Bond Case Briefs

Municipal Finance Law Since 1971

UTILITIES - MISSOURI

Dynasty Home, L.C. v. Public Water Supply District Number 3 of Franklin County, Missouri

Missouri Court of Appeals, Eastern District, Division Four - February 3, 2015 - S.W.3d - 2015 WL 456399

Dynasty is the owner and landlord of residential rental properties in a subdivision in Franklin County, Missouri. The District is a public water supply district that supplies water and sewer service to the premises of the subdivision. While the District will open new accounts for water or sewer service in the name of Dynasty or in the name of the tenant, Dynasty requires its tenants to procure service with the District in their own names.

When a tenant is delinquent in payment for services by thirty days, the District is required to notify Dynasty of the delinquency. The District only discontinues services when accounts are delinquent by forty-five days. When a tenant's service is discontinued for nonpayment, the District requires the property owner, Dynasty, to pay up to ninety days of charges and late penalties assessed to the account.

Dynasty requested that the District terminate service to the listed tenants whose accounts are delinquent by thirty days. The District refused these requests because Dynasty is not the named customer on the account.

Dynasty filed a petition for inverse condemnation against the District for its refusal to terminate service as Dynasty requested, thereby increasing Dynasty's liability for delinquent service charges and late penalties. The trial court granted the District's summary judgment motion and Dynasty appealed.

The Court of Appeals affirmed. The court rejected Dynasty's argument that because the statute deems it to be a furnishee, it should have the same right to terminate service that the occupant has. While section 250.140.1 does deem services to be furnished to both owner and occupant, the statute does not state, and it does not follow, that both parties share equal rights over the terms of the service.

Dynasty did not assert that it was a "customer" within the meaning of the rules and regulations, as it does not use the incoming water services itself. If Dynasty established the accounts in its own name, then billed the tenants for the water they used, it would be a customer, and would have the right to terminate services at its discretion. Dynasty instead chose that its tenants establish accounts in their own names. The tenants therefore have a contractual relationship with the District, and they have the right to terminate services pursuant to the terms of the contract. Dynasty had elected not to be a party to the contract, and therefore it did not have the same rights as the parties have to end services.

"Dynasty has not met its burden to show that the District's rules and regulations bear no reasonable relationship to the legislative objective or that they are unreasonable and plainly inconsistent with section 250.140.1. Because the District's rules and regulations on the termination of service are

valid, and because section 250.140.1 does not grant it any additional rights or powers, Dynasty does not have the right to terminate service at its request. Therefore, Dynasty does not have a property right to be infringed, and it has not suffered a taking."

PENSIONS - NEBRASKA

Board of Trustees of City of Omaha Police and Fire Retirement System v. City of Omaha

Supreme Court of Nebraska - January 30, 2015 - N.W.2d - 289 Neb. 993

Board of trustees of city retirement system brought action against city, seeking declaratory judgment as to whether board had authority to retain an actuarial consultant and private legal counsel at city expense. The District Court entered summary judgment in favor of board. City appealed and petitioned to bypass the Court of Appeals.

The Supreme Court of Nebraska held that:

- Board had authority to hire actuarial consultant;
- Consultant was required to be paid by city; but
- Board lacked authority to hire private legal counsel unless there was a conflict of interest preventing city attorney from serving.

LABOR - NEW JERSEY

Teaneck Firefighters Mut. Benev. Ass'n Local No. 42 v. Township of Teaneck

Superior Court of New Jersey, Appellate Division - February 3, 2015 - Not Reported in A.3d - 2014 WL 7735838

Teaneck Firefighters Mutual Benevolent Association Local Number 42 (FMBA) appealed from a final decision of the Public Employment Relations Commission (PERC) that determined the Township of Teaneck and FMBA's past practice of permitting up to four firefighters off per shift was not mandatorily negotiable because it prevented the Township from meeting its minimum staffing levels.

The parties agreed that the scheduling of time off and work hours is, as a general principle, mandatorily negotiable and that managerial prerogatives are non-negotiable. The central issue in this dispute was whether permitting four firefighters off on each shift fell into the former or latter category. The answer involved a fact-sensitive determination which PERC resolved when it concluded that "the underlying issue in this case primarily involves a minimum staffing level determination, not the allocation of time off."

The appeals court affirmed, finding PERC's decision supported by sufficient credible evidence on the record as a whole.

MUNICIPALITIES - NEW MEXICO

Einer v. Rivera

Court of Appeals of New Mexico - February 2, 2015 - P.3d - 2015 WL 433648

Resident of San Miguel County, submitted a form petition to the County Clerk, requesting that she approve the form of the petition for circulation to qualified electors. The petition requested the San Miguel County Commission to appoint a charter commission providing for the "home rule" government of the county.

The San Miguel County attorney responded to the request, advising that the clerk declined to act on the petition because the petition seeking incorporation of the county and adoption of a charter was not authorized by law. Resident filed a writ of mandamus, requesting that the district court issue (1) a declaratory judgment that San Miguel County is a "municipality" under the Municipal Charter Act and that the form of petition met the requirements of Section 3–1–5(C); and (2) a peremptory or alternative writ of mandamus, compelling the clerk to approve the petition.

The Court of Appeals held that San Miguel County was not subject to the home rule charter process of the Home Rule Amendment of the New Mexico Constitution and the Municipal Charter Act. San Miguel County is not a "municipality" within the Municipal Charter Act or the Home Rule Amendment. The court further concluded that its holding did not violate the constitutional equal protection rights of resident.

UTILITIES - TENNESSEE

American Heritage Apartments, Inc. v. Hamilton County Water and Wastewater Treatment Authority

Court of Appeals of Tennessee, at Knoxville - January 30, 2015 - Slip Copy - 2015 WL 399215

American Heritage Apartments, Inc. brought a lawsuit to protest a monthly flat charge in the amount of $8.00 per unit imposed by the the Hamilton County Water and Wastewater Treatment Authority (WWTA) on all of its sewer customers. The charge was instituted to fund a program designed to repair and refurbish private service laterals. American Heritage sought a declaratory judgment that the WWA had exceeded its authority by imposing an unjust and discriminatory charge.

The trial court granted summary judgment in favor of the WWTA, finding that because the Utility District Law of 1937 (UDL) provided an administrative procedure for contesting utility charges, no private right of action was available. The court further ruled that in the alternative, if a private right of action were allowed by the appeals court, American Heritage's complaint could be certified as a class action lawsuit. American Heritage has appealed.

The Court of Appeals reversed, holding that the trial court erred by applying the Utility District Law of 1937 to a non-utility district water and wastewater treatment authority. Thus, the trial court erred by applying the administrative remedies available to utility users under the UDL to the instant action and thereby erred by finding that American Heritage had failed to pursue said remedies.

The Court of Appeals affirmed the trial court's ruling regarding class action certification.

CONSTITUTIONAL LAW - UTAH

Summum v. Pleasant Grove City

Supreme Court of Utah - January 30, 2015 - P.3d - 2015 UT 31

After the United States Supreme Court, 555 U.S. 460, 129 S.Ct. 1125, rejected religious organization's free speech claim and the federal district court subsequently rejected organization's federal establishment clause claim, organization filed a complaint in state court, alleging that city had violated the religious liberty clause of the Utah Constitution. The Fourth District Court granted summary judgment in favor of the city. Organization appealed.

The Supreme Court of Utah held that religious liberty clause did not require city to install a proposed religious monument in a public park where a Ten Commandments monument was already situated.

Requiring city to erect a second religious monument would not render the allocation of public property and money to the two monuments neutral, displaying monuments that communicate the beliefs of only two religious viewpoints would not amount to an impartial distribution of public property among the spectrum of religious views held by Utah citizens, and because allocation of public money or property to a permanent religious monument was per se not neutral, the appropriate remedy for monument constituting "religious worship, exercise or instruction" would not be the forced installation of a second monument.

IRS Issues Guidance on New Clean Renewable Energy Bond Projects: Tax Analysts

The IRS has solicited (Notice 2015-12) applications for allocations of the remaining available amount of the national limitation for new clean renewable energy bonds under section 54C(a). The available amounts include forfeited amounts previously allocated under prior guidance (Notice 2009-33 and Announcement 2010-54).

Continue reading (subscription required).

TAX ANALYSTS
FEBRUARY 3, 2015

Improvements Underway for Exempt Bonds VCAP, Official Says: Tax Analysts

The IRS has made a number of improvements to its voluntary closing agreement program for issuers of tax-exempt bonds and will keep working to improve the program in 2015, Rebecca Harrigal, director of the IRS Office of Tax Exempt Bonds, said February 5.

Continue reading (subscription required).

Fred Stokeld

February 6, 2015

NABL: Looking Again at Rule15c2-12.

Earlier this week SEC Commissioner Luis Aguilar addressed the American Retirement Initiative's Winter 2015 Summit. The Summit, which was held at SEC headquarters in Washington, is a forum that focuses on how advisors can improve retirement outcomes for Americans. Commissioner Aguilar's remarks were entitled "Advocating for Investors Saving for Retirement" and he took the opportunity to focus on two areas where he believes improvements are necessary for investors to make informed decisions, one of which was disclosure in the municipal market.

Commissioner Aguilar acknowledges that the SEC has limited authority to regulate the municipal market and that situation will continue, as he puts it, "short of a Congressional fix to repeal the Tower Amendment." While he does not directly say so, his remarks seem to indicate that he believes such a fix is unlikely. However, he does say that "more things can be done to enhance disclosure practices in the municipal securities market" and that the SEC should "carefully consider" moving forward using the authorities that it has – regulating underwriters to ensure that investors have "certain limited disclosures" (i.e., 17 CFR 240.15c2-12, "15c2-12") and enforcing the antifraud provisions.

Although he acknowledged improvements in recent years though industry efforts and the introduction of the MSRB's EMMA system, his negative characterizations of the current situation were strong. He spoke of "the entrenched practice among issuers of municipal securities to provide inadequate disclosures" and "pervasive problems" in providing timely and complete continuing disclosures. He cited the enforcement actions against Kansas, Illinois, New Jersey and Kings Canyon Unified School District as support for the proposition that serious problems remain in municipal disclosure.

Among the specific concerns he mentioned were the "absence of detailed information" about an issuer's outstanding debt – specifically liens and collateral pledges – and the disclosure of bank loans.

Commissioner Aguilar mentioned in particular four of the recommendations that were made in the SEC's 2012 Report on the Municipal Securities Market:

- Require fuller, and more specific types of disclosures in the initial offering documents, including the final terms of the offering and the price to be paid for the municipal securities in the initial issuance;
- Mandate more specific types of ongoing disclosures, including disclosures concerning the issuance of new debt;
- Provide a method to address noncompliance with continuing disclosure requirements; and
- Make disclosures easier to understand.

The MSRB recently submitted comments to the SEC calling for a review of 15c2-12 and mentioned some of the same concerns that Commissioner Aguilar raised. SIFMA also filed comments saying that SIFMA and its members "welcome a full and complete review of [15c2-12]", though saying that "fundamental flaws exist with regard to the structure" of 15c2-12 and that SIFMA and its members "are concerned that responsibility for compliance under [15c2-12] is not placed with those who have the best access to issuer information."

NABL WEEKLY WRAP
February 6, 2015

Puerto Rico Power Bonds Rise After Judge Throws Out Debt Law.

(Bloomberg) — Puerto Rico power bonds rallied after a judge threw out the island's debt-restructuring law, giving investors more power in negotiations with the electric utility.

Electric Power Authority securities maturing in July 2040 traded Monday at an average of about 58 cents on the dollar, the highest since May 28 and up from about 48 cents Friday, data compiled by Bloomberg show.

U.S. District Judge Francisco A. Besosa ruled Feb. 6 that the law that lawmakers passed last year would take away protections provided under the federal bankruptcy code, presenting an "irreconcilable conflict." The decision means the junk-rated power authority, called Prepa, can't dictate terms to investors, said Dan Toboja, senior vice president of municipal-bond trading at Ziegler, a broker-dealer.

"It gives Prepa bondholders a more powerful seat at the table if a restructuring becomes necessary," Toboja said from Chicago. "So perceived returns should be higher after the news."

The law that Puerto Rico lawmakers approved in June would have allowed some island agencies to negotiate with investors to lower their bond load. The commonwealth and its agencies owe $73 billion of debt, most of which is tax-exempt nationwide and held by investors around the country.

Creditor Agreement

Prepa and a majority of its creditors signed an agreement in August that puts off payment of bank loans. That contract ends March 31. The agency has asked for a new June 30 deadline, according to two people with knowledge of the request.

Prepa, which has $8.6 billion of debt, owes bondholders $400 million in principal and interest on July 1, according to Janney Montgomery Scott LLC. A debt restructuring of the agency would be the largest ever in the $3.6 trillion municipal market.

Puerto Rico plans to appeal the ruling, Secretary of Justice Cesar Miranda said in a statement Monday.
As Prepa bonds gained, commonwealth general-obligation bonds lost value, pushing yields to record highs.
General obligations maturing in July 2035 traded with average yields above 10 percent, the highest since they were first sold in March 2014. The debt changed hands for as low as 81 cents on the dollar.

The bonds have traded at distressed levels for more than a year as investors speculated that the island will fail to make timely debt payments as officials struggle to revive its economy. Puerto Rico's jobless rate, at 13.7 percent in December, was higher than in any U.S. state and more than double the national average.

If Prepa were to restructure, the commonwealth might direct money to the power agency to resolve investor negotiations, which could mean less cash would be available for general-obligation holders, Toboja said. Investors may also see a resolution of the power-utility debt before they know the fate of the general obligations, he said.

"We'll have a better sense of what's going on with Prepa before we know exactly how the general obligations all shake out," Toboja said. "That could take years."

by Michelle Kaske

February 9, 2015

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Judge Strikes Down Puerto Rico's Debt Restructuring Law.

Investors in billions of dollars of Puerto Rico bonds secured a major legal victory when a federal judge ruled that the commonwealth's recently enacted debt-restructuring law was unconstitutional.

In the decision Friday night, Judge Francisco A. Besosa of the United States District Court in Puerto Rico said the Puerto Rico Public Corporations Debt Enforcement and Recovery Act was void and enjoined commonwealth officials from enforcing it.

The recovery act was passed by Puerto Rico lawmakers last summer to enable the commonwealth to overhaul the debts and labor contracts of the island's struggling public corporations, including the Puerto Rico Electric Power Authority, which is known by its acronym, Prepa.

Like states, Puerto Rico cannot seek protection from creditors under federal bankruptcy law, leaving the commonwealth with few ways to straighten out the finances of troubled agencies like Prepa, which supplies electricity to the island's roughly 3.6 million people.

A group of Prepa bond holders, including BlueMountain Capital and OppenheimerFunds, that own about $2 billion of the power's authority's debt sued the commonwealth in federal court, arguing that the recovery act violated their contractual rights.

The ruling is "a major victory for municipal bondholders," Amy Caton, a lawyer for Oppenheimer and Franklin Mutual, another Prepa investor, said in a statement.

The passage of the recovery act in June rattled investors, particularly hedge funds, which had been buying up bonds issued by Prepa and other Puerto Rico entities at distressed prices. Investors feared that the new law showed how the government of Puerto Rico was willing to unilaterally change the rules, without warning.

The law spawned a spate of downgrades by the ratings firm Moody's, which had already rated the commonwealth's debt as junk.

On Friday, Judge Besosa denied the commonwealth's motion to dismiss the investors' lawsuit, saying that the recovery act was pre-empted by federal bankruptcy law.

"The commonwealth defendants, and their successors in office, are permanently enjoined from enforcing the recovery act," he wrote in a 75-page decision.

A spokesman for the Government Development Bank, which oversees the commonwealth's debt deals, said: "We will be reviewing all the aspects of the ruling rendered by Judge Francisco Besosa. In due time and after careful examination, we will decide on a course of action."

The ruling is a significant setback for the Puerto Rico government, which has been engaged in a high-wire act — trying to restructure the debts of its public corporations while still maintaining the confidence of the municipal bond market that it needs to keep financing its operations.

The recovery act allows for the revamping of debts at certain public corporations. But it does not apply to the commonwealth's general obligation bonds.

Prepa is mired in about $9 billion in municipal bond and other debt and has been struggling with high fuel costs, though the drop in oil prices has relieved some of that strain.

"This is a victory for the rule of law," said Laurence L. Gottlieb, chairman and chief executive of Fundamental Advisors, a hedge fund and private equity firm with investments in Puerto Rico debt. "But now the question is what's next in terms of dealing with Prepa's debt."

THE NEW YORK TIMES

By MICHAEL CORKERY

FEBRUARY 8, 2015

Lawyers Recommend Disclosure Strategies in Wake of MCDC.

WASHINGTON — The Securities and Exchange Commission's disclosure violation self-reporting program has highlighted that issuers and underwriters should take steps to strengthen their disclosure and due diligence procedures to protect themselves from SEC enforcement action, bond lawyers said Thursday.

Attorneys from Orrick, Herrington & Sutcliffe described the state of continuing disclosure in the aftermath of the SEC's Municipalities Continuing Disclosure Cooperation initiative during a webinar the firm presented in conjunction with The Bond Buyer.

The MCDC, announced last March, allowed both issuers and underwriters to voluntarily report, for any bonds issued in the last five years, any time they misled investors about their compliance with their continuing disclosure obligations. The SEC offered lenient settlement terms in exchange for the voluntary reporting.

Though the deadline was in September for underwriters and December for issuers, the SEC is still in the process of combing through the many submissions it has acknowledged receiving from deal participants. Elaine Greenberg, a partner in Orrick's Washington office, said that while it is likely many settlements will result from the MCDC, it may be some time before the SEC gets around to them all.

"The process is likely to take a good part of the rest of the year," she said.

The MCDC was based on the SEC's Rule 15c2-12, which requires dealers to review issuers' official statements in primary offerings and reasonably determine that the issuers have contracted in writing to disclose annual financial and operating information, as well as material event notices.

The Municipal Securities Rulemaking Board is among groups who called for the rule to be revisited and possibly overhauled after the SEC requested comment on the burdens the rule poses. Eileen

Heitzler, a partner in Orrick's New York office, said the MCDC has resulted in a lot of discussion of disclosure requirements.

"There has been more discussion of what is or isn't material," Heitzler said.

Heitzler said the in-depth materiality analyses issuers and underwriters conducted could potentially be carried forward to help determine which, if any, instances of past compliance failure should be included in future official statements. But she cautioned that the SEC has still not ruled on the materiality of the disclosure failures reported under MCDC.

Robert Feyer, a partner in the firm's San Francisco office, offered some specific steps issuers could take to help with their compliance. Continuing disclosure agreements contained in offering documents should set specific dates for filing audited financial statements, rather than adhering to a common practice of promising to file a certain number of days after the end of the fiscal year, Feyer said.

"That makes compliance crystal clear," he said.

Feyer added that issuers should choose a date by which they can confidently complete their audits, and file unaudited information if the audited data is not available by the date in the continuing disclosure agreement.

Alison Radecki, another partner in the New York office, said it is important for both issuers and underwriters to emphasize written policies and procedures related to their compliance obligations, and to have training on the requirements at least annually.

The SEC has only publicized one settlement under the MCDC, a July 2014 action against Kings Canyon Joint Unified School District. That settlement was vague, annoying many bond lawyers. But the SEC has said future MCDC settlements would be more revealing of the commission's views on what should or should be disclosed as material.

THE BOND BUYER

BY KYLE GLAZIER

FEB 5, 2015 2:57pm ET

IRS EO Update: e-News for Charities & Nonprofits - February 5, 2015

1. Register for IRS Phone Forum: Employment Taxes for Exempt Organizations

Thursday, February 19, 2015 – 2 p.m., ET

Topics include:

- What are employment taxes?
- Independent contractors vs. employees
- Voluntary Classification Settlement Program
- Church and the clergy
- Electronic filing and payment options for employment tax returns
- Small Business Health Care Tax Credit

- Exempt Organizations: Additional Employment Tax Resources

Register for this phone forum.

2. Renew your PTIN

Recently, the IRS sent expiration notices to PTIN holders who have not yet renewed their PTIN for 2015. Anyone receiving a notice can still renew their PTIN online at any time, but their status has been changed to “expired” until they do so.

To date, approximately 635,000 tax return preparers have valid PTINs for tax year 2015.

If you do not renew your PTIN, you can no longer prepare federal tax returns for compensation. If you intend to renew your PTIN for 2015, you can renew online or submit a paper application.

Online renewal

You can renew online. If you need assistance, review our instructional videos for help.

Paper renewal

If you prefer, you can renew by paper using Form W-12, available via the IRS homepage. It will take 4-6 weeks to process.

3. New EO published guidance posted

Review the following revenue procedures:

- Revenue Procedure 2015-9, which concerns issuing determination letters on the exempt status of organizations under sections 501 and 521 of the Code.
- Revenue Procedure 2015-10, which concerns issuing determination letters and rulings on private foundation status under section 509(a) of the Code.

4. Register for EO workshops

Register for our upcoming workshops for small and medium-sized 501(c)(3) organizations. Remember to check this page periodically for new workshops being planned in a town near you.

MSRB Updates Market Participants on Progress of Proposed Standards of Conduct for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) is updating the municipal advisory community and other market participants on the status of the development of MSRB Rule G-42, on duties of non-solicitor municipal advisors. As a reminder, the following steps of the rulemaking process have been completed:

COMPLETED STEPS

Request for Comment, January 2014

Draft MSRB Rule G-42 seeks to ensure that municipal advisors are fulfilling their fiduciary duty to their municipal entity clients and their duty of care toward all clients.

Review of Comments Received, March 2014 – August 2014
The MSRB received significant public comment on the initial draft rule and determined to seek additional public comment on a revised draft rule.

Second Request for Comment, July 2014
Input on the revised draft rule has significantly aided the MSRB in its further development of the rule.

The MSRB Board of Directors has approved the submission of a further revised version of the rule for the SEC's formal consideration. The process related to this formal submission is described below.

NEXT STEPS

Formal Filing to the SEC
The MSRB plans to submit a revised version of the rule for the SEC's formal consideration. The MSRB will distribute a link to the filed rule proposal to all registered firms.

Publication of MSRB Filing in Federal Register
When the SEC receives the filing, it will publish the MSRB's proposed rule in the Federal Register for an additional public comment period, the length of which is determined by the SEC but typically is 21 days. The MSRB will notify registered firms about this opportunity for comment via email.

SEC Action on Proposed Rule
Following the Federal Register comment period, the SEC will have 45 days to act on the proposed rule, during which time the MSRB typically responds to all public comments received by the SEC. The SEC can seek up to a 45-day extension of its deadline to act, and then institute additional proceedings to determine what action to take that can last up to an additional 150 days.

Effective Date of MSRB Rule
The MSRB anticipates that the rule, if approved, would become effective six months following the date of approval. The information in this status update is being provided so that advisors may plan, as much as possible given the nature of the rulemaking process, for the effectiveness of any approved rule. Advisors are encouraged to familiarize themselves with the proposed rule that the MSRB files with the SEC to begin to consider implementation strategies and how they would prepare timely to comply with an approved rule.

SEC Budget Increase Would Bolster Exams.

WASHINGTON — The Securities and Exchange Commission's requested fiscal year 2016 budget of $1.722 billion would allow the commission to hire hundreds of examination staff and step up enforcement, as well as help the muni office coordinate with self-regulators.

The SEC justified its budget request this week in a lengthy document laying out goals for each of its divisions and explaining how a budget increase of 9% over the fiscal year 2015 enacted level of $1.574 billion would help the commission reach those objectives. Topping its priorities is a big boost to National Examination Program staffing, putting more boots on the ground to ensure that entities regulated by the SEC are in compliance with the rules.

“The SEC’s responsibilities have increased significantly over the last few years across all fronts, and, at the same time, the financial markets and market participants have grown in size and complexity,” SEC chair Mary Jo White said in a statement. “Providing the SEC with the resources it needs to effectively oversee these markets and participants benefits America’s investors, businesses and our economy.”

The SEC’s budget is deficit neutral, because its expenditures are offset with fees collected from the securities industry rather than with money appropriated by Congress. Another regulator, the Commodities Futures Trading Commission, would operate under the same model under the Obama budget.

The budget request would allow the SEC to hire an additional 431 staff, the commission said, including 225 in the examination program. Many of them would be involved with examining investment advisers, though others would take part in the SEC’s initiative to examine municipal advisors. The SEC in August announced a two-year exam program focusing on MAs who are not dealer firms and members of the Financial Industry Regulatory Authority. FINRA is taking point on examining dealer-affiliated MAs.

“I am pleased that the President’s budget request would allow us to hire additional staff to enhance our enforcement and examination capabilities, provide greater oversight of our markets, add more experts to implement our expanded rulemaking responsibilities and permit the agency to continue to leverage technology to help fulfill its important mission,” said White.

The budget would also support 93 new enforcement staff, the SEC said. The budget justification document explains that the SEC is involved in more litigation now than in previous years, leading to increased costs. The budget money would also support the mission of the Office of Municipal Securities, which plays a major role in working with FINRA and the Municipal Securities Rulemaking Board to develop and approve new rules affecting the muni market.

“In FY 2016, the OMS will continue to implement the final rules for municipal advisor registration by monitoring and improving the new registration system for municipal advisors, participating in the review of these registrations, advising the Office of Compliance Inspections and Examinations regarding examinations of municipal advisors, and providing interpretive guidance,” the SEC said.

Obama’s overall budget proposals have already met with a frosty reception from congressional Republicans, some of whom have declared them as dead on arrival.

THE BOND BUYER

BY KYLE GLAZIER

FEB 3, 2015 3:07pm

The Bond Lawyer - Winter 2015

The Winter 2015 issue of The Bond Lawyer is now available.

Featured articles:

“Federal Securities Law” by Paul S. Maco

Bracewell & Giuliani, Washington, DC

“Tax Lines” by Linda B. Schakel
Ballard Spahr LLP, Washington, DC

Download.

TAX - UTAH

Anadarko Petroleum Corp. v. Utah State Tax Com'n

Supreme Court of Utah - January 30, 2015 - P.3d - 2015 UT 25

Owner of oil and gas interests appealed decision of Tax Commission disallowing severance tax deductions they made for tax-exempt federal, state, and Indian tribe royalty interests.

The Supreme Court of Utah held that severance tax statute categorically excludes any federal, state, and Indian tribe interests from the net taxable value of an oil or gas interest for purposes of calculating the applicable tax rate.

Virginia House Passes P3 Safeguards.

Virginia’s House of Delegates on Tuesday overwhelmingly approved a bill aiming to reduce risk associated with public-private partnerships.

House Bill 1886 Public-Private Transportation Act, introduced by House Appropriations Chairman Chris Jones (R) at the request of Gov. Terry McAuliffe (D), would require a newly formed P3 steering committee, which will include the staff directors of the House Appropriations and Senate Finance committees to declare a project is in the public interest before it can go ahead.

Once the committee has issued the finding, state transportation officials would be required to certify the risks, liabilities and other aspects of the deal have not changed since the committee gave its approval, reported the Richmond Times-Dispatch.

The legislation was prompted by concerns over several P3s:

- The U.S. 460 project which Virginia spent more than $300 million on the project before applying for the federal permits needed to begin construction. The project has yet to receive approval.
- A 58-year concession agreement with Elizabeth River Crossings to renovate the Downtown Tunnel and build the Midtown Tunnel connecting Norfolk and Portsmith. The state paid the private sector operator $200 million to prevent tolls from rising sharply and should the state build a new crossing, it would need to pay “alternative facilities charges.”
- A 20-year lease for a private marine terminal in Portsmouth with a firm that sought to operate the entire Port of Virginia. The McAuliffe administration is seeking a lease extension or guarantee the state will own the asset after paying $50 million annually in rent.

The bill passed the House by a vote of 98-0.

NCPPP

By Editor February 5, 2015

IRS Seeks Applications for New CREB Volume Cap.

Read the Notice.

MMA Issuer Brief: Strong Jan Ends; Atlantic City Implications.

Read the Brief.

Municipal Market Advisors | Feb. 3

Recent Favorable IRS Guidance for Tax-Exempt Bond Financed Facilities: Ballard Spahr.

The IRS has released guidance in three areas of interest to entities that benefit from tax-exempt bond financings, particularly hospitals and educational institutions. This guidance creates new rules related to management contracts and participation by a nonprofit entity in an accountable care organization (ACO), final rules addressing requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act (ACA), and the creation of a standardized voluntary closing agreement program (VCAP) for issuers of 501(c)(3) bonds for the benefit of a 501(c)(3) organization that had its tax-exempt status reinstated after having it revoked for failure to file returns for three consecutive years. Highlights of the guidance are summarized below.

New Five-Year Safe Harbor for Management Contracts

For the first time in 18 years, the IRS made a significant change to existing IRS safe harbors under which management contracts do not result in private business use of tax-exempt bond financed facilities. Notice 2014-67, which was released on October 24, 2014, provides a new favorable five-year safe harbor from private business use for management contracts and expands the types of productivity awards that are permitted. The changes apply to contracts entered into or materially modified on or after January 22, 2015, but may be applied to contracts entered into before that date. The new management contract safe harbor has important immediate implications for borrowers or issuers of bonds who have entered into management contracts with service providers for their bond financed facilities.

New Bond Guidance on Accountable Care Organizations

Notice 2014-67 also is the first step taken by the IRS in addressing the tax issues raised by nonprofit organizations with tax-exempt bond financing participating in ACOs. According to the Notice, the participation of a 501(c)(3) hospital organization (or governmental entity) in the Medicare Shared Savings Program through an ACO will not result in private business use of the tax-exempt bond financed facility if certain conditions are met. The conditions set forth in Notice 2014-67 parallel the conditions in Notice 2011-20, which provided guidance related to the tax treatment for exempt organizations seeking participation in ACOs. These provisions apply to bonds sold on or after

January 22, 2015, but may be applied to bonds sold before that date.

Final Section 501(r) Regulations for Charitable Hospitals

In December 2014, Treasury and the IRS released final regulations regarding the requirements charitable hospital organizations must meet under new section 501(r) of the Internal Revenue Code added by the ACA. Under section 501(r), charitable hospital organizations or entities seeking 501(c)(3) status face additional requirements to maintain their tax-exempt status. These requirements include conducting a community health needs assessment at least once every three years. The final regulations provide needed guidance regarding the potential effects on tax-exempt bonds in the event the charitable hospital organizations do not meet the requirements.

Voluntary Closing Agreement Program for 501(c)(3) Organizations

The IRS announced a simplified process for issuers of 501(c)(3) bonds to request a closing agreement in situations where the borrower received prospective reinstatement after its tax-exempt status was automatically revoked for failure to file an annual return for three consecutive years. The closing agreement amount for each bond issue covered by an agreement is equal to $500 for each calendar month or portion thereof in the period, starting with the month of revocation and ending in the month when the organization's exempt status was reinstated.

Ballard Spahr will host a webinar on Friday, February 27, from 12:00 p.m. to 1:00 p.m. ET, on the recent IRS developments affecting tax-exempt bond financed educational institutions, which will include a detailed discussion of the new management contract safe harbor. Register for this webinar here.

The firm will also be hosting a webinar on recent health care developments on Thursday, April 16. Registration details will be distributed as soon as they are available.

February 2, 2015

by Vicky Tsilas and Linda B. Schakel

Attorneys in Ballard Spahr's Public Finance Department have participated in every kind of tax-exempt bond financing. These financings include bond issues for hospitals and health care institutions, as well as universities, colleges, and student housing. For more information, please contact Vicky Tsilas at 202.661.2283 or tsilas@ballardspahr.com, or Linda B. Schakel at 202.661.2228 or schakel@ballardspahr.com.

What Obama's 2016 Budget Means for States and Localities.

President Barack Obama's record $4 trillion proposed budget would provide boons to states and localities in a host of areas, from infrastructure to education, but the White House's spending plan again includes cuts or limits to popular programs such as community development block grants.

After calling for an end to "mindless austerity," Obama released a proposal Monday that would end spending caps on discretionary spending, which are yearly appropriations encompassing nearly every government function, with particular impact for state governments in areas such as education, transportation, veteran's benefits and natural resource protection. That, combined with a host of new initiatives, would likely mean an influx of state-level spending, but there are some notable cuts or limits.

Some of those have appeared in Obama's budgets for years, and the Republican-controlled Congress will balk at much of the plan's spending and tax changes. That means the final product will look far different, if the two branches of government can come to an agreement at all — a rarity in the Obama era. The budget is for the new federal fiscal year starting Oct. 1.

While the president anticipates the annual budget deficit will dip to $474 billion in 2016 and $463 billion in 2017, it would begin to pick up again, reaching $687 billion by 2025. But as a percentage of the overall economy, that would be lower than current levels of 3.2 percent. The overall national debt — the accumulation of annual deficits — would gradually decrease to 73.3 percent of the overall economy because of changes to health care and other areas, the president argued. The budget never reaches balance, which will prompt further criticism from Congressional Republicans.

Much of the items that will get the most attention focus on new tax credits for middle-class families along with new tax increases for some businesses and higher earners. But there's also much that will directly affect states and cities. The White House budget estimates that federal grants to state and local governments will total $652 billion in 2016, representing a 13 percent increase from 2014.

That's in part possible because the budget assumes the end of spending caps imposed by the 2011 deficit-reduction deal known as sequestration. Under that deal, spending would have inched up by 1 percent, or $2 billion, from the 2015 fiscal year. The president's budget lifts spending in 2016 by $28 billion, or nearly 3 percent, to $1.17 trillion. The White House budget estimates that sticking with the current caps next year "would mean the lowest real funding level for research since 2002 — other than when sequestration was in full effect in 2013 — and the lowest real per-pupil funding levels for education since 2000, a major disinvestment in exactly the areas where investment is needed to support growth."

Under the new plan, the federal government would spend a total of $333 billion more than originally allotted for discretionary funds over the next decade.

The increased caps for non-discretionary spending — things like yearly social programs such as Medicare — may also be a relief for states that been essentially been operating on the assumption that federal appropriations for their programs won't change. Although the president's budget is unlikely to pass as is, a lift on spending caps could end up increasing funding levels for certain grant programs, such as education programs. However, much will depend on decisions in future spending legislation that spells out program appropriations in detail to know the actual impacts.

Here's a rundown of specific areas the budget would boost — and specific areas it would cut.

Infrastructure

The president's budget includes $478 billion over six years paid for with new taxes on companies that incorporate abroad to avoid higher taxes in the U.S.

The administration called for more transportation spending than it has in past years, even though Congress has been deadlocked on long-term transportation spending for years. Since the last long-term surface transportation law expired in September 2009, Congress has passed 32 short-term fixes to keep transportation money coming to the states.

The major culprit has been the declining buying power of federal fuel taxes. The federal gasoline tax, for example, has been 18.4 cents-per-gallon since 1993. The current extension expires in May. There is bipartisan interest in passing another long-term law like the one the president proposed, but talks have always stopped when it comes to finding a way to pay for the new spending.

The fact that Obama's budget identifies a specific mechanism for paying for the new spending proposal is a "good place to start in a discussion with Congress," said Lloyd Brown, a spokesman for the American Association of State Highway and Transportation Officials (AASHTO).

"There seems to be more conversation and discussion going on right now than maybe we've had in the past, but I think that's also indicative of this looming situation," with the expiration of the current spending bill in May, Brown said.

In addition, the budget proposal includes new initiatives to spur private investment through a national infrastructure bank, new financing and bonds, such as tax-exempt Qualified Public Infrastructure Bonds, which are specifically geared toward helping states and localities attract new sources of capital. Packaged together, the incentives for private investment are expected to cost relatively little in 2016 — just $181 million — but will jump to $433 million the following year and $1.7 trillion by 2025.

New matching programs

The president included an already extensively previewed idea to make two years of community college free for qualified students in participating states. The budget provides $60 billion over 10 years, which would pay for three quarters of tuition, with states picking up the rest.

The budget also includes about $2 billion over three years to encourage states to reimburse workers for taking leave for specific family or medical reasons. Three states (California, Rhode Island and New Jersey) already have family leave programs, which allow workers to pay monthly premiums into an insurance fund that they can tap if they have to leave work for an extended period of time. The federal budget would cover half the benefits costs for up to five states, in addition to another $35 million in technical assistance for states already in the process of setting up paid-leave programs.

Health, education, police and research

The president's budget includes more than $100 million in new spending to try reduce opioid abuse through direct spending in states for strengthening drug monitoring programs, expanding access to treatment and broadening the use of drugs that counteract overdoses.

In addition, the budget seeks to reverse cuts made to early childhood education that resulted in about 60,000 children losing spots in the federal Head State and Early Head Start programs.

Likewise, the budget would partially undo cuts to federal support of community policing. Hiring

grants for the Office of Community Oriented Policing Services (COPS) have declined in recent years, from about $240 million in 2010 down to $108 million this year. Obama is calling for $182 million in 2016.

Lastly, the president bemoaned the effects of sequestration on research and development, which he argues has reached its lowest level in a decade. The president's budget would boost funding by nearly six percent over 2015, particularly in the areas of medical research.

Proposed cuts

Perhaps the most notable area that's routinely targeted for cuts is the community development block grant.

Among dozens of proposed cuts, the Obama administration called for $200 million less for the Community Development Block Grant program. That will surely draw criticism from the national associations that represent cities and counties, which have fought to keep the program funded at $3 billion a year.

The grants go to roughly 1,200 units of state and municipal government across the country to pay for a wide range of local needs, such as water infrastructure, affordable housing and meal programs for seniors. While the grant program saw a brief funding surge when Obama first took office, the long-term trend has been less money over time. Total federal disbursements already declined by about 30 percent between 2004 and 2014.

Another area sure to draw the ire of local policymakers is the tax-exempt status of municipal bonds, another perennial target of the White House. The Budget would limit the value of most tax deductions and exclusions to 28 cents on the dollar on higher-income earners, which would likely raise rates for governments. Currently, interest earned on municipal bonds is not taxed — a benefit to bondholders that allows governments to finance their bonds at a lower interest rate and save money. Governmental associations estimate that total borrowing costs for cities, counties and states could increase by more than 50 percent if municipal bonds' tax-exempt status was repealed entirely.

Eliminating or limiting the bonds' tax-free status has been discussed for years as a way to gain more federal revenue, but so far efforts have been unsuccessful. Taxing municipal bonds would add billions of dollars of new revenue to the national government — as much as $40 billion.

It's those two changes in particular that drew the concern of groups advocating for state and local governments. The National Association of Counties, for one, said it appreciates the new infrastructure spending options, but they don't outweigh the potential loss of others. "Counties need more financing options, not fewer," said Executive Director Matthew Chase. "One infrastructure financing tool cannot cancel another."

Other cuts include:

- $67 million from school districts included in the Impact Aid program, which makes up for a lack of property tax revenue in schools on or near federal land such as military bases.
- About $260 million from a variety of public health programs, including a program called Racial and Ethnic Approaches to Community Health, which focuses specifically on health disparities among minority populations.
- $450 million from the Grants-in-Aid for Airports program, which guarantees funding for large airpots. The federal government argues those hubs are better able to make up the money with fees, rather than smaller airports that need the money more.

- $185 million from the State Criminal Alien Assistance Program, which helps offset the costs of jailing unauthorized immigrants for states and localities.

GOVERNING.COM

BY LIZ FARMER, CHRIS KARDISH, J.B. WOGAN, DANIEL C. VOCK | FEBRUARY 2, 2015

The Week in Public Finance: Haunted Budgets, a Bustling Market and Bad Headline News.

