Bond Case Briefs

Municipal Finance Law Since 1971

NABL: SEC Chair White Testifies in Support of Increased SEC Budget, Praises MCDC.

On April 12, U.S. Securities and Exchange Commission (SEC) Chair Mary Jo White testified before the Senate Appropriations Subcommittee on Financial Services and General Government in support of an increased budget for the SEC. Chair White made the case to the Senate Appropriations Subcommittee for President Obama's budget proposal to increase the SEC's Fiscal Year (FY) 2017 budget to $1.781 billion, in part to bolster enforcement resources for violations of Federal securities laws. In particular, the SEC has requested an additional 52 positions in the Enforcement Division to aggressively address misconduct. When questioned by Senator Coons (D-DE) on the SEC's enforcement actions, Chair White highlighted the Enforcement Division's work with the Municipalities Continuing Disclosure Initiative in protecting individual investors.

Chair White's testimony is available here.

A video of the hearing is available here.

Squire Patton Boggs: Tax-Exempt Stadium Financing? - There They Go Again.

Rep. Steve Russell, R-Okla., recently introduced a bill (H.R. 4838) in the House to prohibit tax-exempt financing of professional sports stadiums and for-profit entertainment facilities. This is only the most recent in a string of similar proposals, including by President Obama and former Senator Tom Coburn. In this case, tax-exempt financing would be prohibited for any "stadium or arena for professional sports exhibitions, games, or training" and for any "venue for any entertainment event (i) the live audience for which exceeds 100 individuals, and (ii) any net earnings from which inure to the benefit of an individual or any entity other than [the United States or any State or local governmental entity or certain tax-exempt organizations, including but not limited to 501(c)(3) organizations]," in each case if the facility is used for such purpose at least five days during any calendar year. (This post won't address the over-breadth of "entertainment facilities" included in this prohibition other than to note that, for example, many if not most public and private college arenas, theaters, etc. would be precluded from tax-exempt financing as a result of hosting performances, lectures, concerts, etc. provided by groups or individuals who are paid for their services.) The question considered in this post is not so much the propriety of permitting tax-advantaged financing of these sports and entertainment facilities but whether it is good policy to create targeted rules for certain facilities that may currently be out of favor rather than to rely on the fundamental principles of industrial development bond/private activity bond status that have limited the availability of tax-exempt financing for facilities with private involvement for almost 50 years.

Under current law, professional sports stadiums and arenas generally can be financed on a tax-exempt basis if the private security/payment limit is not exceeded. Some proposals to preclude these financings would impose a special rule to eliminate the private security/payment test for these facilities so that private business use by the teams alone is enough to prohibit tax-exempt financing.

In contrast, Rep. Russell proposes an explicit prohibition against tax-exempt financing of professional sports and entertainment facilities. Both approaches reflect a fundamental departure from the private use and security/payment tests that have established the line between tax-exempt governmental financing and taxable governmental financing since 1968. As stated in Conference Report No. 1533, page 32, accompanying H.R. 15414, which first rendered interest on industrial development bonds taxable in 1968:

> On March 23 of this year the Internal Revenue Service published proposed regulations providing that the interest paid on industrial development bonds described in the proposed regulations would no longer be considered to be exempt under section 103. The proposed regulations represented a change in the position previously taken by the Internal Revenue Service and were based on the theory that industrial development bonds described in the proposed regulations were not "obligations of a State * * * or any political subdivision" within the meaning of section 103 since the primary obligor was not a State or political subdivision.

This underlying theory – that the governmental issuer was not the primary obligor of the bonds — explains why the private security/payment test has consistently been one of the two tests for the fundamental distinction between governmental bonds and private activity bonds (formerly known as industrial development bonds). (Of course it has long been recognized that even where the proceeds of state or local bonds are loaned to a private person and the loan payments are the sole source of payment of the bonds, the state or local issuer of the bonds is respected as the issuer for federal income tax purposes. Nevertheless, the above theory explains the presence of the private security/payment test.)

The basic question of whether private activity bond status should rest on both a use test and a security/payment test was seriously reconsidered in 1985-'86 when bills preceding the Tax Reform Act of 1986 were progressing through Congress. The House bill, H.R. 3838, would have eliminated the private security/payment test, explained as follows:

> The committee is concerned . . . because under present law, a significant amount of bond proceeds from a governmental issue are being used in many cases by nongovernmental persons for activities which have not been approved specifically by Congress for tax exempt financing. . . . [G]overnmental bond issues are intentionally structured to fail the present-law IDB security interest test, when the bonds otherwise would be considered IDBs and subject to the restrictions that Congress has placed on such conduit financing for nongovernmental persons or would be prohibited altogether. The committee believes that this diversion of governmental bond proceeds to nongovernmental users should be limited . . . .
> H.R. Rep. No. 99-426, page 515.

The Senate Finance Committee recognized the same concern but addressed it differently, by subjecting both "direct and indirect" payments by a private user to the private security/payment test:

> The bill clarifies that both direct and indirect payments to an issuer of bonds made by a private user of bond-financed facilities are considered when determining whether the security interest test . . . is satisfied. Thus, payments by such private users of bond-financed facilities equal to or exceeding 25 percent [now 5%/10%] of debt service result in the bonds being IDBs, whether or not the payments are formally pledged as security or are directly used to pay debt service on the bonds.

Rep. No. 99-313, p. 831.

The Conference Committee generally adopted the Senate proposal, with an even more inclusive definition of private security/payments. The important point is that Congress carefully reconsidered the propriety of the private security/payment test and determined to retain it. (It is also worth noting that this Congress eliminated the previous ability, preserved in H.R. 15414 mentioned above, to use tax-exempt industrial development bonds to finance sports facilities. Thus Congress chose to eliminate the advantageous treatment of these facilities and to subject them to the same tests generally applicable to other facilities used by private business.)

So is the argument here that today's Congress is somehow bound by the actions of Congress 30 or 48 years ago? Of course not. The point is that this most fundamental concept in the tax-exempt bond rules – the definition of private activity bonds — has been carefully addressed twice during the existence of the tax-exempt bond rules and each time Congress has concluded that the private security/payment test, together with private business use test, are necessary. Maybe it did so in each case because of the resemblance of state or local bonds to private debt when a private person is effectively paying a significant portion of the debt service. Or maybe Congress didn't feel it should intrude on state or local governments that have decided to use their own tax or other revenues to subsidize a private business activity. Likely, given the overlap in these concepts, it was a combination of the two.

In light of this history, if state or local governments can issue tax-exempt bonds to finance other subsidies to private business, why should the federal government single out sports and entertainment facilities for worse treatment? Stated otherwise, why should the federal government substitute its judgment for that of the local government by picking winners and losers. It might be argued that the cost of the subsidy to the federal government gives it the right to choose. While undoubtedly true as a legal matter, it must also be recognized that the local government is making the policy decision to subsidize the activity despite its cost in doing so (which is much greater than the cost to the federal government since it won't be receiving material payments from the private entities).

While professional sports facility financings have suffered much negative publicity in recent years, the fundamental question of whether these facilities are more or less worthy of local government subsidies relative to other private activities seeking local government subsidies is a question that is and should remain the decision of the local government. Furthermore, to the extent that the federal government has historically meddled in the affairs of local government, as described above, it has repeatedly determined that the private security/payment tests properly preserve the interests of the federal governments. The historic tests for tax-exempt status – the private business use test and the private security/payment test – should apply to sports and entertainment facilities, just as they apply to all other facilities used in private business.

Squire Patton Boggs

The Public Finance Tax Blog

Robert J. Eidnier

USA April 14 2016

GASB Issues Pension Guidance Addressing Issues Raised by Stakeholders During Implementation.

The GASB recently issued guidance addressing practice issues raised by stakeholders during implementation of the Board's pension accounting and financial reporting standards for state and local governments.

GASB Statement No. 82, *Pension Issues*, addresses:

- Presentation of payroll-related measures in required supplementary information
- Selection of assumptions and the treatment of deviations from guidance in Actuarial Standards of Practice for financial reporting purposes, and
- Classification of payments made by employers to satisfy plan member contribution requirements.

The Statement is designed to improve consistency in the application of the pension standards by clarifying or amending related areas of existing guidance.

S&P Report Discusses Cost To State, School Districts Of California's Teacher Pensions.

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

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

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

"Standard & Poor's generally views AB 1469 favorably because it should stabilize CalSTRS' long-term funding situation," said credit analyst Gabriel Petek. "At the same time, we also view the contribution increases it calls for as large enough to have material fiscal implications. Funding the higher contributions could strain the state's budget—or those of the local school districts. We can envision plausible circumstances in which the added fiscal pressure caused by the higher contributions could weaken credit quality. At this point, however, it's unclear whether—or if—the higher contribution rates will stress the finances of either the state or any particular school district to this degree.

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

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

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

The report is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com.

If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@standardandpoors.com.

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

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Moody's Report Tracks P3 Credit Risk, Confidence In the U.S., Canada and Europe.

Interest in using public-private partnerships to develop public projects is slowly growing in the United States, remaining steady in Canada but declining in Europe, Moody's Investors Service has found. The ratings agency also concluded that variations in approaches to financing P3s from one region to the next can affect P3 credit ratings.

Moody's publicly rated 10 Canadian P3s, seven in Europe and three in the United States, in a new report, (paywall) which "illustrates a return to growth in demand for the asset class," Moody's said.

However, different financing approaches can affect the perceived creditworthiness of projects, the agency pointed out

"We've seen some similarities across the regions in how P3s structure their credit profiles and use insurance projects to mitigate risk. But overall, local differences remain very important and lead to material differences between projects from a credit perspective," said Catherine Deluz, Moody's senior vice president.

In Canada and Europe, private partners decide what level of bonding is required, based on the project's risks and the lender's requirements. Many U.S. state governments, on the other hand, require private partners to post material performance bonds to support P3 obligations.

Moody's also found that five projects in the United States and Europe used a deferred draw bond to mitigate the cost of holding an asset that is associated with most bond funding and the agency expects to see more use of these bonds in the months ahead.

Moody's noted that 83 percent of recently rated P3s have received government funding during the construction phase and that an increasing number of municipalities and local authorities are procuring projects through P3s.

Project risks Moody's attributes to government partners include the potential for an agency that is making availability payments to default or make late payments and potential financial uncertainty governments that rely on gas and oil revenues or financial institutions with large oil and gas portfolios face.

The weakening of debt structures, particularly in North America, is yet another risk the report singled out. However, all of the above-mentioned weakening trends may be offset by increased confidence in P3s, based in part on their low level of default, the agency concluded.

NCPPP

April 14, 2016

What Is Lost When a State Takes Over a City.

The ruining of Flint's water after the state stepped in holds lessons — and difficult questions — for governments everywhere.

The Flint water crisis has captured national attention as a spectacular government failure. A Michigan city was poisoned through public management, with breakdowns at the local, state and federal levels. But in this case, the local and state levels were the same, since Flint was then controlled by state-appointed emergency managers (EMs) with extraordinary powers. Now this aggressive state approach to local governance has been identified as a key factor in the crisis by Gov. Rick Snyder's Flint Water Advisory Task Force in its final report.

While other factors were identified too, including oversight failure by the U.S. Environmental Protection Agency, the task force report's focus on the EM law is sure to drive mounting pressure for reform. As other states try to help their own struggling communities, Michigan's laboratory of democracy offers important lessons. And it raises a number of questions for which there are no simple answers.

Since the U.S. Constitution does not mention local government, states are empowered to create local governments and endow them with certain powers. Michigan's approach to local government finance is among the most restrictive in the nation, in more ways than one. On the front end, the state cut revenue sharing to local governments more than any other state between 2002 and 2012. Michigan's constitution also places severe caps on local government's ability to raise funds locally. Indeed, recent research at Michigan State University concludes that, along with state-imposed spending pressures, Michigan's approach to funding local government "incubates" fiscal stress.

Meanwhile, on the back end, Michigan's emergency-manager law is the most aggressive in the nation in terms of state takeovers of local government. Michigan's current law allows an EM to set aside all decision-making power of local elected officials. EMs can also terminate labor contracts, sell off a jurisdiction's assets, and more. In addition to Flint, in recent years Michigan EMs have controlled Benton Harbor, Detroit, Hamtramck, Pontiac and other cities. School districts also have had EMs in charge.

The ability of an EM to completely sideline local elected officials has led to charges that the law is undemocratic, since the voters' choice for mayor and council members can be effectively voided. Gov. Snyder — who championed the EM law — argues that since he was elected by the citizens and emergency managers ultimately report to him, this is still democratic governance, if less direct.

Michigan's voters aren't so sure about that. They overturned a previous and similar version of the law in the fall of 2012, but the state responded by rushing the current, slightly modified, version through a lame-duck session just weeks later.

But while citizens opposed the law, a [2012 Michigan Public Policy Survey] of local-government leaders conducted by the University of Michigan's Center for Local, State and Urban Policy found some surprising support for the state's aggressive approach. Among those who knew of the law, 38 percent supported it while 30 percent opposed it. Perhaps most surprising, the greatest support (68 percent) came in the state's largest jurisdictions, the very places where EMs are most likely to be installed.

One key feature of the law — the EM's power to modify or terminate collective-bargaining agreements with public employees — hints at why leaders in the biggest cities are more likely to support it. In the smallest jurisdictions, 38 percent support this feature of the law, but these jurisdictions are the least likely to have unions. By comparison, in the state's largest jurisdictions, where employee unions are common, 74 percent of local leaders support an EM's ability to overturn union contracts. This may allow local leaders to play the good cop while the state and EM play the bad cop in dealing with union contracts.

Back to the Flint water crisis. Gov. Snyder's task force found that EMs made the decision to switch to the Flint River (and to not switch back later to Detroit water when pushed to do so by local leaders and citizens), and it has called for changes. The task force notes that when an EM is installed, the local democratic system of checks and balances is lost.

What matters most here? In retrospect, that's easy: the health, safety, and welfare of the citizens, precisely what the state of Michigan failed to protect. But beyond that, what is most important? The right of voters to elect their own local leaders? Local governments' fiscal health and sustainability? Checks and balances in governance? The right of the state to control its local governments when things have gotten too far off-track?

These are tough questions, with no easy answers. Michigan has been a laboratory testing these issues, and it has made far-reaching mistakes in the process. Across the country, other government leaders owe it to their own citizens to learn the lessons of Flint.

GOVERNING.COM

BY TOM IVACKO | APRIL 13, 2016

Municipal Bond Sales Poised to Accelerate as Redemptions Rise.

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

States and localities plan to issue $13.8 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $11.7 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

California plans to sell $1.49 billion of bonds, Texas Transportation Commission has scheduled $615 million, Louisiana will offer $359 million and Texas's Lewisville Independent School District will bring $331 million to market.
Municipalities have announced $8.68 billion of redemptions and an additional $10.8 billion of debt matures in the next 30 days, compared with the $17.4 billion total that was scheduled a week ago.

Issuers from California have the most debt coming due with $1.97 billion, followed by Michigan at $1.21 billion and New York with $997.4 million. State of California Department of Water Resources Power Supply Revenue has the biggest amount of securities maturing, with $669.1 million.

Fund Flows

Investors added $1.46 billion to mutual funds that target municipal securities in the week ended April 6, compared with an increase of $1.4 billion in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt fell by $50.4 million last week, reducing the value of the ETFs by 0.24 percent to $21.1 billion.

State and local debt maturing in 10 years now yields 94.803 percent of Treasuries, compared with 92.75 percent in the previous session and the 200-day moving average of 96.982 percent, Bloomberg data show.

Bonds of Ohio and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Ohio's securities narrowed 4 basis points to 1.84 percent while California's declined 3 basis points to 1.89 percent. Puerto Rico and Connecticut handed investors the worst results. The yield gap on Puerto Rico bonds widened 192 to 12.69 percent and Connecticut's rose 12 basis points to 2.26 percent.

This story was produced by the Bloomberg Automated News Generator.

Bloomberg Business

by Ken Kohn

April 18, 2016 — 4:33 AM PDT

Butler Snow: Support the Tax-Exemption for Municipal Bonds.

Please ask your Congressmen to join the bipartisan House Municipal Finance Caucus. Why? What is this caucus? This caucus provides support for the federal tax-exemption for municipal bonds by directly opposing the President's cap of tax-exemption at the 28 percent bracket. The two Congressmen who established this caucus are Randy Hultgren (R-IL) and Dutch Ruppersberger (D-MD). Your Congressmen need to join because this caucus will help support the building of important infrastructure needed in your areas, and having this tax-exemption will allow more projects to come to fruition.

How to get your Congressmen to join? You have to ask them. Congressmen hear from their constituents on important matters, and this tax-exemption is important. Your congressmen need to know that this caucus can help area build the infrastructure you need to support and help your community grow. Contact your Congressmen and have them contact Randy Hultgren or Dutch Ruppersberger to join.

You may want to use the following links to find contact information for your Congressional representatives:

https://www.usa.gov/elected-officials

https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1036

https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1035

Last Updated: April 10 2016

Article by Blake C. Sharpton

Butler Snow 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.

Bloomberg Brief Weekly Video - 04/14

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

Watch the video.

April 14, 2016

New York City Public Pension Pulls Hedge Fund Investments.

NYCERS joins a growing list of public pension funds opting to drop hedge funds

The board of trustees for New York City's biggest public-employee pension fund voted Thursday to pull its investments from hedge funds, joining a growing number of pension funds that have taken this step.

"The trustees believe that this new structure will help the fund construct a responsible portfolio that meets our long-term investment objectives," said New York City Comptroller Scott Stringer, the board's investment adviser, in a statement after the vote.

The resolution authorizes asset managers for the New York City Employees' Retirement System, known as NYCERS, to liquidate its hedge fund investments and not make any future ones.

The trustee board includes Mr. Stringer, a representative for New York City Mayor Bill de Blasio, city Public Advocate Letitia James and others.

NYCERS, which bills itself as the nation's largest pension fund for municipal employees, has about $55 billion in assets for more than 300,000 individuals. Of that total, about $1.4 billion is invested in hedge funds. Among the hedge funds that have managed their money are D.E. Shaw & Co. and Fir Tree Partners. They didn't respond to requests for comment on Thursday.

New York City's other four pension funds have been undergoing a review of their asset allocation for several months. Those funds represent teachers, police, firefighters and the board of education.

The move marks a victory for liberal advocates and labor unions that have organized over the past year against hedge funds. A conglomerate of such advocates have operated under the banner the Hedge Clippers, and staged a protest outside a hedge fund-linked political fundraiser in New York, among other things.

Those advocates scored another win earlier this month when New York Gov. Andrew Cuomo signed a $15 minimum wage into law, backed by labor and liberal activists.

The vote on Thursday came after other large public pension funds in California and Illinois have taken similar steps, and a large pension fund in Ohio recently took testimony on the topic.

The effort to divest from hedge funds is backed by several large labor unions, including the American Federation of Teachers.

THE NEW YORK TIMES

By MIKE VILENSKY and BRODY MULLINS

Updated April 14, 2016 7:06 p.m. ET

Write to Mike Vilensky at mike.vilensky@dowjones.com and Brody Mullins at brody.mullins@wsj.com

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Puerto Rico Aims to Appease Congress With New Debt Proposal.

Puerto Rico proposed a new plan on Monday to restructure its debt, offering some creditors better terms than an earlier plan but falling well short of winning broad support.

The plan was announced as members of Congress in Washington struggled with a momentous decision: whether and how to give Puerto Rico extraordinary powers to wipe out debt. Conservative Republicans have resisted this idea, but major defaults are looming. Last week lawmakers in Puerto Rico stepped up pressure on Congress to act quickly by suddenly authorizing the island's governor to halt payments on $72 billion in debt.

If the threat of a debt payment moratorium was Puerto Rico's stick, the restructuring offer on Monday appears to be a carrot. Puerto Rico said it had found a way to make debt payments of $1.85 billion a year, compared with the $1.7 billion a year it had offered before.

“The commonwealth is in crisis, and the fact is that we will only be able to address these issues by working together,” Victor A. Suarez, Puerto Rico's secretary of state, said in a statement. “Our commitment to this is underscored by our willingness to listen to our different creditors and work to meet their needs."

The new restructuring plan covers $49.3 billion of Puerto Rico's total debt, most of which is in the form of municipal bonds. It calls for creditors to accept $32.6 billion to $37.4 billion up front by exchanging existing bonds for two new classes of bonds. The offer is up from a previous offer of $26.5 billion.

Puerto Rico's Government Development Bank, a crucial part of the local economy, risks defaulting on $422 million in debt payments due May 1, and the island faces $2 billion in payments on debt in July. Lawmakers both in San Juan and Washington have been working to prevent a disorderly collapse of the island's finances. Congress is working on a revised proposal to help Puerto Rico restructure under the supervision of a federal oversight panel.

The Treasury secretary, Jacob J. Lew, speaking at the Council on Foreign Relations on Monday, said, "There are still some open issues."

"There are a lot of details, but when you get down to the bottom line the question to us is: Does that restructuring authority work? It has to work or it's not going to be acceptable," he said. "It can't be something that you put a label on but in the marketplace it doesn't work." He did not comment on Puerto Rico's new proposal.

Puerto Rico began presenting its first restructuring proposal to creditors in January. A number of them said they considered it unacceptable; some have tried with little success to interest Puerto Rico in counteroffers.

Particular resistance has come from creditors who hold bonds backed by Puerto Rico's most ironclad pledges. General obligation bonds, for example, are specifically guaranteed by the island's constitution, and some holders argue that anything less than full, timely repayment would be unconstitutional.

Puerto Rico has taken the position that all types of creditors must sacrifice, however. The new offer announced on Monday reflects that position. General obligation bonds held by investors who do not live on the island would get a recovery rate of 74 percent under the new proposal. Holders of sales-tax-backed bonds would get 57 percent; and holders of bonds issued by the Government Development Bank would get just 36 percent.

Puerto Rico's financial crisis, and the solutions sought by Washington, could reverberate throughout municipal finance. A potential sticking point is that Puerto Rico's other long-term commitments, such as the pensions of retired government workers, would not be reduced under the new restructuring plan. Pensions do not currently have top legal priority in the order of creditors seeking payment, and some lawmakers think that switching around credit priorities for Puerto Rico would send a shock through the capital markets, making it harder for other states and cities to borrow.

The new proposal calls for current bondholders to trade in their holdings for two new types of bonds. Bondholders would get more or less of each type, depending on the priority of the bonds they now hold. Those with the highest-priority bonds would get more of the first type, which offer less monetary value but greater certainty of repayment.

The first type would be a "base bond" with a total face value ranging from $32.6 billion to $37.4 billion, depending on whether bondholders in Puerto Rico opted in or took advantage of the special offer available to them alone.

The new base bonds would start out paying 1.1 percent interest for the coming fiscal year. (Under

Puerto Rico’s previous offer, interest payments would not have started until a year later.) The interest rate would then rise gradually to 5 percent in 2021, the same year principal repayments would start.

Bondholders living in Puerto Rico would, however, have the chance to recover more of their initial investment if they were willing to wait. Instead of trading in their holdings for the regular base bonds, they could opt for “local holder base bonds,” which would have a value equal to the face amount of the bonds being handed over. The local holder base bonds would pay a fixed, 2 percent rate of interest over a longer period of time.

A summary of the proposal noted that Puerto Rico was seeking to “provide relief to those Puerto Ricans who live day-to-day off their interest payments,” and the government was also looking at other ways of helping them.

For investors not living in Puerto Rico, there would be only a chance of getting a full recovery. In addition to their base bonds, they would get a second type, called “capital appreciation bonds,” which would not offer any cash payments until after the base bonds had been fully repaid and it was clear how much of a loss each type of bondholder had suffered.

At that point, this second type of bond would start paying investors enough to make up for their losses over a long time.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

APRIL 11, 2016

New York Suburb, Officials Charged in Landmark Bond Fraud Case.

NEW YORK — An elected official of a New York City suburb was charged on Thursday with defrauding investors who helped finance a controversial minor league baseball stadium, in what authorities called the first criminal securities fraud prosecution involving municipal bonds.

Christopher St. Lawrence, the elected supervisor of Ramapo, New York, was charged in an indictment with securities fraud, wire fraud and conspiracy, as was N. Aaron Troodler, a former executive director of the non-profit Ramapo Local Development Corp.

In addition, the U.S. Securities and Exchange Commission sued Ramapo, the RLDC, St. Lawrence and Troodler, along with Town Attorney Michael Klein and Deputy Finance Director Nathan Oberman.

The case, filed in federal court in White Plains, New York, follows U.S. regulators’ push in recent years to bring civil actions against misconduct in the $3.7 trillion U.S. municipal bond market.

At a news conference in Manhattan, U.S. Attorney Preet Bharara called the Ramapo case a “landmark” first to result in criminal securities fraud charges, adding: “I suspect it will not be the last.”

St. Lawrence, 65, and Troodler, 42, pleaded not guilty during a court hearing on Thursday. Both were released on a $500,000 bond.

Authorities said bond investors lost millions of dollars because the defendants concealed Ramapo's deteriorating finances, caused in part by the $58 million cost of building the ballpark, which is home to the Rockland Boulders.

The costs to build what is now called Provident Bank Park came even though voters refused by a 70 percent margin to approve guaranteeing bonds to pay for its construction and St. Lawrence said later that private funds would be used, prosecutors said.

St. Lawrence and Troodler "kicked truth and transparency to the curb," Bharara said.

John Phelan, a lawyer for Ramapo and the RLDC, declined to comment. A lawyer for St. Lawrence did not respond to requests for comment, while Troodler's lawyer, Joseph Poluka, declined to comment beyond details of his client's plea.

Authorities said the fraud began in 2010, the same year voters overwhelmingly rejected a $16.5 million plan to build the ballpark, and lasted through 2015.

The SEC said Ramapo raised more than $300 million during that period, including $85 million of "new money," because the defendants hid financial strains that were also caused by the town's declining sales and property tax revenue.

Authorities said St. Lawrence once told colleagues to refinance some debt fast because "we're going to have to all be magicians" to meet the promises he made to an agency that was about to rate Ramapo bonds.

Bharara said the probe of the finances of Ramapo, which is 28 miles northwest of New York City and had a population of 126,595 as of the 2010 census, began with a whistleblower complaint.

The Federal Bureau of Investigation searched Ramapo's municipal offices in May 2013 after an audit by New York's state comptroller criticized the funding of the stadium and the cost to taxpayers.

In its lawsuit, the SEC is seeking, among other things, a court-appointed monitor for Ramapo and RLDC and an order restricting them from issuing bonds for five years unless they hire lawyers to review the accuracy of their offering documents.

By REUTERS

APRIL 14, 2016, 1:27 P.M. E.D.T.

(Reporting by Nate Raymond in New York; Editing by Lisa Von Ahn and Alan Crosby)

Slow and Steady Is Sexy Again: Investors Return to Munis.

NEW YORK — Boring? Give me more of that!

The municipal-bond market looks to be regaining its reputation for delivering reliable if unsexy returns, following several big swings since the financial crisis. It's remained sturdy in recent months, even as stocks and other types of bonds have jerked up and down. That has investors, mostly high income earners, once again pouring in dollars in search of safety.

Municipal bonds are issued by states and local governments to raise money to build the school down the street or expand the local sewer system. In exchange for funding projects meant to be good for the community, investors generally do not have to pay federal income taxes on the interest payments they receive. In some cases, they're also exempt from state and local taxes.

The largest municipal bond fund returned 2.9 percent last year, more than the largest stock fund's 0.3 percent. More importantly for twitchy investors, Vanguard's Intermediate-Term Tax-Exempt fund is on pace for its 10th straight month without a loss.

Demand has been strong enough that roughly $16.5 billion has flowed into municipal-bond mutual funds over the last year, according to the Investment Company Institute.

Contrast that with the $73.6 billion that left taxable bond mutual funds, in large part because investors were fleeing high-yield funds on worries about their riskiness. Stock funds had even faster rates of withdrawals.

Just remember that the reason for muni bonds' recent popularity is precisely because they're boring. Don't come in with expectations of getting rich quickly. Yields are low, which cap future returns, and their strong performance last year and so far in 2016 has pushed yields even lower.

"I don't think there's a lot of downside, but the upside is limited too," says Guy Davidson, director of municipal bond management at AllianceBernstein. "Muni funds can offer stability and income in a volatile world, but I don't think you should be preaching for excitement given these yields at the moment."

A DIFFERENT STRUCTURE

Yields are low for muni bonds relative to their history, and they can also be lower than taxable bonds with a similar maturity and credit rating. That's traditionally been the case because muni bonds' income is free of taxes.

Top income earners have a federal tax rate of nearly 40 percent, which means a taxable bond yielding 3 percent would generate the same spending power after taxes as a muni bond yielding just 1.8 percent. Many websites have online calculators that help investors figure out the "tax-equivalent" yield of their bond funds.

That's also why investors hold muni bonds in taxable accounts. If they were in a 401(k) or another tax-deferred account, their tax advantage would be wasted.

PAST SHOCKS

The muni bond market has historically been relatively sleepy. Then the financial crisis hit.

Municipal bond funds held up better than most investments, but the largest category of them still lost an average of 2.3 percent in 2008. Returns rocketed higher the next year, but another shock came in late 2010 and early 2011. That's when a high-profile prediction for a wave of municipal defaults sent investors running for the exits.

The default wave never materialized, but panic set in again in 2013 when worries spiked that interest rates could rise faster than expected. Since then, the muni bond market has dealt with more scares, like the recent debt crisis in Puerto Rico.

STAYING CHOOSY

It's not just Puerto Rico that has raised concerns. Investors are worried about Chicago and areas that have big pension obligations. Governments heavily reliant on revenue from the oil industry are also under pressure, following the collapse in the price of crude. The fear is that if local tax revenue craters, it will be difficult for the municipality to pay back investors.

But fund managers say the market sees these as isolated trouble spots. In the rest of the country, tax revenue is on the upswing due to the stronger economy. And many local governments slashed their expenses and held off on issuing debt following the financial crisis.

"Throwing out Chicago and Puerto Rico, muni credit is kind of as good as it's ever been," says Nick Venditti, portfolio manager at Thornburg Investment management. "It's very easy for a muni bond buyer to come into the market and avoid the Chicagos and Puerto Ricos and find more fundamentally strong credits."

POTENTIAL RISKS

Like any bond fund, a municipal-bond fund will fall in price as interest rates rise. So far, rates have remained low, but most expect them to eventually rise. If it happens slowly enough, the bigger income payments that higher rates would bring could offset price drops.

When assessing the market, muni fund managers also look at how much supply and demand exists for tax-free bonds. Supply hasn't grown as much as in the past, because local governments have been slow to borrow since the financial crisis.

Managers see the strength of demand as the bigger potential threat to future returns. The municipal-bond market is dominated by individual investors, rather than big institutional investors or hedge funds, and they have shown in the past that they can be quick to sell.

For now, muni bonds' steady returns mean demand has remained consistent and strong. Managers say they see few reasons for that to change, at least in the near term.

"I am expecting more of the same," says Regina Shafer, who runs municipal bond funds at USAA. "I think investors appreciate the stable market that municipals bring. We're steady as she goes."

By THE ASSOCIATED PRESS

APRIL 14, 2016, 4:41 P.M. E.D.T.

SIFMA Releases White Paper Recommending Improvements to Disclosure in the Municipal Securities Market.

New York, NY, April 12, 2016 – SIFMA today released a white paper on SEC Rule 15c2-12 which offers the industry's current perspective on the existing framework for disclosure in the municipal securities market and suggests ways in which the framework and related guidance for compliance could be improved to result in better disclosure for investors.

"SIFMA has long advocated for improved disclosure in the municipal securities market, and we are leading efforts for the industry to work with regulators on ways to improve the disclosure regime," said Kenneth E. Bentsen, Jr., SIFMA president and CEO. "Markets and market practice have evolved greatly since SEC Rule 15c2-12 was established. The SEC has said they want to revise and update the rule. When they take up this issue, we urge them to adopt our suggestions and revise the rule and interpretive guidance for the benefit of investors and market participants."

The Rule requires dealers, when underwriting certain types of municipal securities, to ensure that the state or local government issuing the bonds has agreed to provide certain information to the Municipal Securities Rulemaking Board about the securities on an ongoing basis, among other requirements. The Rule was first adopted 26 years ago, with subsequent changes related to continuing disclosure added 21 years ago. While amendments have been put into place since that time, market participants have raised several issues with the rule that may be outdated or could be more efficient.

Among SIFMA's recommendations is a proposal to assign to municipal advisors (MAs) responsibility for checking that statements in offering documents on competitive transactions are accurate when MAs are engaged by issuers to help prepare official statements. Underwriters of municipal securities have a responsibility to perform due diligence with regard to municipal official statements. However, underwriters' due diligence responsibilities on competitive transactions are reduced, since underwriters are not involved in producing official statements in these cases and generally have less time to perform due diligence. In order to ensure official statements are accurate and investors are appropriately protected, a MA should have primary responsibility for performing due diligence on official statements when they help prepare the document.

SIFMA's other suggested changes to the rule include:

- Update the collection of disclosure information to reflect the availability of information on the MSRB's EMMA system, including notification of ratings changes and provision of the final official statement to potential customers;
- Interpreting the "end of the underwriting" period to harmonize with the definition of "primary offering disclosure period" in MSRB Rule G-32; and
- Specifying a date on which annual financial information will be provided and harmonization with continuing disclosure agreements.

Release Date: April 12, 2016

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

- FINRA Regulatory Notice: Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market.
- Chapman and Cutler: MSRB Proposes Additional Exceptions for Trading Municipal Bonds Below Stated Minimum Denominations.
- MSRB To Weigh Complaints on Proposal to Determine Markups.
- NABL: MSRB Seeks Comment on Direct Purchase Disclosure.
- NABL Submits Recommendations for 2016-2017 Priority Guidance Plan.
- Squire Patton Boggs: Crossover Refunding – Does It Really Have to Come to This?
- Political Subdivision Politics.
- IRS: Understanding the Tax Exempt Bonds Examination Process.
- *District of Columbia v. Department of Labor* – Court of Appeals holds that lease and development agreements between the District of Columbia and private developers regarding privately funded mixed-use P3 development on property leased from District were not "contracts for construction," nor "public work," and thus Davis–Bacon Act's prevailing wage requirements did not apply to

project.

- And finally, this week's episode of Staggering Waste of Judicial Resources is brought to you by *Lira v. Greater Houston German Shepherd Dog Rescue, Inc.*, in which the Lira siblings spend $2,500 on a german shepherd they name (in the first sign of trouble) Monte Carlo. The Liras proceed to sink $10k on Monte's "training" – money well spent, as Monte subsequently releases himself on his own recognizance and flees the jurisdiction. The Liras launch a frantic search, only to be informed by the dog rescue zealots that Monte has been deemed abandoned. The dispute wends its way to the honest-to-god Supreme Court of Texas, which unleashes the hound. Speculation abounds as to how a 4-4 Supreme Court will rule.

WAGES & EMPLOYMENT - CALIFORNIA

City of El Centro v. Lanier

Court of Appeal, Fourth District, Division 1, California - March 29, 2016 - Cal.Rptr.3d - 2016 WL 1221948 - 16 Cal. Daily Op. Serv. 3386

Charter cities petitioned for writ of mandate challenging the statute which prohibits a charter city from receiving or using state funding or financial assistance for a public construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the state prevailing wage laws. The Superior Court denied petition. Cities appealed.

The Court of Appeal held that:

- Statute requiring charter cities to pay prevailing wages to receive financial assistance for public construction projects does not violate constitutional home rule doctrine, and
- Statute requiring charter cities to pay prevailing wages to receive financial assistance for public construction projects does not violate the prohibition against legislative restrictions on the use of local tax.

The statute prohibiting charter cities from receiving or using state funding or financial assistance for public construction projects if the city has a charter provision or ordinance that authorizes a contractor to not comply with the state prevailing wage laws was not so coercive on the home rule issue of wages under locally funded public works contracts as to violate the constitutional home rule doctrine, absent evidence of the charter cities' dependence on state funding or financial assistance for municipal projects, and absent evidence that the statute's failure to specify which programs were deemed to be prohibited "financial assistance" prevented charter cities from conducting a meaningful cost/benefit analysis of whether to comply with the statute.

The statute prohibiting charter cities that do not comply with state prevailing wage laws from receiving or using state funding or financial assistance for public construction projects does not violate the constitutional provision forbidding the Legislature to reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes.

LABOR - CALIFORNIA

County of Riverside v. Public Employment Relations Board

Court of Appeal, Fourth District, Division 1, California - March 30, 2016 - Cal.Rptr.3d - 2016 WL 1238737 - 16 Cal. Daily Op. Serv. 3395

County filed a petition for writ of mandate and a complaint for declaratory relief, injunctive relief, breach of contract, and statutory and constitutional violations challenging Public Employment Relations Board's (PERB) acceptance of union's request for impasse resolution through advisory factfinding.

The Superior Court denied PERB's anti-strategic lawsuit against public participation (SLAPP) motion, denied PERB's request for sanctions for violating scheduling order, and issued an injunction and a writ of mandate precluding PERB from processing any factfinding requests under the Meyers–Milias–Brown Act not arising from negotiations for a new or successor memorandum of understanding (MOU). PERB and county appealed.

The Court of Appeal held that:

- Meyers–Milias–Brown Act advisory factfinding provisions do not violate the state constitution's home rule doctrine, and
- PERB's processing and approval of union's request to utilize the factfinding procedures were within anti-SLAPP protection.

The provisions in the Meyers–Milias–Brown Act for impasse resolution through advisory factfinding apply to impasses arising during the negotiation of any bargainable matter, not just to the negotiation of a comprehensive memorandum of understanding (MOU).

Court of Appeal would decide Public Employment Relations Board's (PERB) and county's cross-appeals from trial court's injunction and writ of mandate limiting PERB's use of the Meyers–Milias–Brown Act's provisions for impasse resolution through advisory factfinding, even if the union's withdrawal of its factfinding request rendered the case technically moot, since the case presented important issues.

The provisions in the Meyers–Milias–Brown Act for impasse resolution through advisory factfinding for a public agency at an impasse in negotiations with a union do not violate the state constitution's home rule doctrine by delegating a county's or a city's home rule powers to a private person or body, since the Act's factfinding provisions do not result in a binding decision, and the factfinding provisions result in advisory findings and recommendations which the public agency remains free to reject.

IMMUNITY - CONNECTICUT

Texidor v. Thibedeau

Appellate Court of Connecticut - March 22, 2016 - A.3d - 163 Conn.App. 847 - 2016 WL 978667

Victim, who was shot after his cousin called police and made complaint about group of boys harassing her daughter, brought personal injury action against public safety dispatcher, two police officers, and town. The Superior Court granted summary judgment in favor of defendants, and victim appealed.

The Appellate Court held that:

- Police dispatcher's statement to shooting victim's cousin, that police would arrive shortly, did not create a ministerial duty for police to respond immediately to the call;
- No evidence of any city charter, provision, ordinance, regulation, rule, policy, or other directive

existed to support victim's claim that dispatcher breached a ministerial duty, to which governmental immunity would not apply, by entering incorrect information into police computer system in response to citizen's call for police assistance; and
- Victim's presence as an invitee at cousin's home was insufficient to make him a member of an identifiable class of foreseeable victims for purposes of the exception to governmental immunity.

LABOR & WAGES - DISTRICT OF COLUMBIA

District of Columbia v. Department of Labor

United States Court of Appeals, District of Columbia Circuit - April 5, 2016 - F.3d - 2016 WL 1319453

Private developers of public land who had leased District of Columbia property to construct privately funded mixed-use development featuring residential, office, retail, and open public spaces in public-private partnership filed suit, along with District of Columbia, challenging determination by Department of Labor's (DOL) Administrative Review Board (ARB) that development constituted "public work" within meaning of Davis-Bacon Act.

After labor organization and several individual workers intervened, the United States District Court for the District of Columbia entered summary judgment in plaintiffs' favor, and DOL appealed.

The Court of Appeals held that:

- Lease agreements and development agreements between District of Columbia and private developers were not "contracts for construction" under Davis–Bacon Act, and
- Development was not "public work" within meaning of Davis–Bacon Act.

Lease agreements and development agreements between District of Columbia and private developers regarding privately funded mixed-use development on property leased from District were not "contracts for construction," and thus Davis–Bacon Act's prevailing wage requirements did not apply to project, even though lease contemplated developers entering into future contracts with third party construction contractor.

Privately funded mixed-use development on property leased from District of Columbia was not "public work" subject to Davis–Bacon Act's prevailing wage requirements, even though District helped plan project, and project would produce benefits for public, where District did not expend any funds for construction, and development was privately owned and operated.

IMMUNITY - INDIANA

City of Beech Grove v. Beloat

Supreme Court of Indiana - April 5, 2016 - N.E.3d - 2016 WL 1329559

Injured pedestrian brought action against city. The Marion Superior Court denied city's motion for summary judgment. City appealed.

On petition to transfer, the Supreme Court of Indiana held that city failed to meet its burden on summary judgment to prove entitlement to discretionary function immunity.

City failed to show that it was immune from liability under discretionary function immunity provision of Indiana Tort Claims Act (ITCA) in injured pedestrian's action against city; mayor's affidavit and city council minutes did not demonstrate prioritization of cost-benefit analysis that went into development of project to reconstruct street on which pedestrian was injured, but only reflected steps taken to fund project that had already been discussed, planned, and approved.

EMPLOYMENT - MARYLAND

Stone v. Cheverly Police Dept.

Court of Special Appeals of Maryland - March 31, 2016 - A.3d - 2016 WL 1273045

Police officers brought action for order directing town to show cause why disciplinary charges against officers should not be dismissed and for injunctive relief to prevent town from moving forward with disciplinary charges.

The Circuit Court denied relief. Officers appealed.

The Court of Special Appeals held that officers' failure to participate in hearing board trial on disciplinary charges constituted failure to exhaust administrative remedies, precluding instant appeal.

STATE INVESTMENT COUNCIL - NEW MEXICO

New Mexico State Inv. Council v. Weinstein

Court of Appeals of New Mexico - March 24, 2016 - P.3d - 2016 WL 1178364

New Mexico State Investment Council (NMSIC) initiated suit against defendants, most of which were defendants in separate qui tam action under the Fraud Against Taxpayers Act (FATA), alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of contract, and unjust enrichment. Qui tam plaintiffs intervened. The District Court approved NMSIC's settlements and granted NMSIC's motions to dismiss defendants. Qui tam plaintiffs appealed.

The Court of Appeals held that:

- The District Court's orders were final and appealable;
- The District Court had jurisdiction to approve settlements;
- The District Court did not violate FATA by limiting discovery or "rubber stamping" settlements;
- NMSIC is prohibited from delegating authority to settle litigation to a committee;
- NMSIC's litigation committee was subject to and violated Open Meetings Act (OMA);
- NMSIC's approval of settlement agreements cured improper delegation and OMA violations; and
- NMSIC did not violate Inspection of Public Records Act (IPRA).

Settlement agreements in New Mexico State Investment Council's (NMSIC) breach of fiduciary duty action, which were approved by NMSIC's litigation committee that had been improperly delegated authority to settle litigation, became valid when nine of 11 members of NMSIC voted to approve them; assuming that NMSIC had power to enter into such agreements, vote rectified delegation issue.

ANNEXATION - NORTH CAROLINA

United States Cold Storage, Inc. v. Town of Warsaw

Court of Appeals of North Carolina - April 5, 2016 - S.E.2d - 2016 WL 1319086

Owner of facility located outside of town's corporate limits filed complaint seeking declaratory judgment as to whether town could cease providing sewerage service if owner did not seek voluntary annexation.

The Superior Court declared that town did not have any obligation to continue service, and owner appealed.

The Court of Appeals held that town was not obligated to continue to supply sewerage services to facility, which was located outside town's corporate limits, and could condition continued receipt of services on voluntary annexation. Town's contractual obligation to supply services had ended, principles of estoppel did not compel town to continue providing such services, facility owner did not have any vested right to continue to receive services, and town had not discriminated between facility owner and its other commercial customers outside corporate limits but rather made voluntary annexation a condition on all of them to continue receiving services.

APPROPRIATION BILLS - OKLAHOMA

Reynolds v. Fallin

Supreme Court of Oklahoma - March 29, 2016 - P.3d - 2016 WL 1229875 - 2016 OK 38

State resident brought action against various state officials for their actions concerning three allegedly unconstitutional general appropriation bills. The District Court dismissed action. Resident appealed.

The Supreme Court of Oklahoma held that:

- Transfer of money from various funds to Special Cash Fund of State Treasury created an "appropriation" and was thus constitutional;
- General appropriation bills may become effective prior to the 90-day period following the adjournment of the session;
- Not all money appropriated need be available at commencement of fiscal year; and
- Appropriation and reapportionment of funds not otherwise appropriated in fiscal year is constitutional.

Legislation transferring money from various funds to Special Cash Fund of State Treasury created an "appropriation," and thus legislation did not violate provisions of state Constitution requiring every law making an appropriation to distinctly specify the sum appropriated and object to which it is to be applied and requiring appropriations to be made by separate bills. Legislature's intent was to conveniently make transfers to Special Cash Fund and then appropriate money in Fund to other funds.

Under the provision of the state Constitution prohibiting an act from taking effect until 90 days after the adjournment of the session at which it was passed, general appropriation bills may become effective prior to the 90-day period without the need for a two-thirds vote of the Legislature on an emergency clause.

Under the constitutional provision requiring revenues deposited into the State Treasury to the credit of the General Revenue Fund or of any special fund to be allocated monthly on a percentage basis, not all money need be available at the commencement of the fiscal year.

Appropriation of funds not otherwise appropriated in prior fiscal year and reappropriation of such funds within two and one-half years did not violate constitutional provisions requiring that there be balanced annual budget, setting commencement of fiscal year on July 1, and requiring Legislature to provide for an annual tax sufficient to defray ordinary expenses of State for each fiscal year.

BONDS - OKLAHOMA

Horton v. Hamilton

Supreme Court of Oklahoma - February 10, 2015 - 345 P.3d 357 - Blue Sky L. Rep. P 75, 096 - 2015 OK 6

More than two years after purchasing a capital appreciation bond from sellers, buyer sued the sellers for misrepresentations and omissions in the sale of securities, fraud, breach of fiduciary duty, and negligence.

The District Court, Oklahoma County, granted the sellers' motion for summary judgment, ruling that the statute of limitations for each of the plaintiff's claims had run before she brought suit. Buyer appealed. The Court of Civil Appeals affirmed. Buyer petitioned for certiorari.

The Supreme Court of Oklahoma held that:

- Genuine issue of material fact as to when buyer had discovered, or in the exercise of reasonable diligence should have discovered, the facts of seller's alleged misrepresentation precluded summary judgment;
- Genuine issue of material fact as to whether buyer had discovered seller's alleged fraud more than two years prior to filing suit precluded summary judgment; and
- Genuine issue of material fact as to when buyer knew or should have discovered her claims against seller alleging negligence and gross negligence precluded summary judgment.

BALLOT INITIATIVE - OREGON

Nearman v. Rosenblum

Supreme Court of Oregon, En Banc - March 24, 2016 - P.3d - 358 Or. 818 - 2016 WL 1165713

Petitions were filed to review ballot title for proposed initiative to amend state constitution to change current voter registration methods for federal, state, and local elections in Oregon by requiring in-person registration, thereby eliminating "motor-voter," online, and mail registration options.

The Supreme Court of Oregon held that:

- In stating that application of ballot initiative was limited to state and local elections, caption and summary of initiative did not reasonably identify subject of proposed measure, and
- "Yes" vote result statement was inaccurate and misleading.

In stating that application of proposed constitutional ballot initiative was limited to state and local elections, caption and summary of initiative measure did not reasonably identify subject of proposed measure or state a major effect of the measure, in that they did not state that, by its terms, the initiative applied to federal elections, where effect of federal election law on the initiative was not a settled issue.

“Yes” vote result statement in ballot title for proposed constitutional initiative measure, stating that a “Yes” vote requires registration for state/local elections in person with specified citizenship documentation or immigration verification/hearing, was inaccurate and misleading, where nothing in the initiative established requirements for immigrants or involved an inquiry as to whether an immigrant was properly documented for residency in the state.

BALLOT INITIATIVE - OREGON

Conroy v. Rosenblum

Supreme Court of Oregon, En Banc - March 24, 2016 - P.3d - 358 Or. 807 - 2016 WL 1165712 - 205 L.R.R.M. (BNA) 3640

Petitioners sought review of Attorney General’s certified ballot title for initiative petition, which if adopted, would amend several provisions of the Oregon Public Employee Collective Bargaining Act (PECBA).

The Supreme Court of Oregon held that:

- Ballot caption’s use of the word “required” did not substantially comply with the requirement for a ballot title;
- Neither the caption, the result statements, nor the summary of the ballot title adequately informed voters that, under the measure, employees need not share in a union’s total representation costs;
- Attorney General’s use of the phrase “limited representation/ bargaining activities,” to refer to the fact that measure does not permit unions to include the costs of bargaining for political and ideological purposes and on permissive subjects in their dues structures, was not so unclear or misleading that it violated the requirements for a ballot title; but
- Attorney General’s use of the phrase in ballot title summary, that “currently, public employees in a bargaining unit may be represented by a union,” was incorrect, violated the statute that governed the form or a ballot title, and must be modified.

Ballot caption’s use of the word “required” was insufficient to describe proposed changes to Public Employee Collective Bargaining Act (PECBA) that would permit a union to collect additional revenue to defray other expenses only by obtaining an employee’s affirmative written consent to make such payments on a form prescribed by statute, or to inform voters that, under initiative petition, a union would no longer have authority to set its own membership requirements and to defray its costs through its dues structure, and therefore, did not substantially comply with the requirements for a ballot title.

Neither the caption, the result statements, nor the summary of Attorney General’s ballot title for initiative petition, which if adopted, would amend several provisions of the Oregon Public Employee Collective Bargaining Act (PECBA), adequately informed voters that, under the measure, employees need not share in a union’s total representation costs. Under the initiative petition, if a union were to bargain on permissive subjects and obtain contractual benefits, those benefits would be available to all bargaining unit members, but the union would be prohibited from recovering those expenses as required dues, and an employee who paid only baseline union dues would obtain those contractual benefits for free.

Attorney General's use of the phrase "limited representation/bargaining activities," to refer to the fact that measure to change Public Employee Collective Bargaining Act (PECBA) does not permit unions to include the costs of bargaining for political and ideological purposes and on permissive subjects in their dues structures, was not so unclear or misleading that it violated the requirements for a ballot title, given the word limitations imposed by statute governing the form of ballot titles.

Attorney General's use of the phrase in ballot title summary, that "currently, public employees in a bargaining unit may be represented by a union," was incorrect, violated the statute that governed the form or a ballot title, and had to be modified; although employees were not required to form a union, a union which had been certified or recognized had to represent all employees in the bargaining unit, and thus "must," and not "may," be represented by the union.

DOGGIES! - TEXAS

Lira v. Greater Houston German Shepherd Dog Rescue, Inc.

Supreme Court of Texas - April 1, 2016 - S.W.3d - 2016 WL 1267745

Dog owners brought conversion action against animal shelter seeking declaratory and injunctive relief to recover possession of dog following its impoundment by city animal control agency when dog was found illegally running at large and its subsequent transfer to shelter in lieu of euthanasia.

The District Court entered judgment in favor of owners. Animal shelter appealed. The Court of Appeals reversed, rendered, and remanded. Owners petitioned for review, which was granted.

The Supreme Court of Texas held that:

- Owners, who diligently searched for dog until he was found and immediately requested his return, did not abandon dog, and
- City ordinances under which dog was impounded and transferred to shelter in lieu of euthanasia did not divest owners of their ownership of dog, and thus shelter was required to return dog to owners upon request.

IMMUNITY - TEXAS

Wasson Interests, Ltd. v. City of Jacksonville

Supreme Court of Texas - April 1, 2016 - S.W.3d - 2016 WL 1267697

Tenant of lakefront property owned by the city brought action against city for breach of contract after city sent it an eviction notice claiming that tenant violated an agreement allowing tenant to lease property to families and small groups if lease was for at least 30 days.

The Judicial District Court entered summary judgment in favor of city. Tenant appealed. The Tyler Court of Appeals affirmed. Tenant petitioned for review, which was granted.

As a matter of first impression, the Supreme Court of Texas held that in determining the city's sovereign immunity, the common-law distinction between governmental and proprietary acts applied to breach of contract claim, abrogating *City of San Antonio v. Wheelabrator Air Pollution Control,* *Inc.*, 381 S.W.3d 597, and *Republic Power Partners, L.P. v. City of Lubbock*, 424 S.W.3d 184.

[MSRB To Weigh Complaints on Proposal to Determine Markups.]

WASHINGTON – The Municipal Securities Rulemaking Board plans to weigh complaints it recently received on a proposal for determining markups, as well as comments on close-out procedures for dealers, during its meeting here next week.

At the meeting, scheduled for April 13 and 14, the board will also consider continuing education requirements for municipal advisors and possible enhancements to the MSRB's EMMA system to improve market transparency.

The board's proposed changes to its Rule G-30 on prices and commissions for determining markups mesh with an already established Financial Industry Regulatory Authority process that requires dealers to consider a "waterfall" of factors in determining the prevailing market price and markups or markdowns.

The board must decide whether to file the proposal with the Securities and Exchange Commission for approval.

Issuers and dealers criticized the MSRB's proposal with the harshest critique coming from Ben Watkins, director of bond finance for Florida. He said the "stringent definitions and interpretations of rules" found in the MSRB proposal would "only burden the market."

The Government Finance Officers Association did not submit a comment letter, but Dustin McDonald, director of the group's federal liaison center, said Watkins' comments reflects' GFOA's stance on the issue.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association also complained about the administrative burden dealers would face. They argued the FINRA-based proposal does not fit the municipal market and should instead allow dealers the flexibility to adopt firm-specific policies and procedures within parameters the MSRB establishes.

However, SEC Investor Advocate Rick Fleming told the MSRB that his office supports the goal of the proposal and urged that it be tightened. He raised concerns about possible loopholes for non-arm's length affiliate transactions, where two dealers doing business with one another are part of the same company.

The discussion on close-out procedures will focus on SIFMA and BDA comments to an MSRB proposal released in January that would mandate municipal securities transactions be closed out within a 30-day period.

This would change a more than 30-year-old portion of Rule G-12 on uniform practices that the board believes would lessen the effect of interdealer transaction failures on the market. The MSRB currently recommends that dealers who fail to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

SIFMA responded to the proposal by recommending the MSRB cut the allowable period of time for close-outs to within 15 days of settlement, with the caveat that if both sides in a transaction agree more time is needed, they can extend the timeline another 15 days on a case by case basis.

BDA had concerns about the MSRB keeping the interdealer options for remedying a failed transaction the same through the transition, warning some dealers may not be able to utilize them or could run into prohibitive costs.

The options would allow the purchasing dealer to either: choose a "buy-in" and go to the open market to purchase the securities; choose to accept securities from the selling dealer that are similar to the originally purchased securities; or allow the purchasing dealer to require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB discussion of continuing education requirements for MAs follows a Dodd-Frank Act mandate that the board establish such requirements. The MSRB already administered a pilot professional qualification exam for MAs in January and February and plans to have a formal exam later this year.

THE BOND BUYER

APR 6, 2016 12:48pm ET

TAX INCREMENT FINANCING - CALIFORNIA

Macy v. City of Fontana

Court of Appeal, Fourth District, Division 1, California - February 23, 2016 - 244 Cal.App.4th 1421 - 198 Cal.Rptr.3d 867 - 16 Cal. Daily Op. Serv. 3133 - 2016 Daily Journal D.A.R. 1817

Resident and community organizations petitioned for writ of mandate challenging redevelopment agency's, housing authority's, and city's alleged failure to use 20 percent of city tax increment revenues in support of low- and moderate-income housing under the Community Redevelopment Law (CRL).

The Superior Court sustained demurrer without leave to amend. Resident and organizations appealed.

The Court of Appeal held that:

- CRL did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing;
- Redevelopment agency dissolution law did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing; and
- City's agreement to receive tax increment revenues from redevelopment agency did not require city to use the revenues for affordable housing.

Municipal Bond Market Faces New Pressure.

Selling government bonds could become more difficult during the next credit crunch, thanks to a new federal rule outlining the kind of liquid assets that banks must hold in case of an emergency.

The rule, issued Friday, greatly limits the kinds of municipal bonds that qualify in a big bank's investment portfolio as “highly liquid” — in other words, assets that can be sold quickly for cash. The new regulation was issued by the U.S. Federal Reserve, and is a modification of its previous proposal with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

There’s no immediate negative effect for government issuers. But if and when the next credit crunch hits, it could become more expensive for states and localities to issue debt. That’s because if fewer bonds qualify as highly liquid, there would be less market demand for them. And lower demand would mean higher interest rates for governments.

“As long as munis continue to have a good risk-adjusted return for banks, they’ll continue to invest,” said Chris Mauro, who leads RBC Capital Markets’ municipal strategy team. “It’s really when you’re entering a liquidity crisis and banks are running up against their limit: Unfortunately they may liquidate some of their municipal [bonds] as a result. And they’ll use those proceeds to buy highly liquid assets.”

Such assets are designated as “high-quality liquid assets,” or HQLA. Easily sellable securities like Treasuries or highly rated corporate bonds were included in the rule when the draft was first released in 2013. Bonds issued by state and local governments were not.

Ever since then, public finance officials and other stakeholders in the municipal market have been lobbying hard to make the case for municipal bonds. They seemed to make some headway in February, when the U.S. House of Representatives passed a bill that would have forced banking regulators to classify investment-grade municipal bonds as highly liquid assets. But the Senate has not introduced its own version of the bill. Now that the final rule is out and will go into effect in July, it’s unclear whether the Senate’s companion bill would mirror the House or be more in line with the Fed.

Under the new rule, to earn the HQLA designation, a municipal security has to meet several requirements. It must be a General Obligation bond (backed by the full faith and credit of a state or municipality), be investment grade and have been issued by an entity “whose obligations have a proven track record as a reliable source of liquidity during periods of significant stress.”

The wording is vague, said Mauro. So it will be up to banks to flesh out which municipal assets they believe qualify as highly liquid. Reason suggests, he added, that large governments that issue debt regularly would likely be easily marketable in a credit crunch because investors are familiar with them.

Still, it’s a bit of a guessing game. Much like in a housing crisis, one would assume that the nicest homes in the best neighborhoods would still sell quickly while the more average homes sit on the market for months. But a homeowner is never sure until that time comes.

“At this point, no one really knows how [banks] are supposed to prove if there is a ready and liquid market for these securities,” said Mauro. “It’s a gray area.”

Groups that advocate for the municipal market are speaking out in frustration at the final rule’s limitations. In particular, some were upset that revenue bonds — which are paid back via a dedicated government revenue stream — were not included as an HQLA.

Additionally, banks can’t allocate more than 5 percent of their HQLA portfolio to municipal securities. That’s far off from the 40 percent allocation in the bill passed by the U.S. House.

Groups have said they will continue to work with lawmakers on Capitol Hill to loosen up the designation.

GOVERNING.COM

BY LIZ FARMER | APRIL 5, 2016

CDFA Webcast: Development Finance Solutions for Disaster Resiliency.

Development Finance Solutions for Disaster Resiliency

April 19, 2016
@ 1:00 pm Eastern

Over the past decade, extreme weather events have caused major catastrophes to cities large and small. From vulnerable energy grids to aging infrastructure, communities are susceptible to disasters in multiple ways, and the aftermath of the clean-up and redevelopment can affect a region for years. What are some of the financing strategies for communities to invest in resiliency and mitigate the costs of potential natural disasters? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, explore financing programs and structures for disaster resiliency, partnerships and collaborative efforts to identify financing solutions, including community investments, bond issuance and other development finance tools.

Speakers:
David Safer, Moderator
Vice President, Sales & Relationship Management
The Bank of New York Mellon

Kevin Bush
Resilience Team Lead
HUD

Phillip Kash
Principal
HR&A Advisors, Inc.

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Director, Public Finance
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Squire Patton Boggs: Crossover Refunding - Does It Really Have to Come to This?

Suppose you, or a friend, issued build America bonds or another form of direct payment subsidy bonds in 2009 or 2010, as permitted by the American Recovery and Reinvestment Act, to do your bit to stimulate aggregate demand during the depths of the Great Recession. You, or your friend, as applicable, did not, however, include an extraordinary optional call feature in the BABs that would allow for the immediate redemption of the BABs if the direct payment subsidy was reduced. Consequently, you've been suffering with the reductions to the direct payment subsidy mandated by sequestration (and that will continue through fiscal year 2024), which have increased the net cost of your BABs.

You would like to advance refund your BABs to replace them with (historically) low-coupon tax-exempt bonds, but you know that the Internal Revenue Service has taken the position that a legal defeasance of tax-advantaged bonds, such as BABs, results in the reissuance for federal tax purposes of those bonds as taxable bonds that are no longer entitled to a direct payment subsidy (even one reduced by sequestration). Under this position, the BABs would lose their direct pay subsidy long before they are called in an advance refunding, a result that's best avoided. Is there anything that can be done in this seemingly hopeless situation?

Crossover Refunding – Back to the Future?

Pretty much nothing from the 1980s, including, but not limited to, mullets, Members Only jackets, and the Laffer Curve, should be revived. But a limited number of items, such as Paul's Boutique, the Super Bowl Shuffle, and the television program ALF, are long overdue for a reprise. Into the latter category falls the technique of a crossover refunding, a tax-exempt financing concept from that era, which could prove useful to an issuer of BABs where the BABs lack an extraordinary optional redemption feature and cannot (at least at this point) be currently refunded.

A crossover refunding differs from a traditional advance refunding in that proceeds of the refunding issue are used to pay interest on the refunding bonds, rather than the refunded bonds, until the call date of the refunded bonds, at which point the balance of the refunding bond proceeds in the refunding escrow are applied toward the repayment of the refunded bonds. Under Treas. Reg. § 1.148-10(c)(4), the crossover advance refunding bonds will not be treated as taxable arbitrage bonds. Moreover, under Treas. Reg. §1.149(g)-1, the crossover refunding should not be treated as comprised of taxable hedge bonds if the refunding results in debt service savings (taking into account the direct payment subsidy on the refunded BABs) or relieves the issuer of significantly burdensome document provisions.

The allure of a valid crossover advance refunding to an issuer of BABs that are not subject to extraordinary optional redemption is that the crossover refunding does not effect a legal defeasance of the BABs for purposes of Treas. Reg. § 1.1001-3(e)(5)(ii)(A). Under that provision of the Treasury regulations, the legal defeasance of a debt instrument (other than a "tax-exempt bond" – more on this below) changes the nature of the debt instrument from recourse to nonrecourse, which results in a significant modification of the debt instrument and the treatment of that instrument as reissued for federal tax purposes. For this purpose, Treas. Reg. § 1.1001-3(e)(5)(ii)(A) describes a legal defeasance as a defeasance "in which the issuer is released from all liability to make payments on the [defeased] debt instrument."[1]

As noted above, the IRS has taken the position in Chief Counsel Advice Memorandum Number AM 2014-009 (the "Memo") that the legal defeasance of direct payment subsidy obligations, such as BABs, results in the reissuance of those obligations for federal tax purposes as obligations that are no longer entitled to the direct payment subsidy. A crossover advance refunding would not, however, result in the legal defeasance of the defeased BABs, because the issuer would remain liable for the payment of debt service on the BABs until their call date. In the absence of a legal defeasance, the BABs should not be treated as reissued for federal tax purposes upon the issuance of the crossover advance refunding bonds, and the issuer should retain the benefit of the direct payment subsidy (as reduced by sequestration) on the BABs until their call date.

