council's approval of a resolution and settlement agreement, under which city agreed to drop its opposition to Indian tribe's proposed casino project on land contiguous to city's border. The Superior Court denied the application. Citizen appealed.

The Court of Appeals held that:

- Provisions of resolution unrelated to settlement agreement were not legislative acts subject to referendum;
- Settlement agreement was not referable; and
- City clerk had authority to reject referendum petitions.

Provisions of city council resolution that affirmed or acknowledged prior resolutions of the council, expressed support for Indian tribe's proposed gaming project on land contiguous to city's border, and urged the State and its representatives to withdraw their opposition to the project, reflected the council's changed position and did not amount to "legislation," and thus provisions were not subject to referendum. Resolution merely reflected city council's changed position as to the proposed gaming project.

City council's approval of settlement agreement between city, Indian tribe, and gaming enterprise was not "legislation" subject to referendum, although the agreement was a substantive measure that obligated the city to construct infrastructure for the benefit of the gaming project. Council determined that it was in the city's best interests to stop its challenges to the tribe's proposed gaming facility and to end the disputes between them, city's agreement to initially fund off-site infrastructure was a non-referable administrative act, and allowing city's voters to control litigation would result in chaotic and absurd result if settlement agreement was later rejected by voters.

City clerk had authority to reject referendum petitions challenging city council's approval of a resolution and related settlement agreement in support of construction of a casino on land contiguous to city's borders, taken in trust by the Secretary of the Department of the Interior on behalf of Indian tribe, although statute governing challenges to a legislative measure via referendum couched clerk's duties in response to a petition in terms of what the clerk "shall" do in response. Petitions professed to challenge a non-legislative act of the city council, and statutory scheme and relevant constitutional provisions revealed that clerk had authority to reject petitions challenging non-legislative and non-referable acts.

MUNICIPAL CODE - CONNECTICUT

Brown v. City of Hartford

Appellate Court of Connecticut - October 27, 2015 - A.3d - 160 Conn.App. 677 - 2015 WL 6142877

Property owner brought action against city, alleging claims for negligence and nuisance, violations of city code, and denial of due process and equal protection after city demolished porches and stairways that a city building inspector determined were in immediate danger of falling so as to endanger life.

The Superior Court denied property owner's motion to disqualify city's office of corporation counsel, and following a bench trial rendered judgment for city. Property owner appealed.

The Appellate Court held that:

- Emergency provision of city code did not violate property owner's due process rights on the basis it did not contain an appeal provision;
- Superior Court did not abuse its discretion by denying property owner's motion to disqualify the city's office of corporation counsel;
- Property owner, through counsel, waived his right to a jury trial;
- Property owner did not have a due process right to prior notice and a pre-deprivation hearing before city demolished outside stairways and porches;
- Superior Court did not err by failing to give preclusive effect to mayor's opinion that city violated property owner's right to due process;
- Superior Court did not abuse its discretion by allowing building inspectors to testify as to their observations of property owner's premises; and
- Evidence was insufficient to support property owner's claim for pecuniary damages.

MUNICIPAL CORPORATIONS - CONNECTICUT

Brusby v. Metropolitan Dist.

Appellate Court of Connecticut - October 20, 2015 - A.3d - 160 Conn.App. 638 - 2015 WL 5949276

Landowner brought action against municipal corporation that provided her and other customers with potable water and sewerage services, alleging that its negligent acts caused her to suffer personal injuries and damages to her property as the result of raw sewage entering into and flooding her basement.

The Superior Court entered summary judgment in favor of corporation. Landowner appealed.

The Appellate Court held that:

- Material fact issue regarding whether provision of sanitary sewer services was a proprietary function precluded summary judgment;
- Corporation's allegedly negligent acts or omissions fell under discretionary act exception;
- Landowner was not an identifiable person subject to imminent harm;
- Continuing course of conduct doctrine was not applicable;
- Statute of limitations began to run on landowner's claim when second flooding event occurred; and
- Tort statute of limitations applied to contract claims.

EMPLOYMENT - GEORGIA

[Dowdell v. Fitzgibbon]

Court of Appeals of Georgia - October 23, 2015 - S.E.2d - 2015 WL 6396156

Following county personnel board's decision to suspend, rather than terminate, county tax assessor, the assessor filed petition for writ of certiorari. The Superior Court reversed. Assessor filed application for discretionary appeal.