Haunted state budgets

A new report from Wells Fargo's Natalie Cohen took a look at state fiscal health midway through the 2015 fiscal year. Conditions for states are generally improving and showing fewer signs of budget instability, she said. However, some states reduced taxpayer burdens through tax cuts in prior years and anticipated revenue from expected economic activity hasn't yet offset those revenue cuts. "Kansas is a notable example of this, where Gov. Sam Brownback's individual and corporate income tax cuts in 2012 have only exacerbated the state's fiscal status, as revenue collections dropped more than anticipated," Cohen said in the Feb. 5 report.

There are others. Wisconsin is facing lower revenue partly because of a change in tax withholding rules that lets earners get more from their paychecks. Louisiana is facing challenges with low oil prices, but more of its revenue decline is tied to corporate tax breaks. The state had to make midyear budget adjustments in six of the past seven years. Michigan has a revenue shortfall thanks to earlier business tax credits. Arizona's business tax cuts in 2011 and 2012 are also haunting the state's current budget picture, Cohen wrote.

The revenue challenges come at a time when there is a lot of pressure to enact tax cuts now that the national economy has recovered from the recession and some states are in a position to either spend more money or allow for revenue cuts. These pressures are particularly forceful in Illinois and New Jersey, Cohen said, which both face structural budget problems and are led by Republican governors just itching to lower income taxes. The report also noted that the drop in oil prices and Medicaid expansion are playing roles in state budget adjustments this year.

Hustle and Bustle

Municipal bonds saw a lot more action in January than anyone predicted — but don't get used to it. According to preliminary figures compiled by The Bond Buyer, the total value of bonds issued last month totaled more than $27 billion — despite the fact that bad weather artificially depressed issuance in the final week. (It may be a virtual market but bad weather still looks works like old retail.) According to RBC Capital Markets' Chris Mauro, the total means that last month was the busiest January for the municipal market in five years. If the trend continues, 2015's total volume could turn out to be a lot higher than many analysts' predictions that new volume would total $335 billion. Mauro attributes the burst to a drop in interest rates. The drop prompted more governments to refinance existing bonds to save money. The Texas Department of Transportation refinanced $1.68 billion alone– it will save $380 million, the greatest savings on a single bond deal in the state's history.

Historically, a heavy January has correlated with annual volume totals of over $400 billion (2007 and 2010). Still, governments are reluctant to take on new debt — new bond issuance was down 30

percent in January — and Mauro said, “we question whether the market can maintain this pace of issuance throughout the year.”

Bad times ahead?

Now that the Securities and Exchange Commission program encouraging governments and underwriters to disclose any inadvertent financial omissions about their bond deals has closed, there’s been a lot of speculation about what the SEC will do with the offenders. But one thing’s for sure: the string of settlements the organization releases this year, big and small, will create bad headlines for the municipal market. This, said Municipal Market Analytics’ Matt Fabian, will likely highlight disclosure problems and “incrementally raises the potential for new regulation and/or damage to [municipal bonds’ tax exempt status] in years ahead.”

Noting that governments politically sensitive to admitting past failings, Fabian predicted that means there is more potential for SEC actions against issuers versus underwriters. “The fact that potentially thousands of outstanding bond prospectuses have been flagged as inaccurately depicting past disclosure compliance,” he wrote, “does not exactly bode well for outsiders’ opinions of market operations.”

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 6, 2015

College Sports Ticket Tax Break Would Vanish in Obama Budget.

(Bloomberg) — President Barack Obama wants to remove a tax benefit for college sports fans.

Obama’s budget proposal sent to Congress Monday would end the deduction available to some fans for donations they make to get seats at college sporting events. This is a new proposal by the administration.

By closing what the White House calls a loophole in the system, people would pay about $2.5 billion over the next decade in higher taxes. Currently, college sports fans can deduct 80 percent of the cost of such donations.

The budget plan also would end the use of tax-exempt bonds to build professional sports facilities. Debt to finance stadiums and arenas would be taxable if more than 10 percent of the location is used for private-business use.

Repealing such financing would save $542 million from 2016 through 2025, according to the proposal.
While some alumni and fans would give money to schools regardless of tax benefits, ending the deduction would hurt revenue at some sports programs, said Robert Spielman, a senior tax partner at Marcum LLP who advises high-net-worth clients.

Some U.S. colleges use the tax benefit to generate more revenue from sports. They set a price for season tickets and then demand donations in the hundreds or thousands of dollars on top of that cost as a condition of the sale. Part of the pitch is that fans can claim the expense as a charitable deduction when they itemize their tax return.

Required Donations

At certain universities, fans can't buy tickets unless they make a donation, and at other schools the donations help people get premium seating on the 50-yard line.

One athletic department that uses the donation is the University of Louisville, whose men's basketball team made $40.5 million in revenue in 2013-2014, about $15 million more than the next closest program.

Louisville requires a donation to the Cardinal Athletic Fund for most of its season tickets — contributions that range from $2,500 to $250 a seat. Of the university's $40.5 million in men's basketball revenue, $21.7 million come from donations, according to the school's annual report to the NCAA.

Contribution totals, and season ticket policies, vary significantly across the NCAA's top division. The University of Washington, which requires a donation for its premium football season tickets, reported $19.1 million in football contributions in 2013-14. Rival Washington State's program reported $2.1 million by comparison.

Duke Basketball

At Duke University in Durham, North Carolina, people who give $7,000 a year can get priority for coveted men's basketball season tickets, according to the website for the school's booster club. Buyers could then deduct 80 percent of that cost. For those in the top federal income tax bracket of 39.6 percent, the break is worth $2,218.

Richard Schmalbeck is a Duke law professor who has donated to the university's athletic department to secure the right to buy basketball tickets. He has taken the allowed tax deduction, he said in a phone interview Monday. Even so, the law should change because it's inconsistent with how the Internal Revenue Service usually treats charitable gifts, he said.

Typically, to get a deduction when a charity gives something of worth to the donor, the contribution amount must be reduced by the value of the benefit received, such as dinners and concert tickets at fundraising events, Schmalbeck said.

Sports Facilities

The separate proposal in the budget to eliminate the use of tax-exempt debt for sports facilities would affect states and municipalities that are working with professional teams to finance new or improved stadiums and arenas.

Wisconsin Governor Scott Walker Jan. 27 proposed funding a new arena for the Milwaukee Bucks basketball team, in part with $220 million of bonds backed by taxes generated by the team.

Officials in Missouri are considering a new stadium for the St. Louis Rams NFL team. Two other new NFL venues are being considered in San Diego for the Chargers and in Oakland for the Raiders.

Theodore L. Jones, a lawyer in Baton Rouge, Louisiana, who lobbied Congress for the deduction for donations to college sports programs in 1986, said he opposes Obama's plan to eliminate the break for donations because it helps colleges and universities raise money, he said in a phone interview Monday.
"It's one of the best things to come down the pike," Jones, 80, said.

Jones holds season tickets at Tiger Stadium, home of the Louisiana State University football team, and benefits from the tax deduction, he said.

“I wouldn’t want to take on all the college presidents and college sports programs around the country,” Jones said of the budget plan. “But I’m not the president.”

by Margaret Collins and Richard Rubin

February 2, 2015

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Cuomo Ethics Vow Threatens Streak of Timely Budgets: Muni Credit.

(Bloomberg) — The streak of on-time New York budgets that bolstered the state’s standing on Wall Street may be at risk as Governor Andrew Cuomo pushes lawmakers to disclose outside income amid an ethics fight.

Cuomo said during a speech in Manhattan Monday that he won’t sign a spending plan and will shut down the government if the budget doesn’t include a slate of ethics proposals. He said he expects the demands will meet resistance from lawmakers, after he delivered four timely budgets, the first time that’s happened since 1977.

The budget he proposed Jan. 21 would spend a surplus from legal settlements with financial firms, lower New York’s debt load for the third consecutive year, set a record for the rainy-day fund and put aside money for a disputed Medicaid bill. The state’s fiscal gains have won it breathing room from investors, even if the spending plan misses an April 1 deadline, said Howard Cure, head of municipal research at Evercore Wealth Management, which oversees $5.7 billion.

“It wouldn’t be late because of real economic issues or problems balancing the budget,” said Cure, who’s based in New York. “It’s leverage to achieve something.”

Ratings Climb

In his first four years, Cuomo, a 57-year-old Democrat, closed more than $12 billion in budget gaps. The budget he’s proposing now would be the first of his second term, which started Jan. 1. The combination of timeliness and balanced spending helped New York win its highest rating from Standard & Poor’s since 1972.

Cuomo’s threat comes at a critical juncture for the governor. On Jan. 22, Sheldon Silver, who ruled the Assembly for 21 years as speaker, was arrested on federal corruption charges. He resigned from the post Monday.

Manhattan U.S. Attorney Preet Bharara said the arrest is evidence that Albany’s culture of secrecy and lack of accountability inspires a “caldron of corruption.” Newspaper editorial boards, including the New York Times, said Cuomo must do more to lead the state out of its ethical morass.

As Cuomo pointed out in his State of the State address, the timely budgets were achieved with the same triumvirate — Cuomo, Republican Senate Majority Leader Dean Skelos and Silver — negotiating the deals.
“We still believe we can pass the enacted budget on time,” Skelos said in a statement e-mailed Monday.

Cost Cut

The fiscal gains under the three leaders helped reduce borrowing costs. The extra yield that investors demand to own New York obligations instead of benchmark munis has dropped below 0.1 percentage point on 10-year maturities, from about 0.4 percentage point in January 2013, data compiled by Bloomberg show.

Silver is accused of running two separate kickback schemes for 15 years, netting as much as $6 million. He says he’ll be exonerated. Bronx Assemblyman Carl Heastie was elected on Tuesday to replace him.

The case shows why lawmakers need to provide the public more information on salaries from outside jobs, Cuomo said Monday. His proposal would require them to go beyond the existing disclosure of how much they earn to include how they make it, even if they’re lawyers whose clients would otherwise be protected.

Amendment Plan

He’s also recommending a constitutional amendment to require state officials convicted of public corruption to forfeit pensions, public financing of election campaigns and stronger rules on donor disclosure.

“It’s more important to me to prove that we have corrected the problem, that we have restored the trust, than just check a box that we got a budget done on-time,” Cuomo said. “I will not sign a budget that does not have an ethics plan as outlined in my proposal.”

The budget would spend $5 billion from legal settlements on infrastructure and upstate economic development, and set aside $850 million to pay a Medicaid bill that Cuomo is fighting. The federal government says New York overcharged the health-care program for the poor before Cuomo was in office.

It also splits a $525 million operating surplus, with $315 million directed to a rainy-day fund, raising it to a record $1.8 billion by the end of the fiscal year on March 31, according to budget documents.

Bond Load

The remaining $210 million would go toward paying debt service due next fiscal year, helping lower the state’s bond load for three consecutive years, the first time that’s happened in at least 70 years, according to budget documents and Morris Peters, a spokesman for the budget division.

In July, S&P raised the state to AA+, the second-highest level, citing strengthening finances and timely budgets. The company is reviewing Cuomo’s budget proposal and will look to see how it spends one-time revenue, such as the settlement funds, Robin Prunty, an S&P analyst in New York, said Jan. 30.

“A big driver in the upgrade was structural budget alignment, aligning recurring revenues to recurring expenditures,” Prunty said. “We’ll be watching to see if that continues.”

by Freeman Klopott

February 2, 2015

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Atlantic City Sells $12 Million of Notes to Bank of America.

(Bloomberg) — Atlantic City, the struggling New Jersey casino center, sold $12 million of notes to Bank of America Corp., part of a plan to repay $12.8 million of securities coming due this week.

The city will pay the remainder through cash, according to a plan the City Council passed Tuesday. While officials intended to issue new notes last week to raise the funds, Mayor Don Guardian said Monday that the city had been unable to sell the debt until receiving three offers Jan. 30, including one on which the proposed interest rate — 12 percent — was too steep.

Guardian said the buyer of the new securities was the Charlotte, North Carolina-based bank. The securities mature in August and pay a 5 percent interest rate, according to the city's finance director, Michael Stinson. In comparison, top-rated municipal borrowers pay about 2.55 percent for three decades, data compiled by Bloomberg show.

"It says we're in bad shape," Council President Frank Gilliam said in an interview, referring to the interest rate.

The city, which would pay $300,000 in interest on the borrowing, has pledged as much as $12 million in anticipated state and federal grants to repay the loan, Stinson said. A separate state loan of $40 million comes due March 31.

Orr's Role

Governor Chris Christie, a second-term Republican, has struggled to revive the community of almost 40,000 people, about one-third of whom live in poverty. Casino revenue dropped to $2.9 billion last year from $5.2 billion in 2006 as neighboring states expanded gambling. Four of the city's 12 casinos closed last year.

Moody's Investors Service dropped the city to junk in July because of the dependence on casinos. The company last month lowered its grade on $344 million of Atlantic City debt to Caa1, seven levels below investment grade, citing the governor's move to install an emergency-management team that includes Kevyn Orr. Orr guided Detroit through its record $18 billion municipal bankruptcy in part by asking bondholders to accept less than they were owed.

"The whole perspective for investors changed once Orr got involved, just based on how he approached Detroit," said Daniel Solender, who helps manage $17 billion as director of munis at Lord Abbett & Co. in Jersey City.

Michael Drewniak and Kevin Roberts, spokesmen for Christie, didn't immediately return a phone call or e-mails seeking comment from the administration or Orr's office. Zia Ahmed, a spokesman for

Bank of America, declined to comment.

“Everyone is nervous,” Mayor Guardian told reporters in his City Hall office. “The term emergency manager, I think, scares people away, even though the governor has indicated these are more counselors and tools or experts to help us get through that and doesn’t indicate bankruptcy.”

by Terrence Dopp

February 3, 2015

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Best Bonds Seen Due Beyond 22 Years as U.S. Expands: Muni Credit.

(Bloomberg) — State and local bonds with the longest maturities are delivering the best returns in the $3.6 trillion municipal market even as investors brace for higher interest rates as the U.S. economy grows.

Munis due in 22 or more years have earned about 1.9 percent in 2015, outpacing shorter-dated bonds and beating the 1.4 percent advance for the entire market, Bank of America Merrill Lynch data show. They’re extending a rally after earning 15.5 percent last year, the most since 2009.

Longer maturities are gaining even as the Federal Reserve is projected to raise its benchmark interest rate this year from near zero, where it’s been since 2008. That move wouldn’t reverse momentum for munis due in decades because interest rates will rise more dramatically for debt maturing in one to three years, said Chris Alwine at Vanguard Group Inc. in Valley Forge, Pennsylvania.

“If the Fed begins to tighten, those increases will hit the front end of the curve more,” said Alwine, who oversees $145 billion as head of munis. “And in a world without high inflation, the long end of the curve won’t be hit that badly.”

Bank’s Patience

The Fed last week boosted its assessment of the economy and repeated a pledge to stay “patient” on raising interest rates. It said inflation “is anticipated to decline further in the near term.” The bank will boost its target as soon as next quarter, according to the median forecast of 41 analysts surveyed by Bloomberg.

While Fed increases might push up yields on longer-term securities, this year, subdued inflation will keep rates on longer munis from spiking, said Peter Hayes, who manages $114 billion as head of munis at New York-based BlackRock Inc.

“This time, we would argue that the growth is non-inflationary so we won’t see that steepening,” Hayes said.
The economy will expand 3.2 percent in 2015, according to the median forecast of 84 analysts surveyed by Bloomberg. It would be the fastest growth since 2005.

The Fed's preferred inflation gauge, personal consumption expenditures, rose 0.7 percent in December and has been below the bank's 2 percent target since May 2012. The 54 percent drop in oil since June, to about $49 a barrel, has tamped down inflation. Slower inflation preserves the value of bonds' fixed payments.

Relative Value

Longer munis' relative value against federal debt will also support the securities, said Clark Wagner, director of fixed income at First Investors Management Co. in New York, which oversees $1.5 billion of munis.

Yields on benchmark 30-year munis reached as high as 118 percent of those on Treasuries on Jan. 29, the most since October 2013, data compiled by Bloomberg show.

"That gives it a little cushion if rates rise," Wagner said.

With benchmark yields close to five-decade lows, investors in January poured about $2.5 billion into U.S. muni mutual funds with an average maturity of greater than 10 years, Lipper US Fund Flows data show. It was the biggest inflow in two years.

"They are extending out," BlackRock's Hayes said. "When rates get very low like they are now, investors tend to extend either their duration or they take more credit risk."

Borrower Boon

Declining yields on obligations due in decades have been a boon for issuers borrowing for construction and maintenance of schools, roads and bridges.

Last month, Washington's King County sold bonds backed by sewer revenue to refinance higher-cost debt. The new securities have maturities as late as 2047. The sewer system, the largest in the U.S. Northwest, will save $160 million because of the lower yields, Ken Guy, the county finance director, said in an interview.
"It will save money for our rate payers," Guy said.

The appetite for longer maturities led the county to increase the deal by about $300 million, and then lower yields by as much as 0.05 percentage point across maturities the day of the sale, said Robert Shelley, a financial adviser at Piper Jaffray & Co. in Seattle.

"There's still some investors out there that have cash that they need to put to work," Shelley said. "And debt of municipalities represents good value compared to some of those other options out there."

Supply Equation

The sale was an advance refunding, where proceeds sit in escrow until the original bonds are repaid. With interest rates this low, more localities may opt for such refinancings, said Tim McGregor, head of munis in Chicago at Northern Trust, which manages $30 billion of state and local debt.

"There could be a lot of longer bonds advance-refunded" with shorter maturities, McGregor said. "And that reduces the supply out long."

States and municipalities may sell $335 billion of debt in 2015, Chris Mauro, chief muni strategist in New York at RBC Capital Markets, estimated in December. That includes $55 billion of advance

refunding.

“The $55 billion estimate looks low at the moment,” Mauro said in an e-mail. “It looks like advance refundings are running well ahead of last year in the first few weeks of the year.”

by Michelle Kaske

February 4, 2015

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Detroit Pension Cuts From Bankruptcy Prompt Cries of Betrayal.

(Bloomberg) — Pension checks will shrink 6.7 percent for 12,000 Detroit retirees beginning in March. Making matters worse, many also must pay back thousands of dollars of excess interest they received.

It’s a bitter outcome of Detroit’s record $18 billion municipal bankruptcy for David Espie, 58, who will repay the city $75,000 in a lump sum while his $3,226 monthly pension is cut by $216.

As retirement costs swallow larger portions of U.S. city budgets, Detroit’s bankruptcy plan resolved a pension crisis with creative strokes, though at a cost to retirees who thought their benefits were untouchable.

“I feel betrayed,” said Espie, who may abandon plans to move to Alabama. He recounted family get-togethers he missed during the 30 years he spent in the Department of Public Works picking up trash and plowing snow. He also pays $500 a month more for health insurance than a year ago.

“It’s devastating to me; it’s affecting my health,” Espie said.

In addition to absorbing pension cuts, almost 11,000 retirees and current employees must repay an estimated $212 million in excess interest they accrued in a city-run savings plan, which is separate from the pension fund. The annuity plan guaranteed a 7.9 percent annual return even when the pension lost money, and employees also received bonus interest in some years.

Not Unprecedented

They can either pay the money back in a lump sum or have it deducted gradually from their monthly pension check with 6.75 percent interest.

The savings plan drained $756.2 million from the pension fund from 1985 through 2007 to pay for what former Detroit emergency manager Kevyn Orr said was excess interest. The savings fund produced six-figure nest eggs for some — on top of their pensions — including at least two $1 million accounts. Pensions for general employees, or workers other than police and firefighters, averaged about $19,000 a year.

The clawback is unusual but not unprecedented. About 28,000 Oregon public retirees have had to pay back a combined $156 million after the state Supreme Court ruled in 2011 that the retirement

system overpaid them in 1999 with a 20 percent return, instead of 11.3 percent, said David Crosley, a spokesman for the Oregon Public Employees Retirement System.

More Soup

To make do, Detroit retiree Elaine Williams, 63, said she'll buy more soup and eat cheaper food when her $1,200 monthly pension check is cut by $158. That includes $78 to pay back almost $10,000, a monthly debt she'll face for 17 years.

Williams, who was a customer-service representative in the water department, said she retired in 2012 to a $950-a-month apartment in Phoenix near her children. She worries about medical costs, having endured several surgeries.

"It's wrong that they would mess with our pensions," she said in a phone interview.

Henry Gaffney, 61, a retired bus driver, said he'll pay back $56,000 of the $300,000 he saved by deducting $428 from his monthly $3,100 pension check for 19 years. He said he pays $375 more for health insurance each month.

"I may have to find a part-time job," said Gaffney, former president of Detroit's bus-driver union. "I guess the city wants us to work until we're dead."

Detroit's bankruptcy erased $7.2 billion of debt, of which $1.7 billion was pension liabilities. The city will pay $100 million toward pensions until 2023, while $900 million comes from the Water Department, foundations, the state of Michigan and the Detroit Institute of Arts.

Art Collection

The deal, dubbed the grand bargain, reduced cuts in pension checks and shielded the city's valuable art collection from a forced sale to pay creditors.

The result is a 4.5 percent pension cut for general employees and rollback of a 2.25 percent annual cost-of-living increase that took effect last year while the bankruptcy was pending. Police and fire retirees get no pension cut, though they'll lose half of their cost-of-living benefit.

Detroit is an extreme situation that's unlikely to establish a precedent, said Jean-Pierre Aubry, assistant director of state and local research at the Center for Retirement Research at Boston College.

"The benefit cuts in Detroit are being made in the context of municipal bankruptcy, a very different legal and fiscal environment than that of most cities or towns making pension reforms," Aubry said in an e-mail.

Court Challenge

A group of Detroit employees and retirees is challenging the cuts in federal court.
"It's a clear violation of the state constitution," said William Davis, head of the Detroit Active and Retired Employee Association, which filed the appeal.

U.S. Bankruptcy Judge Steven Rhodes ruled that Detroit's pensions could be cut, even thouth the state constitution prohibits reducing retirement benefits.

The bankruptcy plan created new investment committees for Detroit's pension funds, appointed by

the pension boards and the state. The funds now assume a 6.75 percent annual rate of return on investments, instead of the 7.9 percent and 8 percent rates that were used, respectively, by the general and police and fire funds.
While the pension funds are now more secure, the cost to retirees stirs resentment.

Louis Ali, 64, said his monthly $1,775 pension check will be reduced by $345, mostly to pay back $38,200 he owes in excess interest. Ali, who was a water department technician, said the city should have sold some of its art rather than cut pensions.

“If it comes down to my check being cut or that painting staying on the wall, give me my money,” he said.

by Chris Christoff

February 4, 2015

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Philadelphia Pays Retirees Bonus Amid Pension Gap.

(Bloomberg) — Philadelphia has less than half the money it needs to keep its promises to retiring workers. Yet instead of socking away investment earnings, the city must spend the cash.

When the pension fund of the fifth-most-populous U.S. city performs better than its target, some retirees get a bonus — which will occur this year for the first time since 2008. As Philadelphia, like municipalities nationwide, struggles to meet mounting retirement obligations, it can’t earn its way out of the hole, underscoring the challenge of honoring politicians’ past pledges.

The pension system as soon as next quarter will give an extra $62.4 million to retirees, enough to heat and light schools or pay the starting salaries of almost 1,400 teachers. The payouts exacerbate the distress of the pension, which is 47 percent funded, said Lawrence Tabas, chairman of the Pennsylvania Intergovernmental Cooperation Authority, the state-appointed overseer of the city’s finances.

“We’re in a crisis situation,” Tabas said by telephone. “If we continue to do nothing and have white papers and task forces and discussions, there will come a time when we won’t be able to meet the obligations.”

Unique Case

Philadelphia’s is the only system in Pennsylvania that ties payment of the extra cash to investment returns, said James McAneny, executive director of the state’s Public Employee Retirement Commission, which monitors local plans.

About two-thirds of plans around the country provide stipends pegged to inflation or predetermined rates, rather than investment performance, according to a survey by the National Association of State Retirement Administrators.

Tabas's oversight agency said last month that the city should restore the original requirement from the 1999 bill creating the bonus that the pension be at least 76 percent funded before providing the benefit. The city may distribute more than $200 million in stipends even as the plan remains distressed under some scenarios, the agency said.

There are cases elsewhere in the country where retirees had to give up perks. As part of Detroit's bankruptcy resolution, pensioners there have to repay $212 million of excess interest from a city-run savings plan.

$2 Trillion

States and cities are grappling with pension deficits after suffering investment losses during the financial crisis. From 2004 to 2012, the unfunded liabilities of the 25 largest U.S. public pensions tripled to almost $2 trillion, according to a Moody's Investors Service study.

"Asset performance has been very, very volatile," Al Medioli, a senior credit officer at Moody's, said in an interview. "It can take a long time to recover from the volatility."

In Philadelphia, where almost 30 percent of people live in poverty, seniors shouldn't have to wait for the pension to strengthen before receiving the bonus, said James Kenney, a former councilman. In 2007, he pushed through a bill removing the 76 percent requirement and likened retirees to "combat veterans" who earned the perk. Kenney resigned last week to run for mayor in the May primary.

"There are certainly large structural problems with the pension fund that need to be addressed," Lauren Hitt, a spokeswoman for Kenney, a Democrat, said in an e-mail. "But we shouldn't be trying to fix the fund on the backs of our retirees who are scraping by on pension payments that aren't adjusted for inflation."

Stock Up

Siphoning investment earnings to pay stipends makes it harder for pensions to sustain themselves through market swings, said Jean-Pierre Aubry, assistant director of state and local research at the Center for Retirement Research at Boston College.

"You're cutting off the gains that should be stocked in order to bolster you from the periods of low returns," he said.

Philadelphia's system logged an 11.5 percent return for the year through June 2014, according to the city controller. The stipends kick in when the pension earns 8.85 percent — one percentage point above the target rate of return.

As soon as April, beneficiaries in the system for a decade may see a bonus, said Francis Bielli, executive director of the board of pensions and retirement. Officials haven't determined how many people are eligible and may spread payments over two checks, he said. The payouts amount to half the extra investment earnings.

2008 Payout

The city last paid the bonus in 2008, distributing $40.5 million, Bielli said. He declined to comment on the effect of the stipends or the oversight board's recommendations.

The fund has about $4.8 billion of assets to pay $10.1 billion of obligations. It is in weaker shape than 17 of the 21 plans of the 10 most populous U.S. cities, according to the state oversight agency.

Pension costs are consuming more of Philadelphia's resources: The expense has grown to 39 percent of payroll this fiscal year from 17 percent in 1991, according to the agency.

Investment losses and inadequate contributions fueled the fund's decline, the authority said. Philadelphia supports more retirees and beneficiaries — about 35,000 — than current workers in the system, who number about 27,000.

Credit-rating companies cite the pension burden as a concern. Moody's Investors Service ranks Philadelphia A2, its sixth-highest level and two below its median local-government grade.

Mayors' Efforts

City mayors have tried to limit the stipend.

In 2007, the City Council sided with Kenney to authorize the perk regardless of the funded status, overriding a veto by Mayor John Street. In 2009, Mayor Michael Nutter presented a bill to restore the minimum funding level, yet the council didn't take it up.

Last year, Nutter proposed selling the Philadelphia Gas Works for $1.86 billion to bolster the pension. The council rejected holding hearings on the plan, saying it didn't benefit constituents.

Jane Roh, a spokeswoman for Council President Darrell Clarke, said staff members are reviewing the oversight authority's recommendations. Nutter, a term-limited Democrat in his final year of office, doesn't plan to submit another bill, said a spokesman, Mark McDonald.

"Everything will end up getting cut as larger and larger portions of every dollar go to the pensions," said Tabas of the intergovernmental authority.

BLOOMBERG

by Romy Varghese

February 5, 2015

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Moody's: Some P3 Payments in the US Will Be Treated as Debt.

In many public-private partnerships (P3s), state and local governments agree to make regular payments to a developer once the project is available. We are likely to treat these payments as debt in our debt calculations if they are contractual and present a material liability…

Purchase the Report.

Pension Bonds: State and Local Official Should Proceed with Caution.

Can state and local governments in the U.S. boost retirement funds by selling pension bonds and investing the proceeds? The answer, according to the Center for Retirement Research at Boston College, is it depends on when they do it and on when they measure it.

The strategy, which Kansas Gov. Sam Brownback is proposing in the face of a growing state deficit, would help lower annual state contributions to the Kansas Public Employees Retirement System. As detailed in The Wall Street Journal, the state would make a decades-long bet that pension-fund returns will exceed current interest rates for taxable municipal bonds. Kansas officials said interest rates near historic lows make the bonds an attractive way to help manage retirement obligations.

If examined from the stock market highs at the end of 2007, such deals returned an average of 0.8%, the Center said in a report last year. By 2009, however, most pension bonds were a net drain of -2.6%. Thanks to stock market gains following the recession, however, most of the deals were back in positive territory by 2014, returning an average of 1.5%.

Pension-bond deals made at the end of the market run-up in the 1990s, or right before the crash in 2007, have produced negative returns, the report said. Many of the bonds have a 30-year lifespan, meaning the final results won't be known for years.

"This should be a tool in a well-functioning governments arsenal," said Alicia Munnell, the Center's director. "Unfortunately, those that use them tend to be cash-strapped and desperate."

Matt Fabian, a partner at Concord, MA-based research firm Municipal Market Analytics, said there's never a good time to make bets with public money, and history suggests public officials don't always use the money well, adding to the problem. Investors can also perceive the sale of such bonds itself as a warning of financial distress.

"The use of pension bonds impugns an issuer more than a downgrade, because it shows they're willing to saddle future generations with risk in order to make current budget discussions easier," he said.

Richard Ravitch, the former New York lieutenant governor who helped save New York from bankruptcy in the 1970s and now sits on the board of The Volcker Alliance, called Kansas' plan "a dreadful idea."

"If you cover current obligations by borrowing money, you're on an unstable course," said Mr. Ravitch.

THE WALL STREET JOURNAL

By AARON KURILOFF

Feb 6, 2015

F.C.C. Chief Wants to Override State Laws Curbing Community Net Services.

Tom Wheeler, chairman of the Federal Communications Commission, will propose an order to pre-empt state laws that limit the build-out of municipal broadband Internet services, senior F.C.C.

officials said on Monday.

The proposal focuses on laws in two states, North Carolina and Tennessee, but it would create a policy framework for other states. About 21 states, by the F.C.C.'s count, have laws that restrict the activities of community broadband services. The initiative by Mr. Wheeler, if endorsed by the full commission, would be the first time the F.C.C. has tried to override such state laws.

Mr. Wheeler is expected to circulate his plan to the other commissioners on Thursday, and the full commission is scheduled to vote on Feb. 26.

His community broadband proposal is separate from the larger Internet policy issue Mr. Wheeler is to address this week — rules to ensure an open Internet, or net neutrality. In that proposal, Mr. Wheeler is expected to propose regulating Internet service as a public utility, but without getting involved in pricing and other corporate decisions.

Mr. Wheeler's community broadband proposal is in step with the recent recommendations of the White House, as his net neutrality plan is likely to be.

The chairman's plan to invalidate the two state laws comes in response to petitions from two municipal Internet service providers: the Electric Power Board in Chattanooga, Tenn., and Greenlight, a community-owned broadband service in Wilson, N.C. In both cases, state laws prohibit the community Internet services from expanding into neighboring areas and counties. Their broadband services, they say, are far faster than those offered by nearby private-sector Internet service providers.

Proponents of the state laws, which are typically supported by cable television and telecommunications companies, say the municipal Internet service providers often enjoy tax and low-cost financing advantages not available to private companies. They also say states have the legal right to regulate local markets as they see fit.

The senior F.C.C. officials counter that the state laws deter broadband investment and competition, undermining consumer welfare. The municipal Internet providers, the F.C.C. officials said, are not competing unfairly but investing for the public good, providing high-speed service where the private sector does not.

Overriding the restrictive state laws, they added, conforms to the F.C.C.'s legal mandate to "remove barriers to infrastructure investment" and to "promote competition in telecommunications markets."

If approved by the full commission, the F.C.C. order to invalidate the two state laws would almost certainly be challenged in court.

THE NEW YORK TIMES

By STEVE LOHR

FEBRUARY 2, 2015

Chicago Sees Fiscal Doomsday if Court Suspends Pension Changes.

CHICAGO — A temporary suspension of cost-saving changes to two of Chicago public pensions funds

risks credit rating downgrades that could cost millions of dollars, the city's chief financial officer said on Thursday.

Chief Financial Officer Lois Scott testified in Cook County Circuit Court that all three major credit ratings agencies have negative outlooks on Chicago's ratings, largely due to a big unfunded pension liability that a 2014 Illinois law aims to ease for the city's municipal and laborers' funds.

Labor unions and retirees who are challenging the law, which took effect Jan. 1, have asked Associate Judge Rita Novak to temporarily stop it.

"I think that anything that arrests progress significantly increases our risk of downgrades," Scott testified.

Scott said Chicago's ratings are already lower than most big U.S. cities and that further downgrades would pump up interest rates on new fixed-rate bonds and thin the ranks of potential bond buyers and credit providers. She added the termination of interest-rate hedges and letters of credit on existing variable-rate bonds could be triggered, costing Chicago hundreds of millions of dollars.

However, the city has successfully eliminated hundreds of millions of dollars in risk by terminating or renegotiating 18 interest rate swap or swaption contracts, according to a city spokeswoman, who added such efforts were continuing. Also, the city could refund existing fixed-rate bonds should its ratings improve in the future.

The contested law requires higher pension contributions from both the city and workers and eliminates an annual 3 percent cost-of-living bump, instead tying increases in retiree payments to inflation and skipping those hikes in certain years.

As for finding revenue to make higher pension payments to the two funds without the law's cost-savings, Scott testified Chicago is already financially stretched with a $300 million structural budget deficit and a looming $550 million jump in contributions to the city's police and fire pension funds.

The unions' lawyers have contended pausing the law would allow time for the Illinois Supreme Court to rule this spring on a separate 2013 law that cut pension benefits for state workers. Plaintiffs in both cases contend the laws violate an Illinois constitutional provision prohibiting the diminishment of public worker retirement benefits.

Chicago's attorney has argued the city's law does not violate the constitution because it will save the two pension funds from insolvency.

By REUTERS
FEB. 5, 2015, 9:43 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by Lisa Shumaker)

US Municipal Credit Report, Fourth Quarter and Full Year 2014.

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

Summary

According to Thomson Reuters, long-term public municipal issuance volume totaled $99.3 billion in the fourth quarter of 2014, an increase of 37.2 percent from the prior quarter ($72.4 billion) and an increase of 35.3 percent year-over-year (y-o-y) ($73.4 billion). For the full year 2014, issuance figures reached $314.9 billion, well below the 10-year average of $370.6 billion. Including private placements ($5.3 billion), long-term municipal issuance for 4Q'14 was $104.6 billion. According to the SIFMA Municipal Issuance Survey ("SIFMA Survey"), issuance for 2015 was expected to rise slightly to $315.0 billion.

Tax-exempt issuance totaled $89.9 billion in 4Q'14, an increase of 37.3 percent and 40.8 percent q--q and y-o-y, respectively. For the full year, tax-exempt issuance was $282.8 billion. Taxable issuance totaled $6.7 billion in 4Q'14, an increase of 43.2 percent and 2.3 percent respectively, q-o-q and y o y. For the full year, taxable issuance was $23.0 billion. AMT issuance was $2.7 billion, an increase of 20.4 percent q-o-q but a decline of 9.7 percent y-o-y; for the full year, AMT issuance was $9.1 billion. According to the SIFMA Survey, issuance for 2015 was expected to reach $275 billion in tax-exempt issuance, $30 billion in taxable issuance, and $10 billion in AMT issuance.

By use of proceeds, general purpose led issuance totals in 4Q'14 ($21.4 billion), followed by primary & secondary education ($16.9 billion), and water & sewer facilities ($10.6 billion), identical rankings as the prior quarter and for the whole year. Respondents to the SIFMA Survey expect general proceeds to remain the largest category of municipal issuance in 2015.

Refunding volumes as a percentage of issuance rose slightly from the prior quarter, with 52.8 percent of issuance refunded compared to 49.8 percent in 3Q'14 and 33.4 percent in 4Q'13. For the full year, 47.3 percent of municipal issuance were refundings. Respondents of the SIFMA Survey expect refundings to remain largely unchanged year over year as a percentage of overall issuance (46 percent in 2015).

View the Report.

NFMA Annual Conference - Program Released.

The NFMA is happy to release the program for its 32nd Annual Conference, to take place at the Four Seasons Las Vegas on May 12-15.

Registration is open for members and non-members. There are a limited number of discounts for government employees and students. Contact the NFMA for more information.

View the Program.

Register.

Bloomberg Brief: The Muni Meltdown that Wasn't.

The Muni Meltdown That Wasn't, a Bloomberg Brief, discusses the "inexpert testimony" that flew fast and furious during the panic of 2010 and questions why the opinion of non-experts was taken so

seriously – especially in light of the fact that none of their dire predictions about an imminent municipal bond market collapse came to pass.

The brief analyzes the predictions, hyperbole, and fact, and provides five major lessons learned:

1. The municipal market is particular and specific to a remarkable degree. Hysteria proponents either ignored or didn't know about the incredible variety of securities and credits sold generically as "municipal bonds.'' They generalized.
2. Beware inexpert testimony; not all points of view are legitimate and credible.
3. Many of the dire predictions about the market were politically informed.
4. Municipalities that are legally allowed to file for Chapter 9 will do all they can to avoid it.
5. Twitter is a good source of breaking news and analysis; dismiss it at your risk. (The paper dates the "muni market meltdown hysteria" as starting in 2009, at which point those who understood the municipal market weren't talking about it on social media. That had started to change a few years later, and if the inexpert testimony had started then, "any such 'meltdown' call would have been mitigated, even refuted, by the very same Internet that had given birth to it.")

GFOA GAAFR Supplement.

There have been several developments affecting accounting, auditing, and financial reporting for state and local governments since the Governmental Accounting, Auditing, and Financial Reporting (GAAFR or Blue Book) was published in 2012. First, the Governmental Accounting Standards Board (GASB) has released four new standards. Second, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission has issued a significantly expanded version of its classic Internal Control Integrated Framework. The GAAFR Supplement contains the following new material to address those developments:

- A supplement to Chapter 22, Detailed Note Disclosures, which accounts for changes in note disclosure requirements resulting from the issuance of the three new GASB standards;
- A new version of Chapter 23, Pension Benefits, Other Postemployment Benefits (OPEB), and Termination Benefits, rewritten to reflect the new guidance on employer accounting for pensions in GASB Statement No. 68, Accounting and Financial Reporting for Pensions;
- A supplement to Chapter 30, Other Specialized Applications, which incorporates the provisions of GASB Statement No. 69, Government Combinations and Disposals of Government Operations, and GASB Statement No. 70, Accounting and Financial Reporting for Nonexchange Financial Guarantees;
- A supplement to Chapter 32, Other Required Supplementary Information (RSI), which addresses employer RSI for pensions consistent with the requirements of GASB StatementNo. 68;
- A new version of Chapter 36, Postemployment Benefit Plans, rewritten to reflect the new guidancefor pension plans in GASB Statement No. 67, Financial Reporting for Pension Plans; and
- A new version of Chapter 42, The Comprehensive Framework of Internal Control, rewritten consistent with the new and expanded COSO framework.