Should a Crossover Refunding Really Be Necessary?

The IRS reached its conclusion in the Memo by determining that BABs are not "tax-exempt bonds" within the meaning of Treas. Reg. § 1.1001-3(f)(5)(iii), which defines a tax-exempt bond as "a state or local bond that satisfies the requirements of [Internal Revenue Code] section 103(a)." Under Treas. Reg. § 1.1001-3(e)(5)(ii)(B), the defeasance of a tax-exempt bond does not result in a significant modification of the bond and therefore does not cause the reissuance of the bond for federal tax purposes.

Under Internal Revenue Code section 54AA(d)(1)(A), a bond cannot be a BAB unless that bond satisfies the requirements of Internal Revenue Code section 103. How then does the IRS justify a position in the Memo that is contrary to the plain wording of its own Treasury regulation? By citing the preamble of the Treasury Decision that promulgated the definition of "tax-exempt bond" for purposes of the reissuance regulations. As we have previously discussed, the IRS's citation to the preamble is flawed, but it is also unavailing where the language of the Treasury regulation in question is unambiguous. As the Tax Court held in *Woods Investment Company v. Commissioner*, 85 T.C. 274 (1985), the IRS's remedy if it disagrees with the clear language of a Treasury regulation that it has promulgated is to amend the regulation – not to enforce a position that is contrary to the express provisions of the regulation.

In light of this, there's no reason to fire up the flux capacitor to bring a crossover refunding from the 1980s to the present day, because the legal or economic defeasance of BABs simply should not result in their reissuance for federal tax purposes.

Sequestration – Does it Result in the Repudiation of Debt Owed by the Federal Government?

The question of whether BABs are tax-exempt bonds for purposes of the reissuance regulations arises because of the application of sequestration to the direct payment subsidies paid by the federal Treasury in respect of tax-advantaged bonds, such as BABs.

The effect of sequestration is to adopt mandatory reductions in items of discretionary spending that are subject to annual appropriation if expenditure levels exceed specified thresholds. The direct payment subsidy on tax-advantaged bonds is treated for federal tax purposes as the refund of an overpayment of tax (see IRS Notice 2009-26, Section 3.3, for discussion). The refund of a tax overpayment is not subject to annual appropriation – it is the repayment (albeit without interest) of a debt owed by the federal government to the taxpayer. If the refund is not paid in the full amount owed to the taxpayer, there has been a repudiation of some portion of the debt owed by the federal government to the taxpayer. Is the federal government therefore repudiating a portion of its debt by subjecting to sequestration the direct payment subsidies owed on tax-advantaged bonds?

We'll leave that as a rhetorical question for the time being.

[1] A legal defeasance is illustrated in Treas. Reg. § 1.1001-2(d), ex. 6, as the placement in trust "of government securities that provide interest and principal payments sufficient to satisfy all scheduled payments on the bond." The example concludes that such a defeasance is a modification of the defeased bonds for purposes of the reissuance regulations.

Squire Patton Boggs

The Public Finance Tax Blog

by Michael A. Cullers

USA April 6 2016

Water Deals Top U.S. Municipal Bond Sales Next Week.

The two biggest negotiated deals on next week's $6.7 billion U.S. municipal bond and note calendar will fund water infrastructure projects in Massachusetts and California.

Issuance of U.S. water and sewer municipal bonds in the first quarter rose to $10.2 billion, a 7.8 percent increase over the same quarter in 2015, according to Thomson Reuters data.

That was nearly 23 percent higher than the $8.28 billion median quarterly issuance for water bonds over the last 10 years, according to Reuters calculations.

Local governments invested over $2 trillion in water and sewer infrastructure through 2013 and spend $117 billion a year, said Senator Jim Inhofe, chairman of the U.S. Senate's environment and public works committee, citing data from the U.S. Conference of Mayors at a hearing on Thursday.

He noted that the U.S. Environmental Protection Agency has finally requested funding to start up the Water Infrastructure Finance and Innovation Act, passed in 2014.

Although the EPA requested $15 million, the committee is planning to provide about $70 million to fund the initiative, Inhofe said.

But he said more encouragement for private investment is needed, adding, "If it can't be raised through municipal bonds, where's it going to come from?"

Near record-low interest rates could be an incentive to borrow. Yields on top-rated 30-year municipal bonds closed at 2.54 percent on Friday, just 7 basis points off the 2.47 percent low in November 2012, according to Municipal Market Data, a Thomson Reuters unit.

Next week, Massachusetts' Water Resource Authority will price $535 million of general revenue and refunding bonds through senior managing underwriter Citigroup.

The water system covers 2.8 million people, or 43 percent of the state's population, including most of the Boston metropolitan area, according to a presentation for potential investors.

The authority had about $5.4 billion of debt outstanding as of March, including bonds and loans. Of that, about $905.5 million is variable rate, with $492 million of associated swaps.

Its fiscal 2016 budget grew by $28 million over the previous year, mostly for capital finance expenses, representing an overall rate increase of 3.4 percent, the presentation noted.

A one-day retail order period on Wednesday is to be followed by a day of institutional pricing.

California's Infrastructure and Economic Development Bank will issue $414.2 million of clean water state revolving fund revenue bonds as green bonds through lead manager Morgan Stanley.

REUTERS

APRIL 8 | BY HILARY RUSS

(Reporting by Hilary Russ; Editing by Dan Grebler)

[Tennessee Bars Memphis Conduit From Selling Housing Bonds.]

Tennessee has temporarily barred a Memphis agency from issuing municipal bonds for housing, saying it's suffering from a leadership vacuum while it deals with a high-profile default of debt issued to finance the purchase of two apartment complexes.

The Memphis Health, Educational and Housing Facility Board hasn't had an executive director since December and is facing scrutiny over a $12 million bond issue by the Global Ministries Foundation to buy the Warren and Tulane apartments in Memphis. On March 14, Bloomberg reported that the U.S. Department of Housing and and Urban Development cut rent subsidies to more than 1,000 residents because the buildings were infested with roaches and had numerous health and safety violations. The loss of the federal funds caused the securities to default, pushing the price to as little as 21 cents on the dollar.

"You've got an agency that's going into its fifth month without an executive director and they're needing to deal with, and some cases respond to, some fairly high profile things," said Tennessee Housing Development Authority Executive Director Ralph Perrey in a telephone interview. "We think they have their hands full and we want to give them time to work through all of this."

Buyers Sing Blues After Memphis Bond Default Goes Unrecognized

The Tennessee Housing Development Authority allocates tax-exempt bonds to affordable housing developers. The bonds are then issued through conduits like the Memphis HEHF for a fee.

THDA has referred two developers seeking to issue $22 million of municipal bonds for multi-family apartments through the Memphis HEHF to other area conduits.

Daniel Reid, Memphis HEHF chairman, said in an e-mail that the agency has hired an interim executive director and is working closely with the city of Memphis to address THDA's concerns.

"The board fully anticipates the prompt resolution of THDA concerns and restoration of full services to pending and new applicants in the very near future," Reid wrote.

The action by THDA was reported earlier by the Memphis Daily News.

Bloomberg Business

by Martin Z Braun

April 11, 2016 — 9:51 AM PDT Updated on April 11, 2016 — 11:54 AM PDT

[Chapman and Cutler: MSRB Proposes Additional Exceptions for Trading Municipal Bonds Below Stated Minimum Denominations.]

Municipal Securities Rulemaking Board ("MSRB") Rule G-15(f) prohibits a broker, dealer or municipal securities dealer ("dealers") from effecting a customer transaction in municipal securities in an amount lower than the minimum denomination of the issue stated in offering documents, subject to two current exceptions. The MSRB recently proposed adding two additional exceptions that would allow dealers to sell below stated minimums in limited cases. Both new exceptions would allow below-minimum sales to customers where the transactions would not add to the net below-minimum positions within the market. While Rule G-15(f) has historically not been a point of significant focus, that has changed in recent years. For example, in late 2014, the Securities and Exchange Commission (the "SEC") sanctioned 13 dealers in amounts ranging from $54,000–$130,000 for selling municipal bonds below the minimum denomination stated in the bonds' official statements. Earlier this year, the Financial Industry Regulatory Authority, Inc. ("FINRA") also announced sanctions of seven dealers for similar violations in amounts ranging from $25,000–$200,000. (See the related SEC press release and FINRA disciplinary action report here and here.) For additional information on the MSRB proposal, see the related MSRB notice here.

Current Rule G-15(f)

Rule G-15(f) provides that a dealer may not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue. Municipal issuers may impose high minimum denominations to qualify for certain disclosure exemptions from Rule 15c2-12 under the Securities Exchange Act of 1934 or due to a security being below investment grade or for other reasons that might make the securities inappropriate for retail investors likely to purchase securities in relatively small amounts. Where an issuer states a higher minimum denomination for a bond issue, the higher minimum is often $100,000 while a normal minimum is often $5,000.

Current Rule G-15(f) provides two exceptions to the prohibition in order to help preserve liquidity for customers' below-minimum denomination positions. Investors may have below-minimum positions for various reasons, such as a result of a death or divorce, call provisions that allows calls in amounts less than the minimum denomination, investment advisers splitting positions among several clients, or knowingly or unknowingly purchasing an amount below the minimum denomination. The first existing exception permits a dealer to purchase a below-minimum position from a customer if the dealer determines that the customer is selling its entire position. The second existing exception permits a dealer to sell a below-minimum position to a customer if the dealer determines that the position being sold is the result of another customer liquidating an entire position below the minimum denomination. In this case, the dealer must provide written disclosure to the purchasing customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination.

The Proposed New Exceptions

The MSRB believes that certain other transactions that are not currently contemplated under the rule would be consistent with the intent of the current second exception. The MSRB is seeking comment on two additional exceptions.

The first new exception would permit a dealer to sell a below-minimum position to one or more customers that currently own the issue if the dealer determines that the below-minimum position being sold is the result of a customer liquidating an entire position below the minimum denomination as long as the increment(s) being sold to the customer(s) is consistent with any restrictions in the issuer's authorizing documents, even if the transaction does not result in any purchasing customer increasing its position to an amount at or above the minimum denomination.

Under this exception, a dealer would also be permitted to sell a portion of the below-minimum position to a maximum of one customer that currently does not own a position in the issue. The MSRB's theory for allowing one additional purchaser that does not own any of an issue to buy a below-minimum position in the issue appears to be that it would not result in a net increase in below-minimum positions within the market.

The second new exception would permit a dealer to sell a below-minimum position to a customer that currently owns a below-minimum position in the same issue as long as the transaction results in the customer owning a position at or above the minimum denomination amount. In addition, this exception would allow the dealer to also then sell any remaining below-minimum position to one or more customers that currently own the issue even if the transaction left the customer(s) with a below-minimum position so long as the increments sold were consistent with any restrictions in the issuer's authorizing documents regarding incremental amounts. This situation would appear to bring at least one customer up to a minimum position and not increase the overall number of below-minimum positions within the market.

Consistent with the current rule, a dealer would be able to rely upon customer account records in its possession or upon a written statement provided by the customer to whom the securities are purchased or sold that the customer owns a position in the issue in an amount at or below the minimum denomination. Similar to the existing sale exception in the current rule, under both proposed exceptions a dealer would be required to provide all purchasing customers a statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. A dealer would be required to provide this disclosure at or before the completion of any sale in an amount below the minimum denomination.

Best Ex, Suitability and Time of Trade Disclosure Obligations Still Apply

While proposing additional exceptions to the minimum denomination requirement, the MSRB reminds dealers that obligations arising under Rule G-18, on best execution; Rule G-19, on suitability of recommendations and transactions; and Rule G-47, on time of trade disclosure, continue to apply to impose regulatory requirements on dealers regarding customer transactions that supplement the protections afforded by Rule G-15(f) with respect to minimum denominations. As a result, notwithstanding the exceptions, a dealer would have an obligation to have a reasonable basis to believe that a recommended transaction or investment strategy involving a below-minimum municipal bond position is suitable for the customer, bearing in mind that, among other things, the issue has a minimum denomination and the customer's liquidity needs and risk tolerance. In addition, dealers have an obligation under Rule G-47 to disclose to a customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market, including the fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination.

For More Information

To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group.

April 8, 2016

Credit Ratings Don't Always Tell The Whole Story.

Dusty Self: RidgeWorth is a multi boutique global asset management firm with about $37 billion in assets under management. We offer 28 different mutual funds, both equity and fixed income. At RidgeWorth SEIX, We manage approximately $1.5 billion in the investment grade tax-exempt space. We have three state-specific funds, and we have three national funds that cover the spectrum of the maturity schedule including a long fund, an intermediate fund, and the RidgeWorth Seix Short-Term Municipal Bond Fund (SMMAX), which I manage. This fund has an average maturity of three years or less. But our common strategy across all of these products is that we're active total return managers.

That means we believe in investing in undervalued securities, or sectors that have improving fundamentals, because we're looking for principal appreciation. So buy and hold is fine if you never have to sell before maturity, but we think that investors are leaving too much on the table, and that your allocation to municipal should work harder for you. It's not just about buying at the right price. It's also about knowing when to get out. So identifying securities that are overvalued, or sectors that may have declining fundamentals. Looking for those yellow flags helps you limit your downside risk — and that's our emphasis.

Our investment strategy has been in place for more than 20 years. It centers around three main principals. We believe that 1) interest rates cannot be forecast with any certainty, 2) inefficiencies in the municipal market create investment opportunities, and 3) investors should look beyond yield, to look at quality.

The municipal market has been in this evolution since the credit crisis, where it was this homogeneous mostly-insured AAA-rated market, to now becoming a credit-driven market that has more than 60,000 issuers. So credits and issuers with the same rating just do not have the same underlying fundamentals. And there's even differences between states. Some states have legislation to protect holders of their general obligation bonds, and others do not. So when you're trying to value — or appropriately value — a security, you have to consider all of those things that go into determining value.

So let me give you an example of two states: California and Pennsylvania. And they're both rated Aa3 by Moody's and AA- by S&P. California has legislation in place that provides for the legal protection of its general obligation bond holders. It's got a budget surplus, a rainy day fund, pension plans that are funded 75% to 80%, and a growing and diversified economy. Conversely though, you have Pennsylvania, which has a significantly under-funded pension plan at 51%. It's had a budget impasse for the past eight months and is considering diverting gaming revenue into the general fund so it can make those pension payments. And it provides no legislative protection for its general obligation bond holders.

You have two states that are rated the same, but on very different trajectories that offer very different yields. So we don't think that you should be just chasing yield. When you have 50 different states with their own constitutions, their own legislatures, their own laws, their own political risk, in our minds you have a lot of opportunity but for an individual there is more risk than they realize. In general, the underlying strength of the municipal market, we think, is a reflection of the moderately growing economy.

As a result, defaults remain relatively low and we're seeing upgrades outpacing downgrades for the first time in seven years. So this safety and this low correlation with other asset classes really make a strong case to invest in municipal bonds. But you need to be extremely careful, and make sure that you understand the relative value and what is behind the bonds that you're purchasing.

Wally Forbes: Interesting perspective. How about some examples?

Self: Beyond the differences between the states, we're very concerned about local general obligations. We continue to see that pensioners are being favored over bond holders. And when you see these legacy liabilities, that pensions and OPEB (other post-employment benefit) obligations are crowding out infrastructure spending at the state level, that is the start of a bad situation.

When that happens, what you're doing is that you are pitting pensioners against other constituents. Looking forward, should we slip into a recession and states again run into larger budget issues, the state is going to force down to the local level some of what it can't pay. They're going to pass that down to the local level and make it the local government's responsibility. So we're really concerned about the impact of OPEB and pension liabilities on local general obligation sector, and how they're going to be able to respond in the upcoming fiscal years.

Forbes: That sounds like it could be a big trap.

Self: It could be very tricky. We've seen many states that used the political cover of the recession to make very difficult fiscal policy changes. And they seem to be doing okay. But then there are other states that really did not get out in front of some of their issues, and now it's going to be time to pay the piper.

Geographically, we look throughout the country, because we're looking for relative value. So we're looking for opportunities of something that's trading cheap, historically, or something that's trading expensive. We're constantly looking throughout the country, and what's available in the municipal market. Geographically, we continue to like California, Florida, and the western states. They all have strong, stable, and diversified economies. And you continue to see growth in the migration into those Sunbelt warmer states.

Another sector we like is transportation. And that encompasses a couple of different mini-sectors. We like airports. The larger hubs, where passenger traffic continues to increase and in general lower oil has been a benefit. But we're going to bifurcate that area a little bit. We're going to stay away from the regional hubs where maybe it's not as easy for them to turn a profit because of a decline in passenger traffic or a carrier has pulled out.

Similarly, seaports. Even with the expansion of the Panama Canal, we continue to see improved traffic in the seaports. And we still like toll roads. Even though we realize that toll roads are tied to the economy, we're still watching them. So far, they're fundamentally sound. And we've seen an increase in issuance with the private-public partnerships and view that as a credit positive for the toll road sector. We think it is going to provide some improved relative value and principal appreciation going forward.

Forbes: Are there any particular issues that you think are especially attractive and can you tell people how to go ahead and buy them?

Self: The things that we like to take a look at are issues that somewhat get mispriced. One example, we like Chicago Airport. When they came out with a new bond deal last fall it was priced cheap from a relative value perspective, it had a little bit of taint, because of the name. But it's a separate entity from the city. So they have little to no pension exposure. They've seen the increase in passenger traffic. And just because they had the Chicago name, we saw them trade a little bit cheaper.

Since then, more news has gotten out. People are learning who's really behind, or what is really behind the bonds that they own. And we've seen the spread on the Chicago bonds improve. Similarly, we like the Port of Seattle in Washington, where it's a dual backing bond that means 70% of the revenue comes from the airport, and 30% comes from the seaport. So any sort of bond where you have multiple revenue streams, or you have confirmed revenue streams, where you know exactly how that bond is going to get paid, those are the things that we look for. We want that certainty.

Forbes: That sounds very interesting, and makes a lot of sense. As an individual investor, how do you go about getting to some of these kinds of opportunities? Just do it through your broker?

Self: For a total return strategy an investor would be best served in a mutual fund like the RidgeWorth Seix Funds. Remember we are looking throughout the county for securities that are mispriced and undervalued every day. It could be very difficult to do it through your broker. Available to the public is the emma.msrb.org website, which will include some disclosures and information on municipal securities that you can read. You can also ask your broker about where the revenue stream payments are coming from, and get some background information but the level of disclosure in the municipal market is unlike any other market. It can be a difficult and lengthy process to get information.

Forbes: And that is a website that has municipal bonds listed on it, or what?

Self: It's just information. It's access to the municipal market that has information about disclosures. It also has some trading information, current trading information on securities.

Forbes: How does one tell a better security from a less-good security? Can you do that on the website?

Self: It will help you find comparative price discovery and can help you sort through similar structures, similar maturities, similar credit ratings but remember my example of California and Pennsylvania, credit ratings don't always tell the whole story. These are the types of things that we're looking at when we are purchasing for our mutual funds. We have a credit team with over 28 years of experience in place that spends their time doing analysis. For the individual investor, it is a lot of information to have to filter through and then try to compare and make an informed decision.

Forbes: This has been a different investment area than we usually cover and I'm sure it will be of interest to our readers at this time when good income is a little hard to get.

Self: That is so true, in today's market good income is hard to come by.

Forbes: Dusty, thank you for taking the time to join us.

Self: Thank you, Wally.

AN INTERVIEW WITH

Dusty Lee Self
Director and Portfolio Manager Seix Investment Advisors LLC, RidgeWorth Investments

Wallace Forbes, Contributor

APR 5, 2016 @ 11:19 AM

Opinions expressed by Forbes Contributors are their own.

Political Subdivision Politics.

Recently released proposed Treasury regulations seek to change the requirements for municipal bond issuers to qualify as issuers of tax-exempt bonds. Many lawyer and industry groups, as well as many States and local government agencies, will be commenting unfavorably on this proposal by the Internal Revenue Service. There are a number of areas in which the proposed regulations seem to make the wrong policy choice and create ambiguity instead of clarity, but that is not the focus of this article. Instead, this article focuses on the intellectual integrity of the proposed rules and the misuse of the rulemaking process.

"The term 'State or local bond' means an obligation of a State or political subdivision thereof." Being a "State or local bond" is the threshold requirement for tax exemption, and this language from Section 103 of the Internal Revenue Code and the underlying definition of the term political subdivision has existed for a very long time. Essentially, a political subdivision is a government agency with substantial taxing power, eminent domain power or police power. The proposed regulations attempt to redefine the meaning of the term political subdivision for purposes of the issuance of tax-exempt bonds.

The proposed regulations spring from the controversy surrounding an IRS challenge to the tax exempt status of bonds issued by certain community development districts in Florida and an associated IRS Technical Advice Memorandum 201334038. The Technical Advice Memorandum appeared to create new requirements for issuers to qualify as political subdivisions, and practitioners clamored for a repeal of the Memorandum or at least a rulemaking process that allows for comments and deeper consideration. The IRS chose the rulemaking process.

The Proposed Changes Impact the Tax Law Generally

The federal tax definition of political subdivision is important for a number of purposes independent of whether an entity is qualified to issue tax-exempt bonds (for example, whether the entity is subject to income tax or excise tax liability). The definition of political subdivision under Section 103 has been widely referenced as definitive for all federal tax purposes. Rather than coordinate with other parts of the IRS, the drafters of the proposed regulations would make dramatic changes to a long-standing definition and claim that those changes are intended only to impact tax-exempt bond qualification. But the changes could significantly impact other areas of the federal tax law. Are each of the other impacted areas of the federal tax law now required to adopt their own definition, to apply an old definition that no longer exists in the income tax regulations or to simply go along with this change?

Moreover, if the new rules really do apply only to the issuance of tax-exempt bonds, the proposed regulations package is significantly incomplete. A large number of issuers of tax-exempt bonds (possibly the majority) are not political subdivisions under existing law. Rather, these issuers are constituted authorities, integral parts of political subdivisions or other "on behalf of" issuers. The true impact of the proposed changes cannot be assessed unless the IRS also states its intention with respect to these other entities. If an entity with significant governmental powers is disqualified as a political subdivision due to more than incidental private benefit (one of the proposed new regulatory requirements), will a bond issuing agency of a State, city or county be disqualified if its bonds result in more than incidental private benefit? Perhaps such an authority would also qualify as an integral part entity, but the IRS has refused to provide any guidance, even informal guidance, on the integral part analysis, leaving the State and local government community in the dark.

The IRS Is Changing the Wrong Regulation

The new requirements are designed to thwart the abuse perceived by the IRS that certain tax-exempt, governmental purpose bonds are being issued for the impermissible benefit of private developers. The problem is that the proposed prohibition of non-incidental private benefit incorporates a private business use concept into a regulation relating to something entirely different – the authority to issue bonds. This is effectively changing the private business use rules (which exist under Section 141 of the Internal Revenue Code) through a new requirement under Section 103. This is a deeply flawed and troubling approach. The private business use rules are well-developed and intricate. If there is a legitimate concern about non-incidental private benefit, that concern should be dealt with in a rulemaking project under Section 141, so that the appropriate context and impact on other rules is apparent.

This is a bigger point than the mere placement of a new rule in the income tax regulations. To date, the regulatory requirements for an issuer to qualify to issue tax-exempt bonds has focused on the governmental powers held by the issuer because the related language in the Internal Revenue Code focuses on the attributes of the issuer, not on the attributes of the particular bonds or the project being financed. By comparison, the concepts relating to private business use have focused on the project being financed and the other attributes of individual bond issues because that is the focus of the related language in the Internal Revenue Code. If this distinction between issuer attributes and project/bond issue attributes is not maintained, the resulting requirements will conflict. For example, in at least some circumstances the proposed regulations would make the private security or payment test of Section 141 irrelevant. The point here is not to argue against an incidental private benefit prohibition. The point is that any such prohibition needs to be vetted as a change to the rules under Section 141 and not Section 103.

In fact, this new requirement is similar in many respects to heavily criticized and subsequently withdrawn general prohibitions relating to “economic benefit” and to the “discharge of a primary legal obligation” originally set forth in 1994 proposed regulations under Section 141. There were many negative comments on those proposed regulations. The comments focused on whether the mere existence of private economic benefit was enough to result in private business use and whether traditional assessment bond financing of government mandated infrastructure should be prohibited. In the end, the IRS correctly determined to focus on the use of the assets financed and not to take away from States and local government agencies one of their most powerful and consistently used infrastructure financing mechanisms.

Assuming that there in fact is a problem to fix, this proposal by the IRS to change the political subdivision definition is not an acceptable approach. At best, it raises significant questions about which entities qualify as political subdivisions for general tax purposes. Worse, it creates a new private business use limitation that is not consistent with the Internal Revenue Code or the existing regulatory framework. Thus, this new limitation creates significant uncertainty, because it exists outside the context of similar, well-developed rules. In municipal finance, where investors demand unqualified legal opinions, creating uncertainty is bad policy.

The Bond Buyer

By Chas Cardall

April 7, 2016

Chas Cardall, a partner in the San Francisco office of Orrick, Herrington & Sutcliffe LLP, is the chair of the Tax Department and a member of the Public Finance Department.

MSRB Proposes Clarifying Minimum Denomination Rule Exceptions.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing two clarifying exceptions to its rule preventing dealers from buying or selling bonds below their stated minimum denominations.

The MSRB has asked for comments to be submitted by May 25 on the proposed changes to MSRB Rule G-15 on customer transactions. The rule was amended in 2002 to place the minimum denomination trading restrictions on most dealer transactions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official bond documents. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Although dealers are required to adhere to any minimum denominations set in transactions, some investors can be left with amounts below the stated minimums if they have received a share of someone else's holdings, such as from a settlement after a divorce or an inheritance after a death. The MSRB exceptions allow those customers to avoid simply being stuck with these holdings.

Under the current rule, dealers can buy from a customer below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the issue. The dealer can also sell to a customer at an amount below the minimum denomination if it is a result of another customer liquidating his or her entire position in an issue. This exception requires the selling dealer to provide the customer written disclosure explaining that the quantity sold is below the minimum denomination and could adversely affect the customer's liquidity position.

The new proposals would clarify the types of customers a dealer could sell to at amounts less than the stated minimum. The goal of the rulemaking is to make sure that no additional customers with holdings below the denomination are created as a result of the exceptions.

"The MSRB understands that both firms and enforcement agencies could benefit from greater clarity about circumstances in which sales below the minimum denomination could be permissible," said MSRB executive director Lynnette Kelly. "The proposed additional exceptions to the rule would facilitate regulatory efficiency and enhance liquidity for investors that currently hold positions below the minimum denomination while preserving the spirit of the rule."

The first new exception would pick up on the current language and allow a dealer that has bought a customer's liquidated position less than the minimum denomination to sell these bonds, in amounts below the minimum, to one customer with no prior holdings in the bonds and to any customers who already have positions in the bonds.

For example, if a dealer buys a customer's $75,000 liquidated position in a bond that has a minimum denomination of $100,000 and an increment of $5,000, the dealer could sell $25,000 to a customer with no prior position in the bond, $35,000 to a customer that owns an existing $10,000 position and $15,000 to a customer with an existing $85,000 position.

The transactions would ideally get the customers with prior holdings closer to the minimum denomination, if they have not already reached them.

The second proposed exception applies to dealers that have holdings below, at, or above the minimum denomination. It would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds, so long as the sale is consistent with the issuer's stated increment. However, the exception would not allow a dealer to sell below the minimum denomination to a customer that does not currently have a position in the issue.

All dealers using the exceptions would still have to provide the written statements at or before the completion of the transaction informing the customers of the below-minimum amount and the associated liquidity risks.

The MSRB is also reminding dealers that although the proposal would allow for more exceptions to the rule, dealers would still be bound by MSRB Rules G-18 on best execution, G-19 on suitability of recommendations, and G-47 on time of trade disclosure.

The Bond Buyer

By Jack Casey

April 7, 2016

[Teachers' Required Pension Contributions Are Less Fair Than Union Fees.]

Though the Supreme Court's four-to-four deadlock in *Friedrichs v. California Teachers Association* on Tuesday upheld the requirement that nonunion members pay union fees, it raised new doubts about the fairness of a practice conservative activists have fought for decades. But a more insidious—and lesser known—injustice faces teachers in California and around the nation: they must contribute a substantial share of their salaries to pension plans that deny them a fair return.

In the Supreme Court case, nonunion California public school teachers claimed that having to pay union fees, mandated in California and more than 20 other states, infringes on their First Amendment right to free speech. The union countered that the fees only support its collective bargaining activities, which benefit all teachers, including nonunion members. The court's deadlock means that mandatory payments that support collective bargaining, which the Supreme Court upheld in 1977, may continue.

Pension contributions exceed union fees

The lead plaintiff, Rebecca Friedrichs, says she is forced to pay about $600 a year in union fees. But like all California public school teachers, she must also pay 9.2 percent of her salary to the California State Teachers' Retirement System. For a teacher earning $78,000 a year, the average in Friedrichs'

Savanna school district, these contributions amount to nearly $7,200 a year, about 12 times her required union fees.

Teachers like Friedrichs may feel they get nothing in return for their union fees, but surely they benefit from their retirement contributions, right?

The payback rarely exceeds teachers' total contributions

Newly hired California teachers can expect an annual pension equal to 2.4 percent of their final salary for every year they teach if they retire after age 65. For a 40-year veteran, that amounts to 96 percent of her final salary, or about $90,000 a year in inflation-adjusted terms. That payment stream will be worth more than $1 million when she turns 65.

That's a good deal, but relatively few California teachers remain in state classrooms long enough to collect such a generous pension. Only half of all newly hired teachers complete more than 11 years of service, and only a quarter complete more than 20 years of service. And those with less service receive much smaller pensions.

A 25-year-old teacher hired today would receive a future annual pension of only $12,000 if she teaches for 20 years or $3,500 if she teaches for 10 years. That teacher would have to remain employed for at least 28 years to collect benefits worth more than the required plan contributions. Teachers who stop teaching earlier lose money in the mandatory plan. They would receive more retirement income if they could opt out of the plan and invest their contributions elsewhere. Teachers with shorter tenures end up subsidizing the large pensions received by the longest-tenured teachers. Only 35 percent of new hires and 47 percent of teachers who work at least five years will receive pensions more valuable than their required plan contributions.

Various plan changes could distribute benefits more evenly across the workforce. California could switch to a cash balance plan, which could treat all teachers fairly because school districts and the state could contribute the same share of teachers' salaries to their retirement accounts, regardless of the teacher's age or years of service.

Moving to a 401(k) plan as a replacement to the traditional defined benefit plan or a supplement to it could also help equalize retirement benefits among teachers. In a 401(k)-type plan, all participants could receive the same employer contribution relative to their salaries, regardless of age or years of service. Alternatively, the California State Teachers' Retirement System could distribute benefits more equitably across the workforce by altering the plan's benefit formula.

Requiring public school teachers to contribute to a retirement plan that may not benefit them may not be unconstitutional, but it sure seems unfair.

The Urban Institute

by Richard W. Johnson

April 1, 2016

As an organization, the Urban Institute does not take positions on issues. Scholars are independent and empowered to share their evidence-based views and recommendations shaped by research.

IRS: Understanding the Tax Exempt Bonds Examination Process.

The primary objective of a tax-exempt bond examination is to determine if a municipal debt issuance complies with Internal Revenue Code provisions.

This page discusses general rules and procedures that we follow in examinations and how to correct certain compliance problems.

Selection of returns
TEB uses a centralized case selection and review process to enhance the consistency of our enforcement activities and to focus resources on the areas that will have the most positive impact on the compliance of municipal debt issuances. This process includes identifying areas of noncompliance, developing corrective strategies, and assisting with those strategies. The reasons your municipal debt issuance may be selected for examination include as a part of a market segment's statistical selection, project or referral.

Your role in the process
The issuer of the municipal debt is treated as the "taxpayer" throughout the examination process. You, any conduit borrower, and any other party to the transaction are responsible for maintaining and producing adequate records to substantiate the tax-exempt status of the bonds. If the requested information is organized and complete, we can conduct the examination in a timely and efficient manner.

For certain tax credit bonds where direct payment of the allowable credit has been elected, the issuer of the debt is the party subject to taxation. As the taxpayer, the general provisions of Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, including those dealing with assessments, collections, and appeals, apply to you.

Publication 556 may also be useful in understanding the examination process of tax-exempt bonds. Your examiner can answer questions about the difference between tax-exempt and tax credit bond examination processes.

Representation
If you choose to have someone represent you on the examination, your representative must be a person eligible to practice before the IRS. You can submit Form 2848, Power of Attorney and Declaration of Representative, to authorize an individual to represent you before the IRS.

Your representative may have a conflict of interest if they also had a role in the issuance of your municipal debt, such as providing the approving opinion as to the qualifications of the municipal debt issuance, or is also representing other parties to the transaction, such as the conduit borrower. A representative with a conflict of interest may not represent a client before the IRS unless:

1. The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client,
2. The representation is not prohibited by law, and
3. Each affected client gives informed consent, confirmed in writing.

You may find it appropriate to permit direct communication between the examiner and any conduit borrower. If the TEB examiner agrees to conduct the examination in that manner, you must provide us with a Form 8821, Tax Information Authorization. This form permits the examiner to discuss your tax matter with the conduit borrower.

During the examination, we may also need to contact various third parties, including underwriters, financial advisors, bond counsel, and any other parties (and their counsel) with a transactional relationship to the municipal debt issue.

The examination
A Tax Exempt Bonds examiner notifies you by phone or letter that a municipal debt issuance has been selected for examination. If the initial contact is by phone, a confirmation letter will follow. The letter details the required items for the examination and may indicate how the return was selected. We may request additional items at a later date.

The examination may include a comprehensive review of the municipal debt issuance, or focus only on specific aspects. The examination continues until the examiner is reasonably certain that the municipal debt issuance has met the applicable requirements.

The TEB examiner will discuss any potential compliance problems with you or your representative. In some instances, we may issue Form(s) 5701-TEB, Notice of Proposed Issue, and Form(s) 886-A, Explanation of Items, to identify any areas of noncompliance. Upon completion of the examination, all unresolved issues will be included in a Notice of Proposed Adverse Determination Letter and Form(s) 886-A, Explanation of Items.

Resolving qualification issues – the closing agreement process
With respect to tax-exempt bonds, a failure to comply with the federal tax laws that govern municipal debt issuances may result in the loss of the tax-exempt status of the bonds under examination. Holders of these bonds would be taxed on the interest they receive. With respect to tax credit bonds, a failure to comply with the federal tax laws that govern municipal debt issuances may result in the loss of the tax credit status of the bonds under examination. Holders of these bonds would lose the ability to claim tax credits with respect to the bonds.

However, in most situations, the IRS will allow the issuer to enter into a closing agreement where you agree to correct the compliance failures and pay a resolution amount to the U.S. Treasury. A violation corrected in a closing agreement will allow the bond interest that’s payable to the holders of tax-exempt bonds to retain its tax exempt treatment or the holders of tax credit bonds to maintain the ability to claim tax credits.

Closing Letter
The final step in the examination process is a letter explaining the examiner’s conclusions. Sometimes the conclusion results in a tax liability for related entities and/or individuals and may require coordination with other business units within the IRS.

Appeal rights
The Office of Appeals settles unresolved issues. Your appeal rights are explained in detail in Publication 5, Your Appeal Rights and How to Prepare a Protest if You Don’t Agree. Appeal requests must be in writing and timely. If not, we will issue a Notice of Final Adverse Determination. Fast Track Settlement, an expedited appeals process, may be used in certain situations. You should discuss this with your examiner. For more information about the appeals process, see Revenue Procedure 2006-40, Administrative Appeal of Proposed Adverse Determination of Tax-Exempt Status of Bond Issue.

Post-issuance compliance and the TEB Voluntary Closing Agreement Program
TEB encourages issuers and other parties involved in bond transactions to adopt and follow procedures for monitoring and achieving post-issuance compliance with federal tax requirements applicable to their tax-exempt and tax credit bonds. Monitoring post-issuance compliance will

significantly improve the issuer's ability to identify noncompliance and prevent violations from occurring, or timely correct violations to ensure the continued tax-advantage status of the bonds.

TEB's Voluntary Closing Agreement Program is available to issuers who are not under exam and who have discovered a violation of the law associated with the issuance of tax-exempt or tax credit bonds. TEB VCAP allows you to correct violations as expeditiously as possible before the violations are discovered during an examination. Generally, an issuer will receive more favorable resolution terms under TEB VCAP than for the same tax violation discovered during an examination.

FINRA Regulatory Notice: Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market.

Regulatory Notice 16-10

The Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) are providing guidance to remind firms of their obligations in connection with privately placing municipal securities directly with a single purchaser and of the use of bank loans in the municipal securities market.

Questions concerning this Notice should be directed to:

- Cynthia Friedlander, Director, Fixed Income Regulation, Regulatory Operations, at (202) 728-8133; or
- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104.

View the Notice

S&P's Public Finance Podcast (State and Local Governments' Tax Increment Debt and Special Assessment Bonds)

In this segment of Extra Credit, Associate Director Sarah Sullivant discusses the highlights of our recent article about state and local government tax increment debt and Senior Director Michael Stock discusses our commentary on special assessment bonds.

Listen to the Podcast.

Apr. 4, 2016

Florida Launches Bond Program to Finance P3s.

BRADENTON, Fla. – New Florida legislation makes it possible to use tax-exempt financing as part of public-private partnerships for transportation, though P3 backers must convince an influential skeptic.

On Monday, Gov. Rick Scott signed House Bill 7027 into law, creating the nonprofit Florida

Department of Transportation Financing Corp.

The corporation, to be overseen by the Division of Bond Finance, will be the state's first conduit issuer for Florida DOT bonds.

The projects most likely to be financed are those using public-private partnerships, agency officials said.

The legislation also requires that FDOT consult with the Division of Bond Finance on P3 financing strategies, and allows the division to "make an independent recommendation" to the governor.

Creating of the new financing mechanism "has been criticized by some in the private sector," attorneys at Squire Patton Boggs wrote in a March 3 review of the U.S. Public Private Partnership Sector.

"Such bond issuances would require the approval of the State Bond Director…who is viewed by some in the private sector as being unsupportive of P3s," they wrote.

Until now, however, the Division of Bond Finance has not been consulted on financing proposals for FDOT's P3 projects, director Ben Watkins said Tuesday.

"I'm viewed as anti-P3 because I will be objective," Watkins said. "What I care about is financing in the cheapest possible way. You can have the benefit of the private sector on the design and construction, but tax-exempt financing is eminently more cost effective.

"The two are not mutually exclusive, and P3 proponents would have you believe they are," Watkins said.

To date, Florida's three mega-P3 projects – all of which won numerous industry awards – have been financed primarily with vendor-organized bank loans, along with equity and low-interest federal loans through the Transportation Infrastructure Finance and Innovation Act.

Those projects are the Interstate 595 express lane project in Fort Lauderdale, the Port of Miami Tunnels, and the I-4 Ultimate project.

FDOT's first P3, the I-595 project, was also the first in the nation to use an availability payment scheme using a 35-year concession contract negotiated in 2009.

The project opened in 2014, while payments for operations and maintenance run through 2044.

It cost $1.8 billion to build, but payments over the length of the concession will cost the state $4.27 billion, according to state documents.

The twin underwater tunnels to the Port of Miami were built to relieve traffic congestion through the city, also negotiated in 2009.

The tunnels cost $1 billion to build, and opened in 2014.

The contract also has a maintenance component that runs through 2044. It will cost $2.39 billion.

The most recent mega-P3 is the I-4 Ultimate project in the Orlando area.

Work on the 21-mile project started in late 2014 and is expected to be completed by March 2021.

It is expected to cost $2.3 billion to build, while the concession's 40-year price tag will be $5.04 billion.

"We've had to rely on the private sector" for P3 financing, FDOT Secretary Jim Boxold told The Bond Buyer Monday after the governor signed HB7027. "This [bill] gives us the option to do public-sector financing with bonds and presumably obtain lower interest rates."

Until now, he said FDOT has been limited to certain kinds of projects that it could finance with bonds.

State financing has been reserved for purchasing right of way, building bridges, and constructing certain tolled projects, including those operated by the Florida Turnpike Enterprise.

FDOT also is also authorized to use grant anticipation revenue vehicle bonds, though Florida has never issued Garvees.

Boxold said the new conduit bond program will allow his agency to advance large and small projects, and deliver them quicker, while ensuring that borrowing costs are kept to a minimum.

"This has the potential to result in significant cost savings on large-scale projects," he said, adding that bonding may not be used in every instance.

It gives FDOT an opportunity to "run the numbers" and select the most favorable financing method, he added.

According to Watkins, unwinding a portion of the state's first P3 set the stage for evaluating the use of tax-exempt financing.

In 2009, when FDOT closed on the 13-mile, I-595 project, $780 million of the $1.8 billion construction cost was financed with 10-year loans from a dozen banks.

An analysis of the 35-year P3 deal showed that public financing would have been significantly less expensive than the private-sector financing, Watkins said.

The bank loans were refinanced last year using a private placement and taxable bonds.

Watkins said the state potentially could have saved "hundreds of millions" of dollars if tax-exempt bonding had been an option to finance the I-595 deal initially.

"We deconstructed that transaction because it became clear to me that there was a better mouse trap," he said. "The notion is we can do that more cost effectively rather than leave financing up to the vendor.

"I call this P3 2.0 – the second generation."

Work on the new bond program also led to a new era of cooperation between FDOT and the Division of Bond Finance, Watkins said.

He credited Boxold and other transportation officials in the secretary's administration for supporting the evaluation of alternative financing for P3s.

FDOT saw potential for the bond program after evaluating the financial impact of the first P3s on the agency's work program, Boxold told the House Transportation & Economic Development Appropriations Subcommittee in January.

Paying for private-sector financing over time consumed much of the funds available for other DOT projects, Boxold told the committee.

FDOT's funding will go further using lower-cost tax-exempt bonds upfront, he said, adding that the new program is "another tool to deliver these projects" without impacting the work program.

THE BOND BUYER

BY SOURCE MEDIA

6:55 PM ET 04/06/2016

Puerto Rico Investors Offer New Bond Deal to Avert Default.

Investors holding almost $5 billion of Puerto Rico general-obligation bonds released a plan to provide debt relief to the island, which include a new $750 million offering to stave off a July 1 default.

The bondholders would agree to defer principal repayments for five years through a consensual exchange offer, saving the commonwealth $1.9 billion over the period, according to the proposal. It also stipulates issuing $750 million of new general obligations at a 7 percent interest rate to avoid a default on an $805 million general-obligation payment on July 1. Those securities would also pay only interest through June 2020.

The investor proposal comes after the Puerto Rico Senate passed a bill calling for a moratorium on a wide range of debt payments, including general-obligation bonds, through January 2017. The $13 billion of securities are guaranteed by the island's constitution.

"What the bondholders are doing seems to at least be a more productive step than what Puerto Rico is trying to do," said Dan Solender, who manages $18 billion of state and local debt, including commonwealth securities, as head of municipals at Lord Abbett & Co. in Jersey City, New Jersey.

General obligations with an 8 percent coupon and maturing 2035 traded Tuesday at an average price of 66 cents on the dollar, the lowest since the bonds were first sold in 2014, data compiled by Bloomberg show. The average yield was 12.8 percent.

"This consensual process avoids a July 1 default, which would irreparably harm Puerto Rico's economy, hurt millions of American citizens who live on the island, and impair Puerto Rico's access to markets and its ability to finance essential services," Andy Rosenberg, a lawyer at Paul Weiss Rifkind Wharton and Garrison, who represents the bondholder group, said in a statement. He represents a group of general-obligation bondholders in their negotiations with Puerto Rico and other creditor groups.

The terms proposed by investors includes enacting a statutory lien on general-fund revenue, similar to measures in Rhode Island and California. They would also require Puerto Rico to resume deposits into an escrow account at a New York bank to pay debt service on general obligations.

The $750 million size for the new deal could be revised based on funding needs, according to the proposal.

“We are ready and willing to discuss potential solutions that would address the commonwealth’s fiscal crisis in a sustainable and comprehensive fashion,” Melba Acosta Febo, president of the Government Development Bank for Puerto Rico, said in a statement. “We have not received an actionable, binding financing commitment from anyone, and we have received no offers that would lead Puerto Rico towards a stable and prosperous economy for years to come.”

Bloomberg Business

by Brian Chappatta

April 5, 2016 — 2:44 PM PDT Updated on April 5, 2016 — 2:55 PM PDT

Puerto Rico's Development Bank on Brink as Debt Gambit Goes Bad.

Puerto Rico’s Government Development Bank, which was set up after the Great Depression to chart a course out of poverty, is on the verge of a collapse that would deepen the Caribbean island’s $70 billion debt crisis.
The lender was designed to promote business investment with a long-term horizon, but in recent years politicians turned it into a piggy-bank that lent to the government and its agencies, helping keep them afloat as the island’s economy shrunk. Now it’s rapidly running out of cash and poised to default on a $422 million debt payment due in May — raising the risk that it may be pushed into receivership or broken up.

The bank’s failure would undermine one of the last sources of cash that Puerto Rican authorities are counting on to pay teachers, firefighters and other employees, in a territory where almost half the population lives in poverty. Hedge funds are also laying claim to the money, filing a lawsuit against the lender this week, while in Washington lawmakers are mulling steps to put the island government under federal oversight and give it legal powers to restructure its debt.

“It’s going to be a day of reckoning for a lot of municipalities,” said Marcos Rodríguez-Ema, who served as the bank’s president from 1993 through 1998. “Few of them know how to manage their budgets. Few of them understand the financing world. They will have to live within the means of the tax collections and that’s it.”

Puerto Rico Governor Alejandro Garcia Padilla on Wednesday signed legislation giving the government authority to temporarily halt payments on a wide swath of its debt, step that may buy the bank more time, even though it threatens to complicate negotiations with Wall Street and Congress.

Puerto Rico’s crisis has been building for almost a year as lawmakers cope with years of borrowing that allowed the government to pay its bills as the economy contracted. Since August, it’s defaulted on bonds sold by two of its agencies and is negotiating with hedge funds and other investors in an effort to reduce what it owes. The governor has said it may not be able to cover payments due in July on its general-obligation debt, which is given first claim on the island’s funds under its constitution.

Restructuring the development bank may exacerbate Puerto Rico’s troubles and put an economic recovery further out of reach, said Jose Villamil, an economist at Estudios Tecnicos Inc. an economic strategy and planning firm in San Juan. The 11.7 percent unemployment rate is more than twice what it is in the U.S., helping to fuel a population exodus that’s contributed to the government’s strains.

“If it were to go into receivership, it would increase the sense of uncertainty and in certain ways hopelessness that has been generated by this situation,” said Villamil, who about 10 years ago provided the GDB with a strategic plan that urged the bank to curb its lending to the island. “It would probably make it more difficult for the economy to recover, there’s no question about it.”

Barbara Morgan, a spokeswoman at SKDKnickerbocker in New York who represents the GDB, and Betsy Nazario, a spokeswoman at the GDB in San Juan, didn’t have an immediate comment. On Friday, Garcia Padilla said the bank will remain open and that his administration is doing “all we can to avoid a receivership.”

Melba Acosta, the GDB’s president, told a local radio station last week that the bank’s liquidity stood at about $700 million, while the moratorium legislation said it had slipped to $562 million by April 1, according to a copy of the legislation.

The island’s commission of financial institutions, the bank’s regulator, concluded in its most recent review in November that the GDB is insolvent, a determination that allows the administration to place the bank in receivership. It faces a potential $1.3 billion shortfall in June. Hedge funds that hold the bank’s bonds sued it Monday to stop it from returning deposits to public agencies and municipalities, which had about $3.9 billion in the bank as of Sept. 30.

“As the economic conditions in Puerto Rico continue to deteriorate without any relief in sight, GDB – like all agencies of the commonwealth – is faced with extremely difficult choices, and it is our responsibility to evaluate all options that may protect creditors’ ability to be repaid while ensuring that GDB keeps its doors open,” Acosta said in a statement Monday.

The declining liquidity has caused the price of bonds that mature next month to tumble as investors anticipate a default. Taxable securities due May 1 last traded March 11 at an average 31.9 cents on the dollar, less than half the price from a year ago. The commonwealth’s benchmark general obligations fell Wednesday, changing hands at an average 63.8 cents on the dollar, the lowest since the debt was first sold in 2014, Bloomberg data show.

The bank’s debt “has been dragged down with the commonwealth’s GOs and deteriorated as the severity of the stress in Puerto Rico became clearer and clearer,” said Ted Hampton, an analyst at Moody’s Investors Service.

The bank was created in 1942, with the help of Franklin D. Roosevelt’s administration, to bring manufacturing to an agrarian economy.

It helped to finance government-owned factories, as well as roads, bridges, housing and water and electricity systems. By the 1950s, the bank was extending loans to private companies to build factories and create jobs. A $3.5 million loan helped construct the Caribe Hilton in San Juan, the island’s first modern tourism hotel, which opened in 1949 and still operates today.

After federal tax incentives that lured manufacturers and drug companies were phased out from 1996 to 2006, Puerto Rico relied on the bank to help fund operating expenses by extending it loans or selling bonds on its behalf. That left it owed about $6.8 billion by the Puerto Rico government and its agencies as of June 30, 2015, according to financial documents.

“When you’re looking at the GDB about 2000 and on, you’re looking at a very weakened GDB,” said Jose Bolivar, a Puerto Rico historian and author of a book about the bank. “As time went by there was less money into infrastructure and more into financial engineering — and of course the debt started to increase.”

Bloomberg Business

by Michelle Kaske

April 6, 2016 — 2:01 AM PDT Updated on April 6, 2016 — 10:24 AM PDT

Harrisburg Issue Marks Return of Agency Behind City Collapse.

Armed with an investment-grade credit rating, a Harrisburg agency returned to the bond market for the first time since its predecessor nearly bankrupted Pennsylvania's capital city.

Capital Region Water sold $53 million of bonds to refinance as rates hold near five-decade lows. The agency was created in 2013 from the Harrisburg Authority, a now-defunct agency that funded the city's ill-fated incinerator project and prosecutors say was used by the former mayor to bankroll a criminal spending spree on Wild West memorabilia. The city's inability to pay its debts pushed the community into state receivership from 2011 until 2014.

Unlike in the past, Capital Region Water operates the water and sewer system independently of Harrisburg officials. It garnered a rating of A+, fifth-highest, from Standard & Poor's before the sale.

"It's not just a new logo and a new name,'' said Shannon Williams, the agency's chief executive officer. "It's a full comprehensive reboot to this entire organization and enterprise.''

The bond sale, the largest from a Harrisburg issuer in eight years and the first since the agency's overhaul, is the latest test of whether investors can embrace turnarounds by municipalities that were roiled by the 2008 credit crisis and the recession that ended almost seven years ago.

Essential Services

Detroit, which emerged from a record bankruptcy in 2014, refinanced water and sewer debt for yields of about 1 percentage point more than top-rated securities in December. That same month, Jefferson County, Alabama, secured an investment-grade rating from Moody's Investors Service, two years after having its debts reduced in federal court.

Capital Region's longest maturity bond due in 2029 was priced to yield 2.57 percent, 0.61 percentage point over top-rated debt and 0.08 percentage point less then similarly-rated revenue bonds, data compiled by Bloomberg show.

The Harrisburg agency has "done a lot" to move away from past practices that landed it in trouble, said John Donaldson, who oversees about $700 million of municipal bonds as director of fixed income at Haverford Trust Co. in Radnor, Pennsylvania. Its offering "looks pretty clean."

In addition, the sale taps into demand for debt backed by revenue from essential services, said Donaldson before the sale.

"It avoids some of the issues that go with a city like Harrisburg, where so much of the city is occupied by the state and other entities that aren't necessarily taxable but they do pay their water bills,'' he said.

Wild West

Harrisburg’s bout of fiscal turmoil stoked speculation that the ripple effects of the recession would lead to widespread defaults by local governments, which didn’t occur. The city of about 50,000 residents was placed under a state receivership in 2011, following an unsuccessful effort to file for bankruptcy protection, after defaulting on bonds for the incinerator overhaul that couldn’t generate enough revenue to repay them.

Mayor Stephen Reed, who left office in 2010 after 28 years, was charged last year by the state attorney general for diverting bond proceeds to reward allies and to buy items such as gunfighter Doc Holliday’s dentist’s chair. Reed has pleaded not guilty. Over his tenure, the municipality spent millions of dollars on ventures from a minor-league baseball team to a Wild West museum that was never built.

In 2013, Harrisburg paid off its incinerator debt of $362.5 million, about seven times its general-fund budget, partly through the sale of the facility and lease of its parking system.

Refinancing Savings

Capital Region Water is financially independent of the city. It doesn’t send money to the government and has no plans to sell bonds on behalf of other borrowers, as the Harrisburg Authority did, Williams said. S&P said the agency gets “high marks” for transparency and accountability.

“We actively engage our residents at every opportunity that we can, to make sure they are holding us accountable,” Williams said.

After the sale, the agency will have $127 million in water bonds outstanding. The refinancing may save as much as $7 million, which would help keep expenses down, Williams said.

“We will not be buying Wild West artifacts,’’ she said. “I can state that with firmness.’’

Bloomberg Business

by Romy Varghese

April 6, 2016 — 2:00 AM PDT Updated on April 6, 2016 — 12:39 PM PDT

Historic UConn Women's Basketball Run May Bolster Muni-Bond Sale.

The University of Connecticut is issuing $340 million of municipal bonds as its women’s basketball team looks to become the first-ever to win the National Championship Game four years in a row.

The school is offering the debt to individual investors on Monday and Tuesday, while institutions can buy any remaining securities on Wednesday, according to John Sullivan, the university’s manager of treasury services. UConn’s women’s team is 37-0 and has beaten every opponent by at least 10 points this year. It faces Syracuse on Tuesday in the final game of the National Collegiate Athletic Association Tournament.

UConn also borrowed money in late March or early April in each of the past two years, coinciding with the basketball tournament commonly called March Madness, data compiled by Bloomberg show. In 2014, the school won both the men’s and women’s brackets, a rare feat.

“We do consider possible synergies and it is nice when they occur and the extra athletic publicity is appreciated," Sullivan said in an e-mail. "Many potential buyers look for UConn paper about this time."

Though Sullivan joked that it would be nice to know basketball performance a year or two ahead of the bond sales — when they're usually scheduled — the UConn women's team has proven to be as close to a sure thing as is possible in sports. Led by head coach Geno Auriemma, the team has won nine national championships since 2000, including three straight from 2002 to 2004. They've won in each of the past three years, too. A fourth-consecutive tournament win would be unprecedented.

Standard & Poor's has said that while March Madness success might not mean an instant credit boost, it does give colleges "a leg up" in an era of heightened competition. The University of Oklahoma and Texas A&M University tapped the bond market last month, ahead of their matchup in this year's Sweet 16.

Proceeds from UConn's tax-exempt deal will finance capital projects on the campus in Storrs, Connecticut, and refinance existing obligations, bond documents show. The school is borrowing under its UConn 2000 plan, which has funded initiatives such as adding to the student union, renovating a graduate-student dormitory and building an ice-rink enclosure.

Moody's Investors Service lowered its outlook on the university to negative last month, citing likely reductions in state appropriations because of Connecticut's budgetary strains. Like the state, the bonds are rated Aa3, the fourth-highest investment grade.

Bloomberg Business

by Brian Chappatta

April 4, 2016 — 11:49 AM PDT

Chicago Bondholders Keep the Faith After Pension Fund Setback.

Chicago's biggest bondholders aren't losing faith.

Nuveen Asset Management, Wells Fargo Asset Management, Columbia Threadneedle Investment Advisers and BlackRock Inc. are showing optimism that the nation's third-largest city will work its way out of a pension crisis, even after the Illinois Supreme Court rejected Mayor Rahm Emanuel's plan to ease $20 billion of unfunded retirement obligations. Despite a lack of help from the gridlocked state of Illinois and mounting liabilities that threaten the city's solvency, holders of more than $1 billion of the city's debt, point to Chicago's growing economy and track record of a willingness to raise taxes.

Chicago actually benefits in the short-term from last month's court ruling. Required pension payments drop by about $89 million this year, relieving some of the immediate pressure on the city budget. The two funds are still projected to run out of money in 10 to 13 years. While the decision was a disappointment, city officials now have a new set of facts to work with as they address the liabilities, said Lois Scott, Chicago's former chief financial officer.

"I almost think it's good to get this ruling out of the way, and that actually creates a little bit of clarity in terms of what their options are going forward," said John Miller, co-head of fixed income in Chicago at Nuveen Asset Management, which oversees about $110 billion in munis, including about

$430 million of Chicago general obligations. “It does increase the necessity to work on a reform model that might be a little different, that might actually pass muster.”

The city’s most-actively traded securities over the last week changed hands at an average price of 97 cents on the dollar Wednesday, little changed from the day of the ruling, according to data compiled by Bloomberg. Spreads on the bonds that mature in 2038 had widened by 12 basis points over benchmark securities.

Confidence is being buoyed by the fact that Chicago has already shown its capacity to raise taxes specifically to pay retirement bills. In October, Emanuel pushed through a record property-tax hike to shore up the public-safety worker pensions. The move won praise from investors who rallied the city’s bonds after the levies were approved.

“They’ve demonstrated a willingness, and they have ability, but they will continue to face budgetary pressure related to this for the foreseeable future,” said Joe Gankiewicz, a credit-research analyst at BlackRock Inc. in Princeton, New Jersey, which oversees about $110 billion of municipal debt. The firm holds about $157 million of Chicago GO bonds, according to data compiled by Bloomberg, based on market value.

State Gridlock

Even with the tax hike dedicated to the public-safety retirement funds, uncertainty still haunts the police and fire pensions. State lawmakers approved legislation to lower Chicago’s required payment by about $220 million this year, stretching out the amortization of the debt. Republican Governor Bruce Rauner, who received the bill on March 31, has yet to sign it.

Any kind of assistance from Springfield, the Illinois capital, doesn’t look likely for Chicago. The state has its own fiscal crisis. Illinois is in its 10th month without a budget as Rauner and the Democrat-led legislature can’t agree on a spending plan.

“The noise around Illinois is certainly making it more difficult for Chicago to get things done,” said Dennis Derby, an analyst and portfolio manager at Wells Fargo Asset Management, which holds about $466 million, based on market value, of Chicago general obligations among its $39 billion in assets.

Liabilities Estimate

Chicago isn’t alone in not having enough money to cover all the benefits that have been promised. Unfunded state and local pension liabilities total $3.5 trillion, Moody’s Investors Service said in a report Wednesday. The consequences of not finding a solution are dire: unfunded pension debt helped drive Stockton, California, into Chapter 9, and Detroit into the biggest municipal bankruptcy in U.S. history. Those same unfunded obligations contributed to the crisis in Puerto Rico.

All four credit-rating companies have a negative outlook on Chicago, signaling more rating downgrades may be on the horizon. Fitch Ratings lowered the city to BBB-, one rank above junk, on March 28, calling the court’s decision “‘among the worst possible outcomes.” A week later, Kroll Bond Rating Agency dropped its rating to BBB+, three steps above junk.

“The biggest risk is just that without the flexibility to trim benefits that it’s very likely that the city’s own costs will increase above those that were previously projected,” said Matt Butler, the lead analyst on Chicago at Moody’s Investors Service. “One of the key challenge for the city is the pace at which the pension debt continues to grow.”

Credit Quality

The city has flexibility on expenditures and revenue, signaling there are options available to incorporate higher contributions over the longer-term, according to Moody's.

"Their credit quality hinges entirely on their ability to raise revenues or cut costs, and even more importantly, their willingness to do so" to pay for pensions, said Ty Schoback, a senior analyst in Minneapolis at Columbia, which handles about $30 billion in municipal bonds, including about $300 million of Chicago debt. "There is no silver bullet. It's taken years to get to this point, and it's going to take years to get out."

Bloomberg Business

by Elizabeth Campbell

April 7, 2016 — 2:00 AM PDT Updated on April 7, 2016 — 8:39 AM PDT

[Moneyball Invades Boston's City Hall, Where Everything Is Graded.]

There is no place sports heroes cast a longer shadow than in Boston, where Red Sox immortal Ted Williams has inspired City Hall to come up with its own batting average.

The average on Thursday for Mayor Martin J. Walsh and his lieutenants was 1.36. That's probably confusing even to diehards, since the best Williams ever hit was .406 back in 1941, a mark that hasn't been surpassed since. But by the city's unique calculations, batting a thousand or just above means that targets — a pothole filled within one business day, for example — are being met.

Plenty of cities have what amount to dashboards of data that show how quickly streetlights are fixed or the number of public-school kids attending class. Only in the hometown of the Red Sox is a single number generated to show how well Walsh and his starters are serving Boston's 656,000 residents. While the city has collected data for years, the batting average is two months old.

It's drawing praise for its boldness as well as some head-scratching about whether one number properly assesses the myriad duties on which cities are judged. "They're really jumping into the deep end," said Neil Kleiman, a professor at New York University's Wagner Graduate School of Public Service. "No other city has anything like it."

Greatest Hitter

This is how it works: Department heads gather data on 21 quality-of-life components, from crime to road repair to visitors to the library. Those metrics are folded together to produce the daily tally, as well as a weekly, monthly and quarterly score. All the numbers are posted on City Score, a website that mimics Fenway Park's imposing left-field wall, aka, the Green Monster.

Dan Koh, Walsh's chief of staff, gave a TED Talk last year entitled, "What Government Can Learn from Baseball." Koh led off with — what else? — how the late Williams, who some consider the greatest hitter in baseball history, was the impetus for a single performance number for the sprockets and gears of municipal bureaucracy.

Walsh, elected in 2013 to succeed the late Thomas M. Menino, calls himself and Koh the odd couple of urban America, a streetwise mayor who hired a techno-geek to help build the data-driven city of the future. The Harvard-educated Koh became enamored in college with statistics as used by former Oakland Athletics General Manager Billy Beane, whose implausible success relied on data to find a roster of unheralded yet talented players. His story was chronicled in “Moneyball,” the 2003 Michael Lewis book, and later a feature film.

Seeing Red

Boston residents who spot graffiti and or missed trash pickups are encouraged to message the city, or call the 311 non-emergency hotline. Complainants who send photos of problems may receive, in return, photos of the problems fixed. Many who report issues are surveyed twice, in making the complaint and receiving the result, on how well they were treated along the way.