The Court of Appeals held that omission of certified copy of relevant personnel regulations in record required reversal.

On discretionary appeal from superior court's reversal of a decision by county personnel board to suspend tax assessor's employment with county board of assessors rather than terminate him, omission of certified copy of relevant personnel regulations in record required reversal. Although copies of the relevant regulations appeared in certified copy of proceedings before the board, which were then transmitted to the superior court, a certified copy of the regulations was neither filed with nor tendered to the superior court, and thus Court of Appeals could not take judicial notice of the regulations.

PENSIONS - GEORGIA

[Borders v. City of Atlanta]

Supreme Court of Georgia - November 2, 2015 - S.E.2d - 2015 WL 6630457

Members of defined benefit pension plans brought class action against city for breach of contract and unconstitutional impairment of contract, requesting declaratory and injunctive relief, after city enacted ordinance increasing members' prospective annual contributions to plans.

The trial court granted summary judgment to city. Members appealed.

The Supreme Court of Georgia held that:

- City's provision of retirement benefits must be read in conjunction with local law, and
- Members did not acquire vested contractual rights to plans unaltered by increase to contributions.

A municipal corporation's provision of retirement or pension benefits to its employees must be read in conjunction with the terms of local law and ordinances, that is, that such provision of benefits be supplemented by local law such as that contained in the city code and the city charter.

Members of defined benefit pension plans did not acquire vested contractual rights to plans unaltered by increase in annual contributions, and therefore city ordinance did not breach members' employment contracts or violate impairment clause of state constitution. Even though there was no express statement in governing laws that plan members would not have vested rights, enrollment provisions of plans unambiguously stated that receipt of an member's executed enrollment or application card evidenced member's irrevocable consent to participate in the applicable retirement plan and that member would do so under plan's governing laws as then amended, or as might be amended in the future.

INVERSE CONDEMNATION - ILLINOIS

Sorrells v. City of Macomb

Appellate Court of Illinois, Third District - October 23, 2015 - N.E.3d - 2015 IL App (3d) 140763 - 2015 WL 6437333

Landowners brought action against neighboring developer for flooding that occurred on their property allegedly caused by the development, and amended complaint to add claim for inverse condemnation against city.

The Circuit Court granted city's motion to dismiss for failure to state a cause of action, and landowners appealed.

The Appellate Court held that flooding was not a taking by the city.

Flooding of landowners' property from neighboring development was not a "taking" by the city, despite claim that development's streets had been dedicated to the city and city had taken landowners' property in the form of a "drainage easement" for the drainage of its streets, where development was not a public property, water allegedly invading the property was drainage from two storm water detention basins or other drainage basins rather than from the dedicated streets, and there was no claim that flooding was the intended or foreseeable result of the city's actions rather than that of the development.

EMINENT DOMAIN - MISSISSIPPI

Ward Gulfport Properties, L.P. v. Mississippi State Highway Com'n

Supreme Court of Mississippi - October 22, 2015 - So.3d - 2015 WL 6388832

Property owner brought action seeking injunction for State Highway Commission's alleged taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation.

The Circuit Court granted summary judgment for Commission. Owner appealed.

The Supreme Court of Mississippi held that:

- Owner's claims were not barred by res judicata;
- Owner's claims were not barred by collateral estoppel;
- Genuine issue of material fact as to whether seeking permit constituted categorical taking precluded summary judgment; and

- Genuine issue of material fact as to whether seeking permit constituted partial regulatory taking precluded summary judgment.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by res judicata. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, owner did not split claim, as it filed one action against Commission and another against entity, and subject matter before federal court was whether entity violated specific federal acts in issuing permit, while subject matter in state court was whether Commission's actions in seeking permit effected cognizable taking.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by collateral estoppel. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, causation issue decided by federal court was whether entity violated federal acts in issuing permit so that it could invalidate permit, while causation issue in state court was whether Commission's actions effectuated taking without just compensation, and any alleged wrongdoing by Commission was not necessary to resolution in federal court, just as entity's actions were not necessary to resolution in state court.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation was a permanent restriction cut short which left property owner without economically viable use of the property for the duration of the permit, as to constitute categorical taking, precluded summary judgment for Commission, in owner's action seeking injunction against Commission for alleged taking.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation constituted partial regulatory taking precluded summary judgment for Commission, in owner's action seeking injunction against Commission for alleged taking.