To purchase a copy using the GFOA e-store, log into your e-store account and add the GAAFR SUPPLEMENT to your cart. When you have completed your order, click on the "Download Books" tab and follow the instructions to access the e-bookfile. If you submit your order via mail, fax, or e-mail,you will receive an e-mail the GFOA eStore with steps on how to download your e-book.

GFOA Executive Board Approves 10 Best Practices, Advisories.

The GFOA's Executive Board approved six new best practices and one new advisory at its January 2015 meeting. The board also approved updates to one other existing best practice and two existing advisories. These documents provide recommendations to government finance officers in the areas of budgeting, accounting, retirement benefits administration, debt issuance, and investment management.

Additional Supplementary Information for Departmental Reports. This new best practice provides guidance to government finance officers on content and format for presenting departmental financial reports that are issued separately from a government's general fund financial report. Before the GFOA Committee on Accounting, Auditing, and Financial Reporting developed this document, authoritative accounting and financial reporting standards did not specifically address the contents of separately issued financial reports of units that are not legally separate (e.g., departmental reports and reports of individual funds).

Best Practices in Community College Budgeting. This new best practice was a product of the GFOA Budget Committee's work with practitioners, researchers, and other education finance experts, identifying the best ways for community colleges to leverage the budget process in ways that will align their resources with student outcomes. Funding for this work was provided by a grant from the Bill and Melinda Gates Foundation.

Best Practices in School District Budgeting. The GFOA Budget Committee worked with practitioners, researchers, and other education finance experts to identify the best ways for PK-12 institutions to leverage the budget process in ways that will align their resources with student outcomes. Funding for this work was also provided by a grant from the Bill and Melinda Gates Foundation.

Establishing a Grants Administration Oversight Committee. In this new best practice, the Committee on Accounting, Auditing, and Financial Reporting provides guidance to help governments that receive grant funds support their programs and activities by maintaining compliance with the requirements associated with the grant, to avoid incurring a penalty or forfeiting grant funding because of compliance failures. The GFOA advises governments to create both a grant administrative oversight policy and a grant administrative oversight committee to ensure adherence to that policy.

The Finance Officer's Role in Collective Bargaining. Workforce costs represent more than two-thirds of the operating budget for many local governments. In many regions of the country, most of these compensation costs are negotiated or collectively bargained, at least in part, with public employee unions. But despite the tremendous fiscal implications of these negotiations, those involved do not always incorporate resource planning information from the finance office. This new best practice, which was organized by the GFOA's Committee on Retirement and Benefits Administration, urges governments to include their finance officer in the collective bargaining process in order to protect the financial health of governments.

Pension Obligation Bonds. This existing advisory was updated to urge governments to avoid issuing pension obligations. It summarizes the associated risks.

Public-Private Partnerships (P3s). The amount of discussion surrounding the potential benefits of government engagement with the private sector for funding capital improvement projects led the

GFOA's Committee on Economic Development and Capital Planning to create this new advisory cautioning governments about the risks of engaging in P3 agreements. Finance officers should be involved throughout the process as a public entity considers potential P3 opportunities. Failing to fully understand the overall financial implications, including what the public entity may forfeit, can result in P3 agreements that may not serve the public interest or that may be detrimental to the government's long-term financial health.

Use of Debt-Related Derivatives Products. The GFOA's Committee on Governmental Debt Management updated this existing advisory to alert governments to new federal rules that affect the public sector – such as the new rules issued by the Commodity Futures Trading Commission, requiring governments that want to use derivative products to use a qualified independent representative to advise on the deal. The advisory was also updated to strengthen language that cautions governments about the risks associated with using these products and to advise governments against entering into derivatives contracts unless they have the level of in-house expertise necessary to understand the core aspects and risks of a derivatives transaction.

Using Benchmarks to Assess Portfolio Risk and Return. This new best practice from the GFOA's Treasury Investment Management Committee recommends that government investors assess their investment portfolio for performance and risk by comparing the total return to carefully selected benchmarks.

Using Mutual Funds for Cash Management Purposes. The Treasury Investment Management Committee updated this existing best practice to alert governments to new Securities and Exchange Commission rules that regulate the investment policies, organization, and structure of money market mutual funds. The document recommends that state and local governments restrict their use of mutual funds for cash management purposes exclusively to: 1) money market mutual funds that are invested in Treasury, federal government agency, or first-tier categories, and possess the highest ratings available from at least one nationally recognized ratings agency; and 2) short-term bond funds that receive the highest credit quality ratings and the lowest risk ratings available.

Wednesday, January 28, 2015

MSRB and Texas MAC to Co-Host Education and Outreach Seminar in Dallas.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) and the Municipal Advisory Council of Texas will co-host an education and outreach event for municipal market professionals on March 5, 2015 in Dallas, Texas. The event will provide attendees with updates on MSRB initiatives, including the development of regulations for professionals that provide financial advice to state and local governments.

The joint seminar will be held on Thursday, March 5, 2015 from 2:00 p.m. – 5:00 p.m. CT at the Renaissance Hotel at 2222 North Stemmons Freeway in Dallas. Representatives from the MSRB will review the status of the MSRB municipal advisor regulatory framework, including rules to establish standards of conduct and professional qualifications. The program also will include an overview of the MSRB's work to enhance market structure and price transparency. View the seminar agenda.

The seminar is open to all members of the municipal securities community. There is no cost to attend; however, pre-registration is required. The deadline to register is February 27, 2015.

Click here to register.

About the Municipal Advisory Council of Texas

The Municipal Advisory Council of Texas (MAC) is a membership organization whose purpose is to promote effective and efficient investment banking, underwriting, trading and sales of municipal debt by collecting, maintaining and distributing information relating to issuing entities.

About the MSRB

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its Electronic Municipal Market Access (EMMA®) website, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a Congressionally-chartered, self-regulatory organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is subject to oversight by the Securities and Exchange Commission.

Will Obama Tax Plan Sack Chargers stadium?

A new Chargers stadium could cost more if a proposal buried in President Barack Obama's new budget becomes law.

That's because professional sports facilities would no longer be able finance projects with lower-cost, tax-exempt municipal bonds starting Jan. 1. The fiscal 2016 budget projects that the Treasury could reap a $542 million windfall from the proposal over the next 10 years.

For decades cities have issued tax-free bonds for sports facilities. The new proposal would tighten tax law and effectively bar use of these bonds to finance arenas, stadiums and other professional sports venues.

"The current structuring of government bonds to finance sports facilities has shifted more of the costs and risks from private owners to local residents and taxpayers in general," the U.S. Treasury said in an analysis of the new budget.

Obama's proposal seems to have found favor with economists who have long believed that stadiums do little to benefit cities financially and therefore are not worth the large public subsidies that have historically been invested in such projects.

"This is a pretty modest proposal, but it could have big implications for sports stadiums in the sense that it would make it a lot harder for cities to justify the kinds of subsidies they provide to sports teams," said Samuel Staley, an economics and urban planning professor at Florida State University. "This is one of those areas where there's consensus among economics professors that these are not good projects for the use of public dollars."

By removing access to less costly financing, Obama could potentially force team owners to shoulder more of the risk for their stadium projects, Staley speculated.

The Chargers said Wednesday that it was studying the tax proposal and did not want to comment.

San Diego County Treasurer-Tax Collector Dan McAllister, who may figure into stadium financing if the county joins the city in building a new stadium, said the local impact would mean higher financing costs for the project, projected at $1 billion.

“It’s a variable that didn’t exist a week ago,” McAllister said.

Mayor Kevin Faulconer’s newly appointed stadium task force is looking at financing options, as well as where to locate the stadium, and municipal bonds represent one of several possible ingredients in the mix. Others include Chargers and NFL contributions, naming rights, city land and higher taxes requiring voter approval.

Jim Steeg, former NFL executive and a member of the task force, declined to comment on the Obama proposal until the group starts meeting.

Tax-exempt bonds have long been the go-to tool to finance sports facilities, including Qualcomm in the 1960s, its expansion in the 1990s and the construction of Petco Park in the 2000s. More recently, tax-exempt debt was used to build the new Yankee Stadium and the Dallas Cowboys’ $1.3 billion stadium.

“Obama’s proposal clearly makes the cost more expensive, which arguably makes (the stadium) more difficult to get done,” said San Diego State accounting professor Steven Gill. “But is it a killer? I don’t think so, not in this low interest rate environment.”

Taxable municipal bonds would still be a financing option for a stadium, but the interest rate needed to attract investors would have to be higher — roughly 3.3 percent compared with 2.4 percent in today’s bond market, said Lynn Reaser, chief economist at Point Loma Nazarene University.

While that doesn’t sound like much, but it could translate into millions of dollars in extra bond payments over 20 or 30 years. And if overall rates rise substantially, the payout could be even more. Those extra dollars would have to come from some place — ticket holders, concessions and perhaps taxpayers.

A decade ago, even higher interest rates didn’t stymie the development of Petco Park. Steve Peace, former state finance director, state senator and currently adviser to former Padres owner John Moores, pointed out that poor city finances at the time required the issuance of above-market, 8 percent bonds to build the downtown ballpark.

Faulconer spokesman Craig Gustafson did not address the potential consequences for the current stadium effort but underscored the longstanding importance of tax exempt financing in San Diego.

“The city has issued tax-exempt bonds for Petco Park — currently $129 million through 2032, $11.3 million annually — and Qualcomm Stadium — currently $56 million through 2026, $4.8 million annually,” Gustafson said.

Councilman David Alvarez, who has been critical of Faulconer’s task force effort, said Obama’s proposal is an example of why the city needs to move more quickly in resolving the stadium question. He was unwilling, however, to say whether he supports eliminating the use of tax-exempt debt for financing stadium projects.

But the political landscape for financing stadiums has changed since Petco, acknowledged Charles Black, a former Padres president.

“I think there is a much more limited appetite among municipalities around the country — and that’s certainly true in San Diego — to do large financing to support sports team owners,” Black said.

Clearly, others will likely have to step forward to foot the bill, especially so if tax-free debt is no longer available, said Andrew Reschovsky, a fellow at the Lincoln Institute of Land Policy in Massachusetts and a former University of Wisconsin finance professor.

“People want nice stadiums, and owners probably could put up a lot more money,” Reschovsky said.

The muni bond proposal was one of many tax changes in Obama’s budget and it is uncertain how many of them will be approved — if any — by the Republican-controlled Congress.

U-T San Diego

By Roger Showley and Lori Weisberg

FEB. 4, 2015

Among Metro-North Victims, a Wall Street Muni-Bond Expert.

Six people died when a Metro-North commuter train struck a sports-utility vehicle at a rail crossing in Westchester County Tuesday. One of the victims, Eric Vandercar, had built a long career on Wall Street, and was well-known in the municipal-bond market as a leader in financing muni investors’ trades.

Mr. Vandercar, 53 years old, had most recently served as head of municipal funding at Mesirow Financial. But he had only joined the Chicago-based financial firm in March, after spending 27 years at Morgan Stanley .

Former colleagues remembered the drive and attention to detail he brought work, along with a deep passion for his family and music.

After a successful stint as a fixed-income analyst, where he won accolades for his research, Mr. Vandercar switched roles at Morgan Stanley. He would go on to help build the firm’s profitable business funding money managers’ investments in muni bonds and other securities.

Andrew Garvey, Mr. Vandercar’s boss at Morgan Stanley from 1999 to 2007, remembered his former colleague as a perfectionist.

Mr. Vandercar’s portfolio of financings held up even during the financial crisis, people familiar with the matter said. Even as other corners of the firm’s fixed-income business struggled in 2008, none of Mr. Vandercar’s deals lost money, the people said, a testament to his attention to detail and risk. He was aiming to build a similar business at Mesirow, the people said.

“He was proud of his profession,” Mr. Garvey said. “But he was driven at work so he could go home and have a good time with his family and his kids.

“It was about him working hard for his family.”

Mr. Garvey said Mr. Vandercar was a huge music fan, with an “unmatched Grateful Dead bootleg” collection. He would regularly attend annual jazz festivals in New Orleans with his wife, Jill. Mr.

Garvey, now chief executive of Orix Municipal Finance, said he kept in touch with Mr. Vandercar after their careers took them on different paths. He said he last saw Mr. Vandercar last month in New York. “He made sure I knew he had landed at Mesirow, and was ready to talk,” Mr. Garvey said.

Stratford Shields, who also worked at Morgan Stanley, said Mr. Vandercar was a well-known and respected figure in the municipal-finance business. “He was a guy known for his integrity,” Mr. Shields said.

William O’Keefe, another former Morgan Stanley colleague, recalled telling Mr. Vandercar about a Grateful Dead show he’d attended in college, in the late 1970s. The next day, Mr. O’Keefe said, Mr. Vandercar came in with a bootleg tape from the very show. “It wasn’t just all work and Wall Street for him,” Mr. O’Keefe said.

THE WALL STREET JOURNAL

By JUSTIN BAER

Feb 5, 2015

Risky Pension-Bond Strategy Considered in Kansas.

Kansas is considering a corner of the municipal-bond market most states have come to avoid because of its risk—a $1.5 billion sale of so-called pension bonds to boost returns at the state retirement system.

The strategy, which Gov. Sam Brownback is proposing in the face of a growing state deficit, would help lower annual state contributions to the Kansas Public Employees Retirement System. Under the plan, the state would issue bonds and then invest the proceeds, making a decadeslong bet that pension-fund returns will exceed current interest rates for taxable municipal bonds.

Where Kansas sees a market opportunity, some bond investors see a warning. Pension-obligation bonds remain only a sliver of the $3.6 trillion municipal market even as many states wrestle with oversize retirement-system shortfalls. Such debt offerings can be seen as a sign of distress since governments such as California, New Jersey and Illinois are among the largest issuers and hold the lowest credit ratings among states.

The bonds “can be used beneficially in some situations, but they are often inappropriately used by the desperate and irresponsible,” said Alicia Munnell, director of the Center for Retirement Research at Boston College. Debt tied to pensions played a role in Detroit’s bankruptcy and that of Stockton, Calif.

Supporters of the offering in Kansas, which would be the largest since Illinois sold $3.7 billion of the debt in 2011, see the bonds as a straightforward opportunity to maximize pension-fund returns and hold down annual payments, which have risen sharply, squeezing other government services. The state had success with a smaller pension-bond issuance a decade ago, and supporters say their approach would avoid the pitfalls that hobbled other states.

“Pension-obligation bonds, given near historically low interest rates, are an increasingly good option to manage debt,” said Jeff King, a Republican and vice president of the state Senate.

Kansas' offering, if approved by the state legislature in coming months, could take advantage of yield-hungry investors and pent-up demand for bonds amid a period of relatively low new borrowing by U.S. cities, states and other government entities.

Initial plans call for selling 30-year bonds at a rate below 5% and reaping pension-fund returns of 8%, according to state and pension-fund officials.

Over the last year, Moody's Investors Service and Standard & Poor's Ratings Services have downgraded Kansas, as sharp tax cuts have dried up revenues. The state last year also settled with the Securities and Exchange Commission over charges it didn't adequately warn bondholders of the risks posed by its pension liabilities. Officials improved disclosures and increased employee contributions to the plan, settling with the SEC without admitting wrongdoing or paying a penalty.

Kansas is trying to strengthen a retirement system that the Pew Charitable Trusts last year ranked as one of the nation's most underfunded.

The pension system for teachers and state workers has about 57% of the assets needed to meet promised retirement benefits.

Many investors in the municipal-bond market are concerned that retirement costs will eventually cripple states, particularly in Illinois and New Jersey, which also have settled SEC charges related to pension disclosures. State retirement systems have far less funds than they need to meet all their projected payouts, with the Pew study putting the combined shortfall at $915 billion as of 2012.

Eric Friedland, portfolio manager at Schroders PLC, said the sale of pension bonds can be a warning of eroding credit. Along with the threat that the invested funds won't generate as high a return as anticipated, the practice reduces an issuer's options, swapping a pension-fund promise that can be modified for a fixed obligation to bondholders.

Also, the bonds offer a weaker form of protection in a bankruptcy.

"That's not a type of security I've been very fond of," Mr. Friedland said.

Kansas officials say the bond proposal takes advantage of a market opening and avoids problems that have given pension-obligation bonds a checkered reputation.

Illinois, for example, used the bonds to pay annual pension contributions, saddling the state with increased debt costs while only partially increasing pension-fund assets.

Even under the best circumstances, pension bonds come with the risk that expected spreads won't materialize. Since Oakland, Calif., sold the first pension-obligation bonds in 1985, cities and states have issued about $105 billion of the debt, the Center for Retirement Research said last year. Those deals have had returns averaging 1.5% annually since 1992, thanks to market gains following the financial crisis, the center said.

"It is a bet and that's a concern," said Kansas Rep. Ed Trimmer, a Democrat.

THE WALL STREET JOURNAL

By MARK PETERS And AARON KURILOFF

Feb. 5, 2015 3:23 p.m.

—Timothy W. Martin contributed to this article.

Regulators Way Too Easy On Muni Bond Fraudsters.

In business, when an employee diverts money it is a crime. When they attempt to make things seem other than they are—cooking the books—it is a crime. So why are municipal bond regulators lax in initiating punitive actions against municipalities for diverting funds and cooking the books? Whether it's a state misleading investors, or a municipality whose officials divert funds, a rap on the knuckles only hurts investors and taxpayers, not those perpetrating the crime.

An example of such light punishment occurred in Harvey, Ill. where its comptroller—Joe Letke—was found to have diverted millions in bond proceeds to other projects and to his own pocket. His punishment was merely to pay a fine that appears to be a fraction of what he stole and be barred from ever participating in a municipal bond offering again.

For their role in this fraud, the city of Harvey agreed to stop violating federal securities law and to hire a different consultant other than the one who was caught with his hand in the cookie jar. Oh, and the city was allowed to neither admit nor deny any wrongdoing.

Municipal bond fraud seems to be on the rise. In the recent past the SEC slapped a civil fraud on the State of Illinois for lack of disclosure on its public pensions. New Jersey was charged with fraudulent bond offerings. The court order states that New Jersey has a significant disregard…for the principles of fair and accurate disclosure.

On a smaller scale, Grossmont Union High School District in San Diego County was found to have diverted monies from a voter-approved measure and into non-authorized projects—a classic bait and switch scheme.

When we investors read what the uses of money are for and the issuer does not adhere to that specified project, why aren't the people involved sent to jail? In the case of Grossmont High Schools, once they had the money in their hot little hands they thought they could do whatever they wanted with it rather than what they promised the taxpayers who voted for the bond issue.

As you might guess, Grossmont is seeking to resolve its financial woes in court. However, in such an action, only the lawyers win, not the taxpayers. Consider the audacity of Grossmont in issuing another $60 million in bonds over the next few months. Why would any bond investor trust a word Grossmont's, Harvey's, or the States of Illinois or New Jersey officials say? We don't.

During the legal process of putting together a municipal bond offering, the most important document is the Official Statement. This identifies how and where the monies are spent once the bonds are issued. Those responsible to the bond investors sign off on the Official Statement attesting to the validity of the financial statements, sources and uses of funds, debt service coverage calculations, and cash reserves. Investors rely on the Official Statement.

When the issuers lie about the facts or don't execute what the Official Statements says they will—as in the case of Harvey, Ill, the state of Illinois and the state of New Jersey—the entire issuers integrity craters into a morass of incredulity. That's when the regulators must step in—with an Abrams tank rather than their usual fly swatter that does little in the way of deterring others.

Underwriters, lawyers, regulators and issuers should all abide by and comply with the rules. It's the

retail investors who need their protection. As a bond manager, it is frustrating to get only half-truths or worse—outright lies—while the culprits live large without a hint of remorse or consideration toward the bondholders or voters.

There should be significant punishments for those who break securities laws. Investors beware. Always study compliance with an issuer's past bonds and the promises made. Ask, did they execute what they said they would? Did they deliver? Finding even one instance of noncompliance with the Official Statement is one too many. As with the cockroach theory—there's never just one.

Forbes

Marilyn Cohen, Contributor

2/05/2015 @ 8:42AM

Marilyn Cohen is president of Envision Capital Management, a Los Angeles fixed-income money manager.

Tobacco Leads Yield Chase as Smoking Decline Abates: Muni Credit.

(Bloomberg) — The owners of the riskiest tobacco-backed municipal bonds would like to thank Americans who haven't quit smoking.

High-yield tobacco debt has surged 5.2 percent this year, more than any other area of munis and beating the entire market's 1.6 percent return, Barclays Plc data show. The securities, backed by revenue from U.S. cigarette shipments, are one of the few segments of the tax-exempt market where default isn't just possible — it's expected. Moody's Investors Service predicted in September that 80 percent of the bonds will fail to pay in full.

Yet there are signs the drop in consumption is waning: Philip Morris USA projects cigarette volume fell 2.5 percent in the final quarter of 2014 and 3.5 percent for the full year. That's less than the 4.8 percent average slide the prior seven years. With tobacco debt yielding more than almost all munis outside of flailing Puerto Rico, the bonds are a buy for MacKay Municipal Managers, Nuveen Asset Management and OppenheimerFunds Inc.

"People fear 5 and 6 percent declines, which are actually pretty rare," said John Miller, who oversees $100 billion of munis as co-head of fixed income at Nuveen in Chicago. "Yet the bonds are priced to account for some outsized risks like those."

Unanticipated Decline

Tobacco bonds share a revenue stream from a 1998 settlement in which Lorillard Inc., Philip Morris USA and Reynolds American Inc. agreed to make annual payments to states in perpetuity to settle liabilities for health-care costs tied to smoking. States and cities borrowed against the funds, selling $93 billion of debt when factoring in the full value of zero-coupon obligations.

The securities, particularly those issued in the first few years after the settlement accord, didn't build in the current decline in cigarette consumption. In the seven years through 2006, shipments dropped an average of 1.7 percent a year, data from the National Association of Attorneys General show. The pace of declines almost tripled in the next seven years.

That's left four out of five bonds at risk of default if declines average 4 percent annually, according to Moody's. With a drop of 3.5 percent, which Altria Group Inc., parent of Philip Morris USA, estimated for 2014 in its Jan. 30 earnings report, a smaller portion of debt will be unable to meet obligations, according to Moody's.

Buckeye Yields

Because of the threat of nonpayment, the debt is the only frequently traded part of the tax-free market that offers yields comparable with Puerto Rico, the junk-rated U.S. territory that along with its agencies has $73 billion of obligations.

For example, bonds issued by Ohio's Buckeye Tobacco Settlement Financing Authority and maturing in June 2047 traded Tuesday with an average yield of 7.31 percent, data compiled by Bloomberg show. By comparison, Puerto Rico general obligations due in July 2041 changed hands at 8.5 percent.

At B3, six levels below investment grade, Moody's rates the Buckeye bonds one step lower than Puerto Rico. Benchmark 30-year munis, by contrast, yield about 2.63 percent.

"Puerto Rico has so much more event risk and political risk that tobacco looks relatively better," said Nuveen's Miller. Nuveen usually holds from 3 percent to 6 percent in tobacco bonds across its funds, while it owns almost no Puerto Rico debt.

Payment Probabilities

In the view of Standard & Poor's, tobacco bonds are getting safer. The company cited the pricing power of the biggest cigarette brands as lending stability, offsetting smoking declines.

Last week, the company raised 25 ratings on shorter-maturity debt, while affirming 78 and lowering one. The grades are typically based on maturity because of the risk that payments will diminish.

In some cases, the higher marks make the debt investment grade. Children's Trust Fund tobacco debt issued in Puerto Rico and maturing in May 2039 won an upgrade to BBB- from BB+.

"The rating agencies don't see any changes for the negative on the tobacco front," said Scott Cottier, who helps oversee $26 billion of munis at OppenheimerFunds in Rochester, New York. "The yield you're earning on these bonds far outweighs the risks."

Threat Vaporized

One of the main threats to cigarette use has been the rise of alternatives such as electronic cigarettes, which emit water vapor instead of smoke. While traditional smoking fell in 2013, the use of smokeless options climbed 4 percent to a record. The yearly increase, however, was the smallest since 2009.
The threat is waning as state officials voice skepticism about claims that the products are healthier choices.

The top health official in California said in a report last week that e-cigarettes contain toxic chemicals. New York Governor Andrew Cuomo last month proposed banning the devices, which burn liquid nicotine, from restaurants, offices and anywhere cigarettes are prohibited.

Robert DiMella, who manages $13 billion as co-head of munis at MacKay, predicts tobacco debt will be one of the best-performing parts of the market in 2015. The bonds will grow in appeal as issuers

refinance higher-yielding bonds with interest rates close to the lowest since the 1960s, he said. He accurately predicted in 2014 that high-yield would outperform.

With individuals adding $3.7 billion to muni mutual funds in the year's first four weeks, Cottier at OppenheimerFunds and Nuveen's Miller predict tobacco bonds can extend gains.
"You have a couple of tailwinds for tobacco and I don't see anything that's going to change those in the coming months," Cottier said. "People feel more confident about the long-term prospects of a 2.5 percent or 3.5 percent consumption decline."

Bloomberg Muni Credit

by Brian Chappatta

February 3, 2015

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Mark Tannenbaum, William Selway

Municipal Bonds: What Comes After Perfect?

As records go, you can't beat 12 for 12. Perfection is good … and bad.

Muni investors enjoyed a perfect run in 2014 as the market notched a positive return each and every month, leading the S&P Municipal Bond Index to an annual return of 9.26%.

What could be bad about that? It sets some pretty lofty expectations for 2015. I'd like to provide some context and perspective for investors.

The Stars Aligned in 2014

The stars aligned in spectacular fashion for the municipal bond market in 2014: Low supply amid solid demand, improving fiscal conditions among state and local issuers, and a broad drop in interest rates (and rise in bond prices) helped make munis one of the top-performing fixed income asset classes of the year.

Many of the favorable dynamics remain firmly intact at the start of 2015. But we don't expect 2015 to be a 2014 repeat, if only for the simple fact that munis aren't built to provide 9% returns. They are intended to be a high-quality, relatively low-volatility source of income. Also consider the fact that the Federal Reserve is likely going to start raising interest rates this year, and that will create volatility and some measure of uncertainty for all fixed income assets.

What Is in the Stars for 2015?

In setting expectations for 2015, a look at long-term patterns is informative. Historically, returns in the year following a bounce back year (and yes, 2014 was a big bounce from a dismal 2013) have been two-thirds lower than the bounce. Given a return of 9.26% in 2014, that would equate to a return of roughly 3%-3.5% in 2015.

After the bounce

More importantly though, municipal bonds' income proposition remains very compelling. Long-term muni yields are attractive relative to Treasuries before tax, and especially after tax. At January 30, we had a 30-year muni yield of 2.50% vs. 2.22% on a 30-year Treasury. Pretty good. But factor in munis' tax exemption, and that's a 4.42% taxable equivalent yield on a 30-year municipal bond.* Really good. It's little surprise municipal bonds are attracting the attention of crossover buyers (i.e., taxable investors). We expect that crossover interest to continue, bolstering demand and supporting muni prices in 2015.

Tips for Investors

Against this backdrop, we'd offer a few key recommendations for investors:

Observe the curve. Yield curve positioning will be very important in 2015. The short end will be harder hit as the Fed raises rates. Greater value and lower volatility can be achieved further out. We like the 12- to 17-year area.

Hold onto high yield. High yield munis did even better than the broader muni market in 2014, but I still have a hard time poking holes in the investment case. Investor thirst for income is high, which suggests continued demand for high yield munis. There's also limited supply. Taken together, that makes for a favorable equation.

Avoid the extremes. Don't take on more risk than you can stomach, either by extending too far out on the curve and/or by taking excessive credit risk. At the same time, don't get too defensive. There's no value to be gained in exiting the market and holding cash today.

Use flexible fixed income. BlackRock is urging investors to rethink their bonds in 2015, and part of that means using flexible fixed income strategies to guard against interest rate risk and credit events, while also enhancing the diversification of your fixed income portfolio. In the tax-exempt space, we recently supplemented our Strategic Municipal Opportunities Fund with a new state-specific option in California .

In closing, I'd like to offer one final thought on this idea of perfection: It's overrated … and it's subjective. I enjoyed what munis had to offer in 2014, but I expect continued good things from the asset class in 2015. (But if you're still counting, one month down and "perfect" so far.) I invite you to read my fuller 2015 outlook and to check out our monthly municipal market updates to keep up on market performance and events throughout the year. Happy 2015!

Peter Hayes, Managing Director, is head of BlackRock's Municipal Bonds Group and a regular contributor to The Blog. You can find more of his posts here.

* Assumes highest marginal tax rate of 39.6%, plus the 3.8% tax on investment income under the Affordable Care Act.

By BlackRock, February 04, 2015

The opinions expressed are those of Peter Hayes as of 2/3/2015 and are subject to change at any time due to changes in market or economic conditions. The comments should not be construed as a recommendation of any individual holdings or market sectors.

Investing involves risk including possible loss of principal. Bonds and bond funds will decrease in value as interest rates rise and are subject to credit risk, which refers to the possibility that the debt issuers may not be able to make principal and interest payments or may have their debt downgraded by ratings agencies. A portion of a municipal bond fund's income may be subject to federal or state

income taxes or the alternative minimum tax. Capital gains, if any, are subject to capital gains tax.

You should consider the investment objectives, risks, charges and expenses of the fund carefully before investing. The prospectus and, if available, the summary prospectus contain this and other information about the fund and are available, along with information on other BlackRock funds, by calling 800-882-0052 or from your financial professional. The prospectus should be read carefully before investing .

Obama Puts $1.3 bln Price Tag on New Infrastructure Muni Bond Plan.

Feb 2 (Reuters) – President Barack Obama on Monday put an initial four-year price tag of $1.3 billion on his proposal for a new type of municipal bond to spur public-private partnerships for infrastructure projects.

In his $3.99 trillion U.S. budget proposal, the tax-exempt Qualified Public Infrastructure Bonds (QPIBs) would cost $4.8 billion over about the next decade, from 2016 through 2025.

The bonds are the latest proposal from Obama for financing fixes for the nation's crumbling infrastructure. About $3.6 trillion is needed through 2020 to maintain U.S. infrastructure in good repair, according to numbers from the American Society of Civil Engineers. Only about $2 trillion of that money is likely available, leaving a $1.6 trillion funding gap, the group estimates.

The QPIBs would build on the existing idea of Private Activity Bonds (PABs), a type of U.S. municipal bond.

PABs are already used to for some public-private partnerships, including publicly owned roads, bridges and tunnels operated by private entities. The bonds are generally rated in the triple-B range.

Issuers can only sell a limited number of PABs each year. The QPIB program would not have such a cap and interest would not be subject to the alternative minimum tax.

"Congress is not going to authorize an unlimited issuance of tax exempt bonds if the IRS comes back and says it will cost a great deal of money," said Phil Fischer, managing director of municipal research at Bank of America Merrill Lynch. "Someone is going to have to pay for it."

Another program to finance infrastructure, called Build America Bonds (BABs), was popular but lasted just two years, expiring in 2010. The taxable debt was created in the 2009 economic stimulus plan and pays issuers a rebate equal to 35 percent of interest costs. Critics said the program was too expensive to extend for another 10 years at an estimated cost of $7.46 billion.

As he has done in past budgets, Obama again proposed America Fast Forward bonds, which would be similar to BABs.

Obama also proposed stripping tax exempt status from bonds used to finance professional sports facilities, which would save the federal government $542 million over nine years.

Altogether, incentives for infrastructure investment would total $3.5 billion over the next four years,

or $11.7 billion through 2025, the budget said. His six-year plan for funding highway and transit projects totals $478 billion.

Infrastructure is one of a few areas where Republicans, who control Congress, have said they could find room for compromise with Obama, a Democrat.

Washington lobbying group Bond Dealers of America said it supports Obama's two new bond programs "as long as they serve as a supplement to traditional tax-exempt bonds and not a replacement."

The group continues to oppose Obama's proposal, presented again on Monday, to cut tax breaks on municipal bond interest for high-income earners to 28 percent from 35 percent.

BY HILARY RUSS
Mon Feb 2, 2015 5:33pm EST

(Additional reporting by Megan Davies. Editing by Andre Grenon)

A.M. Best Briefing: Infrastructure Bond Program Could Widen Insurers' Investment Choices.

OLDWICK, N.J.–(BUSINESS WIRE)– A.M. Best has released a Best's Briefing providing its view on Qualified Public Infrastructure Bonds (QPIB), a new kind of municipal bond proposed by President Barack Obama to spur public/private partnerships for infrastructure projects. The briefing is titled, "Infrastructure Bond Program Could Widen Insurers' Investment Choices."

While the project is still in the early stages, with minimal details set and authorization still needed from Congress, the new bonds may provide an additional source of potential investments in a time when after-tax yield is difficult to find and the overall supply of municipal bonds is declining. Despite very low interest rates, municipalities have reduced their bonds outstanding for three consecutive years from 2010-2013. Consecutive declines in the number of outstanding municipal bonds have not occurred since the mid-1990s, according to the Securities Industry and Financial Markets Association.

The insurance industry as a whole has been a large investor in traditional municipal bonds, with holdings of more than $500 billion in assets representing 13.6% of the total municipal bond market, edging out banks' holdings of approximately $446 billion. Within the insurance industry, the property/casualty (P/C) segment is the largest investor in municipal bonds with more than $332 billion in these instruments, followed by the life/annuity (L/A) segment with $148 billion. As a percentage of invested assets (2013), municipal bond holdings represent approximately 22% of the P/C segment and 4% of the L/A segment.

Within the municipal bond asset class, the insurance industry has more than 61% of its investments in revenue bonds, according to figures from the National Association of Insurance Commissioners. This is despite general obligation bonds representing almost 80% of the entire municipal bond market.

The QPIB program, part of the Build America Investment Initiative announced by the president on Jan. 16, 2015, would extend the capital-raising capabilities of local municipalities to public/private partnerships and aim to stimulate private-sector investment into public infrastructure. The QPIB

proposal would not have a private business usage test, which means projects such as airports, solid waste and mass-transit contracts could be issued to private companies under long-term leasing and management contracts as long as the municipality maintains ownership. While a similar program existed called the qualified Private Activity Bond program, this new QPIB program will differ by the previously mentioned features of no expiration date, no issuance caps and exemption from the alternative minimum tax for interest on these bonds.

A.M. Best will continue to monitor the new potential QPIB investment opportunity and what effect, if any, it may have on the insurance industry's universe of investable assets. However, given the information provided so far, A.M. Best believes QPIBs will provide an overall benefit to the industry.

Feb. 3. 2015

- Obama Budget Adds Muni Programs, Contains 28% Cap.
- MSRB To Seek SEC Approval of MA Gifts Restriction, Test Outline.
- New Best Execution Requirement For Municipal Securities Transactions: Morgan Lewis
- Volcker Delay a Plus for Munis.
- Muni Investors Need More Information on Issuers' Other Debts: Regulator.
- S&P U.S. Municipal Water and Sewer Utilities 2015 Sector Outlook: And the Winner Is…
- IRS Issues Favorable But Limited Ruling on Total Return Swaps.
- Moody's Introduction to Public Finance Seminar.
- And finally, "No hard feelings about forcibly placing you in handcuffs, denying critically-needed medical care, and accusing you of drunk driving when in actuality you had suffered a stroke and crashed into the sidewalk while driving home from your stint at the neo-natal intensive care unit, right Dr. Harb? Dr. Harb?"

LIABILITY - CALIFORNIA

Harb v. City of Bakersfield

Court of Appeal, Fifth District, California - January 23, 2015 - Cal.Rptr.3d - 2015 WL 302291

Patient, who suffered stroke while driving, filed negligence action against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment made consequences of stroke much worse. Following jury trial, the Superior Court entered judgment in favor of defendants. Patient appealed.

The Court of Appeal held that:

- Patient provided adequate appellate record;
- Police immunity instruction was ambiguous in a way reasonably likely to cause jury to misunderstand and misapply instruction;
- As a matter of first impression, doctrine of contributory or comparative negligence was inapplicable; and
- Error in instructing jury on comparative negligence was prejudicial.

Police immunity jury instruction, which stated that officer responding to scene of accident was not liable in negligence action filed by patient, who suffered stroke while driving, if officer was

exercising due care, was ambiguous in a way reasonably likely to cause jury to misunderstand and misapply jury instruction in action alleging that delay in getting patient medical treatment made consequences of stroke much worse. Jury was required to determine for itself what "due care" meant and whether instruction was redundant to negligence instructions, defense counsel emphasized police immunity instruction in closing argument, and evidence was not so one-sided that there was little chance of ambiguous instruction being misapplied.

Doctrine of contributory or comparative negligence was inapplicable based on alleged pretreatment negligence of patient, who suffered stroke while driving, in patient's negligence action against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment made consequences of stroke much worse. First responders were required to take patient as they found him, and only legitimate application of doctrine of contributory fault was when fault took place concurrently with or after delivery of practitioner's care and treatment.

Error in instructing jury on comparative negligence based on patient's failure to take his blood pressure medication was prejudicial, such that new trial was warranted on patient's negligence claims against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment after he suffered stroke while driving made consequences of stroke much worse. Even though jury never reached question on special verdict form regarding comparative negligence, defense counsel's opening statements introduced jury to argument regarding who was to blame and position that patient's failure to take his medication was important, evidence regarding patient's failure to take his medication was presented at trial, and defense counsel reference patient's failure to take his medication during closing arguments.

EMINENT DOMAIN - CONNECTICUT

Department of Transp. v. Cheriha, LLC

Appellate Court of Connecticut - January 27, 2015 - A.3d - 155 Conn.App. 181

Property owner appealed after the Department of Transportation assessed $125,000 in damages for taking of property used for automotive related services. After a hearing, the Superior Court reassessed damages as $243,840. Property owner appealed.

The Appellate Court held that:

- Proffered testimony of prior prospective purchaser of the property was inadmissible opinion of nonexpert, nonowner;
- Sales comparison analysis of Department's expert was proper basis for making determination as to value of the property; and
- Trial court was not required to discuss opinion testimony of property's former owner in its decision on fair market value of property.

Proffered testimony of prior prospective purchaser of property that was subject of condemnation proceeding initiated by Department of Transportation, describing the amount purchaser offered to pay for the property, constituted inadmissible opinion of nonexpert, nonowner as to the property's value, in proceedings for reassessment of damages. Although prospective purchaser could have testified to uses of the property other than for automotive-related services and had experience buying and selling commercial properties, he was neither an expert in property valuation nor was he

the owner of the property, and thus he could not testify regarding market value, his intended use of the property was speculative, and the highest and best use of the property was a concept for experts to discuss.

Sales comparison analysis of condemnor's expert was proper basis for making determination as to value of property in eminent domain proceeding initiated by Department of Transportation, though expert's analysis excluded other legally conforming uses for the property, and expert's report referred to incorrect zone for the property. Property owner's own experts used automotive related services as highest and best use of the property, court reached its opinion as to market value based on properties commercially zoned and used for similar purposes, and condemnor's expert report properly identified existing use of subject property and found comparable properties based on their use for similar purposes.

MUNICIPAL ORDINANCE - INDIANA

View Outdoor Advertising, LLC v. Town of Schererville Board of Zoning Appeals

United States District Court, N.D. Indiana, Hammond Division - January 22, 2015 - Slip Copy - 2015 WL 331940

View Outdoor Advertising brought suit against the Town of Schererville, claiming that its ordinance prohibiting all billboards violated its free speech rights, that it did not receive proper due process regarding its request for a variance, and that the Town's decision to deny the variance was arbitrary and capricious.