Walsh meets regularly with his performance managers as well as department heads to talk about the results. At a session two weeks ago, the batting average was 1.11, meaning targets were being met at a slightly better-than-expected rate. The meeting began on an upbeat note with Chris Dwelley, the citywide performance manager, reporting that the prompt repair of streetlights had improved 28 percent in February compared to January. The average for “STREETLIGHT ON-TIME %” as seen on the scoreboard that day was .99.

Walsh nodded his approval, but as he scanned the scoreboard on a screen on his office wall, he saw something he didn’t like: red. White numbers are at or above targets, the red are below. For example, ambulance-response times had been in the red for a while. Walsh dug into the reasons why and concluded that Boston had grown while its ambulance fleet had not. Proving the scoreboard is no mere gimmick, Walsh decided, within just a few weeks of spotting the offending color, to include 10 more ambulances in his next budget proposal.

What bothered him most were the constituent satisfaction surveys, red across the board. “There’s a disconnect somewhere,” he said, vowing to root it out.

Mayors in other cities have looked into making dashboards public before rejecting the idea, according to NYU’s Kleiman. What they typically fear, he said, is that airing bad numbers would bring unwanted attention to their problems. Koh gets it. His boss initially had the same reaction. But in the end, the rationale that the city needed to be run like a business won out. “We deliver services and we have customers,” the mayor said. And besides, “we have a lot of good numbers” to show off too.

Like the day after the meeting, when the average came in at 1.26. That was, for those keeping score at home, up .15 from 1.11 the previous day.

Bloomberg Business

by Tom Moroney

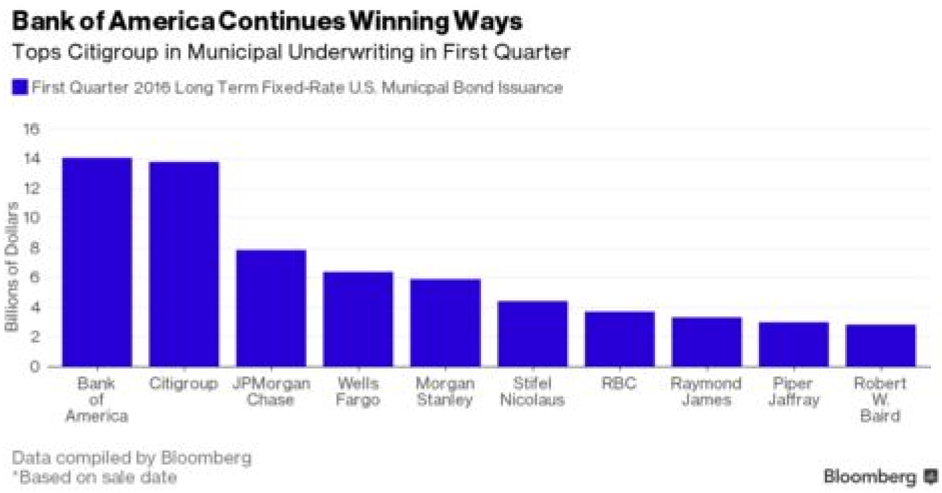
April 8, 2016 — 2:00 AM PDT Updated on April 8, 2016 — 6:00 AM PDT

Bank of America Edges Citigroup in Municipal Bond Sales Battle.

Bank of America Corp. held its position as the top underwriter of U.S. municipal bonds during first quarter of 2016, edging out Citigroup Inc., as securities dealers competed for a shrinking number of new issues.

Bank of America managed the sale of $14.1 billion of long-term, fixed-rate state and local government debt through March 31, according to data compiled by Bloomberg. Citigroup handled $13.8 billion and JPMorgan Chase & Co. was a distant third at $7.9 billion, keeping the dominant banks with the same rankings they held in 2015.

“A lot of it is their experience and their ability to execute transactions — the marketing, distribution and underwriting abilities,” said Sue Perez, an assistant treasurer of Massachusetts. The state hired Charlotte, North Carolina-based Bank of America for its $1.1 billion sale in March, one of the biggest issues of the quarter.

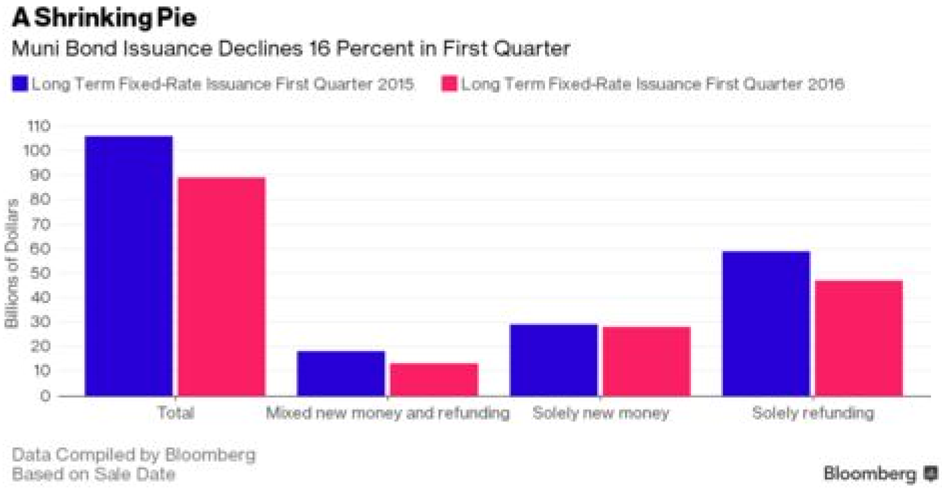


The competition among underwriters increased as bond sales slowed from a year earlier, when states and cities rushed to refinance debt before the Federal Reserve began raising interest rates for the first time since 2006. That left them with fewer bonds to replace during the first three months of the year, even though borrowing costs remained near five-decade lows as the Fed held off on raising rates after its initial quarter-point increase in December.

Municipal-securities issuance totaled $89 billion in the first quarter, down 16 percent from a year earlier. About $47 billion of the bonds were issued solely for refinancing, compared with $59 billion during the same period last year, the data show.

Another reason volume is down: Long-dated municipal bonds typically are callable in 10 years and new sales were slow a decade ago. Issuance totaled about $54 billion in the first quarter of 2006, the second-lowest since 2003.

“Refundings are massively down,” said Mikhail Foux, head of municipal strategy at Barclays Plc, which underwrites bonds. “We expected a down year, it’s sort of on track.”



Selena Morris, a Bank of America spokeswoman, and Scott Helfman, a Citigroup spokesman, declined to comment.
About 76 percent of the quarter's bonds were sold through negotiated sales, in which a municipality picks an underwriter in advance instead of selling them to whoever offers the lowest interest cost during an auction.

Santee Cooper, South Carolina's largest power producer, tapped Bank of America to lead a $540 million debt refinancing in January. The publicly owned electricity company, which provides energy to 2 million South Carolinians, rotates its lead banking roles between Bank of America and Barclays, said Jeff Armfield, the chief financial officer.

The utility has long history working with Bank of America banker Christopher Fink, who served as a financial adviser to the agency when he was at Morgan Stanley, said Armfield.

"What you always look for in an underwriter is somebody that's going to put your interest at least equal with the interest of their bank, if not ahead of the interest of their bank," he said.

Such ties provide more benefits than choosing the bank that offers the lowest cost, Armfield said. That provides the utility with expertise that can help it implement its financial plans, he said.

"Each utility within public power is unique in a lot of ways, " he's said.

Bloomberg Business

by Martin Z Braun

April 5, 2016 — 2:00 AM PDT

[Bloomberg Brief Weekly Video - 04/07]

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

[Watch the video.]

April 7, 2016

Puerto Rico Bonds Tumble on Debt Moratorium Bill.

Some Puerto Rico bond prices touched record lows after Gov. Alejandro García Padilla signed a bill that would allow the commonwealth to suspend debt payments while awaiting help from Washington in dealing with the island's financial crisis.

The bill empowers Mr. García Padilla to impose a moratorium on payments to keep government cash flowing for essential services. It is the latest attempt by the U.S. commonwealth to protect money it says it needs for police and firefighters while it waits on action from the U.S. Congress or Supreme Court.

Under the provisions of the bill, the governor could evaluate whether to pay debt on an "entity-b--entity basis." The moratorium powers would generally last through Jan. 31 with a possible two-month extension. The debt would remain outstanding, and missed payments would be due when the moratorium ends.

Some Puerto Rico general obligation bonds maturing in 2035 traded at 62.98 cents on the dollar Wednesday, below a previous low of 64 cents in June 2015, according to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website.

Puerto Rico owes investors about $70 billion and has been struggling with a decade of economic stagnation and a steep population decline that led Mr. García Padilla to declare its debts unpayable. The island began defaulting on debt with weaker legal protections in August, and the governor has said he would prioritize public safety over payments to creditors.

"This legislation provides us with the tools to address the highest priority of needs—providing essential services to our people—without fear of retribution," Mr. García Padilla said Wednesday.

The island's bill may renew pressure for action from the U.S. Congress. Commonwealth officials have warned of a legal morass that would follow a default on debt with stronger protections.

Republicans in the U.S. House of Representatives last week proposed a bill that would allow debt restructuring under supervision of a federal control board, as the high court debates whether Puerto Rico has the right to craft its own process for municipal bankruptcy.

The House Committee on Natural Resources, which has jurisdiction over federal territories, is shepherding the bill.Because Puerto Rico isn't a state, its municipalities or entities can't file for bankruptcy protection under chapter 9 of the federal code.

The commonwealth's Government Development Bank has a debt payment of about $400 million due May 1. The Government Development Bank had $562 million available to pay debt as of Friday, the bill said.

The bill was met with criticism from some of Puerto Rico's creditors, who said they are being unfairly targeted by a commonwealth that won't commit to necessary structural overhauls and hasn't made a sincere effort at negotiating a consensual restructuring.

Stephen Spencer, a managing director at investment bank Houlihan Lokey who is financial adviser to several of the island's major bondholders, called the bill's passage "an unfortunate development."

"We intend to carefully review the legislation, but at this stage we believe that it may lead to violations of the terms of the agreement" between the Puerto Rico Electric Power Authority and its creditors, Mr. Spencer said.

Several analysts said the island can't restructure its way out of economic problems. At AllianceBernstein Holding LP, which holds no Puerto Rican government debt, municipal analyst John Ceffalio called for federal oversight and debt restructuring, in combination with policies that would spark economic growth.

"We would certainly consider investing in Puerto Rico in the future," Mr. Ceffalio said. "But we would be looking for an economic turnaround first and a change to that debt dynamic."

THE WALL STREET JOURNAL

By HEATHER GILLERS and AARON KURILOFF

Updated April 6, 2016 6:12 p.m. ET

Write to Heather Gillers at heather.gillers@dowjones.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

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Hedge Funds Sue to Freeze Puerto Rico Bank's Assets.

A group of hedge funds asked a federal court in San Juan on Monday to freeze the assets of Puerto Rico's powerful Government Development Bank, claiming it was insolvent and appeared to be spending what cash it had left to prop up other parts of the island's troubled government.

The bank had failed to provide financial information that creditors were entitled to under federal law, the hedge funds said in a lawsuit. They asked the United States District Court in San Juan to bar further cash transfers by the bank, other than those essential to the safety and well-being of the island's residents.

"Once G.D.B. spends its last remaining funds — and it is only a matter of time — many essential services in Puerto Rico may come to a halt," the hedge funds said in their complaint. By then, they said, there would be nothing left for the bank's creditors, who "will suffer substantial losses."

The bank plays a critical role in Puerto Rico's financial affairs, and if it stumbles, the effects would be widely felt.

The Government Development Bank has a debt payment of about $422 million due on May 1, and credit analysts doubt it has enough cash to make it.

The president of the bank, Melba Acosta Febo, said on Monday that the lawsuit's accusations were "erroneous" and that the bank was acting within the bounds of the relevant laws.

"The central claim of G.D.B.'s creditors, that G.D.B. has knowingly withheld financial information in order to prefer certain depositors over its bondholders, is wholly false and without basis in fact," she said, adding that the bank "will respond to the complaint in full through proper legal means."

The federal bankruptcy code bars Puerto Rico from Chapter 9 municipal bankruptcy. So, Congress is working on a law that would allow Puerto Rico to restructure debts under the watch of a federal oversight board. The draft bill would shield the government from creditor lawsuits in the case of a major default.

But the legislation raises constitutional issues. Congress is not expected to enact a law in time for the bank's May 1 debt payment due date — or perhaps not even by July 1, when an even bigger payment from Puerto Rico is due.

The hedge funds, which own Puerto Rico bonds, based part of their lawsuit on a confidential report by Puerto Rico's Commissioner of Financial Institutions, which in November found the Government Development Bank insolvent.

In March, a federal judge quoted prominently from the commissioner's confidential report in deciding a tax case, though the commissioner's office would not release a copy.

In that tax case, Walmart accused Puerto Rico of unlawfully hitting the retailer with a higher tax rate last year than any other business on the island. Walmart argued that the island's lawmakers had enacted the tax because they were desperate to fill a $125 million budget gap.

Judge José Antonio Fusté not only drew on the confidential finding that the bank was insolvent, but also wrote that the bank had not had a required examination since 2007.

After a struggle for information, the examiners had determined, he wrote, that the bank's liquidity level was "critically deficient," that it was failing to account properly for at least $2.3 billion of "off-balance sheet items," and that its liquidity would be "negative $1.348 billion in June 2016," which was less than the required reserve levels. The examiners found that the bank might be put into receivership.

As Judge Fusté's opinion has gained attention, rumors have swirled on the island about a possible receivership for the bank, or other drastic steps. Ms. Acosta issued a statement on Friday calling such rumors irresponsible.

"The G.D.B. will neither shut down nor be privatized," she said. She said the bank was still trying to negotiate with creditors and was considering other steps, "such as declaring a temporary moratorium on payments, and amending the G.D.B. charter."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

APRIL 4, 2016

After Two Years as a Fixed Income Star, Munis Lose Luster in First Quarter.

NEW YORK — U.S. municipal bonds drew investors and yielded positive returns throughout the first quarter of this year, but their performance paled compared to Treasuries, which gained in January during a Chinese-led global stock market rout.

The Treasury rally marred a two-year run of outperformance by municipal bonds. Both asset classes were later cut down after recovering oil prices contributed to a broader risk-on sentiment.

Munis returned 1.67 percent as of March 31, according to Barclay's Municipal Bond index, versus 3.20 percent for Treasuries.

BlackRock called February “a long, strange month” for debt issued by states, cities and other local governments, because strong momentum after eight months of positive runs finally met resistance.

In 2015, munis returned 3.30 percent versus 0.84 percent for Treasuries. Munis returned 9.05 percent in 2014 versus 5.05 percent for Treasuries.

With munis currently underperforming Treasuries, “long-term tax-exempt yields are now higher than the taxable alternatives pre-tax, a fact that should attract more demand from crossover buyers,” BlackRock directors said in a March commentary.

Banks predicted late last year that 2016’s muni performance will underwhelm.

Bank of America Merrill Lynch projected full 2016 total muni returns will be 3.10 percent, while Morgan Stanley estimated 1.25 percent and Barclays a negative 1.00 percent.

Not everyone thinks munis look dull.

“I really don’t see that as true at all,” said Stephen Winterstein, chief municipal fixed income strategist at Wilmington Trust. “In the first quarter we’ve achieved over one-third of the performance of 2015… Never annualize.”

Volatile equity markets have driven stability-seeking investors to munis, Winterstein said.

“It wasn’t that munis did real poorly,” said Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management. “They just kind of took a little step back.”

Investors sank $12.5 billion into muni bond funds in the first quarter, the most since a net inflow of $14.5 billion in the third quarter of 2012. Flows have been positive for 26 consecutive weeks, according to data from Lipper, a Thomson Reuters company.

To be sure, trouble spots linger in Illinois and elsewhere.

PNC Capital Markets found 79 percent of mostly buy-side analysts in a recent survey have a “lower” or “much lower” level of trust toward states’ and cities’ willingness to honor bondholder obligations now versus five years ago.

Yet despite concerns, including continuing crises in Puerto Rico and public pension underfunding, “the municipal market is still regarded as a very high quality market,” Winterstein said.

In many cases, primary deals have not had enough bonds to satisfy investor appetite.

For example, in a March 14 deal from the California Health Facilities Financing Authority for the Lucile Packard Children’s Hospital, term bonds maturing in 2055 were 11 times oversubscribed, Winterstein said.

NEW MONEY

Though demand is high, supply remains low, a technical aspect boosting the $3.7 trillion muni bond market.

Overall muni issuance fell 7.5 percent to $96.2 billion in the first quarter compared to the same quarter last year. New money bonds rose 37 percent year-over-year to nearly $38 billion while issuance tied to refunding dropped 23.4 percent to $58.5 billion.

That is a shift from last year when refundings dominated, but the change could be short-lived.

"We would anticipate that refunding issuance will increase given the rate outlook and low nominal rates going forward," said James Grabovac, a strategist at McDonnell Investment Management.

The slight underperformance could entice more investment dollars into munis.

"Valuations are relatively attractive, especially as you move 10 years and beyond," Grabovac said.

Citigroup was the top underwriter for the quarter, and California sold $2.95 billion of debt, more debt than any other issuer.

By REUTERS

APRIL 5, 2016, 4:12 P.M. E.D.T.

(Reporting by Hilary Russ and Chizu Nomiyama)

Puerto Rico Passes Bill Allowing Halt to Debt Payments.

Gov. Alejandro García Padilla of Puerto Rico on Wednesday signed a bill that would allow him to declare a state of emergency and give him authority to halt payments on the island's crushing $72 billion debt.

The measures capped two days and nights of marathon debate in Puerto Rico's legislature, where lawmakers from the main opposition party called any unilateral debt moratorium dangerous and members of the governor's party insisted that doing nothing would be even worse.

In Washington, House Republicans seeking to rescue Puerto Rico prepared to release a revised plan that includes a federal oversight panel. The proposal has been contentious on the island, where the governor and his top advisers are increasingly at odds with investors over how to restructure the debt, most of it in the form of municipal bonds.

"This legislation provides us with the tools to address the highest priority of needs — providing essential services to our people — without fear of retribution," the governor said in a statement on Wednesday. He accused Puerto Rico's creditors of hampering federal assistance by "misinforming the public and dissuading Congress from doing what is right for our 3.5 million American citizens."

The Puerto Rican Senate approved the measure at about 3 a.m. Tuesday. The House, after becoming embroiled in a dispute over whether certain types of bonds should be excluded, approved it around 1 a.m. Wednesday.

Stephen Spencer, who represents some investors who have already agreed to restructure their bonds, said, "We intend to carefully review the legislation, but at this stage we believe that it may lead to violations of the terms of the agreement."

He said that the administration last fall had hailed that restructuring as a model for others to follow, adding that the bondholders he represents should have been excluded from any coming moratorium, "rather than being cast into a state of uncertainty."

The bill did not specify a starting date for a moratorium, leaving that decision to the governor. But a big debt payment, $422 million, is due on May 1, and there have been many signs that Puerto Rico is not able or willing to pay it.

That payment is due on bonds issued by the Government Development Bank, an institution that plays a critical role in the island's financial affairs, including holding deposits of municipalities and other government entities. As recently as last week, holders of the bank's debt were in talks about an agreement that would give the bank some breathing room if it failed to make the payment.

But those efforts broke off in the face of a flurry of revelations that the bank was insolvent, that it might be placed in receivership, and that it was swiftly moving deposits to other financial institutions, apparently to keep them from being frozen or drained away by frightened depositors.

The bill says the bank has just $562 million in cash. A moratorium would be intended, among other things, to help preserve that cash, so the bank can use it to finance the activities of other parts of the government.

The law also establishes a new framework for putting the development bank into receivership, and creating a "bridge bank" that would take over some of its deposits and obligations during the moratorium.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

APRIL 6, 2016

Bankruptcy Battle Threatens a Summer Chill in Atlantic City.

ATLANTIC CITY — In a normal year, residents and business owners in this seaside resort would be making preparations for a summer-long influx of tourists and gamblers. But this is in no way a normal year in Atlantic City.

The city's government is on the verge of running out of money, even after persuading its employees to defer their paychecks for four weeks. Its mayor and City Council are engaged in a political standoff with Gov. Chris Christie that turned nasty and personal this week.

On Thursday, the speaker of the State Assembly, Vincent Prieto, a Democrat, added fuel to Mr. Christie's ire by introducing legislation intended to help Atlantic City that the governor had vowed he would not sign. Mr. Christie, a Republican, has already sued the city's government for failing to make timely payments to the local schools — even though the school board president said he opposed the lawsuit.

Caught in the political crossfire are business owners like Debbie Devlin, who has two shops on the city's famous boardwalk that sell painted hermit crabs and other novelties and souvenirs. Ms. Devlin said she had only recently begun ordering merchandise for this year, about four months later than usual, and she was doing that cautiously.

"With all the different factions fighting each other, we're stuck in the middle," Ms. Devlin, an Atlantic City native, said. She said the uncertainty about how the city would stave off bankruptcy was compounding the effects of the casino industry's decline. "It's just sad," she said.

Other businesses, like Perry's Cafe, a coffee shop near City Hall, are bracing for a drop-off in traffic from municipal employees who are scheduled to go without pay from Friday until early May.

The nine unions that represent city workers agreed to defer payment until property taxes for the second quarter of the year are collected, a concession the City Council approved on Wednesday. Until that arrangement was worked out, the city planned to shut City Hall and suspend all but the most essential services until May.

A shutdown would have wiped out much of Perry's business, its owner, Perry Arsenis, said. But he said he still expected a stark decline in spending by municipal employees during the long stretch between paydays.

"We'll feel the pinch in the restaurant, yes, absolutely," Mr. Arsenis said. But he said he hoped the city's financial crisis could be resolved before it starts to hurt tourist-dependent businesses like the Howard Johnson motel his family owns near the boardwalk.

"We can't be talking about this all through the summer," Mr. Arsenis said. "If we don't have a good summer, you're going to see people closing up. We're running on fumes."

The motel has already suffered from the reversal of the city's gambling fortunes, he said of the closing in 2014 of four of Atlantic City's 12 casinos. About half of the motel's 71 rooms would be rented on a weeknight before there were casinos in neighboring states, Mr. Arsenis said. Now, with casinos in Pennsylvania, Delaware and Maryland drawing away customers, he said, he was lucky if 10 rooms were filled on a weeknight.

The casinos had been the foundation of the city's tax base, but as their revenues plunged and some closed their doors, the value of the survivors also declined. Casino owners challenged the assessments of their properties and won judgments for significant rebates.

Now Atlantic City owes the most successful of the casinos, the Borgata, more than $125 million. When the city failed to pay part of that debt, the Borgata received court approval to stop paying its tax bills, exacerbating the city's cash crunch.

Some smaller business owners, including Mr. Arsenis, tried to help the city out by paying their property taxes a month early. But the gap between what Atlantic City takes in and what it owes is too wide to bridge without help from the state, city officials say.

That is why the mayor, Donald Guardian, turned to Trenton for help. Mr. Christie said the state would negotiate with the city's creditors only if legislators approved two pending bills that would give the state broad control over the city.

Mr. Guardian and Marty Small, the City Council president, said the legislation would usurp too much local authority, including control over collective bargaining agreements, and enlisted Mr. Prieto's help in crafting an alternative bill, which the Assembly's judiciary committee passed on Thursday and the speaker may put up for a vote next week.

But Mr. Christie had already said, at a news conference in Atlantic City on Wednesday, that he would not sign any bills related to a bailout of Atlantic City other than the two the State Senate passed last month. And while he was in town, the governor took a few swipes at Mr. Guardian, a fellow Republican, and the city's other elected leaders.

Asked why he was meeting with the Atlantic County executive, Dennis Levinson, and not Mr. Guardian, Mr. Christie said, "There's no purpose in meeting with a liar." The governor explained that he believed Mr. Guardian had reneged on a previous agreement with Mr. Christie and the Senate president, Stephen M. Sweeney, a Democrat.

As soon as the governor was on his way out of town, Mr. Guardian and the Council held their own news conference across a courtyard and fired back at Mr. Christie. “His credibility is shot,” Mr. Small said of the governor. “Let’s not let him come down here and use the divide-and-conquer method.”

It was another war at the shore that people might pay to watch, but it lacked a resolution. When the oratorical grudge match was over, Mr. Guardian said he still expected the state to help Atlantic City before it runs out of money.

“We’re in this shape because we haven’t been given the state aid that other cities have,” Mr. Guardian said. He added, “If we do a bankruptcy, it’s not an Atlantic City bankruptcy, it’s a Chris Christie bankruptcy.”

Mr. Christie opposes the idea of having the city file for bankruptcy because credit analysts say it would raise the costs of borrowing money for other cities in New Jersey. But not everybody in Atlantic City is averse to a municipal bankruptcy.

Frank Pileggi, the longtime manager of a bar called the Irish Pub near the boardwalk, said the perception that Atlantic City was not open for business was more damaging than a bankruptcy filing would be.

“Bankruptcy’s not a dirty word around here,” Mr. Pileggi said. “There’s a possibility that the next president of the United States will be a man whose businesses in Atlantic City went bankrupt repeatedly,” he said, referring to Donald J. Trump, who once operated three casinos in town.

THE NEW YORK TIMES

By PATRICK McGEEHAN

APRIL 7, 2016

New Municipal Bond Activity Up 25% vs. January Totals.

CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2016. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests a resurgence in issuance of new corporate and municipal debt offerings over the next several weeks.

Read the report.

Purchasers of ABLE Accounts May Now Be Protected by MSRB Investor Protection Rules.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that it has received interpretive guidance from the staff of the Securities and Exchange Commission (SEC) relating to the status under the federal securities laws of interests in accounts established by states to implement programs under the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). As a result of the MSRB's receipt of that guidance, purchasers in ABLE accounts may be protected by the MSRB's investor protection rules that help ensure that they are treated fairly.

ABLE accounts that are sold by MSRB-regulated dealers, which underwrite other municipal fund securities such as 529 plans, are now required to comply with investor protection rules when acting as underwriters with respect to the sale of ABLE accounts.

"The new ABLE Act savings programs are an important vehicle for helping to support individuals with disabilities in maintaining health, independence and quality of life," said MSRB Executive Director Lynnette Kelly. "The application of the MSRB's investor protection rules will help ensure that ABLE account purchasers are treated fairly and afforded the same protections as other investors in municipal fund securities."

The SEC staff guidance allows the MSRB to regulate dealers involved in the primary offering of ABLE accounts because ABLE programs established by states under Section 529A of the Internal Revenue Code of 1986 may, in some cases, be considered municipal securities that are sold by municipal securities dealers.

The SEC staff guidance means that these dealers are subject to the jurisdiction of the MSRB and its investor protection rules. For example, MSRB rules require that a dealer's recommendation to purchase interests in an ABLE account be suitable for the purchaser based on the purchaser's financial situation and investment objectives and that advertisements cannot be materially false or misleading.

The MSRB will be issuing interpretive guidance under its rules for dealers relating to the sale of interests in ABLE accounts.

Date: April 5, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

NABL Submits Recommendations for 2016-2017 Priority Guidance Plan.

On April 7, the National Association of Bond Lawyers submitted recommendations for inclusion in the 2016-2017 Guidance Priority List in response to IRS Notice 2016-26. The list included updating the management and service contract safe harbors, issuing clarifying guidance concerning the application of the final allocation and accounting regulations in section 1.141-6 of the Treasury Regulations, revising and finalizing the proposed June 2015 regulations concerning issue price matters under section 148, and revising and re-proposing the February 2016 regulations concerning the definition of political subdivision.

The comment letter can be read here.

NABL: House Bill Prohibits Tax-Exempt Bonds for Sports Stadiums.

Rep. Steve Russell (R-OK) introduced the No Tax Subsidies for Stadiums Act (H.R. 4838), which would prohibit tax-exempt bonds from being used for professional sports stadiums and for-profit entertainment arenas. H.R. 4838 defines a professional sports facility as a location used as a stadium or arena during at least 5 days per year for professional sports exhibitions, games or training. The bill would also prohibit tax-exempt financing for certain entertainment facilities. H.R. 4838 has been referred to the House Ways and Means Committee. The Obama Administration also proposed in its budget eliminating tax-exempt financing for professional sports facilities.

Click here to read the bill.

NABL: MSRB Seeks Comment on Direct Purchase Disclosure.

The Municipal Securities Rulemaking Board (MSRB) issued a request for comment on a concept proposal (Regulatory Notice 2016-11) to require municipal advisors to file with the MSRB information on direct purchases and bank loans of their municipal entity clients. The MSRB has encouraged issuers to voluntarily provide information on direct purchases and bank loans but, according to the MSRB, few issuers have done so.

The request lists 17 questions that the MSRB is seeking comment on. The questions include whether requiring disclosure would protect investors, what information should be disclosed, whether a municipal advisor should be required to disclose information on all outstanding "alternative financings" or just the financing the advisor was engaged for, and whether there is additional information an investor would need to have a complete picture of an issuer's overall financial condition. The MSRB did not ask for views on whether it had the authority to require such disclosures, either in general or in the specific case of loans.

The MSRB request for comments is available here.

Comments are due May 27, 2016.

MSRB Seeks Comment on Clarifying Exceptions to Minimum Denomination Rule.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft rule amendments to support the practical implementation of its rule that generally prohibits dealers from selling bonds below a stated minimum denomination. The amendments seek to clarify exceptions that are consistent with the rule's original intent to protect investors.

Comments should be submitted no later than May 25, 2016.

Read the MSRB RFC.

- **Ed. Note:** Microsoft Outlook continues to make a complete hash of the newsletter's formatting. Although the publication is clearly devoid of substance, it should at least look presentable. Please, please scroll to the bottom of the newsletter and avail yourself of the "View it in your browser" option. That is all.
- [NABL: MSRB, FINRA Notice on "Loan" and "Security"]
- [Fed Rule Treating More Munis as HQLA Seen As Too Restrictive.]
- [MSRB Asks About Requiring MAs to Disclose Bank Loan Info From Issuers.]
- [Lawyers Call For Challenges to SEC Administrative Proceedings.]
- [GASB Issues Enhanced Guidance on Irrevocable Split-Interest Agreements.]
- [Hot Topics from the Tax and Securities Law Institute's Annual Meeting: Squire Patton Boggs]
- *BOKF, N.A. v. BCP Land Company, LLC* – District Court holds that bondholders had sufficiently pled their allegations that developers had improperly sold Community Improvement District property to entities with which they were affiliated for the purpose of recouping the Development Period Reserve Fund and to avoid the Special Assessment payments; court deferred to Black's Law Dictionary for definitions of "affiliate" and "control," neither of which was defined in the Trust Indenture.
- And finally, the above-referenced case contains the immortal phrase, "Charles Engram was retained as a consultant to 'create energy and excitement' about Branson Commerce Park." Best of luck with that, Chuck.

TAX - ALASKA

Pursche v. Matanuska-Susitna Borough

Supreme Court of Alaska - March 25, 2016 - P.3d - 2016 WL 1168200

Landowner filed objection to borough's tax foreclosure list. The Superior Court granted borough's motion for summary judgment and denied landowner's motion to dismiss. Pro se landowner appealed.

The Supreme Court of Alaska held that:

- As a matter of first impression, superior court properly exercised jurisdiction over the case, despite federal land patent in the property's chain of title, and
- Land once owned by federal government is subject to local property taxes after it is conveyed to a private party.

Superior court, as Alaska's court of general jurisdiction, properly exercised jurisdiction over tax foreclosure action brought by borough against landowner's property, despite federal land patent in the property's chain of title. There was no exception that removed patented property from superior court's broad jurisdictional grant.

ZONING - ARIZONA

Avenue 6E Investments, LLC v. City of Yuma, Ariz.

United States Court of Appeals, Ninth Circuit - March 25, 2016 - F.3d - 2016 WL 1169080 - 16 Cal. Daily Op. Serv. 3151

Real estate developers brought action against Arizona city, asserting § 1983 claim for equal protection violation and claims under Fair Housing Act (FHA), based on contentions that city's refusal to rezone land to permit higher-density development stemmed from disparate treatment of Hispanics and created disparate impact. After equal protection and FHA disparate treatment claims were dismissed for failure to state a claim, the United States District Court for the District of Arizona granted summary judgment to city on developers' FHA disparate impact claim. Developers appealed.

The Court of Appeals held that:

- Developers plausibly alleged that city's decision was driven by animus, and
- Existence of similarly-priced and similarly-modeled housing available elsewhere in city did not necessarily preclude developers' disparate impact claim under FHA.

Real estate developers, by alleging that Arizona city denied their request to rezone land to permit higher-density development despite advice of its own experts and in context of racially charged opposition by city residents expressed in code words well-understood in city, and that this was the only rezoning application that city had denied in last three years or last 76 applications, plausibly alleged that city's decision was driven by animus, as required to state a claim for disparate treatment of Hispanics with respect to housing opportunities, in violation of equal protection and Fair Housing Act (FHA).

Existence of similarly-priced and similarly-modeled housing available elsewhere in Arizona city did not necessarily preclude real estate developers' disparate impact claim under Fair Housing Act (FHA), asserting that city's refusal to rezone land to permit higher-density development disproportionately deprived Hispanic residents of opportunities for affordable housing.

STATUTE OF LIMITATIONS - CALIFORNIA

Merkoh Associates, LLC v. Los Angeles Unified School District

Court of Appeal, Second District, Division 8, California - March 22, 2016 - Cal.Rptr.3d - 2016 WL 1109099 - 16 Cal. Daily Op. Serv. 3068

Developer brought class action against school district, alleging causes of action for money received and declaratory relief after school district withheld refund of developer fees based on demolition credit and refused to pay interest on refunded fees. The Superior Court sustained school district's demurrer on grounds that action was time-barred under school impact fee statute, and developer appealed.

The Court of Appeal held that school impact fee statute, rather than more general prejudgment interest statute, governed developer's interest claim.

School impact fee statute, rather than more general prejudgment interest statute, governed developer's claims seeking interest on development fees refunded by school district due to demolition credits. Legislature specifically set forth an interest provision in the school impact fee statute and the method for obtaining it, and developer's claim was "an action to attack, review, set aside, void, or annul the imposition of the fees" within the meaning of the statute.

EMINENT DOMAIN - GEORGIA

Jones v. Sabal Trail Transmission, LLC

Court of Appeals of Georgia - March 29, 2016 - S.E.2d - 2016 WL 1203814

Company hired to construct and operate natural gas pipeline brought action seeking interlocutory injunctive relief and declaratory judgment on its request to enter property to perform survey. The trial court entered final declaratory judgment and injunction, declaring that company had right to enter property and enjoining property owner from interfering with that right. Owner appealed.

The Court of Appeals held that:

- Trial court was authorized to consolidate hearing on interlocutory injunction application and declaratory judgment action, and
- Statute governing eminent domain for natural gas pipelines does not condition grant of eminent domain on possession of any certificate or permit.

Trial court was authorized to consolidate hearing on interlocutory injunction application and declaratory judgment action brought by company hired to construct and operate natural gas pipeline, which sought to enter property to perform survey, even though notice for hearing only indicated that it was for interlocutory injunction. Company's motion for interlocutory injunction was also action for declaratory judgment, as it plainly asserted claims for and sought injunctive relief and declaratory judgment as to company's right to perform survey, nothing in the record showed that property owner, after hearing, raised any objection to consolidation or asserted a claim of insufficient notice, and, thus, owner had sufficient notice that hearing would encompass both claims and acquiesced to consolidation of issues, which were clearly identified by judge and company's counsel at hearing.

Property owner waived for appellate review claim that trial court erred in finding that company hired to construct and operate natural gas pipeline had statutory authority to enter her property to survey, as Natural Gas Act did not authorize entry and federal law preempted state law on issue. Owner did not raise issue before trial court, and preemption claim was not jurisdictional, as successful preemption defense under Act would have dictated only change in law, not change in forum.

Property owner waived for appellate review claim that trial court erred in finding that company hired to construct and operate natural gas pipeline had eminent domain authority to enter her property to conduct survey, as company was not pipeline company as term was used in statute stating that special procedures and restrictions were necessary for petroleum pipelines in connection with grant of eminent domain power to pipelines and statute defining pipeline; claim was not raised and ruled on in trial court.

IMMUNITY - GEORGIA

Mayor, City Council of City of Richmond Hill v. Maia

Court of Appeals of Georgia - March 30, 2016 - S.E.2d - 2016 WL 1237359

Mother, as individual and administratrix of daughter's estate, brought action against city and police officer for wrongful death, intentional infliction of emotional distress, invasion of privacy, and daughter's pain and suffering, arising out of officer's disclosure of photographs of daughter's body after previous suicide attempt. The trial court denied city and officer's motion for summary judgment. City and officer applied for interlocutory appeal, which was granted.

The Court of Appeals held that:

- Mother's ante litem notice to city was insufficient, except for wrongful death claim;

- Genuine issue of material fact precluded summary judgment on wrongful death and survival claims;
- There was no evidence that officer's conduct was directed toward mother to support individual claim; and
- Officer's disclosure was not public.

Ante litem notice, as required to bring action against city and police officer in official capacity, was not sufficient as to claims brought by mother for daughter's pre-death pain and suffering, invasion of daughter's privacy, or for mother's individual claim for intentional infliction of emotional distress. Even though notice identified mother as surviving parent, described claimed negligence, and was sufficient to put city on notice of mother's claim for wrongful death, notice did not reference any claims on behalf of daughter's estate or identify mother as administratrix, did not present for adjustment claims by estate for pre-death pain and suffering or for invasion of privacy, and did not state that mother suffered any personal injury.

Genuine issue of material fact as to proximate causation of daughter's suicide precluded summary judgment for city and police officer in mother's wrongful death and survival claims.

There was no evidence that police officer's allegedly tortious conduct of disclosing photographs of daughter's body after suicide attempt was directed toward mother, as required to support mother's individual claim of intentional infliction of emotional distress against officer in his individual capacity, despite contention that there was evidence that mother suffered non-physical injury and incurred pecuniary losses. Mother did not base claim on negligence, rendering physical impact rule and pecuniary loss exception to impact rule inapplicable.

Police officer's disclosure of photographs of body of individual after suicide attempt to his daughter was not public disclosure, and therefore did not constitute tort of public disclosure of private facts. Even if disclosure was wrongful, it was private communication to daughter that was not sure to reach public.

INVERSE CONDEMNATION - GEORGIA

[Pribeagu v. Gwinnett County]

Court of Appeals of Georgia - March 23, 2016 - S.E.2d - 2016 WL 1126548

Property owners filed suit against county for inverse condemnation, seeking recovery for damage to personal property, cost of repair, emotional upset, and attorney fees, arising out of constant flooding of their property due to county's alleged failure to properly maintain road and storm water drainage system that serviced their property. The trial court, Gwinnett County, granted county's motion in limine on basis of sovereign immunity, and excluded testimony of owners' experts. Owners appealed.

The Court of Appeals held that:

- Owners' failure to identify anywhere in record "personal property" that was taken as result of county's purported actions that created nuisance, and to explain "direct, consequential, special, and emotional damages" sustained, precluded appellate review of trial court's order barring owners' recovery of damages;

- Owners’ failure to include in record on interlocutory appeal pre-trial order excluding owners’ expert testimony on value of property loss precluded appellate review of same;
- Testimony of owners’ expert that it would cost $45,540.81 to repair and restore property damaged by constant flooding was relevant to show diminution of fair market value of property;
- Owners were not precluded from presenting evidence on claim for bad faith attorney fees.

EMINENT DOMAIN - MISSISSIPPI

City of Gulfport v. Dedeaux Utility Co., Inc.

Supreme Court of Mississippi - March 24, 2016 - So.3d - 2016 WL 1165447

Following second remand of city’s condemnation action against utility, the Special Court of Eminent Domain entered judgment on jury verdict awarding $8,063,981 to utility. Parties appealed.

The Supreme Court of Mississippi held that:

- Setoff to which city was entitled was limited to revenues produced by assets added after city had filed petition;
- City was required to pay interest from date of filing of petition;
- City would be required to pay interest at reasonable rate determined by trial court; and
- There was no evidence that jury rendered impermissible “quotient verdict.”

In valuing utility property that was taken by city via eminent domain, assets existing on date petition was filed were to be valued as of that date, and any tangible assets acquired between filing of petition and transfer of property were to be valued as of date of transfer. Clear jury instructions eliminated possibility that jury would be confused, and using two valuation dates did not somehow mean that utility was not valued as a going concern.

In eminent domain proceedings in which city took utility property, setoff to which city was entitled was limited to revenues produced by assets added after city had filed petition.

In eminent domain proceedings in which city took utility property, city was required to pay interest from date of filing of petition, instead of date of taking actual possession, on amount of jury award pertaining to value of assets existing on date petition was filed.

In eminent domain proceedings in which city took utility property, city would be required to pay interest at reasonable rate determined by trial court, rather than at 8% rate applicable to notes, accounts, and contracts.

In eminent domain proceedings in which city took utility property, there was no evidence that jury rendered impermissible “quotient verdict,” even though amount of damages was precisely the average amount of figures submitted by parties. Trial court specifically instructed jury that it was impermissible to arrive at quotient verdict, and there was no evidence that jurors agreed in advance individually to determine their damage valuations and then average them.

BONDS - MISSOURI

BOKF, N.A. v. BCP Land Company, LLC

United States District Court, W.D. Missouri, Southern Division - March 9, 2016 - Slip Copy

- 2016 WL 951636

A Community Improvement District was formed in Branson, Missouri for the purpose of developing property for commercial and residential purposes. The District authorized the issuance of $13,590,000 of Special Assessment Bonds and $3,150,000 of Subordinate Special Assessment Revenue Bonds.

The Bondholders subsequently sued the development group (and the subsequent purchaser), alleging that it had sold the property to individuals and organizations affiliated with the developers in order to recoup the Development Period Reserve Fund and to avoid payment of the Special Assessments.

The original developers moved for summary judgment, contending that the sales were legitimate, arms-length transactions to parties they did not control and with which they were not affiliated.

The District Court denied the developer's motion for summary judgment, finding that the Bondholders had sufficiently pled their allegations that the developers were affiliated with the subsequent purchasers.

Of particular interest was the court's analysis of the terms "affiliate" and "control," neither of which were defined in the Trust Indenture. Rejecting the defendants' attempt at much narrower interpretations, the court instead deferred to the much broader definitions contained in Black's Law Dictionary.

INSURANCE - SOUTH CAROLINA

South Carolina Ins. Reserve Fund v. East Richland County Public Service Dist.

Court of Appeals of South Carolina - March 23, 2016 - S.E.2d - 2016 WL 1125810

Liability insurer brought action against its insured, a county public service district, for declaratory judgment that it owed no duty to defend or indemnify insured in homeowner's suit alleging district had installed a sewage force main and an air relief valve that released offensive odors in front of homeowner's property. Insured counterclaimed for declaratory judgment. The Circuit Court entered judgment for insurer after bench trial. Insured appealed.

The Court of Appeals held that:

- Pollution exclusion was valid;
- The odors were pollutants; and
- "sudden and accidental" exception to pollution exclusion did not apply.

Pollution exclusion was valid in policy issued to county public service district under Tort Claims Act permitting political subdivisions to procure coverage from Insurance Reserve Fund for risks for which immunity was waived. Regulation in existence when legislature enacted the Act contained general liability policy with pollution exclusion.

Foul odors from hydrogen sulfide and methane gases released from sewage force main and an air relief valve in front of homeowner's house were "pollutants" within meaning of pollution exclusion of liability policy issued to county public service district, even though the odors were not harmful. The odors were "fumes" or "gases" listed in the exclusion.

Release of foul odors through sewage air relief valve was not accidental and unexpected, and, thus, “sudden and accidental” exception to pollution exclusion of liability policy issued to county public service district did not apply to homeowner’s claim to recover for damage caused by release of odors in front of house. Release prevented sewer line explosion, and although district did not know when pumps would turn on and cause release, they did so several times each day.

EMINENT DOMAIN - UTAH

Salt Lake City Corp. v. Evans Development Group, LLC

Supreme Court of Utah - March 24, 2016 - P.3d - 2016 WL 1178396 - 2016 UT 15

City brought condemnation proceedings against property owner, seeking condemnation so that property could be exchanged for another piece of property owned by public utility company. The Third District granted summary judgment in favor of city. Property owner appealed.

The Supreme Court of Utah held that:

- Statute providing that railroad was public use for which condemnation was permitted did not authorize city to condemn property, and
- Condemnation of property for utility company to build substation violated statutory requirement that city, as condemnor, remain in charge of public use.

Eminent domain statute providing that property could be condemned for railroads and street railways for public transportation did not authorize city to condemn owner’s property so that it could exchange that property for another property owned by public utility company, though purpose of exchange agreement was so that city could conduct railroad realignment project on utility company’s property. City had to satisfy public use requirement on property subject to condemnation, and though eminent domain statute might provide authority for city to condemn utility company’s property for railroad, it did not authorize city to condemn owner’s property.

City’s condemnation of owner’s property pursuant to exchange agreement, under which city was to condemn property and exchange it for another piece of property owned by public utility company so that utility company could build electrical substation on condemned property, violated statutory requirements that the city, as condemnor, be in charge of the public use to which property would be put and oversee construction of that use. City was sole condemnor, but it was utility company that was to be in charge of public use of building and operate electrical substation, and that arrangement would leave owner without recourse to bring action against city to recover property if substation was not built within reasonable time.

Electronic Trading is Poised to Transform Institutional Trading of Municipal Bonds.

The average daily trading volume for municipal bonds in 2015 was $8.6 billion, according to SIFMA.1 Trading volumes may be significant, but inefficiencies remain.

Municipal bond trading is hampered by a fragmented market that makes finding liquidity challenging. There’s a lack of automation, with the majority of trades still completed over the phone. Manual processes not only increase costs, but they are prone to errors. However, electronic trading is now poised to transform how institutional investors and dealers approach secondary trading in muni bond markets.

Regulators are also looking more closely at the market for muni trading. A February 13, 2015 statement, U.S. SEC Commissioner Luis Aguilar stated that inefficiencies and lack of automation in municipal bond trading results in “billions of dollars each year in unnecessary fees, transaction costs, and interest expense.”2

Secondary trading of municipal bonds is in desperate need of a transformation. For an example of what that transformation may look like, consider how the introduction of electronic trading significantly impacted the trading of high grade (HG) and high yield (HY) corporate bonds more than a decade ago. Today, approximately 20% of trading in the U.S. high grade markets takes place electronically.

Although there are differences between the corporate and municipal bond markets, the benefits of electronic trading will improve municipal bond trading, just as it has transformed the corporate bond market.

Here are three ways that electronic trading technology can accelerate that transformation by providing additional liquidity that improves pricing, eases regulatory compliance, and improves trading efficiency and reduces costs.

1. Broader Liquidity and Improved Pricing

Electronic trading allows investors to simultaneously query multiple dealers in an auction format versus the traditional sequential search, significantly opening up the number of potential trading counterparties and expanding the liquidity pool for all market participants.

Additionally, on an all-to-all electronic platform, dealers and investors are able to anonymously see and respond to orders even if they did not receive the inquiry directly.

2. Ease Regulatory Compliance

Electronic trade blotters record every transaction—including bids and offers—to provide an audit trail. For example, a trader can easily answer compliance questions surrounding best execution by proving that they canvassed electronically and traded at the best level.

3. Trading Efficiency and Reduced Costs

An electronic investor-to-multi-dealer request for quote (RFQ) model that submits a bid or offer to multiple dealers simultaneously not only increases the number of trades but results in cost efficiency. Analysis conducted by the University of California, Berkeley*, showed an increase in cost savings, in corporate bond markets, when the number of dealers in competition increased, through using electronic RFQ to submit inquiries.

The broader the universe of trading counterparties, the more likely a trade request will match two participants. And, stated simply, more trade volume equates to greater profitability for all counterparties.

An electronic trading platform enables straight through processing by providing connectivity between dealer and investor order management systems (OMS) for both pre-trade and post-trade. This connectivity allows the investor to send and review trades to and from the OMS. Reporting and updating occur automatically.

Conclusion

The high grade and high yield corporate bond markets have benefited significantly from electronic trading. Those same benefits– additional liquidity, better pricing, easing of the compliance burden, and reduced costs—will translate to the municipal bond market as well.

1http://www.sifma.org/research/statistics.aspx

2https://www.sec.gov/news/statement/making-municipal-securities-market-more-transparent--iquid-fair.html

About MarketAxess

MarketAxess operates a leading e-trading platform that enables market participants to trade credit instruments using MarketAxess' patented technology. Over 1,000 institutional investor and broker-dealer firms are active users of the platform, accessing global liquidity in U.S. high-grade, Emerging Markets, high-yield, Eurobonds, U.S. Agencies, Munis, CDS and other fixed-income securities.

MarketAxess offers institutional municipal bond participants with multi-dealer RFQ trading, bid/offer list execution of up to 200 line items, access to IDC and JJK evaluations and MSRB data, full STP connectivity from pre- to post-trade, complete audit trails and trade blotters and best-in-class TCA.

MAR 30, 2016

Fed Rule Treating More Munis as HQLA Seen As Too Restrictive.

WASHINGTON – The Federal Reserve on Friday released final rule changes to treat more municipal securities as high-quality liquid assets under liquidity requirements for large financial institutions, but critics complain they do not go far enough and could hurt the muni market.

The rule changes will take effect on July 1, 2016, but other banking regulators still exclude munis as HQLA.

"Unfortunately, [the rule changes] will continue to discourage investment in our local communities. And, it will do little, if anything, to help cash-strapped school districts and municipalities finance critical infrastructure projects," said Rep. Luke Messer, R-Ind., sponsor of a bill approved by the House in November that would go further than the Fed.

The final rule changes are slightly more lenient than those proposed last May after municipal market participants protested the liquidity rules adopted by the Fed, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp. in September 2014 that excluded munis as HQLA because of concerns they were not liquid or readily marketable and could not be converted to cash during periods of financial stress.

The final rule changes treat as level 2B liquid assets municipal general obligation bonds that are backed by the full faith and credit of a U.S. state or municipality, are investment grade, and have been issued by an entity whose obligations have a proven track record as a reliable source of liquidity during periods of significant stress.

Munis would still have to meet the liquid and readily marketable standard outlined in the rule to be considered level 2B assets. There are three classifications of liquidity in the rule, level 1, level 2A and level 2B. Level 2B, which includes some corporate debt, is the lowest liquidity classification in the rule. Only 40% of an institution's aggregate HQLA can be made up of level 2A and 2B assets, with only 15% of the total HQLA coming from level 2B assets.

One big change from the Fed's first proposed changes is that the final rule allows insured munis to qualify as level 2B securities if the underlying security would otherwise qualify as HQLA without the insurance.

Another change is that the final rule eliminates the proposed requirement that institutions have no more than 25% of munis with the same CUSIP number.

However, the Fed still maintains a 5% limit on the amount of munis that a regulated institution can include as HQLA but does not limit the number of munis an institution could hold other than for complying with the Fed's liquidity rule.

The final rule does not include revenue bonds as HQLA, but the Fed said it will continue to monitor the liquidity characteristics of revenue bonds and consider whether to include them as HQLA in the future.

Dustin McDonald, director of the federal liaison center for the Government Finance Officers Association, said GFOA applauds the Fed's effort to include munis but believes the regulator ignored the group's broad input on the liquidity benefits munis could provide.

"The amendment does not sufficiently correct the 2014 rule and GFOA and our state and local government association partners will continue efforts to secure enactment of legislation to truly address the short-sightedness of the rule," McDonald said.

He was referring to Messer's bill, which would treat munis that are investment grade and readily marketable as Level 2A assets — the same level as some sovereign debt and government-sponsored debt of Fannie Mae and Freddie Mac. Munis could also account for up to 40% of a bank's HQLA under the bill.

Rep. Carolyn Maloney, a Democrat from New York who co-sponsored Messer's bill, said, "The OCC should follow the Fed's lead and offer similar relief in order to protect the municipal bond market, and cities and states across the country."

Sen. Mike Rounds, R-S.D., who has been mentioned as a candidate to offer an HQLA bill in the Senate, said the Fed proposal "is a step in the right direction" but that he plans to keep working in the Senate to give fair treatment to munis.

Dealer groups, like the lawmakers, welcomed the Fed's efforts, but criticized the limited nature of the changes.

John Vahey, director of federal policy at Bond Dealers of America, said it is "unfortunate that the Fed has chosen to continue to restrict and limit the use of general obligation bonds and completely exclude high-quality revenue bonds from the banking liquidity rule."

Michael Decker, managing director and co-head of the Securities Industry and Financial Markets Association municipal securities group, said the eventual effect of the rule will be to reduce demand for munis and potentially create higher borrowing costs for state and local governments.

Mike Stanton, head of strategy and communications at Build America Mutual, said BAM appreciates the Fed's willingness to make insured munis eligible for treatment as Level 2B liquid assets provided they meet the board's other criteria.

The Fed's liquidity rule applies to institutions that have at least $250 billion in total consolidated assets or at least $10 billion in on-balance sheet foreign exposure.

It also applies to state member banks that have at least $10 billion in total consolidated assets and are consolidated subsidiaries of covered bank holding companies as well as nonbank financial companies that the Fed has supervisor over as designated by the Financial Stability Oversight Council.

Bank holding companies and certain savings and loan holding companies with at least $50 billion in total consolidated assets who don't meet any other thresholds are also covered under the rule.

The Bond Buyer

By Jack Casey

April 1, 2016

Moody's publishes methodology on Green Bonds Assessment .

New York, March 30, 2016 — Moody's Investors Service has published its Green Bonds Assessment (GBA) methodology, which offers a consistent, standardized and transparent framework for evaluating an issuer's approach for managing, administering, and allocating proceeds to and reporting on environmental projects financed by green bonds across various security types globally.

Specifically, the GBA methodology explains how Moody's evaluates a green bond based on five key factors: (i) organization, (ii) use of proceeds, (iii) disclosure on the use of proceeds, (iv) management of proceeds, and (v) ongoing reporting and disclosure on environmental projects financed or refinanced with such securities. Moody's defines green bonds as fixed-income securities — both taxable and tax-exempt — that raise capital for use in projects or activities with environmental benefits.

The methodology is intended to inform issuers, investors, financial intermediaries and other interested market participants about Moody's green bond assessment definitions and symbols, assessment process, information sources, the key factors and sub-factors, and how these are scored to derive a green bond assessment.

The methodology's publication follows a Request for Comment (RFC) period that ran between 14 January and 12 February 2016. This published version incorporates a number of revisions that reflect the feedback received.

The GBA methodology may be used to assess bonds issued by corporations, financial institutions, governments, supranational organizations, municipal bodies as well as other entities. Additionally, the methodology may be used to perform an assessment on project finance and structured finance transactions, such as asset backed securities.

As part of the assessment process, Moody's will score each bond issue on five key factors (along with their respective sub-factors), weighted to reflect their relative importance, to arrive at a composite grade.

The composite grade, in turn, will inform an overall assessment that runs from GB1 (Excellent) to GB5 (Poor).

The initial assessment of green bonds and their use of proceeds involves an examination of relevant governing documentation, regulatory filings, issuer reports and presentations, if any, and other publicly available information.

Information derived from these sources is complemented by direct engagement and dialogue with the issuer. GBAs are unmonitored but are expected to refresh annually based on receipt of an annual "use of proceeds" report from the issuer.

Moody's "Green Bond Assessment Methodology" is available for purchase at: http://www.moodys.com/viewresearchdoc.aspx?docid=PBC_188333.

TAX - OHIO

Veolia Water N. Am. Operating Servs., Inc. v. Testa

Supreme Court of Ohio - March 2, 2016 - N.E.3d - 2016 WL 827776 - 2016 -Ohio- 756

Taxpayer, a private owner and operator of a waste-water-treatment plant, treating both industrial and residential waste water, filed application for an exempt-facility certificate. The tax commissioner granted certificate for only a percentage of the personal property the commissioner deemed to be exempt. Taxpayer appealed. The Board of Tax Appeals affirmed. Taxpayer appealed.

The Supreme Court of Ohio held that Board's application of primary-purpose test to each article of plant's property was reasonable and lawful.

Board of Tax Appeals' application of primary-purpose test to each article of property of waste-water treatment plant individually, in determining tax exempt status of plant pursuant to statute governing tax exemption for industrial water pollution control facilities, was reasonable and lawful. Pollution-control statute imposed a direct functionality test, under which, plant's trucks and general buildings were not themselves designed, constructed, or installed for primary purpose of either "collecting or conducting industrial waste to a point of disposal or treatment," or of "reducing, controlling, or eliminating water pollution caused by industrial waste," as required for exemption.

Ellis Straddles the Line Between Politics, Municipal Finance and Public Policy.

AUSTIN – Over the past 26 years, state Sen. Rodney Ellis, D-Houston, has voted to confirm gubernatorial appointments to the Lower Colorado River Authority, a powerful electric utility in Central Texas. During the same time, financial firms he either owned, worked for, or owned stock in have profited handsomely by helping underwrite $3.7 billion in bonds sold by the authority.

Ellis, who is seeking the Democratic Party's endorsement for a seat on the Harris County Commissioners Court, has an impressive legislative record well-known to voters – 676 bills he has authored or served as the lead Senate sponsor have become law, including major reforms to Texas' criminal justice system, schools and community colleges.

But because of Texas' lax ethics law, much less is known about Ellis' equally impressive career in the lucrative government bond business, which repeatedly has placed him in a position to exercise authority over local governments and public agencies whose bond proceeds were being used to pay Ellis' firms. His dual role as lawmaker and bond underwriter has left him straddling the line between politics, municipal finance and public policy, raising questions about potential or actual conflicts of interest, or the appearance of conflicts.

Since first being elected to the Texas Senate in 1990, Ellis has been involved directly or indirectly in municipal bond deals totaling at least $50 billion in Texas, an analysis by the Houston Chronicle has found. Nearly all of those deals have involved several firms doing "underwriting" – when firms are chosen or bid to buy bonds from a government agency and then sell them to investors.

The cost of issuing government bonds is about 1 percent of the bond's principal amount, or $1 million for every $100 million in bonds sold. About half that issuance cost, or $500,000, would go to underwriters' fees, according to Public Sector Credit Solutions, a California-based research firm that has examined 800 bond deals nationwide since 2012.

'Proud' of varied roles

Ellis, in recent interviews via email, said he has not violated any ethics laws and has not done anything unethical in his votes as a legislator.

"There is no connection between my votes in the Senate and any bond underwriting," he said. "I'm a businessman, lawyer, and African-American involved in public finance. I'm proud of the fact that I'm one of the first to combine those four experiences and also have a successful legislative career at the same time."

Asked how his involvement with firms underwriting government debt would affect his work as a Harris County commissioner, Ellis told the Chronicle that if elected, he would "sever all ties with public finance companies."

That has not been the case during his legislative career.

In many respects, Ellis has benefited from a system in which Texas legislators set their own rules and many Texans appear reconciled with so-called "citizen legislators" who hold regular sessions every other year and often blur the line between public service and private interests. Ellis himself has said in floor debate that in "a part-time citizen legislature … there are going to be some inherent conflicts in how people derive income."

The list of government agencies whose bonds Ellis' firms have helped underwrite is a long one, including the city of Houston, Harris County and the Houston Independent School District. Others are far removed from his power base, like the Lower Colorado River Authority in Austin and the North Texas Tollway Authority in suburban Dallas.

In 1993, Ellis was chairman of a Senate committee that handled legislation affecting how local governments operate. While he wielded the gavel, the firm he co-founded was doing bond work for at least 26 local governments in Texas and collecting at least $375,000 in fees.

Ellis' firm in 2010 was among seven that bought and sold $256 million in bonds issued by the Port of Houston Authority for the port's expansion. Two years later, Ellis opposed a proposal that would have enabled the governor to appoint all members of the port commission, saying the authority should not be singled out despite major questions about its leadership.

Ellis was a member of the Senate Transportation Committee in 2014 when his firm helped underwrite $130.6 million in bonds for the Metropolitan Transit Authority of Harris County and $379.6 million in bonds sold by the Dallas Area Rapid Transit Authority, and in 2012 when $134.6 million in bonds were issued by the North Texas Tollway Authority.

State law does not require Ellis to categorize in his ethics statements that the firms he has owned, worked for, or owned stock in specialize in government bond deals.

Texas lawmakers have to disclose clients only if they are lobbyists or if they work for public agencies or companies that employ lobbyists.

In his personal financial statements from 1991 through 1994, Ellis listed 56 fees that his firm received from local governments and public agencies, such as river authorities, that wield power across several counties. He was not required to reveal what the fees were paid for, but the Chronicle confirmed that Ellis' firm worked on bond sales by Harris County, the city of Houston, Bexar County, the city of Austin, the Trinity River Authority and Dallas-Fort Worth International Airport, among several others. He did not have to disclose the fee amounts – only within ranges. Of the 56 fees listed, 42 were $25,000 or more.

Ellis has not disclosed any government bond fees after filing his personal financial statement covering 1994. Ellis' financial services firm and the New York City company that bought it in 1998 and kept Ellis on board as a managing director have done bond deals with many of the same local governments, which have continued to employ lobbyists.

"From 1991 to 1994, I thought the disclosures I made were required," Ellis said in an email to the Chronicle. "I was advised in 1995 that the disclosures were not required."

Other states have more expansive requirements for legislators to disclose clients.

In California, legislators must identify those who pay them more than $10,000 per year. Florida's law triggers disclosure if legislators receives more than 10 percent of their gross income from a client and the total is more than $1,500. New York lawmakers must list clients if they or their employer received more than $10,000 in connection with work on state legislation, a contract or a grant.

A U.S. senator or House member is barred from working as a government bond underwriter, said John Wonderlich, policy director of the Sunlight Foundation, a nonprofit organization in Washington, D.C., which advocates for transparency in government.

Tom "Smitty" Smith, director of the Texas office of Public Citizen, a nonprofit watchdog group, has watched Ellis in action from the start of his legislative career. During that time, Ellis has taken the lead on ethics issues, from requiring more disclosure to overhauling how judicial campaigns are financed, Smith said.

"There's the good Rodney and the bad Rodney. The good Rodney knows what needs to be done, but he also has made a lot of money off of connections, knowing who to talk to, and selling bonds," Smith said.

On several occasions, Ellis has defended his work in public finance by noting that legislators receive only $7,200 a year in salary. Ellis said in 2013 that he wouldn't run for Congress because he couldn't take a pay cut. Congressmen are paid $174,000 a year.

Controversial work

Ellis was a Houston city councilman in 1987 when he and two others opened a public finance firm, Apex Securities Inc., in a field that Ellis referred to as “overwhelmingly white.”

“There was a growing recognition in the public sector for leaders to insist that minorities and women be allowed to break into” the public finance profession, Ellis said.

But the firm’s work generated controversy.

In 1993, state Rep. Ron Wilson, D-Houston, criticized Ellis for doing bond work for the city of Houston while trying to make sure city officials got legislative approval for a $500 million bond sale.

Ellis removed his firm from a city contract that had been awarded to help sell $119 million in certificates of obligation. The city was borrowing the money as it waited for the Legislature to pass a law enabling the bond sale to go forward.