The District Court held that:

- The ordinance was sufficiently narrowly tailored to directly advances the Town's interests in aesthetics; and
- There existed no due process violation, as View had been given notice and a robust opportunity to be heard at the hearing before the Board of Zoning Appeals.

Having dismissed all federal claims, the District Court remanded all remaining state claims (including the arbitrary and capricious claim) to the state court.

MUNICIPAL ORDINANCE - NEW JERSEY

Newfield Fire Co. No. 1 v. Borough of Newfield

Superior Court of New Jersey, Appellate Division - January 23, 2015 - A.3d - 2015 WL 302648

Volunteer firefighter company filed complaint in lieu of prerogative writs, seeking to invalidate, as ultra vires, municipal ordinance requiring company's officers to be appointed by municipality's governing body. The Superior Court upheld the ordinance as enforceable after excising three specific provisions. Company appealed.

The Superior Court, Appellate Division, held that municipality was unambiguously permitted by statute to use ordinance as contractual basis to set forth provisions assuring municipal supervision and control of company's members.

MUNICIPAL ORDINANCE - NEW MEXICO

Swepi, LP v. Mora County, N.M.

United States District Court, D. New Mexico - January 19, 2015 - F.Supp.3d - 2015 WL 365923

On April 29, 2013, the Mora County Board of County Commissioners adopted the (insufferably self-righteous) "Mora County Community Water Rights and Local Self–Government Ordinance" prohibiting (among many other things) the extraction of oil, natural gas, or other hydrocarbons within the County.

SWEPI, LP, which had entered into an oil-and-gas lease with the State of New Mexico in 2010, sought an injunction to prohibit the County from enforcing the Ordinance and seeking monetary damages.

The District Court invalidated the Ordinance, finding that:

- SWEPI, LP had standing to bring each of its claims, because it had suffered an injury in fact;
- Because the County had already enacted the Ordinance, and because SWEPI, LP would suffer harm if the Court delayed considering its claims, each of SWEPI, LP's claims was ripe, except for its claim under the Takings Clause;
  Because SWEPI, LP had not sought just compensation through a state inverse condemnation action, its takings claim was not ripe;
- SWEPI, LP could bring its claim under the Supremacy Clause, because it could bring independent claims, through 42 U.S.C. § 1983, under the constitutional provisions that it asserted trumped the Ordinance;
- The Ordinance violated the Supremacy Clause, because it conflicted with federal law;
- The Ordinance did not violate SWEPI, LP's substantive due-process rights or the Equal Protection Clause, because the County had a legitimate state interest for enacting the Ordinance;
- The Ordinance violated the First Amendment by chilling protected First Amendment conduct;
- Because the County lacked the authority to enforce zoning laws on New Mexico state lands, it could not enforce the Ordinance on state lands;
- Because there is room for concurrent jurisdiction between state and local law, New Mexico state law does not preempt the entire oil-and-gas production field;
- The Ordinance conflicted with state law by prohibiting activities that state law permits: the production and extraction of oil and gas; and
- The invalid provisions of the Ordinance were not severable from the valid provisions, making the Ordinance, in its entirety, invalid.

I read a 100-page opinion for you ingrates!

Shout out to my peeps at Holland & Hart for surviving this nonsense.

PENSIONS - PENNSYLVANIA

Loscombe v. City of Scranton

United States Court of Appeals, Third Circuit - January 28, 2015 - Fed.Appx. - 2015 WL 348055

Fire Captain for the City of Scranton was forced to retire due to injuries he sustained in a work-

related accident. For his service, he received a disability retirement pension from the City's Fire Department. Following his retirement from the Fire Department, Captain accepted an offer to serve as a member of the Scranton City Council. Because Captain was serving as a City Council member, the City directed the Pension Board to suspend his pension, in accordance with municipal ordinance requiring that any pensioned firefighter who becomes employed by the City shall have his pension suspended during the term of that employment.

Captain raised a series of constitutional claims challenging the Ordinance and the suspension of his pension benefits. The District Court ruled in favor of the City and Pension Board, finding no constitutional violations. Captain appealed and the Court of Appeals affirmed.

CONTRACTS - SOUTH DAKOTA

Lowe v. City of Hot Springs

Supreme Court of South Dakota - January 28, 2015 - N.W.2d - 2015 S.D. 3

After city accepted corporation's proposal to lease real property belonging to city, private entity, whose proposal had been rejected, sued city and corporation, seeking to require city to reject all proposals and restart process, based on allegation that city failed to adhere to statutory service procurement requirements. The Circuit Court granted city and corporation summary judgment. Private entity appealed.

The Supreme Court of South Dakota held that city's request for proposals and contract with corporation did not involve procurement services.

City's request for competitive sealed proposals for continued utilization of its real property and subsequent contract with corporation to lease property for sand and gravel extraction did not involve procurement of services, such that city was not required to adhere to statutory service procurement requirements. Even though lease required corporation to use its efforts with respect to certain matters, terms requiring corporation's efforts were all integrally related to city's historical use of property, transaction involved bona fide lease, and city paid no monetary compensation for corporation's efforts.

SIGNAGE - TEXAS

Garrett Operators, Inc. v. City of Houston

Court of Appeals of Texas, Houston (1st Dist.) - January 22, 2015 - S.W.3d - 2015 WL 293305

Owner of billboard was prohibited by City from installing an LED display on the sign, although the local Sign Code contained no reference to LED lights. The City subsequently amended the Code (the "Amendments") to prohibit electronic signs.

Owner sued, arguing, inter alia, that any application of the Amendments to him was a violation of the Texas Constitution's prohibition against retroactive laws under Article I, section 16.

The Court of Appeals held that:

- The trial court erred in ruling that Owner was barred by the statute of limitations;

- Owner's proposed conversion of the billboard but was a reconstruction or alteration of the billboard requiring a permit from the Sign Administration;
- Because Owner was required to, but had not requested a permit from the Sign Administration at the time he filed suit, he had no vested interest in converting its sign to LED without a permit; and
- Because Owner had no vested interest in converting his sign without a permit, the amendments to the Sign Code were not unconstitutionally retroactive when applied to him.

PUBLIC RECORDS - WASHINGTON

Worthington v. Westnet

Supreme Court of Washington - January 22, 2015 - P.3d - 2015 WL 276401

Records requester brought action against regional drug task force, alleging that task force formed under the Interlocal Cooperation Act (ICA) had wrongfully denied his request for records pursuant to the Public Records Act (PRA). The Superior Court granted task force's motion to dismiss. Requester appealed. The Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court of Washington held that:

- Provision of interlocal agreement stating that task force was not an "agency" for purposes of PRA was not binding on the courts, and
- Interlocal agreement could not designate task force as a nonentity if doing so would conflict with PRA obligations and requirements.

Self-imposed terms of interlocal agreement stating that drug task force was not an "agency" for purposes of the Public Records Act (PRA) did not establish as a matter of law that the task force was not an agency, absent evidence of whether the task force operated independently, maintained its own records, or effectively existed as a separate government agency.

Under the provision stating that the Public Records Act (PRA) governs in the event of conflict with any other act, an interlocal agreement creating a drug task force could not designate the task force as a nonentity if doing so would conflict with PRA obligations and requirements, unless another contributing agency could satisfy the task force's PRA obligations on the task force's behalf.

EMINENT DOMAIN - WASHINGTON

Public Utility Dist. No. 1 of Okanogan County v. State

Supreme Court of Washington, En Banc - January 29, 2015 - P.3d - 2015 WL 388301

Public utility district (PUD) filed a condemnation petition against property owners to obtain easements that were necessary to build a new electrical transmission line. One property owner was the state, which owned school trust lands that were required for the project. Conservation group filed a motion to intervene, which was granted. Group and Department of Natural Resources (DNR) each filed a motion for summary judgment, arguing that PUD did not have the authority to condemn the school trust lands. The Superior Court denied the motions and granted summary judgment in favor of PUD. Group and DNR appealed, and PUD cross appealed. The Court of Appeals affirmed. DNR and PUD sought review, which the Supreme Court granted.

The Supreme Court of Washington held that:

- Statute does not prohibit a court from exercising its authority under the court rules to join individuals challenging a condemnor's authority with respect to certain property;
- Trial court could allow group to be a permissive intervenor;
- Public utility districts have express statutory authority to condemn school lands held in trust by the state;
- A present or prospective public use does not categorically exempt property from condemnation by a municipal corporation; abrogating *State ex rel. City of Cle Elum v. Kittitas County*, 107 Wash. 326, 173 P. 698;
- Condemnation of an easement through school lands by public utility districts does not violate the Washington Constitution; and
- Legislative grant of authority to public utility districts to condemn school lands is not a breach of the state's fiduciary duties as trustee of school lands.

TAX - ARIZONA

Hub Properties Trust v. Maricopa County

Court of Appeals of Arizona, Division 1 - January 27, 2015 - Not Reported in P.3d - 2015 WL 357850

Hub Properties Trust (Hub) purchased real property (the Property) from the City of Phoenix on March, 2011. After Hub purchased the Property, the County Assessor's Office determined the Property was no longer exempt municipal commercial property. As a result, the Property was included in the Assessor's roll as taxable property and was included in the County's tax roll for tax year 2011. The Maricopa County Board of Supervisors then fixed, levied and assessed property taxes for the Property for the County's assessment and tax roll for the 2011 tax year.

Hub appealed, arguing that because the City owned the Property "during the entire assessment period for the tax year 2011, on the tax lien date, and for more than two full months of the tax year at issue herein," the Property was tax exempt during tax year 2011. Thus, Hub contended the Property was illegally taxed that year. Hub's argument stemmed from the notion that once property is exempt, it is exempt for the entire tax year even if there is a change of use or ownership.

The Court of Appeals agreed with the tax court's conclusion that the period of exemption begins on the date the property enters government ownership and ends on the date it leaves government ownership. Although the Property was tax exempt while the City owned it in 2011, the exemption was lifted when Hub purchased the Property in March. Thus, the court affirmed the tax court's ruling that the Property was not tax exempt after the City sold it to Hub in 2011.

TAX - ALABAMA

Montgomery County Com'n v. Federal Housing Finance Agency

United States Court of Appeals, Eleventh Circuit - January 16, 2015 - F.3d - 2015 WL 223699

This consolidated appeal arose from six district court actions in this circuit. In each of the six cases, the district court ruled in favor of the Appellees, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Federal Housing Finance Agency (collectively referred to as the "federal entities").

Appellants' position on appeal was that the state taxes normally imposed on real estate transfers apply when the federal entities transfer real property in their respective states. The federal entities have not paid the transfer taxes, citing their Congressional charter exemptions from "all taxation." These statutory exemptions contain an exception allowing states to impose real estate taxes on the federal entities, and Appellants contended their transfer taxes fall into that exception. Appellants also made the constitutional argument that even if the exemptions precluded the states from imposing the transfer taxes, the exemptions themselves are unconstitutional under the Commerce, Necessary and Proper and Supremacy Clauses.

The district court in each case, as have several Circuit Courts of Appeal, found the federal entities are exempt from paying transfer taxes, and the statutes are otherwise constitutional. The U.S. Court of Appeals affirmed.

MSRB To Seek SEC Approval of MA Gifts Restriction, Test Outline.

WASHINGTON – The Municipal Securities Rulemaking Board is preparing to submit to the Securities and Exchange Commission a proposal limiting the gifts municipal advisors can give to state and local employees as well as a study guide for its MA qualifications exam.

MSRB chair Kym Arnone announced the decisions Monday following the board's meeting at its headquarters Alexandria, Va. Last week. Arnone, a managing director and head of municipal securitization at Barclays Capital, inherited several unfinished MA rulemaking endeavors when she assumed the chair in October, and SEC approval of these latest MSRB proposals would be another step toward completion of that agenda.

"The MSRB continues to prioritize the development of regulations and professional qualifications to protect the interests of states and municipalities that rely on the services of municipal advisors," Arnone said. "These measures are consistent with the MSRB's development of a comprehensive framework of rules and standards for municipal advisors stemming from the Dodd-Frank Wall Street Reform and Consumer Protection Act."

The MSRB will seek SEC approval to amend its rule G-20 on gifts and gratuities to cover municipal advisors as well as the broker-dealers it currently restricts. The rule currently prohibits a dealer from giving directly or indirectly any thing or service of value, including gratuities, in excess of $100 per year to a person if that gift is related to the muni securities activities of the employer of the recipient. The amendment would clarify that the gifts also cannot be related to muni advisory activities.

The rule also would explicitly prohibit dealers and MAs from receiving reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities. The amended rule will include applicable interpretive guidance, the MSRB said in a release.

In addition, the board is preparing to give the SEC a "content outline" or study guide to the MA competency exam it is developing, Arnone said. The board plans to send the outline to the commission as soon as the SEC approves the related proposal to create different categories of MAs and requires them to take a qualifications test. The MSRB filed that proposal with the SEC in December.

"If approved, a pilot Series 50 municipal advisor exam will be administered later this year and a permanent exam is expected to be in place by 2016," the MSRB said.

“Municipal advisors play a key role in municipal finance transactions, from the most basic to highly complex transactions,” said Arnone. “Going forward, passing a basic competency exam will be a requirement for all municipal advisors in—or entering—the profession. Finalizing the blueprint for the municipal advisor exam is a major milestone in this effort.”

The Board agreed to an increase in the fees to take the other exams that it has developed and that are administered by the Financial Industry Regulatory Authority. The fees, which have not been adjusted since 2009, would rise to $150 from $60, Arnone said. That figure does not include the cost of administrative fees assessed by FINRA, which range from $95-$120 per exam.

Arnone said the board will continue to carefully consider comments on its proposal to require dealers, when acting as principals, to disclose to customers on their confirmations a “reference price” of the same security traded that same day. That proposal, released in November, would apply to principal transactions of less than $100,000 or those with 100 bonds or fewer, in an effort to attempt to address concerns about hidden markups in so-called “riskless principal transactions.” Dealers have told the MSRB it should withdraw the proposal, but the SEC’s Investor Advocate has voiced support.

The board will next meet April 22-24.

THE BOND BUYER

BY KYLE GLAZIER

FEB 2, 2015 2:22pm ET

Obama Budget Adds Muni Programs, Contains 28% Cap.

WASHINGTON – The $4 trillion fiscal 2016 budget request unveiled by President Obama on Monday includes several proposals applauded by muni market participants, including: a six-year, $478 billion transportation infrastructure plan; the creation of tax-exempt qualified public infrastructure bonds; America Fast Forward direct-pay bonds; and an increase in the annual issuer bond limit for bank-qualified bonds.

On the other hand, his renewed push to limit the value tax-exempt bond interest to 28% of a taxpayer’s income, a new proposal to eliminate the use of tax-exempt bonds to help finance professional sports stadiums and a plan to impose a fee on big banks and broker-dealers, are drawing some opposition.

Ultimately the budget request, the first that Obama has had to release with Republicans in control of both chambers of Congress, may not matter.

House Ways and Means Committee chairman Paul Ryan, R-Wis., said the budget contains $2.1 trillion in new taxes and would add $8.5 trillion in more debt. “This is simply unacceptable,” he said.

Sen. David Vitter, R-La. said, “The only positive thing about [the budget] is that it has a zero percent chance of becoming law.”

But Micah Green, chair of the financial services and tax policy practice group at Squire Patton Boggs, said that while the budget is unlikely to be warmly embraced on Capitol Hill, it puts forward

ideas.

The budget makes infrastructure a priority. Obama's six-year transportation plan, proposed as the current temporary transportation funding program is set to expire on May 31, would be funded with $278 billion from a new tax rate on corporate foreign earnings and $240 billion of gasoline tax revenues.

The proposal would increase federal surface transportation funding to almost $80 billion annually over the six years, from fiscal 2015's $54 billion.

"These investments would be paid for by closing tax loopholes as part of reforming the business tax rules to level the playing field and make sure everyone pays their fair share," the White House said in a fact sheet.

"The proposal would allow us to repair existing roads and bridges and modernize our infrastructure with new investments in highways, freight networks, and bus, subway, rapid transit, light rail, and passenger rail systems," the fact sheet said.

Obama would establish an independent national infrastructure bank to leverage public and private capital to fund large infrastructure projects. The infrastructure bank, which Obama has been pushing for since 2011, would be capitalized with $7.7 billion over the next 10 years.

The six-year plan would provide $317 billion for roads and bridges and more than $143 billion for transit and passenger rail. The budget also includes $28.6 billion for high-performance and other passenger rail projects, and $18 billion for multimodal freight programs.

The plan would provide $7.5 billion to the Transportation Investment Generating Economic Recovery, or TIGER, and make the grant program permanent. The budget also includes $1 billion annually for credit assistance and low-cost loans through the Transportation Infrastructure Finance and Innovation Act Program for nationally or regionally significant transportation projects. A new office for innovative finance would be created to manage these credit programs.

The Transportation Department's proposed $94.7 billion budget for fiscal 2016 covers the first year of the six-year transportation program. The proposed spending plan for 2016 would allocate $51 billion to highways and surface transportation projects, an increase of $10 billion, and $18 billion to transit, an increase of $7 billion.

In a TV interview with NBC News on Feb. 1, Obama said he was open to options from Republican lawmakers on infrastructure funding. "I think Republicans believe that we should be building our infrastructure," Obama said. "The question is how do we pay for it? That's a negotiation we should have.

"My job is to present the right ideas, and if the Republicans think they have better ideas, then they should present them," he said.

The proposed 14% corporate tax rate would be levied on foreign profits even if the money remains overseas. The tax rate on current earnings then would be set at 19% instead of the current 35% rate. The 14% transition tax would mean that multinational companies have to pay U.S. tax right now on the $2 trillion they already have overseas, rather than being able to delay paying any U.S. tax indefinitely at the current 35% rate, the White House said.

"Unlike a voluntary repatriation holiday, which the president opposes and which would lose revenue, the president's proposed transition tax is a one-time, mandatory tax on previously untaxed foreign

earnings, regardless of whether the earnings are repatriated," the fact sheet said.

Obama's proposal sets the stage for a serious discussion on long-term, sustainable infrastructure funding, said Bud Wright, executive director of the American Association of State Highway and Transportation Officials.

"We know the hardest conversations will involve how to fund infrastructure investments," Wright said.

The president's proposal is "extremely encouraging" and should be the beginning of debate on how to fund long-term infrastructure needs, said Brian Turmail, director of public affairs at Associated General Contractors of America.

"We expect Congress will take this opportunity to work out a viable deal with the administration," he said.

But Sen. Jim Inhofe, R-Okla., chairman of the Environment and Public Works Committee, was not happy. "The president's budget proposal entangles infrastructure funding with other pet projects that distract from Washington's constitutional responsibility to provide for our nation's roads and bridges," he said. "Efficient investments and common-sense reforms of our nation's surface infrastructure system will be the key to rebuilding a stronger, more robust middle class and to moving our economy forward for the next generation ….. I am working with my colleagues on a long-term reauthorization bill that builds on the reforms in MAP-21 and provides states the certainty needed to deliver the projects most critical to our nation."

Obama would raise to $19 billion from $15 billion the national limit for qualified highway and surface freight transfer facility bonds.

As expected, the budget proposes the creation of tax-exempt QPIBs, which would not be subject to volume caps or the alternative minimum tax, but would have to comply with other private-activity bonds requirements, such as having to obtain public approval.

QPIBs could be issued beginning in 2016 for airports, docks and wharves, mass commuting facilities, water furnishing and sewage facilities, solid waste disposal projects, and qualified highway or surface freight transfer facilities.

Projects financed by QPIBs would have to be owned by a state or local governmental unit and would have to serve a public use or be available on a regular basis for general public use. QPIBs could replace certain PAB categories or could be issued in addition to them and would increase the deficit by $4.83 billion from 2016 through 2025, according to the budget.

The budget once again calls for the creation of a permanent, taxable direct-pay America Fast Forward bond program, with Treasury making subsidy payments to issuers equal to 28% of their interest costs. AFF bonds could be used to finance projects that could be financed with PABs or QPIBs as well as governmental capital projects or current refundings of bonds associated with such projects. They could also be used for working capital financings and projects for 501(c)(3) nonprofit entities.

Mike Nicholas, CEO of Bond Dealers of America, said BDA supports QPIBs and AFF bonds, as long as they are not intended to replace tax-exempts.

As expected, the budget would increase the issuer annual cap to $30 million from $10 million for bank-qualified bonds. Banks could buy the tax-exempt bonds of issuers who sold reasonably

expected to issue less than $30 million of munis during the year.

It also proposed modifying the 2% de minimis rule for financial institutions to include banks. That provision would allow banks to deduct 80% of the cost of buying and carrying tax-exempt bonds, to the extent that their tax-exempt holdings do not exceed 2% of their assets. Banks currently are only able to take advantage of that 80% write-off when purchasing bank-qualified bonds.

Dealer groups and issuers were pleased with the increase in the issuer limit for bank-qualified bonds. Michael Decker, a managing director and co-head of munis at the Securities Industry and Financial Market Association, said this proposal is "very welcome" and that, since banks are playing an increasing role as investors in tax-exempts, it's important to encourage that.

Nicholas said BDA is "fully supportive" of the increase, but that the limit should also be indexed for inflation.

Richard Ellis, Utah's Treasurer and former president of the National Association of State Treasurers, said the increase "makes a lot of sense" since the costs of projects has increased over the years due to inflation.

The president proposed expanding a little-known program called Qualified Public Education Facility Bonds. First authorized in 2001, those bonds' issuance is currently capped at the greater of $5 million or $10.00 per capita. The program has not been used much, if at all, because of its problematic requirement that an educational facility be both part of a public elementary or secondary school and owned by a private, for-profit corporation engaged in a public-private partnership with a state or local government. The proposal would eliminate the private corporation ownership requirement and subject QPEFs to state PAB volume caps. But Obama renewed his call for a 28% cap on the value of tax-exempt bond interest, including for bonds already issued, beginning in 2016. Dealer groups complain this would be a tax on municipals.

"A little bit of the value [of QPIBs] is taken back" by the 28% cap, said Green.

"We completely disagree" with the 28% cap, Nicholas said. When muni interest is taxed, it raises issuers' borrowing costs.

"It's a direct hit on issuers' ability to finance capital improvement projects," he said. If it is more expensive to pay for projects, taxes will go up for people that live in the issuers' jurisdictions.

For the first time, Obama proposed eliminating tax-exempt financing of professional sports stadiums. "Allowing tax-exempt governmental bond financing of stadiums transfers the benefits of tax-exempt financing to private professional sports teams," Treasury said in its green book on the budget's tax proposals. It also "shift[s] more of the costs and risks from the private owners to local residents and taxpayers in general," it said.

SIFMA stands by the current law. "There's a well-established and well-seasoned test for determining what projects qualify for tax-exempt bond financing. Stadium financings have been structured to pass this test, and it doesn't make sense to exclude one type of bond from the regular test," Decker said.

"Professional sports in certain cities are the core of their economy and their identity," Green said.

Obama's proposed fee of seven basis points for banks, broker-dealers and other financial institutions with worldwide assets of more than $50 billion was also criticized.

A SIFMA spokesperson said the group doesn't support a tax on a single sector and thinks that any tax reform should be comprehensive. A lot of the Dodd-Frank reforms that regulators have finalized or are working on mitigate risk. "The tax code is not the place to address risk," she said.

THE BOND BUYER

BY NAOMI JAGODA and JIM WATTS

FEB 2, 2015 5:18pm ET

Kyle Glazier and Lynn Hume contributed to this article

New Best Execution Requirement For Municipal Securities Transactions: Morgan Lewis

Although the MSRB's new best execution rule is generally consistent with FINRA's, differences exist and questions remain regarding FINRA's examination and enforcement of the requirements.

On December 5, 2014, the U.S. Securities and Exchange Commission (SEC) approved a Municipal Securities Rulemaking Board (MSRB) proposal to establish explicit best execution requirements for brokers, dealers, and municipal securities dealers (Dealers) effecting transactions in municipal securities, subject to certain exceptions.1. The MSRB's best execution rule is largely consistent with the best execution rule of the Financial Industry Regulatory Authority (FINRA), with some key differences.2.

The MSRB characterizes its best execution rule as an order-handling standard, and not a pricing standard, that would require Dealers to use "reasonable diligence" in seeking to obtain the best price for a customer under prevailing market conditions. Although the MSRB already requires that Dealers trade with customers at fair and reasonable prices, and exercise diligence in establishing the market value of municipal securities and the reasonableness of their compensation, it is unclear whether the MSRB's new best execution rule will conflict with the MSRB's existing pricing standards because, for example, those pricing standards explicitly recognize that Dealers are "entitled to a profit."3. The substantive requirements of the MSRB's best execution rule are discussed below, as are some of the issues that Dealers might consider when implementing the requirements of the new rule.

The MSRB's best execution rule becomes effective on **December 7, 2015.**

BEST EXECUTION

New MSRB Rule G-18—Best Execution—consists of three main provisions and nine paragraphs of supplementary material that inform the best execution standard. We provide an overview of each of these provisions below.

General Best Execution Standard

MSRB Rule G-18(a) contains the substantive best execution standard. In relevant part, MSRB Rule G-18(a) requires Dealers to

use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under the prevailing market conditions.

Although MSRB Rule G-18(a) does not specifically define "reasonable diligence," it does identify six factors for determining whether a Dealer has used "reasonable diligence," with no single factor being determinative:

1. The character of the market for the security (e.g., price, volatility, and relative liquidity)
2. The size and type of transaction
3. The number of markets checked
4. The information reviewed to determine the current market for the subject security or similar securities
5. The accessibility of quotations
6. The terms and conditions of the customer's inquiry or order, including any bids or offers, that result in the transaction, as communicated to the Dealer

Although the substance of MSRB Rule G-18 is substantially similar to FINRA's best execution rule (FINRA Rule 5310), MSRB Rule G-18 contains an additional factor not found in FINRA's Rule—the information reviewed to determine the current market for the subject security or similar securities. As explained by the MSRB when it proposed the rule, this additional factor is intended to "guide the use of reasonable diligence when, for example, there are no available quotations for a security . . . [, and] take into account that [D]ealers may use information about similar securities and other reasonably relevant information."4.

Interpositioning Prohibited

As with FINRA Rule 5310(a)(2), MSRB Rule G-18(b) prohibits "interpositioning," which is the practice of unnecessarily interjecting a third party between the Dealer and the best market for a security. Unlike FINRA Rule 5310(b), however, which requires FINRA members to show why it is reasonable to use a broker's broker when effecting a transaction for a customer, the MSRB's best execution rule does not require Dealers to establish such a showing. Indeed, the definition of a "market" for purposes of the MSRB's rule (as discussed below) includes broker's brokers.

MSRB Rule G-18 Not a Pricing Standard

Finally, MSRB Rule G-18(c) states that the obligations under MSRB Rule G-18 are distinct from the pricing obligations in MSRB G-30. It is unclear, however, whether MSRB Rule G-30 and its various interpretations will cause interpretive dilemmas for Dealers, in particular, if regulatory examiners misapply the standard from the FINRA rule when reviewing a Dealer's compliance with the MSRB rule.

Supplementary Material

The supplementary material to MSRB Rule G-18 is intended to clarify certain aspects of MSRB Rule G-18. In particular, the supplementary material addresses the following:

Failure to Obtain the Most Favorable Price: The supplementary material clarifies that the failure to have actually obtained the most favorable price will not necessarily mean that a Dealer failed to use reasonable diligence in connection with the Dealer's best execution obligations under the rule.5.

Adequate Resources: Under the rule, a failure to maintain adequate resources, such as staff

or technology, is not a justification for executing away from the best available market. 6. This provision parallels a similar requirement in FINRA Rule 5130(c).

Timing of Execution: Paragraph .03 of the supplementary material acknowledges that although customer transactions should be executed promptly, under certain circumstances, Dealers may need more time to use reasonable diligence to determine the best market for a security.7.

Definition of Market: The rule defines the terms "market" and "markets" broadly to include brokers' brokers, alternative trading systems or platforms, and other counterparties. Significantly, the rule makes clear that a market through which a most favorable price could be obtained includes a Dealer acting as principal.8. In contrast, the definition of "market" in FINRA Rule 5310/.02 does not explicitly include a FINRA member acting as principal.

Executing Brokers: Supplementary Material .05 indicates that a Dealer's duty to provide best execution to customer orders received from another Dealer arises only if that other Dealer routes the order to the Dealer for handling and execution.9.

Limited Quotations and Pricing Information: The rule requires that a Dealer (1) have policies and procedures in place that address how its best execution determinations will be made for securities in which there is limited pricing information or quotations and (2) document compliance with such policies and procedures.10.
Customer Instructions: Paragraph .07 of the supplementary material states that a Dealer is not required to make a best execution determination if the Dealer receives an unsolicited instruction from a customer that designates a particular market for execution.

Periodic Reviews: On at least a yearly basis, a Dealer is required to review its policies and procedures for determining the best available market for the execution of its customers' transactions.11. In conducting the review, a Dealer is required to assess whether its policies and procedures are reasonably designed to achieve best execution while taking certain factors into account, such as the following:

- The quality of execution that the Dealer is obtaining under its current policies and procedures
- Changes in market structure
- New entrants
- The availability of pre-trade and post-trade data
- The availability of new technologies

Municipal Fund Securities: Excluded from the scope of MSRB's best execution rule are transactions in municipal fund securities.12. A municipal fund security is a municipal security issued by an issuer that, but for the application of section 2(b) of the Investment Company Act of 1940 (1940 Act), would constitute an investment company within the meaning of section 3 of the 1940 Act.13. Examples of municipal fund securities include local government investment pools and 529 college plans. As explained in the Proposal, municipal fund securities are typically distributed through continuous primary offerings at calculated prices, and the decision to purchase such funds involves special tax and other considerations unique to such securities, making the best execution standard in proposed MSRB Rule G-18 "inapt."14.

Exceptions for Sophisticated Municipal Market Professionals; Affirmations

In connection with its best execution framework, MSRB also amended MSRB Rule G-48—transactions with Sophisticated Municipal Market Professionals (SMMPs)—to exclude transactions with SMMPs from the best execution requirements. The MSRB also amended the

definition of an SMMP in MSRB Rule D-15 to indicate that, to qualify as a SMMP, a customer must affirmatively indicate that it is exercising independent judgment in evaluating the recommendations of a Dealer. More specifically, the affirmation would require the customer to indicate that it

- is exercising independent judgment in evaluating the recommendation of the Dealer, the quality of execution of the customer's transactions by the Dealer, and the transaction price for nonrecommended secondary market agency transactions as to which the Dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and
- the dealer does not exercise discretion as to how or when the transactions are executed, and has timely access to material information that is available publicly through established industry sources as defined in MSRB Rule G-47(b)(i) and (ii).

The supplementary material to MSRB Rule D-15 indicates that this affirmation may be given, either orally or in writing, (1) on a trade-by-trade basis, (2) on a type-of-municipal-security basis, or (3) on an account wide basis.

Implications

Although compliance with the MSRB's best execution rule is roughly a year away, Dealers should begin to consider what changes they have to make to their order management and back office systems to comply with the rule. In particular, Dealers should review their current practices for complying with FINRA Rule 5310 and MSRB Rule G-30 and determine how to incorporate, in their policies and procedures, the enumerated factors in MSRB Rule G-18 that can be used to establish the use of "reasonable diligence" in fulfilling the best execution obligations under the rule. Although the "reasonable diligence" factors identified by the MSRB are intended to be nonexclusive, Dealers may want to address in their policies and procedures why a particular factor was not included. In this regard, we caution, as some commenters on the Proposal did,15. that rather than view the list as nonexhaustive, FINRA examination staff might take the view that each of the factors needs to be addressed in any policies and procedures to ensure compliance with the rule.

In addition, although MSRB's best execution rule indicates that a Dealer's inventory holdings qualify as a market that can be used to satisfy their obligations under the rule, Dealers should take care to ensure that other markets do not offer comparable or better pricing for a fixed-income product that satisfies the attributes that a customer is seeking. This is particularly the case because MSRB rules do not contain a direct methodology for establishing the prevailing market price for a security as does FINRA Rule 2121/.02 (Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities). Although the MSRB did propose creating such a methodology,16. it never filed a notice with the SEC to do so. Such a methodology would be helpful in connection with the information reviewed to determine the current market for the subject security or similar securities, especially when reviewing the market for "similar securities" when engaging in a reasonable diligence exercise. Dealers may want to establish criteria for determining what qualifies as a "similar security," and in this regard, may want to reference the discussion of a "similar" municipal security in the 2010 MSRB Mark-Up Proposal. That proposal states that "a 'similar' municipal security should be sufficiently similar to the subject security that it would serve as a reasonable alternative investment to the investor. At a minimum, a market yield for the subject security should be able to be fairly estimated from the yields of the similar securities." The 2010 MSRB Mark-Up Proposal then goes on to identify the following factors for evaluating the similarities between securities:

- Credit quality considerations, such as whether the municipal security is issued by the same or similar entity, bears the same or similar credit rating, or is supported by a similarly strong

guarantee or collateral as the subject security (to the extent that securities of other issuers are designated as "similar" securities, significant recent information of either issuer that is not yet incorporated in credit ratings should be considered (e.g., changes to ratings outlooks)).
- The extent to which the spread (i.e., the spread over U.S. Treasury securities of a similar duration) at which the "similar" municipal security trades is comparable to the spread at which the subject security trades.
- General structural characteristics and provisions of the issue, such as coupon; maturity; duration; complexity or uniqueness of the structure; callability; the likelihood that the municipal security will be called, tendered, or exchanged; and other embedded options, as compared with the characteristics of the subject security.
- Technical factors, such as the size of the issue, the float and recent turnover of the issue, and legal restrictions on transferability as compared with the subject municipal security.
- The extent to which the federal and/or state tax treatment of the "similar" municipal security is comparable to such tax treatment of the subject security.17.

Finally, we note that with respect to SMMPs, Dealers may want to amend their account-opening documents to include materials through which SMMPs can make the required affirmations under MSRB Rule D-15. As mentioned in the Approval Order, however, for existing customers that are SMMPs, Dealers will likely have to get new affirmations. 18.

Conclusion

As explained by the MSRB, the best execution rule is among several initiatives under way to fulfill the MSRB's long-term plan for market transparency and to align MSRB rules with recommendations from the SEC's 2012 Municipal Securities Report.19. Indeed, the MSRB and FINRA recently coordinated on requesting comments from their respective members regarding a proposal to disclose pricing information and price differentials in customer confirmations for many same-day transactions.20. We will continue to monitor these and other developments as they progress.

Footnotes

1. See Securities Exchange Act Release No. 73764 (December 5, 2014), 79 Fed. Reg. 73658 (Dec. 11, 2014) (Approval Order). A copy of the approval order is available here. See also SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals, MSRB Regulatory Notice 2014-22 (December 8, 2014) available here.

2. See FINRA Rule 5310.

3. See MSRB Rule G-30/.02(b)(iii) (indicating that a factor a Dealer may consider in determining fairness and reasonableness of prices is that the Dealer is entitled to a profit).

4. Securities Exchange Act Release No. 72956 (September 2, 2014), 79 Fed. Reg. 53236, 53238 (September 8, 2014) (Proposal).

5. MSRB Rule G-18/.01.

6. MSRB Rule G-18/.02. The supplementary material also indicates that "[t]he level of resources that a dealer maintains should take into account the nature of the [D]ealer's municipal securities business, including its level of sales and trading activity."

7. MSRB Rule G-18/.03.

8. MSRB Rule G-18/.04.

9. MSRB Rule G-18/.05.

10. MSRB Rule G-18/.06. By way of example, the supplementary material states that a Dealer should generally seek out other sources of pricing information and potential liquidity for such a security, including other dealers that the Dealer previously has traded within the security. In addition, the supplementary material states that a Dealer generally should, in determining whether the resultant price to the customer is as favorable as possible under prevailing market conditions, analyze other data to which it reasonably has access.

11. MSRB Rule G-18/.08.

12. MSRB Rule G-18/.09.

13. Section 2(b) of the 1940 Act states: "No provision in this title [1940 Act] shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto."

14. Proposal, 79 Fed. Reg. at 53240.

15. Approval Order, 78 Fed. Reg. at 73662 (indicating a belief among some commenters that the exhaustive list of factors to be considered by Dealers could become a de facto enforcement checklist for FINRA).

16. See Request For Comments On Draft Interpretive Guidance On Prevailing Market Prices And Mark-Up For Transactions In Municipal Securities, MSRB Notice 2010-10 (April 21, 2010) (2010 MSRB Mark-Up Proposal).

17. Id. See also SEC, Report on the Municipal Securities Market (July 31, 2012) (Municipal Securities Report), pages 129–130, available here.

18. Approval Order, 78 Fed. Reg. at 73663.

19. Supra note 17.

20. Please see our previous LawFlash for a discussion of these proposals, available here.

Last Updated: January 26 2015

Article by Steven W. Stone, Peter K.M. Chan and Ignacio A. Sandoval

Morgan Lewis

Refundings Push January U.S. Muni Bond Sales to $28.2 Billion.

Feb 2 (Reuters) – U.S. municipal bond sales totaled $28.2 billion in January, up 55 percent from a year earlier, according to Thomson Reuters data released on Monday.

States, cities, schools and other issuers in the municipal bond market refunded outstanding debt, taking advantage of falling interest rates last month. Refundings accounted for 67 percent of issuance.

The yield on top-rated 10-year bonds fell 32 basis points over the month to 1.72 percent as of Friday's close, while the yield on AAA-rated 30-year munis dropped 36 basis points to 2.50 percent on Municipal Market Data's benchmark scale. (Reporting by Karen Pierog; Editing by Lisa Von

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NABL: President Releases FY 2016 Budget Proposals.

President Obama has released his FY 2016 budget proposals. The President has again proposed to limit to 28 percent the benefit of certain tax preferences, including tax-exempt interest.

The President has proposed discretionary spending in excess of the sequester limits under the Budget Control Act of 2011, but the budget does not propose changes to the sequester of mandatory spending and therefore would leave intact the reductions to payments to issuers of direct pay bonds. The Office of Management and Budget also released today the sequester percentage for fiscal 2016. The percentage reduction that will be applied to payments to issuers of direct-pay bonds for fiscal 2016 will be 6.8 percent. The percentage reduction for the current fiscal year is 7.3 percent.

As announced previously, the President has proposed a new category of private activity bond, Qualified Public Infrastructure Bonds (QPIBs). QPIBs would be available for certain governmentally-owned exempt facilities and would not be subject to volume cap or the alternative minimum tax. QPIBs would allow for greater private business use than is possible under current law to encourage public-private partnerships.

The President has also re-proposed a new direct-pay bond program, America Fast Forward (AFF) bonds, the permissible uses of which include nearly all of the current uses of tax-exempt bonds, such as private activity bonds and short-term capital needs and also would include the new QPIBs. However, while AFF bonds could be used for current refundings, they could not be used for advance refundings. As with last year's proposal, AFF bonds would be exempt from sequestration and the credit rate for AFF bonds would be 28 percent.