In 1998, a New York City financial services firm, Rice Financial Products, purchased Apex Securities. The terms were not disclosed. After the sale, Ellis became a managing director of Rice Financial.

When Ellis was first elected to the Senate in 1990, he listed owning stock in three companies, according to his personal financial statement filed with the Texas Ethics Commission. By 2003, five years after he sold Apex Securities to Rice Financial, he owned stock in 181 companies, including shares of Coca-Cola, Walt Disney Co., Morgan Stanley and Rolls Royce Group.

Ellis has not been required under Texas law to disclose much about his activities with Rice Financial.

Since 1999, he has reported the firm as a “source of occupational income,” listed managing director as his title most years, and characterized his occupation as “investment banker.” An exception was in his ethics statements covering 2012 and 2013 when he did not receive income from Rice Financial. For 2014 and 2015, he listed the firm again as a source of occupational income.

Ellis was required to disclose his ownership of stock in Rice Financial, a privately held firm, in ranges. That ownership increased in 2008 from “less than 100” shares to between 1,000 and 4,999 shares since then. He is not required to disclose how much those shares are worth.

Legislators and other public officials who are required to file annual ethics statements don’t have to disclose their income, either as a precise amount or within an approximate range.

Ellis sidestepped several questions about his work at Rice Financial, other than to say it involved “providing strategic advice” about the bond market.

“I absolutely brought respect and earned clients’ trust across the country, and in doing so,” he said, “I brought income to the property.”

Richard Ramirez, who co-founded Apex Securities with Ellis in 1987 and has remained in touch with him, said: “Rodney is just about work – politics and work, all the time. He hits it hard all the time.”

True to form

Ellis played true to form during last year’s legislative session when Gov. Greg Abbott took aim at lawyer-legislators in an ethics reform bill he put forth as one of his top priorities.

The Texas Constitution requires legislators to disclose if they have a “personal or private interest in any measure or bill, proposed, or pending, before the legislature” and they are barred from voting.

They have interpreted that provision, according to Abbott, “to mean they do not have a conflict of interest if they vote on legislation that affects an entire industry and not just their own specific business.”

In his legislation, Abbott wanted to require legislators and statewide elected officials to disclose more about their sources of income – specifically government contracts or other deals in which they or their spouses get paid by public agencies. In addition to requiring greater disclosure by lawyer-legislators, Abbott proposed banning lawmakers from serving as bond counsel for government debt. The bill carrying Abbott’s ethics reforms included a provision to ban lawmakers from working as lobbyists.

Ellis – who noted during the debate that he is an “investment banker” and not a bond counsel – attacked the bill from several angles in committee and on the Senate floor. Commenting on the proposed ban on public officials working as lobbyists, Ellis lectured the bill’s sponsor, Sen. Van Taylor, R-Plano, that the founding fathers of Texas “wanted us to go out to work. So what you would do is prohibit someone from being able to work, in terms of doing lobbying work.”

In the end, Ellis voted for the bill.

“I support increasing all disclosures – tax returns, inherited wealth, and anything else the legislature chooses to require – but I do not support requiring them only of members in selected professions,” Ellis said in a recent email.

The bill died after the House and Senate Republicans could not reach agreement on a compromise version.

‘I don’t work on deals’

Four months after last year’s legislative session ended, a New York City investment firm, Bonwick Capital Partners, hired Ellis away from Rice Financial to expand into the competitive field of public finance. In announcing Ellis’ hiring, the firm noted that Ellis had a quarter of a century of experience in both municipal finance and the Texas Legislature.

When asked if Bonwick hired him to tap the Texas government bond market, Ellis said: “I don’t work on deals; I’m simply a strategic counsel to Bonwick employees.”

It appears that Ellis, if he gets the nomination from Democratic precinct committee members in June and is elected in November as a member of Harris County Commissioners Court, would have to abstain from voting if Bonwick Capital competes for Harris County bond work. He has said he would resign from Bonwick and not work for any other public finance firm if elected.

If he steps down, it would be the first time in three decades that Ellis has not worked at the intersection of politics, municipal finance and public policy.

The Houston Chronicle

By James Drew

April 2, 2016 Updated: April 2, 2016 9:44pm

NABL: MSRB, FINRA Notice on “Loan” and “Security”

Today, the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) issued to firms they regulate a joint regulatory notice, reminding those firms of their obligation to conduct adequate due diligence to determine whether certain alternative financial instruments, including direct purchases, may in fact be municipal securities.

The notice emphasizes that even when the financing is described as a “bank loan,” firms still must consider the applicability of MSRB and FINRA rules and other federal securities laws with respect to their activities.

The notice sets out factors to be considered in determining whether a transaction is a loan or a security and provides an overview of applicable MSRB and FINRA rules.

The joint regulatory notice is available here.

Zombie Foreclosures and the Crucial Role of Judges.

Clouded property titles invite neighborhood blight. Simple steps by the courts can produce huge results.

In February, RealtyTrac reported that one in four U.S. foreclosures are “zombies”: homes where the owner has vacated the property but the lender isn’t proceeding diligently to end the case and so hasn’t taken ownership. With the title clouded, neither the lender nor the owner maintains the parcel, so it falls into disrepair and becomes a blighting influence on the neighborhood.

The hardest-hit states include California, Florida, Illinois New Jersey, New York and Ohio, but zombies can be found everywhere. While some states have laws shortening the foreclosure process for an abandoned parcel, the fix that’s needed isn’t solely one for legislatures. The courts also play a crucial role. Improved judicial supervision of mortgage-foreclosure cases can prevent zombies, lessen blight and strengthen neighborhoods.

Judges can take simple steps to net huge neighborhood-improving results by exercising the court’s power to control court dockets and manage cases. They can, for example, ensure that lenders’ lawyers who file foreclosure cases move them along to completion by requiring periodic scheduling conferences to ensure progress. Courts adopting these steps will be reinforcing the rules of professional conduct that all lawyers must follow anyway under the American Bar Association’s Rules of Professional Conduct: to diligently advance lawsuits to completion and refrain from acting in a way that causes harm to others.

So why do so many foreclosures still move so slowly that they leave zombies scattered across so many of our neighborhoods? While each state’s mortgage-foreclosure law is unique, there are commonalities: the lender’s lawyer files a foreclosure complaint, the lender gets a judgment of foreclosure, and the judgment starts a redemption period in which the owner can pay off the loan to stop the foreclosure. If the owner doesn’t redeem, the parcel gets scheduled for auction or sheriff’s sale and the property is sold to the high bidder.

Note the anomaly. Unlike other litigation, in which the judgment ends the case, in mortgage-foreclosure litigation there are post-judgment steps to accomplish before the case can come to a true end. Judges in foreclosure cases must make sure that those post-judgment steps actually happen, and that they happen as quickly as possible.

Lenders and their mortgage-servicing companies would seem to have incentives to bring foreclosure cases to induce loan payoff. Many times, however, filing the case doesn't achieve that goal. This is especially so in distressed urban neighborhoods where home values and conditions have declined. In those situations, it's unlikely that bidders at an auction will offer an amount to reasonably minimize the lender's losses from missed mortgage payments. Lenders don't want to add to their inventories more bank-owned parcels that they have to maintain, repair, manage and try to sell. So some lenders let cases linger, zombie-izing the properties.

It is at this point, in the post-judgment, post-redemption period, when a court can and should step in. The court should require the lender to advance the case and schedule the post-judgment auction sale. If no one wishes to bid, then the court should make the lender dismiss the case and satisfy the mortgage to finalize the case and remove the litigation cloud on the title, leaving the defendant/owner clearly responsible for the parcel. One way or another, the lender that invokes the judiciary by filing a foreclosure lawsuit must be held accountable by the court to finish the case.

Courts in Milwaukee County, Wis., and Cuyahoga County, Ohio, are among those that are working aggressively to make that happen, mandating periodic scheduling conferences to ensure that foreclosure cases advance and don't stall. It works. "We move properties fast," says Judge Nancy Margaret Russo of Cuyahoga County's Common Pleas Court. "Neighborhoods are safer."

Clearly, improved judicial supervision of mortgage-foreclosure cases can prevent zombie foreclosures, lessen blight and strengthen neighborhoods. Simple steps, huge results.

GOVERNING.COM

BY GREGG HAGOPIAN | APRIL 4, 2016

[Pension Reform That Gets the Job Done.]

What Arizona lawmakers have done gets at many of the most serious problems facing public pensions everywhere. Now it's up to the state's voters.

In February, I wrote that a case challenging reforms made in 2011 to Arizona's Public Safety Personnel Retirement System (PSPRS) had made it to the state Supreme Court. The case is still pending, but bold new legislation has since been enacted that holds the promise of putting PSPRS back on track and serving as a national model for collaborative public-pension reform.

In just over a decade, the PSPRS went from being fully funded to having less than half the assets it needs to cover its liabilities; its unfunded liability stands at $6.6 billion. There are two major culprits. One is the all-too-common practice of basing funding calculations on unrealistic investment return assumptions. The PSPRS's assumed annual rate of return was 8 percent until a recent reduction to 7.5 percent. But since 2002, "actuarially smoothed" returns — the basis on which pension contribution rates are determined — have been less than 5 percent.

The other main cause was a bizarre practice known as the permanent benefit increase (PBI). In years when investment returns were strong, money was skimmed off the top to give PSPRS retirees increases designed to partially offset inflation. The practice has a host of problems. Since it's impossible to predict the years when the fund will realize strong returns, PBI expenditures could not be anticipated or factored into funding projections, and the skimming reduced the amount of money collecting interest.

PBI benefits were also allocated inequitably. Rather than basing payments on a retiree's monthly benefit, all received the same amount. Finally, the increases doled out during good times were permanent and became part of a retiree's base benefit.

The latest PSPRS reform takes a number of steps to address these problems, most of which will apply to employees hired on or after July 1, 2017. The maximum annual salary for purposes of pension calculation will be reduced from $265,000 to $110,000. Current and future pension costs will be split evenly between employers and employees. And the number of labor representatives on the PSPRS board will increase to recognize the equal risk and cost-sharing between employees and employers.

New employees will choose between a defined-contribution plan and a hybrid that combines defined-benefit and defined-contribution elements. Those employees can't begin to collect until age 55 (up from 52-1/2), although they can retire at any time. This is an important change because it makes pensions portable, so employees wanting to move on no longer have an incentive to stick around until they vest in the retirement plan.

And what about PBIs? They will be replaced by a traditional cost-of-living adjustment (COLA) based on the Phoenix-area consumer price index. Once CPI increases are established, the COLA is calculated as part of the normal cost to be funded that year by employer and employee contributions. For those hired on or after July 1, 2017, the maximum annual COLA limits are 2 percent if PSPRS is at least 90 percent funded, 1.5 percent if it's 80 percent funded and 1 percent if it has 70 percent of the assets needed to cover its accrued liabilities; there will be no adjustment if PSPRS falls below a 70 percent funded ratio. (Pre-reform unfunded liability will not be taken into account.)

The comprehensive reform includes a number of other fiscally responsible provisions. Any future benefit increases that create unfunded liability must be paid in full at the time of enactment. Any unfunded liability created by new hires is to be amortized over 10 years, and a 20-year schedule is established for retiring legacy unfunded liability.

Despite new employees' shouldering of a larger percentage of pension costs, their contributions under the law are projected to be smaller than what current employees pay, since the new system will be less expensive. In all, the new system is expected to save $1.5 billion — more than one-third of accrued liability — over 30 years.

Arizona pension reform savings

The one catch is that replacing the PBIs with a COLA system will require voters to amend a provision of the Arizona constitution decreeing that "public retirement benefits shall not be diminished or impaired." The measure will appear on the statewide ballot in May and has the backing of public safety unions, municipal employers and Gov. Doug Ducey.

Just as amazing as the scope of Arizona's reform was the way in which it was achieved. It passed overwhelmingly in the state House and unanimously in the Senate after a year-long collaborative process that involved lawmakers, public safety unions and the Reason Foundation, a libertarian think tank, among others. Arizona Republic columnist Robert Robb rightly described it as a "paradigm-buster," writing that "public employee unions and libertarian wonks blazed new ground on a difficult and emotional topic that is producing paralysis around the country."

Each state has its own political dynamics, but most face significant pension challenges. Arizona's paradigm-buster may not be achievable everywhere, but it does offer an approach that some could use to make real progress on a problem that often seems intractable and will only get worse if it isn't addressed.

GOVERNING.COM

BY CHARLES CHIEPPO | APRIL 5, 2016

A Missing Opportunity to Fix Government Finances.

Most places focus on pensions for cost-cutting. But a new study argues it would be easier for governments to reduce the collective $1 trillion they owe in retiree health care.

Pension liabilities have been a high-profile issue in recent years, and they remain a major budget burden for state and local governments. States and cities have tried to rein in expenses by issuing less bond debt, and they've tried to mitigate further increases in their pension liabilities.

But a new study released Thursday says governments are missing a key opportunity to reclaim billions in annual revenue by not making severe cuts to retiree health care, commonly referred to as other post-employment benefits, or OPEB.

"There continues to be a lot of emphasis on pensions, and rightly so," said Stephen Eide, a co-author of the report produced by the Manhattan Institute. "But we wrote this report to say it might make more sense to focus more on OPEB reform than pensions — the simple reason being, legally speaking, you're more likely to get further in bringing down OPEB costs than pension costs."

In other words, states have more flexibility in restructuring retiree health-care benefits, and doing so could save hundreds of billions of dollars.

Eide and co-author Daniel DiSalvo argue that retiree health-care costs are just as big a culprit for crowding out other government priorities as pension costs have been, although the latter has received much more of the blame.

For instance, New York City's unfunded OPEB liability is more than $85 billion, more than four times the amount of the city's entire housing authority maintenance backlog. A 2013 study of California school districts found that rising health-care costs were in part offset by transferring money from other government funds that had been earmarked for kids with special needs and for remedial education.

A big reason retiree health care has flown somewhat under the radar is that most governments just appropriate money every year for their annual OPEB bill. While they report their annual liability — which is a collective $1 trillion — there are no long-term projections about how much their annual bill will increase over time, as there are with pensions. By not pre-funding OPEB in a way similar to pensions, it keeps the view on costs in the short term.

In general, retiree health-care costs aren't as ironclad as pension benefits. That's led some people to adopt a somewhat dismissive attitude about total liability numbers: Governments can always reduce their OPEB costs, the thinking goes, so that bottom-line number doesn't count for much.

Moody's Investors Service, which has taken a more critical view of pension debt, issued a report last year saying it doesn't view retiree health-care liabilities in the same light. Instead it focuses on OPEB more as a current budgetary expense — which averages about 1.5 percent of operating costs — when evaluating government fiscal health.

But those costs are expected to rise, thanks to health-care cost inflation and a growing retiree population. The Manhattan Institute report points to New York City, which paid $3.1 billion for retiree health care in 2015 alone — a 244 percent increase from what the city paid 10 years ago. Meanwhile the city's actual budget increased just 48 percent in comparison.

Given the trajectory, Eide and DiSalvo argue that governments should act now on health care before costs get out of control. Pointing to the trouble many governments have had in fully funding their pensions, the authors say governments should scrap the idea of prefunding OPEB and simply phase out the benefits.

How exactly that phase-out would work depends on the government, as OPEB benefits vary widely, as do the state-by-state legal requirements. But for states looking to cut costs, one area of focus may be on government retirees who are younger than 65 and therefore don't yet qualify for federal medical coverage under Medicare. People in this group keep their health-care coverage even after they retire and their former government employer continues to pay part — or in some cases, all — of their premiums.

The study notes that the Affordable Care Act, which set up health-care exchanges so that the nation's uninsured could access group health-care coverage, provides an opportunity for governments to phase out their own long-term health-care benefits. The authors point to Chicago as a test case, where Mayor Rahm Emanuel began phasing out the city's health-care program for retirees in 2014. At the time, Chicago had more than $800 million in unfunded OPEB liabilities. The Illinois Supreme Court, however, recently struck down that attempt by Chicago. The ruling was issued after the Manhattan Institute paper was completed.

The costs don't end once retirees qualify for Medicare, however. Many state and local government plans supplement federal medical coverage by paying for part of those retirees' out-of-pocket payments like copays and deductibles.

"The whole rationale [today] for having retiree health care seems to be much weaker versus when these programs were originally enacted," said DiSalvo. "California's OPEB started before there was even Medicare. Now there's Medicare, the Obama exchanges, you can get insurance under your [working] spouse if you retire early. That takes away a significant amount of need for this."

Still, some say that retiree health-care costs can be controlled without dismantling the whole system.

Josh Franzel, vice president of research for the Center for State and Local Government Excellence, notes that governments have been shifting more and more health-care costs onto their employees and retirees in recent years.

"Of course every dollar is scarce and there's competition for them," said Franzel, who had not yet seen the report. "But if you're going to try and retain individuals and have certain job types [like firefighters] that have higher physical requirements, enabling these folks to retire before being Medicare eligible is important."

But DiSalvo said some governments, such as New York City, have health-care liabilities so big that passing on more costs to employees and retirees wouldn't make a big enough dent. Additionally, he said, current employees tend to bear more of the brunt of those costs.

"In places where you're really backloading benefits, it's not only bad for … transparency, it's bad for workers themselves because you have to be a long term employee to really reap the benefits," he said. "Instead, you could put some of the [health-care] savings back into government salaries."

**This story has been updated to reflect a ruling by the Illinois Supreme Court.*

GOVERNING.COM

BY LIZ FARMER | MARCH 31, 2016

CDFA - Kresge Impact Investing RFP Webinar.

In 2016 CDFA, The Initiative for Responsible Investment, and The Kresge Foundation are jointly exploring how impact investments in development finance agencies can spur economic development.

April 13, 2016
2:00pm Eastern

Overview

The Kresge Foundation is launching Kresge Community Finance, a $30 million program-related investment (PRI) finance offering available to two key organizational types working to expand opportunities for low-income people in America's cities. The foundation will select applications through a competitive Request-for-Proposals (RFP) process. The RFP is open exclusively to certified Community Development Finance Institutions (CDFI) and quasi-public or private Development Finance Agencies (DFA). Funded projects will support work that aligns with Kresge's six programs – Arts & Culture, Detroit, Education, Environment, Health and Human Services – and their strategic focus areas. To advance the Foundation's vision, CDFA, in coordination with the Initiative for Responsible Investment, will hold an informational webinar to outline in greater detail the type of projects The Kresge Foundation wishes to fund.

REGISTER.

Bill Would Prohibit Tax-Exempt Bond for Sports Stadiums.

WASHINGTON – Rep. Steve Russell, R-Okla., has introduced a bill in the House that would prohibit the use of tax-exempt bonds to build or subsidize professional sports stadiums and for-profit entertainment arenas. H.R. 4838, or the No Tax Subsidies for Stadiums Act, would prevent professional sports franchises and for-profit entities from seeking federal taxpayer financing toward stadiums, which Russell called a "30-year-old tax loophole."

The bill was introduced on March 22 and subsequently referred to the House Ways and Means Committee. There are no cosponsors as of yet. In a statement, Russell said the Office of

Management and Budget has estimated that repealing tax-exempt bond financing for stadiums would lower the budget deficit by a total of $542 million over the next decade.

Russell, who serves on the House Armed Services Committee, said that money could be used to fund the armed services. President Obama has moved to cut 40,000 soldiers and another 17,000 Army civilian employees due to “a difficult fiscal environment,” Russell said.

“The No Tax Subsidies for Stadiums Act is a step in the right direction, for our national security, as well as for fixing our annual deficits,” the congressman said in a release.

The bill would define a professional entertainment facility as a location that serves as either a stadium or arena for professional sports games or training and seats more than 100 people for at least five days of the year.

Russell’s bill is not the first proposal to ban tax-exempt financing for stadiums. Former Sen. Tom Coburn, R-Okla., also called for a ban on federal tax-exempt financing for sports stadiums in his Dec. 2014 “Tax Decoder” report. He argued against the technicality that local governments could use federal bonds to finance a stadium if taxpayers paid for nearly all of the interest. Under current law, a stadium can be built with tax-exempt bonds as long as no more than 10% percent of the debt service is paid or secured by private parties and no more than 10% of it is privately used.

“Congress should level the playing field and protect taxpayers by closing the stadium loophole entirely,” Coburn wrote in the report. “Not a single dollar from tax-exempt municipal bonds should be used for these billionaires’ bonanzas.”

President Obama has also taken a stance against taxpayer financing for stadiums and arenas. In his fiscal 2016 and fiscal 2017 budgets, Obama proposed prohibiting tax-exempt bonds to be used for financing private sports facilities by eliminating the private payment test for them. As a result bonds would be taxable private-activity bonds if more than 10% of the facility was used by private parties. “When Senator Coburn and President Obama agree on a budget proposal, you know it is a necessary measure to work on,” Russell said.

Since the Tax Reform Act of 1986, which prohibited tax-exempt private activity bonds from financing stadiums, was enacted, Russell said professional sports franchises have taken advantage of “loopholes” to receive billions of dollars in tax subsidies.

Professional sports franchises, though collectively earning billions of dollars in revenue annually often seek federal, tax-free funding to finance the construction of new stadiums and arenas.

The issue of stadium financing has become a hot-button issue in recent years, as several franchises have said they need new stadiums or will have to relocate to other cities. The NFL’s Atlanta Falcons are set to begin playing in the $1.4 billion Mercedes-Benz Superdome next season, roughly $200 million of which was financed with tax-exempt bonds, according to Coburn. The $1.2 billion Cowboys Stadium completed in 2009 was financed by governmental bonds, which Coburn said would cost $65 million in subsidies to investors over the
next 65 years.

The Minnesota Vikings will soon begin playing home games at the $1 billion Vikings Stadium, roughly half of which was financed by tax-exempt bonds, Coburn said.

Critics complain tax-exempt bond financings of stadiums are an ineffective means of spending public funds and providing benefits mostly to teams, while supporters have stressed the added investments that such facilities can bring to regions.

Since 2006, 263 tax-exempt bond issues totaling $16.9 billion have been sold to finance stadiums and sports arenas, according to figures compiled by Thomson Reuters. That includes the five bond issues totaling $82.2 million have been reported thus far for 2016.

Dennis Zimmerman, the director of projects for the American Tax Policy Institute and former economist at the Congressional Budget Office, said Monday that although he has not yet seen Russell's bill, he is in favor of any legislation that would curtail federal, tax-exempt sports stadium funding.

"I think the federal government has no business subsidizing sports stadiums," Zimmerman said. "From a federal taxpayer's perspective – where's the advantage? No federal taxpayer gets a benefit from it."

Zimmerman said "we are wasting our money," when it comes to the federal funding, adding that it is very different than funding at the state or local level. The somewhat fixed cap on sports franchises, he said, provides little incentive for the federal taxpayer.

"I don't think it generates much economic activity," he said.

Former Sen. Daniel Moynihan, D-N.Y., proposed The Stop Tax-Exempt Arena Debt Issuance Act in 1996, which would have prohibited state and local governments from using tax-exempt bonds toward pro sports stadiums. That bill failed to pass in the Senate.

The Bond Buyer

By Evan Fallor

March 28, 2016

Hot Topics from the Tax and Securities Law Institute's Annual Meeting: Squire Patton Boggs

Every year, the National Association of Bond Lawyers ("NABL") hosts the Tax and Securities Law Institute ("TSLI"), which is an advanced conference with various workshops related to pressing issues confronting tax and securities lawyers in the public finance arena. Essentially, the annual TSLI is like Chrismukkah for tax and securities lawyers. This year's meeting was held on March 11th and 12th and was sure to be a barn burner in light of the meaningful guidance released by the IRS over the last year including the proposed issue price regulations, the allocation and accounting regulations (the "Allocation Regulations") and, most recently, the proposed political subdivision regulations (the "Proposed Political Subdivision Regulations"). This year's meeting did not disappoint as one tax practitioner loudly interrupted a panel consisting in part of IRS and Treasury agents to proclaim that the proposed political subdivision regulations were the worst piece of guidance to come out of the Treasury in recent history.

Below is a list of tax items discussed at TSLI that this blogger thought were particularly noteworthy. When reading the information below, please keep in mind that statements made by personnel from the IRS or Treasury reflect the individual's personal beliefs and are not necessarily reflective of an official position taken by the IRS or the Treasury.

Helpful commentary on the Allocation Regulations

The Allocation Regulations have been the subject of multiple prior blogs (see here, here, here, and here). The Allocation Regulations released last fall are extremely taxpayer friendly; however, there remain a number of important items regarding their application.

One open item is whether the definition of "mixed-use project" is broad enough to encompass projects financed exclusively with proceeds other than tax-exempt bond proceeds. The heightened value of "qualified equity" (discussed here) under the Allocation Regulations has encouraged practitioners to try to incorporate as much qualified equity as possible. To do this, one possibility is to expand the project to include ancillary projects that are not expected to have any private business use and that were not originally considered for tax-exempt financing. Confusingly, the inclusive definition of "project" in the Allocation Regulations would seem to permit this approach while the narrower definition of "mixed-use project" may not. A "mixed-use project" is any "project" that is financed with proceeds other than tax-exempt bond proceeds as well as tax-exempt bond proceeds. Therefore, an ancillary project financed exclusively with proceeds other than tax-exempt bond proceeds may fall outside the definition of "mixed-use project."

When considering what "mixed-use project" was intended to include, officials from the IRS and Treasury made two interesting observations. First, in response to a panelist suggesting that any ancillary project needs to be related to the bond-financed project, a senior Treasury official indicated there is no "relatedness" requirement when determining the scope of what constitutes a mixed-use project. Second, the same official indicated that there should be some "intent" to finance a portion of each component of the mixed-use project (including any ancillary project) with tax-exempt bond proceeds.

Issuers and borrowers often finance multiple, unrelated project expenditures with a single bond issue so disavowing any "relatedness" requirement was not surprising. However, suggesting that a project cannot be extended to incorporate ancillary projects not anticipated to be tax-exempt bond-financed would be a substantive limit. For an issue of qualified 501(c)(3) bonds, query whether listing the ancillary project in a public notice for a TEFRA hearing would be sufficient? Alternatively, for qualified 501(c)(3) or other types of tax-exempt bonds, is it necessary to affirmatively allocate tax-exempt bond proceeds under Treas. Reg. Section 1.148-6(d) or by a reimbursement allocation to a component of a project not otherwise financed with proceeds of tax-exempt bonds?

Applying the Allocation Regulations to Refunded Bonds

In response to a question about how to apply the Allocation Regulations to bonds issued prior to the release of the Allocation Regulations, a senior Treasury official acknowledged that the application of the Allocation Regulations to bonds outstanding prior to October 27, 2015 (including bonds refunded subsequent to that date) is uncertain and that the Allocation Regulations were written primarily to address new money issues. In addition, that same Treasury official acknowledged that "qualified equity" excludes certain expenditures that could have been included such as invoices paid after the project's placed-in-service date and preliminary expenditures paid prior to the beginning of the period during which qualified equity can be contributed to a project.

Political Subdivision

As suggested in the introductory paragraph, the recently released Proposed Political Subdivision Regulations have been extremely controversial, initially because of the transition rule but also because of the introduction of what many practitioners consider to be new requirements that political subdivisions be shown to (i) operate in furtherance of a "governmental purpose" (with no more than an incidental benefit to private persons) and (ii) be "governmentally controlled". In response to a panelist's observation that the Proposed Political Subdivision Regulations shift away from the historic reliance exclusively on the Shamberg powers (discussed here),1 a senior Treasury official commented that the Proposed Political Subdivision Regulations were not intended to be a radical departure from the historic approach. Rather, notwithstanding the development of the law surrounding application of the Shamberg powers, the senior Treasury official suggested that the requirement that a political subdivision have a governmental purpose and operate under government control has always been a historic, albeit less developed, requirement for political subdivisions. The official emphasized that imposing heightened scrutiny on what entities qualify to be political subdivisions was not an imposition on a state's constitutional rights because the exemption is from *federal* income taxes.

In response to one panelist indicating that the incidental benefit limit is troubling, a senior Treasury official responded by requesting that those concerns be included in comment submissions. The same official emphasized that practitioners should take comfort in the historically broad definition of governmental purpose. Throughout TSLI, Treasury and the IRS emphasized the need to receive comments to the Proposed Political Subdivision Regulations and it seems likely there could be significant changes to the regulations before they become final.

In discussing the policy behind the proposed regulations, a senior Treasury official indicated that, historically, reliance on the Shamberg powers was predicated under the belief that states do not delegate certain rights very easily. However, in certain circumstances, the official indicated that this may not be the case.

Upcoming Guidance

A senior Treasury official and a senior IRS official indicated that guidance on the following issues is "on the horizon":

- Finalize the 2007 and 2013 proposed arbitrage regulations;
- Update safe-harbors in Rev. Proc. 97-132 to include longer term contracts (possibly 15-years) and provide factors to distinguish management contracts from leases;3
- Finalize the proposed issue price regulations;
- Streamline the Voluntary Closing Agreement Program ("VCAP') to address an escrow agent's failure to reinvest proceeds in SLGS (see IRM 7.2.3.4.2(9)).4

In addition, although not imminent, the same senior Treasury official suggested that the following items will be next in line:

- Incorporating Notice 2008-41 (reissuance rules originally intended to apply to qualified tender bonds) into regulations under Section 150 of the Code to address certain issues that are present with refunding tax-advantaged bonds including Build America Bonds ("BABs");5
- Guidance involving change-in-use; and
- Finalize the proposed 2008 TEFRA regulations.

Odds and Ends

The following odds and ends were also discussed:

- In response to criticism that the IRS never utilizes its authority to waive the arbitrage rebate penalty for bonds under audit (a discussion of which is here), a senior IRS official said that the Service has not historically waived the penalty for fear that they could not do so on a consistent basis applying a consistent standard. However, the IRS official indicated that a "penalty committee" has recently been formed to determine how to consistently waive certain penalties,

including the arbitrage rebate penalty; and
- When discussing the recent change in the IRM which indicates that it is no longer necessary to have written post-issuance compliance procedures, one senior IRS official indicated that the IRS is much more concerned about the content of procedures and that unwritten procedures (e.g., electronic monitoring) could be sufficient depending on the content of such procedures.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Squire Patton Boggs

by Joel Swearingen

USA March 30 2016

MSRB Asks About Requiring MAs to Disclose Bank Loan Info From Issuers.

WASHINGTON – The Municipal Securities Rulemaking Board has issued a concept release on whether it should require municipal advisors to disclose information about the bank loans or privately placed municipal securities of their issuer clients.

The nine-page release, which contains 17 specific questions related to the proposal, asks for public comments to be submitted no later than May 27.

The board said it is proposing requiring these disclosures because issuers have only responded on a limited basis to its requests for voluntary disclosures of bank loans on EMMA. These disclosures are important so that investors can better gauge the credit or liquidity profiles of issuers, according to the MSRB.

The board suggested in a notice issued in April 2012 that bank loans be disclosed in the voluntary continuing disclosure category of "Financial/Operating Data – Investment/Debt/Financial Policy for submission. The issuer was asked to indicate in the "Consisting of" free-text field that the documentation consists of "bank loan" disclosures. The board urged issuers to provide documents related to bank loan financings such as the loan or financing agreement or, as an alternative, a summary of some or all the features of the loans. These would include lender, borrower, purpose, security for repayment, third party guarantees, interest rates, tax status of interest and other features, the board said.

However, as of March 28, a search of EMMA for the term "bank loan" resulted in only 143 hits, the MSRB said. Of these, 79 included the words "bank loan" in the issue description and were filed as suggested by the MSRB. Another 23 hits included the words "bank loan" in the issue description, but the documents were reported in other subcategories than the one suggested by the MSRB. The remaining 41 hits, while including the words "bank loan" in a document, did not include any documents under the subcategory suggested by the MSRB.

The board said that generally information about bank loans and private placements is only available in an issuer's financial statements and do not include the key terms of the financings such as provisions that would affect the seniority of bondholders in the event of the issuer's default.

"The MSRB is concerned that the lack of disclosure hinders an investor's ability to truly understand the risks of an investment, thus frustrating the transparency, integrity, fairness and efficiency of the municipal securities market," the MSRB said.

"The MSRB is seeking comment on ways in which more information or more timely information about such financings could be made available to investors, including whether and how to require municipal advisors to disclose information about a municipal entity client's outstanding indebtedness."

The board noted that Section 15B(d)(1) of the Securities Exchange Act of 1934 prohibits the Securities and Exchange Commission and the MSRB from requiring issuers directly, or indirectly through a broker-dealer, to submit the equivalent of a registration statement or similar documents before the sale of municipal securities.

Section 15B(d)(2), commonly known as the Tower Amendment, prohibits the MSRB from requiring muni issuers directly, or indirectly through a dealer of municipal advisor, certain information relating to them (the issuers) to the MSRB or to purchasers or prospective purchasers of muni bonds.

However, the board said, its existing Rules G-32 on primary offering disclosures, and G-34 on Cusips, new issue, and market information requirements already require dealers to make certain disclosures with respect to sales of munis.

Therefore, "it may be possible to require disclosures by municipal advisors of information about direct purchases and bank loans of their municipal entity clients within the limitations of the Tower Amendment," the board said in the notice. "The MSRB has broad rulemaking authority under the Exchange Act, as amended by the Dodd-Frank Act, over municipal advisors and municipal advisory activities."

"The MSRB believes that the availability or timely disclosure of information about an issuer's direct purchases and bank loans is beneficial to fostering transparency and ensuring a fair and efficient market."

Industry participants have also asked for these kinds of disclosures, the board said.

The MSRB asked for comments on, among other things, what activity should trigger the disclosure requirement – advising on a bank loan or advising on any kind of transaction?

The board also asked how expansive should such disclosures be?

Should such a disclosure obligation apply to dealers? the board asked.

It also wanted to know if there are alternative methods the MSRB should consider for obtaining and publicly disseminating material information related to an issuer's direct purchases and bank loans.

The MSRB asked what types of debt financings, in addition to direct purchases and bank loans, do muni issuers use as alternatives to the direct issuance of muni bonds for which disclosures would be useful to investors.

The board also asked for any historical data, studies or other information relating to the number, value and terms of outstanding bank loans or direct purchases by muni issuers.

The Bond Buyer

By Lynn Hume

March 28, 2016

Lawyers Call For Challenges to SEC Administrative Proceedings.

WASHINGTON – The Supreme Court's refusal to take up a case on the Securities and Exchange Commission's use of administrative proceedings to impose penalties in enforcement cases prompted a law firm to recommend those subject to administrative proceedings to challenge their constitutionality.

The alert issued by Orrick, Herrington & Sutcliffe on Thursday comes as the SEC has faced increasing criticism for using administrative law judges instead of the courts to try enforcement cases.

Most SEC muni enforcement actions are brought through administrative proceedings. However, the commission also files complaints against alleged violators of anti-fraud statutes in district courts.

"The consequences of being subject to an SEC administrative review process are significant," wrote Jason Halper, the co-chair of Orrick's financial institutions litigation practice who authored the alert with two other lawyers from the firm. "In federal court, a defendant is entitled to full civil discovery, complete application of the federal rules of procedure and evidence, in most cases, a jury trial, and adjudication by a neutral arbiter, while a respondent in a SEC proceeding is entitled to none of these protections."

The Orrick lawyers said the "results of that incongruity speak for themselves," citing media reports that found the SEC was successful in 90% of administrative proceedings over a five-year period compared to only 69% of federal court cases during the same time period.

The case on which the alert is based is Bebo v. Securities and Exchange Commisson. It involves Laurie Bebo, the former chief executive officer of Wisconsin-based Assisted Living Concepts Inc., who challenged the constitutionality of the penalties imposed in administrative proceedings. The SEC had charged that Assisted Living Concepts and Bebo had released false or misleading financial and disclosure documents.

The proceedings were ongoing when Bebo filed her constitutional challenge in the District Court of the Eastern District of Wisconsin. The district court dismissed Bebo's case citing a lack of jurisdiction over the issue because she had not concluded with the administrative proceedings at the time she filed. The Seventh Circuit Court of Appeals in Chicago later affirmed the decision.

Although the Supreme Court decided last week not to review and reconsider the appeals court ruling, the Orrick lawyers said there are more cases making their way through the federal system and that the Supreme Court might decide to address the issue if a split in opinion develops in the circuit courts.

"The SEC has chosen a forum that allows it to investigate, prosecute, adjudicate, and if successful in supporting the charges before an administrative law judge, provide appellate review of a case for which the very same commissioners approved the filing of charges in the first place," Bebo's lawyers said in the district court complaint.

Mark Cuban, the celebrity entrepreneur, filed a friend-of-the-court brief as Bebo's case was being appealed calling the administrative proceedings a "farce" and unconstitutional.

In the case, Bebo argued that the SEC administrative law judges who impose enforcement penalties violate the Appointments Clause of the Constitution because the judges are hired by the SEC and not appointed by the president or SEC commissioners. The SEC administrative law judges were first allowed to issue enforcement penalties after the Dodd-Frank Act of 2010 was passed, according to the Orrick lawyers.

Representatives from the Department of Justice who responded to the complaint on behalf of the SEC, said the administrative law judges “possess the limited adjudicatory authority that the commission has delegated to them, play a part in a process over which the commission retains ultimate control, enjoy ordinary tenure protection, and have a long history of use.”

Andrew Ceresney, director of the SEC’s enforcement division, said in a speech to the New York City Bar last year that the commission’s “overriding goal is to achieve strong and effective enforcement of the federal securities laws in a fair and efficient manner.”

“We try to recommend the forum that will best utilize the commission’s limited resources to carry out its mission,” he said. The SEC analyzes a host of factors when deciding between administrative proceedings and a district court, but administrative proceedings are almost always wrapped up more quickly and can be much more efficient, Ceresney added.

The Bond Buyer

By Jack Casey

March 31, 2016

TAX - LOUISIANA

Board of Com'rs of Port of New Orleans v. City of New Orleans

Court of Appeal of Louisiana, Fourth Circuit - March 16, 2016 - So.3d - 2016 WL 1061490 - 2015-0768 (La.App. 4 Cir. 3/16/16)

Political subdivision of state, as taxable entity, filed suit against city tax assessor, challenging ad valorem tax assessments on properties owned by subdivision. The Civil District Court granted subdivision summary judgment. Tax assessor appealed. The Court of Appeal reversed. On remand, the Civil District Court granted summary judgment to subdivision. Tax assessor appealed.

The Court of Appeal held that lease improvements to several properties owned by subdivision were exempt from ad valorem taxation.

Improvements owned by port and leased to third-party, private, for-profit, commercial tenants were exempt from ad valorem taxation under constitutional article expressly providing that public property used for public purposes is exempt from ad valorem taxation. Activities of the tenants fit within the port’s broad, legislating mission to maintain, develop, and promote the commerce and traffic of the port and city harbor.

Engaging in for-profit activities on public property does not preclude those activities from having a public purpose, under constitutional article expressly providing that public property used for public purposes is exempt from ad valorem taxation.

No Losses for Puerto Rico General Obligation Debt Seen by Height.

Proposed federal legislation that would help Puerto Rico restructure its $70 billion of debt could lead to full repayment of general obligations, which would be a boon to bondholders and insurers, according to Height Securities.

A draft measure by House Republicans that has circulated on Capitol Hill would give a five-member federal control board the authority to oversee a reduction of the island's debts, instead of entrusting that to local officials, and empower it to sell debt on behalf of the island. With such a structure in place, losses on general obligations would be zero, and sales-tax bonds would be cut just 10 percent, down from earlier estimates of 10 percent and 45 percent, respectively, according to a report released Tuesday by Height, a Washington-based broker dealer.

"The key element of the bill is the limitations on debt restructurings, which should protect general obligation and Cofina bondholders," wrote Edwin Groshans, an analyst who tracks municipal-bond insurers at Height. The bill, the bulk of which has a 75 percent chance of becoming law, is "a positive for creditors as it creates a strong federal oversight board and protects bondholders vis a vis pensioners," he wrote.

The draft bill from the House Natural Resources Committee, which the panel plans to release publicly Tuesday, is the most comprehensive fix yet advanced by Congressional Republicans to help pull Puerto Rico from a crisis that's been building since June, when Governor Alejandro Garcia Padilla said its debts aren't payable. It allows for a court-overseen restructuring to force creditors to accept a deal, in contrast to the current consensual negotiations, though it doesn't specify how various bondholders would be treated.

Trading in Puerto Rico show that investors aren't anticipating that they'll be paid back on time and in full. The commonwealth's benchmark general obligations with an 8 percent coupon and maturing in 2035 traded Tuesday at an average 70.3 cents on the dollar, data compiled by Bloomberg show. Sales-tax backed debt due in 2042 traded Monday for 42 cents.

Ambac Financial Group Inc. would benefit the most from the legislation because it insures about $7.3 billion of sales-tax debt service payments, according to Height. Overall, Ambac's losses from paying investors would decline by 26 percent, while MBIA Inc.'s would fall by 18 percent and Assured Guaranty Ltd.'s would drop 6 percent relative to the firm's moderate-loss scenario.

Bloomberg Business

by Brian Chappatta

March 29, 2016 — 7:45 AM PDT

Puerto Rico Bill Won't Shield GOs, Congressional Aide Says.

Draft legislation to reduce Puerto Rico's $70 billion debt load may fail to shield debt protected by the island's constitution.

The House Natural Resources Committee released Tuesday a discussion draft of a bill that would establish a federal control board to manage Puerto Rico's finances and oversee any restructuring of debt. It plans to introduce the bill April 11. The proposed oversight panel may consider the commonwealth's $13 billion of general-obligation debt, which its constitution says must be repaid before other expenses, if it believes those securities need to be altered, a congressional aide told reporters during a conference call.

The legislation is the most comprehensive plan yet drafted by Congressional Republicans to help resolve the island's debt crisis. Details of the bill started to be unveiled last week. Puerto Rico Governor Alejandro Garcia Padilla in June said the commonwealth was unable to repay all of its obligations after years of borrowing to fix budget deficits. Two agencies have defaulted on debt since then and the island's next major bond payment is about five weeks away.

"This draft is thoughtful, comprehensive legislation that gives the U.S. territory the tools it needs to deal with its systemic fiscal and budgeting problems—without a taxpayer bailout," House Speaker Paul Ryan said in a statement Tuesday.

Broad Counterproposal

Ryan directed his members to draft legislation that would address Puerto Rico's finances by March 31. Lawmakers have been working on the bill as the commonwealth negotiates with its creditors. Island officials last week gave bondholders their most recent debt-restructuring plan. Investors began working together Monday on a broad counterproposal that would include the island's various types of debt during a meeting between advisers and lawyers for mutual funds, bond-insurance companies and hedge funds.

A U.S. Treasury Department spokesman said the draft needed improvements.

"Puerto Rico urgently needs the ability to comprehensively restructure its financial liabilities paired with independent oversight that respects the commonwealth's self-governance," the spokesman, Daniel Watson, said in a statement Tuesday.

The draft bill would enable the control board to rein in bondholders that are reluctant to agree to a voluntary restructuring plan by using the courts to force those investors to accept losses. Some investors have balked at that element of the legislation. Puerto Rico entities don't have access to municipal bankruptcy, as Detroit did.

"The bill would retroactively eliminate an important investor protection relied upon by millions of individual investors throughout the U.S. mainland and Puerto Rico," Stephen Spencer, managing director at Houlihan Lokey, adviser to major creditors of Puerto Rico, said in a statement. "As a result, the bill would transfer billions of dollars from retail investors and retirees to pay for Puerto Rico's mismanagement and reckless spending."

The bill would also safeguard Puerto Rico from legal action by temporarily prohibiting creditor lawsuits once the measure is enacted into law.

Garcia Padilla said Monday that the proposed federal legislation imposes too much U.S. control over the island. The federal board would oversee any debt restructuring, instead of entrusting that power to local officials. The panel would have the ability to balance budgets if Puerto Rico lawmakers are unable to end multi-year deficits that are at the root of the island's financial challenges.

Most Congressional Democrats led by top House Democrat Nancy Pelosi of California were also less then impressed. She warned in statement that "the sweeping powers of the oversight board proposed in Republicans' current discussion draft are far from what Democrats can support."

“In its current form, this board would exert undue and undemocratic control over Puerto Rico’s government and residents,” said Pelosi.

Bloomberg Business

by Michelle Kaske and Billy House

March 29, 2016 — 3:35 PM PDT Updated on March 29, 2016 — 6:58 PM PDT

[Atlantic City Downfall Tests New Jersey's Record Rescuing Cities.]

Atlantic City is gambling with New Jersey’s reputation for rescuing distressed local governments.

The casino resort hub, whose finances have been battered by the expansion of gaming in nearby states, may shut down much of its functions next week for lack of cash –- an unprecedented action for a New Jersey municipality. Governor Chris Christie has suggested that bondholders may need to make “sacrifices” and refused to extend short-term help, marking a potential shift for a state that hasn’t let a single locality default or go bankrupt since the 1930s.

“It is a blow toward New Jersey local credit quality and the assurance that investors have,” said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. “It should no longer be said that it has a great reputation for local governments.”

Atlantic City has been dependent on the casino industry since the late 1970s, when New Jersey gave it an East Coast monopoly that was lost when other states legalized gambling. The 39,000-person city has seen the property-tax base plummet by 64 percent in five years, with a third of its betting parlors shutting down in 2014. Others have demanded tax rebates as real estate values slide, further straining its finances.

This year, Atlantic City was counting on legislation that would allow it to tap additional gambling money to close its deficit, only to see the measure rejected by Christie, who said the local officials haven’t done enough to reduce spending. Left with a $33.5 million shortfall, Mayor Don Guardian said he won’t be able to pay employees from April 8 until at least May 2 as he waits for tax collections to trickle in.

Christie is pushing legislation with the Senate’s Democratic leader that would allow New Jersey to take over the city, after an earlier appointment of an emergency manager didn’t lead to significant changes. Opposed by Guardian and the city council, the bill is stalled in the Assembly, where Speaker Vincent Prieto, a Democrat, rejects a provision that would let the administration change or end labor contracts.

Christie has faulted them for failing to endorse the legislation and said workers won’t bear the city’s financial burdens alone. During a radio interview Thursday, he said bondholders “are going to have to make sacrifices as well.’’

The city has $247 million in general-obligation debt and owes $190 million of tax refunds to casinos. Guardian told reporters last week that the debts should be renegotiated.

Investors have demanded higher yields on some uninsured city securities, reflecting the increased risk that payments won’t be made. Tax-exempt bonds due in December 2033 last traded March 22 for an average of 65 cents on the dollar to yield 9 percent, more than three times those on top-rated securities, data compiled by Bloomberg show. That price is down $1.01 early last year.

A shutdown could push up yields on bonds sold by Atlantic City and other distressed borrowers in New Jersey, said Ted Molin, senior credit analyst at Wilmington Trust Co., which oversees $4 billion of municipal debt.

“A concrete event like that definitely would cause spreads to widen and would taint the state and probably a lot of the good credits in the state,’’ he said.

When asked about investors’ concerns, Brian Murray, a spokesman for Christie, said “there is a bipartisan solution on the table and just one person is obstructing that solution from proceeding, Speaker Prieto.’’

The governor doesn’t need the legislature to help Atlantic City, said Tom Hester, a spokesman for Prieto. “The speaker isn’t blocking anything,” he said. “The governor already has the authority to save Atlantic City from financial disaster.”

While some New Jersey cities have furloughed workers for a day, Atlantic City would be the first to implement a prolonged shutdown, according to the state’s Department of Community Affairs. But it’s not the first that’s threatened to take that step. Camden did in 1999, only to withdraw a bankruptcy petition after the state came through with more aid.

“It’s so hard to tell nowadays what’s negotiating and what’s real,’’ said Dan Solender, who manages $18 billion of state and local debt as head of municipals at Lord Abbett & Co. in Jersey City, New Jersey. “The way it’s sounding, it’s sounding real now.’’

After making payments on bonds and to schools, the city’s cash balance will be just $1.8 million on April 1 and will be depleted the following week, according to estimates Guardian provided to the state this month.

The mayor said many employees have volunteered to keep working and he’s still evaluating which services would cease.

Even after forgoing paychecks temporarily, the city will again run out of money this year, Guardian said. He said he plans to meet debt obligations in May.

Ratings companies are skeptical: without state action, Atlantic City is headed toward default or bankruptcy, according to Moody’s Investors Service. Yet a previous bout of stepped-up oversight did little to help: Standard & Poor’s cut the city’s grade twice in 2015 as the appointment of the emergency manager, who left in January after a year, heightened concerns of potential losses for bondholders. The company in January cut Atlantic City four levels to CCC-, nine steps into junk.

“There’s no real path right now,’’ Solender said.

Bloomberg Business

by Romy Varghese

March 30, 2016 — 2:00 AM PDT Updated on March 30, 2016 — 5:42 AM PDT

San Bernardino Approves Deal to Settle Bankruptcy Bond Fight.

San Bernardino, California, moved closer to exiting bankruptcy after striking a deal that gives pension bondholders 40 percent of what they're owed.

In a statement Tuesday, the city said the settlement approved by the mayor and council reduces its payments by $45 million to creditors Commerzbank Finance & Covered Bond SA and bond insurer Ambac Assurance Corp.

"The settlement will end the costly legal battles between the city and the settling creditors," city attorney Gary Saenz said in the release.

Municipal bond market participants are watching cases such as San Bernardino to evaluate how their investments may fare in distressed situations. In Detroit's record bankruptcy, pension bondholders owed about $1.4 billion were forced to take deeper cuts than city workers and retirees.

San Bernardino, which filed for bankruptcy in 2012 and more recently in December drew attention for being the site of deadly terrorist attacks, will make payments over 30 years, officials said. A judge must approve the deal as part of the city's plan to exit court protection.

The case is In re San Bernardino, 12-bk-28006, U.S. Bankruptcy Court, Central District of California (Riverside).

Bloomberg Business

by Romy Varghese and Steven Church

March 30, 2016 — 7:07 AM PDT

Puerto Rico's Government Development Bank Risks Receivership.

Puerto Rico's Government Development Bank, whose regulator says faces a cash shortfall of as much as $1.3 billion in June, will continue to operate on its own — for now.

The bank, which lends to the commonwealth and its municipalities, is insolvent, Puerto Rico's Commission of Financial Institutions, the bank's regulator, concluded in its most recent report on the GDB's finances.

That determination allows the island's Treasury Secretary to ask a court to appoint a receiver to oversee the GDB. It's a move the administration won't make at this time, Jesus Manuel Ortiz, a spokesman for Governor Alejandro Garcia Padilla, told reporters Wednesday in San Juan.

"We are constantly monitoring the liquidity of the GDB and no receiver will be named in the short term," Ortiz said.

The GDB serves as the commonwealth's financial adviser and structures municipal-debt sales for the island. The bank's cash crunch has hampered its ability to lend to the commonwealth and provide short-term funds.

The GDB is experiencing a liquidity shortfall that will reach a negative $1.3 billion in June, according to a Monday court opinion of Wal-Mart Stores Inc.'s successful suit against Puerto Rico to end a tax that applied its highest rate on the retailer. The opinion quoted from the commission's November report, which isn't public.

Critically Deficient

The commission's report found that the bank's "liquidity levels are critically deficient in relation to its weakened financial conditions caused by an elevated debt exposure and obstructed access to capital markets," the court opinion quoted from the report.

The bank has disputed the findings. Melba Acosta, president of the Government Development Bank, is cited in a footnote in the report as saying the report was 'obviously written by someone who doesn't understand the GDB."

Barbara Morgan, a spokeswoman at SKDKnickerbocker in New York who represents the GDB, didn't have an immediate comment. Betsy Nazario, a spokeswoman at the GDB in San Juan, didn't immediately return a phone call and e-mail.

Puerto Rico is negotiating with its creditors to reduce $70 billion of debt through a voluntary debt exchange after the island borrowed for years to paper over budget deficits. About 45 percent of residents live in poverty and the island's economy has shrunk in the past decade. The House Natural Resources Committee Tuesday made public a discussion draft of a bill that would set up a federal control board to oversee any debt restructuring and review annual budgets.

Last Examination

The bank in November warned that it was at risk of receivership, which would suspend the GDB's operations and settle its obligations. It owes investors a $422 million bond payment May 1 that Garcia Padilla has said cannot be paid. Puerto Rico and its agencies must pay an additional $2 billion in principal and interest on July 1.

The commission's last comprehensive exam of the GDB was in 2007, according to the court opinion. Once the commission began conducting its review last year, the bank took more than six months to give "the minimum necessary information to produce" the review, the court opinion quoted from the report.

"For years now, the commonwealth has been running away from the truth about its fiscal health," Judge Jose Antonio Fuste, wrote in his opinion. "The deep-seated refusal of several administrations to own up to and correct the structural imbalances in our economy has brought us to the point of crisis."

Bloomberg Business

by Michelle Kaske and Alexander Lopez

March 30, 2016 — 12:11 PM PDT

Muni-Bond Funds Burned Chasing Yield With Wood-Pellet Bankruptcy.

Wood pellets are made to be burned. It turns out a Louisiana facility that was built to make the pieces for power plants is doing the same to municipal-bond investors.

Invesco Ltd., Waddell & Reed Financial Inc. and AllianceBernstein Holding LP are among buyers left in limbo after Louisiana Pellets Inc., a subsidiary of the world's biggest pellet maker in Germany, filed for Chapter 11 bankruptcy last month. After selling almost $300 million in municipal debt since 2013, it defaulted on some taxable bonds on Jan. 1 because its facility in a small lumber town struggled to ramp up output to the levels projected in initial offering documents.

The project is the latest example of the risks associated with chasing yield in the portion of the $3.7 trillion municipal market that finances industrial-development projects, the segment most prone to default.

Investors have had few opportunities to buy recently and a lot of money to work with: High-yield muni funds saw inflows in 94 of the 116 weeks since the start of 2014, Lipper US Fund Flows data show.

The wave of cash means "you have people jumping over themselves chasing incremental yield," said John Bonnell, a fund manager who oversees about $10 billion of state and local-government debt at USAA Investment Management Co. in San Antonio. "There used to be a saying way back when: If something couldn't get financed in the bank market or the corporate market or the equity market, it would get done in the muni market."

Local authorities often issue debt for companies, hospitals and nonprofits, which back the obligations. While they often work with well-established borrowers, so-called conduits since 2014 have financed — or tried to finance — speculative projects including a sewage-to-fertilizer plant, a new home for USA Basketball and a methanol plant near Texas's Gulf Coast that's seeking to challenge foreign producers that dominate the business.

A Louisiana public authority issued $140 million of debt in November 2013 on behalf of the pellet company, which built a facility in Urania, a lumber town of 1,300 about 245 miles (394 kilometers) northwest of New Orleans. Investors extracted a steep price to compensate for the risk: Partially tax-exempt securities due in 2039 paid 10.5 percent interest, or 6.4 percentage points more than AAA munis, according to data compiled by Bloomberg. Subsequent rounds of financing came through private placements in 2014 and 2015, the data show.

The pellets are made from wood residues like sawdust or shavings that are then dried and compacted.

Electricity producers burn the pieces, which are considered carbon-neutral, along with coal to comply with renewable-energy mandates.

Facing adverse weather and construction setbacks, the facility failed to meet production expectations. A sharp decline in the price of traditional energy sources like oil and natural gas added financial strain to the parent company, Wismar-based German Pellets, which declared insolvency overseas last month.

Bondholders' View

Invesco is the largest holder of Louisiana Pellets debt, with about $89 million in its funds as of Dec. 31, data compiled by Bloomberg show. The next biggest owner is Waddell & Reed, with $22.5 million, then AllianceBernstein with $18.5 million, the data show.

Claudia Röhr, a German Pellets spokeswoman, didn't respond to an e-mail seeking comment on its plans for the Louisiana facility or the options available to repay bondholders.

"The quickness of this project coming under scrutiny and into trouble is concerning to us, but it's why you run a diverse portfolio," said Mark Paris, who runs Invesco's $7.7 billion high-yield muni fund from New York. "This is one of those situations where as a bondholder, we're going to be working out the situation with the borrower. It's probably not something we are going to try and sell out of."

Michael Walls, who manages the $869 million Waddell & Reed Advisors Municipal High Income Fund, declined to comment, citing restrictions from being part of a group that agreed not to publicly discuss certain details of the project. The Louisiana Pellets bonds due in 2039 with a 10.5 percent interest rate are the second-largest holding in the fund.

"We believe that eventually the first phase of this plant can operate successfully — and have a new owner — but it is way too soon to know about expanding beyond that," Dean Lewallen, a senior high-yield municipal credit analyst at AllianceBernstein, said in an e-mail. "The near-term focus is to get it operating again."

German Pellets began financing the plant in late 2013 when oil was still selling for about $100 for a barrel, compared with $40 now. Natural gas prices have been cut in half over the period.

'Very Vauable'

The plant was supposed to produce 500,000 metric tons of pellets annually by operating at about 87 percent of capacity, according to offering documents from the 2013 sale. Instead, in the second half of 2015, it produced just 101,000.

German Pellets also borrowed $187 million in 2012 through a development agency in Sanger, Texas, for its first U.S. location, in Woodville, Texas. Invesco is the largest holder of those securities as well, with $39.6 million, Bloomberg data show.

Unlike its Louisiana counterpart, the Texas plant is operating as expected, producing more in three months than the Urania facility did in twice the time.

"We believe there is a very strong international demand for the product, and we expect these plants to be very valuable," said Paris, the fund manager for Invesco. "They're the largest, they're new, and we expect them to be very valuable assets."

Bloomberg Business

by Brian Chappatta

March 28, 2016 — 2:00 AM PDT Updated on March 28, 2016 — 8:05 AM PDT

Nuveen, Goldman Buy Chicago School Debt.

Chicago's public schools are poised to shut down on Friday as the teachers' union stages a one-day strike, the latest sign of escalating financial pressure on a junk-rated district that's veering toward insolvency.

The distress hasn't deterred Nuveen Asset Management, Goldman Sachs Asset Management and OppenheimerFunds Inc. According to data compiled by Bloomberg, the three were some of the biggest buyers of the $725 million of bonds the school system sold last month, when it was forced to pay yields as high as 8.5 percent — three times more than benchmark debt, even though it doesn't have the power to go bankrupt.

"Investors are betting that the 8.5 percent yield will be a sufficient cushion to offset the bumpy ride ahead for the CPS bonds," said Richard Ciccarone, president of Merritt Research Services LLC, which analyzes municipal finances. "Time will tell whether it will be enough."

Chicago's school system, the nation's third largest, has been pushed to the brink after years of skipping pension payments and borrowing to cover operating costs, which has led credit-rating companies to downgrade its bonds to as low as five steps below investment grade. Facing projected deficits of $1 billion a year through 2020, the school system is lobbying for more aid from Illinois, while Republican Governor Bruce Rauner is pushing for a state takeover and changing the law to let it file for bankruptcy to reduce its debt.

The district's borrowing last month provided needed cash and showed that investment firms anticipate it will find a way to turn around its finances. The purchases have so far paid off: Bonds due in 2044 traded Wednesday for 91 cents on the dollar, up from the initial price of 84 cents.

The deal "came at a time of heightened controversy around state takeover threats and bankruptcy threats," said John Miller, co-head of fixed income at Nuveen, which oversees about $110 billion of municipal debt, including $279 million of last month's issue, according to data compiled by Bloomberg. "Those were maybe overdone, if you will, because there isn't a legal path or a legal mechanism to do those things."

Rauner has had no success in the Democrat-controlled legislature with his Chapter 9 proposal, which Democrats and unions oppose because it would let the schools seek to alter labor contracts as well as other debts. Such a change is unlikely and wouldn't happen for years, according to Miller, who said that the state aid and property-tax revenue that the school district has pledged to bondholders should be sufficient to keep it from defaulting.

"It's 390,000 students, and it's one of the largest employers at 27,000 employees," he said. "They're not going to shut down."

Goldman Sachs funds holds about $87 million of the 29-year debt the district sold last month, data compiled by Bloomberg show, while OppenheimerFunds has $9 million. That makes them the second- and third-largest holders after Nuveen, based on the most recent data available. Goldman spokesman Andrew Williams declined to comment. OppenheimerFunds spokeswoman Meredith Richard declined to comment. Emily Bittner, a spokeswoman for the district, didn't return e-mail and phone messages requesting comment.

The bond sale refinanced debt and provided cash to help the district cover its operating expenses. After it closed, the board deposited $268 million with bond trustees, which covers all general-obligation debt payments through March 1, 2017, according to Moody's Investors Service.

Nuveen's participation in the deal as a local firm with a strong track record is a "vote of confidence," said Ciccarone, the Chicago-based analyst with Merritt. Their involvement is reminiscent of the consortium of local banks in the late 1970s that put together interim financing when the district couldn't pay teachers, he said.

The district still faces serious challenges. The state hasn't come through with $480 million in aid that school officials have pleaded for to close this year's budget gap, which was brought on by rising retirement-benefit expenses. Chicago's is the only Illinois district that pays the vast majority of its own pension costs, and it owes another $679 million to the retirement fund by June 30.

With no sign of help from the state, the district announced three furlough days this year to save an estimated $30 million and cut school budgets by $85 million. Rauner, who is locked in a record-long budget impasse with Democratic lawmakers, has said he will only help Chicago's schools if Mayor Rahm Emanuel, a Democrat, helps push his agenda. Rauner wants limits on collective bargaining, property tax curbs and term limits, none of which are winning favor from Democrats.

Tensions with teachers are also rising. The union authorized Friday's strike to pressure the state and highlight stalled contract talks. It may save money initially as teachers who don't come to school won't get paid, saving about $10 million, according to district estimates if all educators don't report to work.

Longer term, it complicates the ongoing negotiations for the contract that expired June 30. If an unfavorable labor pact is reached without corresponding cuts, the district's "very weak" liquidity will be even more strained, according to Moody's.

"This is a case where their finances are bad, and it would be a tough situation to dig out of even if you had everyone rowing in the same direction," said Tom Schuette, co-head of credit research and portfolio management at Solana Beach, California-based Gurtin Fixed Income Management LLC, which holds about $10.3 billion of munis. "It's really hard to see how they manage through this when you have the labor union and the state seemingly pushing in opposite direction of management."

Bloomberg Business

by Elizabeth Campbell

March 31, 2016 — 2:00 AM PDT Updated on March 31, 2016 — 5:46 AM PDT

Puerto Rico `Not Serious' on Consensual Plan, Says Insurer.

Assured Guaranty Ltd. is seeking financial information from Puerto Rico, and is looking to Washington for help.

The bond insurer, which guarantees repayment on about $3.8 billion of commonwealth securities, sent a letter Wednesday addressed to Cleary Gottlieb Steen & Hamilton LLP, which is representing Puerto Rico in its attempt to restructure $70 billion of debt, detailing multiple requests for information. The letter signed by Bruce Stern, Assured's executive officer, was also sent to U.S. Treasury Secretary Jacob J. Lew, House Speaker Paul Ryan and other federal lawmakers working on legislation to address the island's fiscal crisis.

Assured says that it has failed to receive complete financial information that it is entitled to as insurer of commonwealth securities after repeated appeals during the last 18 months, beginning with a request for Puerto Rico Highways & Transportation Authority maintenance agreements in September 2014. Assured is also seeking current balances for accounts that repay Highways debt and Puerto Rico Convention Center District Authority bonds after the two agencies began using reserve funds to make their Jan. 1 debt-service payments. Assured needs the data to plan for possible draws on its insurance policies, Stern wrote in the letter.

Oversight Bill

“The financial situation of the commonwealth and its public agencies remains opaque,” Stern said. “In the absence of a legitimate reason for this opacity, Assured is left to speculate what ulterior purpose the continued refusal to provide basic and readily-available financial information serves.”

Stern sent the letter as the House Natural Resources Committee plans to introduce on April 11 its bill that would establish a federal oversight board to manage any Puerto Rico debt restructuring and weigh in on annual budgets. The goal is to end the commonwealth’s practice of borrowing to fill budget deficits. U.S. territories, including Puerto Rico, don’t have access to municipal bankruptcy.

Puerto Rico has been in discussions with Assured and its advisers during the last two years as part of financial diligence on a variety of commonwealth issuers and to work out a restructuring plan, Barbara Morgan, a spokeswoman at SKDKnickerbocker in New York, which represents Puerto Rico’s Government Development Bank, said in an e-mail.

“The timing of Assured’s letter is no doubt part of their lobbying strategy on the Hill against the Natural Resources Committee’s proposed legislation, but its allegations about the commonwealth stonewalling and withholding information are baseless,” Morgan said.

Betsy Nazario, a spokeswoman at the GDB in San Juan, and Shannon Lynch, a spokeswoman at Cleary Gottlieb, didn’t immediately return phone calls and e-mails.

Creditor Counterproposal

Governor Alejandro Garcia Padilla in June said the island was unable to repay its obligations on time and in full. Two agencies have missed bond payments since then and the government has redirected revenue from the Highways and Convention Center authorities to instead pay general-obligation bonds, which have the highest priority under its constitution.

Creditors, including mutual funds, bond-insurance companies, and hedge funds are working together on a unified counterproposal that would reduce Puerto Rico’s debt after island officials last week offered their latest debt-restructuring plan to the different parties. Puerto Rico has said it wants to reach an agreement with its creditors, an assertion that Stern questions.

The responses of Cleary Gottlieb, Puerto Rico and the island agencies, “suggests the commonwealth and its public corporations are not serious about working towards a meaningful consensual restructuring,” Stern wrote.

Assured guaranteed about $3.8 billion of Puerto Rico securities, as of Dec. 31, as measured by gross par outstanding, according to financial documents on the company’s website.

Bloomberg Business

by Michelle Kaske

March 31, 2016 — 12:15 PM PDT Updated on March 31, 2016 — 3:53 PM PDT

San Diego May Seek Tax Increase for $1 Billion Chargers Stadium.

San Diego voters would decide whether to increase the city's tax on hotel occupancy to help pay for a new $1 billion stadium for the National Football League Chargers and a $600 million convention center.

The team would contribute $350 million, the NFL would pay $300 million and the city would add $350 million through its hotel tax toward a 65,000 seat stadium, according to a proposal released Wednesday.

The increase in the tax on visitor stays by 6 percentage points to 16.5 percent would back about $1.15 billion of municipal bonds, which would fund the city's contribution, the convention center and land acquisition.

Mayor Kevin Faulconer praised the deal as being more than a stadium with the inclusion of the convention center.

"My top priorities are to protect jobs, protect taxpayers and do what's right for all San Diegans," said Faulconer, in an e-mailed statement. "I will evaluate the proposal's details through that lens."

The Chargers had been one of three teams seeking to move to Los Angeles last year before the NFL approved a move by the St. Louis Rams. When the NFL approved the Rams' move in January, it left open the possibility that the Chargers could share the team's stadium in Inglewood, California.

The Chargers and supporters of the proposal must gather 66,447 signatures from registered voters by mid-June of the proposal to be on the ballot in November.

Bloomberg Business

by Darrell Preston

March 31, 2016 — 8:45 AM PDT

Rally in Longest Muni Bonds Drives Yield Gap to Eight-Year Low.

The longest-dated municipal bonds haven't looked this expensive since before the 2008 financial crisis. Yet investors aren't showing any signs of slowing their purchases.

Following a rally that began in the second half of 2015, the extra yield buyers pick up for holding 30-year debt instead of two-year securities fell last week to as little as 1.96 percentage points, the lowest since February 2008, according to data compiled by Bloomberg. The difference shows investors are anticipating that bonds maturing in decades will fare best at a time when inflation is subdued and the Federal Reserve is planning to raise short-term rates.

The so-called flattening of the yield curve has made a lot of people look prescient: Investors and analysts at more than half a dozen firms including Barclays Plc, Citigroup Inc., Janney Montgomery Scott and Morgan Stanley Wealth Management all predicted the move in December. Some say long bonds could extend the rally through year-end amid signs that individual buyers are no longer waiting for yields to rise from five-decade lows.

“We’ve come a long way in a few months, but going forward, munis can hold onto this flatness or flatten even further,” said John Dillon, managing director at Morgan Stanley Wealth Management in Purchase, New York.

“Individuals have this greater comfort that long-term rates aren’t going to get away from them, and they’re getting the idea that reinvesting in two-year paper isn’t producing any kind of return.”

Even though the Fed raised its target rate in December for the first time since 2006, few expect significantly higher interest rates as other countries seek to combat a slowdown in growth. The futures market is factoring in a 6 percent chance the U.S. central bank will raise rates at its meeting in April, down from the one-fifth that was predicted a month ago.

On Monday, the Commerce Department reported that its price index for consumer purchases, a gauge closely watched by the Fed, dropped 0.1 percent in February from the month before, underscoring the lack of upward pressure on inflation.

For muni buyers in particular, the outlook is promising after weathering the usual wave of new bond offerings in March, which typically weighs on prices. States and cities issued $35.6 billion over the past month and the tax-exempt market gained 0.08 percent, according to data from Bank of America Merrill Lynch and Bloomberg.

“The long-end of the muni curve continues to look quite attractive, while the short-end should continue to cheapen,” said Phil Fischer, head of municipal research at Bank of America in New York. “Continued curve flattening seems like a reasonable bet.”

Individuals are speculating on the longest-dated debt outperforming. They’ve added money for 25 straight weeks to long-term muni mutual funds, which represent about two-thirds of overall tax-exempt fund inflows during the period, Lipper US Fund Flows data show.

Amid the demand, the yield on an index of benchmark 30-year munis is 2.73 percent, compared with 3.18 percent when the streak of inflows began, Bloomberg data show. By contrast, benchmark two-year rates, at 0.76 percent, are up from 0.56 percent, as traders price in another quarter-point Fed increase by the end of the year.

Not every investor is going all-in on the longest-maturing securities. Bonds due in eight to 12 years offer a better value for investors because prices haven’t rallied as much, said Jamie Pagliocco, who oversees muni-bond funds at Fidelity Investments.

Yet even he sees the appeal of long-term debt for investors who are losing patience with muni-market yields that are stuck near the lowest since the 1960s.

“There can still be a fair amount of demand on the long end because of the absolute yield levels,” said Pagliocco, whose company oversees $32 billion of munis. “The longer rates sit around this level, the more comfortable people get.”

Bloomberg Business

by Brian Chappatta

March 29, 2016 — 2:00 AM PDT Updated on March 29, 2016 — 5:51 AM PDT

Detroit School Bonds Would Fully Pay in Split Plan, Snyder Says.

Investors holding $1.5 billion of bonds from Detroit's distressed schools would be fully repaid under a plan by the state to split the system in two, Michigan Governor Rick Snyder said.

The proposal, which passed the state Senate last month, establishes a new district responsible for educating students and running the schools, while the existing district's only task is to collect taxes and repay all obligations except pensions. Moody's Investors Service said in a report Thursday that while the plan could be "a significantly positive event for bondholders," the split doesn't mean a default or bankruptcy is off the table.

"We've done nothing to suggest or say anything other than bondholders are going to get paid through this entire process," Snyder said during an interview at Bloomberg's New York headquarters. He answered "yes" when asked if bondholders would be repaid in full under the plan, referred to as Newco-Oldco in corporate finance.

"I don't know how they'd have a default or bankruptcy if you did Newco-Oldco," he said. "That is the financial solution."

Detroit's school district is reeling from the same population decline that pushed the city into the largest U.S. municipal bankruptcy. The system, which has seen enrollment drop by nearly 100,000 students in the past decade, is overseen by Emergency Manager Steven Rhodes, the judge in Detroit's Chapter 9 proceedings.

Moody's gives it an issuer rating of Caa1, the fifth-lowest rank.

Snyder this week signed an emergency funding measure for the schools, which would send $48.7 million to the district to keep doors open through the end of the school year. The Senate passed a $720 million bill that would break the system into two last month.

Getting the proposal through the House "will be more challenging than it was in the Senate, but that's not to say it's not doable," Snyder said. "The real issue is not necessarily about the money as much anymore. Much of it now is more about what level of oversight."

The split-district plan would allow Rhodes to vacate his emergency-manager post, Snyder said. One of the reasons he was chosen for the position was that he'd have to step down before the school system could declare bankruptcy, since he'd have a conflict of interest, the governor said.

Much of the Detroit school debt is backed by state aid, bond insurers, or both.

The largest tax-exempt bond outstanding, due in May 2029, has protection from Assured Guaranty Municipal Corp. and trades at a premium. Franklin Advisers and Nuveen Asset Management are the largest holders of the $183.7 million obligation, owning about $25.9 million and $20.5 million, respectively, data compiled by Bloomberg show.

Bloomberg Business

by Brian Chappatta

April 1, 2016 — 8:49 AM PDT

Municipal Bond Sales Poised to Decelerate as Redemptions Rise.

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

States and localities plan to issue $5.9 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.8 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Houston's school district plans to sell $684 million of bonds, Hawaii has scheduled $331 million, Anne Arundel County, Maryland, will offer $285 million and the Pennsylvania Turnpike Commission will bring $205 million to market.

Municipalities have announced $7.6 billion of redemptions and an additional $8.4 billion of debt matures in the next 30 days, compared with the $15.3 billion total that was scheduled a week ago.

Issuers from New York have the most debt coming due with $1.18 billion, followed by California at $1.07 billion and Massachusetts with $649 million. California has the biggest amount of securities maturing, with $615 million.

Investors added $1.06 billion to mutual funds that target municipal securities in the week ended March 16, compared with an increase of $1.03 billion in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $93.6 million last week, boosting the value of the ETFs 0.44 percent to $21 billion.

State and local debt maturing in 10 years now yields 96.2 percent of Treasuries, the same as the previous session and the 200-day moving average of 97.3 percent, Bloomberg data show.

Bonds of Tennessee and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Tennessee's securities narrowed 1 basis point to 1.84 percent while California's increased 1 basis point to 2.09 percent. Puerto Rico and Connecticut handed investors the worst results. The yield gap on Puerto Rico bonds widened 149 basis points to 12.25 percent and Connecticut's rose 18 basis points to 2.46 percent.

This story was produced by the Bloomberg Automated News Generator.

Bloomberg Business

by Ken Kohn

March 28, 2016 — 3:33 AM PDT

U.S. Urges Memphis Ministry to Sell Three Bond-Funded Complexes.

The U.S. Department of Housing and Urban Development has "lost confidence" in a Memphis-area ministry's ability to manage its portfolio of low-income housing and urged it to sell three of its municipal bond-financed apartment complexes in Florida.

In a March 24 letter to the Global Ministries Foundation president, Rev. Richard Hamlet, HUD said recent inspections of the non-profit's complexes in Jacksonville and Orlando found exposed wiring, decades-old cabinets and "band-aid" fixes such as using painted duct tape to cover holes or painting over untreated mildew.

"HUD is extremely concerned by GMF's quick fix approach to maintenance at its properties," wrote Priya Jayachandran, HUD Deputy Assistant Secretary for Multifamily Housing. "While HUD will continue to closely monitor the conditions at all of the GMF properties in Florida to ensure that GMF addresses these problems with long-term sustainable and permanent repairs, HUD has lost confidence in GMF's ability to manage its large portfolio."

GMF, a Cordova, Tennessee, non-profit founded in 2003, has raised $400 million to finance the acquisition and operation of 60 multifamily complexes in eight states. The non-profit issued municipal bonds through "conduits," — local agencies with few, if any, employees and that exist only to sell tax-exempt debt for a fee.

Ministry's Response

"The leadership of Global Ministries' affordable housing program takes the allegations raised by HUD's deputy assistant secretary very seriously," Hamlet said in e-mailed statement to Bloomberg News. "We are working closely with HUD and impacted stakeholders to continue the work underway to improve our properties."
GMF is working with government housing officials to ensure the properties comply with all federal and state laws, regulations and local codes, said Hamlet.

"GMF remains unwavering in its commitment to restoring safe, comfortable, and affordable housing for families in need," he said.

HUD visited GMF's Eureka Gardens Apartments and Washington Heights apartments in Jacksonville and the Windsor Cove Apartments in Orlando on March 17 and 18. The three complexes have 852 units.

Municipal Bonds

GMF issued $34 million of tax-exempt debt through the Capital Trust Agency, to purchase the Jacksonville properties and four others in the city in 2012. Capital Trust is a conduit located in Gulf Breeze, Florida, 360 miles (579 kilometers) away. Capital Trust also issued $11.3 million in 2012 to finance GMF's acquisition of Windsor Cove in Orlando.

The primary source of revenue backing the bonds are rent subsidies from HUD. Last month HUD cut off subsidies to two GMF properties in Memphis because GMF failed to maintain the properties in a "safe and sanitary manner." The loss of the federal funds caused the securities to default, pushing the price to as little as 21 cents on the dollar.

Bondholders of the GMF properties in Jacksonville and Orlando would lose money if the non-profit sold the apartments for less than they purchased them.

On March 30, GMF's Jacksonville bonds with a 4.25 percent coupon maturing in 2035 traded at average price of 98.4 cents on the dollar. The same day, an investor bought $115,000 of of GMF's Orlando bonds with a 5 percent coupon maturing in 2047 for 99 cents on the dollar. The bonds carry an A rating from Standard & Poor's.

Following on-site visits to some buildings, S&P put 25 GMF-backed bond issues on review for a downgrade last month, saying a decision to withhold funding from other complexes could jeopardize the money used to repay investors.

Bloomberg Business

by Martin Z Braun

March 31, 2016 — 9:40 AM PDT

Bloomberg Brief Weekly Video - 03/31

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

Watch the video.

March 31, 2016

Fed Rule Allows Banks to Use Munis as Part of Crisis Buffer.

U.S. cities and states won a partial victory Friday as the Federal Reserve gave final approval to a rule that will let banks include some municipal bonds in stockpiles of easy-to-sell assets meant to serve as a buffer against a financial crisis.

The decision to allow certain investment-grade bonds to be used in meeting liquidity requirements expands the Fed's version of a multiagency rule adopted in 2014, which calls for the biggest banks to hold enough high-quality liquid assets to survive a 30-day period of financial stress. The central bank revisited the idea of including munis after local governments waged a lobbying campaign for the change.

Bank regulators adopted the minimum-liquidity demand as a response to deficiencies highlighted during the 2008 credit crisis, when financial firms were stuck with assets they couldn't sell. The Fed, which announced completion of its revised rule in a statement, said it relied on an analysis that suggested certain munis should qualify because they have liquidity characteristics similar to assets such as corporate debt securities.

Other Regulators

What makes the victory only a partial one for issuers is the fact that a substantial portion of muni activity occurs in the bank units overseen by the Office of the Comptroller of the Currency. So far, neither the OCC nor the Federal Deposit Insurance Corp. has matched the Fed's confidence in the liquidity of the muni market.

"Fundamentally, the rule now makes sense," said Philip Fischer, who heads muni research for Bank of America Corp.'s Merrill Lynch unit. He said the muni market is "extremely high-quality" and that he expects the Fed's action to spur the other regulators to reconsider their positions.

Bryan Hubbard, an OCC spokesman, and Barbara Hagenbaugh, an FDIC spokeswoman, declined to comment.

The Fed's change, which takes effect July 1, applies to Fed-supervised lenders subject to the liquidity coverage ratio requirement. Those bank holding companies will be able to include a limited slice of munis among the Treasuries, highly-rated corporate bonds and foreign-government debt they already count against their liquidity demands.

'Proven Record'

The Fed will allow munis that "have a proven record as a reliable source of liquidity in repurchase or sales markets during a period of significant stress," according to the text of the rule. Such munis can be part of a second tier of liquid assets, which can total no more than 40 percent of the overall liquidity buffer.

The city and state lobbying also targeted lawmakers, and legislation to allow munis in the liquidity rule made some progress through a House committee in 2015.

Dustin McDonald, director of the Government Finance Officers Association, said the Fed's allowance isn't wide enough, and that "local government association partners will continue efforts to secure enactment of legislation to truly address the short-sightedness of the rule."

The phase-in period for the liquidity rule started in 2015 and it is set to go into full effect on Jan. 1. It's also expected to be joined this year by a separate but related liquidity demand — known as the net stable funding ratio — that considers a longer stress horizon.

Even under the pressure of rules and warnings from municipal lobbyists, banks have increased their muni holdings, which rose to almost $500 billion by the end of 2015, more than twice the levels the industry held at the end of the financial crisis.

Bloomberg Business

by Jesse Hamilton

April 1, 2016 — 7:00 AM PDT Updated on April 1, 2016 — 10:25 AM PDT

Muni Funds See Most Cash Since '12 on Best Risk-Adjusted Returns.

When it comes to risk-adjusted returns, municipal bonds still can't be beat. And individual investors are taking notice.

The $3.7 trillion municipal market earned about 0.3 percent in March, building on gains of 1.1 percent and 0.1 percent in January and February, Bank of America Merrill Lynch data show. It's just the second time since 2002 that the debt has posted three straight positive months to start the year. While the first-quarter return is merely on par with the average over the past decade, individuals are pouring money into tax-exempt bonds anyway. They've added to municipal bond mutual funds for 26 straight weeks dating back to October, the longest streak since 2012, Lipper US Fund Flows data show.

With tax-exempt interest rates near the lowest since the 1960s, munis don't seem alluring on their own. Rather, they offer a combination of relatively higher yields and lower volatility that’s hard to match in the global markets, explaining why individuals continue to favor them, according to investors and analysts at BlackRock Inc., Loop Capital Markets, Oppenheimer & Co. and Vanguard Group Inc. When adjusted for price swings, state and local bonds performed better than many major asset classes in the first quarter, just as they did last year.

“As long as rates stay where they are right now, and you get to earn the coupon, I think retail investors are OK with that,” said Chris Mier, chief strategist at Loop Capital Markets in Chicago. “Munis are a good place to hide.”

When accounting for risk, as measured by price volatility, the broad municipal market earned 0.95 percent in the first quarter through March 30, data compiled by Bloomberg show. That edges the 0.94 percent return on investment-grade corporate bonds. U.S. Treasuries, high-yield company debt, commodities and the Standard & Poor’s 500 index of stocks gained 0.75 percent, 0.36 percent, 0.12 percent and 0.08 percent, respectively.

Last year, munis did even better, returning 2 percent on a risk-adjusted basis while other assets either eked out gains or declined.

U.S. stocks plunged briefly into a correction in August 2015, which may have steered some investors into munis, Mier said. The current streak of inflows, totaling about $22 billion, began in the first week of October.

The S&P 500 recouped most of its losses later last year, only to plunge to the lowest in nearly two years on Feb. 11. The same week the index touched the low, investors added $941 million to muni funds, the fourth-largest inflow of the current stretch.

“Oftentimes we see investors looking in the rear-view mirror — they look at what has done well and buy that,” said Chris Alwine, head of munis in Malvern, Pennsylvania, at Vanguard, which oversees $157 billion of the debt. “We’ve been a bit surprised by the level of inflow.”

April will test demand for munis — funds have seen outflows in at least one of the first two weeks of the month each year since 2010, Lipper data show. That’s because individuals tend to raise cash ahead of the U.S. tax-filing deadline in mid-April.

Investors may also react to price declines from mid-February to mid-March, which drove benchmark 10-year yields up 0.3 percentage point to 1.87 percent, said Sean Carney, head of municipal strategy at BlackRock in New York.

“Many look at fund flows in the municipal-bond market as a leading indicator, when in all actuality they’re a lagging indicator — they lag past performance,” said Carney, whose firm oversees $110 billion in munis. “It wouldn’t be surprising if we were to begin to see fund flows compress a bit. They’ve been very strong.”

Tax season also has a positive effect for munis: reminding investors how much they pay, and what they could save by earning tax-exempt interest. Including a 3.8 percent levy on the investment income of top earners resulting from the 2010 Patient Protection and Affordable Care Act, the highest federal rate is 43.4 percent.

That means the 1.75 percent yield on benchmark 10-year munis is equivalent to 3.1 percent on a taxable basis for top earners. That compares with 1.77 percent on U.S. Treasuries and exceeds the rate on 10-year bonds from Australia, Canada, China, almost all European countries, New Zealand, South Korea and Thailand, Bloomberg data show.

“People are looking at this external volatility and they want to put their money into something that’s more stable and consistent,” said Jeffrey Lipton, head of municipal research at Oppenheimer in New York. “If you’re within the upper income-tax brackets, and if diversification and preservation of capital is an important investment objective, why wouldn’t you put money into munis?”

Bloomberg Business

by Brian Chappatta

April 1, 2016 — 2:42 AM PDT Updated on April 1, 2016 — 7:12 AM PDT

Bankrupt Kentucky City Reaches Repayment Deal.

The bankrupt city of Hillview, Ky., said it plans to raise taxes and borrow $5 million to pay off a newly reached settlement in a decade-old property dispute with a truck-driver training school.

Officials for the Louisville suburb said in court papers on Wednesday that they reached a deal to pay a portion of the $15 million judgment owed to Truck America Training LLC. The legal award, which grew by $3,759.54 a day in interest, prompted Hillview leaders to put the 9,000-resident city into bankruptcy proceedings in August.

The settlement could bring closure to city leaders who have debated how to handle the situation for years. “It’s weighed on their hearts and their minds for years now, and there’s some relief in reaching this agreement,” said Tammy Baker, an attorney for the city.

The deal still needs approval from Judge Alan C. Stout, who agreed to evaluate it at a hearing on Thursday. Court approval would enable Hillview to drop its bankruptcy case.

Under the deal, Hillview officials will make an up-front payment of $5 million that it plans to raise by issuing municipal bonds. City officials will also turn over 8.3% of its general fund revenue, minus a few deductions, to the training school for 20 years, according a copy of the settlement filed in U.S. Bankruptcy Court in Louisville.

The settlement also calls for the city, which typically brings in less than $3 million a year in taxes and fees, to raise taxes to pump up its revenue intake. Hillview officials are preparing to raise its occupational tax from 1.5 % to 1.8% and its insurance premium tax, which is collected on insured property and people within the city limits, from 5% to 7%, according to the settlement.

The city’s battle with Truck America Training goes back to a 2002 deal that allowed the school to use a city-controlled, 40-acre parcel of land for a heavy equipment training program.

School officials who made a deal to buy the property put $1.5 million worth of bulldozers, excavators and dump trucks on the site to train 277 students in the first year, according to earlier court papers. But city leaders changed their minds and resisted finalizing the sale.

When Truck America sued in 2005, city leaders evicted them.

“Without suitable land on which to train, student enrollment and the related revenue plummeted, and Truck America was forced to sell its heavy equipment at a significant loss,” Truck America lawyers said in a lawsuit that prompted a jury to award the school $11.4 million in August 2012.

Earlier this year, Hillview officials sued ex-lawyer Mark Edison, saying he misled city leaders in 2004 into thinking that they could get out of a contract to sell the land to the school without major consequences. Mr. Edison, who worked for the city from 2003 to 2015, declined to comment on the lawsuit.

Hillview officials have only paid a small amount of the total damages due. At one point, Truck America officials filed a lawsuit to try to force a tax increase on the city, a request under Kentucky law that hasn't been made since the 1940s.

The city's Aug. 20 filing for chapter 9 protection—the type of bankruptcy used by struggling cities and towns—made it the first city to turn to bankruptcy since Detroit in July 2013.

THE WALL STREET JOURNAL

By KATY STECH

Updated March 30, 2016 4:19 p.m. ET

(This article also appears in Daily Bankruptcy Review, a publication from Dow Jones & Co. Go to http://dbr.dowjones.com.)

Write to Katy Stech at katherine.stech@wsj.com

Federal Reserve Issues Final Rule on Banks' Municipal Bond Holdings.

In a showdown over who should decide how safe, or sellable, municipal bonds would be in a crisis, the Federal Reserve tilted its position in response to critics, but still left them unsatisfied.

Federal regulators opened the door for banks to count municipal bonds as liquid assets, including those from smaller municipalities.

The Fed adopted a framework that partly responded to industry concerns about a postcrisis rule that could have made it harder for local governments to raise money. But the Fed's action Friday didn't give critics what they wanted most: a definition deeming the bonds safer than corporate debt.

Lawmakers said they welcomed the changes but would continue to pursue legislation that would address the discrepancy. "The Federal Reserve's new rule is a step in the right direction," Sen. Mike Rounds (R., S.D.), a member of the Banking Committee, said in a statement.

The issue had led to an unusual showdown, with Wall Street, Congress and municipal officials challenging bank regulators' skepticism toward municipal debt.

The dispute stems from a 2014 rule aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days. The requirements mean banks have to hold more cash or securities that are easily salable. The Fed and two other bank regulators had originally decided debt issued by states and localities didn't make the cut. In 2015, the Fed proposed amendments to allow some municipal bonds to qualify, but it met with some criticism for not going far enough.

Under Friday's final rule, banks can count investment-grade state and municipal securities as "high-quality liquid assets" up to certain levels if the securities meet the same criteria as corporate bonds.

The Fed made several changes from last year's proposal. For example, it said bonds that are insured can also qualify as long as they meet criteria that apply to municipal bonds without insurance. The earlier proposal had rejected all insured bonds.

Around 6.7% of the $379 billion in municipal bonds issued in 2015 were insured, according to municipal bond insurer Build America Mutual. That number rises to 15% when looking at the number of transactions, since many small and midsize issuers tend to use insurance more frequently, said spokesman Michael Stanton, who called the final rule a "fair and reasonable outcome."

In another shift, banks can now hold larger portions of certain small issuances.

The ultimate impact of the rule is likely to be somewhat limited because the two other regulators involved—the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp.—haven't made any changes themselves and don't allow the institutions they regulate to count municipal bonds toward their liquidity buffers. The Fed regulates bank holding companies, while the banks themselves are overseen by either the OCC or the FDIC depending on whether they have national or state charters.

When adopting the final rule in 2014, FDIC Chairman Martin Gruenberg said his agency believed banks generally held municipal securities as longer-term investments, and not for liquidity purposes.

A bipartisan group of lawmakers has advanced legislation to mandate that all three regulators include municipal securities into a safer category that includes debt sold by government-sponsored enterprises like Fannie Mae. Several lawmakers said Friday that they would continue to pursue the legislation.

"While I'm glad to see the Federal Reserve making some progress on this issue, the proposal does not go far enough. Unfortunately, it will continue to discourage investment in our local communities," said Rep. Luke Messer (R., Ind.).

The Securities Industry and Financial Markets Association trade group representing banks, broker-dealers and asset managers warned the rule, even with the changes, would likely raise borrowing costs for state and local governments. That is because they think banks will still buy fewer bonds, leading states and localities to pay higher interest rates to attract investors.

But Justin Hoogendoorn, head of fixed-income strategy and analytics at broker-dealer Piper Jaffray, said the decision to count more municipal bonds as liquid assets underscores the importance of the municipal-bond market.

"The main point is that the regulators are viewing these securities as an important and acceptable component of the balance sheet," he said.

THE WALL STREET JOURNAL

By ARUNA VISWANATHA and HEATHER GILLERS

Updated April 1, 2016 5:49 p.m. ET

Write to Aruna Viswanatha at Aruna.Viswanatha@wsj.com

Latest Plan to Rescue Puerto Rico Is Met With Disdain on Island.

House Republicans released a draft of a rescue plan for Puerto Rico on Tuesday that they hoped could quickly garner bipartisan support and win over skeptics on the island, on Wall Street and in Congress.

The plan, being drafted by Republicans on the House Natural Resources Committee, in consultation with Democrats in Congress and the Treasury Department, calls for putting Puerto Rico's finances under a presidentially appointed oversight board — a bitter pill to many on the island.

"This discussion draft will change," said Representative Rob Bishop, Republican of Utah, who has been leading the drafting process. "We are releasing it now to encourage feedback."

The plan would also establish guidelines for restructuring some portion of Puerto Rico's $72 billion of debt, "where necessary." While Puerto Rico would not be granted standing to seek relief in bankruptcy — something its leaders wanted — it could get some of the legal tools found in bankruptcy as long as it first jumps through a number of hoops.

Creditors' demands for immediate payment would be halted for 18 months, for example, much as creditor lawsuits are automatically stayed in bankruptcy cases. Under certain circumstances Puerto Rico would also have the authority to impose losses on unwilling creditors — an extraordinary power that is normally available only in bankruptcy. The oversight board's duties would include keeping Puerto Rico from abusing that power.

To some on the island, any federal oversight board at all is a deal-breaker.

Shortly after a summary of the committee's approach began to circulate late last week, the governor of Puerto Rico, Alejandro García Padilla, denounced it as "shameful and degrading," and something that would deprive the island "of its own government."

The president of the Puerto Rican Senate, Eduardo Bhatia, said upon reading the proposal that he was deeply offended by the way it was written, which he said "was from the 18th century," evoking "the worst colonial subjugations."

Congressional staff must work at a pace seldom seen in Washington these days, because between May 1 and July 1 Puerto Rico owes debt payments totaling around $2.4 billion. By setting up a legal framework before that, Congress may be able to prevent the chaos and devastation of a disorderly default.

That means devising a package acceptable both to Democrats, who tend to support debt relief for Puerto Rico, and to conservative Republicans, who see debt relief as a bailout that would unacceptably reward profligacy.

Getting a bill onto President Obama's desk for signature would also mean finding common ground with Senate Republicans, who have seemed less willing to assist Puerto Rico, citing its failure to make required financial disclosures.

Given the need to act quickly, House aides said, lawmakers were trying not to be "overly prescriptive," and were leaving many details of the rescue plan for the five appointed and two ex-officio oversight board members to sort out. They said they hoped to have a bill ready to be introduced when Congress returns from Easter recess in April.

Mr. García Padilla has been calling Puerto Rico's $72 billion of debt "unpayable" for almost a year, and asking Congress for extraordinary powers to reduce it. If there had to be an oversight board in the process, the governor had envisioned it made up primarily of people from Puerto Rico.

On Saturday, he called for candidates for governor from all parties on the island to form a united front to block the package as written.

Mr. Bhatia said that as Senate president, he knew enough about the legislative process to know the package would be revised. “It has to be amended, because as written it is not going to pass,” he said.

All over the island, people have been taking on the airwaves and social media to hash out their thoughts about the rescue plan, even though almost none of them had seen a copy of it.

Large numbers seemed to disagree with the governor, saying they would accept a federal oversight board. Some said they expected federal oversight to be like surgery — painful, but necessary to Puerto Rico’s recovery.

The small but well-regarded Puerto Rico Independence Party rejected outright the governor’s calls for unified opposition, saying his longstanding support for Puerto Rico’s territorial status made unity impossible.

And in Washington, Puerto Rico’s nonvoting member of Congress, Pedro Pierluisi, said that the governor’s position was “completely unrealistic.” He said that if Puerto Rico expected Washington to help it reduce its debts, then it should not be surprised when Washington wanted a closer look.

Mr. Pierluisi, a Democrat, also said that he had found dozens of things in the draft proposal that he thought should be changed, and that he planned to keep working with the Republicans.

Investors were less vociferous than critics on the island, but they still found fault with certain parts of the rescue package.

The Mainstreet Bondholders, an organization seeking to represent small investors, expressed concern about the idea of halting creditor lawsuits. The group said it wanted reassurances that no one would get preferential treatment.

Steve Spencer, a financial adviser to creditor groups, said the most troubling aspect he could see was the rescue plan’s “broad ‘cramdown’ provision.”

Cramdowns can happen when companies declare bankruptcy under Chapter 11. They are not, in general, controversial because Chapter 11 also gives creditors legal tools to fight them. But Chapter 9 municipal bankruptcy also provides for cramdowns, and during the recent flurry of bankruptcies in places like Detroit and Stockton, Calif., creditors discovered that the law gave them no way to protect themselves.

Now, Mr. Spencer said, creditors see the same risk in the Puerto Rico rescue plan.

“The bill would retroactively eliminate an important investor protection, relied upon by millions of individual investors throughout the U.S. mainland and Puerto Rico,” he said in a statement on Tuesday. “As a result, the bill would transfer billions of dollars from retail investors and retirees to pay for Puerto Rico’s mismanagement and reckless spending.”

He said he hoped the people shaping the rescue plan would “remain open to stakeholder input — and we look forward to being a constructive part of that process.”

Mr. Pierluisi said everybody had a stake in getting a restructuring framework in place before the big defaults expected in May and July.

"If a bill does not become law, Puerto Rico and its creditors will almost certainly go over a cliff — together — this summer," he said.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

MARCH 29, 2016

GASB Issues Enhanced Guidance on Irrevocable Split-Interest Agreements.

Norwalk, CT, March 29, 2016 — The Governmental Accounting Standards Board (GASB) today issued recognition and measurement guidance for governments that benefit from irrevocable split-interest agreements.

Under a typical irrevocable split-interest agreement, a donor transfers assets for the shared benefit of at least two beneficiaries: a government (often a public college, university, or hospital) and another donor-designated beneficiary. The donor transfers the related assets to either the government or to a separate third party, such as a bank.

GASB Statement No. 81, *Irrevocable Split-Interest Agreements*, addresses when these types of arrangements constitute an asset for accounting and financial reporting purposes when the resources are administered by a third party. The Statement also provides expanded guidance for circumstances in which the government holds the assets.

"The types of agreements addressed by Statement 81 can represent significant resources for certain public colleges, universities, and hospitals," said GASB Chair David A. Vaudt. "This guidance will lead to more consistent accounting for these agreements, which will allow users access to more comparable information about them."

The requirements of GASB Statement 81 are effective for reporting periods beginning after December 15, 2016. The full text of the Statement is available at www.gasb.org.

- IRS Releases Model Closing Agreements for Tax-Exempt Bonds: Squire Patton Boggs
- GASB Publishes New Implementation Guidance to Assist Stakeholders With Recent Pronouncements.
- MSRB Seeks Comment on Potential Rulemaking to Improve Transparency of Direct Purchases and Bank Loans.
- House Introduces Public Employee Pension Transparency Act Bill.
- A New Twist on 'Pay for Success' Programs.
- Moody's Joins Effort to Standardize Green Bond Market: Ballard Spahr
- *Jones v. Municipal Employees' Annuity and Ben. Fund of Chicago* – Supreme Court of Illinois holds that amendments to City Pension Code that reduced value of annual annuity increases, eliminated them entirely for certain years, postponed time at which they began, and completely

eliminated compounding component violated State Constitution's pension protection clause.

- And finally, this week brings us: the Northeast Mental Health-Mental Retardation Commission, which should seriously consider updating its name; a police officer who reached into his squad car to answer the radio and managed to head butt the door frame so hard that he broke his spine (We gave this man a gun?); and a business establishment that rolled up a glorious blend of hypocrisy, irony, and audacity by refusing to apply for a local business license, arguing that the local code was preempted by the Controlled Substances Act – the very law it intended to flagrantly violate by operating a marijuana dispensary (Insert "What were they smoking?" joke here.)

REFERENDA - CALIFORNIA

California Cannabis Coalition v. City of Upland

Court of Appeal, Fourth District, Division 2, California - March 18, 2016 - Cal.Rptr.3d - 2016 WL 1072858 - 16 Cal. Daily Op. Serv. 2989

Initiative sponsor petitioned for writ of mandate to compel city and city clerk to hold a special election on an initiative imposing a charge on medical marijuana dispensaries. The Superior Court denied petition. Sponsor appealed.

The Court of Appeal held that Right to Vote on Taxes Act did not require initiative to be decided at general election rather than a special election.

The provision of the Right to Vote on Taxes Act stating that a general tax can only be approved by a majority vote in a "regularly scheduled general election" is limited to taxes created or enacted by local government and does not apply to taxes imposed by initiative, since the term "imposed" in the Act does not include collecting or receiving tax proceeds after the tax has been enacted.

City's refusal to place a local initiative on a special election ballot unlawfully interfered with the sponsor's right of initiative by delaying voting on the initiative until the next general election, where the initiative qualified for placement on the special election ballot under the Elections Code.

MUNICIPAL ORDINANCE - CALIFORNIA

City of Palm Springs v. Luna Crest Inc.

Court of Appeal, Fourth District, Division 2, California - March 17, 2016 - Cal.Rptr.3d - 2016 WL 1056700 - 16 Cal. Daily Op. Serv. 2902

City brought action against medical marijuana dispensary operator for injunction against operation of the dispensary, after the operator failed to apply for the dispensary permit required by city ordinance. Operator cross-complained for injunction against continued enforcement of the city's permitting requirement for medical marijuana dispensaries. The Superior Court granted preliminary injunction for city, and denied operator's injunction motion. Operator appealed.

The Court of Appeal held that Controlled Substances Act did not preempt city's ordinance requiring a permit to operate a medical marijuana dispensary.

The Controlled Substances Act did not preempt city ordinance requiring a permit to operate a medical marijuana dispensary, even though the ordinance involved the city in overseeing the dispensaries' operation through regulations, including testing requirements regarding safety and potency of the marijuana and marijuana products being dispensed, since the permitting requirements did not require the city to do anything forbidden by the Controlled Substances Act, and city's regulatory program for medical marijuana did not stand as an obstacle to the purposes and objectives of Congress.

The Controlled Substances Act does not direct local governments to exercise their regulatory, licensing, zoning, or other power in any particular way, so exercise of those powers with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law.

PUBLIC RECORDS - CALIFORNIA

Ardon v. City of Los Angeles

Supreme Court of California - March 17, 2016 - P.3d - 2016 WL 1062109 - 16 Cal. Daily Op. Serv. 2830

City resident filed putative class action lawsuit against city, alleging that city's telephone users tax was an illegal tax and seeking a refund of the tax. The Superior Court granted city's motion to strike resident's class action allegations, and resident appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal, and reversed and remanded.

City moved to compel resident to return privileged documents city turned over to his counsel pursuant to a Public Records Act (PRA) request and to disqualify his counsel. The Superior Court denied the motion. City appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that City's inadvertent disclosure of documents in response to Public Records Act request did not waive attorney-client and work product privileges covering the documents.

MUNICIPAL ORDINANCE - GEORGIA

Gebrekidan v. City of Clarkston

Supreme Court of Georgia - March 21, 2016 - S.E.2d - 2016 WL 1085243

Defendant was convicted in the Municipal Court of violating city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing on their premises any form of electronic or mechanical game machine or coin-operated device that may be used for entertainment or amusement purposes. She obtained review by certiorari. The Superior Court affirmed. Defendant applied for discretionary appeal.

The Supreme Court of Georgia held that ordinance was preempted by state law.

State's detailed statutory scheme regulating coin operated amusement machines (COAM) and COAM businesses preempted city ordinance prohibiting certain retailers of packaged alcoholic beverages from allowing on their premises any form of electronic or mechanical game machine or coin-operated device that may be used for entertainment or amusement purposes. Direct effect of ordinance was to ban COAMs from businesses in city where state allowed them, and legislature did not authorize local governments to flatly prohibit alcoholic beverage licensees from allowing COAMs on their premises or to penalize such businesses for doing so.

BENEFITS - ILLINOIS

Vaughn v. City of Carbondale

Supreme Court of Illinois - March 24, 2016 - N.E.3d - 2016 IL 119181 - 2016 WL 1165636

Police officer, whose line-of-duty disability pension benefits had been terminated by city, sought permanent injunction to prevent city from terminating employer-provided health insurance coverage for police officer and his wife. The Circuit Court denied police officer’s complaint. Police officer appealed. The Appellate Court reversed and remanded. City appealed.

The Supreme Court of Illinois held that:

- Evidence was insufficient to support a finding that police officer’s catastrophic shoulder and back injury was suffered in response to what was reasonably believed to be an emergency, as required for eligibility for health insurance benefits for officer and his family under the Public Safety Employee Benefits Act;
- City was not prohibited from terminating payment of insurance benefits to police officer and his family; and
- Officer did not detrimentally change his position when he dropped his health insurance, as required to estop city from terminating officer’s benefits.

Evidence was insufficient to support a finding that police officer’s catastrophic shoulder and back injury was suffered in response to what was reasonably believed to be an emergency, as required for eligibility for health insurance benefits for officer and his family under the Public Safety Employee Benefits Act. While officer was outside his patrol car talking to a motorist, dispatch called for officer to respond over the radio, officer returned to his car to answer, reaching headfirst through the driver’s side door to reach the microphone, striking his head on the door frame, sustaining a compression fracture of the T1-T3 vertebrae.

City was not prohibited from terminating payment of insurance benefits to police officer and his family, even though it had originally provided the benefits pursuant to the Public Safety Employee Benefits Act, because, as officer’s catastrophic shoulder and back injury did not occur in response to what was reasonably believed to be an emergency, officer was not eligible for insurance benefits under the Act in the first place.

Police officer did not detrimentally change his position when his dropped his health insurance in reasonable reliance on city’s provision of health insurance benefits under the Public Safety Employee Benefits Act, as required to estop city from terminating those benefits; even though city would not longer pay the entire premium of its health insurance plan for officer and his family, officer was not prevented from continuing his health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), or from obtaining his own coverage pursuant to the Patient Protection and Affordable Care Act.

PENSIONS - ILLINOIS

Jones v. Municipal Employees' Annuity and Ben. Fund of Chicago

Supreme Court of Illinois - March 24, 2016 - N.E.3d - 2016 IL 119618 - 2016 WL 1137984

Current and former city employees filed suits challenging constitutionality of amendments to Pension Code that reduced value of annual annuity increases, eliminated them entirely for certain years, postponed time at which they began, and completely eliminated compounding component. The Circuit Court enjoined enforcement of act. Pension funds appealed.

The Supreme Court of Illinois held that:

- Amendments violated state Constitution's pension protection clause, and
- Invalid provisions were not severable from valid provisions.

Amendments to Pension Code that reduced value of annual annuity increases, eliminated them entirely for certain years, postponed time at which they began, and completely eliminated compounding component violated state Constitution's pension protection clause and exceeded General Assembly's authority. Promise of solvency could not be "netted" against unconstitutional diminishment of benefits.

Nothing in legislative process that led to passage of act reducing annuity benefits to city employees constituted a waiver of employees' constitutional rights under state pension protection clause. Negotiations between union and city were no different from legislative advocacy on behalf of any interest group supporting collective interests to a lawmaking body.

Unconstitutional portions of act reducing annuity benefits to city employees were not severable from valid portions, and thus act was unenforceable in its entirety. Statute contained clause stating that provisions were mutually dependent and inseverable, and General Assembly had expressly found that the legislation intended to tie reduction in employee benefits to funding and enforcement provisions of act as part of a unified package.

ZONING - MASSACHUSETTS

Almeida v. Arruda

Appeals Court of Massachusetts, Bristol - March 18, 2016 - N.E.3d - 2016 WL 1063135

Abutting property owners appealed decision of town zoning board of appeals allowing convenience store owners to sell bear and wine as part of store's pre-existing nonconforming use on residentially-zoned property. The Superior Court Department affirmed board's decision. Abutting property owners appealed.

The Appeals Court held that owners' proposed sale of beer and wine at store was not substantial change in use and, thus, such activity was protected as prior nonconforming use.

REGIONAL COMMISSIONS - MISSISSIPPI

Northeast Mental Health-Mental Retardation Com'n v. Cleveland

Supreme Court of Mississippi - March 17, 2016 - So.3d - 2016 WL 1063329

Tenant, a regional health commission, sought to rescind 99-year fixed-lease agreement. The

Chancery Court found the agreement was enforceable and awarded back rent. Tenant appealed.

The Supreme Court of Mississippi held that:

- The 99-year fixed-lease agreement was voidable at tenant's discretion as a matter of law;
- Evidence supported finding that tenant exercised discretionary authority, rather than mandatory authority, when signing 99-year fixed lease agreement; and
- The statutory authority for tenant, a regional health commission, to lease and contract did not allow it to enter into 99-year fixed lease agreement.

Under the common law in Mississippi, governing bodies, whether they be elected or appointed, may not bind their successors in office by contract, unless expressly authorized by law, because to do so would take away the discretionary rights and powers conferred by law upon successor governing bodies.

The 99-year fixed-lease agreement, which authorized landlord to build and operate facility, which tenant leased, on land owned by tenant, was voidable at tenant's discretion as a matter of law. Tenant was a regional health commission, commission was governed by a board of commissioners, who each served a four year term, the excessive duration of the lease prohibited future commissioners from selling or conveying the property, and statute granted the commission authority to acquire, own, or dispose of real and personal property.

Evidence supported finding that tenant, a regional health commission, exercised discretionary authority, rather than mandatory authority, when signing 99-year fixed lease agreement, which authorized landlord to build and operate facility that tenant leased, on land owned by tenant. The discretionary act was signing the lease agreement to carry out its mandated function of administering mental health programs.

The statutory authority for tenant, a regional health commission, to lease and contract did not allow it to enter into 99-year fixed lease agreement that would bind successor board of commissioners. No statute granted tenant, a regional health commission, the authority to enter into long-term contracts or leases, and thus the rule precluding current governing bodies from binding their successors by contract in the exercise of their discretionary powers applied.

ANNEXATION - OHIO

State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commrs.

Court of Appeals of Ohio, Third District, Marion County - March 7, 2016 - N.E.3d - 2016 WL 859892 - 2016 -Ohio- 859

Relator filed petition seeking writ of mandamus ordering county board of commissioners to approve relator's petition to annex relator's land, over a portion of which railroad had ownership interest.

The Court of Appeals held that railroad was "owner" of land in territory proposed for annexation, and thus railroad's signature was required in petition for annexation.

Railroad was "owner" of land in territory proposed for annexation, and thus relator's failure to obtain railroad's signature in petition to annex rendered denial of petition appropriate, where land was transferred to railroad's predecessor by deed, and nothing in deed stated that interest transferred was easement, right-of-way, or fee for the purpose of operating a railroad.

BANKRUPTCY - WEST VIRGINIA

In re Fairmont General Hospital, Inc.

United States Bankruptcy Court, N.D. West Virginia - February 25, 2016 - B.R. - 2016 WL 762728

Debtor Representative/Liquidating Trustee of bankruptcy estate of debtor hospital ("Debtor") and UMB Bank, N.A., in its capacity as successor trustee with respect to $13.7 million of hospital revenue bonds (together, the "Plaintiffs") brought adversary proceeding to avoid transfers in exercise of strong-arm and preference powers and moved for entry of summary judgment.

In order to finance the construction and operation of a new hospital the Marion County Commission ("Defendant") issued $13,700,000 in hospital revenue bonds. In exchange, the Debtor provided the Defendant with certain security interests. In the 2007 Loan Agreement, the Debtor granted the Defendant a security interest in its Gross Revenues.

On the same day, the Defendant and WesBanco executed a Trust Indenture, which assigned to WesBanco the Defendant's security interest in Gross Revenues of the Debtor to WesBanco. WesBanco also became the Indenture Trustee through the Trust Indenture and thus undertook various fiduciary obligations to bondholders.

The Trust Indenture obliged WesBanco to properly record the security interest in the Debtor's Gross Revenues. WesBanco hired Steptoe to do so, and Steptoe filed financing paperwork in that regard with the West Virginia Secretary of State on July 16, 2007. The financing statement filed on WesBanco's behalf listed the Defendant as the borrower and WesBanco as the secured party. On May 11, 2011, Steptoe caused a continuation statement relating to the original financing statement to be filed with the West Virginia Secretary of State, again naming WesBanco as the secured party and the Defendant as the borrower. On July 17, 2013, Steptoe, on WesBanco's behalf and in an apparent attempt to correct the previous financing and continuation statements, caused a new financing statement to be filed. The new financing statement listed the Defendant as the secured party and the Debtor as the borrower.

The Plaintiffs brought this action to avoid the financing statement filed July 17, 2013, as a preferential transfer under 11 U.S.C. § 547, as the filing occurred within 90 days of Debtor's bankruptcy filing. The Plaintiffs further seek to avoid any remaining interest of the Defendant in the Debtor's Gross Revenues as an unperfected security interest avoidable by a hypothetical lien creditor under 11 U.S.C. § 544. In response, the Defendant asserted that the Defendant was not a creditor of the Debtor, thus no preferential transfer occurred.

The Bankruptcy Court held that:

- The Marion County Commission case was not proper defendant, and estate representative did not have viable preference claim against it, and
- Financing statement that failed to properly identify debtor, and that sought to perfect security interest in Gross Revenues that purported creditor did not have, having previously assigned its interest in gross revenues to another entity, was ineffective under West Virginia law, and any interest that purported creditor had was avoidable by estate representative in exercise of strong-arm powers.

TAX - GEORGIA

Columbus, Georgia, Bd. of Tax Assessors v. Medical Center Hosp. Authority

Court of Appeals of Georgia - March 22, 2016 - S.E.2d - 2016 WL 1102625

Hospital authority and city tax board appealed county board of equalization decision finding one of eight parcels exempt from ad valorem taxes. The Superior Court entered summary judgment that all eight parcels were exempt public property. Board appealed.

The Court of Appeals held that:

- Authority parcels that contained parking lots and walking trails, but generated no income, were "public property" exempt from taxes, and
- Parcel purchased by authority with non-profit hospital and for-profit clinic was exempt from taxes.

Hospital authority parcels that contained parking lots and walking trails, but generated no income, were "public property" exempt from ad valorem property taxes. Even if the authority could not justify use as a free benefit to patients, the parking lots furthered hospital function by providing free parking for doctors patients, visitors, and employees, and walking trails in wooded lot on hospital grounds were available to patients, visitors, and employees.

Parcel purchased by hospital authority with non-profit hospital and for-profit clinic in separate buildings was exempt from ad valorem property taxes, where clinic square footage was less than half that of the hospital's square footage.

How Big a Burden Are State and Local OPEB Benefits?

The brief's key findings are:

- State and local OPEB liabilities, largely retiree health, have received growing attention due to rising health costs and a change from cash to accrual accounting.
- This analysis provides a comprehensive look at OPEBs in 2012-2013 at the state, county, city and school district levels.
- The three key insights are:

1. aggregate unfunded OPEB liabilities are an estimated $862 billion – nearly two thirds of which is held at the local level;
2. these unfunded liabilities are equivalent to 28 percent of the unfunded liabilities of pensions (using the OPEB interest rate for pensions);
3. and while OPEB liabilities are large, several factors – such as sponsors' flexibility to scale back benefits – limit their potential drain on resources.

Download the full brief.

Center for Retirement Research at Boston College

by Alicia H. Munnell, Jean-Pierre Aubry and Caroline V. Crawford

IRS Releases Model Closing Agreements for Tax-Exempt Bonds: Squire Patton Boggs

When an issuer of tax-advantaged bonds discovers a problem with the bonds, the issuer can resolve the problem by requesting a closing agreement through the IRS Voluntary Closing Agreement Program (VCAP). Similarly, where the IRS discovers a problem in the course of an audit of a tax-advantaged bond issue, and the issuer agrees that there is a problem, the issuer can resolve the problem by entering into a closing agreement with the IRS.

In the closing agreement, the IRS agrees not to attempt to tax bondholders or reclaim direct payments from the issuer, and in exchange the issuer agrees to cut a check and redeem the "nonqualified" bonds.

As part of its campaign for greater consistency and standardization, the IRS has released "standard form" closing agreements for each of these situations. In VCAP, issuers or borrowers must submit a draft of the closing agreement based on this new model agreement when they submit the VCAP request (in addition to new Form 14429 and the descriptive information it requires).

Somewhat strangely, it is usually easier to get the IRS to negotiate the amount of the closing agreement payment and the amount of bonds to be redeemed than it has been to get the IRS to change the factual statements and representations in the closing agreement. The IRS has been extraordinarily resistant to even minor, common-sense changes to the terms of the closing agreement, even its boilerplate provisions. The release of the model agreements could give issuers and borrowers some additional flexibility in proposing the terms that will necessarily vary from the terms of the draft agreement, because they now will be drafting it first, at least in the VCAP context. Or, more likely, it may signal the official calcification of many of the terms; the IRS notes that if the issuer and borrower want to change the model language, it will require "additional review" by the IRS. If prior experience in negotiating the language of these agreements is any guide, we should read the phrase "additional review" as "a slight delay before telling you 'no.'"

The model closing agreements can be found on the IRS's website by clicking here. The webpage provides some commentary on some of the provisions. We summarize the interesting points below.

First, click here for a comparison of the provisions of the model VCAP agreement table. As you will see, most of the provisions in the two model agreements are the same.

Analysis

1. The closing agreement uses the example of an issue of tax-exempt qualified 501(c)(3) bonds.

So, in the case of garden-variety governmental use bonds, the issuer usually will remove references to "the borrower." Other details may need to be added in the case of other private activity bonds, such as exempt facility bonds (e.g., solid waste disposal facility bonds).

Also, the agreement will need to be modified for tax-advantaged bonds that are not tax-exempt bonds, such as build America bonds.

2. The closing agreement covers only the bond issues in Recital A and only the tax problems in Recital C for those bond issues.

Recital A has a description of the bond issues that the closing agreement covers. This seems informational, but it is important. Only the bonds mentioned in Recital A will be covered by the closing agreement.

Recital C further specifies the tax problems with the bonds in Recital A that the closing agreement will resolve. This provision is also important – the closing agreement will cure only the violations listed in Recital C. If it's not explicitly there, it's not resolved.

Importantly, Recital C in each agreement says that the IRS "has a basis to conclude" that a violation has occurred. It does not say, for example, that a violation *"has occurred."* This subtle linguistic change could prevent situations like the recently-concluded New Hampshire student loan bond saga. Under Section 7121 of the Code, which governs closing agreements, the IRS does not have to conclude that a violation has occurred before it signs a closing agreement with an issuer.

3. Recital B in the VCAP agreement describes the bond issues and the circumstances leading to the violation.

This is the Recital that will vary the most from situation to situation. Most of the information for this recital will come from the VCAP request and Form 14429.

4. Section 5 is the punchline – it notes that the closing agreement will prevent bondholders from having to include interest on the bonds in their gross income for tax purposes as a result of the violation described in Recital C.

Where applicable, the issuer and borrower should modify Section 5 to address other collateral tax consequences that will be avoided because of the closing agreement. One example, which the IRS describes on its website, is a statement about whether the facilities acquired with bond proceeds by a taxable conduit borrower will continue to be treated as tax-exempt bond financed property under Section 168(g) of the Code and continue to be subject to less taxpayer-friendly (i.e., slower) rates of depreciation. Other examples can be found in Code Section 150(b).

5. Section 7 waves a magic wand over the original proceeds of the nonqualified bonds and breaks the link between those proceeds and the expenditures the issuer originally spent them on.

Take note of Section 7. This section states that proceeds of any bond redeemed as a condition of the closing agreement are treated as unspent proceeds for any future refunding of those bonds. The IRS website makes clear that this applies not just to unspent bond proceeds of the redeemed bonds, **but also to bond proceeds that were previously spent.**

The IRS website describes this provision as follows: "The effect of this paragraph is to sever the connection between bond proceeds and the expenditures to which they were originally allocated. Accordingly, should a taxable refunding of the nonqualified portion of the bonds subsequently be refunded with tax advantaged bonds the proceeds would not be considered as "spent," which could result in violations of tax rules regarding the expectation to use proceeds and certain arbitrage restrictions."

This provision appears to be intended as an anti-abuse rule that will prevent issuers from borrowing in the taxable markets to redeem nonqualified bonds and then using tax-advantaged bonds to refund that taxable borrowing at some later date. This provision will make it quite difficult to do so, because the issuer will be treated as essentially borrowing most of the bond issue twice, which will lead to any number of nightmares.

Not to get too metaphysical, but Section 7 treats the nonqualified bonds as irredeemably nonqualified (also the title of my upcoming memoirs). To illustrate: Assume that the reason for a closing agreement for a bond issue was excessive private business use of the bond-financed property, and assume that the issuer had to redeem the nonqualified bonds, which were a portion of the issue, but not all of it. To redeem the nonqualified bonds, the issuer borrowed money in the traditional taxable markets. Now assume that soon after that, the issuer ended the private business use, so that the bond-financed property could technically be eligible for tax-exempt bond financing. Even so, Section 7 of the model closing agreement prevents the issuer from refunding the taxable borrowing with tax-exempt bonds.

6. The IRS reserves the right to audit the bonds in Section 8.

Section 8 of the VCAP agreement notes that the closing agreement isn't based on an audit of the bonds and that the IRS reserves the right to audit the bonds. This is somewhat troubling. The point of the closing agreement is to resolve, once and for all, the tax issue described in Recital C of the agreement. This provision seems to undercut that point. It would be nice to have the agreement modified to say that the IRS will not audit the bonds and challenge their tax-exempt status as a result of the violation described in Recital C of the agreement. This provision is omitted from the audit model agreement, but it would be better to add it back in and restrict it to the issue described in Recital C.

7. Exhibit A requires a certification from the trustee that the issuer has redeemed the nonqualified bonds.

Exhibit A will be a certificate from the trustee listing the amounts and CUSIPs of the nonqualified bonds. It will also contain a certification that the bonds were redeemed on a pro rata basis, in accordance with the requirements in Reg. 1.141-12(j). Where the bonds won't be redeemed until a date after the closing agreement is signed (for example, because the bonds aren't yet callable), the IRS will modify this exhibit to tell the issuer how to notify the IRS that the nonqualified bonds have been redeemed.

8. Issuers and borrowers should incorporate a review of the model closing agreements into their post-issuance compliance planning.

When deciding how to approach potential violations that issuers and borrowers discover looming on the horizon, or deciding tactics in an audit, issuers should include a review of the model agreements as part of their planning process, in addition to preparing a preliminary calculation of the potential closing agreement amount and the amount of nonqualified bonds to be redeemed.

Article By John W. Hutchinson

Squire Patton Boggs (US) LLP

The Public Finance Tax Blog

Thursday, March 24, 2016

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Senior Associate
Johnny Hutchinson focuses his practice on taxation. He has significant experience in tax issues relating to public finance. Johnny has devoted substantial time to all types of tax-advantaged state and local debt, including governmental financings and financings for 501(c)(3) health systems,

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SIFMA U.S. Research Quarterly, Fourth Quarter 2015.

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

Summary

Total Issuance Increases Declines in 4Q'15

Long-term securities issuance totaled $1.48 trillion in 4Q'15, an 8.5 percent decline from $1.62 trillion in 3Q'15 and a 4.9 percent decrease year-over-year (y-o-y) from $1.56 trillion in 4Q'14. Issuance fell quarter-over-quarter (q-o-q) across all asset classes with mortgage-backed, asset-backed and equity recording the largest percentage declines. For full year 2015, long-term issuance totaled $6.7 trillion, an increase of 7.1 percent from $6.3 trillion in 2014. The annual increase was driven primarily by increase in mortgage-related and corporate bond issuance.

Long-term public municipal issuance volume, including private placements, totaled $84.7 billion in the fourth quarter of 2015, a decline of 8.1 percent from the prior quarter ($92.2 billion) and a decline of 19.7 percent y-o-y ($105.5 billion). Despite the fourth quarter decline, full year issuance was $403.1 billion, an increase of 19.4 percent from 2014.

In the fourth quarter, $527.3 billion in Treasury coupons, Floating Rate Notes (FRNs) and Treasury Inflation Protected Securities (TIPS) were issued, down 1.7 percent from $536.3 billion issued in the prior quarter and 2.2 percent below the issuance of $539.1 billion in 4Q'14. In full year 2015, Treasury issued $2.12 trillion in Treasury coupons, FRNs and TIPS, down 4.2 percent from $2.22 trillion in 2014.

Federal agency long-term debt issuance was $121.5 billion in the fourth quarter, a 4.9 percent decrease from $127.8 billion in 3Q'15 and 21.3 percent above $100.1 billion issued in 4Q'14. For the full year, long-term agency issuance was $513.5 billion, an increase of 36.1 percent from 2014.

Issuance of mortgage-related securities, including agency and non-agency passthroughs and collateralized mortgage obligations (CMOs), totaled $380.5 billion in the fourth quarter, a 18.9 percent decrease from 3Q'15 ($469.5 billion) but a 1.9 percent increase y-o-y ($373.4 billion). For full year 2015, $1.72 trillion of mortgage-related securities were issued, a very slight increase (0.4 percent) from the prior year.

Asset-backed securities issuance totaled $33.2 billion in the fourth quarter, a decline of 16.3 percent q-o-q and 27.0 percent y-o-y. For the full year, issuance totaled $193.2 billion, a decline of 14.3 percent from the prior year. Corporate bond issuance totaled $297.0 billion in 4Q'15, down 4.4 percent from the $310.6 billion issued in 3Q'15 and 10.0 percent below 4Q'14's issuance of $330.3 billion. For full year 2015, corporate bond issuance totaled $1.49 trillion, up 3.9 percent from $1.44 trillion in 2014.

Equity underwriting decreased by 14.6 percent to $38.8 billion in the fourth quarter from $45.4 billion in 3Q'15 and was 39.9 percent below the $64.5 billion issued in 4Q'14. For full year 2015, equity underwriting totaled $256.0 billion on 1,004 deals, down 17.8 percent and 17.9 percent, respectively, in volume and number of deals from 2014. "True" initial public offerings (IPOs) increased to $7.7 billion in 4Q'15, a 44.3 percent increase from $5.3 billion in 3Q'15 but a 57.3 percent fall from $18.0 billion in 4Q'14. In full year 2015, $24.6 billion was raised through 166 IPOs, down 65.8 percent from the record-breaking $94.3 billion on 301 deals in 2014.

Read the full report.

IRS Publishes Population Figures for Housing Credit, Private Activity Bonds.

The IRS has published the 2016 resident population figures for the 50 states, the District of Columbia, Puerto Rico, and the U.S. possessions for use in determining the state housing credit ceiling under section 42(h) and the private activity bond volume cap under section 146.

MSRB Provides Resources on Puerto Rico Issuers.

The MSRB's Electronic Municipal Market Access (EMMA®) website provides information for investors and others concerned about bonds issued by the Commonwealth of Puerto Rico and issuers within the Commonwealth. To assist those seeking information, the MSRB has compiled the following resources:

- See a list of Puerto Rico bond issuers, trading, outstanding debt information and links to other information on EMMA.
- View additional resources from organizations that provide demographic, economic or geographic data and fact sets about Puerto Rico.
- Learn how to use the EMMA website to actively monitor an issuer's financial health and the secondary market trading of municipal bonds, and how to stay informed in the event of an issuer's fiscal distress.
- Read about the jurisdiction of the MSRB and its role in making disclosure information related to municipal securities freely available to the public through its EMMA website.