The other bond-related proposals in the budget include:

- Establish a National Infrastructure Bank
- Modify tax-exempt bond rules for Indian Tribal Governments
- Modify current refunding rules for governmental bonds
- Repeal the $150 million non-hospital bond limitation for 501(c)(3) bonds
- Increase the national limitation amount for qualified highway or surface freight transfer
- Eliminate the private corporation ownership requirement for qualified public educational facilities
- Reinstate the $30 million bank-qualified limit and the two percent of assets rule
- Repeal the private payment test for professional sports facilities (eliminating the ability to finance with governmental bonds)
- Allow more flexible research arrangements for the purpose of private business use limits

- Simplify the single-family mortgage revenue bond targeting requirements
- Simplify the arbitrage investment restrictions
- Streamline the business limits on governmental bonds

A description of the proposals is contained in the Treasury Department's Green Book, which is available here.

MSRB Holds Quarterly Board Meeting.

Alexandria, VA – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 28-29, 2015, where it reached another milestone in its development of a baseline qualifying exam for individuals who engage in municipal advisory activities, such as providing financial advice to state and local governments on municipal bond issuances.

The Securities and Exchange Commission (SEC) is reviewing a related MSRB proposal to establish two classes of municipal advisor professionals – representative and principal – both of whom would be required to pass a basic competency examination. If this proposal is approved by the SEC, the MSRB will submit to the SEC for its approval the study outline for the examination, the Board decided at its meeting. The planned test will cover the role and responsibilities of municipal advisor professionals as well as the rules and regulations governing their activities. If approved, a pilot Series 50 municipal advisor exam will be administered later this year and a permanent exam is expected to be in place by 2016.

The study outline was developed after the MSRB conducted extensive outreach to gather input from municipal advisors and others. The outline includes topics to be covered by the test and provides sample questions and reference material to assist municipal advisor professionals in preparing for the exam. All MSRB professional qualifications exams are developed in accordance with established national standards.

"Municipal advisors play a key role in municipal finance transactions, from the most basic to highly complex transactions," said MSRB Chair Kym Arnone. "Going forward, passing a basic competency exam will be a requirement for all municipal advisors in—or entering—the profession. Finalizing the blueprint for the municipal advisor exam is a major milestone in this effort."

The MSRB also developed and maintains the Series 51, 52 and 53 qualification examinations for municipal securities professionals. At its meeting, the Board agreed to an increase in the fees for these exams, which have not been adjusted since 2009. Even with the increase, costs to maintain MSRB tests far exceed test revenues. The MSRB is currently engaged in a holistic review of all its fees to ensure that they are reasonably distributed across regulated entities. It should be noted that these fees still fall short of the development costs.

In other municipal advisor rulemaking action, the Board agreed to make certain revisions, after considering the comments received, to the MSRB's draft amendments to Rule G-20 on gifts and gratuities to extend its provisions to municipal advisors. The revised amendments, to be filed with the SEC, would prohibit municipal advisors, with limited exceptions, from giving more than $100 per year to a person in connection with the municipal securities or municipal advisory activities of the recipient's employer. The rule also would explicitly prohibit dealers and municipal advisors from receiving reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities. To ease compliance burdens, the amended rule will codify applicable

interpretive guidance.

“The MSRB continues to prioritize the development of regulations and professional qualifications to protect the interests of states and municipalities that rely on the services of municipal advisors,” Arnone said. “These measures are consistent with the MSRB’s development of a comprehensive framework of rules and standards for municipal advisors stemming from the Dodd-Frank Wall Street Reform and Consumer Protection Act.”

In addition to municipal advisor topics, the Board began its review of comments recently received on a proposal to require dealers to disclose reference prices on retail customer trade confirmations executed by dealers on the same day. The MSRB’s pricing reference information proposal, released in November 2014 in conjunction with a similar FINRA proposal for the corporate bond market, aims to enhance price transparency for retail investors in municipal securities. The Board will continue to carefully consider the issues raised by commenters and continue to coordinate with FINRA as it determines next steps.

In furtherance of its effort to promote greater transparency in the municipal securities market, the MSRB continues to explore adding pre-trade information to its Electronic Municipal Market Access (EMMA®) website, and recently decided to seek SEC approval to add additional post-trade information to the site. Finally, the MSRB is engaged in a review of all its uniform practice rules to determine if changes might be necessary to modernize the rules, which were established primarily in the 1980s, consistent with advancements in technology and current market practices.

Date: February 2, 2015
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Vitter Reintroduces Bill Banning State and Local Bailouts.

WASHINGTON — Sen. David Vitter, R-La., has reintroduced legislation that would prevent the federal government from providing assistance to any state or local government that defaults or is at risk of defaulting on its obligations. The bill, however, contains exceptions for responses to disasters.

Vitter introduced S. 94 — legislation he has offered in the two previous Congress’ — on Jan. 7. The bill provides for broad restrictions against the use of federal funds to support troubled state and local governments. Vitter has previously touted the bill, which has failed to gain traction in the past, as “The State Bailout Prevention Act.”

The bill has four sections. The first is a broad prohibition against the use of federal money to purchase or guarantee obligations of, or to issue lines of credit to, or to provide grants and aid to, any state or local government that has defaulted on its obligations since Jan. 26, 2011, or is at risk of defaulting, or is likely to default without federal assistance. The legislation does not specify how to measure that risk.

The second section prohibits the Treasury from providing assistance to state and local governments under those same conditions, and the third section bars the Federal Reserve Board of Governors from providing similar support.

In a July 2013 press release, Vitter’s office specifically cited Detroit as an example of a distressed

municipality that the federal government should not be in “the business of bailing out.”

The final section of the bill makes clear that it does not preclude federal assistance for disaster relief, ensuring that Louisiana will continue to get federal support for hurricanes like Katrina.

If enacted the bill might not have much direct effect on traditional muni finance, because the Internal Revenue Code already prevents direct or indirect federal guarantees of tax-exempt debt, lawyers said.

“Thus, such bonds already are precluded from being issued, unless the issuer wants to offer them on a taxable basis, which would seem unlikely,” said Mike Solet, an attorney at Mintz Levin in Boston. Solet said there are some exceptions related to housing and student loan bonds, but that those are mainly issued by authorities that would not seem to fall under the umbrella of the bill’s first section.

James Spiotto, managing director at Chapman Strategic Advisors in Chicago, said that the legislation has troubling implications because it would bar federal assistance like the more than $2 billion the federal government provided to New York City during its financial crisis in 1975.

“You would hate to think we would pass a law that would prohibit helping a municipality that was in trouble, or a state that was in trouble,” Spiotto said. “Sometimes people need a bridge to recovery and liquidity.

Economic recovery at the local level is beneficial to the federal government in the long run, Spiotto said, creating more wealth that flows back to the Treasury in taxes and keeping more individuals off the federal welfare rolls.

The bill is awaiting action by the Senate Committee on Banking, Housing, and Urban Affairs.

THE BOND BUYER

BY KYLE GLAZIER

JAN 30, 2015 3:23pm ET

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Volcker Delay a Plus for Munis.

WASHINGTON – The Federal Reserve Board's decision to delay certain aspects of the Volcker Rule are a plus for the municipal market, a major rating agency and a dealer group said.

The Fed decided earlier this month to delay until July 21, 2017 implementation of Dodd-Frank Act provisions that would prevent banks and their affiliates from gambling federally-insured money in

risky funds. The municipal market has been preparing for a major change to the roughly $70 billion to$80 billion tender-option bond market. But Moody's Investors Service said this week the Fed's decision will delay a mass liquidation of bonds associated with TOB programs.

The deadline was originally in July of this year.

Under Volcker, banks will no longer be able to sponsor a TOB program, own a residual certificate issued by a TOB trust, or provide credit enhancement, liquidity, or remarketing services to these programs. TOB programs have historically been used to provide short-term, tax-exempt munis to money market funds. In a typical TOB program, the sponsor will deposit a fixed-rate bond or note into a trust, which will issue two new certificates — a floating rate certificate and a residual certificate.

The floating rate certificate will have a tender option, through a liquidity facility that is typically issued by the program's sponsor or an affiliate that shortens the maturity of the bond or note so it becomes eligible to be purchased by a tax-exempt money market fund.

Alternative TOB structures have been formulated, and Merrill Lynch, Pierce, Fenner & Smith executed the first Volcker-compliant TOB transaction in June last year. Due to aspects of the rule already in place, no TOBs can be created using the traditional structure.

"TOBs represent about 25% of muni [closed-end fund] leverage, through investments in residual certificates," Moody's said. "As a result of the extension, CEFs will be able to continue using existing TOB structures for financing, and can avoid replacing that leverage, most likely at a higher cost."

"Without the delay announced last month, TOB trusts with up to $75 billion in floating rate certificates and $90 billion in underlying assets would have been unwound during the first half of 2015. Market participants project approximately $300 billion in long-term, tax-exempt new issues for all of 2015," Moody's continued. "Liquidation of up to $90 billion in bonds currently held in TOB trusts during the first half of the year would represent 60% of the $150 billion of new issuance expected in the same period. Postponement of that liquidation relieves pressure on the overall market."

Mike Nicholas, chief executive officer of the Bond Dealers of America, said the delay is a positive for the whole muni market although BDA continues to cast a wary eye at the rule.

"The delay in unwinding tender option bonds simply gives banks more time and flexibility which will help prevent a sharp pricing event in the muni market – good for all muni market participants," he said. "However, the BDA continues to be concerned with the Volcker Rule's negative impact on overall credit market liquidity and the rule's negative impact on investors."

THE BOND BUYER

BY KYLE GLAZIER

JAN 27, 2015 1:15pm ET

Moody's Introduction to Public Finance Seminar.

This seminar provides delegates with an understanding of the contextual framework of the U.S.

public finance market, as well as the tools to begin analyzing key public finance credits. Using case studies, spreadsheets and group discussions, the course covers municipalities, state government, special authorities, essential purpose revenue bonds, and higher education, and also introduces the sectors of health care and housing.

For more information on dates, locations, and registration, click here.

TAX - SOUTH DAKOTA

Deadwood Stage Run, LLC v. South Dakota Dept. of Revenue

Supreme Court of South Dakota - December 17, 2014 - N.W.2d - 2014 S.D. 90

Taxpayer brought action seeking declaratory judgment prospectively establishing the 2006 assessed valuation of tax incremental district, which consisted of taxpayer's land, as the appropriate tax incremental base, rather than the 2007 valuation. The Circuit Court entered summary judgment in favor of Department of Revenue.

Taxpayer appealed, arguing that in calculating the tax incremental base for a tax incremental district, SDCL chapter 11–9 required the Department to use the last aggregate assessed valuation certified by the Department prior to the date of creation of the tax incremental district.

The Supreme Court of South Dakota held that Department was required to determine aggregate assessed value of the property by using the last previously certified valuation for any buildings or additions completed or removed and to adjust it for the value to the date the district was created. The phrase "last previously certified" in the statute referred only to improvements in the land, and this reading harmonized the statute with other statutes.

IRS Issues Favorable But Limited Ruling on Total Return Swaps.

WASHINGTON – The Internal Revenue Service has issued a favorable but limited private-letter ruling concluding a total return swap entered into between a borrower and a bank at the same time the underlying tax-exempt bonds were sold is "not an abusive arbitrage device," tax lawyers said.

The IRS always cautions that its PLRs are based on specific transactions or fact patterns and should not be read broadly to cover other deals. But muni market participants typically read them for clues in areas where there is no current tax guidance.

Tax lawyers said the letter-ruling is favorable to primary market total return swaps and the ever growing number of bank loans that are hedged. The PLR answers some tax questions about TRS that had been troubling, they said. However, because of the narrow facts of the case, the ruling is limited, and the IRS gives no rationale for its conclusions, several of them added.

"I think it's a good ruling," said Rich Moore, a partner at Orrick, Herrington & Sutcliffe in San Francisco. "I think it made clear that if there are no bond proceeds subject to rebate, there is nothing inappropriate about a borrower using a total return swap to hedge its interest rate exposure."

IRS agents have taken positions contrary to that in audits in the past, some lawyers said.

“The ruling indicates that there is nothing improper or abusive per se about the use of a total return swap in connection with a tax-exempt bond issue in a primary market transaction,” said Hobby Presley, Jr., a partner at Balch & Bingham in Birmingham, Ala. “The ruling also indicates that it’s possible for a bondholder who buys a tax-exempt bond in a primary market transaction to provide a hedge agreement with respect to that bond.”

The PLR, which did not identify the parties involved, seems to suggest that a borrower can elect not to integrate its bonds and a total return swap to determine the bond yield for rebate purposes and that the IRS will honor that election, some of the lawyers said.

“I think [the PLR] is favorable, but it doesn’t answer all the questions that may be relevant for transactions, said David Cholst, a partner with Chapman and Cutler in Chicago. “This was a fact pattern that assumed away some of the concerns that have been raised in some transactions.”

TRS’, possibly hundreds of which have been done over many years, hedge interest rate risk and lower the cost of borrowing for a conduit borrower, while providing banks with earnings – possibly more than they would receive from letter of credit or direct loan fees. TRS may also provide banks with deductions of their losses from the swap payments, though this is the case with all swaps.

These involve conduit bond deals. The borrowers are almost always nonprofit hospitals, which tend to have a lot of cash reserves on hand for liquidity purposes. Initially, TRS’ were secondary market transactions. They were done to allow bonds to retain their insurance. They also are used to allow borrowers to refinance their bonds when the tax law does not permit them to do an advance refunding.

Most TRS are done today in primary market transactions. These transactions involve-long term bonds and a short-term TRS. In such deals, a hospital through an issuer privately places long-term bonds with a bank, which then enters into a much shorter term TRS with the hospital. The bank becomes the holder of the bonds as well as the swap counterparty.

The borrower typically swaps fixed for variable rates to lower its cost of borrowing. It also takes risk and provides price protection for the bank/bondholder/swap counterparty. When the TRS terminates, or is terminated, the bonds are valued. If the bonds’ value is below par, the hospital pays the bank. If the value is above par, the bank pays the hospital. But many TRS’ are rolled over or replaced and new negotiated terms during the life of the bonds. The hospital could be forced to pay if interest rates rise.

The bank/bondholder/swap counterparty makes money from the higher tax-exempt bond rate and its deduction of its loss from the swap payments.

Example

For example, a hospital will privately place 30-year fixed-rate bonds with a tax-exempt coupon of 5% with a bank. The bank will then enter into a three-year TRS with the hospital. The bank will pay the hospital a variable rate based on the Securities Industry and Financial Markets index plus 100 basis points. If the SIFMA index is 1%, the bank will pay the hospital a total of 2%, taking into account the 100 basis points. The hospital will pay the bank/bondholder the 5% tax-exempt interest on the bonds. That interest rate may be worth more like 7.5% to the bank, when one takes into account its corporate tax rate. The hospital will also make a swap payment to the bank of SIFMA plus 100, or 2%. The bank will make a swap payment to the hospital of 5%.

In this example, the borrower’s net cost of borrowing is lowed from 5% to SIFMA plus 100 basis

points, or 2%. The bank is getting 5% tax-exempt interest on the bonds, which might be worth more like 7.5% to it, and it can also take a deduction for a 3% loss on the swap (the total of the 5% swap payment it makes to the borrower minus the 2% swap payment it receives from the borrower).

Some sources question whether the bank should be allowed to take the deduction. But the lawyers said banks have many loss carry forwards and that, in any case, this is a question for bank regulators, not the IRS. They also point out that there's always a risk that variable rate bond rates will rise and there will be no deduction.

In the early 2000s, TRS' were done with so-called coerced tenders that were designed to get the bonds in the hands of the bank. The issuer would tell investors they could tender the bonds back to it at a premium, say 101, or wait for the bond call at par. Most investors wanted the premium, but fund managers and analysts were upset that these high-coupon bonds were being taken from them sooner than expected and they began complaining loudly to the press and regulators.

The IRS began auditing these secondary market transactions toward the end of that decade and raised concerns that a TRS either caused the bonds to be reissued and subject to the most recent tax law changes. The Service also said the deal constituted an abusive arbitrage device that could force the integration of the bond and the swap. Integration could lead to a lower bond yield and therefore, a lower investment yield if the hospital wanted to avoid arbitrage earnings that would have to be rebated.

Under the tax law, issuers or borrowers can elect whether or not to integrate the bond and swap. But if the IRS Commissioner finds a transaction is an abusive arbitrage device, he or she and can force the issuer or borrower to integrate the bonds and swap, which might lower the bond yield, and therefore the investment yield.

The PLR

The IRS private-letter ruling was based was a primary market transaction that involved long-term tax-exempt bonds privately placed with a bank and a short-term TRS that was entered into at the same time the bonds were placed. The borrower and bank wanted to extend to the TRS by five years. The pricing of the extended TRS was to be amended so the borrower's net financing would be reduced to the SIFMA index plus 80 basis points.

The bond proceeds had all been used to current refund some previously issued bonds, as well as to pay issuance costs. As a result, there were no proceeds remaining and there was no debt service reserve fund, for which arbitrage might have had to have been rebated. A debt service reserve fund typically holds a year's worth of interest rate payments. If there had been bond proceeds or a reserve fund outstanding, the IRS could have questioned whether rebate calculations should have been based on the bond yield or an integrated bond and swap. But the facts of the case rendered this issue moot.

The IRS said there were no replacement proceeds. Under the tax rules, if a transaction is found to be an abusive arbitrage device, the Commissioner can decide that even though no bond proceeds remained, the hospital's funds could serve as replacement proceeds for the bond proceeds and cause arbitrage problems.

"There are no replacement proceeds otherwise created and no transferred proceeds were received," the IRS said in the PLR. "The proposed extension of the TRS does not affect the gross proceeds of the bonds.…"

The IRS declined to take any position whether the TRS extension would cause a reissuance. The issuer and the bank/bondholder/swap counterparty, as a precautionary step, filed another Form 8038 for the bonds in case the IRS decided there was a reissuance. But in that Form 8038, which issuers file for the issuance of 501(c)(3) bonds for nonprofits, they did not include any election to integrate the bonds and swap.

“We specifically express no opinion about whether of the TRS causes a reissuance under Section 1001 [on reissuance] or about issuer’s precautionary treatment of such extension as a reissuance,” the IRS said in its PLR.

The lawyers said that reissuance wouldn’t pose problems for current TRS’ because there have been no tax law changes in recent years that could be applied to these transactions.

The IRS found the transaction was not an abusive arbitrage device because it did not exploit the difference between tax-exempt and taxable rates and it did not overburden the tax-exempt bond market.

“We conclude that the original structure of the financing plan, including the TRS, and the extension of the TRS for the bonds, does not enable the borrower to exploit a difference between tax-exempt and table interest rates to obtain a material financial advantage,” the IRS said. “The financing structure does not result in any gross proceeds available for non-purpose investment beyond the first 30 days during which initial time period they qualified for an applicable temporary period. The financing structure and the terms of the TRS extension do not reflect an intent to exploit tax-exempt versus taxable interest rate differentials for arbitrage purposes. Since rate exploitation is not present, it is unnecessary to determine if overburdening is present.”

Regarding the question of whether the bonds and TRS should be integrated, the IRS said: “We conclude that the structure of the original financing, including the TRS, and the proposed extension of the TRS, does not reflect a principal purpose by the borrower to obtain a material financial advantage by either rate exploitation or by overburdening. Improved market conditions and the improved credit quality of the borrower are the motivating factors for the extension. The modified pricing reflected in the extension was negotiated in an arms’ length transaction based on fair market value pricing and not on the amount of arbitrage earned or expected to be earned on the hedged bonds in a manner that is inconsistent with the purposes of Section 148.” That section of the Internal Revenue Code contains arbitrage provisions and defines an arbitrage bond, which is taxable.

THE BOND BUYER

BY LYNN HUME

JAN 26, 2015 11:05am ET

Decaying Roads, Bridges Attract Investor Interest.

PHILADELPHIA — Investors such as Jeffrey Gundlach’s DoubleLine Capital and KKR & Co. are looking at crumbling U.S. roads — and like what they see.

DoubleLine, which oversees $64 billion, plans to start its first fund to finance infrastructure, Gundlach said last month. KKR, the private-equity firm led by Henry Kravis and George Roberts, signed a contract in December to manage the water system in Middletown, Pennsylvania, with Suez

Environnement Co.'s United Water unit. Its debut infrastructure fund started buying assets in 2011, Bloomberg News reported in April.

The companies are working with states and localities fed up with federal inaction to jump-start transit projects and revamp public works suffering from decades of neglect. Such an alliance in Pennsylvania, home to the nation's highest number of deficient bridges, is letting the state replace 558 crossings more cheaply and more quickly.

"We're pretty happy with where we are," said Bryan Kendro, director of Pennsylvania Department of Transportation's Public Private Partnerships office. "It gives us confidence to continue to look at other opportunities."

Officials in Pennsylvania and Colorado, which reached agreement for its first partnership with a private operator last year, say this year will help guide future prospects for such deals.

Last year, four major transportation public-private partnerships cemented agreements, up from three in 2013, said Roderick Devlin, a project finance lawyer at Squire Patton Boggs in New York. Eight states plan transit work requiring at least $11 billion in funds combined through September, according to Public Works Financing, a newsletter.

More states will probably consider the contracts in 2015 amid concern that federal funding will fall short and as gasoline-tax receipts for projects decline, said Jim Reed, a transportation analyst for the National Conference of State Legislatures in Denver.

While private financing of public works is common in Europe and Canada, it's less so in the United States, where localities can sell tax-exempt municipal bonds to build and maintain bridges and roads. With public-private contracts, companies handle the work on the assets while governments retain ownership.

Funds are eyeing U.S. infrastructure as "a way to diversify their investment base," said Howard Cure, head of muni research in New York at Evercore Wealth Management, which oversees $5.7 billion. Projects on existing roads are appealing because there's a history of revenue, he said.

The District of Columbia passed legislation last month to encourage the transactions, according to law firm Ballard Spahr, which tracks the issue. Thirty-three states have enacted similar laws, Reed said.

There have been setbacks. Illinois Gov. Bruce Rauner, who took office this month, halted major interstate construction projects, including an effort with Indiana for a highway that may involve private partners, pending a review. In Maryland, officials delayed a deadline for bids on a light-rail project to March from January as newly elected Gov. Larry Hogan evaluates it.

Such political risks don't dissuade international investors, said Devlin at Squire Patton Boggs. The U.S. has the potential to be the largest market globally for the partnerships because of its infrastructure needs, Moody's Investors Service said in September.

U.S. roadways alone need $170 billion a year of improvements, according to the Federal Highway Administration.

Nine U.S. infrastructure funds raised about $14.5 billion in 2014, compared with $10.5 billion for eight funds in 2013, according to Seattle-based PitchBook Data Inc., a research firm for private equity and venture capital.

Gundlach said this month that New York's $4 billion plan to replace the 59-year-old Tappan Zee Bridge over the Hudson River is the kind of project his Los Angeles-based fund may target. Gundlach didn't return an e-mail seeking further comment.

The "estimates of what's needed are mind-blowing," he said in an interview this month.

Bloomberg News reported in April that KKR was seeking $2 billion for its second fund dedicated to infrastructure investments globally. Kristi Huller, a spokeswoman for New York- based KKR, declined to comment on the fundraising.

"We certainly believe that there is a great need and opportunity to invest in infrastructure globally," Huller said in an email.

BlackRock Inc., the world's biggest money manager, is expanding offerings targeting projects such as roads and bridges, Chief Executive Officer Larry Fink told Bloomberg News this month.

"There are more and more clients asking about infrastructure," he said in an interview.

Clients "are looking to increase their allocation to global infrastructure as a way to match long-dated liabilities and provide portfolio diversification," Josh Levine, head of BlackRock's alternative investment strategy group, wrote in an e-mail.

Caisse de Depot et Placement du Quebec, Canada's second- biggest pension fund manager, is also eying U.S. infrastructure for investment opportunities.

Last year, 22 states considered at least 70 bills to allow such deals or tweak existing laws, said Reed at the NCSL. Governments and the private sector have committed to about $61 billion in projects during the past 25 years, with half that amount coming during the past five, he said.

President Barack Obama has been pushing for more global private-sector involvement to meet the infrastructure needs. He announced a proposal Jan. 16 to spur private investment, including a new class of municipal bonds.

State and federal governments have relied on fuel-tax collections that have declined as cars become more efficient and motorists drive less while politicians balk at raising taxes.

State spending on surface transportation fell by $20 billion from 2002 to 2011, or 20 percent in inflation-adjusted terms, according to a September report by the Washington-based Pew Charitable Trusts.

Congress has yet to agree on a long-term solution for the U.S. Highway Trust Fund, which pays for transportation projects; in August lawmakers passed a patch that keeps it operating through May.

States are increasingly considering private financing because "the federal partner is not as reliable as it had been in the past," said Jonathan Gifford, director of the Center for Transportation Public-Private Partnership Policy at George Mason University in Arlington, Virginia.

Having a private operator handle several aspects of a transportation project such as design, construction, operation and maintenance can reduce costs, he said.

Pennsylvania's bridge program, for which $800 million of bonds may be sold by March, is the nation's first to bundle hundreds of structures into one project. It would save about $400,000 for each crossing and may be done in 2018, according to the state.

The state may award a contract later this year to develop compressed natural-gas fueling stations at public-transit agencies, said Kendro from the Department of Transportation. Officials are also considering other highway projects that could benefit from private financing, he said.

In Colorado, officials are undertaking a second public- private venture, a $1.8 billion reworking of Interstate 70, the largest highway infrastructure project in state history.

The legislature may also consider creating an entity to promote private financing for more projects, said Mike Cheroutes, director of the state's High-Performance Transportation Enterprise division, which examines how to pay for transportation needs.

"The use of private partnerships in sectors other than transportation is also on the table in a big way in Colorado," he said.

Feb 1, 2015

By Romy Varghese and Mark Niquette, Bloomberg News

_ Niquette reported from Columbus, Ohio. Contributors: Jennifer Oldham in Denver and Mary Childs in New York.

Public Financial Management, Inc. Retains Top National Ranking for 2014.

PHILADELPHIA, Pa., Jan. 29, 2015 (GLOBE NEWSWIRE) — via PRWEB – Public Financial Management, Inc. (PFM) has again been ranked first overall by a sizable margin as the nation's most active municipal advisor for municipalities and non-profit organizations. This ranking is for both the number of transactions as well as the dollar value of those transactions for the full year of 2014. According to Thomson Reuters, which tracks and assembles the rankings, PFM advised on a total of 783 transactions with an aggregate principal amount of $48.6 billion. These results far outpaced all the other advisory firms, which include independent firms like PFM and other advisors. PFM garnered an 18.9 percent market share compared with only 10.8 percent for the nearest competitor.

PFM's CEO John Bonow noted that while a number one ranking is always rewarding, delivering excellent client service is what drives PFM, and the firm views its continuing success as a result of its many trusted client relationships.

"Of course, it's gratifying to retain the leadership position PFM has held for the past seventeen years. We certainly believe that our ongoing dedication to developing solutions to our client's needs as our primary goal has helped us maintain this ranking," he noted. "Governments and non-profits are increasingly looking for an independent advisor they can trust when navigating the capital markets, and they find that at PFM."

"PFM is vigilant in analyzing our clients' debt portfolios and capital plans to help them quantify what the market may offer them and access cost-effective capital. While we work on more transactions than just about every other public finance company or group, we are focused on finding the optimal funding solution for the client, including those that may not involve debt. PFM's fiercely independent character provides clients with the assurance that we are working in their best interests," he explained.

Thomson Reuters also ranked PFM first in a number of market sectors, including Combined Utilities,

Primary & Secondary Education, Higher Education, Industrial Development, Transportation, Public Power, Water, Sewer & Gas, and Economic Development. Further, PFM ranked first in most geographic regions, including the Midwest, Northeast, Southeast, Mideast, and West.

Looking to the future, Mr. Bonow noted that PFM will continue looking for additional ways to be of service to clients and to deliver innovative ideas that help clients overcome their most difficult challenges. “We are heartened that so many clients recognize the value of PFM’s advice and we will continue to provide unbiased advice in the years to come as well,” he added. “We have been here for our clients in a variety of different market environments,” Mr. Bonow noted, “and our record of service speaks for itself. The rankings are simply evidence of the faith that our clients have in our ability to be valuable partners who will always render solid advice on their behalf,” he added.

For nearly four decades, PFM has built a solid presence in the municipal and non-profit marketplace and has provided independent financial advisory services to local, state, and regional government and non-profit clients throughout the United States in their dealings with the capital markets. The PFM Group has built a solid presence in the municipal and not-for-profit marketplace. The PFM Group of companies includes Public Financial Management, Inc., (PFM) the top-ranked municipal advisory firm in the nation for the past 17 years according to Thomson Reuters. PFM is a registered municipal advisor with the SEC and the MSRB under the Dodd-Frank Act of 2010.

PFM Asset Management LLC (PFMAM), also part of the PFM Group of companies, is registered with the SEC under the Investment Advisers Act of 1940 and manages money market, fixed income, and multi asset class portfolios. For almost 34 years, PFMAM has specialized in providing fixed income portfolio management for separate accounts, emphasizing a conservative, low-risk, and disciplined approach to research and portfolio construction. PFMAM provides independent and objective advice to institutional and government clients on investment consulting and asset management services, as well as strategic consulting and plan benefits for Public and ERISA Pensions, OPEB Trusts, Endowments and Foundations, Insurance Trusts.

The PFM Group currently employs more than 500 individuals serving a broad base of clients from offices in every region of the country.

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Judge Fines, Sanctions Longtime Harvey Comptroller.

A one-time top accountant for several south suburbs was ordered to pay more than $200,000 and barred by a federal judge from ever taking part in a key way local governments borrow money.

Tribune investigation spurs suit that leads to official being fined $217,000 and barred from certain deals.
A one-time top accountant for several south suburbs was ordered to pay more than $200,000 and barred by a federal judge from ever taking part in a key way local governments borrow money.

The case against Joseph T. Letke followed a Tribune investigation in 2013 that exposed an insider

deal in Harvey that cost taxpayers up to $20 million. The deal was supposed to redevelop an old hotel between Interstate 80 and a strip club. Instead, the deal enriched Letke while leaving taxpayers with a half-gutted hotel in foreclosure.

U.S. District Judge Amy St. Eve on Tuesday barred Letke from advising or consulting in any municipal bonds. Bonds are essentially IOUs that local governments issue in exchange for cash. They're the common way towns borrow money for big projects. One of Letke's firms, Public Funding Group, has touted itself as a specialist in municipal bonds.

The judge also ordered Letke to pay $217,115 in restitution, fines and interest. He's supposed to pay it within two weeks.

The FBI, in what it has called a criminal investigation, has sought documents about Letke's firms and asked questions of a number of Harvey officials about the hotel deal. But the lead agency in the action against Letke was the U.S. Securities and Exchange Commission. That agency typically acts as a watchdog in the bond market to ensure borrowers don't cheat lenders.

"The harm caused by Letke's misconduct was severe," SEC attorney Eric Phillips wrote in a brief filed this month. "Harvey raised millions of dollars through bond offerings which were supposed to benefit Harvey residents, and instead Harvey and Letke wasted the money."

The SEC sued Letke and Harvey last year, calling the hotel deal a "scheme" that defrauded lenders. Letke was Harvey's comptroller during the deal and made money three ways when the town borrowed the money in stages from 2008 and 2010. He or his firms were paid more than $1 million by the town over that time to keep its books, paid $547,000 by the town to advise it on how to borrow the money, and paid $269,000 by the developer getting the money, records show.

In complaining about Letke's actions, the SEC focused on the payouts to Letke by the developer. The SEC complained those payouts were never disclosed on documents given to lenders — violating federal law.

Letke never offered a defense, instead telling the SEC that — if called to testify — he'd invoke his Fifth Amendment right not to answer questions, citing a fear that what he said could be used to prosecute him. By then, he'd already invoked his Fifth Amendment right under oath — in an unrelated lawsuit — when asked about the hotel deal and his work in Harvey.

Letke wasn't the only one to invoke his Fifth Amendment right regarding the hotel deal. So did Harvey Mayor Eric Kellogg — a longtime political ally of Letke.

The SEC had accused Kellogg's administration of diverting borrowed money from the deal to make payroll in a town that had long spent more than it brought in, with little oversight from the state. In December, in a deal cut with the SEC, Harvey agreed to let the federal court oversee how it borrows and tracks spending.

No Harvey official other than Letke was singled out for punishment in the lawsuit.

Letke stopped working for Harvey last summer. Kellogg said Letke was fired. Letke said he quit. In recent years, he also stopped working for three other suburbs: Riverdale, Dolton and Robbins. It's unclear if he still works for Markham.

Letke also is tied to several businesses whose websites pitch accounting and marketing consulting to the public, private and nonprofit sectors. Those firms include Alli Financial and what is called a new branch of it, Alli Media Group.

On the latter's website, Letke was listed early Wednesday afternoon as the CEO of Alli Media Group. But Letke's name disappeared from that firm's website after the Tribune emailed Alli Media Group on Wednesday about Letke's connection.

Letke did not respond to an email.

By Joe Mahr and Matthew Walberg

Chicago Tribune

1/29/15

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U.S. Municipal Market Board Takes on Murky Bank Lending.

Jan 29 (Reuters) – The board overseeing the $3.6 trillion U.S. municipal bond market wants to shed more light on a dark and growing area of public finance: direct lending from banks.

In a strongly worded advisory, the Municipal Securities Rulemaking Board on Thursday said many state and local governments do not disclose bank loans and the resulting murkiness threatens investors.

"Given the current regulatory ambiguities regarding bank loans, inconsistent market practices and lack of commonly accepted provisions within bank loan agreements, the MSRB believes that informing the market of the incurrence of a bank loan and its terms is beneficial to the continued fairness and efficiency of the municipal securities market," it wrote.

In these alternative financings, issuers sell bonds directly to banks or take out loans. The advantages, the MSRB said, can include lower costs, less exposure to bank capital requirements, simpler execution and no need to obtain a rating.

By law issuers do not have to disclose loans if they are not considered municipal securities. Bondholders, taxpayers and others only learn about the loans' terms, as well as their impact on bondholders' rights and existing debt, when an issuer releases audited financial statements or documents for a public bond sale, the MSRB said.

For more than two years the board, a self-regulatory organization made up of bankers, issuers and advisers, has asked borrowers to post information to the public database called EMMA, for Electronic Municipal Marketplace Access.

But "bank loan executions have far exceeded bank loan disclosures in comparison," it said, adding that about 88 loans have been disclosed since April 2012. Outstanding loans number in the hundreds.

It suggested detailed steps for fostering transparency, including determining whether loan payments have a higher priority to bond payments.

Both Standard and Poor's Ratings Services and Moody's Investors have raised alarms about the

amorphous practice.

Last year Standard & Poor's investigated 404 direct loans totaling $15.8 billion, it said in a special report on Wednesday. The loans did not impair the rights of existing bondholders and their terms did not erode borrowers' credit quality.

About 243 of the loans were repaid by taxes, appropriations or utility fees, and had an average size of $25 million. The remainder, which had a much bigger average size of $61 million, were in the higher education, healthcare, transportation and public power sectors.

S&P "observed an increase in the number of banks offering such products, especially smaller local banks."

BY LISA LAMBERT

(Reporting by Lisa Lambert; Editing by Leslie Adler)

MacKay Municipal Managers Provides Top Five 2015 Municipal Market Insights.

PRINCETON, N.J.–(BUSINESS WIRE)–MacKay Municipal Managers™ today distributed its outlook on the top five municipal market trends for 2015. The insights include:

"The municipal marketplace delivered strong performance in 2014 as one of the best asset classes in the fixed income arena. The muni marketplace will remain large and fragmented in 2015 and active management will be imperative to investing in the right bonds at the right prices"

1. Demand for municipals remains high – institutions increase investments and proprietary trading desks resurface. We foresee demand for municipals remaining high and liquidity improving as certain institutional clients, including insurance companies, continue to add municipals to their core portfolios. These institutions, with varying tax profiles, will likely view municipal bonds as a compelling investment solution that offers attractive absolute income streams. On the heels of a dramatic decline in capital commitment to municipal bonds since 2008, our view is that favorable market conditions and regulatory developments will cause proprietary trading desks to resurface and, therefore, liquidity will improve on the margin.

2. High grade municipal bonds with short to intermediate maturities will underperform. We expect a flattening of the yield curve to cause dislocations and spread widening among high grade bonds on the short-intermediate part of the yield curve and, as a result, we believe this segment of the market should be avoided in 2015. In light of their higher correlations to Treasury securities, AA and AAA-rated municipal bonds in the three to seven year maturity range have higher exposure to potential interest rate hikes by the Fed than most other segments of the municipal market. This is due in part to the expensive nature of the high grade, short-intermediate part of the municipal market. Getting defensive on rates without sacrificing income by focusing on cushion bonds (high coupon/premium bonds) is our preferred portfolio structure. We believe this will cause actively managed portfolios to outperform passive municipal bond ladders in terms of total return and current income.

3. New bond issuance will surprise on the upside – but net supply will be negative for the fifth year in a row. We project new bond issuance will surpass consensus and exceed $375 billion.

Although new issuance will rise as the U.S. starts to come to terms with its infrastructure needs, we believe net new supply will remain negative for the fifth year in a row and the overall municipal market will continue to shrink. Refinancing will likely contribute to net negative supply as issuers capitalize on the opportunity to advance refund higher coupon bonds while locking in more favorable long term borrowing costs. We believe new bond issuance and increased market trading will contribute to pricing transparency. As a result, portfolios taking an active, credit research-driven approach to municipal bond investing should further positively differentiate themselves as the true value of underlying credits materializes.

4. Return of new issue monoline insurance – greater than 10% penetration rate for the first time in six years. We expect the penetration rate of monoline insurance on the new issue market to exceed 10 percent for the first time in six years as the market continues to rediscover the benefits of bond insurance. Challenges that monoline insurance companies experienced in years past have resulted in many clients having an underweight position to insured municipal bonds in their portfolio. We believe that attractive spreads and improving fundamentals, while also recognizing the relative position of select monoline insurers including AMBAC1 will yield opportunities in this segment of the market. While we do not expect to see AMBAC re-entering the primary market in 2015, bonds backed by its insurance policies should continue to experience spread narrowing as various legal settlements proceed to final resolution.

5. Tobacco sector outperforms – investors seek to maintain yield as existing higher coupons are called or mature. With a projected increase in municipal refinancings taking out higher coupon bonds in 2015, we anticipate municipal bond investors will look at Tobacco settlement bonds to replace income in their portfolios. While the Tobacco sector will likely experience periods of higher volatility throughout the year, we believe the overall return will place it as one of the top performing sectors in 2015. MacKay Municipal Managers remains confident in certain areas of the Tobacco sector as deep credit research identifies valuable bonds at an attractive price.

The insights were developed by MacKay Municipal Managers which manages $12.7 billion as of December 31, 2014. The MacKay Municipal Managers are subadvisor to the MainStay Tax Free Bond Fund, MainStay High Yield Municipal Bond Fund, MainStay California Tax Free Opportunities Fund, and the MainStay New York Tax Free Opportunities Fund. The team is co-headed by John Loffredo and Robert DiMella, who have worked together for over 20 years managing municipal bonds, including high-yield, investment grade, and state-specific strategies.

“The municipal marketplace delivered strong performance in 2014 as one of the best asset classes in the fixed income arena. The muni marketplace will remain large and fragmented in 2015 and active management will be imperative to investing in the right bonds at the right prices,” said Loffredo and DiMella. “The overall market will be promising, but attention must be paid to potential risks such as the flattening yield curve. In this environment, our focus remains on continuing to identify opportunities in line with our strategies and funds that we manage.”

For more information about MacKay Municipal Managers and to view the full report, click here.

About MacKay Shields LLC

MacKay Shields LLC (“MacKay”) is a global, multi-product fixed income investment advisory firm managing more than $92 billion in assets as of December 31, 2014. Its clients include pension funds and other institutional investors in the U.S. and overseas. MacKay Shields is an indirect, wholly-owned subsidiary of New York Life Insurance Company. Please visit MacKay’s website at www.mackayshields.com for more information.

About MainStay Investments

With approximately $100 billion in assets under management as of December 31, 2014 across retail mutual funds and variable product sub-accounts, MainStay Investments is the mutual fund distribution arm of New York Life. MainStay provides financial advisors access to a powerful mix of autonomous, institutional investment managers, delivered by people who understand the needs of today's financial advisor. As an indirect subsidiary of New York Life Insurance Company, a Fortune 100 company founded in 1845, MainStay is owned by the largest mutual life insurance company in the United States* and one of the largest life insurers in the world. Please visit www.mainstayinvestments.com for more information.

*Based on revenue as reported by "Fortune 500 ranked within Industries, Insurance: Life, Health (Mutual)," Fortune magazine, 6/16/14. See http://fortune.com/fortune500/.

For more information about MainStay Funds®, call 800-MAINSTAY (624-6782) for a prospectus or summary prospectus. Investors are asked to consider the investment objectives, risks, and charges and expenses of the investment carefully before investing. The prospectus or summary prospectus contains this and other information about the investment company. Please read the prospectus or summary prospectus carefully before investing.

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About Risk

MainStay Tax Free Bond: A portion of the Fund's income may be subject to state and local taxes or the alternative minimum tax. The Fund may invest in derivatives, which may increase the volatility of the Fund's net asset value and may result in a loss to the Fund. Funds that invest in bonds are subject to interest-rate risk and can lose principal value when interest rates rise. Bonds are also subject to credit risk, in which the bond issuer may fail to pay interest and principal in a timely manner. The Fund may experience a portfolio turnover rate of over 100% and may generate short-term capital gains which are taxable.

MainStay High Yield Municipal Bond Fund: A portion of the Fund's income may be subject to state and local taxes or the alternative minimum tax. High-yield securities (commonly referred to as "junk bonds") are generally considered speculative because they present a greater risk of loss than higher-quality debt securities and may be subject to greater price volatility. High-yield municipal bonds may be subject to increased liquidity risk as compared to other high-yield debt securities. The Fund may invest in derivatives, which may increase the volatility of the Fund's net asset value and may result in a loss to the Fund. Funds that invest in bonds are subject to interest-rate risk and can lose principal value when interest rates rise. Bonds are also subject to credit risk, in which the bond issuer may fail to pay interest and principal in a timely manner.

MainStay California Tax Free Opportunities Fund and MainStay New York Tax Free Opportunities Fund: Because the Funds invests primarily in municipal bonds issued by or on behalf of the State of

California or the State of New York, respectively, and its political subdivisions, agencies, and instrumentalities, events in California or New York are likely to affect the Fund's investments and performance. These events may include fiscal or political policy changes, tax base erosion, and state constitutional limits on tax increases, budget deficits, and other financial difficulties.

Past performance is no assurance of future results. Investment return and market value of an investment in the funds will fluctuate.

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Former Illinois Town Official to Pay Steep Penalties in SEC Case.

Jan 28 (Reuters) – A federal judge ordered the former comptroller and financial adviser to Harvey, Illinois, to pay more than $200,000 as part of a judgment over the misuse of municipal bond proceeds.

Federal District Judge Amy St. Eve ordered Joseph Letke to pay disgorgement, interest and penalties totaling $217,115 and barred him from participating in any municipal bond deals, the Securities and Exchange Commission said in a release posted late Tuesday.

Letke was not available for comment.

The SEC is tightening oversight of the municipal bond market, which had long escaped regulatory scrutiny, and also of individuals involved in bond deals. In November it charged a Michigan city and two of its former leaders with fraud over a municipal bond offering. One of the officials had to pay a much smaller fine of $10,000.

In court in September, Letke, an accountant, said he had health issues and was “virtually destitute” because of the case.

“The federal government came into my offices – an accountant – over a year ago and asked me to participate or cooperate, and I said no,” he told the judge. “And they said, ‘We will run you over with a train and you will not be able to get a job at McDonald’s when we are finished with you.'”

Harvey has already settled with federal regulators. The case took an unusual turn this summer when the SEC obtained a restraining order against a bond sale that Harvey had prepared.

Starting in 2008, the city sold $14 million in bonds for the construction of a Holiday Inn that would be repaid from dedicated hotel-motel and sales tax revenues. It then diverted at least $1.7 million to fund its daily operations and also made $269,000 in undisclosed payments to Letke, the SEC alleged.

In June, when it learned that Harvey would return to the $3.7 trillion municipal bond market, the SEC asked a federal court in Illinois to block the sale. By law, municipal bond issuers do not have to involve federal regulators in planned debt sales.

(Reporting by Lisa Lambert; Editing by Leslie Adler)

Tailing Europe, U.S. Is on the Road to New Investment Bonds.

The White House’s idea to promote public- private partnerships with a new kind of investment bond could raise billions of dollars for transportation projects with relatively little fiscal effect on the government, but the big infrastructure projects carry big risks for the private sector.

The Qualified Public Infrastructure Bond the administration proposed this month would give public-private partnerships access to the low interest rates, federal tax benefits and the government protection of municipal bonds. The bonds are similar to Private Activity Bonds, which have proved successful but have been limited to $15 billion. The new program would not be capped.

The administration’s idea is to combine some of the most attractive features of public-private partnerships with those of wholly public projects. Local governments would get a private equity partner willing to share the risk of a project, while the private sector would get access to low-interest loans.
The program would require congressional approval, and some observers think it may have a good chance among lawmakers looking for new ways to finance transportation and infrastructure projects because receipts from the federal excise tax on motor fuel have been inadequate. The costs are unclear since the administration has withheld details in its initial release of the plan.

The idea has support in the transportation industry, but whether the financial world comes on board is an open question.

A Game of Risk

The risks in transportation infrastructure can be considerable. Construction delays, cost overruns and other problems can be difficult to manage on a complex project. Depending on the structure of the partnership, the private investor may take on the responsibility of managing those risks.

Public-private partnerships, in which a private investor contributes equity and takes a share of risk

in an infrastructure project, are widespread in Europe but have not gained a great deal of acceptance in the United States. That has led American investment funds to put money into projects overseas rather than at home.

One case in point is the California Public Employees' Retirement System, one of the world's largest investors, which owns 12.7 percent of London's Gatwick Airport.

One reason the partnerships haven't taken hold in the United States is that state and local governments benefit from a well-developed municipal bond market that allows them to borrow money cheaply. Rather than deal with the legal hassles of writing a contract with a private investor, the governments prefer to go to the bond market and keep control of their projects.

A brief run of private investment in big transportation projects in the 2000s increased interest in such public-private partnerships, but the examples fell away to financial reality. The management operation of the Indiana Toll Road, for instance, filed for bankruptcy protection last year after traffic declined and an investment by Spanish and Australian firms meant to last 75 years ran off the road.

By David Harrison
Roll Call Staff
Jan. 28, 2015, 2:18 p.m.

Ratings Agency Finally Gives Some Bond Investors Respect.

Aretha Franklin's 1967 R&B hit song, R-E-S-P-E-C-T, had people singing the word as we wrote it. We also sang the spelling in our heads as we said it out loud. In mid-January, R-E-S-P-E-C-T came vividly to mind when Moody's rating service withdrew ratings on 25 New York issuers. Moody's took this action because these 25 issuers failed to provide 2013 financial statements to the public.

Finally, a rating agency giving some respect to bond investors. Issuers that wanted and received investor money when they originally came to market with new bonds subsequently thumbed their noses at investors by foregoing disclosure of their financial results in later years.

When a municipality fails to disclose financial results investors cannot possibly know what they own. A publicly traded company that fails to report its financial information quarterly will quickly see its share price plummet and may even be delisted by its stock exchange. A punishment well deserved.

Disclosure requirements for municipalities include annual financial statements. Not a difficult requisite. Yet many either cannot or will not provide them. That shows investors no respect, no honesty, and very little financial competency.

When a new client comes to us with municipal holdings that have no financials, we sell them immediately. It surely doesn't mean the bond issuers will soon declare bankruptcy. But it does show a lack of abiding by the municipal bond rules and regulations. A management that shows a total lack of regard and transparency for the bondholder is not a management in which anyone should invest.

Kudos to Moody's for yanking their ratings on these 25 bad citizens. They don't deserve to be rated. Such munis often descend into a different category: Unrated. Most do-it-yourself investors don't buy unrated munis. Junk municipal bond funds, speculators and a few risk takers who know what they're doing usually inhabit the unrated sector. So always scan carefully your monthly statements and your online alerts for investment grade municipal bonds that have sunk into the junk pile. Keep tabs on

your muni holdings and their financials at the MSRB web site.

Here's the list of New York issuers that Moody's will no longer rate:

- Village of Airmont
- Town of Bolton
- Town of Boston
- Town of Busti
- Cicero
- Dickinson
- Erwin
- Esopus
- Fort Ann
- City of Gloversville
- Town of Greenport
- City of Johnstown
- Town of Lake Luzerne
- Lansing
- North Dansville
- North Greenbush
- Royalton
- Schaghticoke
- Schodack
- Stone Ridge Fire District
- Vrigil
- Volney
- Watertown
- Wawayanda
- Woodbury

So what municipal bonds should investors be buying? Buy State Intercept Bonds. That is municipal bonds that carry a pledge of state cash to investors if there is a default by the issuer. There are State Aid Intercepts, State Tax Intercepts, State Guarantees and State Permanent Funds. Just make sure the state is creditworthy and can step in if needed. Clearly, stay away from Illinois.

Forbes

Marilyn Cohen, Contributor

1/27/15

S&P's U.S. Not-For-Profit Healthcare 2015 Outlook - Webcast Replay Now Available.

Standard & Poor's Ratings Services held a live Webcast and Q&A on Thursday, December 18, 2014, at 2:00 p.m. Eastern Standard Time, on the 2015 outlook for U.S. not-for-profit health care. We discussed our view on the outlook for the U.S. not-for-profit health care sector, along with the potential impact on ratings for 2015.

Listen to the replay.

Download the slides.

Speakers were:

Martin Arrick
Managing Director, U.S. Public Finance
Standard & Poor's Ratings Services

Kevin Holloran
Senior Director, U.S. Public Finance
Standard & Poor's Ratings Services

Standard & Poor's Ratings Services' Webcasts deliver audio and slides in a streamlined presentation. You will need computer speakers or headphones to listen to the audio stream. Throughout this live webcast, you may submit your questions for the presenters in real time via the Webcast interface.

S&P's Public Finance Podcast: Oil Price Implications for Texas Municipalities and the University of Texas Permanent University Fund.

In this week's Extra Credit, we review the implications of oil price declines on municipalities in Texas with credit analyst Oscar Padilla and on the University of Texas Permanent University Fund with Director Bianca Gaytan-Burrell.

Listen here.

Jan 29, 2015

S&P: Budgeting With Revenues Growing Means California Must Confront Its Past.

California's finances are roaring back. Midway through the fiscal year, the state now expects its fiscal 2015 revenues to come in $2.6 billion—or 2.4%—higher than the budget assumed. History would suggest, however, that any fiscal renaissance will be temporary–the result of several favorable developments occurring simultaneously. A cruder characterization would be that the state is only better off now because it obtained voter consent to raise taxes in the midst of a long-lived bull market for equities. Once the tax increases expire, or if market sentiment turns bearish, the skeptic might assert that the state—along with its credit rating—is condemned to go off a fiscal cliff.

Standard & Poor's Ratings Services sees California's improving finances and credit quality as more than just the result of a cyclical upswing. In November 2014, we raised California's general obligation (GO) debt rating to 'A+'. The move signaled our belief that the state is positioned for a more enduring period of financial stability. It was also the most recent rating revision in a steady progression of favorable adjustments that began in July 2011.

Overview

- California is in the midst of a multi-year fiscal recovery.
- Contrary to popular belief, elimination of prior deficits was mostly accomplished through lower spending, not higher revenues.
- California does not necessarily face a fiscal cliff when its temporary taxes expire.
- The key to avoiding future budget crises is prudent management while revenues are growing strongly.

Continue reading the Report.

28-Jan-2015

S&P Maintains its Focus on Direct Loans after Evaluating $15.8 Billion in 2014.

BOSTON (Standard & Poor's) Jan. 28, 2015–Providing a precise measure of the U.S. public finance direct bank loan market is challenging for a variety of reasons—but primarily because bank loans are not explicitly required to be disclosed because they are not securities. Nevertheless, Standard & Poor's Ratings Services sees issuers across the breadth of the municipal finance market meaningfully using bank loans and direct-purchase debt as alternative financing products to manage their debt profiles.

In 2014, Standard & Poor's evaluated the impact on obligors' public debt ratings of 404 direct loans with a par amount totaling $15.8 billion. The loans ranged in size from less than $100,000 up to almost $1 billion. With few exceptions, the loans Standard & Poor's reviewed do not impair the rights and remedies of existing lenders or bondholders. Against a backdrop of terms that generally do not erode credit quality, Standard & Poor's continues to emphasize that disclosing the presence of these loans and their terms is critical to identifying those instances where the loans do compromise credit quality and existing bondholders' rights. Moreover, loan disclosure promotes transparency for all market participants, including the retail and institutional investors that use Standard & Poor's ratings.

Of the 404 loans that Standard & Poor's evaluated, 243 were tax-backed, appropriation, or water/sewer utility loans entered into primarily by local governments or local utility systems, with a par amount totaling approximately $6.1 billion. The average deal size was $25 million.

The balance of 161 loans evaluated, totaling $9.8 billion, was concentrated in the higher education, health care, transportation and public power sectors. The average loan size was $61 million, about 2.5 times the average loan size of the tax-backed, appropriation, and water/sewer utility sectors. Along with the wide spread between the smallest and largest loan amounts, we have also observed an increase in the number of banks offering such products, especially smaller local banks.

The loans Standard & Poor's evaluated in 2014 represent loans originated in 2014, as well as loans originated in prior years. Issuers provided loan information in response to our requests for the information as part of our periodic review of existing debt ratings. We continue to request all loan documents from issuers, regardless of whether we rate the loans. This is because additional leverage or unique events of defaults and remedies could impact other rated debt.

Los Angeles Looks at New 'Infrastructure District' to Fund River Plans.

Los Angeles leaders are hoping to use a new tax-sharing law to help finance ambitious plans to transform the city's namesake river into a ribbon of recreational areas and vibrant new developments.

As of Jan. 1, local officials have the authority to direct a greater share of future property taxes to revitalization efforts, public works projects and environmental cleanup. The law is intended to replace some of the billions of dollars cities lost when Gov. Jerry Brown and the Legislature shut down more than 400 redevelopment agencies during the recession-driven budget crisis.

L.A. officials wasted no time, taking initial steps last week toward creating what is believed to be the state's first Enhanced Infrastructure Financing District. At a City Hall hearing, council members voiced eagerness to explore the steps needed to form a district and ordered a detailed report, due back in 45 days.

Councilman Mitch O'Farrell, who asked for the analysis, said the city's first infrastructure district would be focused on projects to restore and improve a 31-mile portion of the Los Angeles River.

Revitalizing the river is one of Mayor Eric Garcetti's top initiatives, and the city got a boost last year when the Army Corps of Engineers agreed to a $1-billion restoration plan. But the city has been trying to come up with its share of funding. Retaining more property taxes within the city is one possibility, O'Farrell said this week.

"I've been chomping at the bit for the better part of a decade to identify a permanent source of revenue for improvements along the river," he said. "And tax-increment financing can be a very good vehicle for that."

The L.A. River is an example of what municipal analysts say could be a wave of new and stalled economic development projects that could gain momentum as a result of the state's tax-sharing law.

In addition to public works projects, the infrastructure districts can be used to remake former military bases, rehabilitate private industrial buildings and leverage transit-oriented development, said Jon E. Goetz, a San Luis Obispo attorney who specializes in municipal law. Unlike those of the now-defunct redevelopment agencies, qualifying projects and districts don't have to be in blighted areas, he said.

"Redevelopment was a power tool, and this is more like a hand tool," he said. "It's not as powerful, but with creativity it can be used for economic development, for infrastructure and for affordable housing."

Taxpayer groups opposed the infrastructure district legislation because it permits local jurisdictions to create the zones without a vote of affected property owners. They also objected to a 55% voter-approval requirement to issue bonds and raise money for the districts. Many other tax-related measures require a two-thirds majority of voters to become law.

Diverting more property tax dollars to capital projects would shrink money available for ongoing services, such as public safety and paving roads, which in turn would "drive the demand for higher local taxes," the California Taxpayers Assn. said in a letter outlining its concerns.

There are key differences between the new law and legislation that created redevelopment agencies

more than 60 years ago. Those entities, mostly run by cities, were empowered to capture virtually all property tax growth in designated, blighted areas. That cost counties, schools and special districts billions.

Critics and warring local officials accused the agencies of stretching the definition of “blighted” to siphon away needed property tax dollars.

Under the new law, property taxes going to schools can’t be diverted to the infrastructure districts. And dollars allotted for counties or special districts would be redirected to the new districts only if all the affected agencies agree.

Los Angeles County Supervisor Hilda Solis, who represents areas northeast of downtown where the initial river projects are envisioned, said she strongly backs the revitalization effort. But city leaders will have to convince the county to part with a portion of its future property tax collections, she said.

“There will have to be a good case for that,” she said.

Before their 2012 dissolution, California redevelopment agencies received more than $5 billion in property tax revenue annually. In Los Angeles County, cities shared about one-third of that through their redevelopment agencies.

The new funding zones are expected to raise a fraction of that. On average in Los Angeles County, the infrastructure districts could collect close to 60% of what redevelopment agencies were able to capture in designated areas, said Tom Sakai, a local government consultant. But the share would be significantly less if counties and special districts declined to participate, analysts say.

Goetz and others say local governments may look favorably on the potential of infrastructure districts, despite the limitations.

“It does force more cooperation between layers of government, particularly between the city and county,” he said. “And it forces local governments and developers to put their heads together and come up with plans to benefit everyone.”

O’Farrell’s staff said his office hasn’t yet done a revenue projection or identified what L.A. River projects would be included. But an estimated $1 billion worth of improvements have been listed in the city’s master revitalization plan, including widening bridges, restoring wetlands, cleaning up industrial waste and acquiring privately held parcels.

Lawmaker support in the council’s Arts, Parks, Health, Aging and River Committee, where creation of a infrastructure district was discussed, was generally strong.

But there could be fights ahead over how to use any windfall of tax money. As rents climb, Councilman Gil Cedillo signaled he would like some of the money earmarked for affordable housing.

“It’s great to talk about how great the river can be,” he said. “I’ve got four of the six major projects in my district. But I’m concerned that we would be doing river work in lieu of housing.”

BY CATHERINE SAILLANT – LOS ANGELES TIMES / JANUARY 19, 2015

catherine.saillant@latimes.com

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Denver Homeless Initiative Would be Latest to Tap Social Impact Bonds.

In the dry and wonky world of municipal finance, a new way for state and local governments to pay for the rapid expansion of social service programs — from Massachusetts and New York to Chicago, Salt Lake City and now Denver — is gathering steam and turning heads.

And it could even save taxpayers over the long haul — at least, that's the way it's sold.

Government officials, nonprofit leaders and for-profit investors are striking deals that take on thorny challenges, such as helping ex-offenders avoid new crimes and expanding preschool access for at-risk children. Coming soon in Denver, officials want to use a deal potentially worth $8 million to $15 million to move up to 300 of the most chronically homeless into housing that's coupled with mental health and substance abuse treatment.

As promoted, private investors that take part put up millions of dollars to start or expand preventative programs. In just a few years, those programs start saving taxpayers money by reducing the need for costly spending in other areas — say, for frequent jail, detox and hospital stays by homeless people — which the government then taps to pay back investors, plus interest.

And if the plan fails to save money? Then the foundations, investment banks or others who put up the money wouldn't get repaid.

The arrangements are called social impact bonds or investments. Some call them "pay for success" plans.

Less than 5 years old, the financing method has taken off quickly, including in at least seven U.S. states, cities and counties. Some critics caution that it's too soon to know if the model works. They also question whether it's too easy for investment banks such as Goldman Sachs, which has signed on to a handful of deals elsewhere, to profit needlessly off already proven programs.

But Denver city officials and heads of nonprofits geared toward the homeless are palpably excited. They're forging ahead by seeking out investors and making plans for the six-year "supportive housing" program.

"We expect to save taxpayers money through the life of this program," said Cary Kennedy, Denver's deputy mayor and chief financial officer. "In the short term, those savings will go to repay the investors. And long term, they will go toward investing in permanent supportive housing."

Denver would draw on a housing strategy that long has shown promise here and in other places. The final amount sought from foundations and investors will depend, the city says, on how state officials work out potential Medicaid reimbursements for some of participants' health care and treatment costs.

Mayor Michael Hancock announced the city's social impact bond plan to great fanfare at last June's

Clinton Global Initiative America conference in Denver.

In coming months, Hancock's deputies, working with consulting organizations including the Corporation for Supportive Housing, hope to work out an investment deal that will launch the program by late summer or fall.

By the numbers

For several years, the Denver Crime Prevention and Control Commission and other city agencies have tracked the heaviest users of city or county services, including the jail. Nearly all are homeless. Most are men. They often have addiction and severe mental health challenges.

And they're a tiny portion of the 5,812 homeless men, women and children found last year during the Metropolitan Denver Homeless Initiative's annual survey of the seven-county metro area.

On average, Denver city data show, the top 300 who cost the city the most spend dozens of nights in jail a year. It's usually for petty offenses including trespassing, public nuisance and panhandling, or for alcohol- or drug-related charges. And they make an average of eight visits to detox and two visits to the emergency room each year.

The city estimates the annual budget toll for all of those costs at roughly $38,000 per person, or $11.4 million.

But creating a tailored program that provides a small apartment or housing voucher, along with case managers and mental health and drug treatment to help participants achieve a firmer footing, would cost an estimated $18,000 per person. Commission director Regina Huerter says a new pilot program called the Recovery Court so far is showing it's possible to provide similar housing and services for less than half that.

If a deal for Denver's social impact bond project wins approval, a recently selected evaluation team, headed by the Urban Institute with local evaluators, will scrutinize the city budget over the six-year project to determine the amount of savings.

The social impact investors would provide money for operating costs, but they wouldn't cover the big expense to build two new projects with 160 housing units.

Two nonprofit partners, the Colorado Coalition for the Homeless and the Mental Health Center of Denver, instead would pursue federal and state grants, donations and other typical funding sources to cover construction costs. Remaining housing would come from renting units in existing or already planned projects.

Both groups have helped homeless men and women get back on their feet. Last year, the coalition opened the Renaissance Stout Street Lofts, along with a clinic, for people such as Sammy B. Taylor.

Until he moved in last August, he had lived in a downtown parking garage for three years, spending some nights in jail when police found him. He's taking it a day at a time, and the facility offers counselors and other support when he's ready.

"Being here in this apartment, my goal is to get into a rehab, to get into a community college, finish my cooking career, open up my ministry," said Taylor, 57. "My goal is to help homeless people."

Making an investment

The rapid rise of social impact bonds is rooted in an experiment in 2010 in Peterborough, England.

Seventeen investors, including the New York-based Rockefeller Foundation, pooled about $8 million for a six-year prisoner re-entry program. Offenders serving sentences of less than a year get intensive pre- and post-release counseling and resettlement services to reduce their likelihood of committing new crimes, which would cost the government more money.

Governments in Europe, the United States and elsewhere have adapted the model to take on a range of issues, setting repayments to investors based on how successful the programs become.

Foundations bearing big names, including Rockefeller, Pritzker and Bloomberg, are among the leading supporters, sometimes backing up investments from Goldman Sachs or joining local nonprofits and other sources.

Since the first project, “we’ve seen social impact bonds move from concept to execution faster than any other social innovation in years,” said Kippy Joseph, the Rockefeller Foundation’s associate director for innovation.

She says the financing method offers an innovative way to expand the reach of evidence-based, preventative programs.

In 2012, New York City started a nearly $10 million program meant to reduce re-offending by delinquents at Rikers Island. New York state has a $13.5 million program to provide training and employment to released adult prisoners.

In Salt Lake City, the local United Way and two school districts have started a $7 million expansion of preschool for at-risk children, predicting a reduction in special education costs later.

With similar goals, Chicago recently announced a $17 million pre-kindergarten initiative.

Massachusetts has launched two social impact bonds in the last year: a $27 million deal to provide outreach, life skills and employment training to young men on probation or leaving juvenile prisons, and a $3.5 million project to house the homeless, with the promise of savings on emergency shelters and Medicaid costs.

And in Cuyahoga County, Ohio — surrounding Cleveland — officials just started a $4 million program to provide help and housing to homeless families. The hoped-for result: reduced out-o--home foster care for children.

Cities and states have been encouraged to join those places by nonprofits and universities that have received federal grants, championed by the Obama administration, to help them come up with plans to tackle social problems.

Now Denver and Colorado are getting help on the city’s project from the Social Impact Bond Technical Assistance Lab at Harvard’s Kennedy School of Government. It sent program fellow and Colorado native Tyler Jaeckel to help full time for a year.

Kennedy and Jaeckel were in Salt Lake City last week to pitch Denver’s plan to big foundations and other potential investors that took part in a White House-sponsored innovation summit on the pay-for-success model.

Weighing risk

Critics point out that these funding schemes are so new that none of the deals have resulted in repayments to investors, including in Peterborough.

Rick Cohen, a nonprofit consultant and writer for Nonprofit Quarterly, questions the interest rates Goldman Sachs negotiated.

“Often, (the projects are) being developed for programs and activities that are pretty well known to be effective,” Cohen said, including for supportive housing for the homeless. “The issue is, if they’re so clearly effective, why not just simply do them rather than pay a private investor 6, 8, 10, 12 percent?”

His concerns are echoed by Jon Pratt, executive director of the Minnesota Council of Nonprofits.

“One of the compelling arguments for it has been that this will be an end-run around the lack of political will,” Pratt said, to avoid asking taxpayers to fund a new social program, however promising.

Denver’s Cary Kennedy, asked about such concerns, described up-front investor money as a way to jump-start the transition from the current high jail and hospital costs to the point, in a few years, when a reduction in those costs will enable the program to pay for itself. Essentially, the investor money builds a bridge, though the city may have to set aside some reserves as insurance.

And Kennedy says interest is necessary — averaging a typical 5 percent, with for-profit investors likely asking for more — since the funders are taking the risk the program will fail and they won’t get anything back.

“We’ll look at paying a risk-weighted rate,” she said.

Drawing on experience

If the idea of the government providing housing for the homeless sounds familiar, that’s because Denver has done so on a smaller scale for years, as part of its perhaps-too-hopefully-named ” Ten Year Plan to End Homelessness,” now being reformulated.

That plan has drawn on taxpayer money and on partners’ fundraising, but advocates say the effort hasn’t grown fast enough.

“I think what Denver’s Road Home (program) has demonstrated is that we know what works to end homelessness,” especially for the hardest cases, said John Parvensky, president of the Colorado Coalition for the Homeless. “What was missing was this level of investment.”

Denver City Council members, who will weigh whether to approve any social impact bond deal, say they’re eager to scrutinize the details. Not all are completely sold yet.

“Every major city has a homeless problem,” said at-large Councilwoman Debbie Ortega, formerly executive director of Denver’s Homeless Commission. “I commend the administration for looking at something creative that is helping us try to figure out how to solve this problem.”

By Jon Murray

The Denver Post

POSTED: 01/25/2015

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Building Public Infrastructure Privately.

Private investment in infrastructure has been popular with Republicans since the Reagan presidency. A commission created by Reagan concluded that public-private partnerships ("P3s") could substantially enhance the efficiency, speed and volume of highway, aviation and water projects while lowering the cost to taxpayers and facility users. In the years since, infrastructure P3s have become an increasingly bipartisan cause, with elected officials, including President Obama, touting the many benefits of private investment. There is even a Congressional Public-Private Partnership Caucus co-chaired by a Republican and a Democrat. Ronald Reagan must be smiling.

Back in the 1980's, many policy wonks, we among them, were certain that private equity and ambitious constructors would finally bring free market dynamism to the notoriously moribund business of municipal bricks and mortar.

It never happened that way.

It was not until 2006 when Chicago leased a highway segment to a private investor for $1.8 billion that politicians began to take P3s more seriously. While former Chicago Mayor Daley's monetization of a roadway was certainly shrewd, it is not what President Obama had in mind when he praised P3s in his State of the Union address. The president was talking about new projects and major upgrades to existing facilities, not large cash-for-control transactions.
P3s are less common in America than in other countries mostly because the federal tax subsidy of state and local government debt is not available to projects in which a private developer has long-term construction and operating responsibility. The interest earned by buyers of municipal bonds is exempt from federal – and often state and local – taxation, while earnings on private purpose bonds are taxed. In most other countries, interest on private and government debt is taxed equally. This puts the private delivery of infrastructure at a disadvantage in financing cost.

Developers are often able to make up for the extra financing cost through innovative design, construction and operating efficiencies, but it is a brutal equation. Equalizing the net cost of debt, on the other hand, would allow the value of those efficiencies to flow to facility users and local taxpayers.

Remember too that there is still a "public" in public-private partnerships. These projects and private involvement will happen only when and where a government wants them. Governments still specify the project's service and safety standards and will usually hold final say over pricing.

The president proposed leveling the financial playing field for private and public infrastructure investment. Specifically, he would create Qualified Public Infrastructure Bonds (QPIBs). QPIBs would resemble existing "private activity bonds," or PABs, which are federally tax-exempt bonds issued by or on behalf of a state or local government for the purpose of attracting private investment for projects with demonstrable public benefit. These bonds are typically revenue bonds backed solely by income from the project itself, and importantly, not taxpayers. The problem with PABs is that the amounts that can be issued in each state and the permissible uses are sharply limited, and interest paid is subject to the Alternative Minimum Tax (AMT). As a result, PABs have contributed only modestly to solving America's infrastructure crisis.

Unlike PABs, the QPIB program will have no expiration date, no limits on the total amount issued,

and interest on these bonds will not be subject to the AMT. The Administration's proposal appears to include uses that PABs currently allow, including airports, ports, mass transit, solid waste disposal, roads, sewer as well as water, which is not currently covered.

Fiscal conservatives have been wary of expanding tax-exempt bonds for fear of enabling government-sponsored white elephant projects and for increasing deficits by further eroding the tax base. The "static analysis" traditionally employed by the Congressional Budget Office in scoring legislation might well have projected Obama's proposal to increase the federal deficit. However, with the recent adoption by the House of Representatives of "dynamic scoring," whereby the macroeconomic impacts are considered in addition to simple budget math, QPIBs are likely to be scored positively.

PABs and QPIBs are not free lunches. As with any debt instrument they need to be repaid. User fees (tolls, fares, passenger charges, water fees, etc.) or "availability payments" (payments made by government to a P3 developer contingent upon meeting service quality standards) will always be needed. But the advantages of P3s remain – delivering infrastructure faster, for less money, and with lower risks to taxpayers.

Obama's proposal is politically remarkable but it was also probably inevitable. Being able to get more projects constructed while relieving their creaking general government balance sheets is a very big deal for mayors and governors, regardless of party.

Perhaps the best thing about P3s is not just the new money they bring to our crumbling roads, leaky water systems, and crowded airports but that the private money is motivated to succeed.

January 26, 2015

By John Buttarazzi and Steve Steckler

Steckler is chairman of Infrastructure Management Group, Inc. and IMG Rebel LLC. Buttarazzi is associated with IMG Rebel and is on the faculty of Georgetown University's McCourt School of Public Policy where he teaches public-private partnerships.

Municipal Issuer Brief - Market Volatility a Theme.

Read the Brief.

Municipal Market Advisors | Jan. 27

Fitch: Annual Upgrades Exceeded Downgrades for Public Finance in 2014, Reversing 5-Year Trend.

NEW YORK–(BUSINESS WIRE)–In 2014 and for the first time since 2008, U.S. Public Finance annual upgrades exceeded downgrades, says Fitch Ratings. For all U.S. public finance sectors in aggregate, the number of upgrades increased in 2014 to 183 from 101 in 2013 while the number of downgrades decreased to 142 from 189 last year, according to Fitch in a new report.

Downgrades represented 4.2% of all rating actions and the par value totaled $214 billion. The number of downgrades was at its lowest level since 2008. Upgrades represented 5.4% of all rating actions and the par value totaled $99.7 billion. The number of upgrades was at its highest level since 2009, driven in part by the upgrades of Florida Housing Guaranty Fund and the state of New York, each of which affected a number of securities. Tax-supported ratings downgrades accounted for 62% of all U.S. public finance rating downgrades.

The annual downgrade to upgrade ratio by rating action was 0.8:1, decreased from 1.9:1 in 2013, and was at its lowest level since 2008. The downgrade to upgrade ratio by par was 2.1:1, increased from 1.1:1 in 2013.

Fitch also reported that the number of ratings with a Negative Outlook at the end of 2013 (180) was down from 232 at year-end 2013. The number of Positive Rating Outlooks also decreased to 68 from 85 the previous year. Negative Rating Watches decreased to nine from 40.

A majority of rating actions (86%) during the year were affirmations. Additionally, 93% of Rating Outlooks were Stable at the end of 2014.

The report also includes data on rating actions taken during the fourth quarter of 2014.

'U.S. Public Finance Rating Actions 2014' is available at www.fitchratings.com.

January 28, 2015 11:27 AM

S&P U.S. Municipal Water and Sewer Utilities 2015 Sector Outlook: And the Winner Is...

The first quarter of each year marks the height of awards season in American popular culture. Attention turns to the memorable and forgettable on the silver screen and the red carpet. Mass marketing campaigns are made for our consideration – just in case it is not really an honor just to be nominated, or to make us remember (or forget) how something opened. Alas, in the end, hilarity does not always ensue.

In the U.S. municipal water and sewer sector, there are also the usual suspects, the next big stars, key supporting actors, and even paparazzi lurking in the shadows. Fortunately, the sector's story is more documentary than dramatic in nature. The reviews are in, and we find that little has changed. More than nine out of 10 of our ratings have stayed the same, and almost all of those are high-investment-grade. It is a risk-averse sector that sticks to a core business model of drinking and clean-water service provision, rather than engaging in any unregulated or competitive ventures. Standard & Poor's Ratings Services believes the sector continues to be one of the most capital-intensive services that a local or regional government provides, save for owning and operating power plants. Further, utility managers operate in an environment where funding capital investments is probably the most difficult budgetary decision they will make each year. In general, we have observed that there remains a strong correlation between management and credit quality. So for your consideration, we present our thoughts for the sector for 2015.

Overview

- Credit quality remains stable and solid, with most ratings in the high investment-grade category.
- Debt issuance is likely to increase as issuers take advantage of still-favorable market conditions to

fund capital spending.
- Economic recovery will be uneven across U.S. regions and in its impact on utilities.

Continue Reading.

26-Jan-2015

The Myths of Municipal Mergers.

The media attention on Ferguson, Mo., one of the 90 jurisdictions in St. Louis County, has also brought attention to consolidation — a touted solution to government ills.

In the wake of the events in Ferguson, Mo., much of the media coverage focused on the geopolitical fragmentation of the St. Louis area, and the abuses it has engendered. In some circles, it led to talk of government consolidation, or "big box" government, as a possible solution.

St. Louis County has 90 municipalities. (This doesn't include the city of St. Louis, which is technically an "independent city.") Believe it or not, with 22,000 residents, Ferguson is one of the biggest. A number of the municipalities have fewer than 1,000 people. This proliferation of small cities has created perverse incentives to bad and abusive governance. But while there may be clear benefits to consolidation, is it really the answer here?

Consolidation and absorption of territory by expansive central cities have been in vogue for some time. Former Albuquerque, N.M., Mayor David Rusk's influential 1993 book Cities without Suburbs noted that regions whose central cities had elastic boundaries that could expand to take in new territory outperformed those that did not.

It's said that consolidation brings more clarity to regional leadership and creates tax equity, since the tax burden is distributed over a larger entity. Cost savings from economies of scale are often touted as well. But as my colleagues Alan Ehrenhalt and Justin Marlowe have written in these pages, a look at consolidation as currently practiced reveals holes in all of these theories.

First, in many consolidations, there is really little consolidation at all. In the case of the "Unigov" system in Indianapolis, virtually none of the existing municipalities in the county were legally eliminated during consolidation. Police and fire departments were left unconsolidated, as were 11 school districts. Similarly in Louisville, Ky., where the city and county merged, neither existing municipalities nor fire departments were abolished. This hardly clarifies leadership and lines of authority.

There's also limited tax sharing, thanks to the political deals needed to get mergers approved. In Nashville/Davidson County, there are not only six "satellite" cities, but there is also a separate "urban services district" with a higher tax rate. Louisville has a similar designation for its former city territory.

As for cost savings, evidence suggests that these are vastly exaggerated and that the cost of government can actually go up. This was the case in Indianapolis, where in 2007 the city finally consolidated police departments. The move was projected to save $8.8 million per year. A post-merger audit by the firm KSM Consulting found that actual savings were "negligible."

Corporations frequently manage to save money when merging. That's because they can pare costs

by eliminating redundancy and harmonizing salaries. But in the public sector, nobody is likely to lose his job, and salaries tend to be harmonized to the high water mark.

Even the “cities without suburbs” paradigm may actually be backwards. In a paper criticizing the Louisville merger, University of Louisville professors Hank Savitch and Ronald Vogel argued that a better description is “suburbs without a city.” That is, by allowing formerly suburban and unincorporated areas to vote for the government of the city, the locus of control shifts from urban to suburban residents. This disempowers the city by merging its interests with a far larger group of suburbanites who may have different interests and values. This can also have a racial dimension, as it dilutes concentrated minority voting power in the central city. The mere act of putting different groups of people inside the same box doesn’t ensure that they will agree, as Congress so starkly illustrates.

Expansive or consolidated governments are often less responsive to citizen and neighborhood needs. A large city still only has one mayor who only has 24 hours in a day. His or her attention span is limited. And in a large city, the most influential interests tend to be its wealthy citizens along with corporate players. It can be hard for neighborhood-level concerns to get addressed.

Given these factors, it’s hard to see how consolidation would help the St. Louis area. This is particularly true when, as Cincinnati Mayor John Cranley has noted of his city, the urban core is starting to see uplift while surrounding inner-ring suburbs face challenges from their own economic and fiscal declines.

Yet there’s an argument to be made for consolidation of especially small cities. Unlike big-city governments, these often fly under the media and state radar unless a major problem erupts. This renders them vulnerable to abuses. It’s no surprise that it was Bell — not small on an absolute basis, but only the 215th largest municipality in California — where the city manager was making nearly $800,000 per year. Combine small size with poverty, as in Bell, and these places are often doubly overlooked.

In these cases of documented abuse, state legislatures should not hesitate to simply abolish the small municipalities in question. This would result in de facto consolidation to the county level. No one should suggest that this in and of itself would solve the racial and other challenges facing the St. Louis region. In fact, it would likely produce many of the downsides described above, such as the dilution of minority voting power. But it would at least end the outright abuse of citizens, especially poor and minority citizens, by these tiny fiefdoms.