County Gives its Bridges Away to Save Them.

Editor's Note: Story revised to clarify the nature of the project as being separate from

Pennsylvania's statewide Rapid Bridge Replacement Project (revision posted March 25, 2016 at 11:30 a.m.).

A Pennsylvania county is temporarily relinquishing ownership of 33 bridges to save them from further deterioration.

The Northampton County Council voted in early March to transfer ownership of the bridges to the county's independent General Purpose Authority so that the spans could be replaced or repaired through a public-private partnership.

Pennsylvania's Public-Private Partnership Board's approval of the project in November 2015 paved the way for the P3, which would replace 28 county-owned bridges and repair six others. Pennsylvania's Department of Transportation will serve in an advisory capacity throughout the procurement.

The ownership transfer is necessary because, although bridges owned by independent authorities qualify for this type of procurement to complete their replacement or repair, county-owned ones do not. Once the construction has been completed, bridge ownership will revert to the county, reported the Allentown Morning Call on March 3.

This project is modeled after the Commonwealth's Rapid Bridge Replacement project, but will be a separate P3 procurement.

Northampton borrowed $11.4 million through a bond issue in 2013 to repair or replace 19 bridges but decided that it could not afford an additional $1 million to hire professionals to oversee the construction, according to a Feb. 18 Allentown Morning Call article. The county had applied to have the bridges repaired through the state's ongoing transportation improvement program, which would cover some of the cost, but only one bridge had been selected for the program over the last 20 years. The average county bridge is 61 years old, said Northampton County Executive John Brown.

Brown believes using a P3 could lower the cost of bridge repairs by 30 percent to about $40 million and that the county could pay up to $6 million per year to finance it.

"Public-private partnerships are one way that we can leverage private-sector ideas and resources to improve transportation in our state," said Pennsylvania Department of Transportation Secretary and P3 Board Chair Leslie S. Richards. "Whether started by the department or suggested by the private sector, we have many options to deliver improved or new services."

NCPPP

March 24, 2016

States Slap Cities With Fiscal Handcuffs.

Is anyone trying to balance the fiscal inequities states impose on their localities?

In our current federal system, states are endowed with the right to chart their fiscal destinies. Each state can choose which kinds of taxes it wishes to impose — and what rates and rules will apply.

Not so with municipalities. States can, and do, impose fiscal straitjackets on local governments, defining their authority or lack thereof to levy certain kinds of taxes, or even how such taxes may be assessed, applied or collected. At the same time, they require local governments to balance their budgets, keep their debt under control, and promise more to retirees than can be paid.

While there seems little disposition for federal, state and local governments to sit down together and consider this unbalanced fiscal dilemma, there might be a sign of recognition of the quandary by the Oregon Legislature. For starters, it directed the Legislative Research Office to prepare an analysis of options for restructuring Oregon's state and local revenue system, a report that was recently completed.

The situation in Oregon is complicated by initiatives statewide voters imposed. A property tax revolt, which began in 1990 with Measure 5, limited property taxes to 1.5 percent of a home value, thus disassociating local revenues from local expenses. Notwithstanding Measure 5's artificial limit, rapidly rising home prices meant that local property taxes continued to escalate — as did tempers. So six years later Oregonians adopted Measure 47, which rolled back property tax assessments to the prior year's levels — minus an additional 10 percent — and imposed a 3 percent a year cap on annual increases. The following year, voters adopted Measure 50, which imposed changes that clarify how the system would work. In effect, the measures permanently disconnect property tax levies from present-day property values.

As housing prices continue to rise, the initiative helps ensure that Oregonians can afford to stay in their homes. But it also severs the umbilical cord that enables local elected leaders to balance citizens' needs with the ability of the government to pay for them.

The series of tax limitations made Oregon the only state in which assessed values do not reset to market value each time a property is sold — creating a different kind of governance challenge. Tax-relief benefits have been concentrating in gentrifying neighborhoods that have experienced rapidly rising home values. This is leading to inequities in property tax bills for homes of equivalent values. In effect, it has made tax policy a tool for inequity, even as it has imbalanced cities' abilities to govern.

These state-imposed rules and limitations have created a perverse system in which every April, local governments confront a huge challenge: How to guesstimate the revenues that their levies will generate. Of the four variables that go into the calculation, only one (the tax rate) is known in April, but even that will end up caught in the buffeting winds of the state's property tax system. Ergo, the daunting challenge of estimating tax revenues for local budgets has become more one of throwing darts than precision math. It is not, after all, until the assessor releases the tax data early in November (some seven months later) that the municipal budget architects can truly assess how accurate their guesstimates were. It is akin to blindfolding governance.

There would be singular benefits to reconnecting property taxes to real market values and creating uniformity of taxation for properties having the same market value. The Oregon League of Cities has long been working on possible solutions. The state could intervene and replace the lost revenue — although this comes with a risk for local governments. Should the state opt to address the current inequities through the provision of some kind of property tax credit to homeowners, the replacement of lost revenue by the state would need to be constitutionally mandated to protect cities from subsequent legislative actions. State largess is not as sure as the proverbial death and taxes.

GOVERNING.COM

BY FRANK SHAFROTH | MARCH 2016

Chicago’s Shockingly Bad Finances.

You’ve probably read headlines about the Windy City’s financial woes. About how Chicago’s years of borrowing to pay for its operations has finally caught up to it. About how inadequate funding of its pensions has saddled it with huge annual payments.

But unless you’ve been paying close attention, chances are Chicago is worse off than you think.

The numbers are staggering. The city has about $34 billion in outstanding debt, with roughly $20 billion of that coming from its five pension plans. That’s compared with a little more than $9 billion total annual budget. The teachers’ retirement fund is short about $9.6 billion and owes an additional $6 billion to bondholders. The outstanding bonds alone exceed the system’s annual $5.8 billion budget. Overall, Chicago Public Schools has struggled to sell enough bond debt to get through the current year, and the system is even facing a possible state takeover. Both the city and the school system’s credit ratings have been downgraded to junk status.

It’s an overwhelming set of problems, but not an unsolvable one. Chicago has a stable and growing economy. It is not Detroit, whose bonds are also rated as junk, with a shrinking population and a declining job base. In the coming years, Chicago’s chief challenge will be figuring out how to end its decades-long tradition of charging city expenses to future generations of taxpayers.

That will be hard, particularly when it comes to pensions. Until recently, Chicago funded its pensions based on a state law that required it to pony up a certain dollar amount each year. But that amount had nothing to do with actuarial funding, which is how most plans determine what governments should contribute annually to keep the pension system solvent. Chicago’s contributions were essentially arbitrary. In 2004, for example, the city paid in $345 million to its five pension plans, but the actuarially recommended payment was about $567 million, according to Merritt Research Services. Ten years later, the city paid in $447 million, but the actual pension cost was more than three times that amount, or $1.8 billion.

The city played similar games with paying off its debt. Officials would “scoop and toss,” meaning they sold long-term bonds and used the proceeds to pay off debt coming due in the short term. “The city’s problems, when you get right down to it,” says Merritt Research President Richard Ciccarone, “were many years in the making because of all the debt and pension deferrals.”

Right-sizing Chicago’s debt at this late stage is no easy task. Last year, freshly re-elected Mayor Rahm Emanuel pushed through the largest property tax hike in decades. It’s expected to raise more than $588 million annually after it is fully implemented over four years, and the proceeds will go toward the city’s pension payments.

But many say the half-billion-dollar infusion is just one step on the road to recovery. For one, the tax increase, which represents a 70 percent hike in city property taxes, won’t completely shore up the city’s pension funds. And in March, the state Supreme Court struck down the city’s attempt to increase employee pension contributions and reduce cost-of-living increases for retirees. Without those in place, Chicago will likely face hundreds of millions more in pension costs.

The city could raise more revenue through additional tax increases. But that would be a big feat, given the controversy over last year’s property tax hike. Chicago has long prided itself on being a lower-tax city: Even with last year’s increase, Chicago homeowners still pay less in property taxes than their counterparts in the suburbs, according to a Chicago Tribune analysis. Raise taxes too much, and the middle class could flee.

As Chicago fully addresses its spending mismatch, says Matt Fabian, a partner at Municipal Market Analytics, the city could face some serious soul-searching. “Keeping the middle class in the city might be an old-fashioned idea,” says Fabian. “If they keep workers local, [officials] have more people voting for them — that’s how the political machine works. But maybe that’s not the way anymore.”

**This story has been updated from the version that ran in the April print magazine to reflect the Illinois Supreme Court ruling on the state’s pension reform.*

GOVERNING.COM

BY LIZ FARMER | MARCH 25, 2016

A New Twist on ‘Pay for Success’ Programs.

A variation on the existing model would provide a money back guarantee should a project fail.

This year has already seen a flurry of activity when it comes to governments and the private sector partnering on social programs. Fewer than three months into 2016 and three governments have announced so-called pay for success or social impact bond projects, boosting the total number of such programs to 11 across the country.

Now, there may be a new option for governments interested in the model, but wary of its complicated nature. Under a pay for success or social impact bond program, private funders finance a preventive social or health program and only get paid back if the project meets its goals over the course of a predetermined set of years. The new model, announced by Third Sector Capital Partners on Thursday, offers a money back guarantee.

With a “social impact guarantee” or SIG project, governments front the money (instead of a private investor) and get paid back if the project doesn’t meet its goals. Specifics are sparse, but Third Sector co-founder George Overholser says he’s currently working with two states on creating the country’s first SIG projects and hopes to announce them by the end of this year.

The main objective of the new tool, which is the brainchild of Overholser, is to give governments a simpler alternative to the existing structure. Third Sector helps governments develop social impact bond projects and Overholser says two main complications tend to arise under the current model.

For one, private investors like Goldman Sachs and JP Morgan are wary of financing these projects over the long-term without a guarantee from the government that it will pay them back if the project meets its outcomes. Governments have taken to creating escrow accounts to assure investors. “It’s tying up capital that could be used in different ways,” Overholser says. If governments are setting aside money each year anyway, he asks, wouldn’t it be simpler just to pay for the social program directly?

The second complication is that governments have to pass new laws or regulations — which can take years — to even begin creating a social impact bond program. That’s because governments generally aren’t allowed to contract for longer than they can appropriate funds. That means they’re limited to one- or two-year contracts. But outcomes-based programs can take several years before they start showing real results, so social impact bond projects tend to contract for between five and seven years.

Overholser says SIGs avoid these complications because governments would simply continue to contract with social services providers just like they already do. The difference is the deal would include clawback provisions for governments to recover their money if program goals aren't met.

Although its objective is to be more simple, SIGs are still tricky. Part of what motivates financiers to back a pay for success project now is that if the program exceeds its goals, financiers not only get their initial investment back but they get a bigger interest payment as well.

To keep that financial sweetener in place, Third Sector has structured SIGs so that a private financier basically plays the role of an insurer. In the new scenario, a service provider contracting with the government would be on the hook for paying back the money if the goals aren't met. So the service provider turns to a private financier to provide insurance on the agreement. The service provider pays the financier premium payments, much as we do with car insurance. The premium payments would likely be baked into the provider's costs and passed on down to the government. If the project fails, the service provider refunds the government and collects those losses from the financier. But the far more likely outcome, says Overholser, is the financier simply pockets the premiums.

Still, some question whether the new proposal would offer enough incentives for nonprofits to opt for a SIG over a social impact bond. If the contracting structure is more like what governments already do with nonprofits, says Lili Elkins, then what is the motivation for a nonprofit to take the extra step of going with a SIG and finding insurance to offer a money back guarantee? Elkins' nonprofit Roca provides counseling, job training and other services for a social impact bond project in Massachusetts aimed at reducing recidivism and increasing employment among high-risk young men. (Third Sector helped put the project together.) Elkins says a SIG project would have to offer something more than the status quo, whether it's funding stability or something else.

Financial stability in particular is a big draw for nonprofits when it comes to pay for success projects. For Roca, rather than scraping together funding every year, the opportunity to be guaranteed funding for 900 young men over multiple years was a big incentive to be part of the Massachusetts project.

"The tricky thing now," Elkins says, "is getting people into that model. The reason we jumped into pay for success is there was an incentive for us to jump."

GOVERNING.COM

BY LIZ FARMER | MARCH 24, 2016

National Federation of Municipal Analysts Annual Conference.

Join us for the NFMA's 33rd Annual Conference in Chicago, to take place at the Westin Michigan Avenue on May 3-6.

To view the program, click here: 33rd Annual Conference Program.

To register, click here: Annual Conference Registration 2016.

March Madness Clash of Oklahoma, Texas Begins in Bond Market.

Before the University of Oklahoma and Texas A&M University basketball teams square off in the Sweet 16 on Thursday, they'll be competing for bond investors' money.

Texas A&M plans to begin issuing $418 million of federally taxable debt as soon as Monday, data compiled by Bloomberg show. The deal would come a day after the school's men's team came back from a 12-point deficit with less than a minute to play in regulation to beat Northern Iowa in double overtime, an unprecedented feat.

Oklahoma's board of regents also plans to borrow as soon as Monday with a $75 million tax-exempt bond sale. Behind 36 points from Buddy Hield, the Sooners on Sunday advanced to face the Aggies on Thursday for a spot in the Elite Eight.

As higher-education institutions grapple with limits on raising tuition, the pool of graduating high-school seniors shrinks and students balk at taking costly loans, universities have a history of capitalizing on high-profile athletic achievements to issue bonds. Standard & Poor's has said that while March Madness success might not mean an instant credit boost, it does give colleges "a leg up" in an era of heightened competition.

Clemson University sold tax-exempt debt in December after earning the No. 1 ranking in the College Football Playoff. Bonds due in about 10 years priced to yield 2.2 percent, for a spread to AAA munis that was less than similarly rated revenue securities.

During March Madness in 2014, the University of Connecticut priced $220 million of debt as its teams advanced to the Final Four of the men's and women's national college basketball tournaments. Both were crowned national champions. While UConn's men's squad fell to top-seed Kansas on Saturday, its No. 1 women's team looks to move on Monday against Duquesne.

Proceeds from Texas A&M's offering will provide funds for construction across its school system and refinance some other obligations, according to offering documents. Oklahoma will look to take advantage of tax-free interest rates near 50-year lows to refund securities that financed projects on its main campus in Norman.

Oklahoma is the No. 2 seed in the NCAA Tournament's West region and Texas A&M is the No. 3 seed. The victor will face the winner of the Oregon and Duke matchup.

BLOOMBERG NEWS

MARCH 21, 2016

This article is by Brian Chappatta of Bloomberg News. It appeared first on the Bloomberg Terminal.

Muni-Bond Funds Burned Chasing Yield With Wood-Pellet Bankruptcy.

Wood pellets are made to be burned. It turns out a Louisiana facility that was built to make the pieces for power plants is doing the same to municipal-bond investors.

Invesco Ltd., Waddell & Reed Financial Inc. and AllianceBernstein Holding LP are among buyers left in limbo after Louisiana Pellets Inc., a subsidiary of the world's biggest pellet maker in Germany, filed for Chapter 11 bankruptcy last month. After selling almost $300 million in municipal debt since 2013, it defaulted on some taxable bonds on Jan. 1 because its facility in a small lumber town struggled to ramp up output to the levels projected in initial offering documents.

The project is the latest example of the risks associated with chasing yield in the portion of the $3.7 trillion municipal market that finances industrial-development projects, the segment most prone to default.

Investors have had few opportunities to buy recently and a lot of money to work with: High-yield muni funds saw inflows in 94 of the 116 weeks since the start of 2014, Lipper US Fund Flows data show.

The wave of cash means "you have people jumping over themselves chasing incremental yield," said John Bonnell, a fund manager who oversees about $10 billion of state and local-government debt at USAA Investment Management Co. in San Antonio. "There used to be a saying way back when: If something couldn't get financed in the bank market or the corporate market or the equity market, it would get done in the muni market."

Local authorities often issue debt for companies, hospitals and nonprofits, which back the obligations.

While they often work with well-established borrowers, so-called conduits since 2014 have financed — or tried to finance — speculative projects including a sewage-to-fertilizer plant, a new home for USA Basketball and a methanol plant near Texas's Gulf Coast that's seeking to challenge foreign producers that dominate the business.

A Louisiana public authority issued $140 million of debt in November 2013 on behalf of the pellet company, which built a facility in Urania, a lumber town of 1,300 about 245 miles (394 kilometers) northwest of New Orleans. Investors extracted a steep price to compensate for the risk: Partially tax-exempt securities due in 2039 paid 10.5 percent interest, or 6.4 percentage points more than AAA munis, according to data compiled by Bloomberg. Subsequent rounds of financing came through private placements in 2014 and 2015, the data show.

The pellets are made from wood residues like sawdust or shavings that are then dried and compacted. Electricity producers burn the pieces, which are considered carbon-neutral, along with coal to comply with renewable-energy mandates.

Facing adverse weather and construction setbacks, the facility failed to meet production expectations. A sharp decline in the price of traditional energy sources like oil and natural gas added financial strain to the parent company, Wismar-based German Pellets, which declared insolvency overseas last month.

Bondholders' View

Invesco is the largest holder of Louisiana Pellets debt, with about $89 million in its funds as of Dec. 31, data compiled by Bloomberg show. The next biggest owner is Waddell & Reed, with $22.5 million, then AllianceBernstein with $18.5 million, the data show.

Claudia Röhr, a German Pellets spokeswoman, didn't respond to an e-mail seeking comment on its plans for the Louisiana facility or the options available to repay bondholders.

"The quickness of this project coming under scrutiny and into trouble is concerning to us, but it's why you run a diverse portfolio," said Mark Paris, who runs Invesco's $7.7 billion high-yield muni fund from New York. "This is one of those situations where as a bondholder, we're going to be working out the situation with the borrower. It's probably not something we are going to try and sell out of."

Michael Walls, who manages the $869 million Waddell & Reed Advisors Municipal High Income Fund, declined to comment, citing restrictions from being part of a group that agreed not to publicly discuss certain details of the project. The Louisiana Pellets bonds due in 2039 with a 10.5 percent interest rate are the second-largest holding in the fund.

"We believe that eventually the first phase of this plant can operate successfully — and have a new owner — but it is way too soon to know about expanding beyond that," Dean Lewallen, a senior high-yield municipal credit analyst at AllianceBernstein, said in an e-mail. "The near-term focus is to get it operating again."

German Pellets began financing the plant in late 2013 when oil was still selling for about $100 for a barrel, compared with $40 now. Natural gas prices have been cut in half over the period.

'Very Vauable'

The plant was supposed to produce 500,000 metric tons of pellets annually by operating at about 87 percent of capacity, according to offering documents from the 2013 sale. Instead, in the second half of 2015, it produced just 101,000.

German Pellets also borrowed $187 million in 2012 through a development agency in Sanger, Texas, for its first U.S. location, in Woodville, Texas. Invesco is the largest holder of those securities as well, with $39.6 million, Bloomberg data show.

Unlike its Louisiana counterpart, the Texas plant is operating as expected, producing more in three months than the Urania facility did in twice the time.

"We believe there is a very strong international demand for the product, and we expect these plants to be very valuable," said Paris, the fund manager for Invesco. "They're the largest, they're new, and we expect them to be very valuable assets."

Bloomberg Business

by Brian Chappatta

March 28, 2016 — 2:00 AM PDT Updated on March 28, 2016 — 8:05 AM PDT

IRS Issues Simplified Procedure to Extend Empowerment Zone Designation Period.

Notice 2016-28 provides a simplified procedure under the PATH Act for a State or local government to amend an empowerment zone nomination, extending the designation of the empowerment zone remaining in effect through December 31, 2016.

Notice 2016-28 will be in IRB 2016-15, dated April 11, 2016.

MSRB Seeks Comment on Potential Rulemaking to Improve Transparency of Direct Purchases and Bank Loans.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a potential approach to enhance investor and public access to information about the direct purchase and bank loan transactions of municipal securities issuers. In concept, the MSRB is considering whether to require municipal advisors to disclose information about the bank loans and direct purchases of their municipal entity clients to the MSRB's Electronic Municipal Market Access (EMMA®) website.

Direct purchases and bank loan agreements may contain key terms that impair the rights of existing bondholders. For example, in some instances, these financings may have provisions that make creditors senior to bondholders or that provide creditors with more favorable remedies than bondholders in the event of default. Bondholders may not learn of the existence and amounts of these types of financings until the release of the issuer's audited financial statements, and the key terms typically would not appear in such financial statements.

"The lack of transparency around the full picture of an issuer's indebtedness has long concerned the MSRB," said MSRB Executive Director Lynnette Kelly. "For a number of years, the MSRB has been encouraging state and local governments to voluntarily disclose bank loan financings and other similar obligations on EMMA, yet only a small number have done so. We are now considering whether rulemaking is necessary to ensure investors have the information they need with respect to these financings to make informed investment decisions."

The MSRB's concept proposal is intended to gather input on ways to improve the availability and timeliness of information about direct purchases and bank loan financings for the benefit of investors and the public generally. Specifically, the MSRB seeks comment on the benefits, costs and potential alternatives to requiring municipal advisors to disclose this information to the EMMA website.

Comments should be submitted no later than May 27, 2016.

Date: March 28, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Finra Arbitration Panel Orders UBS to Pay for Damages Over Puerto Rico Bond Losses.

UBS Group AG's wealth management business for the Americas must pay more than $470,000 to three investors who claimed damages because their accounts were over-concentrated in Puerto Rico bonds that plunged in value, according to the Financial Industry Regulation Authority Inc.

Obdulio Melendez Ramos, Ramon Velez Garcia and Carlos L. Merced had been seeking as much as $570,243 for damages, alleging fraud and negligent supervision, according to the Finra arbitration award document dated March 24. Their claims were filed in October 2014.

“Although the arbitrators awarded less than the full damages the claimants requested, UBS is disappointed with the decision to award any damages, with which we respectfully disagree,” Gregg Rosenberg, a spokesman for UBS, said in an emailed statement.

“The decision in this case was based on the facts and circumstances particular to these particular claimants, and is not indicative of how other panels may rule with regard to other customers who invested in similar products,” he said.

Damages tied to Puerto Rico’s distressed debt were among the litigation matters outlined in the Swiss bank’s financial supplement for its fourth-quarter earnings results released in early February. The supplement showed that since August 2013, declines in the price of Puerto Rico municipal bonds and related funds managed and distributed by UBS have led to regulatory inquiries, customer complaints and arbitrations, with claimed damages totaling $1.5 billion.

About $284 million of claims were resolved through settlements or arbitration, according to the supplement.

The oil bust could leave a similarly long wake of arbitration awards in the brokerage industry, as a wave of claims are expected to be filed this year with Finra. Investors have begun seeking damages based on allegations that their brokers put too much of their money in energy investments, which cratered following crude’s plunge in the second half of 2014.

Investment News

By Christine Idzelis

Mar 25, 2016 @ 11:25 am

Public Finance Authority Responds to Critics.

PHOENIX – Leaders of the Public Finance Authority take issue with criticisms that the Wisconsin-based national conduit issuer only exists to usurp local control from taxpayers and other bond-issuing authorities.

The PFA, created by the state legislature as a political subdivision of Wisconsin in 2010, has issued nearly $4 billion of bonds for more than 150 projects in 40 states.

But the issuer, which was created with the support of the National Association of Counties, the National League of Cities, the Wisconsin Counties Association and the League of Wisconsin Municipalities, has taken fire from local politicians and finance authorities who don’t like the PFA doing financings far from its own home base.

Mike LaPierre, the program manager at the PFA, said the criticisms are the result either of local politics or complaints from state agencies that have never been forced to compete with another conduit issuer. When the University of Kansas issued more than $325 million of lease revenue bonds through the PFA earlier this year, for example, the result was controversy.

KU bypassed its usual issuer, the Kansas Development Finance Authority, because the bonds would have required legislative approval. Lawmakers questioned the wisdom of the project, which was to finance a classroom and housing.

The bonds received investment-grade ratings but negative outlooks from Moody's Investors Service and Standard & Poor's. Ray Merrick, a Republican and speaker of the Kansas House of Representatives, was especially critical, charging that issuing the bonds through the PFA was an attempt to escape state oversight and hide the financial risks of the project from Kansas taxpayers.

But the PFA's leaders insist that the agency exists merely to fill a void for issuers who might not otherwise have a way to get a financing done. They say the PFA takes no part in local politics.

The KU deal, said PFA program manager Phil Letendre, was essentially a case where some individuals did not want the university doing any new construction at all. That debate had nothing to do with the PFA, he said. KU insisted throughout the process that it had every legal authority to issue the bonds through the PFA.

Nor does the PFA have a problem with an issuer that ultimately chooses to issue bonds through a regular state agency, Letendre said.

"If the state can do it better, more efficiently, great," he said.

Illinois and Washington have each passed laws seemingly designed to hamper activity from issuers like the PFA, by giving relevant in-state authorities time to review the potential financing and choose to do it themselves if they see fit. The PFA has done deals in those states, but its officials acknowledge that the laws make it more difficult because issuers typically do not want to be in legal limbo for months while their project is reviewed.

The PFA also has been criticized for the fact that 44% of the debt it has issued is unrated and privately placed. Only about 35% of PFA's bonds have been rated triple-B minus or higher and publicly offered, with the balance directly purchased by banks. The PFA contends that it only sells unrated debt to qualified institutional buyers, and that its projects have historically performed well.

"We've not had a default," Letendre said.

Wisconsin benefits from the PFA as well, authority officials contend, even though its activities do not create many jobs. The PFA is managed by LaPierre's firm, GPM Municipal Advisors, which is based in Walnut Creek, Calif. But an economic impact study commissioned by the PFA estimated that the authority's financings have created some 8,462 permanent jobs and generated about $61.4 million in tax revenues from all its deals across the states.

One of its earliest of the PFA's deals was for a rural electric cooperative in Wisconsin that created about 68 permanent jobs and almost half a million in tax benefits to the state, according to the report.

PFA bonds are only federally tax exempt, so states still collect taxes on the interest earned on those bonds.

The Bond Buyer

By Kyle Glazier

March 24, 2016

TAX - FLORIDA

Island Resorts Investments, Inc. v. Jones

District Court of Appeal of Florida, First District - March 21, 2016 - So.3d - 2016 WL 1085225

Owner of 99-year leasehold interest in unimproved 12-acre parcel filed action for a declaratory judgment that its interest could be taxed only as intangible personal property, and for an injunction prohibiting the assessment and collection of ad valorem taxes on the land. The Circuit Court entered judgment for county appraiser and tax collector, and leasehold interest owner appealed.

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

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

TAX - LOUISIANA

Coastal Drilling Co., L.L.C. v. Dufrene

Supreme Court of Louisiana - March 15, 2016 - So.3d - 2016 WL 1050541 - 2015-1793 (La. 3/15/16)

Taxpayer filed suit against parish tax collector to recover amount paid in use taxes for materials purchased for use in rebuilding inland marine drilling barge damaged by fire. The District Court granted summary judgment to collector. Taxpayer appealed. The Court of Appeal affirmed. Taxpayer’s application for writ of certiorari was granted.

The Supreme Court of Louisiana held that:

- Regulation permitting sales tax exemption if reconstruction restored ship, vessel, or barge to seaworthiness following its destruction by sinking, collision, or fire was constitutionally valid;
- “Seaworthiness” in the regulation has its general maritime meaning of fitness for its intended purpose;
- “Destruction” in regulation involves such extensive impairment from very specific event that vessel no longer can operate for its intended purpose; and
- Barge was destroyed making materials, equipment, and machinery eligible for the exemption.

TAX - LOUISIANA

Crowne Air, Inc. v. St. Tammany Parish

Court of Appeal of Louisiana, First Circuit - February 29, 2016 - So.3d - 2016 WL 852480 - 2015-0741 (La.App. 1 Cir. 2/29/16)

Sublessees under long-term subleases from city, which had leased land from parish and airport authority, brought action against parish tax collector, parish assessor, and chairman of state tax commission seeking declaratory judgment and to recover taxes paid under protest. The District Court entered summary judgment in favor of parish assessor. Sublessees appealed.

The Court of Appeal held that:

- Sublessees' leasehold improvements were not owned by the public, and thus were not exempt from ad valorem taxation, and
- Improvements were not for a public purpose, and thus were not exempt from ad valorem taxation.

Leasehold improvements made by sublessees, which subleased airport land from city for purpose of building hangars, were not owned by the public, and thus were not exempt from ad valorem taxation under applicable state constitutional provision, since language of sublease clearly contemplated that any permanent improvements made by sublessees during lease term remained property of sublessees until lease was terminated, and improvements were not translated into public domain, since sublessees did not let public use the land with intention of making dedication to public use.

Leasehold improvements made by sublessees, which subleased airport land from city for purpose of building hangars, after parish and airport authority had leased airport land to city, were not for a public purpose, and thus were not exempt from ad valorem taxation under applicable state constitutional provision, even though agreement between city, parish, and authority declared the land be used for non-commercial aeronautical activities essential to city's operation of its public airport and beneficial to city's economic development, where subleases did not contain such language, and subleases and operating agreements specifically provided that sublessees were permitted to lease of hangars to third parties for profit.

Our Water System: What a Waste.

Austin, Tex. — America has a water problem. To put it simply, the national network for providing safe, clean water is falling apart.

This state of affairs, which is the focus of a summit meeting on Tuesday at the White House, threatens more than our drinking water supplies. Water is used in every sector of industry, grows our food, affects our health and props up our energy system.

The price of this neglect will be high. In Flint, Mich., the mayor has estimated that it will cost as much as $1.5 billion to fix or replace lead pipes. Over all, repairing our water and wastewater systems could cost $1.3 trillion or more, according to the American Society of Civil Engineers. We need to do this to improve water quality, protect natural ecosystems and ensure a reliable supply for our cities, agriculture and industry.

The problem is a result of many factors, including old, leaky pipes; archaic pricing; and a remarkable lack of data about how much water we use.

In cities across the country, billions of gallons of water disappear every day through leaky pipes. Houston alone lost 22 billion gallons in 2012. As the water expert David Sedlak at the University of California, Berkeley, has noted, the water system is facing a double whammy: It has reached the end of its service life just as climate change and population growth have increased its burdens. No wonder the civil engineers society gave the nation's drinking water systems a grade of D in 2013.

Wastewater treatment systems are also in serious need of upgrading. Flooding strains treatment plants and sewer systems in many older cities, causing them to discharge untreated sewage whenever rainfall or snowmelt overwhelm them. After Hurricane Sandy, treatment plants in the New York area backed up, with sewage flowing the wrong direction from drainage pipes. The New York Times noted that in one neighborhood “a plume of feces and wastewater burst through the street like a geyser.”

Droughts also jeopardize water supplies, causing cities in the West to reach farther or dig deeper to get their water. Outside Las Vegas, Lake Mead, fed by the Colorado River, was recently measured at 39 percent of capacity.

These problems are compounded by an antiquated system of regulations, dysfunctional water markets, policies that encourage overpumping, and contracts that discourage conservation by requiring customers to pay for water they don’t use. These approaches depress investment and inhibit innovation.

To fix our water systems, we need prices that lead to more rational water use and invite needed investment, data to track water resources and usage, and much more research and development.

Take prices, for example. Water prices should rise or fall according to supply and demand. The idea that the price should be the same in the dry season (when supplies are low and demand for irrigation is high) as the wet season (when supplies are high and demand is low) is nonsense.

Water utilities should take a page out of the energy sector’s playbook. Electric utilities had been plagued for decades by many of the same difficulties. But now they are moving toward time-of-use pricing, with prices rising when demand is up, and inverted block pricing, where prices increase with consumption. Allowing these price shifts would change user behavior. Higher prices would encourage conservation and new technologies.

Regulations can ensure that the first few gallons per person per day are cheap or free, with escalating costs beyond that. Water for necessities such as drinking, cooking and hygiene should be affordable. Beyond that, water for lawns, filling swimming pools, washing cars and other uses should be more expensive.

We also have to fix our data gaps. We are operating blind. Compared to sectors like energy, where robust statistics on prices, production and consumption are generated weekly, key information on water use and supply is missing or published only every few years.

We should increase the federal budgets for water monitoring. Establishing a Water Information Administration, just as the Department of Energy has an Energy Information Administration, to collect, curate and maintain up-to-date, publicly available water data would inform policy makers and the markets.

Congress should also significantly increase support for water research and development, making sure to include the private sector as a partner.

We need breakthroughs in water treatment technology that would enable larger-scale recycling and reuse of treated water, desalination, and aquifer storage and recovery. These improvements range from the mundane — better pumps and home appliances — to advanced nanomaterials for energy-efficient water treatment.

The water industry’s risk-averse culture has resisted innovation. Higher prices and government-backed research and development could help prompt a wave of innovation and investment. This is what happened with hydraulic fracturing and horizontal drilling, two technologies advanced through government research that kicked off the shale boom.

The water problem is daunting. But putting a sensible price on water to invite investment and encourage conservation, increasing the availability of information and doubling down on innovation can go a long way toward solving it.

THE NEW YORK TIMES

By MICHAEL E. WEBBER

MARCH 22, 2016

Michael E. Webber, the deputy director of the Energy Institute at the University of Texas, Austin, is the author of the forthcoming "Thirst for Power: Energy, Water and Human Survival."

Planning the Future of the Community Development Financial Institutions.

At the 2016 CDFI Institute, attendees discussed where the industry started, its current state and plans for the future of CDFIs

WASHINGTON, March 17, 2016 /PRNewswire-USNewswire/ — Last week, the 22nd Community Development Financial Institutions (CDFI) Institute was held in our nation's capital. The event, hosted by the CDFI Coalition, drew over 150 community development stakeholders from around the nation. Prominent Members of Congress, Senior Treasury Department staff and panels of CDFI experts participated in the Institute.

A highlight of the two-day event included a panel on the future of the CDFI Industry. The panel took place during lunch on the first day of the Institute, and featured a presentation on the industry trends. Attendees were invited to weigh in on where they see the industry presently and where they predict it will head in the next few years. Paul Anderson of Rapoza Associates presented on CDFI Fund data trends the firm analyzed on behalf of the Coalition. Panelists, including Calvin Holmes of Chicago Community Loan Fund and Tanya Fiddler of the Native CDFI Network, as well as the moderator, Lori Canady of Alaska Benteh Capital, commented on their perspectives from within the industry.

Rapoza Associates will be using the data and comments resulting from the conversations at the Institute to prepare a comprehensive report on the future of CDFIs that is expected to be released in late summer. During the presentation, Anderson noted that in the wake of the Great Recession, CDFIs are increasingly targeting loans and investments to America's highest poverty communities. The share of CDFI loans and investments going to America's most severely distressed communities increased from 27.3 percent in 2004 to 43.8 percent in 2013.

"There are many economically distressed communities still working to jumpstart their local economies and grow business opportunities and jobs, but access to capital often impedes progress," said James R. Klein, CEO Emeritus of Finance Fund, a longtime member of the CDFI Coalition, who was elected Board Chair on March 10. "That's where CDFIs come in—we are helping revitalize local economies by providing access to capital that traditional financial institutions cannot, with the goal of bringing these communities and their businesses into the economic mainstream."

On the second day, attendees heard from senior leaders of the CDFI Industry who recently retired or are preparing to retire. The panelists included Bob Davenport, president of the National Development Council; Julie Gould, the former president of Mercy Loan Fund; Ron Phillips, the president and founder of Coastal Enterprises, Inc.; Cliff Rosenthal, the former CEO of the National Federation of Community Development Credit Unions; and Michael Rubinger, the president and CEO of Local Initiatives Support Corporation. The panel was moderated by Donna Gambrell, the former CDFI Fund Director from 2007-2013, and the longest serving and first African American woman to be appointed to the position. The panel discussed the origins of the CDFI movement, citing many CDFIs came from the civil rights movement.

The event also included keynotes from CDFI Fund Director Annie Donovan and Senator Sherrod Brown (D-OH), Ranking Member on the on the Banking, Housing and Urban Affairs Committee and a senior member of the Finance Committee. Senator John Boozman (R-AR) and Senator Chris Coons (D-DE), respectively, Chair and Ranking Member of the Appropriations Subcommittee on Financial Services and General Government, also spoke at the CDFI Coalition's Capitol Hill Reception, which was held on March 9.

There are currently more than 954 certified CDFIs, including 71 Native CDFIs, working in communities across the United States. These institutions include 510 loan funds, 251 credit unions, 170 bank depository institution holding companies, banks or thrifts, and 14 venture capital funds. In 2015 CDFI Fund grantees made over 41,000 loans or investments totaling more than $3 billion. This capital financed over 25,000 units of affordable housing, and 12,000 businesses. For more information on the Coalition and CDFIs, visit our website at www.cdfi.org.

Mar 17, 2016, 16:00 ET from CDFI Coalition

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Do Bonds and EB-5 Investment Go Together?

EB-5 is a growing and acceptable financing methodology as part of the capital stack in many U.S. projects, with real estate assets remaining the primary focus for investment of such capital. As other projects seek to take advantage of this opportunity to attract capital, the question arises as to whether government bond financed projects are suitable investments for EB-5 capital. In a typical structure, the EB-5 investor invests in a specially formed entity that, in turn, buys the governmental entity's bonds; the bonds finance an eligible project and the investor's money is traced to project costs. Of course, the risk of loss as a result of a default on the bonds also flows through to the EB-5 investor.

EB-5 investment in bonds related to government infrastructure projects can be a suitable investment; however, as with any investment, proper due diligence is a necessity. While the risks and benefits of an investment in a bond financed project must be evaluated on a project by project basis, there are some general principles of due diligence that apply to analysis of these investments.

The time period over which the EB-5 investor to receive the full return of his/her EB-5 investment should be a critical part of any evaluation, as bond related investments tend to be long-term, and the risk profile of a long-term obligation is different from a 5 year investment that is typical investment time frame for an EB-5 investment.

Generally speaking, the higher the quality of the bond investment, the lower the yield offered to investors. Inversely, a low quality bond product must offer a higher rate of return to an investor as an incentive to attract such investor. If there's any doubt about the ability of the bond issuer to pay off an investor on time, a high yield offering could be a poor choice as the risk of getting repaid on your investment is greater. Investors with a low risk tolerance should stick with high quality bonds even though the lower yield may be less attractive to an individual investor.

How do we tell if a bond is a high quality bond? One tool for evaluation of quality is a credit rating provided by independent institutions, or "rating agencies," such as Moody's, Fitch and Standard & Poor's. A triple A (AAA) bond is the highest rating. BBB/Baa is the lowest rating that qualifies for commercial bank investments and this rating on a bond makes it a borderline group for which, in Standard & Poor's words, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity to repay the investor. Dipping below BBB/Baa ratings takes you into speculative territory. Because of their higher risk of default, such bonds must pay higher yields to attract an investor BUT "high yield" is the marketing name for what most people call junk bonds.

The fact that the bond is issued by a government entity, in and of itself, is not determinative in the analysis whether a bond investment is a suitable investment for an EB-5 investor. Foreign investors should not fool themselves into believing that an investment in a government intrinsically safer and less risky than an investment in a privately sponsored vehicle just because of the involvement of a government entity. Rather, an investor should investigate how the government is involved in the project. Is the governmental entity merely a conduit issuer of a privately owned and operated facility? Or are they providing actual financial support, either directly in the form of a payment guaranty or pledge of tax or other revenues, or indirectly through tax abatements or other subsidies?

In summary, here are a few factors an EB-5 investor should look at when evaluating the risk of any government bond investment:

1. <u>Financial condition of the issuer of the bonds.</u> The financial statements of the bond issuer should be evaluated carefully, in much the same way as one would review those of a private entity. Financial reporting rules and accounting principles differ for governmental entities, so particular care should be taken in the evaluation of these materials by someone who knows the rules for government accounting in the United States. The stronger the balance sheet, the greater the likelihood that the investor will receive the benefit of what is being bargained for.
2. <u>Credit rating of the Bond.</u> This is how the rating agency rates the strength and risk level of the investment. A triple A bond (AAA) designates a strong likelihood of repayment. Anything below that has a higher degree of risk, often offset by enticing the investor with a higher coupon rate. A bond rating of A- or lower should cause concern and the lower the rating, the higher the risk.
3. <u>Historical track record of repayment of prior bonds.</u>
4. <u>Level and nature of governmental issuer involvement and financial support or subsidization of the project.</u>
5. <u>Length of investment.</u> A typical bond term may be 20 years or longer. A typical EB-5 investment is approximately 5 years. Does it make sense to have principal tied up for that many years or is the investor better off getting its principal back sooner to reinvest how the investor thinks best? This is a question that can only be answered by the risk tolerance of the investor but suffice it to say, a long term investment of capital is not optimal for every investor.

Greenberg Traurig, LLP

Bruce C. Rosetto
Shareholder

Monday, March 21, 2016

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What Presidential Candidates' Tax Plans Mean For Munis

WASHINGTON – As the 2016 presidential race narrows down to a handful of candidates, it appears likely that business mogul Donald Trump and former Secretary of State Hillary Clinton will be the nominees with the most votes at the Republican and Democratic conventions.

Should Trump and Clinton secure the nominations, voters will be presented with two candidates whose tax plans share many similarities, but would have vastly different implications for the municipal bond market, in the eyes of some tax and muni bond experts.

Trump says his plan would simplify the tax code, cut taxes for the middle class and grow the economy without adding to the debt or deficit. But his plan, which would lower tax rates, could hurt munis, the experts said.

Clinton's plan, on the other hand, would maintain or raise tax rates for the highest earners, and that could spell positives for munis, they said. And as 2016 is a lame duck year, most experts agree that tax reform before January is not likely.

No matter who comes out on top in November, muni market participants will try to make sure they understand the importance of muni bonds. Bond Dealers of America CEO Michael Nicholas stressed that munis have funded critical infrastructure needs effectively for more than a century.

"They are the proven, economically efficient solution to the U.S. infrastructure problem that the presidential candidates have been discussing all across the country," Nicholas told The Bond Buyer this week. "BDA urges all the candidates to avoid eliminating or placing an unnecessary limit or cap on the value of the municipal bond interest exemption if they are truly serious about reducing fiscal burdens on localities while simultaneously putting people to work building roads, bridges, schools, and hospitals."

Donald Trump

Trump's plan is perhaps best defined by its across-the-board tax cuts, including an elimination of the individual income tax for 73 million households. The tax brackets would be reduced to four brackets from seven and set at rates of 0%, 10%, 20% with a top rate of 25%, according to Trump's campaign website. Those in the 10% bracket would keep all or most of their current deductions; those in the 20% bracket would keep more than half of their current deductions; and those in the 25% bracket would keep fewer deductions. The current top rate stands at 39.6%.

On the business side, Trump also calls for a reduction of the corporate income tax rate to 15 percent as well as an elimination of the death tax, the marriage penalty and the alternative minimum tax.

The Tax Foundation, a research think tank, estimated his plan would reduce tax revenues by $10.14 trillion, after taking into account an estimated 11% increase in GDP in the long term and an estimated 5.3 million new full-time jobs. The organization estimated a plan like Trump's, which would increase the federal deficit by more than $10 trillion on both a static and dynamic basis, would "greatly increase" the size of the U.S. economy in the long run.

Neither Trump nor Clinton mention municipal bonds specifically in their tax plans, but several experts have previously expressed concerns over what Trump's plan could mean for the market. Frank Shafroth, the director of the Center for State and Local Government Leadership at George Mason University, warned that Trump's plan would "lead to a fiscal double whammy for states and local governments and the nation's public infrastructure" because it would reduce the incentives for purchasing munis, while increasing the federal debt and failing to offset spending reductions. This would create "significant, adverse" impacts on the muni market and "debilitating" effects on public infrastructure, he said.

Trump "would almost certainly force even deeper federal cuts in federal infrastructure programs – even as the dramatically reduced taxes proposed for the highest income Americans would equally reduce incentives for the purchase of municipal bonds," Shafroth said.

The plan would be paid for by a one-time repatriation of overseas-held corporate cash at a discounted 10% tax rate; ending the deferral of taxes on corporate income earned abroad; and the reduction or elimination of several loopholes available to the most wealthy. He would steepen the curve of the personal exemption phaseout and the "pease limitation" on itemized deductions. He would also phase out the tax exemption on life insurance interest for high-income earners and reduce or eliminate other loopholes for the very rich and special interests.

Speaking at the 2016 National Association of State Treasurers Legislative Conference here earlier this month, David Burton, a conservative, called Trump's tax plan "unusual," adding that many financial analysts have estimated it would cost the country roughly $1 trillion per year.

The Tax Policy Center, in a December report, predicted increased government borrowing under Trump's proposal would drive up interest rates and crowd out private investment, which could offset any positive incentive effects.

"Offsetting a deficit this large would require unprecedented cuts in federal spending," the center wrote in the report.

Trump has said he would take the $4 trillion spent toward toppling various regimes and instead put it toward what he has repeatedly called a "crumbling" domestic infrastructure.

Still, Susan Collet, president of H Street Capitol Strategies, but doesn't think the business mogul's plan is well-developed enough to assess the likelihood of its potential positives for infrastructure spending. "He definitely wants to fix the infrastructure of the nation," Collet said. "How to get there from his tax plan is a big question. The infrastructure spending has got to come from somewhere."

"With deficits and debt climbing that high, the future White House and Congress are going to have to grapple not only with the tax code but also entitlements and spending," she added.

"These federal cuts, and the resulting federal revenue losses would be unprecedented in U.S. history," Shafroth said.

Hillary Clinton

Clinton's plan is centered around a "Rising Incomes, Sharing Profits" tax credit that would award a two-year tax credit to companies that share profits with employees. The credit would be equal to 15 percent of the profits they share, and the profits would be capped at 10% on top of current employee wages.

The cost of the tax credit, estimated at $20 billion over a ten-year budget window, would be paid for through the closure of tax loopholes Clinton has said she will identity in the "weeks and months ahead."

Hillary Clinton's campaign recently released a detailed tax proposal, one that includes $1.1 trillion in tax increases. In its analysis of the report, The Tax Policy Center said the top 1% of households would pay more than three-fourths of Clinton's increases, while the bottom 95 percent would remain relatively unaffected by any cuts. Citing Clinton representatives, The Tax Policy Center said it also anticipates a tax cut for low- and middle-income households to be released later in the campaign.

Clinton's proposals are expected to raise tax revenue by $498 billion over the next decade, the majority of which would come from the Buffett Rule, or a cap on itemized deductions, The Tax Foundation estimated in January,

The $1.1 trillion the plan is expected to raise over the next decade would effectively reduce the economy's size by one percent as a result of higher marginal tax rates on capital and labor income, the group said. Using its tax and growth model, the group projected a 1% drop in GDP and a 2.8% percent smaller capital stock.

A tax reform task force led by House Ways & Means Committee Chairman Kevin Brady, R-Texas, released a mission statement this month that stresses a limit of exclusions, deductions and credits in hopes of creating a stable tax code and a larger economy – quite the opposite from what experts believe would come from a Clinton tax plan.

As part of her plan to raise taxes on the wealthiest Americans, Clinton in January proposed a 4% surtax on those with an annual income of more than $5 million.

Howard Gleckman, a senior fellow at the Tax Policy Center, said that Clinton's plan, which would raise rates for the highest earners, lends itself more to a thriving muni industry than Trump's. He added that Trump's plan, barring any unreleased planned spending cuts, would add enormously to the budget deficit and create a "big challenge" for state and local governments.

"The general rule of thumb is the lower the tax rate for the individual, the worse it is for tax-exempt bonds," he said. "The higher the rate, the better it is."

"Trump plans to dramatically lower the tax rates, giving people a much less reason to buy tax exempt bonds. Clinton, on the other hand, by raising tax rates for people at the top would make tax exempt bonds more attractive," said Gleckman.

Other candidates

This week's third incarnation of Super Tuesday saw Sen. Marco Rubio, R-Florida, exit the race after losing by double digits to Trump in his home state, leaving Trump with Sen. Ted Cruz, R-Texas, as the closest remaining competitor in a previously overcrowded GOP field.

The Tax Foundation, the tax research think tank, estimated Cruz's plan would grow 10-year capital by 43.9%. Cruz, as he has mentioned throughout his campaign, has proposed a flat tax rate of 10%, and has plans to abolish the Internal Revenue Service. He would instead rely on a mail-in postcard tax payment system overseen by an office within Treasury.

He has proposed to replace the income tax with a consumption tax, which Shafroth said would cut taxes by an average of roughly $6,000, higher than any of remaining candidate. Cruz's plan, which reduces both the corporate and individual tax rate, could very well push the tax system toward pro-growth, according to Burton.

Shafroth said a Cruz or Trump presidency would spell many of the same problems for munis, but what stands out about Cruz's plan is what he called "disproportionately" proposed tax cuts – those in the top 1 percent would see an average federal tax cut of 26%, while middle income households would see just a 3.2 percent cut. This in itself, he said, would be disincentives for the purchase of general obligation and revenue municipal bonds both at the state and local level, Shafroth said.

Cruz has proposed an $8.6 trillion federal tax cut, roughly $1 trillion less than that of Trump.

"These two candidates would confront states, counties, and cities with much greater infrastructure or muni borrowing costs, even as federal investment resources for the nation's infrastructure would be depleted," Shafroth said.

The Tax Foundation said the plan of Sen. Bernie Sanders, I-Vt., the only other remaining Democratic presidential candidate, would result in a "substantial reduction" of the size of the U.S. economy in the long run. Sanders has proposed a number of increased payroll taxes and individual income taxes as well as four new income tax brackets for high-income households: 37%, 43%, 48% and 52%. The organization estimated that it would reduce the size of GDP by 9.5% in the long term, and increase federal tax revenues by $9.8 trillion over the next decade.

A report issued by the Tax Policy Center estimated Sanders' plan would cost the government roughly $13.5 trillion.

The likelihood of any of the candidates' plans coming to fruition is largely dependent on a number of factors, including the makeup of Congress and the Supreme Court, said the experts.

Chuck Marr, a self-described liberal and the director of federal tax policy for the Center on Budget and Policy Priorities, said at the NAST conference that the U.S. tax system is currently "bleeding," and speculated a divided Congress and more modest tax reform, specifically in the corporate sector should Democratic frontrunner Hillary Clinton win the presidency, and a "steamroll" effect in terms of implementing new tax measures should a Republican win.

"The highest probability for big change is if Republicans win and control a whole Congress and presidency. Then they'll have major tax cuts," he said. "They'll reduce rates on capital, and that is the most likely major action."

The Bond Buyer

By Evan Fallor

March 20, 2016

Developers Use Innovative Strategies to Deliver Affordable Housing.

As Seattle and the region search for ways to produce and retain affordable housing, these four developments backed by private capital are examples of different strategies that have worked.

James Lacey and Emily Perchlik kept coming up short in their hunt for a modern Seattle apartment they could afford.

Finally, three months before their daughter Willow was born, the couple in May landed one of the 36 below-market apartments at Anthem on 12th, one of three new projects on Yesler Terraceby Seattle-based Spectrum Development Solutions.

The couple pays about $1,545 a month for their 847-square-foot, two-bedroom unit, about $750 less than a similar market-rate unit at Anthem.

“It allows us to save up for a down payment,” Lacey said.

While the Seattle area is witnessing a historic boom in the construction of expensive, luxury apartments, four local projects show private developers are using innovative strategies to deliver housing that’s affordable to low-income or middle-class households.

Last year, Seattle Mayor Ed Murray set a goal of 20,000 new affordable units over the next decade, with the private sector tasked with producing much of it.

Hal Ferris, who founded Spectrum in 2008 and is a national affordable-housing leader, is realistic about what his eight-person firm can achieve.

“I don’t think we alone are going to be able to solve the problem,” said Ferris, 59. “What Spectrum can do is show others how to do it.”

Other local projects like Imagine Housing’s Velocity show how low-income housing can be integrated with market-rate apartments and mass transit. Smaller-scale projects such as Green Canopy’s Triplets in the Delridge area and Capitol Hill Urban Cohousing point to ways in which housing for the middle class might be preserved or created in Seattle.

What unites them is the developers’ success in scoring cheap capital, whether from competitive tax-credit awards, foreign investors or friends and family, to achieve their vision.

Housing shortage

Like other metros nationwide, Seattle is suffering from a shortage of affordable housing. Not just the poor, but those on higher incomes like teachers, medical assistants and food-service workers are challenged to find housing that’s affordable.

According to Harvard University’s Joint Center on Housing Studies, nearly two-thirds of Seattle-area renters earning between $30,000 and $45,000 in 2014 spent more than 30 percent of their income on housing, a threshold that’s widely considered the point at which housing becomes unaffordable. The same was true for almost one in six earning $45,000 or more.

From early 2014 to the end of last year, the average per-square-foot rent in King and Snohomish counties has climbed nearly 20 percent, according to data from Apartment Insights Washington, a market-research firm. To be sure, that figure is skewed by new properties like downtown Seattle high-rises like Cirrus, which charges about $3,000 a month for a one-bedroom apartment, but even older properties have raised their rents in the face of insatiable demand for urban digs.

All developers of affordable housing face some common hurdles. Among them: high land and construction costs, rigid lenders and a long trek through different bureaucracies, not to mention neighborhoods that may be resistant to denser development and housing associated with the poor.

The conventional wisdom is that because of those high costs, “You can’t build a property for a middle-class renter,” said Jay Parsons, director of analytics for Texas-based MPF Research. “Any new apartment is a luxury property — it’s just a question of how luxurious it’s going to be.”

But some developers are doing what they can to defy that thinking.

A trifecta on Yesler Terrace

Spectrum opened Anthem, the first of three apartment projects on First Hill within walking distance of each other, last May. The 120-unit Anthem, at 103 12th Avenue, was the first private development in the Seattle Housing Authority’s revamp of Yesler Terrace.

Anthem has a bike-share station and is located on the new streetcar line, giving residents a convenient ride into downtown.

“It’s great for me to see her in the middle of the day and not have an hour of transit time,” said Perchlik, who works at an architecture firm. Lacey, a stay-at-home dad, said the couple wanted to avoid paying for child care.

Spectrum expects to complete the 75-unit Decibel in June and an 85-unit project, Reverb, in September. Renters in the three projects will share amenities, such as Anthem’s bike-share stations, Reverb’s rooftop clubhouse and Decibel’s open-space community hall — a split-site design that means each project can offer more affordable apartments.

Tax breaks for projects

Seventy of the 280 new units are reserved for households earning between 65 percent and 85 percent of area median income (which was $62,800 for a single person and $89,600 for a family of four in Seattle last year).

That’s because all three projects will receive a tax break under the city’s multifamily tax-exemption program, which the City Council recently approved expanding to all multifamily zones.

Anthem itself is expected to remain affordable for longer than the 12-year tax break: Under its deal with the Housing Authority, Spectrum committed to keeping 25 percent of Anthem’s units affordable for 20 years.

But for the capital to build the project, the developer relied on private equity investors — though these can be hard to find for such projects — and not public money. The main investor in Anthem, Decibel and Reverb is Canada’s Gracorp Capital in Calgary.

Gabriel Grant, one of Spectrum’s three principals, says he gives investors a strong business rationale for building projects that aren’t aimed solely at the high-end tenant: Apartments with a wider spectrum of renter incomes tend to have more stable cash flow and will do well when the economy slides into the next recession.

While Spectrum uses the tax-exemption program like other developers, “we’re exploring new tools and new ways that allow us to increase the level of affordability in our projects and scale it in a way that’s going to be successful in the long term,” says Jake McKinstry, another Spectrum principal.

For instance, Spectrum is tapping historic-preservation tax credits to support 125 affordable units opening later this year at the Publix Hotel redevelopment in the International District.

And in the near future, Spectrum plans to use low-income housing tax credits to support a project that can accommodate those making up to 40 percent of median income — and for inspiration, the firm points to Velocity, a Kirkland project.

Kirkland’s Velocity

In the summer of 2014, Imagine Housing opened Velocity, a 58-unit apartment building at the South Kirkland Park-and-Ride and a short walk from Lake Washington Boulevard. The units are restricted to households making no more than 60 percent of area median income — currently $37,680 for a single person or $53,760 for a family of four.

The award-winning housing project has an exercise room, wireless Internet access in common areas and a rooftop garden and community room. Imagine has 400 families on the waitlist to move in.

“If I could, I would do this over and over,” said Sibyl Glasby, director of housing development at Imagine Housing. “It’s a great way to bring private investment into affordable housing.”

The project got its start after for-profit developer Polygon Northwest won a competition held by King County and the city of Kirkland to develop next to the park-and-ride lot. As part of its Kirkland Crossing transit-oriented development, Polygon was required to work with a nonprofit partner to build affordable housing units on the site.

The deal produced more affordable housing units than typically required: Out of 243 units in two separate apartment buildings, 61 are income-restricted, or one-quarter of the total units, Glasby said.

The nonprofit was able to combine $11 million in low-income housing tax credits, the chief source of equity for affordable housing nationwide, with $4 million in public funds.

It’s hard to build an equal number of income-restricted and market-rate housing units in one development because financing sources for each have different requirements.

Velocity’s secret: While it shares the parking-garage podium with Polygon’s apartments, it’s a separate legal entity as a commercial condominium, Glasby said.

All of the units in Imagine’s apartment building are income-restricted and will remain that way for at least 50 years, according to Imagine.

Another aspect of affordability at Velocity: Having frequent bus service next to the apartments means residents don’t need cars, Glasby said. Of the 44 parking spaces at Velocity, only 35 are used.

“Transportation costs are the second highest expense after housing,” she said. “You have more money to spend if you can get rid of your car.”

Renovation project

Rehabilitating old homes can create more affordable housing too.

Green Canopy, a for-profit builder on a mission “to inspire resource efficiency in residential markets,” saved two out of three Southwest Seattle houses built in the 1920s from being torn down. (The foundation on the third was cracked, so a new home was built in its likeness.)

Known as The Triplets, they are three-bedroom, two-bath houses ranging from 1,300 to 1,600 square feet on large lots.

The company bought the houses in 2012, remodeled them and sold each for less than $400,000 in the summer of 2013, when the median price of homes in the city was about $460,000. Green Canopy dubbed the houses Clara, Zelda and Louise after three women who helped define the 1920s flapper era.

The homes, located along 24th Avenue Southwest, have retained their original exterior charm. At the rear of the each home, Green Canopy added a “great room” with 11-foot ceilings that connects living, dining and kitchen space with the backyard.

The homes are expected to use up to 50 percent less energy than before.

“Sustainability and affordable homeownership go hand in hand,” said Aaron Fairchild, Green Canopy’s chief executive. “It’s not just, ‘Can you make the monthly payment?’ ”

To finance the purchase and remodel, Green Canopy received a low-interest rate loan from the Washington State Housing Finance Commission, which administers a sustainable energy trust fund.

Also through the low-interest program, Green Canopy recently built a cluster of six energy-efficient single-family homes also in Seattle’s Delridge neighborhood.

Without the commission’s energy program, Fairchild said, “there’s just no way we could bring homes to market that are as affordable as they are.”

Danish model

Later this month, nine families will move into a new five-story apartment building that promises long-term affordability in one of Seattle’s priciest neighborhoods, Capitol Hill. The concept, patterned after a Danish housing model, is for households to own shares in a community and rent units to themselves.

The group never expected it would take six years to realize its vision for a multigenerational community, said Grace Kim, one of the project’s founders, who happens to chair the Seattle Planning Commission. The group had to overcome legal and financial hurdles to create something new.

“We didn’t set out to be a pioneer in this way, but we are doing something very unconventional,” she said.

Cohousing plan

In 2008, Kim and two others paid $975,000 for a 4,520-square-foot lot at 1720 12th Ave., a block from Cal Anderson Park and short walk from the light-rail station. Kim and her husband, Michael Mariano, began holding open houses to see if anyone else might be interested in pooling funds to launch a cohousing project.

“We’re collectively making the decision to live together in a very collaborative way so our children have the chance to live in a multigenerational community in the heart of the city with a pretty good quality of life, and that’s not something any other multifamily project is striving for,” Kim said.

Members deposited about $30,000 each to a partnership to reserve a unit. If and when they decide to leave the cohousing project, they won’t be able to reap huge equity gains from selling their partnership stake: They will only receive their initial membership deposit plus a small amount of interest.

“The intention is for there to be income and social diversity,” Kim said.

Capitol Hill Urban Cohousing, as it’s called, cost a total of $5.5 million to develop.

“We will start out at market-rate rents,” Kim said, “but we’re hoping over 10, 20, 30 years that will become a pretty moderate living expense.”

The Seattle Times

By Sanjay Bhatt

Seattle Times business reporter

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California Wants to Know: What’s Next for Green Bonds?

What’s the best way to be green? California’s treasurer, John Chiang, is trying to find out.

Mr. Chiang is meeting with bond investors this week in New York and Boston in what he calls a “listening tour” to discuss green bonds, which finance projects aimed at mitigating climate change or that have other environmental benefits. The market expanded quickly in recent years as concerns about climate change intensified, but the growth in green-bond sales slowed last year amid questions over how to define green.

Some projects, like a parking garage on a college campus in Massachusetts financed with green bonds, have come under scrutiny. Critics point out that it is largely up to an issuer, and the banks selling the bonds, to determine whether to market them as green. There are also questions over whether the development of green bonds has allowed new projects to move forward, or whether those projects would have been financed regardless through regular bond sales.

Mr. Chiang, who points out that rising sea levels in the coming decades could inundate California’s valuable coastline, said the Golden State could become a major green-bond issuer. It already sold $300 million in green bonds in 2014, much of which has gone to efforts to reduce air pollution. The California Infrastructure and Economic Development Bank is planning to sell green bonds in April.

“When you just think about the needs, the numbers would be large,” said Mr. Chiang, who previously met with investors on the West Coast. He is considering a more regular green-bond sales program, but said, “We don’t have anything immediately in place, because we want to do this correctly.”

Some $42 billion in green bonds were sold globally in 2015, according to the Climate Bonds Initiative, a nonprofit group in London that tracks the market, a figure that was shy of the group’s $100 billion goal. It was a 13% increase from the $37 billion that were sold in 2014, but a slower increase than the roughly 220% growth seen from 2013, when $11.5 billion were sold, to 2014.

So far in 2016, some $14 billion have been sold, according to the Climate Bonds Initiative. Earlier this year, Apple sold green bonds as part of a larger corporate-bond sale. Whether the issuer is a corporation or a municipality, the bonds are paid back in the same way as regular debt.

Efforts are already underway to better define the market. The International Capital Market Association manages a set of voluntary guidelines called the green-bond principles that is overseen by an executive committee of investors, issuers and underwriters. The guidelines do recommend that issuers obtain “external assurance,” such as an opinion from a third-party that certifies the environmental benefits of the project being financed.

Earlier this year, credit-rating firm Moody’s Investors Service said it would look into providing opinions — separate from traditional credit ratings — on green bonds. The firm said the opinions would “assess the relative likelihood that bond proceeds will be invested to support environmentally beneficial projects as designated by the issuer.”

Speaking from the New York office of law firm Orrick Herrington & Sutcliffe LLP, which has served as bond counsel for California, Mr. Chiang and other top officials in his office outlined other challenges tied to green bonds that they planned to explore.