GOVERNING.COM

BY AARON M. RENN | JANUARY 2015

Michigan Sends Road Funding Proposal to Voters.

After several years, Gov. Rick Snyder has finally convinced lawmakers to spend more money on roads. There’s one hitch: The state’s voters have to approve the deal in May.

Like most governors, Michigan’s Rick Snyder spends a lot of time trying to burnish the image of his state. Among its highlights, Snyder touts a 48 percent increase in automobile manufacturing in the last four years, a turnaround in state finances and Detroit’s quick exit from bankruptcy.

But there is one thing about Michigan that the Republican governor is downright negative about: the roads. They are “rotten,” Snyder told legislators during his State of the State speech last week, citing plywood under overpasses to catch falling concrete and the growing number of potholes on Michigan streets. On average, he said, Michiganders pay $132 more per year in car repairs than their neighbors in Indiana. “No one in Michigan,” he added, “likes our roads and bridges.”

It is a message Snyder has been repeating for years, but now, after a brutal winter tore up the state’s already ravaged roads last year, he’s finally making headway on the issue. A broad coalition of Republicans and Democrats approved a last-minute deal in December to raise spending on roads by $1.2 billion, as long as voters approve a 1-cent sales tax hike — from 6 percent to 7 percent — in May.

Snyder used his annual State of the State address to lawmakers to lobby for the ballot measure. The package passed by the legislature is a complex one, but the governor focused primarily on its potential to increase safety. “Vote yes so we can have safer roads,” he said. “Vote yes so we can get rid of those crumbling bridges and crumbling roads. Vote yes so we can have stronger schools and local governments. Vote yes so we can have tax relief for low-income people. There are only good reasons to vote yes.”

Not everyone, of course, supports the measure. The campaign over the initiative has barely begun, but already the Michigan chapter of Americans for Prosperity, a conservative antitax group, is fighting it. Annie Patnaude, the group’s deputy state director, said Michigan roads need to be improved, but legislators ought to use existing state revenues to do it rather than using a “massive tax hike.” “Politicians and special interests are coming back to citizens and asking for more,” she said, “when they need to do a better job with the money they already have.”

But a lot more is riding on the outcome of the ballot measure than simply road funding. If voters give it a green light, it will trigger other provisions, including an increase in motor vehicle registration fees and a change in how the state spends taxes collected on the sale of gasoline and diesel fuel. The package requires online retailers to collect sales taxes. And it eliminates the sales tax on gasoline but increase fuel taxes. In other words, rather than requiring customers to pay taxes by the gallon at the pump, the measure would tax fuel on a percentage basis at the wholesale level.

These changes are meant to achieve a more straightforward allocation of tax money overall. The taxes customers pay when buying fuel, for example, will help transportation. The money they pay in sales taxes would help schools, social programs and other spending paid out of the state’s general fund.

Other changes were included in the package to attract support in the legislature, where a supermajority was needed to put the sales tax hike on the ballot. For example, it would also provide an additional $300 million for schools; an extra $100 million for transit and local governments; and a restoration of cuts to the state earned income tax credit made in 2011.

Patnaude, from Americans for Prosperity, said her group plans to highlight all of the ways the proposal would hit Michigan residents in the pocketbook. “This is not just a sales tax hike,” she said. “It’s a gas tax hike. It’s an increase in registration fees. A huge chunk of this tax hike does not go to roads.”

While turnout for the spring election is expected to be small, the Michigan Infrastructure and Transportation Association, a construction trade organization, has already told its members it has raised $2 million for the campaign and is shooting for $5 million. “Michigan citizens,” the group said, “will have a once in a lifetime opportunity to really make a difference in the way our state funds

roads, schools and local governments."

Gilda Jacobs, the president and CEO of the Michigan League for Public Policy, which advocates on behalf of poor residents, is pushing for passage of the sales tax hike as well. The restoration of the state's earned income tax credit, she said, could help offset those costs for low-income residents. The ballot measure also helps low-income residents with their transportation needs, she said, because it would increase money for public transportation and would improve the condition of the state's roads. "It impacts everybody," she said. "But for a low-income person to have their tire blow out means more of their personal income has to be used to replace their tire than my personal income."

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BY DANIEL C. VOCK | JANUARY 28, 2015

What the CBO's Latest Predictions Mean for States and Localities.

The Congressional Budget Office expects the economy to grow at an even slower rate than it has in the past.

For those who have wondered whether we've reached a "new normal," or whether these years of slow economic growth are just a blip on the radar, the Congressional Budget Office (CBO) has officially called it. Its new economic and budget outlook contains a sobering prognosis: Get comfortable because the nation's economic output won't pick up any time soon.

This week's CBO report anticipates that output will grow slower than it has in the past, to a little more than 2 percent each year thanks in part to slow growth in the labor market. The predicted long-term growth rate reflects a 1 percent drop from the CBO's last projection in August when forecasters still thought that the economy had not rebounded to its full potential, said CBO Director Douglas Elmendorf. "For some time, that seemed like a reasonable expectation because productivity usually falls when the economy is weak," Elmendorf said at a briefing Monday. "It's hard to know how much of what's been going on over these half-dozen years is just because the economy is weak or how much of it is the underlying structural conditions we face. The persistent slow growth in a growing economy suggests more of that is due to a structural versus cyclical [weakness]."

State budgets have reflected that weakness. Accounting for inflation, this fiscal year's total general fund spending of $748 billion is still 2 percent below the pre-recession peak, according to the National Association of State Budget Officers (NASBO). Even not accounting for inflation, this year's 3.1 percent spending increase over 2014 is far below the 5.5 percent year-over-year average recorded over the 37 years NASBO has been conducting its budget survey.

On the national level, federal revenues are expected to match this weakness and not keep pace with expenditures. The CBO has lowered its revenue estimates for future years, and forecasters say it will take less than 25 years for the federal debt burden to equal the nation's annual GDP. The last time federal debt soared to those levels was just after World War II. But rather than dealing with the one-time spending spike of paying for a war, this era's spending spree has a more permanent flavor with Social Security and Medicare payments being among the biggest cost drivers as baby boomers retire. Spending on those two programs is expected to nearly double over the next decade. Meanwhile non-defense discretionary spending, which goes to state needs like law enforcement, transportation, education grants, veterans' health care and environmental protection, is expected to

only inch along by comparison, growing 18 percent by 2025.

So what does all this mean for state and local governments as the 114th session of Congress kicks off? It places a higher priority than ever on states to ensure their own financial sustainability. “Clearly the federal government will be less responsible for things at the state and local level,” said Matt Fabian, a partner at the research firm Municipal Market Analytics. “The policy stage is shifting toward the states and that’s where the meaningful work gets done.”

That said, Capitol Hill observers believe Congress could take action in a few key areas, including the Marketplace Fairness Act (MFA). The bill, which taxes Internet sales, passed the Senate last session but died in the House of Representatives. It’s expected to get another hearing this session. House Speaker John Boehner is pushing an alternate idea that would tax Internet purchases at the sales tax rate in the seller’s home state instead of the buyer’s, as the MFA does. The National Conference of State Legislatures has already fired off a blistery letter to the Speaker, panning the idea as “unclear, unconstitutional [and] riddled with loopholes.” But at a minimum, the idea of taxing Internet sales will get far more airtime in the House this session.

A second area where progress is expected is in infrastructure bonds. In his State of the Union speech, President Obama proposed so-called qualified public infrastructure bonds, which are essentially a new type of tax-exempt municipal bond that would help finance public-private infrastructure projects. The idea to use tax incentives as a way of encouraging more private investment is popular with market participants and Republicans, who now control both houses on Capitol Hill. More private investment in public infrastructure projects means that governments would be sharing the financial risk of those projects, an appealing notion in times of fiscal austerity.

Sadly for state and local governments, the federal government’s growing financial inflexibility also means that calls for so-called flexible federalism, the idea that the federal government shouldn’t fix its own problems on the backs of the states, will likely go unheeded. The flexible federalism agenda is a perennial one from the National Governors Association and includes requests like reauthorizing the federal Workforce Investment Act and restoring the 15 percent set-aside dedicated to state workforce innovation. In fact, says Municipal Market Analytics’ Fabian, quite the opposite is in store unless Congress makes a policy shift. “Look for an increase in unfunded mandates. States will have to look at ways to raise more money because, increasingly, they’re on their own. That’s the message.”

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BY LIZ FARMER | JANUARY 29, 2015

Relax and Unwind: Volcker Rule Delayed.

Last month, regulators announced they were extending by two years the effective date of the Volcker Rule, which was supposed to go into effect in July. This is good news for the municipal market, which otherwise would have seen some concentrated selling-off activity during the first half of this year.

The Volcker Rule, finalized in late 2013, limits banks’ investments in hedge funds and other high risk vehicles, including what are called Tender Option Bonds, or TOBs. These bonds represent a small fraction of the municipal market (about $90 billion of the $3.7 trillion market) and are used to cover long term investments.

Banks and hedge funds get cash from a money market fund (a short term borrow) then turn around and invest that in a municipal bond. Because short term borrowing has typically yielded very low interest rates while rates on longer-term bonds has been higher, banks hope to pocket the difference between the two rates as profit.

Without the delay, managers would have had to unwind up to $90 billion in bonds currently held in TOB trusts during the first half of the year, which is equivalent to 60 percent of the expected $150 billion of new issuance in that same period, according to a Jan. 26 analysis by Moody's Investors Service. "Postponement of that liquidation relieves pressure on the overall market," Moody's added.

GOVERNING.COM

BY LIZ FARMER | JANUARY 30, 2015

Rams Prod Missouri to Borrow by Flirting With L.A.: Muni Credit.

(Bloomberg) — Billionaire Stan Kroenke's push to move the National Football League's St. Louis Rams to Los Angeles is paying off: Missouri may pony up for a new stadium, even though taxpayers owe $130 million for the old one.

Governor Jay Nixon's advisers proposed using public funds, including bonds, to finance about half of an almost $1 billion, 64,000-seat arena in downtown St. Louis after Kroenke said he may build a venue in Southern California. Missouri and its local governments already pay a combined $20 million a year on debt for the 19-year-old Edward Jones Dome, which the Rams consider out of date.

"We need to find a plan to keep the team in town," said Frank Viverito, president of the St. Louis Sports Commission, which promotes the city. "It's important for any city that wants to be considered a major league city."

States and cities have sold $9 billion of bonds for stadiums, sometimes to keep teams from leaving behind vacant coliseums and wounded civic pride, according to data compiled by Bloomberg. Indianapolis, Minnesota and Louisiana are among those that have subsidized new or renovated facilities over the past decade after owners considered moving away.

Bargaining Chip

Los Angeles, the second-most-populous U.S. city, has become a bargaining chip for owners. The NFL's Oakland Raiders and San Diego Chargers have drawn officials in their cities into negotiations following speculation that they would move to Los Angeles. The metropolis hasn't had an NFL team since the Rams and the Raiders left after the 1994 season.

"Going to L.A. is a ploy to get a bigger subsidy," said Victor Matheson, a sports economist at College of the Holy Cross in Worcester, Massachusetts. "You see this happening again and again and again." Tax breaks, land giveaways and public funding have persisted even as research casts doubt on the benefits. The venues typically don't expand a city's tax base or generate revenue, Matheson said. In Florida, he found the opposite: new stadiums, arenas and sports franchises reduced taxable sales at nearby businesses.

Wal-Mart Heir

Kroenke, 67, the founder and owner of St. Louis-based THF Realty, can leave the St. Louis stadium because the agency that runs it hasn't kept it up to date with other NFL venues, as its contract requires. The husband of Wal-Mart Stores Inc. heir Ann Walton Kroenke, he has investments in six professional sports teams, including the National Hockey League's Colorado Avalanche and the National Basketball Association's Denver Nuggets, as well as cable television channels.

On Jan. 5, Kroenke, with a net worth of $4.8 billion on the Bloomberg Billionaires Index, proposed an 80,000-seat stadium on land he owns in Inglewood, California. Back in St. Louis, the Rams had the second-worst home attendance in the league in 2014, with an average of about 57,000 per game, according to ESPN.com.

Tomago Collins, a spokesman for Kroenke, and Artis Twyman at the Rams didn't respond to requests for comment.

The site in the suburb of 112,000 is one of three potential locations for an NFL team in the Los Angeles area, according to a Dec. 21 article on NFL.com, the league's official website. Philip Anschutz, owner of the NHL's Los Angeles Kings, has proposed a stadium downtown. A local developer is pushing a third option in Carson, about 17 miles (27 kilometers) south, according to the Daily Breeze newspaper in Torrance, California.

Welcome Mat

An NFL team "would be great for the city," Los Angeles Mayor Eric Garcetti said during a Jan. 13 interview.
The scale of Kroenke's plans heightened speculation the Rams will move, a step the NFL would have to approve.

"If this is just a pretext to get the public to build a new stadium for the Rams, he's gone pretty far out on a limb," said Fred Lindecke, spokesman for the Coalition Against Public Funding for Stadiums, an activist group in St. Louis.

The Inglewood site wouldn't need taxpayer funding, Mayor James Butts said in a telephone interview.
"Not one single dollar of public money is going to be spent on the stadium," said Butts. "Nor will there be any bonds."

Missouri is more game. On Jan. 9, a panel formed by Governor Nixon, a Democrat, proposed a stadium on the banks of the Mississippi. It may cost $985 million, with the public paying as much as $535 million through bonds and other sources, according to the proposal, which didn't offer details.

Goldman Sachs

Greg Carey, a banker at New York-based Goldman Sachs Group Inc. who is advising the task force, said his job is to craft a deal that works for the city and the team.

"If St. Louis did not have the Rams, it's like a company leaving the market," he said.

The NFL wants all of its teams to stay in their current markets, Commissioner Roger Goodell said at a Friday press conference in Phoenix ahead of Sunday's Super Bowl.

"We want to work with the business community and the public sector" to keep the Rams in St. Louis, he said.
Missouri officials are balancing the desire to keep the team against their obligations to the public

purse.

Nixon said his panel's plan would help St. Louis without adding to the state's taxes. St. Louis Mayor Francis Slay doesn't support raising levies to pay for a facility, said Maggie Crane, his spokeswoman. The plan may involve refinancing stadium debt to avoid adding to the city's bond bills.

"Some of this is a little bit fluid and not yet finalized," she said.

Rams Review

Jim Woodcock, a senior vice president in St. Louis with FleishmanHillard, which represents the task force, said representatives weren't available. The Rams said in a statement Jan. 9 that the team is reviewing the proposal.

Missouri, the city of St. Louis and St. Louis County are still paying off bonds for the Edward Jones Dome, with about $30 million of interest due through 2021, according to financial statements. The vacated dome would still be used as a convention center, according to the proposal.

The St. Louis Regional Convention and Sports Complex Authority issued about $259 million of bonds in 1991 backed by the city, county and state to build the venue. Tax-exempt debt sold as part of a 2013 refinancing and maturing in August 2021 priced to yield about 2.8 percent.

The Missouri plan may have a hard time winning approval from city and county voters for public financing, said Lindecke, the spokesman for the group opposing it.

A poll sponsored by the Missouri Alliance for Freedom, which is against subsidies, found that 18 percent of residents support the task force's recommendation. The poll by Kansas City-based Remington Research Group, which surveyed 776 likely voters and was released Jan. 27, had an error margin of 3.4 percent.

"People aren't going to approve paying money for a new stadium when the old one is only 20 years old and hasn't been paid off," said Lindecke. "This isn't going to happen."

Bloomberg Muni Credit

by Darrell Preston

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Local Debt Trails Treasuries on January Sales Surge: Muni Credit.

(Bloomberg) — Even as the $3.6 trillion municipal market heads for its biggest monthly gain in a year, it still can't keep up with surging Treasuries.

Munis have advanced 1.6 percent in January, while federal debt has earned 2.6 percent, according

to Bank of America Merrill Lynch data. With borrowing costs diving amid signs the global economy is slowing, localities are scheduled to sell about $29 billion of bonds this month, which would be the busiest January in five years, data compiled by Bloomberg show.

Money is flowing into tax-exempt mutual funds at almost double the pace of the past year. Yet the spate of borrowing, powered in part by communities refinancing higher-cost obligations, signals that munis may struggle to repeat a 2014 performance in which they beat other areas of fixed income.

The sales calendar "adds a little pressure," said Alan Schankel, a managing director at Janney Montgomery Scott LLC in Philadelphia. "On the other hand, fund flows and demand metrics have been pretty strong throughout the month."

Sales Headwind

Rising issuance presents another headwind in a year when the consensus view is that interest rates will climb and depress munis' performance after the bonds rallied 9.8 percent last year, the most since 2011. The 2014 gain beat advances of 6 percent for Treasuries and 7.5 percent for corporate debt.

Returns on state and city debt will probably be less than in 2014, even as munis may outperform Treasuries, Schankel said.

Wall Street analysts predict a growing economy will push interest rates up. Yields on 30-year Treasuries will rise about 1.1 percentage points to 3.4 percent a year from now, according to the median forecast of 42 analysts in a Bloomberg survey.

The opposite happened on Wednesday in New York: Treasuries surged after the Federal Reserve maintained a pledge to be "patient" on raising interest rates. It cited international risks to the economy while boosting its assessment for the U.S. Yields on 30-year Treasuries set a record low of 2.27 percent.

Dust Cloud

"Strong Treasury rallies often leave munis in the dust initially," said James Dearborn, head of munis in Boston at Columbia Management Investment Advisers, which oversees about $30 billion in local debt. "I'm taking comfort from the fact, in spite of all the supply, you're still seeing deals get done and oversubscribed."

Benchmark 10-year muni yields have dropped a quarter-percentage point this month to 1.86 percent, data compiled by Bloomberg show. Yields touched 1.81 on Jan. 21, the lowest since May 2013. Bonds' yields and prices move in the opposite direction.

Even with the gains, judging by relative yields, munis are the cheapest in more than a year compared with Treasuries.

Benchmark 10-year muni yields are about 105 percent of the level on similar-maturity Treasuries. The ratio, a measure of relative value between the asset classes, is close to the highest since October 2013. The figure is typically below 100 percent because investors are willing to accept lower interest rates in exchange for munis' tax-free income.

Attraction Rules

"For certain parts of the curve, munis are an extremely attractive asset class," said Gary Pollack,

who manages $12 billion as head of fixed-income trading at Deutsche Bank AG's Private Wealth Management unit in New York.

The appeal of tax-exempt interest has only climbed after investors last year faced tax bills that included federal increases that took effect in 2013. The top marginal rate of 39.6 percent is the highest since 2000.
The 1.86 percent yield on benchmark 10-year munis is equivalent to about 3.1 percent taxable for the highest earners.

Investors added about $1 billion to mutual funds that target munis in the week ended Jan. 21, compared with a one-year average increase of about $600 million, according to Investment Company Institute data compiled by Bloomberg.

"With tax brackets where they are, it makes the math pretty easy to justify buying munis," said Patrick Morrissey, who helps oversee $3.3 billion of fixed income at Great Lakes Advisors LLC in Chicago.

Bloomberg Muni Credit

by Elizabeth Campbell

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N.Y. Pension Pays $708 Million to Florida Retirees: Muni Credit

(Bloomberg) — Florida is luring more than just New York's residents. It's also absorbing a growing pile of cash from the state's largest pension.

The New York State and Local Retirement System, the third-largest U.S. public plan, paid $708 million to Floridians in fiscal 2014, or about 7 percent of the total, its financial report shows. That's up about 50 percent in the past decade and was the biggest share of its $1.9 billion of payments out of state.

The obligations weaken the argument that defined-benefit systems prop up local economies as workers retire. The payments to 34,374 Sunshine State residents mirror a migration south to Florida, which last year overtook New York as the third-most-populous state.

"The one group of people who absolutely are taking money from New York with them are government retirees," said E.J. McMahon, president of the Empire Center for Public Policy, a research group that advocates less government spending. "That check from the state goes wherever they are."

Swelling Obligation

New York's pension commitments have swelled about 80 percent in the past decade and are set to keep increasing, McMahon said. Moody's Investors Service estimates that mounting retiree costs

have left the 25 largest U.S. public pensions with about $2 trillion in unfunded liabilities.

For states struggling to catch up after shortchanging pensions during the recession, failing to retain retirees is a missed opportunity. That includes Illinois, which faces a $2 billion budget gap and $111 billion in unfunded pension liabilities.

The retirement system for Illinois state employees, which has about 34 percent of assets needed to cover projected liabilities, pays 1,258 former workers living in Florida, according to financial documents. That's out of about 5,900 retirees living outside Illinois.

Only seven states were better off than New York in funding their pensions as of 2013. New York had an 87.3 percent funded ratio, down from 105.9 percent in 2008, data compiled by Bloomberg show. The median was about 69 percent in 2013.

401(k) Debate

Comptroller Thomas DiNapoli, sole trustee for New York's pension, has used the cash retirees receive — and spend — as justification for maintaining a defined-benefit plan, even as companies adopt 401(k)-style approaches in which employees shoulder investment risk.

"Defined-benefit pensions help to stabilize our state's economy," DiNapoli wrote in a February 2012 op-ed in the New York Daily News. "The more than 1 million members, retirees and beneficiaries of the state and local retirement system are taxpayers, too."

The following month, the legislature passed pension changes, raising the retirement age for most new workers and offering a 401(k)-type option to some nonunion employees.

Almost all states have enacted tweaks to their plans since 2009 to cut costs and ensure adequate contributions, according to the National Conference of State Legislatures.

DiNapoli's stance hasn't changed since 2012, said Nikki Jones, a spokeswoman. The comptroller's office declined to comment further, Jones said.

Southern Comfort

In fiscal 2014, one in five recipients of New York pension payments lived elsewhere, financial documents show. About 38 percent of out-of-state benefits went to Florida.

Florida's population grew by 293,000 in the year ended July 1, 2014, to 19.9 million, while New York added 51,000 to 19.7 million, Census data show.

Florida receives the biggest share of people leaving New York, with about 55,400 residents migrating to the Sunshine State in 2013, Census data show.

"It's emblematic of the Snowbelt-to-Sunbelt movement," said William Frey, a demographer at the Brookings Institution in Washington. "In some respects, Florida is not a southern state. It's almost a New York appendage."

The same trend holds for the flow of retirees: New York has 1,143 beneficiaries of the Florida Retirement System, less than Alabama and Tennessee, financial documents show.

Tax Appeal

Florida's appeal goes beyond warmer winters. While New York ranked highest in terms of its

residents' state and local tax burden as of fiscal 2011, Florida, with no income tax on individuals, placed 31st, according to the Tax Foundation in Washington.

Union leaders say the departures wouldn't justify overhauling pensions.

"There will always be some percentage of retirees from all walks of life who will be lured by the weather and leisure life of the Sunbelt," Stephen Madarasz, a spokesman for the Civil Service Employees Association, New York's largest public-worker union, said by e-mail.

The cash influx is a windfall for Florida and its localities, which are rebounding from a housing-market collapse that left the state with the highest foreclosure rate in the nation and a default rate of more than 80 percent on bonds sold to finance new development.

Recruiting Trail

Governor Rick Scott, a 62-year-old Republican re-elected to a second term in November, touted the population gains during his inauguration Jan. 6.

"When people move here, they spend their money here, they bring their businesses here, they support our charities and they create more jobs and opportunities for others," Scott said in his speech.

"Over the next four years, I will be traveling to your states personally to recruit you here," he said, addressing residents of New York, Illinois, California and Pennsylvania.

Florida has competition in attracting New Yorkers. Georgia, South Carolina and Texas have seen pension payments to New York transplants more than double since 2005.

The payments from New York's largest pension to Floridians approaches the $723 million earned by 9,780 financial analysts employed in Florida, according to Labor Department data from 2013.
Deb Peterson, 64, lives in Melbourne on the Atlantic Coast and spends her pension from the New York teachers' fund traveling and volunteering. She retired to Florida with her husband in 2005 after 33 years as a music instructor in the Hudson Valley.

"We've explored a lot of areas, and we found our niche right here," Peterson said, highlighting the weather, health-care options and relatively low cost of living.
As more of her peers born between 1946 and 1964 move to warmer climes, their new home states will benefit, said Frey at Brookings.

"A lot of Baby Boomers are going to retire over the next 15 years, and if they follow these same patterns it's going to be a win for Florida and a loss for New York," Frey said.

Bloomberg Muni Credit

by Brian Chappatta

January 26, 2015

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

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Mark Tannenbaum, Mark Schoifet

The Carbon Effect: Assessing the Challenges for Public Power - Fitch.

Fitch Ratings has issued a Special Report concluding that preserving financial margins and credit quality, while complying with the EPA's proposed Clean Power Plan (CPP), will be most challenging for public power and cooperative utilities operating in states subject to sizable mandated carbon-reduction goals, high carbon-reduction costs and a relatively high cost of electricity.

Read the report.

Muni Investors Need More Information on Issuers' Other Debts: Regulator.

Cities and states should promptly disclose any loans they have taken from banks, the Municipal Securities Rulemaking Board said Thursday in the latest regulatory effort to promote transparency for investors in the $3.6 trillion market.

Such obligations "could impair the rights of the issuer's existing bondholders," the self-regulator said in a regulatory notice. Existing bondholders could find themselves pushed down in the order of creditors to be paid if a bondholder runs into financial problems, and the added debt could also "impact on the credit or liquidity profile of an issuer," the MSRB said.

While some cities and states have begun posting information about their loans on the MSRB's free Electronic Municipal Market Access website, known as Emma, many others have not.

Individuals own about three-quarters of the debt issued by cities, states and other municipalities, either directly or through mutual funds. Many buy the bonds for tax-free income as a way to fund their retirements.

Disclosure has long been an issue in the muni-bond market, which was described in a 2012 Securities and Exchange Commission report as "illiquid and opaque."

The MSRB has been encouraging state and local governments to disclose bank loans voluntarily since 2012. This month the board urged the SEC to review disclosure requirements, saying that changes in the market—including the increased use of direct loans—require a thorough look at the rules.

The SEC has recently targeted cities and states for improper disclosures, such as settling with Kansas, New Jersey and Illinois for failing to note the risks posed by underfunded pension obligations to bondholders. The agency also halted a bond sale by Harvey, Ill., saying officials had misused funds from previous sales and then misled investors in offering documents. In November, the SEC charged Allen Park, Mich., and two public officials with fraud, saying bond offering documents contained false statements about the viability of a movie-studio project and Allen Park's financial condition.

In its regulatory notice issued Thursday, the MSRB recommends that issuers develop voluntary disclosure policies, post loan information to Emma, determine where loans stand in the priority of repayment relative to existing bonds, and highlight any factors that could accelerate debt repayment or change the interest rate.

The MSRB's advisory comes as rating agencies have expressed concern about the growth of bank loans and other private debt placements by municipal entities. Moody's Investors Service in an October report that a review of 10,000 local-government issuers it rates found more than 100 bank loans large enough for the firm to consider them worth disclosing.

Standard & Poor's Ratings Services said in a report this week that it studied 404 loans with a par amount totaling $15.8 billion last year and found they didn't impair the rights of existing bondholders. Disclosing those loans and their terms, however, is "critical to identifying those instances where the loans do compromise credit quality and existing bondholders' rights," the report said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Jan 29, 2015

Super Bowl Host City Still Reeling Over Sports Deals.

GLENDALE, Ariz. — The entire world will be watching Glendale on Sunday as it hosts the Super Bowl and the legions of fans who are shelling out big bucks to see the big game.

What may be not visible amid all the hoopla is a sobering reality about the Super Bowl host city: Glendale is suffering deep financial issues over its troubled effort to become a sports destination.

Glendale bet big on professional sports in the last 15 years, spending millions of dollars on a hockey arena for the Arizona Coyotes and investing heavily in a spring training ballpark for the Chicago White Sox and Los Angeles Dodgers. Then the economy tanked, and the hockey team went through bankruptcy, with several different owners in recent years.

The city has found stronger financial footing since then and its bond rating has improved markedly, but not without having to raise taxes, trim 25 percent of the municipal workforce, cut back on paving projects, and reduce hours at municipal swimming pools and libraries. The 9.2 percent sales tax that shoppers and diners pay in Glendale is among the highest in the state.

To fiscal conservatives, Glendale serves as a cautionary tale for suburban cities across the United States that want to throw public money at professional sports projects.

"Overall, it's a bad move for cities," said Kurt Altman, general counsel for the Arizona-based Goldwater Institute, which fought Glendale over its enticements to the hockey team. "As much as they say it's going to make the city a destination, it just doesn't."

Glendale is a city of about 250,000 people in the northwest part of the Phoenix metro area. The location where the Arizona Cardinals' stadium and the Arizona Coyotes' arena were built had been a dusty farm area. The agricultural influence is visible to people driving to games when they pass tractors and farm equipment in nearby fields.

As the Coyotes and Cardinals sought new facilities in the early 2000s and efforts failed to build them in other parts of the Phoenix area, Glendale stepped in. The city helped pay for the Coyotes' arena with $167 million in bonds in 2003, and as the hockey team's finances began to fade during the

recession, Glendale went all-in to keep the team in Arizona. The city dished out $50 million earlier this decade to keep the team and continues to make annual payments toward the arena, but the money it is getting in return has not met expectations.

The football stadium was built in 2006, but Glendale was not on the hook for the costs of the $450 million retractable-roof facility. It was funded primarily with new taxes on car rentals and hotels in the Phoenix area, but that financing hit a snag last year when a judge ruled that the car rental tax was unconstitutional, leaving a major funding source for the Super Bowl venue in jeopardy. The issue is still being argued in the courts.

Glendale is far from alone. Cities and states nationwide have long struggled with how much public money to spend on stadium projects. The effort to build a new stadium for the Minnesota Vikings became embroiled in controversy over a financial commitment by the state that opponents said was excessive. The St. Louis Rams are at the center of a debate over whether to spend public money on a new stadium. Topeka, Kansas, is immersed in a fight over a motorsports track that has drawn comparisons to hockey in Glendale.

Continue reading the main storyContinue reading the main storyContinue reading the main story
As he navigates the financial situation, Glendale Mayor Jerry Weiers returns to a maxim he has repeated many times in his life: “I’m not living in the past. I’m just paying for it.”

In the case of the Super Bowl, he believes the city is paying dearly. He said Glendale will actually lose a “couple million dollars” by hosting the event. It’s spending huge amounts of money on overtime and police and public safety costs for the Super Bowl but not getting much back.

Super Bowl visitors are mostly staying in Phoenix and Scottsdale and only showing up in Glendale on game day, meaning the city won’t see much of a boost in tax revenue. And the city was hoping the state would reimburse Glendale for its police overtime costs, but lawmakers have scoffed at the idea.

Weiers said it pains him that the city had to cut services and lay off workers, but the moves were necessary to ensure financial solvency. He said the outlook has improved in the last year, a far cry from a couple years ago when Glendale was in jeopardy of joining the likes of Detroit in the category of municipal bankruptcies.

“I have to believe that if ‘1’ is perfect as things could be and ’10’ was bankruptcy, I’d say we were a strong ‘8,’” Weiers said. “We never had to go there, and I strongly believe we won’t have to go there.”

By THE ASSOCIATED PRESS

JAN. 26, 2015, 3:03 A.M. E.S.T.

MSRB Again Calls for Enhanced Municipal Market Transparency of Undisclosed Debt.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published its second notice calling for more transparency of undisclosed debt of municipal bond issuers. The MSRB is concerned that investors and other market participants are often unaware of the potential impact of bank loans and other debt-like obligations on the seniority status of existing bondholders and the credit or liquidity profile of an issuer, among other implications.

"As issuers increasingly turn to bank loans to finance infrastructure projects, the MSRB is concerned that current disclosure requirements may not provide a complete picture of an issuer's indebtedness," said MSRB Executive Director Lynnette Kelly. "The MSRB's advisory aims to promote greater market transparency and investor confidence by reminding market participants of current best practices for the voluntary disclosure of bank loans."

The MSRB first encouraged state and local governments in 2012 to make information about their bank loans publicly available on a voluntary basis on the MSRB's Electronic Municipal Market Access (EMMA®) website. Today's market advisory notes that fewer than 100 bank loan documents have been properly submitted to EMMA since that time. The MSRB this month urged the Securities and Exchange Commission (SEC) to consider requiring bank loan disclosure as part of an extensive review of the federal municipal market disclosure regime established by SEC Rule 15c2-12. Read about the MSRB's market leadership on bank loans and municipal market disclosure.

The current advisory highlights the importance of bank loan disclosure for the transparency and efficiency of the municipal securities market, and provides best practices to support voluntary disclosure of bank loan information through EMMA. These guidelines draw on those espoused by municipal market participants, and the advisory provides examples of steps issuers and their financial professionals can take to ensure investors have a full understanding of the terms of a bank loan and its implications for existing debt.

"The MSRB believes that access to bank loan information can provide current or prospective bondholders and other market participants with key information that can be useful in assessing their current holdings of municipal securities or in making informed investment decisions regarding transactions in municipal securities," Kelly said.

Date: January 29, 2015

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- **Program Note:** This week's issue includes links to articles published by Tax Analysts, which is a subscription service. It's a deservedly popular service, so please check with your librarian or tax folks to determine if your firm is already a subscriber. We're working on obtaining permission to publish full articles.
- MSRB to Discuss MA Exams, Gift Restrictions, Principal Transaction Disclosure.
- Muni Groups: SEC Disclosure Rule Outdated, Needs Overhauling.
- Dealers to MSRB: Withdraw Principal Trade Disclosure Proposal.
- SIFMA Supports Increased Bond Market Price Transparency for Investors; Urges Greater Access to and Usage of Existing Data on FINRA and MSRB Systems.
- QPIBs Provide a Level Playing Field for Public-Private Partnerships.
- S&P: Why U.S. Availability Projects are Not Rated the Same as the Counterparty.
- GASB Adds External Investment Pools to Its Technical Agenda.
- WSJ: Detroit's Lawyers and Advisers Defend Billing.
- Congress Extends QZABs, New Markets Tax Credits; Continuing Effect of Sequestration: McGuire Woods
- *American Federation of Teachers v. State* – Supreme Court of New Hampshire upholds statutory amendments affecting the calculation of benefits under the New Hampshire Retirement System,

finding that the statute's defining of "earnable compensation" did not create a contractual right to a fixed definition of that term.
- And finally, *Argabrite v. Neer* was good enough to provide us this week with the most accurate description of the BCB workplace to date, "atrocious, and utterly intolerable in a civilized society."

PUBLIC RECORDS - CALIFORNIA

Bertoli v. City of Sebastopol

Court of Appeal, First District, Division 4, California - January 20, 2015 - Cal.Rptr.3d - 2015 WL 251444

Pedestrian, who was struck by car as she walked inside crosswalk located on highway owned by city, and pedestrian's attorney filed writ of mandate seeking order requiring city and its departmental employees to produce electronically stored information (ESI) responsive to attorney's Public Records Act (PRA) request for documents sought in anticipation of litigation related to accident.

The Superior Court denied petition. Pedestrian and attorney filed extraordinary writ challenging the trial court's decision. The Court of Appeal summarily denied writ. Pedestrian and attorney filed petition for review. The Supreme Court denied petition. City and employees filed request for attorney fees and costs. The trial court granted request. Pedestrian and attorney appealed.

The Court of Appeal held that petition was not clearly frivolous, such that award of fees and costs was improper.

Petition for writ of mandate seeking order requiring city and its departmental employees to produce electronically stored information (ESI) responsive to Public Records Act (PRA) request for documents sought in anticipation of litigation stemming from accident in which pedestrian was struck by car as she walked inside crosswalk located on highway owned by city was not clearly frivolous, such that award of attorney fees and costs in favor of city and its employees was improper. Petition was not filed to harass city or its employees or for purposes of delay, and petition itself did not entirely lack merit, even though, as drafted, petition was unduly burdensome, overbroad, and would significantly compromise interest in privacy and confidentiality.

CONTRACTS - CONNECTICUT

Bellsite Development, LLC v. Town of Monroe

Appellate Court of Connecticut - January 27, 2015 - A.3d - 2015 WL 248939

Bellsite Development, LLC filed a civil action against the Town of Monroe after the Town reneged on its commitment to place Police Department telecom equipment in a communications tower to be built by Bellsite. Bellsite alleged three counts: breach of contract, promissory estoppel, and negligent misrepresentation. Following a trial, the jury returned a verdict in favor of the plaintiff on the breach of contract and negligent misrepresentation claims, and a verdict in favor of the defendants on the promissory estoppel claim. The jury awarded the plaintiff $700,000 in damages. After receiving the jury verdict, the defendants filed a motion to set aside the verdict, which was denied. Defendant appealed.

On appeal, the defendants claim that the court erred in denying the motion to set aside the jury's verdict as the jury's findings of a breach of contract and negligent misrepresentation were not

supported by the evidence adduced at trial.

The appeals court reversed, setting aside the jury verdict. The court found that the Town selectman who had been negotiating with Bellsite had neither express, nor apparent, authority to bind the Town. The court also found no evidence that the town council acted in any way that could reasonably be interpreted as ratification of the agreement, as the town never accepted or received any benefit from the purported agreement. The court also rejected the negligent misrepresentation claim, as there had been no false statement.

LABOR - ILLINOIS

McGreal v. Village of Orland Park

Appellate Court of Illinois, First District, Second Division - January 20, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 141412-U

The Metropolitan Alliance of Police, Orland Park Police Chapter No. 159 (MAP), filed an unfair labor practice charge against the Village of Orland Park concerning the Village's treatment of Officer Joseph McGreal. The Illinois Labor Relations Board dismissed the charge in accord with an arbitrator's recommendation. McGreal then filed in the circuit court a petition to vacate the arbitrator's award. The circuit court dismissed the petition. McGreal appealed.

The appeals court found that McGreal lacked standing to petition to vacate the arbitrator's award, holding that when parties to a collective bargaining agreement use procedures established in the agreement to arbitrate a grievance, only the parties to the collective bargaining agreement have standing to petition to vacate the arbitrator's award, unless the individual employee can show that the union breached its duty of fair representation.

SCHOOLS - ILLINOIS

Lutkauskas v. Ricker

Supreme Court of Illinois - January 23, 2015 - N.E.3d - 2015 IL 117090

Taxpayers brought actions, which were consolidated, against school district employees, district's accountant, and district board members, alleging employees and members engaged in or permitted improper spending of money from district's working cash fund. The Circuit Court dismissed action. Taxpayers appealed. The Appellate Court affirmed. Taxpayers appealed.

The Supreme Court of Illinois held that:

- Taxpayers did not have standing to seek employees' and board members' forfeiture of office or payment of fines, and
- Particular taxpayer's action arose out of same set of facts as other taxpayer's prior action and was barred by res judicata.

Taxpayers did not have standing to seek school district employees' and school district board members' forfeiture of office or payment of fines, for alleged improper transfer of money from district's working cash fund; statute providing for forfeiture and fines created only a criminal offense with criminal penalties.

TAKINGS - LOUISIANA

Progressive Waste Solutions of La, Inc. v. Lafayette Consolidated Government

United States District Court, W.D. Louisiana, Lafayette Division - January 14, 2015 - Slip Copy - 2015 WL 222396

On June 7, 2011, Progressive Waste Solutions entered into a Lease Agreement with Option to Purchase with Waste Facilities of Lafayette for the construction and operation of a dual transfer station and hauling facility. The Lease would not commence until Progressive obtained an Occupancy License from the Lafayette Consolidated Government (LCG).