Periodic reporting that details how bond proceeds have been spent are an added cost. There’s still little evidence that issuers get lower interest rates on a green bond versus a regular bond, and rates on California’s green bonds were comparable to other bond sales, officials said.

Climate change is a hot-button topic for younger Americans, but they generally haven’t yet accumulated enough wealth to start investing in bonds, they said. And the green-bond market in other places like Europe is considered more robust than in the U.S.

A main question is “how do we accelerate the maturation of our market so that we can gain a new financing tool,” said Collin Wong-Martinusen, Mr. Chiang’s chief of staff.

The treasurer’s office, which not only oversees bond sales but also invests public funds, has also purchased green bonds in the past from entities like the World Bank. Mr. Chiang, elected treasurer in 2014, appeared hopeful that California’s green-bond efforts could help jump-start green-bond sales in other states as well.

“The states are very different,” he said. “You will have progressive treasurers who are very excited about the prospects. Obviously they may have to do the political calculations within their state. But if California’s successful, they will be very closely behind us.”

THE WALL STREET JOURNAL

By MIKE CHERNEY

Mar 21, 2016 1:29 pm ET

Grants To Go To Programs That Generate User Fees for Transportation.

DALLAS — States have been invited to experiment with user-based transportation funding mechanisms that go beyond the traditional gasoline tax under a new competitive federal grant program outlined Tuesday by the Federal Highway Administration.

The Surface Transportation System Funding Alternatives Program, which was authorized by the recently enacted five-year Fixing America's Surface Transportation (FAST) Act, provides $15 million in fiscal 2016 for the pilot program to determine how to charge road users. Allocations in the FAST Act for the user-fee grants include $20 million in each of the next four years.

Revenues from the federal fuels taxes of 18.4 cents per gallon of gasoline and 24.4 cents per gallon of diesel are insufficient to meet the nation's need for transportation infrastructure investment, said Transportation Secretary Anthony Foxx.

"What is clear is that more investment in transportation is necessary to prepare for an increasing strain on the system in the upcoming decades," Foxx said. "A reliable funding source is at the heart of a robust surface transportation system so commuters can get to their jobs, businesses can run their operations and freight shippers can move their goods."

Congress mandated that the grants go toward implementation of at least two alternative revenue collection mechanisms.

The grants are available only to state transportation departments or groups of states.

Projects must demonstrate a user fee-based structure with an ability to maintain the long-term financial health of the Highway Trust Fund, the FHWA said. The federal share of a pilot program cannot exceed 50%.

States can use the competitive grants to refine existing pilot projects or help launch new ones. A proposed user-based revenue mechanism, which cannot be a toll, must consider personal privacy and the use of private vendors to collect the fees, FHWA said.

"The mechanism would ultimately need to demonstrate that it could effectively collect federal user fee revenue and be scalable nationally, but it could also be used to collect state user fee revenue," FHWA spokeswoman Nancy Singer said.

Federal user fee revenue will not actually be collected during the initial phase, she said.

"The pilot approach would demonstrate how it could be collected," Singer said.

Oregon in mid-2015 implemented a limited road funding program based on vehicle miles traveled. The initial VMT program is limited to 5,000 cars and light commercial vehicles, with motorists paying 1.5 cents per mile rather than the state gasoline tax of 30 cents per gallon.

Reps. Peter DeFazio, D-Ore., and Eleanor Holmes Norton, D-D.C., asked Foxx in early January to quickly implement the user-based revenue grant program. DeFazio is the ranking Democrat on the House Transportation & Infrastructure Committee and Norton is the ranking member on the committee's highways and transit panel.

"The FAST Act is a great achievement, but it does not resolve the long-term solvency challenges of the HTF," DeFazio and Holmes said in a joint letter. "To ensure that we are not in the same position four years from now, we must immediately begin to identify real, workable funding solutions to carry our surface transportation programs through the 21st century."

The FAST Act provides $286 billion of federal funding for highways and public transit through fiscal 2020 but the fuel taxes and other levies will bring in only about $200 billion over the five years. Approval of the FAST Act by Congress in late November required the transfer of $70 billion from the general fund to supplement the tax revenues dedicated to the HTF.

Lawmakers have transferred more than $143 billion into the HTF since 2008 to support the fuel taxes.

The Bond Buyer

By Jim Watts

March 23, 2016

Moody's Joins Effort to Standardize Green Bond Market: Ballard Spahr

The municipal green bond market is in its infancy. For it to achieve scale and widespread recognition, a process for verifying whether a bond is "green" is needed so the market can fairly judge the merits of each green bond issuance. In the absence of recognized standards, issuers can choose to label their bonds as green based upon their own subjective measures.

Only a fraction of the municipal green bonds that have been issued to date feature some type of third-party certification that the bonds are financing or refinancing a project which is benefiting the environment. Moody's has now joined the nascent effort to standardize the certification process by publishing a proposed Green Bonds Assessment (GBA) approach and methodology. Moody's invited the market community to comment on the proposed approach, and the comment period ended on February 12, 2016.

A GBA, rather than constituting a credit rating, is a forward-looking assessment of an issuer's approach to green bond financing. The Moody's GBA scorecard rates each transaction based on the review of the issuer's approach in five areas, closely following the voluntary guidelines for issuing green bonds set forth in the Green Bond Principles. The five factors are Organization, Use of Proceeds, Disclosure on the Use of Proceeds, Management of Proceeds, and Ongoing Reporting and Disclosure.

The most heavily weighted factor is Use of Proceeds, worth 40 percent of the GBA score. Under this factor, Moody's will evaluate whether the green bond proceeds are in line with the environmentally beneficial project categories listed in the Green Bond Principles and which percentage of the bond proceeds is invested into such projects. Moody's proposed GBA approach and methodology did not specify, however, how exactly Moody's will make this determination.

Ongoing Reporting and Disclosure is the second most heavily weighted factor, worth 20 percent of the GBA score. Moody's will consider the nature and the frequency of the expected updates on the status of the projects, as well as the disclosure regarding the impact on the environment, including adoption and reliance on quantitative metrics for measuring the impact, if any.

The Disclosure on the Use of Proceeds and the Management of Proceeds factors are weighted the same—each is worth 15 percent. Under the Disclosure on the Use of Proceeds factor, Moody's will evaluate the quality of the disclosure regarding the green projects in the initial offering document, specifically looking for a detailed description of the green projects, clarity as to whether the bonds are funding a new project or refinancing an existing investment, whether there is adequate funding for the projects, the quantitative measures to be used for results of each investment and the criteria and method for calculating performance against expected results. Under the Management of Proceeds factor, Moody's will evaluate the issuer's procedures for segregating and tracking the green bond proceeds, applying the proceeds by appropriate category and type and having clear investment practices, while giving weight to the existence of an audit of the issuer's tracking methods and procedures.

The least weighted factor is Organization, weighing 10 percent of the GBA score. Under Organization, Moody's will evaluate the issuer's governance and organization structure, its decision-making process relating to the green financing and its framework for determining eligible projects, setting goals and measuring and reporting results. Moody's also will take into account any external evaluations the issuer might have procured from a third-party environmental expert.

Moody's will issue a GBA on a scale of 1 to 5, with 1 being poor and 5 being excellent, based on an evaluation of the five factors described above. After an initial GBA has been issued, it may be updated from time to time to take into account the application of proceeds and the impact of the completed projects on the environment. It is not clear whether Moody's would conduct a follow-up review and update an initial GBA on its own accord, similarly to what it does on the credit rating side, or whether a follow-up review would be done solely at a request of an issuer.

Although a number of questions regarding the GBAs remain, Moody's decision to develop a structure to assist investors in evaluating green bonds is a step in the right direction and an indication that, despite skeptics, the green bond market may be here to stay.

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.

Ballard Spahr

by Tatjana Misulic and Kimberly Magrini

March 4, 2016

Rockefeller Institute's State Revenue Report.

Softening Third-Quarter Growth in State Taxes, Weak Forecasts for Fiscal 2016 and 2017.

State tax revenue growth slowed in the third quarter of 2015, a trend that is expected to continue in the remainder of fiscal year 2016 and into 2017 according to the latest State Revenue Report. Personal income tax growth slowed to 6.5 percent and growth in corporate income taxes, sales taxes and motor fuels were weak. Fluctuations in the stock market and the drop in oil prices are two of the reasons that these trends likely will continue into the future.

Read the full report.

The Rockefeller Institute

March, 2016

S&P Methodology For Rating Project Developers.

(Editor's note: This criteria article supersedes "Rating Criteria For Project Developers," published Sept. 30, 2004.)

1. Standard & Poor's Ratings Services is publishing its criteria for project developers.

2. The criteria are intended to enhance the comparability of our ratings on project developers with ratings in other sectors (see "Understanding Standard & Poor's Ratings Definitions," published June 3, 2009) and increase the transparency on how we assign ratings for companies in this group. The criteria constitute specific methodologies and assumptions under our "Principles Of Credit Ratings," published Feb. 16, 2011.

3. The criteria supersede "Rating Criteria For Project Developers," published Sept. 30, 2004.

Continue reading.

21-Mar-2016

S&P Analysts Address The Prospects For U.S. Health Care.

On March 10, 2016, Standard & Poor's Ratings Services held a webcast on the U.S. health care outlook for 2016 featuring senior analytical leaders of the health insurance, for-profit health care, and not-for-profit health care sub-sectors. Our outlook on these sectors is stable, although either individually or collectively, all areas of health care still face challenges. During the webcast, the audience submitted more questions than we were able to answer in an hour. Many of those questions were about big, cross-sector issues affecting U.S. health care since the enactment of the Affordable Care Act in 2010. The rise of bad debt at some hospitals, the new business models emerging in U.S. health care, the prospects for health insurance sold over ACA exchanges, and the impact of consolidation, were just some of the inquiries we received.

(A replay of the webcast can be found here.)

Here are the answers to these and other questions that were raised during that webcast about the future of U.S. health care.

Continue reading.

23-Mar-2016

[S&P's Public Finance Podcast (The City of Houston and the Commonwealth of Puerto Rico)]

In this week's Extra Credit, Associate Director Omar Tabani explains what's behind our recent rating action on the City of Houston and Senior Director Dave Hitchcock discusses the highlights of our recent report on Puerto Rico and its related credits.

Listen to the podcast.

Mar. 25, 2016

Lawmakers, Bankers Discuss How to Ease Tax Laws for P3s.

WASHINGTON – Municipal finance leaders and a bipartisan group of lawmakers met Wednesday on Capitol Hill to discuss how tax laws might be eased so that more public-private arrangements could be used to finance public infrastructure projects.

The event, hosted by the Securities Industry and Financial Markets Association, included policymakers and industry executives with expertise in P3s. Some of the discussion focused on whether there should be more kinds of public infrastructure projects that can be financed with tax-exempt private-activity bonds and P3 arrangements.

At the roundtable discussion, several executives from investment banks provided information about P3s to members of Congress. They included Chris Hamel, the managing director and head of municipal finance for RBC Capital Markets; Stephen Howard, the director and head of infrastructure project finance for Barclays Capital; Howard Marsh, the managing director of municipal securities for Citigroup; and Michael Decker, a managing director and co-head of municipal securities for SIFMA.

Following the roundtable discussion, which was closed to the press, Decker told The Bond Buyer the roundtable was a "constructive discussion" with input both from industry officials and members of Congress.

"There seems to be a lot of interest from members of Congress here, who asked a lot of questions like, 'What can Congress do to encourage this type of financing?'" he said.

Legislators who attended the discussion included Reps. Steve Stivers, R-Ohio; Terri Sewell, D-Ala.; and Randy Hultgren, R-Ill., all of whom serve on the House Financial Services Committee.

Hultgren said afterward that infrastructure financing is a subject that "needs to be discussed," adding that is a broader issue than just maintaining the tax-exempt status of bonds. He said the timing of the discussion does not mean there is imminent legislation, but it does follow the bipartisan Municipal Finance Caucus he launched earlier this month that would protect the tax-exempt status of municipal debt.

"There are so many times where it has worked well and a few times where it hasn't," Hultgren said. "We have to figure out what we can do to build on [the P3s that worked well and] to make sure bad decisions aren't made that would harm something that effective."

In an election year where leading presidential candidates have called infrastructure “crumbling” and “decimated,” Stivers cited the $3.98 billion plan to replace the 61-year-old Tappan Zee Bridge connecting Nyack and Tarrytown, N.Y., as an example of a successful P3 that saved $1.1 billion in construction costs and 18 months of construction time.

Stivers said, “The threat to municipal bonds and capping of the benefit of the tax exemption would make tax-free bonds partially taxable and therefore make infrastructure projects more expensive and harder to complete.”

“We just need to expand opportunities for public-private partnerships to be a viable means of financing along with the regular municipal financing that comes from state and local governments,” he said.

Decker said much of the discussion at the roundtable centered on incentivizing states to adopt Design-Build policies to a greater extent and to use private sources of capital for infrastructure projects. Design-Build policies allow a state or local government or an authority to enter into a contract with a private partner that takes on the responsibility for both the design and the construction of a project.

Though the tax code generally prohibits the use of tax-exempt bonds for certain projects when there is a more de minimis level of private financing, Decker said there are exceptions such as for airport projects, which can be financed with tax-exempt PABs.

For “social infrastructure” projects, including city halls, courthouses and public parks, tax-exempt financing cannot be used if there is more than a de minimis level of private participation in the project, a hurdle Decker needs to be addressed.

Under federal tax law, a project must be financed with private-activity bonds if more than 10% of it is used by a private party and more than 10% of the debt service is paid or secured by a private party. But PABs are not tax-exempt unless the projects they are financing fall into specific categories, one of which includes airports.

President Barack Obama has proposed eliminating barriers in the tax code to private use of tax-exempt bonds for public infrastructure projects.

“You can make a strong case that the tax code can be agnostic with regards to infrastructure projects when there is public access to the project and where there is local government oversight,” he said.

The roundtable was held the same day as the Flint Water Advisory Task Force released its final report on the water crisis facing Flint, Mich., which it called a “story of government failure, intransigence, unpreparedness, delay, inaction, and environmental injustice.”

Sewell, who represents both Birmingham and several rural communities in Alabama, said that many of the rural areas also face water and sewer issues. She said the U.S. Department of Agriculture helps with financing for these issues, calling them “the only game in town.”

“It’s not a capital problem. It’s a funding problem,” she said. “We need to figure out a better ways of trying to fund these infrastructure projects.”

Going forward Decker said he hoped discussions with legislators will continue, especially before a new administration enters the White House in 2017.

“Our focus is just raising awareness with the issues,” Decker said. “Like we did today, we just want to make sure policymakers in Washington understand the techniques being employed or can be employed for financing infrastructure in a broader array of investments and projects.”

The Bond Buyer

By Evan Fallor

March 23, 2016

Scalia, Alito Court Absences Shape Puerto Rico Debt-Relief Bid.

Two empty chairs at the U.S. Supreme Court could be full of significance as the remaining justices consider whether Puerto Rico can ease its fiscal crisis with a law that would let the island’s public utilities restructure more than $20 billion in debt.

The U.S. territory will make its case Tuesday to what probably will be a seven-member court, a rarity caused by the unexpected death of Justice Antonin Scalia in February and a financial conflict that may force Justice Samuel Alito to recuse himself.

The case, part of a multi-fronted battle over Puerto Rico’s financial future, directly affects more than $20 billion owed by the commonwealth’s utilities, including $9 billion owed by the Puerto Rico Electric Power Authority, known as Prepa. A decision upholding Puerto Rico’s restructuring measure may give the island leverage to reach deals with creditors over other parts of its $70 billion in debt.

The law “gives Puerto Rico more weapons to threaten creditors to get a better settlement than they would otherwise,” said Matt Fabian, a partner at Municipal Markets Analytics, a research firm based in Concord, Massachusetts.

Lawmakers in Congress have been negotiating for months over legislation to help Puerto Rico, though Republicans are reluctant to grant the kind of restructuring authority the U.S. Treasury Department and the island’s leaders want.

The high court case could affect a tentative agreement between Prepa and most of its creditors. A decision upholding the Puerto Rico law might give Prepa a chance to try to pay them less than the 85 cents on the dollar promised by the accord.

Tuesday’s case involves creditors that reached settlements over more than $2 billion in Prepa bonds, including BlueMountain Capital Management LLC and funds managed by Franklin Advisers Inc. and OppenheimerFunds Inc.

Under U.S. law, states can authorize federal bankruptcy filings by their municipalities, including public utilities, but Puerto Rico and the District of Columbia can’t. Puerto Rico sought to skirt that provision in 2014 by passing a measure known as the Recovery Act to let utilities restructure their debts under local law.

A U.S. appeals court ruled unanimously that federal bankruptcy law bars the Puerto Rico measure. The three-judge panel said Congress reserved for itself the power to decide how Puerto Rican debt should be restructured.

Alito didn’t participate when the agreed to hear Puerto Rico’s appeal in December. The justice’s most recent financial disclosure report indicates that either he or his wife own shares in a Franklin fund that holds Puerto Rican municipal bonds. Barring a last-minute sale of those holdings, Alito presumably won’t take part Tuesday either.

Seven-Justice Court

Scalia’s Feb. 13 death added a new dynamic by creating a seven-justice court for the case. Puerto Rico now needs to persuade only four justices, not five, and the court’s four Democratic appointees will outnumber their three Republican-selected colleagues.

Losing Scalia may deprive the bondholders of one of their most likely allies, said John Pottow, a bankruptcy law professor at the University of Michigan Law School. Scalia was a stickler for adhering to statutory text, even when it was ambiguous, rather than looking beyond the words to the broader purpose lawmakers might have had.

“If you were a strict textualist, I think you would find the arguments against Puerto Rico’s position more attractive,” Pottow said.

The high court case turns on the impact of a 1984 amendment to the federal bankruptcy law. The amendment for the first time explicitly said that Puerto Rico and the District of Columbia were to be considered states for bankruptcy purposes. An exception to the amendment said Puerto Rico and the district can’t authorize their utilities to file under Chapter 9 of the bankruptcy code, the federal provision for reorganizing municipalities.

The bondholders say a separate, longstanding provision also bars states and Puerto Rico from using their own laws to authorize non-consensual restructurings.

‘No Man’s Land’

Puerto Rico counters that Congress didn’t intend to leave the commonwealth in a “no man’s land” with its utilities unable to seek debt relief under either federal or local law.

The island’s financial problems are also an issue in Congress, where House Republicans are drafting a bill to help Puerto Rico with its debt problems.

The measure is expected to include a financial control oversight board that has powers to negotiate with the island’s creditors. It’s not expected to make the island eligible for federal bankruptcy protection, which Democrats and President Barack Obama have pushed. If enacted, the legislation could trump whatever the high court decides.

The Supreme Court case “is probably being overshadowed a bit by the potential for something coming out of Congress,” said Lyle Fitterer, head of tax-exempt debt at Wells Capital Management, which oversees $39 billion of municipal securities.

The cases are Puerto Rico v. Franklin California Tax-Free Trust, 15-233, and Acosta-Febo v. Franklin California Tax-Free Trust, 15-255.

Bloomberg Business

by Greg Stohr and Micheele Kaske

March 21, 2016 — 2:00 AM PDT

Puerto Rico Gets Mixed Reception at U.S. Supreme Court.

Puerto Rico got a mixed reception at the U.S. Supreme Court as the justices debated a local law that would let the island's debt-ridden public utilities restructure their obligations.

Puerto Rico is aiming to revive the law, which directly affects more than $20 billion in utility debt and would give the commonwealth leverage in handling the rest of the $70 billion it owes. A federal appeals court said a U.S. bankruptcy law bars Puerto Rico from setting up its own debt-restructuring system.

The hour-long hearing Tuesday in Washington made clear that at least some of the justices were still formulating their views, and the case ultimately may divide the court. Justice Sonia Sotomayor, whose parents moved to New York from Puerto Rico, emerged as the island's strongest supporter.

Justice Ruth Bader Ginsburg also hinted she might back the commonwealth. She voiced doubt that Congress would have left Puerto Rico's utilities unable to use either the federal bankruptcy system or a local restructuring law.

"Why would Congress put Puerto Rico in this never-never land?" Ginsburg asked.

Under federal law, states can authorize bankruptcy filings by their municipalities, including public utilities, but Puerto Rico and the District of Columbia can't. Puerto Rico sought to get around that provision in 2014 by passing a local law that offers an option similar to bankruptcy.

Appeals Court

A U.S. appeals court ruled in July that Congress had reserved for itself the power to decide how Puerto Rican debt should be restructured.

"Congress has for a long time micromanaged Puerto Rico's debt," Matthew McGill, the lawyer representing funds that hold Puerto Rican municipal bonds and are challenging the Recovery Act, told the justices.

McGill drew his strongest support from Chief Justice John Roberts. Two other justices, Elena Kagan and Stephen Breyer, asked questions of both sides, while Justices Anthony Kennedy and Clarence Thomas said nothing.

The Supreme Court is considering the case two justices short of its usual complement of nine. Justice Antonin Scalia died last month, and Justice Samuel Alito has a financial conflict.

'Nonsensical' Argument

Puerto Rico's lawyer, Christopher Landau, told the justices it was "nonsensical" to think Congress meant to leave the island without access to either federal or local restructuring law.

Roberts questioned that assertion, saying Congress has a different relationship with Puerto Rico than it has with the states.

"Why would it be irrational for Congress to say, 'All right, this is the system we're going to apply to all the states, but when it comes to Puerto Rico, if they want changes, we want them to come to us?'" Roberts asked.

That drew a sharp response from Sotomayor, who didn’t even give Landau a chance to answer Roberts’s question.

“Why not treat it like every other territory?” Sotomayor asked. “If you’re going to treat it differently, wouldn’t you expect them to say that?”

Sotomayor Alone

The case turns on the impact of a 1984 amendment to the federal bankruptcy code. The amendment said that Puerto Rico and the District of Columbia were to be considered states for bankruptcy purposes. An exception to the amendment said that, unlike states, Puerto Rico and D.C. can’t authorize their utilities to file for bankruptcy under federal law.

Puerto Rico says that amendment implicitly freed the island to pass its own restructuring law, known as the Recovery Act. The bondholders say the Recovery Act is barred under an older, separate provision that prohibits states and Puerto Rico from enacting local bankruptcy laws.

Early in the argument, Sotomayor looked as though she might be alone in backing Puerto Rico. Two other Democratic appointees, Breyer and Kagan, both suggested that they couldn’t square Puerto Rico’s contentions with the language of the U.S. bankruptcy code.

“I can’t say that an airplane means a horse,” Breyer said.

Evolving Kagan

Kagan questioned whether Congress would have made the “major change” of allowing Puerto Rico to enact a local restructuring law in such a “cryptic, odd way.”

Later, however, Kagan said her thinking had evolved as she better understood Puerto Rico’s argument about the statute’s language. She asked McGill why Landau’s interpretation of the statute isn’t “just as good, if not better, than yours.”

“I didn’t come in here thinking that, but now I kind of am thinking that,” Kagan said.

The dispute is part of a multi-front battle over Puerto Rico’s financial future. Lawmakers in Congress have been negotiating for months over legislation to help Puerto Rico, though Republicans are reluctant to grant the kind of restructuring authority the U.S. Treasury Department and the island’s leaders want.

Governor Alejandro Garcia Padilla has warned the island will default May 1 on a $422 million debt payment unless the commonwealth reaches an agreement with its creditors. Puerto Rico and its agencies face another $2 billion payment due July 1.

The high court case could affect a tentative agreement between Puerto Rico Electric Power Authority, known as Prepa, and most of its creditors. A decision upholding the Puerto Rico law might give Prepa a chance to try to pay them less than the 85 cents on the dollar promised by the accord.

The high court case involves creditors that reached settlements over more than $2 billion in Prepa bonds, including BlueMountain Capital Management LLC and funds managed by Franklin Advisers Inc. and OppenheimerFunds Inc.

The cases are Puerto Rico v. Franklin California Tax-Free Trust, 15-233, and Melba Acosta-Febo v. Franklin California Tax-Free Trust, 15-255.

Bloomberg Business

by Greg Stohr and Michelle Kaske

March 22, 2016 — 9:19 AM PDT Updated on March 22, 2016 — 11:47 AM PDT

New Jersey Issues Rare Debt as Yield Premiums Soar to Near Highs.

Sold, at bargain prices: bonds from New Jersey, where the transportation fund is going broke, the pension system's shortfall is growing and the economy has been slow to recover from the recession.

The $131 million deal Wednesday was the state's first sale of general-obligation debt since 2014. The securities, with stronger credit ratings than those New Jersey typically sells, were priced with a top yield of 2.36 percent for those due in 7 years, some 0.9 percentage point more than benchmark debt, after the size of the offering was cut back by about $10 million. The state also borrowed $98 million through the building authority at yields as high as 4.1 percent on securities that mature in 2030, almost two percentage points over top-rated debt.

"There are not too many situations out there besides Illinois that investors are getting paid right now for those risks and that potentially bumpy ride," said Paul Brennan, a senior vice president in Chicago at Nuveen Asset Management, which oversees about $100 billion of municipal bonds.

New Jersey's 10-year bonds yield 2.82 percent, the highest after Illinois among the 20 states tracked by Bloomberg. That's almost a full percentage point more than top-rated tax-exempt debt, near the highest since the data begin in 2013. That premium, a measure of the perceived risk, is more than three times what investors demand from California, Michigan and Massachusetts.

New Jersey's mounting tab from its employee retirement plans are squeezing its finances because years of failing to set aside enough to cover promised benefits have caused the annually required contributions to soar.

The state's strains don't end there. Republican Governor Chris Christie and the Democratic-controlled legislature have yet to replenish a fund that finances transportation projects and is set to run out of money in July. A lackluster recovery from the recession has also stymied the state: It wasn't until late last year that private-sector payrolls climbed back above their 2008 peak, a benchmark the U.S. reached in early 2014.

"There is a lot of uncertainty," said Rob Amodeo, head of municipals in New York for Western Asset Management Co., which holds $25 billion of the securities.

The state is able to benefit from interest rates that are hovering near a five-decade low, even if its yields have held above other states. Proceeds from the general-obligation sale, the first since a $525 million deal in December 2014, refinanced higher-cost securities.

Buyers gravitated toward the bonds sold by the building authority, which had higher yields and longer maturities than the general obligations, said Joseph Perone, a spokesman for the state's Treasury Department. He said that Citigroup Inc., the lead underwriter on the offering, will "sell the remainder of the GO bonds in the market in due course."

"We were pleased with the outcome," he said in an e-mail.

The state primarily borrows through appropriation-backed bonds, with most of its debt service relying on funds that are allocated by the legislature. Those securities are rated one step lower than the state's $2.4 billion of general obligations, which are backed by its full faith and credit and don't depend on lawmakers' approval.

Falling Behind

While Christie has put aside more for pensions than his predecessors, the retirement system is about 48.6 percent funded, the lowest ever, according to preliminary offering documents for Wednesday's sale. For the year beginning in July, his administration has proposed making a $1.9 billion payment, about 40 percent of what actuaries say is required.

Senate President Steve Sweeney, a Democrat, is pushing legislation that would ask voters to mandate that the state pay what it owes every year, a move Christie opposes because he says it would require a massive tax increase.

The three major credit-ratings firms have downgraded New Jersey a total of nine times since Christie took office in 2010, when the impact of the recession was roiling its finances. It has a lower rating from Moody's Investors Service and Standard & Poor's than any state but Illinois.

The state's grade "will continue to fall" absent any significant change, Moody's, which ranks it A2, five steps above junk, said in a report last week. On Tuesday, S&P lowered the outlook on New Jersey to negative from stable, a sign the rating could be cut.

Investors who bought the new deal should be prepared for volatility, said Amodeo, the money manager with Western Asset. It's likely that New Jersey's yield premiums will increase over the next few months, he said.

"If you believe the current status quo remains in place, you'd want to avoid it," he said, ahead of the sale's close. "If you have a long-term view that the situation would find a remedy, it's offering good value."

Bloomberg Business

by Romy Varghese

March 23, 2016 — 2:00 AM PDT Updated on March 23, 2016 — 1:56 PM PDT

[Sotomayor Helps Puerto Rico Argue Its Bankruptcy Case.]

Before Tuesday, I'd have said that Puerto Rico had no chance to win its legal fight to let its municipalities and utilities declare bankruptcy. That's how the island hopes to resolve its overwhelming debt problems, but the federal bankruptcy code says that it can't.

That's what the U.S. Court of Appeals for the First Circuit held last summer, unanimously. The statute seemed so clear that even Judge Juan Torruella, the appellate court's only Puerto Rican member, concurred in an outraged separate opinion criticizing the federal law.

Then Sonia Sotomayor stepped in. Oral arguments before the Supreme Court rarely change the outcome of a case, yet Tuesday's session may turn out to be the exception. In a fascinating and unusual argument, Justice Sotomayor, who is herself of Puerto Rican descent, spoke by my count an astonishing 45 times. Sotomayor left no doubt that she was speaking as an advocate.

The interpretation of the law she favored would make the system fairer to Puerto Rico, allowing the commonwealth to create its own emergency bankruptcy measures outside federal law. But it depends on a highly doubtful reading of the statute, one that stretches credulity when read into the text. Ideally, Congress will hear what happened at the oral argument and pass one of the reform proposals it's currently considering that would spare the court from having to decide the case.

First, Sotomayor walked Puerto Rico's attorney, Christopher Landau, through his own argument with a precision that exceeded his own. She answered other justices' hostile questions for him, better than he did. Then she dominated Matthew McGill, the lawyer for the creditors of Puerto Rico's electrical utility, who are fighting the bankruptcy bid. In the second half of the argument, the other justices mostly stood by and let her go at him.

Sotomayor's position, borrowed from Landau's creative brief, was that the federal bankruptcy law doesn't mean what the appeals court considered obvious. The law says that Puerto Rico is to be considered a state for purposes of the bankruptcy code, except that, unlike a state, it may not authorize its municipalities (and by extension, its utilities) to resolve debts under Chapter 9 of the code.

According to the interpretation favored by Sotomayor, this provision does indeed mean that Puerto Rico can't use federal bankruptcy law to let its electrical utility go into default. But at the same time, she clearly believes, the same law should be interpreted to allow Puerto Rico to create its own bankruptcy laws, under which it might be able to do just that.

The appeal of this interpretation is that it spares Puerto Rico the indignity of the First Circuit's interpretation. According to that court, Puerto Rico is prohibited from having its own bankruptcy laws, just as the 50 states are prohibited. But uniquely (along with Washington, D.C.), Puerto Rico can't enable municipalities or utilities to enter Chapter 9 bankruptcy.

The drawback of this reading is that by implication it gives Puerto Rico a power that no state has had for many decades – the power to create its own bankruptcy code. It seems extraordinarily unlikely that Congress really meant to give it that power, and no one has thought it did until now.

What was even more remarkable than Sotomayor's dominance of the argument was the effect it seemed to have on her liberal colleagues. Justice Elena Kagan did something that's rare in an oral argument: She announced that Landau (speaking under Sotomayor's tutelage) had clarified her view. "I think I get what you're saying now, which I didn't when I started," Kagan told Landau. Initially, Kagan had seemed skeptical that Puerto Rico's argument could be made to fit the statutory text. Now she was claiming to see the light.

Later Kagan made the point more explicit. "I came in here thinking your best argument is straight on the text," she told McGill. "But now I have a better understanding of Mr. Landau's interpretation of the text."

Justice Stephen Breyer, who had seemed skeptical of Landau's position, also appeared to change sides, or at least to be considering doing so.

The case, Puerto Rico v. Franklin California Tax-Free Trust, will be decided by seven justices, since the late Justice Antonin Scalia hasn't been replaced and Justice Samuel Alito is recused. That means Sotomayor would need four votes to win. Chief Justice John Roberts spoke briefly, expressing skepticism about Puerto Rico's position. Justice Clarence Thomas was silent. So was Justice Anthony Kennedy.

That leaves Justice Ruth Bader Ginsburg, who could conceivably provide a fourth liberal vote in favor of Puerto Rico. She spoke sparingly, but pointedly. When Landau first stood up, she asked him if Puerto Rico would be allowed to let its electrical utility default on its debt, or whether that would violate the provision of the Constitution that says states may not impair the obligation of contracts.

Technically, not all of the Constitution applies to Puerto Rico, and Landau declined to say that Puerto Rico would be barred from a default that abrogated the utility's contractual obligations in its debt contracts. In practice, however, there's little doubt that the contracts clause of the Constitution would indeed apply to Puerto Rico. Ginsburg knows that perfectly well.

That's important. She almost certainly asked her question to signal that allowing Puerto Rico to engage in some sort of emergency default wouldn't actually sink the creditors' real-world claims. This is as close as Ginsburg gets to hinting that she might be prepared to hold for the commonwealth.

The silent participant in this entire unusual argument is Congress, which is considering legislation that would give Puerto Rico some way to restructure its utilities' debts. The liberal justices are telling Congress that if it doesn't help Puerto Rico bail itself out, they may do it themselves.

I'm sure all four liberals hope that Congress was listening. A holding like the one Sotomayor was pushing would be good policy, but would push the envelope of statutory interpretation. Congress should resolve this issue soon, before June, so that a hard case doesn't make questionable law.

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

Bloomberg View

By Noah Feldman

MARCH 23, 2016 10:42 AM EST

Puerto Rico Bill Said to Have Investor Cram-Down Mechanism.

An emerging U.S. House Republican bill to address Puerto Rico's debt crisis would create a strong oversight board and a mechanism to force creditors to accept a restructuring deal, according to a congressional official familiar with the legislative efforts and a written summary.

The board's debt restructuring powers could include all creditors, but only after certain conditions are met, a congressional official said.

The partial draft also provides for the board to petition a judge for a court-supervised restructuring, which would amount to a cram-down mechanism to force resistant investors to accept a deal, according to a Republican-drafted legislative summary circulated Thursday on Capitol Hill and the congressional official.

The proposal would be an alternative to a process under Chapter 9 of the U.S. bankruptcy code, which Republicans have opposed.

As part of the plan, lawmakers are also considering safeguarding Puerto Rico from legal action by temporarily prohibiting creditor lawsuits.

The proposal, which is being developed by Republicans on the House Natural Resources Committee, remains fluid and details could still change, congressional aides said Thursday.

A legislative hearing on the proposal is planned for April 13, after the House returns from a recess.

Oversight Board

The oversight board included in the draft is modeled after the one imposed once on the District of Columbia, rather than on the one proposed by the U.S. Treasury Department to address Puerto Rico's financial troubles, the congressional official said.

The board would consist of five appointed members and would have the power to hire financial and management experts, according to the summary.

Forcing creditors into a restructuring if Puerto Rico fails to negotiate in good faith would be "an extreme stand," said Daniel Solender, who manages $18 billion of state and local debt, including commonwealth securities, as head of municipals at Lord Abbett & Co. in Jersey City, New Jersey.

"The outcome is definitely uncertain in that type of structure," Solender said. "It's concerning how everything will be decided and who would be deciding."

Prices on Puerto Rico securities were little changed Thursday. General-obligations with an 8 percent coupon and maturing July 2035 traded at an average price of 71.25 cents on the dollar, compared with 71.5 cents the day before, data compiled by Bloomberg show. The average yield was 11.8 percent.

Lawmakers may alter the legislation as it makes its way through the House and the Senate, potentially weakening any proposed forced restructuring, Daniel Hanson, an analyst at Height Securities, a Washington-based broker dealer, wrote in a report Thursday.

"We continue to believe that a federal control board created by such a law would have expansive authority over local Puerto Rico budgets but limited ability to coerce creditors into any kind of restructuring," Hanson said in his report. "Any bankruptcy authority passed through Congress will likely include only limited scope."

Democrats have been told by Republicans drafting the bill that a version of the measure is to be publicly posted on March 29, said a Democratic aide.

Tight Timing

But time is running tight. Governor Alejandro Garcia Padilla has warned the island may default May 1 on a $422 million debt payment unless the commonwealth reaches an agreement with its creditors. Puerto Rico and its agencies face another $2 billion payment due July 1.

"At least people are working toward a solution, so that's a positive thing," Solender said. "The structure is uncertain, but at least there's progress in that direction."

Republicans have in recent months been insisting that Puerto Rico needs a strong oversight board to manage the territory's fiscal problems. By modeling such a board after the one imposed on D.C. in the 1990s, Republicans are choosing a muscular body that could likely limit the powers of officials in Puerto Rico.

The federal government in 1995 established a five-member control board to oversee the District of Columbia's finances and imposed a chief financial officer to manage the district's agencies. The panel had the power to override decisions by the mayor and the D.C. city council.

That control board ended its oversight in 2001 after four straight years of balanced budgets and approved audits.

Several Hurdles

Under the plan being shaped now by House Republicans for Puerto Rico, such a board would seek audited financial statements at all levels of government, the legislative summary said. The board also would have the authority to enact budgets if the governor and lawmakers do not, and make cuts in departments and agencies, including public corporations.

Certain conditions would have to be met before the board could proceed with debt restructuring, including audited financial statements, a fiscal plan and budget, and mediation among the various debtors and creditors.

As a last resort, according to the memo, the oversight board would have the power to authorize a petition in U.S. District Court for restructuring.

Also mentioned in the summary is that an independent study would be conducted of Puerto Rico's pension obligations and their sustainability.

Bloomberg Business

by Kasia Klimasinska and Billy House

March 24, 2016 — 7:54 AM PDT Updated on March 24, 2016 — 3:04 PM PDT

The Troubled Housing Behind a Muni Bond.

After federal subsidies are cut off, investors see a big loss.

At the Warren and Tulane apartments in Memphis, inspections have found roach infestations, broken windows, buckling ceilings, and missing or damaged appliances. "It's appalling," says Jessica Johnson-Peterson, who's lived at the Warren apartments with her husband and children since 2009. "We have to jump through extreme hoops to even get anyone's attention."

Such conditions led the U.S. Department of Housing and Urban Development in February to cut off rent subsidies for more than 1,000 residents. Those federal dollars were to be used to repay $12 million of bonds sold by the apartments' owner, Global Ministries Foundation. Without that money, the bonds went into technical default, pushing their price to as little as 21¢ per dollar of their face value.

The GMF debts were municipal bonds, government-sponsored debt that offers investors income free from taxes. Munis may call to mind investments in toll bridges and sewers, but they also include bonds like GMF's issued through "conduits"—local agencies with few, if any, employees that exist only to sell tax-exempt debt for a fee. With little responsibility for the projects they finance—sometimes in different states—the authorities have raised money for privately run nursing homes, charter schools, and even amusement parks.

"Conduits have been a perennial problem in the market," says Christopher Taylor, the former executive director of the Municipal Securities Rulemaking Board, the industry's regulator. About 60 percent of muni bonds that default are issued by such conduits, according to Matt Fabian, a partner at Municipal Market Analytics.

"Our management team, in addition to outside contractors we engaged, worked hard under very stressful conditions to mitigate physical deficiencies on the sites."—Richard Hamlet, Global Ministries Foundation

The market for conduit bonds is one of Wall Street's most opaque niches. Seven days after GMF issued a letter to the bond trustee about the default, some bonds were sold in lots of $25,000 and $50,000 for as much as 10 percent more than face value. Neither the buyers nor sellers are known. The trades suggest that small-time investors may not be getting important information when they buy bonds. In 2009 the muni rule-making board launched a website for reporting such information, but investors may not know the records are available.

GMF, which says on its website that it works "for the glory of God and the eternal welfare of mankind," owns 10,500 low-rent apartments in eight states. It financed its purchase of the Memphis apartments through the city's Health, Educational, and Housing Facility Board. The agency's head says that GMF had a good reputation with the investment community before the default.

Richard Hamlet, GMF's president, says his organization has invested more than $3 million in the Memphis apartments, which were suffering from crime and poor maintenance before GMF purchased them in 2011. "Our management team, in addition to outside contractors we engaged, worked hard under very stressful conditions to mitigate physical deficiencies on the sites," Hamlet says.

GMF is a nonprofit. According to its tax records, Hamlet was paid $535,000 in salary and benefits in 2014. He says that's in line with his industry peers.

Conditions deteriorated after the GMF acquisition, federal reports say. An April inspection of 30 buildings and 25 units found "life-threatening" breaches including exposed wires and blocked emergency exits. Although GMF hasn't missed payments on the bonds, it's likely to do so within two years unless it can sell the buildings, Standard & Poor's Financial Services said on Feb. 19. The end of HUD subsidies put the bonds in technical default. Hamlet says this "is the first bond default I have had in my career in this space."

Federal housing officials have begun planning to relocate residents of the Warren and Tulane apartments.

"I'm ecstatic," Johnson-Peterson says. "I feel like it's an opportunity to be able to provide better chances for my children and a better environment to raise my children."

The bottom line: Municipal bonds don't only fund government and big public works. Sometimes the borrowers are private groups with shaky projects.

Bloomberg Businessweek

by Martin Z Braun

March 24, 2016 — 9:17 AM PDT

Detroit Bondholders to Wait Nearly a Year for Annual Financials.

Detroit's record bankruptcy hasn't solved once financial problem that's plagued the city for at least a decade: Getting its annual financial report done on time.

Mayor Mike Duggan's administration will miss a March 31 deadline for releasing audited statements for the fiscal year that ended in June, the city said in a regulatory filing. The report is expected to be ready by May 31, the city said, because of holdups from the water and sewer department and library system.

Such delays are legion in the $3.7 trillion municipal market, especially when it comes to distressed borrowers at the greatest risk of defaulting. That's in part because the Securities and Exchange Commission has no direct power to crack down on governments that drag their feet in making routine disclosures, unless it finds evidence of fraud.

Municipal issuers "substantially lag" corporate borrowers when it comes to delivering timely financial reports, according to Richard Ciccarone, president of Merritt Research Services LLC who found that municipal audits typically don't come out until about six months after the year ends. That's three times longer than the deadline the SEC imposes on the largest corporations.

"Detroit isn't the only one, but because the city is trying to rebuild it's credibility in the market after going into bankruptcy, it's important for them to keep their word," said Ciccarone. "When they promise to do something, it's important for them to do that."

The SEC, which in a 2012 report said the current regulations leave investors without information they need to make decisions, has been trying to change that through tougher enforcement of the rules it imposes on underwriters. Before selling bonds, those firms have to determine that the governments plan to disclose annual reports and other material information that could affect the value of their bonds.

Detroit hasn't complied during the past five years "in all material respects with its obligations," according to its bond documents when it borrowed $245 million as it emerged from bankruptcy in 2014.

"Now that it has exited bankruptcy the city expects to be in a position to file its annual updates at least within nine months after its fiscal year end going forward," the city said in its bond documents.

That hasn't happened yet. John Naglick, Detroit's finance director, said in a statement that it's alerting investors because "officials know we cannot make the 270 day time frame."

Bloomberg Business

by Darrell Preston

March 24, 2016 — 12:25 PM PDT

Bloomberg Brief Weekly Video - 03/23

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Brian Chappatta from Bloomberg News about this week's municipal market news.

Watch the video.

Fitch: High Bar for Special Revenue Consideration.

Fitch Ratings-New York-21 March 2016: California School Districts' GO bonds meet the high bar Fitch has set to consider pledged funds secure in bankruptcy, according to a Fitch Ratings report. The report identifies a number of elements Fitch believes provide a sufficient level of comfort that special revenue status is unlikely to be challenged in a bankruptcy.

"Fitch sets a high bar for assuming bonds would survive a bankruptcy under the last of five categories of special revenues, which is ambiguous and difficult to apply in practice. The case for special revenue status must be very clear," said Amy Laskey, Managing Director, Fitch Ratings.

"A distressed municipality will seek to exploit any reasonable doubt in a bankruptcy proceeding, so a fair or plausible argument is not sufficient to deter challenges and support rating divergence from the general credit. The more complex the proceedings and the higher the stakes for other claimants including public employee pension funds, the more likely it is that the status as special revenue bonds will be disputed."

Fitch has assigned 'AAA' ULTGO ratings to bonds issued by several California school districts whose issuer default ratings are notably lower. The higher ULTGO ratings reflect Fitch's opinion that the property tax revenues pledged to bond repayment would be considered pledged special revenues under 902(2)(E) of the bankruptcy code.

In contrast, the legal framework supporting the property tax pledge of Chicago Board of Education's ULTGO bonds create more concern that a legal challenge might be successful. Fitch's high bar was not met in this case and Fitch could not rate the bonds higher than the 'B+'/Negative Outlook.

Fitch will host a teleconference to discuss the special report on Wednesday, March 23rd at 2:00 PM EDT. To receive dial-in details for the call, please resister here: http://dpregister.com/10082911

For more information, a special report titled "Special Revenue Analysis: California School Districts and Beyond" is available on the Fitch Ratings web site at www.fitchratings.com.

California's State Pension Obligations Are Larger Than Previously Estimated.

New accounting rules for determining debt are aimed at increasing transparency

SACRAMENTO, Calif.—California has nearly $64 billion in pension debt that eventually must be paid to current and former teachers and state workers—a figure more than $20 billion higher than previous estimates, state Controller Betty Yee said Friday.

Ms. Yee disclosed the higher pension liability for the first time in California's comprehensive annual financial report, using a new calculation aimed at more accurately reporting the government's financial responsibilities. It reflects the state's unfunded retirement debt as of June 30, 2015.

The "net pension liability" reflects the state's unfunded retirement costs as of June 30, 2015. California had previously reported a different figure, the "unfunded actuarial liability," which was $40 billion a year earlier.

Under requirements of the Governmental Accounting Standards Board, state and local governments nationwide are using the new calculation to report their unfunded pension debts. They also must now be included on the balance sheet alongside other government debts, such as bonds, claims, judgments and long-term leases.

As a result, California ended the year $175 billion in debt, up from $119 billion the prior year.

The new rules will increase transparency, Ms. Yee said in a statement, "which will in turn focus local and state governments on ensuring they adequately plan for these important long-term obligations."

Ms. Yee said she expects other employment-related benefits, such as retiree health-care costs, to be reported in future years, further driving up the deficit on California's balance sheet.

The new reporting requirements allow state lawmakers and local government leaders to make more informed decisions about pension benefits, said Sen. John Moorlach (R., Costa Mesa), a certified public accountant who has been highlighting pension costs as they are reported by local governments.

"I'm embarrassed that my profession failed to make this requirement 30 years ago," Mr. Moorlach said. "Now most states are in pension-plan debt up to their eyeballs, and the problem is ubiquitous."

The financial report said California collected $117 billion in revenue during the last fiscal year. That was up 12% from the previous year, mostly from a sharp uptick in personal-income tax collections. The general fund had enough cash at the end of the fiscal year to pay for 20 days of operations, up from 16 a year earlier, the report said.

Associated Press
March 18, 2016 9:35 p.m. ET

Follow the Money at LAX.

Travel buffs have a new hobby: scrutinizing how Los Angeles International Airport spends $1 billion a year on operations.

The L.A. city controller last week put the finances of Los Angeles World Airports online. You can look up each invoice paid by the agency that runs LAX. You can see how the money is spent, check salaries of airport employees, chart car rentals by month and see maps of noise impact and rankings of airports world-wide showing LAX lagging. It opens up the inner workings of a major airport as never before.

“I think everybody would be surprised at how much it costs to operate a major airport, just what a massive operation is involved,’’ says Los Angeles City Controller Ron Galperin. “These are very complicated operations.”

The disclosure is part of the controller’s push for more transparency and accountability in city spending. Mr. Galperin has put the checkbooks of different departments online, making every dollar spent downloadable and searchable, and it’s been popular. The city controller’s website got very little traffic until the spending information started going up in late 2013; since then it has tallied a total seven million page views.

“You name it, the city buys it,” Mr. Galperin says.

The Los Angeles airport collects an average $17 per passenger through concessions and fees: When you rent a car, the airport collects revenue from rental-car companies plus a $10 fee to pay for facilities. The airport gets a cut of duty-free sales and every bottle of water sold. When you take a taxi, there’s a $4 fee paid to the airport per drop-off and pickup. Uber and Lyft pay it, too, for use of the roadway and curb spaces. Airlines pay the airport rent for the space they use and landing fees on each flight, which ultimately come out of passengers’ pockets, too.

LAX is the largest airport in the country in terms of the number of passengers beginning or ending their trips there (Atlanta is biggest if passengers making connections are included). Costs at LAX are expected to rise as bills come due for a massive rebuilding program now under way.

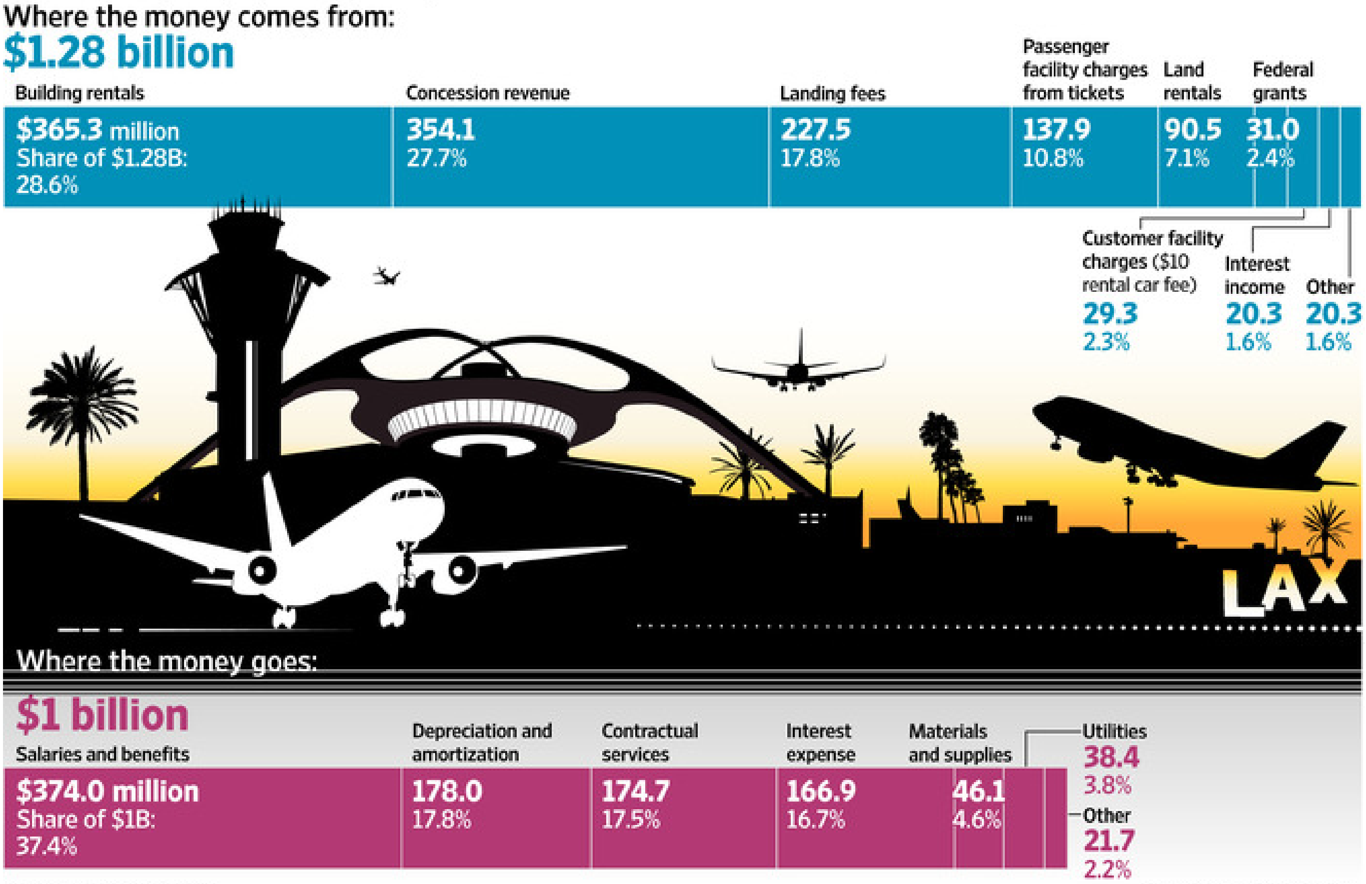
Some of the spending showed up Tuesday after bombings at the Brussels airport, when LAX beefed up terminal patrols by police officers armed with automatic weapons and bomb-sniffing dogs. Los Angeles officials said they had no specific threat concerning the airport but wanted to show a bigger law-enforcement presence. Last year, LAX spend about $120 million on security staffing costs, airport spokeswoman Nancy Castles said.

The biggest cost for LAX is employees. The airport spends $374 million a year on salaries and benefits, about 37% of all spending, and another $175 million on contractual services. Behind the scenes are maintenance workers, police and fire officers, airfield managers, lawyers, architects, accountants, PR teams, sales executives recruiting new airlines around the world and many others. (LAX and some other airports have their own police forces; others are patrolled by local municipal police. Federal Transportation Security Administration officers aren’t armed; they screen passengers and cargo boarding planes but don’t carry out law enforcement at airports.)

Airport spending world-wide has gone up as new terminals get built, old terminals get renovated and airports chase new business around the world, even offering to help airlines pay for launching new flights. Airports were once seen as low-cost loading docks for getting people on and off planes as cheaply as possible, with greasy hot dogs on rolling warmers available for the desperately hungry.

Easy Come, Easy Go

Fliers can look up every invoice at Los Angeles International Airport thanks to the L.A. city controller, Ron Galperin, who put the finances of the agency that runs the airport online. 'I think everybody would be surprised at how much it costs to operate a major airport,' Mr. Galperin says.



Source: Los Angeles City Controller

THE WALL STREET JOURNAL.

Now, though, airports are considered first-impression community gateways, showcases for art, high-quality food, amusement and local ambience. Airports increasingly see themselves pitched in global competition for air service.

But details of the spending at LAX show how running an airport is about much more than public art and incentives for foreign airlines. Los Angeles World Airports spent $3.9 million on Smarte Carte luggage trolleys in 2015, $314,425 for fingerprint and background checks on employees, $257,348 on toilet paper, $23,180 on foam ear plugs, $15,805 on retirement clocks, $11,296 on dog food for airport K-9 teams and $10,562 on badge retractors (those wire things that clip to your belt).

“The scale of the airport’s operation is often overlooked when considering the cost,’’ says Ms. Castles, the airport spokeswoman.

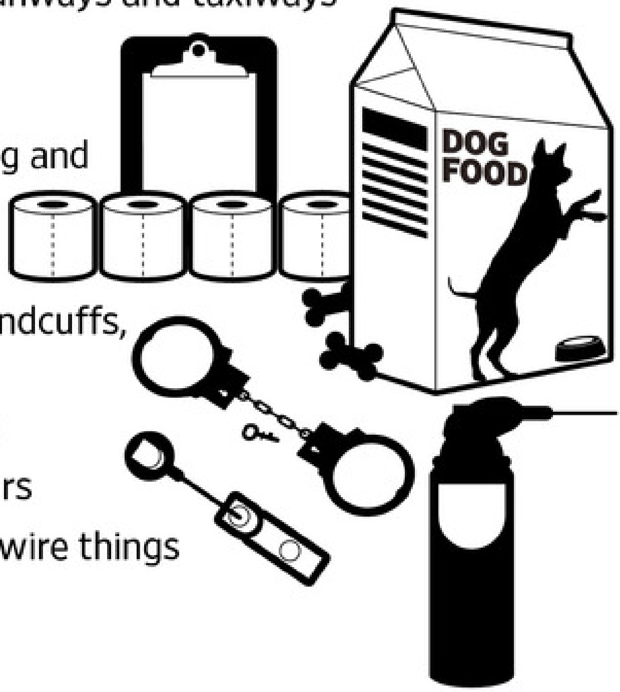
To keep things running smoothly at LAX, the airport agency bought $1,322 worth of WD-40 lubricant. The total tab at Home Depot was $417,811 for the year. The airport police department bought $271,719 worth of body armor, handcuffs, boots, pants and other supplies. Total AT&T bill in 2015: $3.4 million.

There were plenty of big-ticket items. LAX is spending hundreds of millions on construction, including $228 million worth of interior improvements and security upgrades at the Tom Bradley International Terminal last year. About $118 million was spent in 2015 renovating other terminals, sound-proofing and noise mitigation, and $32 million on escalators and elevators. The airport paid $41 million to the city of Inglewood, Calif., for Inglewood’s residential soundproofing and aircraft noise-reduction programs.

Fun Facts from the LAX Checkbook

Last year the airport spent:

- **$228.3 million:** Interior improvements and security upgrades at Tom Bradley International Terminal
- **$118.2 million:** Renovations in other terminals
- **$55.0 million:** Residential acquisition, sound-proofing and noise mitigation
- **$31.7 million:** Replacement and improvements of elevators and escalators
- **$21.1 million:** Construction of runways and taxiways
- **$3.9 million:** Luggage carts
- **$314,425:** Fingerprint processing and background checks
- **$257,348:** Toilet paper
- **$217,719:** Police body armor, handcuffs, boots and pants
- **$23,180:** Foam ear plugs
- **$11,296:** Dog food for K-9 officers
- **$10,562:** Badge retractors (the wire things that clip to your pants).
- **$1,322:** WD-40 lubricant



Source: Source: Los Angeles City Controller

THE WALL STREET JOURNAL.

More money is coming in as passenger traffic grows. Concession revenue, which includes parking and rental cars, is a big part of any airport’s budget, bigger than landing fees. LAX has undergone a concessions makeover in its terminals with local restaurants spicing up the offerings. It’s resulted in increases in concession revenue for the airport. Though some stores had to be shut down because of the construction, in-terminal concession revenue jumped 8% last year at LAX. Duty-free revenue was up 15%.

The $8.5 billion modernization program largely will be paid for by the $4.50 “passenger facility charge’’ added to each airline ticket. LAX, which has lagged in airport quality surveys around the world, is rebuilding the Bradley terminal now, expanding it with additional gates and concession areas, and will eventually build a central rental car facility, a train to the airport and a people mover inside the airport. There will also be big improvements to the central terminal area. A VIP terminal, paid for by a private company, is under development.

“Frankly the city of Los Angeles needs to see improvements in the passenger experience at LAX,” said Mr. Galperin. “There have been billions that have been spent and more billions that are going to be spent and we want to make sure that all of that is completely transparent.”

But any goodwill built with new facilities could get wiped out by traffic and parking problems, he says. A consultant’s report on LAX commissioned by the city council criticized the airport for a lack of traffic engineering and planning. Traffic already routinely approaches gridlock in the central terminal horseshoe, where picking up an arriving passenger can be an hour-long crawl with honking horns and police whistles blaring.

“Traffic will get worse before it gets better,” Mr. Galperin warns.

The airport has already implemented some recommendations from the consultant’s report and will deliver a complete formal response to its board in the weeks ahead, Ms. Castles says.

THE WALL STREET JOURNAL

By SCOTT MCCARTNEY

March 23, 2016 2:29 p.m. ET

Write to Scott McCartney at middleseat@wsj.com

Puerto Rico Fights for Chapter 9 Bankruptcy in Supreme Court.

WASHINGTON — Debt-laden Puerto Rico went toe to toe with its creditors at the Supreme Court on Tuesday, arguing that it has been wrongly locked out of the bankruptcy courts, the only place it can reasonably expect to restructure its crushing debt.

“We’ve talked a lot about legal principles,” said the lawyer Christopher Landau, summing up his arguments on behalf of the commonwealth. “But this is also a flesh-and-blood situation in Puerto Rico.”

Hanging on the outcome, he said, were questions like “whether people in a village in Puerto Rico will be able to get clean water.”

Puerto Rico is struggling with $72 billion in debt and has been saying for more than a year that it needs to restructure at least some of it under Chapter 9, the part of the bankruptcy code for insolvent local governments. But Puerto Rico cannot do so, because Chapter 9 specifically excludes it, although it is unclear why.

In 2014, the island tried to get around that exclusion by enacting its own version of a bankruptcy law, designed for its big public utilities, which account for about $26 billion of the total debt. But that attempt ran afoul of yet another provision of the code, which says that only Congress can enact bankruptcy laws.

“Congress has shut the door,” said Mr. Landau. “There is no door for Puerto Rico, and no key for

Puerto Rico.”

Many of the justices’ questions, and the parties’ responses, involved possible rationales for tying Puerto Rico’s hands, as Congress went out of its way to do in 1984. Its amendment that year also barred the District of Columbia, without leaving any legislative history or indication of intent.

“Why would Congress preclude Puerto Rico from Chapter 9?” asked Chief Justice John G. Roberts Jr.

“Why would Congress put Puerto Rico in this never-never land?” asked Justice Ruth Bader Ginsburg. “Why in the world? What explains Congress wanting to put Puerto Rico in this anomalous position of not being able to restructure its debt?”

“It’s the question that everyone asks when they pick up this case,” said Mr. Landau.

He and the lawyer representing Puerto Rico’s creditors, Matthew D. McGill, agreed that no one knew for sure, but both offered theories.

Mr. McGill said the 1984 amendment was not all that mysterious if you considered that Congress had a long history of micromanaging Puerto Rico’s indebtedness. He cited a 1917 federal law that specifically limited the amount of debt that Puerto Rico could take on, which remained in force until Puerto Rico ratified its own constitution in 1952. Even then, he said, Congress agreed to lift its own debt restriction only because Puerto Rico had included a similar restriction in its new constitution.

He also said that Congress had tacitly encouraged the widespread purchasing of Puerto Rican debt, by permitting Puerto Rico to market its bonds as triple-tax-exempt in all American states and cities. As a result, Puerto Rican debt is exceptionally widely held across the United States mainland, and Congress may have wanted to protect investors by making it hard for Puerto Rico to renege.

Plan to Rescue Puerto Rico Advances, Led by House RepublicansMARCH 25, 2016
“The third reason is that by 1984, Puerto Rico and D.C. were the two most indebted territories, by a lot,” he said. Under those circumstances, Congress was unlikely to have wanted to “allow the District of Columbia and Puerto Rico to write their own municipal bankruptcy laws, that may or may not treat their nationwide creditors fairly.”

Mr. Landau offered an entirely different theory as to why Congress had enacted the laws at issue. He said the legal provisions were being misread, and that Congress had not really intended to shut Puerto Rico out of bankruptcy.

While lawyers, judges and policy makers have grappled with these issues, Puerto Rico’s finances have gone from bad to worse. The island has already defaulted on about $221 million of debt, prompting lawsuits by some of the affected creditors. And bigger, far more contentious defaults appear imminent.

On May 1 the island’s all-important Government Development Bank must make debt payments of $422 million, which it does not seem to have. Two months later, about $2 billion is due from the central government and a number of big public enterprises: the electric power authority, the water and sewer authority and the highway authority, among others. Puerto Rico’s constitution effectively guarantees at least some of those payments, but the money to make them appears to have dried up.

Gov. Alejandro García Padilla has said that he will not make debt payments if it means depriving the Puerto Rican people of essential services. But skipping the big payments due in May and July would probably mean many more creditor lawsuits.

And a default by the Government Development Bank, which oversees the island's finances, could set off a far-reaching chain reaction. The bank has guaranteed the debts of numerous other agencies and private companies, and insured hundreds of personal mortgages. Those guarantees and insurance would presumably lose value in a default, hurting the balance sheets of any number of institutions.

Analysts have warned that it could take years to sort out the resulting mess, and in the meantime, Puerto Rico would be a pariah, less and less able to protect the safety and well-being of its more than three million residents.

When it first enacted its own version of bankruptcy in 2014, Puerto Rico had hoped to restructure only a few large government enterprises.

But two big mutual fund companies, Franklin Advisers and OppenheimerFunds, filed suit on the same day the law was enacted. They argued that no matter how much Puerto Rico might want to take shelter from creditors, the bankruptcy code clearly said it could not file for Chapter 9 protection, nor could it enact its own bankruptcy law. The United States District Court in San Juan and the Court of Appeals for the First Circuit agreed.

As the case inched along through the courts, it became increasingly clear that restructuring the public enterprises alone would not be nearly enough to solve Puerto Rico's problems.

Last year, certain congressional committees began working with the Treasury Department on legislation that would give Puerto Rico a legal framework for restructuring all of its debts under the Territorial Clause of the United States Constitution. That approach would help Puerto Rico cope without running into the special exclusion that has been keeping the island out of Chapter 9.

"Isn't there also legislation to put Puerto Rico back in Chapter 9?" Justice Ginsburg asked on Tuesday.

"Yes there is," said Mr. McGill. "Congress is considering a range of options for Puerto Rico, including Chapter 9, just as Congress considered a range of options for the District of Columbia during its own financial crisis in the 1990s, which resulted in a financial control board rather than Chapter 9."

A House bill is expected to be introduced by the end of March, in keeping with instructions issued by the speaker, Paul D. Ryan. A Senate bill is likely to follow. They are expected to provide some framework for restructuring other than Chapter 9. Congressional action is likely to come well before any court ruling.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

MARCH 22, 2016

[Illinois Supreme Court Strikes Down Chicago Pensions Plan.]

SPRINGFIELD, Ill. — The Illinois Supreme Court dealt another devastating blow Thursday to the state's impatient attempts to control ballooning public pension debt, striking down a law that would have cut into an $8 billion hole in two of Chicago’s employee retirement accounts and leaving officials searching for new options to shore up an already wobbly program.

The city had hoped that by pointing to the steep increase in taxpayer-fueled contributions the law required it would be able to sidestep a widely expected ruling that the plan violated the Illinois Constitution’s protection against reducing pension benefits.

But the court’s unanimous finding in favor of pension participants who pointed to reduced future benefits and higher contributions sends the city back to the bargaining table.

Republican Gov. Bruce Rauner used the ruling the tout a proposal by Democratic Senate President John Cullerton that would offer workers a choice of future cost-of-living increases based on current salary, or lowered increases tied to future pay raises. The idea is, benefits already collected don’t go away.

“We’ve got to stop changing and taking away peoples accrued pension benefits,” Rauner said at a stop in Paxton, according to audio released by his office. “Let’s propose changes for future work with ‘consideration’ so teachers or police officers or public places can choose different pensions for the future.”

An expert on Illinois finances said it’s time to amend the Illinois Constitution to make the pension protection language clear. Lawmakers vowed to keep trying.

To stave off insolvency by 2029, the law forced the city to significantly ramp up its annual contributions, but also cut benefits and required larger contributions from about 61,000 current and retired librarians, nurses, non-teaching school employees laborers and more.

Critics targeted the law from the start, in part because it addressed only two funds — civil servants and laborers. When including police and fire pension programs, the city’s total liability was $20 billion — not counting a $9.6 billion shortfall in the Chicago Public Schools teachers’ pension account. The City Council approved a $543 million property-tax increase last fall — to deal with shortages in police and fire funds.

The order came less than a year after the high court used the same reasoning to shoot down a separate pension bailout: the $111 billion deficit in state-employee retirement accounts.

And other cities are not far behind, facing similar shortfalls.

Laurence Msall, president of the Civic Federation, a Chicago-based tax policy and research group, suggested the iron-clad constitutional language threatens any proposal. He suggests a constitutional amendment that loosens its restrictions.

“We’re not advocating for any specific plan,” Msall said. “We’re supporting the need for clarity in the constitution so those ideas can be legislated.”

Chicago Mayor Rahm Emanuel, who inherited the crisis, disagreed with the ruling but pledged to re-convene negotiations on a new framework.

“My administration will continue to work with our labor partners on a shared path forward,” the Democrat said in a statement.

The four unions representing the plaintiffs were more sanguine.

“This ruling makes clear again that the politicians who ran up the debt cannot run out on the bill or dump the burden on public-service workers and retirees instead,” the unions said in a joint statement.

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The case is Jones v. Municipal Employees’ Annuity and Benefit Fund of Chicago

By THE ASSOCIATED PRESS

MARCH 24, 2016, 6:28 P.M. E.D.T.

Illinois High Court Delivers Defeat to Union on Back-Pay Dispute.

CHICAGO — The Illinois Supreme Court reversed two lower court rulings on Thursday and held that unionized state workers whose 2011 raises were withheld during a state budget crisis are not entitled to back pay unless the state legislature appropriates the money.

Roughly 24,000 employees in five state agencies aimed to collect $62 million in unpaid wage increases promised in July 2011 as part of a modified four-year contract that the American Federation of State, County and Municipal Employees (AFSCME) negotiated with the state.

Then-Governor Pat Quinn had budgeted for the increases but was unable to deliver them because the legislature failed to appropriate enough money. The union estimated the affected members, on average, are owed $2,500 apiece.

AFSCME later won an arbitration ruling ordering immediate payment of the raises despite no specific appropriation from the Illinois General Assembly. A state circuit court and appellate court upheld the decision.

But in Thursday’s ruling, backed by six of seven justices, the state’s high court overturned the decisions and held that Illinois’ constitution requires a legislative sign-off on all spending matters, including union pay raises negotiated with the executive branch.

Justice Mary Jane Theis, writing for the court’s majority, justified the stance by noting past court precedent that “when labor representatives bargain with executive agencies, they do so with the knowledge that any agreement reached will be affected by the General Assembly’s appropriation power.”

AFSCME was disappointed with the ruling.

“The court’s decision today raises the troubling prospect that government could benefit from a contractual agreement – in this case, the public services provided by many thousands of men and women – but refuse to fulfill its own obligations under that agreement if lawmakers and the governor do not enact a bill to fund them,” AFSCME Council 31 Executive Director Roberta Lynch said.

By REUTERS

MARCH 24, 2016, 1:30 P.M. E.D.T.

(Editing by Jeffrey Benkoe)

Illinois Supreme Court Deals Another Blow to Rahm Emanuel.

CHICAGO — The Illinois Supreme Court on Thursday dealt another setback to Mayor Rahm Emanuel, ruling that a 2014 law that required Chicago city workers to pay more toward their retirements while also scaling back their future benefits was unconstitutional.

The court said the plan was a violation of the rights of employees, who are protected by the Illinois Constitution under a clause that states pension benefits “shall not be diminished or impaired.”

“The pension protection clause does not guarantee any particular method of funding, but, rather, guarantees the right to be paid,” the ruling said.

The decision is likely to make it more difficult for city leaders to resolve a developing financial crisis exacerbated by their obligation to pay into pension funds, which have been underfunded for years and are under increasing pressure as more workers retire and then live longer.

It comes amid other financial pressures — the leadership of the Chicago Teachers Union voted on Wednesday to approve a one-day walkout on April 1 in protest of budget cuts and forced furlough days — and at a time when the state is in its second year without a budget because its Democratic legislators and Republican governor cannot agree.

Other states and localities are also facing the need to solve underfunded pensions, after officials for years shortchanged the funds into which they were obligated to pay.

Mr. Emanuel had negotiated with unions for city employees and laborers to shore up two of the city’s four pension funds. According to the agreement, the city would increase its annual contributions to the funds, while workers would increase their retirement contributions by 2.5 percentage points over five years.

But not all union members were in favor of the agreement, and a group filed a challenge in court. Judge Rita Novak of Cook County ruled last summer that the 2014 law overhauling the two pension funds was unconstitutional. The decision on Thursday denied the city’s appeal.

In a statement, Mr. Emanuel said the city would continue to work with labor unions “on a shared path forward that preserves and protects the municipal and laborers’ pension funds, while continuing to be fair to Chicago taxpayers and ensuring the city’s long-term financial health.”

“Though disappointing, this ruling does not change my commitment to ensuring employees and retirees have a secure retirement without placing the full burden on Chicago taxpayers,” Mr. Emanuel said.

The unions and city employees who filed the lawsuit said they were pleased with the result, which “strengthens the promise of dignity in retirement.”

“Like last year’s decision that prevented pension cuts to teachers, state employees and university employees in state pension systems, this ruling makes clear again that the politicians who ran up the debt cannot run out on the bill or dump the burden on public-service workers and retirees instead,” the unions said in a statement.

The decision in the unions’ favor could actually help Chicago’s finances in the short term: By throwing out the law, the Illinois Supreme Court also removed the requirement that the city pay more into the pension funds.

But in the long term, Mr. Emanuel or his eventual successor will have to look for revenue elsewhere, such as with another property tax increase for city residents. The City Council passed a $589 million increase in property taxes last year to fund police and firefighter pensions.

The Chicago Teachers Union went on strike for more than a week in 2012 and eventually won concessions from the city over pay and teacher evaluations. Union leaders claim it is now inadequate. “The labor conditions have gotten to the point where they are not bearable,” Karen Lewis, the union president who has previously clashed with Mr. Emanuel, said Wednesday.

THE NEW YORK TIMES

By JULIE BOSMAN

MARCH 24, 2016

GASB Publishes New Implementation Guidance to Assist Stakeholders With Recent Pronouncements.

Norwalk, CT, March 24, 2016—The Governmental Accounting Standards Board (GASB) today issued implementation guidance containing questions and answers intended to clarify, explain, or elaborate on recent GASB Statements.

Implementation Guide No. 2016-1, Implementation Guidance Update–2016, primarily addresses questions that have been raised relative to the Board’s recently issued standards on fair value and tax abatement disclosures. The Guide also addresses a wide array of practice issues on other topics that have been brought to the GASB’s attention and reinstates certain previously superseded questions and answers that have been updated for the effects of newly issued standards on pensions and other postemployment benefits.

The requirements of Implementation Guide 2016-1 are effective for reporting periods beginning after June 15, 2016.

House Introduces Public Employee Pension Transparency Act Bill.

On March 22, Devin Nunes (CA-22) introduced the Public Employee Pension Transparency Act (PEPTA), HR 4822. This legislation is identical to previously proposed and ultimately unsuccessful versions of PEPTA introduced in the last two sessions of Congress. The act would require sponsors of state and local defined benefit plans to report plan liabilities to the Secretary of the Treasury annually in order to retain their federal tax-exempt bond status. It would also require supplementary reports restating these liabilities, using a so-called “risk-free” assumed rate of return. The data would then be entered into a federal database that would be accessible to the public. Finally, the bill makes it explicitly clear that public pension obligations are the responsibility of state and local governments and that the federal government will not provide a bailout. GFOA opposes this measure and any imposition of federally mandated disclosure and reporting on state and local pension plans.

This proposed expansion of the existing reporting and disclosure requirements would add significant reporting burden to state and local plans, possibly doubling the effort and cost of the current reporting requirements. A small number of well-known jurisdictions have severe pension funding problems, but transparent data resources such as the Public Plan Database ensure that these jurisdictions' shortfalls are well-known and understood under the current reporting and disclosure requirements. In addition, PEPTA requires the creation of a new federal bureaucracy that would gather, process, and verify the information for the nation's 2,550 state and local pension plans.

Adding another calculation to public pension plans' disclosure efforts is not only burdensome but misleading. Significant additional and irrelevant reporting requirements will not correct funding issues. Adding a new number to the reporting and disclosure efforts of the Governmental Accounting Standards Board, Actuarial Standards Board, and credit ratings agencies could also impede appropriate funding decisions by causing policymakers to misunderstand the level of contributions required.

GFOA, along with other Public Pension Network members representing both state and local governments and retirement systems, will continue to educate members of Congress about the true fiscal condition of public pension systems, along with considering the extent to which proposed initiatives support flexibility in providing retirement security to public sector employees and opposing congressional proposals to undermine state and local government authority to effectively govern and finance their pension plans. Please stay tuned for a resource page on GFOA's federal relations page with materials and information you can use in reaching out to your elected officials.

GFOA

Thursday, March 24, 2016

New Municipal Bond Activity Up 25% vs. January Totals.

CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2016. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests a resurgence in issuance of new corporate and municipal debt offerings over the next several weeks.

Read the report.

- The Bond Lawyer – Winter 2016
- NABL: SEC Charges Municipal Advisor for Failing to Disclose Conflict.SEC: Don't Argue About Materiality After MCDC Submission.
- SEC Sues Muni Adviser for Undisclosed Fees Under New Rules.
- Bond Lawyers Blast Proposed Political Subdivision Rules.
- MSRB Webinar on Amended Gifts Rule for Municipal Advisors.
- Buyers Sing Blues After Memphis Bond Default Goes Unrecognized.
- And finally, think you're having a bad day? For a little perspective, please open your hymnals to *Estate of Collis ex rel. Collis v. Hazel Green Rescue Squad, Inc.*, which brings us the heartwarming tale of Clarence Collis and a genuinely awful day. Sure, things got off to a rocky start when

Clarence suffered a medical emergency and summoned an ambulance, but the day ended up in the figurative ditch when the ambulance promptly overturned, launching the late Mr. Collis into a very real ditch where he unceremoniously expired. Job well done, Hazel Green Rescue Squad, job well done.

COUNTIES - ALABAMA

Mobile County v. Rich

Supreme Court of Alabama - March 11, 2016 - So.3d - 2016 WL 933065

District attorney filed complaint against county seeking declaratory relief and damages with regard to funding of employees of district attorney's office. County filed counterclaims. The Mobile Circuit Court ordered county to provide certain funding. Parties appealed.

The Supreme Court of Alabama held that:

- Local acts requiring county to provide certain funding to district attorney's office were constitutional;
- Local acts required county to fund all but $15,000 of salaries for office employees;
- "trial coordinators" who were actually performing work of "legal stenographers" were entitled to be paid as legal stenographers;
- County was not entitled to reimbursement of funds paid to office, even though office had received funding from outside sources;
- County was not required to provide funding for salaries of certain individuals working in investigation unit of office; and
- Failure of past district attorneys to insist that county adhere to statutorily-mandated funding requirements did not prevent self-executing modification of salary-funding-schedule amounts.

Local acts requiring county to provide certain funding to district attorney's office did not violate constitutional provision that no money shall be paid out of treasury except upon appropriations made by law. County's payments were not paid out of State treasury, and there was no argument that actual warrants received by employees of district attorney's office were not properly issued pursuant to lawful appropriations.

Local acts requiring county to provide certain funding to district attorney's office did not violate constitutional provision that legislature shall have no power to require any county to grant extra compensation to any public officer, employee, agent, or contract after service shall have been rendered; trial court did not grant "back pay" or amounts due for salary increases that should have occurred in the past, and attorneys were employees at will.

MUNICIPAL ORDINANCE - CALIFORNIA

Lamar Central Outdoor, LLC v. City of Los Angeles

Court of Appeal, Second District, Division 8, California - March 10, 2016 - Cal.Rptr.3d - 2016 WL 911406

Billboard company brought action against city for declaratory, injunctive, and writ relief challenging city ordinance restricting off-site outdoor advertisements. The Superior Court granted writ of mandate. City appealed.

The Court of Appeal held that:

- Ordinance generally banning off-site outdoor advertisements was not subject to strict scrutiny, and
- Ordinance generally banning off-site outdoor advertisements did not violate the free speech provision of the state constitution.

City ordinance generally banning off-site outdoor advertisements for activities or businesses conducted “elsewhere than on the premises where the sign is located” was not subject to strict scrutiny under the free speech provision of the state constitution, even though the ordinance contained exceptions allowing about 15,000 off-site outdoor advertisements, since the distinction between off-site and on-site advertisements was not content-based, and the ordinance was not directed at the content of any commercial sign or at any particular speaker.

City ordinance generally banning off-site outdoor advertisements for activities or businesses conducted “elsewhere than on the premises where the sign is located” did not violate the free speech provision of the state constitution, since the ordinance satisfied an intermediate scrutiny standard by reasonably fitting the objectives of traffic safety and esthetics, even though the ordinance contained exceptions allowing about 15,000 off-site outdoor advertisements, where the majority of those advertisements were on public facilities such as transit shelters and light poles.

PENSIONS - CALIFORNIA

Fry v. City of Los Angeles

Court of Appeal, Second District, Division 1, California - March 7, 2016 - Cal.Rptr.3d - 2016 WL 861241

City fire and police department employees and association for retired fire and police employees filed petition for writ of mandate to compel city to provide increases to health insurance premium subsidy available to police officers and firefighters without regard to city ordinances restricting such increases or to stay enforcement of those ordinances pursuant to contracts clause of constitution, alleging that ordinances impaired officers’ and firefighters’ vested contractual right to receive increases to subsidy and that officers and firefighters earned vested contractual right to system providing for such increases.

The Superior Court rejected assertion that employees had a vested right to increases in amount of subsidy, but issued writ of mandate authorizing board of city department of fire and police pension commissioners to exercise its discretion to set maximum subsidy contribution without regard to ordinances. City appealed.

The Court of Appeal held that:

- Ordinance that permitted board to exercise its discretion to set maximum subsidy contribution did not create vested contractual right to increases in subsidy, and
- Ordinance neither restricted city council’s authority to set amount of subsidy nor created vested right to board-determined subsidy.

City ordinance that permitted board of city department of fire and police pension commissioners to exercise its discretion to change level of health insurance premium subsidy available to police officers and firefighters did not give firefighters and officers vested contractual right to increases in subsidy protected by contract clause under state and federal constitutions; ordinance did not require that subsidy increase.

City ordinance that delegated authority from city council to board of city department of fire and police pension commissioners to change maximum level of health insurance premium subsidy available to police officers and firefighters and placed a cap on amount of any increase neither restricted council's authority to set amount of subsidy nor created vested right to board-determined subsidy protected under contracts clause of state and federal constitutions. City charter granted council authority to set amount of subsidy, ordinance did not state that delegation of authority to board was absolute or in perpetuity or that council was divesting itself of authority to set subsidy, and taken together, amendments to charter and ordinances pertaining to subsidy did not evince legislative intent to create vested right to board-determined subsidy amount, but rather evinced intent to reserve to council the final decision authority over subsidy.

EMINENT DOMAIN - MISSISSIPPI

High v. Kuhn

Supreme Court of Mississippi - March 17, 2016 - So.3d - 2016 WL 1062769

Landlocked property owner filed petition for establishment of private road over neighbor's property, for purposes of ingress and egress. The Special Court of Eminent Domain denied neighbor's motion to dismiss, and then granted petition. Neighbor appealed.

The Supreme Court of Mississippi held that:

- Statute authorizing establishment of private road over property of another, when necessary for ingress and egress, did not authorize landlocked property owner's condemnation of private road over neighbor's property that was within incorporated city;
- Neighbor did not waive claim that special court of eminent domain lacked authority to grant owner's petition for establishment of private road over neighbor's property that was located within incorporated city; and
- State constitutional provision authorizing condemnation of property to create rights of way for private roads where necessary for ingress and egress, "but such rights of way shall not be provided for in incorporated cities and towns" did not violate equal protection.

LIABILITY - MISSISSIPPI

Advanced Technology Bldg. Solutions, L.L.C. v. City of Jackson, Miss.

United States Court of Appeals, Fifth Circuit - March 14, 2016 - F.3d - 2016 WL 1009754

Limited liability company (LLC) and its owner brought § 1983 action against city, alleging that mayor, through certain city employees, retaliated against plaintiffs, in violation of First Amendment, by influencing Joint Redevelopment Authority (JRA) to withdraw support for project that LLC proposed after owner made public statements claiming corruption in city government.

After jury verdict in favor of plaintiffs and award of $600,000, the United States District Court granted city's motion for judgment as a matter of law. Plaintiffs appealed.

The Court of Appeals held that city council, rather than mayor, was final policymaker with respect to funding decisions, thus precluding § 1983 claim against city by limited liability company (LLC) and its owner, alleging that mayor, through certain city employees, retaliated against them, in violation of First Amendment, by influencing Joint Redevelopment Authority (JRA) to withdraw support for

LLC's proposed development project after owner made public statements claiming corruption in city government, even if mayor held personal sway over JRA through appointment power, and even though, under Mississippi law, mayor had authority to veto any council resolution to approve funding for project, where council retained authority to override such veto, such that council ultimately had final review.

IMMUNITY - NEW HAMPSHIRE

Maryea v. Velardi

Supreme Court of New Hampshire - March 8, 2016 - A.3d - 2016 WL 873811

County house of corrections inmate filed suit against county for injuries she sustained when van that she was riding in while being transported to courthouse collided with another vehicle. The Superior Court granted county's motion for summary judgment on grounds of immunity, and inmate appealed.

The Supreme Court of New Hampshire held that:

- Statutory exception to immunity for actions to recover for bodily injury, personal injury, or property damage arising out of ownership, occupation, maintenance or operation of motor vehicle did not abrogate common law "discretionary function" immunity, and
- County was entitled to "discretionary function" immunity from liability for inmate's injuries.

Statute providing that governmental unit may be liable in action to recover for bodily injury, personal injury, or property damage arising out of ownership, occupation, maintenance or operation of motor vehicle did not abrogate county's common law "discretionary function" immunity from liability for injuries sustained by county house of corrections inmate when van she was riding in while being transported to courthouse collided with another vehicle, which claim arose out of county sheriff's decision not to install seat belts in portion of van designated for inmates.

County sheriff's decision not to install seat belts in portion of transport van designated for inmates was discretionary, not ministerial function, and thus, county was entitled to "discretionary function" immunity from liability for injuries sustained by House of Corrections inmate when van she was riding in while being transported to courthouse collided with another vehicle. Sheriff considered installing seatbelts, but decided that danger to officers and public outweighed increased safety that the seatbelts would provide for inmates, in that installation of seatbelts would require corrections officers to enter van with inmates in order to strap them in, which would make it easier for inmates to overwhelm officers, access their firearms, and escape.

IMMUNITY - NORTH DAKOTA

Woody v. Pembina County Annual Fair Exhibition Ass'n

Supreme Court of North Dakota - March 15, 2016 - N.W.2d - 2016 WL 1031797 - 2016 ND 56

Spectator brought action against county fair association alleging negligence after she fell through a board in the grandstand while watching a fireworks display. The District Court granted summary judgment in favor of association. Spectator appealed.

The Supreme Court of North Dakota held that:

- Association was entitled to recreational use immunity, and
- Statute imposing supervision requirement did not impose duty on association to ensure premises were safe.

County fair association was engaged in recreational, rather than commercial, purposes in staging fireworks display, and therefore was entitled to recreational use immunity in negligence action brought by spectator who fell through grandstand while watching fireworks, where association did not charge any fee for entry to fairgrounds, to the grandstand area, or to observe the fireworks display.

Statute that imposed supervision requirement on county fair associations that granted applications for carnivals did not impose duty to ensure the premises were safe from all conditions, and therefore statute did not apply in negligence action brought by spectator who fell through grandstand while watching fireworks display at county fairgrounds.

MUNICIPAL ORDINANCE - NORTH DAKOTA

State v. Putney

Supreme Court of North Dakota - March 15, 2016 - N.W.2d - 2016 WL 1030024 - 2016 ND 59

Defendant was convicted in the District Court of aggravated assault. Defendant appealed.

The Supreme Court of North Dakota held that:

- Evidence supported finding that defendant acted knowingly;
- Evidence supported finding that shooting victim suffered a permanent impairment of a bodily function; and
- Courts are free to judicially notice municipal ordinances, abrogating *Keyes v. Amundson*, 391 N.W.2d 602, and *State v. Stensaker*, 2007 ND 6, 725 N.W.2d 883.

MUNICIPAL ORDINANCE - OHIO

Springfield v. State

Court of Appeals of Ohio, Second District, Clark County - February 26, 2016 - N.E.3d - 2016 WL 768655 - 2016 -Ohio- 725

City filed complaint against state, alleging that proposed legislation that served to amend and enact several statutory provisions governing traffic law photo-monitoring devices violated Home Rule Amendment to state constitution. The Court of Common Pleas denied city summary judgment and granted state summary judgment. City appealed.

The Court of Appeals held that:

- City lacked standing to challenge legislation regarding provision implementing use of speed cameras and mobile photo-monitoring devices;
- City’s traffic camera ordinance was an exercise of police power subject to invalidation; and
- Proposed legislation was a general law.

ZONING - RHODE ISLAND

Tarbox v. Zoning Bd. of Review of Town of Jamestown

Supreme Court of Rhode Island - March 15, 2016 - A.3d - 2016 WL 984044

Homeowners appealed town zoning board of review's denial of their application for a dimensional variance. After the Superior CourT reversed, the Superior Court denied homeowners' motion for an award of reasonable litigation expenses under the Equal Access to Justice for Small Businesses and Individuals Act. Homeowners appealed.

The Supreme Court of Rhode Island held that:

- As a matter of first impression, litigant seeking review of ruling on litigation expenses under the Act in case on appeal from decision of zoning board must petition for writ of certiorari;
- Zoning board is an "agency" under the Act; and
- Homeowners' hearing was an "adjudicatory proceeding" under the Act.

IMMUNITY - WISCONSIN

Estate of Collis ex rel. Collis v. Hazel Green Rescue Squad, Inc.

Court of Appeals of Wisconsin - March 3, 2016 - Slip Copy - 2016 WL 820825

Following ambulance accident, decedent's estate brought a wrongful death action against the Hazel Green Rescue Squad, Inc.

Hazel Green moved for summary judgment. It argued that the Estate failed to provide the Hazel Green Rescue Squad with a notice of claim as required under WIS. STAT. § 893.80(1d) (2013–14). Hazel Green argued that the Hazel Green Rescue Squad is a political corporation or governmental subdivision of the municipalities that it is organized and funded to serve, that its ambulance is a municipal vehicle, and that driver was its volunteer at the time of the accident, triggering the notice of claim statute. Hazel Green provided supporting affidavits averring that the Hazel Green Rescue Squad is a nonprofit organization that provides ambulance services for a group of neighboring municipalities; that all of its drivers are volunteers; that each participating municipality pays for a portion of the organization's equipment and operating costs; that the ambulance involved in this case is owned by the Hazel Green Rescue Squad; and that the Estate did not provide a timely notice of claim.

The Estate opposed summary judgment, arguing that the Hazel Green Rescue Squad is not a political corporation or governmental subdivision.

The Court of Appeals held that the Hazel Green Rescue Squad is a nonprofit corporation organized and maintained by neighboring municipalities to provide authorized ambulance services. The Hazel Green Rescue Squad is therefore a "municipality" for purposes of negligence actions arising from operation of a motor vehicle owned by a municipality.

More Than 1,600 Advisors Take Pilot Municipal Advisor Exam.

In preparation for the development of a permanent qualification exam for municipal advisors, more than 1,600 municipal advisor professionals representing over 350 firms took the pilot Municipal Advisor Representative Qualification Examination (Series 50) In January and February 2016. These volunteer test-takers will help determine the passing score and validate the question bank for the permanent Series 50 exam, which the MSRB expects to launch in the fall of 2016. The MSRB's Series 50 exam is the first qualifying examination for municipal advisors.

Read more about the development of the Series 50 exam.

Hospital Property Tax Exemption Under Attack In Illinois.

On Jan. 5, 2016, the Illinois Fourth District Appellate Court ruled in the Carle Foundation Hospital case that an Illinois state law providing for property tax exemptions for certain not-for-profit hospitals is unconstitutional. Since that time, there have been several developments including the following:

- The Carle Foundation announced that it plans to appeal the ruling to the Illinois Supreme Court.
- The Champaign County Board of Review voted to place Carle Foundation and Presence Covenant Medical Center in Urbana back on its tax rolls.
- The Illinois Department of Revenue said it will await the Supreme Court's decision before issuing any new property tax exemptions.
- The Fourth District Appellate Court denied requests to delay enforcement of the decision pending further review by the Illinois Supreme Court.

If the ruling stands, not-for-profit hospitals in Illinois could be in danger of losing their property tax exemptions.

Case details

The case involved an action brought by Carle Foundation against the City of Urbana and other taxing authorities in which the hospital sought to recover real estate taxes which it paid under legal protest during the period from 2004 to 2011.

The case centered on a statute which uses a monetary test to determine which hospitals are eligible for a property tax exemption. 35 ILCS 200/15-86. Under this law, hospitals are eligible for a property tax exemption if the hospital's total dollar amount of charity care and other services equals or exceeds the hospital's estimated property tax liability for the year.

The legislative authority for the statute is from article IX, section 6 of the Illinois Constitution of 1970 which provides: "The General Assembly by law may exempt from taxation…property used exclusively for…charitable purposes."

The court held that the statute exceeds the terms and conditions of article IX, section 6 because it does not require the subject property to be "used exclusively … for charitable purposes" and instead "grants an exemption on the basis of an unconstitutional criterion, i.e., providing services or subsidies equal in value to the estimated property tax liability." Read the opinion.

Trends in nonprofit hospital tax exemptions

This ruling appears to be consistent with a growing trend in states' questioning property tax exemptions for nonprofit hospitals. As cities and counties continue to lose tax revenue because of property tax exemptions, nonprofit hospitals are becoming potential targets to increase revenue. For example, in November of 2015, Morristown Medical Center in New Jersey agreed to pay $26 million to the town of Morristown to settle a dispute involving the hospital's property tax exemption. Also, state leaders in Connecticut and Maine and the mayor of Pittsburg have recently raised the issue.

Last Updated: March 14 2016

Article by Nicole K. Jobe

Thompson Coburn 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.

State, Local Taxes On Tribal Leases Vulnerable After California Court Order.

HIGHLIGHTS:

- A California district court recently issued an order that signals it is likely to invalidate Riverside County's imposition of a possessory interest tax on lessees of trust lands within the reservation of the Agua Caliente Band of Cahuilla Indians.
- The court analyzed several previous cases, the Bureau of Indian Affairs (BIA) leasing regulations and the Bracker balancing test, which is designed to determine whether the exercise of state authority violates federal law.
- As a result of the changing landscape, tribes are now in a position to argue that many lease-related state and local taxes are preempted by federal law even if those taxes have been upheld by courts in the past.Continue reading.

Last Updated: March 13 2016

Article by Steven D. Gordon and Kenneth Parsons

Holland & Knight

Tax-Exempt Bonds: Post-Issuance Compliance Issues.

Why Borrowers Using Tax-Exempt Bonds Need a Post-Issuance Compliance Policy

For borrowers using tax-exempt bonds, particularly 501(c)(3) organizations, it is tempting to treat the issuance of tax-exempt bonds as the end of a financing process that can be unfamiliar and somewhat complicated. However, it would be unwise for a borrower to place its bond documents on a shelf and ignore them.

There are a number of issues that can arise post-closing that could affect the taxability of the bonds, many of which are addressed in a tax exemption agreement that the borrower likely entered into at closing. These issues include (1) use of the bond proceeds of the bonds, including arbitrage issues relating to investment of the bond proceeds, (2) restrictions on use of the bond-financed property including, in the case of 501(c)(3) bonds, restrictions on the borrower's ability to enter into leases and other contracts related to the bond-financed property with for-profit entities, (3) in the case of 501(c)(3)bonds, maintenance of the borrower's 501(c)(3) status, and (4) disposal of all or part of the bond-financed property. As the borrower has gone to some effort to obtain the advantages of a tax-exempt bond, it should ensure that its post-closing actions and inactions do not jeopardize the tax treatment of those bonds by establishing a post-issuance compliance policy.

The specifics of a post-issuance compliance policy will vary depending on the borrower, the relevant Internal Revenue Code provisions authorizing the bonds and the type of project financed with bond proceeds. For example, post-issuance compliance policies related to 501(c)(3) bonds should focus significant attention on contracts with any private businesses for the use or management of any part of the bond-financed property. Post-issuance compliance policies related to low-income housing bonds should contain detailed provisions related to the requirements for verification of tenants' income limits, and methods of ensuring that the tenant income requirements are adequately monitored and maintained.

As a practical matter, having a comprehensive post-issuance compliance policy that identifies potentially problematic actions related to the bond-financed property and the use of the proceeds is likely to reduce or eliminate violations of federal tax law and the relevant regulations. Employees of the borrower dealing with the bond-financed property and bond proceeds should receive training on the post-issuance compliance policy and, in particular, should understand which types of actions (including third-party contracts, investment of bond proceeds and disposal of bond-financed property, among other actions) need to be flagged, and the compliance officer or outside counsel with whom those actions should be vetted. As Internal Revenue Service ("IRS") Publication5091 notes, reliance on the Tax Exemption Certificate and Agreement alone regarding future compliance obligations is not recommended, as this agreement and the related financing documents may not be known to the relevant employees or may not contain sufficient detail. Further, the language used in the Tax Exemption Certificate and Agreement is legal and technical in nature, and may not be properly understood by employees responsible for the day-to-day functions of the organization, who may not have been involved in the financing transaction at all.

There is another important potential benefit to borrowers involved in tax-exempt financing of having a written post-issuance compliance policy. Tax Exempt Bonds ("TEB"), a division of the IRS, administers federal tax laws applicable to tax-exempt bonds.1 As part of its oversight of tax-advantaged bonds, TEB administers a Voluntary Compliance Agreement Program ("VCAP"), which is a procedure for resolving violations of the federal tax laws applicable to tax-exempt bonds. Parties to a tax-exempt bond issuance that participate in the VCAP generally receive more favorable outcomes than in instances where the IRS's examination of the bonds reveals an issue.2 As part of the information submitted by a borrower to participate in the VCAP, the borrower needs to identify how the violation was discovered and whether it has post-issuance procedures in place to monitor federal tax law compliance.

Using the VCAP following identification of an issue pursuant to a borrower's written post-closing compliance procedures could have several advantages for the borrower. In many cases, the amount that must be paid to resolve an issue under the VCAP will increase the longer the period between the violation and the submission of the VCAP request, so having policies and procedures in place that will promptly identify violations after they occur is important in minimizing the borrower's exposure to additional costs.3 A closing agreement entered into under the VCAP is final and conclusive as to the matters addressed, and may not be reopened or modified by the IRS.4 Further, IRS procedures state that, absent extraordinary circumstances, a bond issuance will not be selected for examination while it is under the VCAP review. A borrower with a comprehensive post-issuance compliance policy is therefore better positioned to take advantage of the VCAP if tax issues arise.

Therefore, while the specifics of the post-issuance compliance policy will vary depending on the type of bonds and the specifics of the borrower's industry and situation, we recommend that all borrowers involved in tax-exempt financing adopt and follow written policies related to post-issuance compliance with federal tax laws and regulations.

Footnotes

1 Note that the TEB VCAP program also applies to other types of tax advantaged bonds, such as tax credit bonds that provide a tax credit to the bond holder, and direct pay bonds, where the issuer receives a refund of part of the interest it pays on the bonds.

2 See https://www.irs.gov/Tax-Exempt-Bonds/New-Voluntary-Closing-Agreement-Program--equest-Form.

3 See Internal Revenue Manual 7.2.3.4.2 and 7.2.3.4.4.

4 See IRC 7121 and the corresponding Regulations.

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: March 16 2016

Article by Mindy F. Rice

Reinhart Boerner Van Deuren S.C.

NABL: SEC Charges Municipal Advisor for Failing to Disclose Conflict.

The U.S. Securities and Exchange Commission (SEC) has charged Central States Capital Markets, its CEO and two employees for breaching their fiduciary duty by not disclosing a conflict of interest to a municipal client. This is the SEC's first case in enforcing the fiduciary duty for municipal advisors since the implementation of the 2010 Dodd-Frank Act. According to the order, while Central States served as a municipal advisor to a client on municipal bond offerings in 2011, two of its employees, in consultation with the CEO, arranged for the offerings to be underwritten by a broker-dealer where all three worked as registered representatives. Central States CEO John Stepp and employees Mark Detter and David Malone did not inform the client of their relationship to the underwriter or the financial benefit in serving multiple roles.

Click here to read the press release.

Click here to read the SEC order.

The Bond Lawyer - Winter 2016

The Winter 2016 issue of The Bond Lawyer® is now available.

Click here to download the document.

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members and associate members of the Association. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

MSRB Webinar on Amended Gifts Rule for Municipal Advisors.

The MSRB will host an educational webinar on the amendments to its Rule G-20, on gifts, gratuities and non-cash compensation, for municipal advisors.

Date: Thursday, March 24, 2016

Time: 3:00 p.m. – 4:00 p.m. ET

Description: During this free webinar, MSRB staff will review the key provisions of changes to MSRB Rule G-20 to extend restrictions regarding gift-giving and the related recordkeeping requirements currently applicable to brokers, dealers, and municipal securities dealers to municipal advisors.

Register.

SEC Approves MSRB Plan To Lengthen Board Terms To Four Years.

WASHINGTON – The Securities and Exchange Commission has approved a Municipal Securities Rulemaking Board proposal that extends MSRB board terms to four years from three.

The approval means that all board members who start their terms in MSRB's fiscal year 2017, which begins on Oct. 1 of this year, will serve four-year terms. Also, only six new members will be selected next year instead of the normal seven.

The proposed changes to the board's Rule A-3 on board membership have drawn industry support since the MSRB first announced them in October of last year. They were approved on Thursday but the MSRB did not announce the SEC's decision and it was not posted on the commission's website until Friday.

"Longer board terms support greater continuity and institutional knowledge while preserving the benefits of a yearly incoming class with new perspectives and expertise," said MSRB executive director Lynnette Kelly.

The SEC said in its release approving the changes that it "believes that the effect of the proposed rule is beneficial and the proposed changes will improve the effectiveness … of the board."

The Securities Industry and Financial Markets Association and Bond Dealers of America said in comment letters that they agreed the changes would help board members be more effective during their tenures.

SIFMA said the changes would specifically help public members who may have had limited exposure to the municipal dealer and advisor industries before joining the board.

BDA asked the MSRB to use the changes as an opportunity to reevaluate its training process for board members and make sure it is updated to reflect any changes in market practices or new regulations. Responding to BDA's comments, the MSRB said it already revises and improves its orientation process consistently.

The MSRB board is made up of 21 members, 11 of which are public and 10 of which are regulated. The members currently serve staggered three-year terms with a new "class" of seven members joining the board every fiscal year. The classes are named for the year in which its members are scheduled to leave the board.

The new arrangement approved by the SEC will keep the 21-member, majority-public board structure, but change the number of classes to four. One class will have six members and the other three will have five. The MSRB said it designed the changes to keep the balance between public and regulated members in each class as even as possible.

The changes also eliminate a requirement that each new class have at least one non-dealer municipal advisor. The MSRB said the requirement, which would have led to four non-dealer MAs on the board at any given time, may have inadvertently limited representation of other regulated members. Despite the change, there will still be a requirement that the board in its current form have at least three non-dealer advisors serving at any time.

Additionally, the proposal also limits the number of consecutive terms a member can serve to two. Members would only be eligible for a second term if they are invited to do so because of a board-determined special circumstance or if they are filling a vacancy and are therefore only serving a partial term.

The SEC made its approval conditional on the MSRB implementing its stated plan to shift the board structure over three fiscal years, starting in 2017. For this next fiscal year, one public representative from the class of 2016 will receive a one-year extension and six new members will join the board. In fiscal year 2018, one public and two regulated representatives from the class of 2017 will each receive a one-year extension and five new members will join the board. Finally, for fiscal year 2019, three public and two regulated representatives from the class of 2018 will receive a one-year extension and five new members will join the board.

By fiscal year 2020, no further extensions will be needed and five new members will join the board. After that, new classes will be named annually in a repeating sequence of six members, then five members, then five members, then five members.

Any board member whose term expires on or after the end of MSRB fiscal year 2016 will be eligible for a one-year extension during the transition period. The full board will then vote by ballot to determine who receives the extensions.

The MSRB's proposal also lists several smaller changes to bring Rule A-3 up to date. It will eliminate a portion of the rule that laid out a transition process the board undertook in fiscal years 2013 and 2014 to move to 21 members from 15 because the process has concluded. It will also insert the updated name of a committee referenced in the rule.

The Bond Buyer

By Jack Casey

March 18, 2016

Deloitte: Unlocking the Value of Community Solar.

US electric utilities of all types are defining their own paths forward to bring solar to their customers. Community, or “shared,” solar programs are an increasingly popular option. These programs allow customers who do not own their homes, possess strong credit scores, or have adequate roof space to buy solar power, or in some cases, to invest in solar assets.

A new report from the Deloitte Center for Energy Solutions analyzes the community solar market from a fresh angle, examining the unique opportunities and challenges posed to each utility type: cooperatives, municipal, and investor-owned utilities.

Discover how growth trends vary by utility type and why state policies are a key factor in enabling and driving community solar market growth.

P3 Connect: The What's Next P3 Event.

Join the top leaders from all segments of the P3 community as we map the future of P3s. P3 Connect 2016 is two days of ideas, inspiration and insights, networking and learning, and proven strategies to advance P3s.

Chicago, June 27-29, 2016

To learn more, click here.

P3s Can Spur Economic Development by Providing Good Jobs, Training Opportunities, Study Says.

Publicly funded infrastructure projects have proved to be a reliable source of local job creation and economic advancement, providing many socially and economically disadvantaged residents with a pathway to join the middle class. Projects procured through public-private partnerships can provide these opportunities as well, according to a new report published by In the Public Interest and the Partnership for Working Families.

The report, Building American While Building Our Middle Class: Best Practices for P3 Infrastructure Projects, outlines best practices that can be incorporated into P3 agreements, such as the adoption of policies that set job quality and income thresholds, inclusive hiring, apprenticeship and other types of training opportunities and oversight of efforts to ensure fair employment practices. The report also recommends that P3 partners enter into community workforce agreements (CWA), potentially with labor unions, “that establish targeted hiring goals, training opportunities and jobs for communities of need.”

Providing P3-based job opportunities for those who are struggling to climb the economic ladder can benefit not only those who step into these roles but the projects themselves. Job accessibility and training ensure the future supply of a cadre of skilled workers who can replace those who retire or move on to different types of jobs. Such projects also are likely to attract public and community support, the lack of which can delay or ultimately derail a P3, the report points out.

Specific examples of the types of employment policies P3s could incorporate include meeting prevailing wage standards, classifying workers as employees rather than contractors to ensure that they receive benefits, and recruiting and providing training opportunities for workers from socially or economically disadvantaged and minority communities.

The report describes several municipal infrastructure projects that helped low-income and socially disadvantaged residents to significantly enhance their economic status.

According to a 2014 study conducted by the University of California, Los Angeles, only 6 percent of Seattle's workforce lived in the city and only 25 percent resided in surrounding, largely impoverished King County. After the city entered into a CWA — designed to recruit low-income workers into construction jobs — to conduct the Elliott Bay Seawall Replacement project, local workers in low-income areas had earned more than $4.6 billion by June 2015. This was achieved in part by a commitment to put new graduates of a union apprenticeship program to work on the project. The city also passed an ordinance that year to improve access to construction careers for women, people of color and others with social and economic disadvantages on city construction projects of $5 million or more.

Los Angeles Metro entered into a project labor agreement to employ low-income residents for the second phase of a $1.6 billion light-rail project. Several years later, the project has exceeded its targeted hiring goals by 49 percent and its disadvantaged worker requirement by 27 percent, providing employment for 1,120 workers.

The Chicago Transit Authority's "Second Chance Program," which provides apprenticeships for low-income residents with non-violent criminal records had, by April 2015, seen 113 of its more than 500 graduates obtain full-time agency jobs, seven of whom have been promoted into management positions.

Measures cities and states can take to ensure that infrastructure P3s incorporate these types of objectives include passing P3-enabling legislation that emphasizes local job creation and targeted hiring practices, and emphasizing these priorities in the requests for proposals and contracts they issue, the report suggest.

CWAs and other types of labor recruitment agreements that emphasize local hiring, recruitment of low-income and other disadvantaged groups, training opportunities and the availability of skilled and semi-skilled jobs can be negotiated among public and private partners, labor organizations and community stakeholders as well.

P3s already are being conducted, or will soon begin, that are designed to achieve these goals.

One example is a community-based public-private partnership project that is being conducted in Prince George's County, Md., to prevent polluted stormwater from entering the Chesapeake Bay and its tributaries. Corvias Solutions is conducting this $100 million green infrastructure retrofit with the county's Department of the Environment. In the first phase, Corvias is retrofitting 2,000 acres of public and private land with stormwater management infrastructure over three years to help the county comply with EPA regulations.

Corvias is receiving availability payments for reaching certain milestones, which range from meeting construction deadlines to ensuring that local residents will comprise 15 percent of the workforce in year one and reach 50 percent by the end of year three. The firm already had already exceeded this goal by mid-January, having contracted $5.7 million in work to small contractors, 85 percent of whom are minorities, women and small businesses, reported Corvias.

The firm also mentors subcontractors, teaching them how to write proposals and get certified as small disadvantaged businesses, and is training local businesses, the workforce and students who may go into the stormwater arena as engineers or in other roles.

Maryland has committed to providing local and employment training opportunities through its 16-mile Purple Line light-rail project.

The state has included targeted hiring provisions in its RFP documents, which include requirements that at least 33 percent of all construction work hours be performed by socially and/or economically disadvantaged workers and that up to half of all construction work hours be performed by helpers or other unskilled laborers.

"[T]houghtful design of infrastructure projects with the inclusion of job quality and equity policies, not only builds much needed public work projects that we all critically rely on, but can also build middle class pathways for those living the shadows of poverty. Regardless of how a public infrastructure project is funded, policymakers and stakeholder must advocate for wise use of that funding, ensuring maximum economic and social benefit. Building America must also mean building our middle class," the report says.

NCPPP

March 21, 2016

Broadband P3s Attract Business to Local Communities.

Huntsville Utilities' decision to build a fiber broadband network through which Google Fiber will provide gigabit Internet to residents and businesses will improve the economic competitiveness of Alabama's fourth-largest city, two state legislators believe.

"Research has shown that communities with gigabit services have exhibited a per capita GDP approximately 1.1 percent higher than similarly situated communities without gigabit service" and this feature also can increase the value of a home by 3.1 percent, wrote Reps. Mac McCutcheon and Laura Hall in an op-ed in AL.com.

Fitch Ratings upgraded Kansas City, Mo.'s bond ratings when Google Fiber started providing gigabit Internet access there and communities have reported an increase in the construction of office buildings and creation of business startups after installing fiber networks and inviting private companies to provide high-speed Internet access, the legislators noted.

Huntsville Utilities will build a new fiber network to monitor its public water, electric and natural gas systems throughout its network. Google Fiber will access the network through a 20-year lease. The public utility will own the network and Google will own the power line-to-home connections, handle all hookups and provide Internet services.

The city views providing universal access to high-speed Internet as a key way of keeping and attracting high-tech businesses that nearby Chattanooga, Tenn., with its municipal-utility-provided fiber network, might otherwise lure away, reported muninetworks.org.

Opponents of these types high-speed broadband P3s have argued that permitting governments to build fiber networks constitutes unfair competition with the private sector, but McCutcheon and Hall disagreed.

“Huntsville Utilities is not planning to compete with private broadband providers. Instead, they are leasing to private parties — lowering the barriers to competition. This sort of arrangement plays to the different strengths of cities and the private sector — cities often invest in and maintain durable infrastructure that’s core to the community, while private entities are generally better at providing a commercial service,” they wrote.

The Federal Communications Commission (FCC) has championed municipalities’ efforts to expand broadband infrastructure, reported Fierce Telecom. The FCC in February 2015 overturned state laws that prevented Wilson, N.C.’s and Chattanooga’s municipal service providers from expanding their broadband networks to neighboring communities where private companies were installing only low-speed Internet service.

The FCC concluded that the overturning the laws “will speed broadband investment, increase competition and serve the public interest,” noting that “[t]he networks in both areas have attracted major employers, including Amazon and Volkswagen in Chattanooga and Exodus FX, Regency Interactive and WHIG TV in Wilson.” Tennessee is fighting the FCC’s ruling.

NCPPP

BY ANGELA SIMPSON

March 16, 2016

Angela Simpson, deputy assistant secretary at the National Telecommunications and Information Administration, will talk about telecommunications partnerships as a featured speaker at NCPPP’s Federal P3 Summit, March 17-18 in Washington, D.C.

Municipal Bonds Have a Lot Riding on Race for the White House.

Will Hillary Clinton pump money into infrastructure as president? Will GOP presidential front-runner Donald Trump? Is the tax-exempt status of municipal bonds under a new Congress in jeopardy?

Those are all pressing postelection questions that could shape the outlook for municipal bonds.

Municipal bonds—typically used to fund infrastructure products, including bridges, tunnels and sewers—were the best performing fixed-income assets in 2015, posting a 3.3% return, even as the Federal Reserve raised interest rates for the first time in nearly a decade in December.

But as the race for the White House heats up, questions abound for the muni market.

Munis stand to outperform other fixed-income categories again in 2016, said Peter Hayes, head of the municipal bonds group, and Sean Carney, head of municipal strategy at BlackRock BLK, -0.25% in a research note first issued in January and backed in an early-March update.

That’s good news for wealthy investors who tend to scoop up these bonds for their tax advantages—for qualifying filers, munis are exempt from certain state and local taxes. Modest inflation could help, too, increasing the allure of tax-exempt munis relative to their taxable federal-issued and corporate-issued brethren, all things being equal. Rising inflation can erode spending power on your bond’s income over time.

However, for state and local governments, political uncertainty could sideline muni issuance. And for income-focused investors who need these tax-exempt bonds to lower their tax bills, limited supply may frustrate.

Against that shifting political and regulatory backdrop, here are some key election-related factors to keep an eye on:

Clouds for that rainy-day fund?
For states and municipalities, the political climate, for instance the likelihood for easier taxing capabilities, typically impacts decision-making on capital projects that are penciled in for several years out from an election, said Justin Marlowe, public finance professor at the University of Washington’s Evans School of Public Policy and Governance. The presidential election isn’t likely to sway decision-making on bond issues spanning even two to five years from an election year. Those plans are already baked in, he argues.

But issuers do care now about the future cost of capital, and they may be inclined to try to lock in bond offerings sooner versus later, Marlowe said.

Private-public blend?
On the national landscape comes the potential for new or expanding infrastructure financing tools. They made their way into the Obama administration and could have legs for the future, says Marlowe. One such program, Build America Bonds (BABs) were created to supplement state and local government’s capacity to access conventional corporate debt markets for public infrastructure instead of issuing traditional tax-exempt debt. Will they stay around? Clinton, for one, has called for the creation of a national infrastructure funding bank to help pay for transportation projects. Muni-market trade publication “The Bond Buyer” has declared Ohio Republican presidential candidate Gov. John Kasich and Democratic Sen. Bernie Sanders as the friendliest candidates for infrastructure funding. All told, analysts think that private-public financing options could gain increasing attention, which could limit the number of more traditional bonds coming to market.

Obamacare
Candidates including Trump and his Republican presidential rival Sen. Ted Cruz have threatened to scrap Obamacare. “Easier said than done,” said Marilyn Cohen, chief executive officer of bond-focused Envision Capital Management. “But it is true that the challenge of funding Obamacare has impacted the fiscal profile of issuers including medium and small hospitals and so this is a national issue that trickles down to the states and locals.”

The economy, stupid
Whether talking about bond issuance or job creation, the economy is a major differentiator in this and any election. Think China and global trade issues can’t touch munis? Think again. “State economies are deeply dependent on exports in ways that wasn’t really the case 10 years ago,” said Marlowe, who points to Washington state’s export-led production of software, aircraft, and more. “Even if local economy fundamentals are solid, the tie-up with Asian markets could have a 2% to 4% impact on local tax collection in Washington state, for example,” said Marlowe, whose University of Washington posting affords him this vantage point. It is also true that state-specific issues, including the budget and economic toll of unfunded pension liabilities in Illinois, can ramp up attention on state and local elections in determining the winners and the losers in the muni-bond market.

The next administration and congressional makeup could have a thing or two to say about the complexity of e-commerce taxation after Amazon.com AMZN, +0.00% has blown up the model, according to Marlowe. States, including Michigan, Colorado and Alabama, are trying to circumvent high-court rulings on cross-state taxation. Sales tax can be one of the major revenue streams that finances public debt, including muni bonds. “This is a macro trend that alone is a huge source of uncertainty and certain to feature in a new congress,” Marlowe said.

Also, Sanders and other lawmakers have questioned the fairness of tax exemption for muni holders. It is a “trial balloon” floated from time to time in Congress and elsewhere that has so far been mostly hot air. A study commissioned by the International City/County Management Association and the Government Finance Officers Association, argues that because investors don’t have to pay an income tax on their interest earnings from the bonds, governments can pay off their bonds at a lower interest rate than they would otherwise. In other words, muni bond issuers can compete with the often higher yields on corporates or Treasury bonds. The tax-free status of municipal bonds saved governments an estimated $714 billion in extra interest payments from 2000 to 2014, according to the report. Without the benefit, a typical bond issue would cost $80 to $210 in added interest per each $1,000 of borrowed money.

Loss of the exemption “could crush the states’ [post tax-benefit] competitive yields compared to corporate bonds,” says Envision’s Cohen. “You could have governors storming the White House and that may keep this topic a non-starter. Washington will have bigger problems than it.”

MARKETWATCH

RACHEL KONING BEALS

Published: Mar 16, 2016 4:00 p.m. ET

Bond Lawyers Blast Proposed Political Subdivision Rules.

WASHINGTON – Bond lawyers on Thursday criticized the political subdivision rules recently proposed by the Treasury Department and Internal Revenue Service, claiming they would trample states’ rights, alter the landscape for public financing, and jeopardize the tax-exempt status of millions of dollars of municipal bonds.

The lawyers pummeled Treasury and IRS officials with questions and concerns about the rules at the National Association of Bond Lawyers’ 14th Tax and Securities Law Institute here.

The federal officials thought they might have minimized controversy by releasing a prospective effective date for the rules the night before the meeting. The initial rules faced a firestorm of criticism for proposing a technically complicated effective date that would have been prospective under certain tax-exempt bond provisions of the tax code, but not others.

But NABL members were still upset by the substance of the proposed rules. Richard Chirls, a lawyer with Orrick, Herrington & Sutcliffe who sat in the audience during a panel discussion, accused Treasury and the IRS of “stepping on the toes of state and local governments” and said, “I think it’s quite offensive.”

Chirls noted that states, for many years, have set up political subdivisions within their jurisdictions under state laws that specify that an entity is a political subdivision if it has been delegated a substantial amount of at least one of three sovereign powers: eminent domain, taxation and policing.

These proposed rules, however, would add two new requirements — that political subdivisions serve a governmental purpose and be governmentally controlled.

Under the proposed rules, the determination of whether an entity serves a governmental purpose would be based, in part, on whether the entity carries out the public purposes set forth in its enabling legislation and whether it operates in a manner that provides a significant public benefit "with no more than an incidental private benefit."

To be governmentally controlled, a political subdivision would have to be controlled by a state or local governmental unit or an electorate. The proposed rules set forth what Chirls later called "arbitrary new standards for voting" to ensure the political subdivision is not controlled by private parties.

Mike Larsen, a lawyer from Parker Poe Adams & Bernstein, said he did not see any demonstrated need for new rules and asked a Treasury official on the panel why they were proposed.

John Cross, Treasury's associate tax legislative counsel, told NABL members that IRS audits had exposed a vulnerability of political subdivisions to be controlled by private entities and that this had "raised concerns at the highest levels of government."

"We tried to be targeted with the way we addressed that" with the proposed rules Cross said, adding, "We don't think there's a big problem here."

But Chirls insisted that the proposed rules' attempt to expand on what states are allowed and not allowed to do "is offensive."

Cross reminded the lawyers that that the tax exemption of munis "is a federal subsidy" and said the federal government plays a role in determining how that subsidy is used.

Many of the lawyers in the room were concerned that the rules would jeopardize political subdivisions that were initially temporarily controlled by developers who sold bonds to build infrastructure for retirement communities or water or irrigation districts before residents moved in or farmers could get water and play a part in governing the districts.

Cross said federal officials are aware that many political subdivisions are initially controlled by developers and that there's plenty of opportunity to provide public comments to the Treasury and IRS on how they should deal with this issue.

Richard Moore, a lawyer with Orrick who was on the panel, worried that the proposed requirement for a political subdivision to operate in a manner that provides a significant public benefit "with no more than an incidental private benefit" would set up another "private use test" and would allow IRS auditors to audit anything they don't like about a political subdivision. Many of the lawyers also complained the proposed requirement was too broad.

Spence Hanemann, an attorney in the IRS' Office of Chief Counsel, said bond lawyers must tell the IRS how it can limit the "no more than an incidental private benefit" requirement to make it more reasonable. The best way to make the requirement more reasonable would be to get rid of it, said Mitch Rapaport, a lawyer at Nixon Peabody.

Hobby Presley, a lawyer with Balch & Bingham, said the rule will have unintended consequences for many public universities that are set up under state constitutions and have procedures for electing trustees. Those procedures might not comply with the proposed rules' voting standards to demonstrate governmental control, he said.

Another lawyer in the audience said Pennsylvania has created a number of political subdivisions that have board members who are not elected on an ongoing basis and worried about how they would fare under the proposed rules.

Perry Israel, a lawyer in Sacramento who represents the Village Center Community Development District in Florida that is the subject of an IRS audit that led to the proposed rules, said he is grateful that rules were proposed that are subject to public comment and will be prospectively effective.

NABL members joked that Israel should win an award for sucking up to the Treasury and IRS and that his audit should be closed.

Treasury and IRS lawyers decided to write rules on political subdivisions after the IRS' Chief Counsel's Office issued a very controversial technical advice memorandum in 2013 concluding that the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials. The audit had been ongoing for years and has still not been resolved, although the bonds have been redeemed.

Lawyers argued that the TAM's assertion that control by elected officials is necessary for an entity to be a political subdivision was a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM in an enforcement proceeding.

Meanwhile, the English comedian and television host of "Last Week Tonight," John Oliver, recently aired a segment on "special districts" that compared them to "cults" and said they can take your money without your even being aware you are in them. He said they are being replicated all over the country with little or no standards or regulatory oversight.

The Bond Buyer

By Lynn Hume and Evan Fallor

March 10, 2016

SEC: Don't Argue About Materiality After MCDC Submission.

WASHINGTON – Issuers are not likely to change the Securities and Exchange Commission staff's minds about the violations they have disclosed under the commission's municipal self-reporting initiative, the commission's top cop for municipal securities enforcement said on Thursday.

LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit, said that by the time her office calls issuers who have submitted information under the Municipalities Continuing Disclosure Cooperation initiative to talk about settlement terms, they have already looked at all of the issuer's reported disclosure violations and concluded which are material.

She made her comments during a panel discussion at the National Association of Bond Lawyers' Tax and Securities Law Institute held here. The panel focused on what issuers and their attorneys can expect as the MCDC initiative moves towards issuer settlements.

MCDC, first announced in March 2014, allows underwriters and issuers to receive lenient settlement terms if they voluntarily self-report any instances during the past five years in which the issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements and the underwriters failed to discover the misstatements. The underwriter portion of the initiative concluded with a third round in January. Altogether, 72 underwriters representing 96% of the underwriting market by volume, paid $18 million to settle violations with the SEC.

The SEC has already started reaching out to issuers about settlements and has said it intends to pursue actions against non-reporting entities after it finishes settling with those who did report. The commission also has left open the possibility of taking enforcement actions against individuals related to the disclosure failures.

Underwriters that raised materiality defenses after being contacted by the SEC about settlement terms “did not get much traction with trying to argue with us,” Gaunt said, adding she expects issuers to follow the same trend. However, she said the SEC will not “close its ears” to such arguments if they do arise.

Gaunt said the communication between her office and reporting issuers is expected to be brief. All issuers who submitted information under the initiative will receive a response as to whether the unit found material disclosure failures. Any settlement discussions resulting from the disclosures should take at most a couple of weeks, she said. The SEC’s goal is to have all of the issuer settlements completed within the calendar year.

“Certainly we will be applying pressure because we want to get [this] done,” she said. “We’re going to try to keep people on a pretty tight leash when we offer settlement terms.”

She added that the SEC understands issuers may need more time to get an authorized person or authority to sign off on a settlement.

Mitchell Herr, a partner in Holland & Knight’s Miami office, moderated the panel and said after listening to Gaunt’s explanation of the MCDC settlement talks that he came to the conclusion that those who submitted information were “in a way confessing instead of just self-reporting.”

Peter Chan, a partner at Morgan Lewis in Chicago and architect of the MCDC initiative, said that issuers who wanted to defend the materiality of some of their submissions should have included those arguments in what they originally sent the SEC.

Both Herr and Ken Artin, NABL’s president and a lawyer at Bryant, Miller & Olive, asked Gaunt if issuers could obtain further leniency under MCDC from the SEC’s 2001 Seaboard Report. That report explains that cooperation can lead to leniency in enforcement actions. They asked if issuers might be allowed to file Wells Submissions, in which a defendant in an SEC action explains its position through a memo or videotape in hopes of getting SEC commissioners and officials to change their minds.

Gaunt said that MCDC, while not explicitly linked with the Seaboard Report, already follows its message by allowing self-reporters more lenient terms than they may have received in full enforcement actions. She also said that Wells Submissions are not generally found with settlements and that if issuers wanted the benefit of a Wells Submission, they could opt out of the MCDC settlement and be subject to further SEC investigations under a more normal enforcement process.

When asked whether the commission may pursue individuals at a later date under MCDC, Gaunt did not offer much insight except to say her unit is focused on asking about settlement terms for reporting entities at this point. Chan said he suspects “that there is tremendous interest by the commission and staff” as well as the industry to move on from MCDC. Because of that, he wondered if the SEC would investigate every case and every self-report to try to identify potentially liable individuals.

He hypothesized that the SEC could use the “gigantic” amount of data it is currently sitting on from MCDC to find possible cases by looking for individuals that come up more often than others or instances where there is a red flag because an individual seemed to know there were issues with the continuing disclosure certifications.

The Bond Buyer

By Jack Casey

March 10, 2016

To TIF or Not to TIF: Podcast

Billionaire Under Armour CEO Kevin Plank is asking Baltimore City for $535 million to help fund redevelopment in Port Covington. The city would borrow against future property tax revenue to pay for streets, utilities, and other infrastructure related to the project. If approved, it would be the largest tax increment financing, or TIF, deal in city history. TIF is a common development tool across the country; the city of Baltimore has OK’d eleven deals since 2003. But tax increment financing is controversial. Supporters say it attracts private investment to blighted areas. Critics say it enriches developers at public expense.

Listen.

Our guests: Greg LeRoy, Executive Director of Good Jobs First, and Toby Rittner, President and CEO of the Council of Development Finance Agencies.

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By SHEILAH KAST & ANDREA APPLETON • MAR 15, 2016