Following the LCG Planning, Zoning & Codes Department's review, on September 19, 2011, Waste Facilities obtained a building permit and began construction on the waste transfer station. Subsequently, on October 18, 2011, the Lafayette City–Parish Council approved an Ordinance prohibiting the establishment or siting of any new waste transfer station within the Parish of Lafayette and directed the City–Parish President to withdraw and revoke any and all permits for any waste transfer stations permitted but not yet in operation on the effective date of the ordinance. The Ordinance became law on October 29, 2011 and Waste Facilities' building permit was revoked on October 31, 2011.

Progressive sued, claiming that its Lease Agreement with Waste Facilities gave it status as a "lessee" in the District Court and therefore asserting a takings claim based upon the revocation of the building permit issued to Waste Facilities. LCG argued that Progressive's taking claim was not ripe as it had failed to exhaust all state law remedies, and alternatively that Progressive did not have a legally protectable property interest to assert a takings claim. In addition to addressing the takings claim, LCG asserted that Progressive's substantive due process and equal protection claims must fail and that Progressive had failed to state a cause of action as to its State law claims for intentional interference with a contract and detrimental reliance.

The District Court held that:

- Even assuming *arguendo* that Progressive's takings claim was ripe under the "futility exception," Progressive failed to meet its burden of proving that its status as a putative or "would be" lessee entitled it to a vested right in order to pursue a Federal takings claim; and
- A "contract of lease," binding the parties to the Lease Agreement never occurred because the suspensive condition that an Occupancy License would be issued had not been fulfilled making the Lease void *ab initio*, nor had Progressive expended significant funds in good faith reliance on the building permit.

The Court also denied Progressive's other claims, granting the LCG's motion to dismiss.

IMMUNITY - NEBRASKA

Brothers v. Kimball County Hospital

Supreme Court of Nebraska - January 16, 2015 - N.W.2d - 289 Neb. 879

After receiving treatment at Kimball County Hospital, patient filed a tort claim pursuant to the Political Subdivisions Tort Claims Act (Act) and later filed suit against the County, the hospital, and a physician. The district court dismissed the county and entered summary judgment in favor of the hospital and the physician. The Nebraska Court of Appeals affirmed.

The patient appealed, alleging that the Court of Appeals erred by (1) finding that the County was properly dismissed and failing to reverse and remand for a summary judgment hearing at which patient would have the opportunity to present evidence and (2) determining that Kimball County Hospital and physician were properly dismissed based on lack of service of the tort claim pursuant to the Act.

The Supreme Court of Nebraska affirmed, holding that:

- As a matter of law, a county hospital is a separate and distinct political subdivision from the county, and thus any error in failing to allow the patient to present evidence on the county's motion to dismiss was harmless;
- Because the patient did not file his tort claim with the statutorily designated individual, he failed to comply with notice requirements of the Act.

PUBLIC RECORDS - NEBRASKA

Frederick v. City of Falls City

Supreme Court of Nebraska - January 16, 2015 - N.W.2d - 289 Neb. 864

The issue presented in this appeal was whether certain documents in the possession of a private corporation which had an ongoing contractual relationship with a city were "public records" within the meaning of Neb.Rev.Stat. §§ 84–712 and 84–712.01.

Falls City Economic Development and Growth Enterprise, Inc. (EDGE), a Nebraska nonprofit corporation, provides economic development services to the City of Falls City, Nebraska, and other entities. A Nebraska citizen asked EDGE to produce documents relating to a specific economic development project, and EDGE denied the request on the ground that the requested documents were not public records as defined by § 84–712.01(1). The citizen then brought an action for a writ of mandamus to compel production of the requested documents. Except for certain documents which it determined to be privileged, the district court granted the writ. EDGE appealed, and Falls City cross-appealed, aligning itself with EDGE. The citizen also cross-appealed, contending the district court erred in not requiring production of all of the requested documents.

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of Neb.Rev.Stat. § 84–712.01(1), such that its records are subject to disclosure upon request under Nebraska's public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government.

In applying the functional equivalency test to determine whether a private entity is the equivalent of a public agency, branch, or department, it is not necessary that an entity strictly conform to each factor, but the factors should be considered and weighed on a case-by-case basis.

In its analysis, the court noted that the fact that EDGE receives 63 percent of its funding from public sources lent some support to the argument that it is the equivalent of a public agency, branch, or department, but concluded that the remaining factors lend no support to a determination that EDGE is the functional equivalent of a city agency, branch, or department. EDGE was formed by private parties. Its employees are not Falls City employees, its offices are not housed in city buildings, and

its financial and other records are kept separately from those of Falls City. The city does not control EDGE's board.

PENSIONS - NEW HAMPSHIRE

American Federation of Teachers v. State

Supreme Court of New Hampshire - January 16, 2015 - A.3d - 2015 WL 222181

Members of state employee pension plan and organizations representing groups of such members brought action against state and others challenging the constitutionality of certain statutory amendments affecting the calculation of benefits under the pension plan. The Superior Court entered judgment finding that amendments to the definition of "earnable compensation" violated the contract clauses of the state and federal constitutions, but amendments to the statutes providing for cost of living adjustments (COLAs) did not. State appealed, and pension plan members and organizations cross-appealed.

The Supreme Court of New Hampshire held that:

- Statute defining "earnable compensation" did not create contractual right to fixed definition of the term, and
- Pension plan members did not have vested rights to a COLA.

Statute defining "earnable compensation" for purposes of state employee pension plan did not create contractual right to fixed definition of the term, and thus amendment to statute that excluded from the definition certain "other compensation" paid by the employer did not violate the contract clauses of federal and state constitutions, even though state employees became vested in pension plan after 10 years of creditable service. Vesting was not synonymous with a contractual right, statute contained no clear language indicating legislative intent to be bound by the definition of earnable compensation, and change in the definition did not retroactively affect calculation of pension benefits.

Members of state employee pension plan did not have vested rights to a COLA, and thus statutory amendment changing the manner of funding COLAs did not violate the contract clauses of the state and federal constitutions. COLA was not the same thing as the underlying retirement benefit, and statutes defining the "retirement allowance" collectible by eligible members of the pension plan did not state that the retirement allowance included COLAs.

ZONING - NEW JERSEY

Griepenburg v. Township of Ocean

Supreme Court of New Jersey - January 22, 2015 - A.3d - 2015 WL 263913

Landowners brought action against township, challenging validity of zoning ordinance rezoning a large tract of land, including most of landowners' property, from residential and commercial use to an Environmental Conservation district. Following a bench trial, the Superior Court dismissed landowners challenge. The Superior Court, Appellate Division reversed. Township petitioned for certification.

The Supreme Court of New Jersey held that ordinances were valid.

Township zoning ordinances, rezoning a large tract of land from residential and commercial use to an Environmental Conservation district, were a valid exercise of municipal zoning power and were not arbitrary, capricious, or unreasonable; ordinances represented a legitimate exercise of the municipality's power to zone property consistent with its Master Plan and Municipal Land Use Law goals.

ANNEXATION - NEW YORK

City of Gloversville v. Town of Johnstown

Supreme Court, Appellate Division, Third Department, New York - January 22, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 00575

Owners of unimproved real property located in the Town of Johnstown requested in 2012 that the property be annexed by the City of Gloversville. After a joint public hearing, the Town Board voted to deny the request while the City's Common Council voted in favor of annexation.

The City thereafter commenced a special proceeding pursuant to General Municipal Law § 712 seeking a judgment that annexation was in the overall public interest, and the owners of the property were permitted to intervene. The court then designated a panel of three Referees to hear and report on the proposed annexation. Following a trial, the Referees visited the property, viewed the surrounding area and issued a report unanimously recommending annexation. The City then moved to confirm the report, and the Town moved to reject it.

The appeals court held that any detriment to the Town was far outweighed by the benefits of annexation to the City, based on the City's municipal water and sewer services, as well as its professional, higher-rated emergency services and the resulting ability to develop the property in the same manner and with the same services and facilities. Accordingly, the court agreed with the unanimous conclusion of the Referees that annexation would be in the overall public interest.

IMMUNITY - OHIO

Estate of Smith v. Western Brown Local School Dist.

Court of Appeals of Ohio, Twelfth District, Brown County - January 20, 2015 - N.E.3d - 2015 -Ohio- 154

Estate of high school student who committed suicide filed wrongful death action against superintendent, principal, and assistant principal. The Court of Common Pleas granted summary judgment in favor of school officials. Estate appealed.

The Court of Appeals held that:

- Trial court acted within its discretion in finding that professor was not qualified to testify as an expert;
- Student's suicide was not foreseeable under the circumstances, and thus parents failed to support wrongful death action; and
- School officials were entitled to immunity from tort liability.

Trial court acted within its discretion in finding that professor was not qualified to testify as an expert in wrongful death action as to duty of school district superintendent, principal, and assistant

principal to notify parents of high school student who committed suicide of threatening notes student had allegedly received. Professor had relative unfamiliarity with subject matter central to issues involved, although professor was principal investigator on survey assessing whether schools were complying with bullying policy, survey did not explore or link effects of policy and likelihood of student suicide, and professor's experience with bullying policies was not relevant to circumstances surrounding student's suicide, as it appeared student was the author of the notes as part of a ruse.

High school student's suicide was not foreseeable under the circumstances, and thus school district superintendent, principal, and assistant principal did not have a duty to inform student's parents of situation involving student, girlfriend, and apparent rival at time officials were notified of threatening notes, as was required to support parents' wrongful death action. School officials acted quickly and efficiently to gather information about notes, by the next afternoon officials had formulated the suspicion that student was the author of the notes as ruse to draw girlfriend closer to student, student had not exhibited any signs of suicide at that time, student's threatening text messages to rival were unknown to officials, and threat to kill rival and then himself had yet to occur.

There was no evidence that school district superintendent, principal, or assistant principal acted in wanton or reckless manner with respect to situation involving high school student who committed suicide, student's girlfriend, and apparent rival, which involved investigation into threatening notes, and thus school officials were entitled to immunity from tort liability generally applied to employees of a political subdivision, in wrongful death action by student's parents. Although student's death was tragic and an immense loss, school officials had gone to great lengths to gather information, assess the nature of threats contained in the notes, and ultimately to contact student's parents.

LIABILITY - OHIO

Argabrite v. Neer

Court of Appeals of Ohio, Second District, Montgomery County - January 16, 2015 - N.E.3d - 2015 -Ohio- 125

Innocent driver filed negligence action against officers in involved in pursuit of burglary suspect to recover damages for her injuries. The Court of Common Pleas Court granted summary judgment for the officers. Driver appealed.

The Court of Appeals held that officers' conduct in pursuing burglary suspect driver was not outrageous or extreme, and thus officers' pursuit of fleeing driver was not the proximate cause of injuries to innocent driver.

EMINENT DOMAIN - PENNSYLVANIA

Hess v. Pennsylvania Public Utility Com'n

Commonwealth Court of Pennsylvania - December 22, 2014 - A.3d - 2014 WL 7242855

Landowners sought review of Public Utility Commission order that approved electric utility's applications to exercise the power of eminent domain to acquire rights-of-way and easements over their land for construction of a new 69 kilovolt transmission line and substation. Utility intervened.

The Commonwealth Court held that:

- Line and substation were necessary;
- Commission properly considered utility's reliability principles and practices manual; and
- Substantial evidence supported Commission's finding that utility considered alternative solutions to the problem.

New 69 kilovolt transmission line and substation were necessary, as required for electric utility to exercise its power of eminent domain to acquire rights-of-way and easements over landowners' property, where an inordinate number of customers in the project area were at risk of sustained outage if a single-contingency outage occurred, there was no existing load-transfer capability in the project area, ability to transfer load shortened the duration of outages, and utility had attempted to resolve the issues by other means to no avail, and considered other alternatives before presenting the proposal for the new line and substation to the Public Utility Commission.

Public Utility Commission properly considered electric utility's reliability principles and practices manual in determining whether new 69 kilovolt transmission line and substation were necessary, as required for electric utility to exercise its power of eminent domain to acquire rights-of-way and easements over landowners' property; Commission's regulations required electric utilities to design and maintain procedures and criteria to ensure continuous, safe, and reliable electric service, and required electric utilities to establish their own inspection, maintenance, repair and replacement standards based on the unique circumstances facing each utility.

Substantial evidence supported Public Utility Commission's finding, in proceeding in which landowners challenged electric utility's applications to exercise the power of eminent domain to acquire rights-of-way and easements over their land for construction of a new 69 kilovolt transmission line and substation, that electric utility considered alternative solutions to problem of inordinate number of customers in the project area who were at risk of sustained outage if a single-contingency outage occurred, where utility thoroughly examined other transmission alternatives and found that they were more expensive, less viable, or failed to achieve utility's reliability objectives in the project area, and utility's witnesses rebutted landowners' alternatives.

ZONING - PENNSYLVANIA

Oakland Planning and Development Corp. v. City of Pittsburgh Planning Com'n

Commonwealth Court of Pennsylvania - January 9, 2015 - A.3d - 2015 WL 116560

Owner of rental property sought review of decision of municipal planning commission approving applicant's development plan application to construct an adjacent nine-story office building. The Court of Common Pleas affirmed. Owner appealed.

The Commonwealth Court held that:

- Applicant bore the burden of providing sufficient evidence to support approval of project development plan;
- Objectors have the burden to show that a project development plan adversely affects a community's health, safety, and morals; and
- Evidence supported finding that project development plan met the Zoning Code's requirements for approval.

TAX - CALIFORNIA

Citizens for Fair Reu Rates v. City of Redding

Court of Appeal, Third District, California - January 20, 2015 - Cal.Rptr.3d - 2015 WL 252175

The City of Redding engaged in the practice of making an annual budget transfer from the Redding Electrical Utility to Redding's general fund. Because the Utility is municipally owned, it is not subject to a one percent ad valorem tax imposed on privately owned utilities in California. However, the amount transferred between the Utility's funds and the Redding general fund is designed to be equivalent to the ad valorem tax the Utility would have to pay if privately owned. Redding describes the annual transfer as a payment in lieu of taxes (PILOT). The PILOT is not set by ordinance, but is part of the Redding biennial budget.

Plaintiffs challenged the PILOT on grounds it constitutes a tax for which article XIII C of Proposition 26 required approval by two-thirds of voters. Redding responded that the PILOT was not a tax, and if it was a tax, it was grandfathered-in because it preceded the adoption of Proposition 26.

The Court of Appeal concluded that the PILOT constituted a tax under Proposition 26 for which Redding must secure two-thirds voter approval unless it proves the amount collected is necessary to cover the reasonable costs to the city to provide electric service.

The court rejected Redding's assertion that the PILOT was grandfathered-in by preceding Proposition 26's adoption. As a budget line item, the PILOT is subject to annual discretionary reauthorization by Redding's city council. The PILOT does not escape the purview of Proposition 26 because it is a long-standing practice.

The court remanded for an evidentiary hearing in which Redding has the opportunity to prove the PILOT does not exceed reasonable costs under article XIII C, section 1, subdivision (e)(2).

Record Green Bond Issuance Bolsters Chicago Sewers: Muni Credit.

U.S. municipalities are selling a record amount of debt earmarked for environmental projects as a growing appetite for the bonds pulls in issuers from the nation's capital to Chicago's water district.

States and localities issued $2.5 billion of obligations in 2014 that they tagged with the green label, up from $100 million the year before, data compiled by Bloomberg show. Globally, issuers such as governments, banks and companies offered about $39 billion of the securities last year, an all-time high, according to Bloomberg New Energy Finance data.

A $350 million tax-free sale by Massachusetts in September to restore waterways and save energy in public buildings shows how borrowings for environmental needs are attracting money to the $3.6 trillion municipal market. The issue drew five first-time institutional buyers of the state's debt, and about a third of the orders from individuals came from people who don't typically buy munis, according to Morgan Stanley, the underwriter.

"We're hearing more and more that folks want to invest in environmentally friendly projects," said Colin MacNaught, the Massachusetts assistant treasurer.

2014 Batch

There's no universal standard for a green bond. Issuers use the label in offering documents to help market a deal. Having an independent second opinion evaluating a bond's environmental credentials gives investors more confidence, Tess Olsen-Rong, a market analyst in London at Climate Bonds Initiative.

Seventeen muni issuers assigned the green tag to sales last year, after Massachusetts was the sole entry in 2013, Bloomberg data show. The label designates a project as having an environmental benefit, from clean water to energy efficiency.

The European Investment bank issued debt for climate improvement in 2007, and the World Bank followed with a labeled green bond in 2008, according to Climate Bonds Initiative, a nonprofit promoting low-carbon investment.

Massachusetts sold $100 million of bonds with the green label in June 2013 in what it called a first for a U.S. state. Proceeds went toward projects such as flood control and land acquisition, according to offering documents.

Last year's sale will help pay for the New Bedford Marine Commerce Terminal, which will support offshore wind projects. The District of Columbia sold $350 million of green obligations last year to build tunnels about 10 stories deep as part of a project to reduce overflow into rivers and neighborhoods.

Raul Pomares, founder of San-Francisco-based Sonen Capital, said he advises clients, including tax-exempt foundations that typically don't buy munis, that this segment of local-government debt has a role to play.

Local Hero

"They are an attractive contributor from a total financial return perspective, and deliver this clear, meaningful, measurable social, environmental impact," he said.

Ellen Friedman, executive director of the Compton Foundation, a Sonen client, said that the muni tax exemption isn't a priority for the San Francisco-based based organization, started after World War II to promote peace. The securities are, however, because they help communities, she said.

Green-bond sales by municipalities will keep climbing, said Olsen-Rong. Environmentally conscious investors often want to know where proceeds are going, and municipal offering documents provide transparency, she said.

The first-time buyers of Massachusetts bonds show that investment advisers have clients asking for the debt, said Brian Wynne, managing director and co-head of Morgan Stanley's public-finance group in New York.

"If you had an increase in green-bond issuance that would bring in more investors to the market," Wynne said. "And that would provide the potential for green bonds to price at a premium versus non-green bonds."

Demand Check

Demand hasn't reached that level, said Scott McGough, director of fixed income in Philadelphia at Glenmede Trust Co., which manages about $2.7 billion of munis.

John Flahive, Boston-based director of fixed income at BNY Mellon Wealth Management, which oversees about $20 billion in munis, said that while he has more clients who want holdings with a socially responsible slant, he probably would've bought the Massachusetts debt anyway because of its credit quality. The state has an Aa1 grade from Moody's Investors Service and AA+ from Standard & Poor's, one step below the top.

Issuers say the green tag brings attention. The Metropolitan Water Reclamation District of Greater Chicago sold about $225 million of the securities in December, its first such issue, said Mary Ann Boyle, the district's treasurer.

The label helped distinguish the agency's first muni issue in three years, Boyle said.

The district, which oversees wastewater plants, is using proceeds for work including more sewer tunnels and reservoirs to curb overflow. Some money will go toward a system to convert waste into environmentally friendly fertilizer.

"We had much more excitement and much more investor interest related to the green bonds than we've seen in the past," Boyle said.

Bloomberg Muni Credit

By Elizabeth Campbell Jan 25, 2015 5:00 PM PT

To contact the reporter on this story: Elizabeth Campbell in Chicago at ecampbell14@bloomberg.net

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Municipal Bond Sales Poised to Decline as Redemptions Increase.

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 sell $8.76 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.

Pennsylvania plans to sell $1 billion of bonds, Utah Transit Authority has scheduled about $832 million, California's East Bay Municipal Utility District will offer about $510 million and Kentucky will bring $385 million to market.

Municipalities have announced $15.9 billion of redemptions and an additional $12.6 billion of debt matures in the next 30 days, compared with the $27.4 billion total that was scheduled a week ago.

Issuers from Texas have the most debt coming due with $3.16 billion, followed by New York at $1.39 billion and Minnesota with $1.08 billion. New York State Dormitory Authority has the biggest amount of securities maturing, with $394 million.

Market Contraction

The $3.5 trillion municipal market contracted by $4.82 billion last month. Sales of $46.1 billion compared with redemptions and maturing debt that totaled $50.9 billion. Last year, the market shrank by 4 percent. This year, maturities are poised to drop 38 percent from 2014 levels to $176 billion.

Investors added $966 million to mutual funds that target municipal securities in the week ended Jan. 14, compared with $1.33 billion in the previous period and the one-year average of $586 million, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt received $52.3 million of cash, increasing the amount invested in the ETFs by 0.3 percent to $15.6 billion.

State and local debt maturing in 10 years yields about 105 percent of Treasuries, Bloomberg data show. Since 2000, the gap has averaged 93.8 percent.

Bonds of Michigan and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data show. Yields on Michigan's securities narrowed 12 basis points to 2.16 percent while California's declined 8 basis points to 2.09 percent. A basis point is 0.01 percentage point.

Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 52 basis points to 9.24 percent and New Jersey's rose 12 basis points to 2.40 percent.

Bloomberg

By Ken Kohn

Jan 26, 2015 4:57 AM PT

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Volcker Rule Delay Good for U.S. Municipal Bond Market - Moody's.

Jan 26 (Reuters) – The $3.7 trillion U.S. municipal bond market will benefit from a recent delay in implementing part of the Dodd-Frank financial reform law known as the Volcker Rule, Moody's Investors Service said on Monday.

The rule requires banks to unwind the tender option bonds that they, along with closed-end funds, use to finance purchases of municipal bonds. Last month Congress passed legislation giving banks extra time to comply with the rule.

"This delay is credit positive for municipal closed-end funds and the municipal bond market at large," said the rating agency. "The extension will also help prevent a sharp price correction in muni bonds, since trusts can be unwound and underlying assets sold more gradually."

The implementation delay until July 2017 will "postpone the possible liquidation of approximately $90 billion in municipal securities that collateralize roughly $75 billion in existing" tender option bonds, according to the rating agency.

Nonetheless, the Volcker Rule does not allow new tender option bonds to be created and closed-end funds will soon need to find alternatives that comply with the rule's limits. Moody's said the delay will allow a more gradual development of the alternative structures.

(Reporting by Lisa Lambert; editing by Matthew Lewis)

Lockport Made Interest-Saving Deal on Deficit Financing.

LOCKPORT – The city borrowed more than $4.2 million on Dec. 30 to pay off accumulated deficits, but it will have to pay interest on only $3.9 million of the borrowing, Mayor Anne E. McCaffrey said Friday.

The deal involved the payment of a $103,000 premium by Oppenheimer & Co., the underwriter of the city's bond issue, which boosted interest paid to investors while giving the city a bit of a break in interest costs for the 10-year borrowing.

The state Comptroller's Office, which recommended the borrowing in the first place, is allowing Lockport to make an interest-only payment on the bonds in October of this year. That figure will be $156,156, City Treasurer Michael E. White said.

However, in the ensuing nine years, the city will have to pay back principal as well as interest, White said. That will mean an annual expense of more than $550,000 a year that can't be avoided unless the city finds some way to pay off the debt early.

"It's an obligation we're going to have to pay," McCaffrey said.

White said the 10-year total interest cost on the bond issue will be $1,207,406. The total repayment of principal plus interest over the coming decade will be $5,152,406.

A state law allowing Lockport to borrow its way out of the red authorized bonding of as much as $5.35 million, but auditing by the state and the Bonadio Group, an Amherst accounting firm hired by the city, showed the city didn't need that much.

"The actual deficit confirmed by the state Comptroller's Office was $4,216,771," McCaffrey said. But interest is due only on $3,945,000 of the borrowing, she said.

The city's costs of issuing the bonds were tied into the premium paid by Oppenheimer, which specializes in high-risk municipal bonds. White said investors who subsequently buy the bonds from Oppenheimer are buying a "coupon rate" of 5 percent, but because of the premium upfront, the investors will pocket 2.5 percent to 3.7 percent, depending on which year their bonds mature.

After this year's interest-only payment, the city will owe $552,250 in 2016, including $197,250 in interest.

The remaining years' debt service costs are $554,500 in 2017; $555,750 in 2018; $556,000 in 2019; $555,250 in 2020; $553,500 in 2021; $555,750 in 2022; $556,750 in 2023, and $556,500 in 2024.

McCaffrey said it hasn't been determined yet how the repayment costs will be distributed among the city's budgetary funds. The cost in the general fund would affect property taxes, while allocations to the water, sewer and refuse funds would affect user fees in those areas.

White said the amount of interest in those payments falls steadily, while the amount of principal repaid increases through the 10 years.

In October, the city borrowed $4.57 million on a 90-day note to get through the rest of last year, and that money, plus 3.375 percent interest, was to be repaid this month from the cash proceeds of the Dec. 30 bond issue.

By Thomas Prohaska | News Niagara Reporter | @ThomasProhaska |

January 24, 2015 – 10:35 PM

Another Friend of Court Sides with Town over Prism Bonds.

WEST ORANGE, NJ — The second amicus curiae brief submitted in the New Jersey Supreme Court case against West Orange sided with the township just as the first did, with the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys jointly arguing that the administration had followed proper procedure in issuing $6.3 million in municipal bonds to real-estate operator Prism Capital Partners.

The brief, which was filed by the organizations' attorney, Edward Purcell, on Jan. 8, made the case that not only was the township free to pledge the bonds without receiving approval from the Local Finance Board, but that the plaintiffs had acted after the deadline for filing a complaint on the matter in the first place.

For the latter argument, the brief pointed out that local bond law stipulates that no one can take any action denying or questioning the validity of a bond ordinance after 20 days have passed since its publication. Because the five residents did not file suit until May 14, 2012 — 53 days after the ordinance was advertised on March 22, 2012 — the brief argued that they did not meet that statute of limitations. As such, the brief urged the court to dismiss the plaintiffs' case, or else risk losing the credibility of state municipal bonds.

The brief argued that "Every bond issued by a New Jersey municipality would be less marketable," if the plaintiffs were victorious. "And, as a consequence, New Jersey municipal bonds would have to be issued at a higher interest rate, increasing costs to taxpayers and making certain projects unfeasible."

In arguing that the township did not need the LFB's approval in issuing the bonds, the brief presented two cases. The first was that local bond law dictates a municipality only has to seek LFB review if exceeding its debt limit or choosing to deduct debt from its debt limit in granting a bond. The brief argued West Orange did neither in pledging the $6.3 million to Prism, therefore there was no need for it to obtain permission from the LFB.

The brief's second case, also a point made in the amicus brief submitted by acting Attorney General John Hoffman, dealt with the interpretation of an unclear passage of the law. Specifically, the section's language leaves room for debate as to whether bonds can only be pledged after receiving approval from the LFB. It begins with the statement that bonds may be issued and sold in a number of ways, which it then lists, and ends with the phrase "upon application to and prior approval of the Local Finance Board in the Department of Community Affairs."

Like the acting Attorney General's Office, the League of Municipalities and the Institute of Local

Government Attorneys cited grammatical legal precedent to argue that the wording did not refer to all of the ways listed, which would have meant that every bond would require permission from the LFB. Instead, the brief made the case that only the third way listed — selling bonds at a public sale at less than par and at a private sale at par or less than par — mandates LFB approval.

In fact, the brief took it a step further, arguing that requiring LFB approval for bond sales above par is just not necessary from a policy perspective.

“LFB oversight is only needed where bondholders appear to be receiving benefit to the detriment of taxpayers,” the brief said. “It simply doesn’t make policy sense to require LFB approval for the sale of bonds above par.”

The brief went on to argue against the plaintiffs’ assertion that West Orange “intentionally attempted to masquerade the issuance of ordinary General Obligation Bonds as Redevelopment Bonds” in order to avoid being subject to a referendum. The fact that the township issued GO bonds is really “immaterial,” according to the brief, since what legally determines whether it should be subject to referendum is the law under which the bonds were enacted. And, since the administration enacted the bonds under the Local opment and Housing Law, voters did not have the ability to disapprove the ordinance by referendum.

With both amicus briefs coming down in its favor, the township has confidence in its chances going forward in the suit. Indeed, Mayor Robert Parisi previously told the West Orange Chronicle that he is optimistic.

“The court is being diligent in its review of this matter, but the township remains confident that the court will ultimately rule in our favor,” Parisi said. “We are anxious to have this matter resolved.”

But the five plaintiffs in the case are far from giving up hope. Windale Simpson, a plaintiff and the spokesman for the group, previously told the Chronicle that he still did not expect to lose the lawsuit even after reading the attorney’s general’s brief. And he feels the same way about the second amicus brief.

“We were not surprised by the League of Municipalities brief,” Simpson said in a Jan. 20 email. “At the onset we expected that it would be up to the high court to clarify the dangerous confusion that exists around the ambiguous redevelopment law.”

According to the Supreme Court Clerk’s Office, a new date for oral arguments has not yet been set. The original Nov. 10 date was postponed after the court requested the amicus briefs.

Essex News Daily

By: Sean Quinn – Staff Writer

January 26, 2015

Pennsylvania Tops Next Week's U.S. Municipal Bond Sales.

Jan 23 (Reuters) – A $1 billion general obligation deal from Pennsylvania tops next week’s $6.7 billion calendar of U.S. municipal bond and note sales, a total that is down slightly from roughly $8 billion this week.

Pennsylvania's $1 billion competitive offering, on Tuesday, is the first big debt sale since the state's new Democratic governor, Tom Wolf, took office this week.

Some question whether Wolf, a Democrat, and the Republican-led legislature will be able to work together to address the state's problems. These include an underfunded public pension system, revenue strain and a stressed education system.

Next week's biggest negotiated deal is from the Utah Transit Authority, which plans to sell $831.6 million of sales tax revenue refunding bonds through lead manager Morgan Stanley.

(Reporting by Hilary Russ; Editing by David Gregorio)

FASB Refines Proposed Disclosure Rules for Lessee Accounting: Tax Analysts

The Financial Accounting Standards Board on January 21 considered changes to a package of proposed disclosure requirements for lessee accounting in an effort to provide adequate leasing information to financial statement users without imposing undue costs on public and nonpublic business entities.

Continue reading. (Subscription required)

IRS Addresses Timeliness of Refundable Bond Credit Claims: Tax Analysts

In partially redacted program manager technical assistance, the IRS concluded that because Forms 8038-CP can function as both a return and refund claim, an initial Form 8038-CP filed more than three years after the date of a bond interest payment date may be timely for purposes of section 6511(a), but the amount of the credit or refund will be limited under section 6511(b)(2)(A).

Continue reading. (Subscription Required)

IRS Anticipates Issuing Proposed Regs on Governmental Plans: Tax Analysts

The IRS announced (Notice 2015-7) that it intends to issue proposed regulations that would permit a state or local retirement system that is a governmental plan within the meaning of section 414(d) to cover public charter school employees if specified requirements are satisfied.

Continue reading. (Subscription Required)

JANUARY 23, 2015

MSRB to Discuss MA Exams, Gift Restrictions, Principal Transaction

Disclosure.

WASHINGTON — The Municipal Securities Rulemaking Board, at its quarterly meeting in Alexandria, Va., next week, will discuss municipal advisor qualification examinations, as well as comments on proposals that would restrict MA gift giving and require dealers to disclose reference prices to customers.

The MSRB announced its discussion topics for the Jan. 28-30 meeting on Thursday. The meeting will be the second of the MSRB's Oct. 1- Sept. 30 fiscal year, but the first of the new calendar year. The board is in the process of completing several muni advisor rules stemming from the final Securities and Exchange Commission MA registration rule, which took full effect last July. The board is also pursuing several price transparency initiatives.

The MSRB has already asked for the SEC to approve setting baseline qualifications for muni advisors, including requiring them to take and pass one-time exams. The Securities Industry and Financial Markets Association has said that a new exam is unnecessary for professionals who have already passed the necessary tests to become dealer representatives. The Investment Company Institute has said that there should be MA exams tailored to specific types of advisory work. The MSRB is working on a pilot exam that it expects to unveil this year.

The MSRB proposal to extend its Rule G-20 on gift and gratuities to also cover MAs was released in October. The rule currently prohibits a dealer from giving directly or indirectly any thing or service of value, including gratuities, in excess of $100 per year to a person if that gift is related to the muni securities activities of the employer of the recipient.

While most market participants have voiced support to extend the regulation to MAs, dealers and MAs have suggested that the board use the opportunity to make changes to the rule. Dealers told the MSRB the rule should allow dealer firms to use bond proceeds to reimburse themselves for business costs as long as the issuer agrees. Public Financial Management, a large MA firm, said the rule should be amended to explicitly restrict gifts to elected officials.

The comment period just closed on the MSRB's proposal to require dealers acting as principals to disclose to customers on their confirmations a "reference price" of the same security traded that same day. Dealer groups want the proposal withdrawn, but the SEC's Investor Advocate supports it.

THE BOND BUYER

BY KYLE GLAZIER

JAN 22, 2015 12:24pm ET

Paul to Offer Bill to Fund Highways Through Repatriation.

DALLAS — Sen. Rand Paul, R-Ky., is expected to soon propose legislation that would shore up the structurally insolvent Highway Trust Fund with revenue from a tax cut on foreign corporate earnings.

Paul told a Ripon Society gathering on Wednesday that he and Sen. Barbara Boxer, D-Calif., are close to an agreement on a measure that would dedicate collections from the tax reform plan to the HTF, which supports federal grants to states for highway and transit projects.

Paul's staff declined to provide specifics of the new legislation being developed.

Boxer was the chairwoman of the Senate Environment and Public Works Committee last year when it passed a $242 billion, six-year transportation measure.

With the post-election shift in leadership of the Senate, she is now the ranking Democrat on the committee, which is chaired by Sen. James Inhofe, R-Okla.

Boxer announced earlier this month that she will not seek re-election in 2016.

The Senate committee will consider a variety of transportation funding options, including corporate tax reform, more public-private partnerships, and an increase in the federal gasoline tax, when it begins work on a five-year funding bill, Inhofe said this week.

Last year, Paul proposed a repatriation plan with a tax holiday that he said could bring in up to $16 billion in new money.

The Paul proposal would have allowed U.S. based corporations to bring back foreign subsidy earnings at a 10% rate for two to three years to avoid the current 35% tax rate.

Paul said he would have preferred a reduction to 5% but the lower rate was not politically possible.

The 2014 repatriation plan was endorsed by then-Senate Minority Leader Mitch McConnell, R-Ky., and Senate Majority Leader Harry Reid, D-Nev., before they swapped those posts in the new Congress.

Paul said that much of the opposition to repatriations in the Congress is coming from the Republicans, who want a more comprehensive tax-reform program.

Repatriation of foreign corporate tax earnings is a popular transportation funding source being discussed in Congress, House Transportation and Infrastructure Committee, chairman Rep. Bill Shuster, R-Pa., said on Thursday at the U.S. Conference of Mayors' Winter Meeting.

The panel is working with the Ways and Means Committee to find a funding solution for a five-to-s-x-year transportation bill, according to Shuster.

An increase in the federal gasoline tax to bolster the HTF is unlikely, he said.

"I just don't believe votes are there in Congress at this point to do that," Shuster said.

The $302 billion, four-year transportation funding proposal that President Obama made last year relied on $150 billion of revenue from corporate-tax repatriations.

A similar plan was proposed by former Rep. Dave Camp, R-Mich., in 2014. It would have taxed all repatriated income at a reduced rate and would have generated $170 billion over 10 years for transportation funding.

The Joint Committee on Taxation said last year that reviving a 5.25% corporate tax holiday from 2004 could generate an additional $20 billion in the first two years but would result in an overall 20-year revenue loss of $96 billion.

Tax holidays provide an incentive for corporations to bring profits back into the United States for a short period, but that's usually money that would be have come back anyway over the longer term, said Marc Goldwein, senior policy director at the Center for a Responsible Federal Budget.

U.S. multinational companies can defer taxes on non-financial income earned overseas until they bring the money back at the 35% corporate rate, Goldwein explained. American companies hold about $2 trillion in cash overseas, he noted.

“The real question about the repatriation plan is, will it be a one-time holiday or a transition to a U.S.-based tax like the Camp plan?” Goldwein said.

“The tax holiday is a terrible idea. A transition plan wouldn’t be the best idea, but it is better than the alternative.”

THE BOND BUYER

BY JIM WATTS

JAN 22, 2015 2:47pm ET

Muni Groups: SEC Disclosure Rule Outdated, Needs Overhauling.

WASHINGTON — The Securities and Exchange Commission’s Rule 15c2-12 on muni disclosure is outdated and could be overhauled to reduce the regulatory burden for issuers and underwriters, bond lawyers and underwriters told the SEC.

Muni groups sent letters to the SEC in response to its Nov. 18 call for comments on the rule, which requires underwriters to review issuers’ official statements and reasonably determine that the issuer has contracted to disclose annual financial and operating information, as well as material event notices, on the Municipal Securities Rulemaking Board’s EMMA website. The call for comments was required by a federal law aimed at reducing regulatory paperwork.

National Association of Bond Lawyers president Antonio Martini, a partner at Locke Lord Edwards in Boston, told the SEC that its rule hails from a time before Internet dissemination of financial information, meaning that it may not be providing any necessary investor protection in many cases.

“NABL believes that collection of information under Rule 15c2-12 is not necessary for, but generally does enhance, the proper performance of the functions of the SEC in regulating the municipal securities market,” Martini wrote. “However, Rule 15c2-12 was adopted (and amended to require continuing disclosure) before the widespread adoption of the Internet as a means of exchanging information permitted issuers of municipal securities to quickly and efficiently provide pertinent updates to holders of those securities. Many issuers today maintain publicly accessible websites on which they include information of the type that is required to be provided to the MSRB pursuant to the contractual filing requirements mandated by Rule 15c2-12, and their information can easily be located by using Google or another readily available search engine.”

Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at The Securities Industry and Financial Markets Association, wrote that the SEC could take several approaches to ease the regulatory burden of the rule.

“SIFMA feels that automated collection techniques or other forms of information technology can be used to reduce the burden on filers and increase the certainty that filings are made,” Norwood told the commission. “For instance, the SEC should explore the possibility of whether bond insurers should be indirectly or contractually required to report rating changes on all bonds they insure to

EMMA. Also, EMMA currently collects and disseminates rating changes from the majority of rating agencies. The SEC also should explore the possibility of whether all rating agencies should be required to report all rating changes on all municipal bonds they rate to EMMA."

Moody's Investors Service is the lone holdout that is not streaming its ratings to EMMA, and was rebuked by the Government Finance Officers Association last week for its inaction. Moody's maintains that its ratings are available for free on its website.

Some specific filing requirements could be changed to improve the rule, wrote Bond Dealers of America chief executive officer Mike Nicholas. For example, 15c2-12 requires certain event notices to be posted to EMMA within 10 days of the event, even though the person responsible for posting the notices might have no way of knowing about it for days or even weeks, he told the SEC. Instead, it should be 10 days after the appropriate person becomes aware of the event, Nicholas argued.

The rule should not designate rating changes as material events that have to be reported to EMMA, and audited financial statements should only be required to be disclosed annually if they were included in the final official statement of the bonds, he wrote.

The MSRB released its own comment letter, calling for the SEC to undertake a comprehensive review of the rule. Most groups agreed that the commission's estimates of the time required to comply with the rule are low. Issuers require about 45 minutes to prepare and submit material event notices to the MSRB, the SEC estimated. Dustin McDonald, director of the GFOA's Federal Liaison Center, said issuer officials reported times ranging up to 4 hours.

The SEC has said it invites comments on 15c2-12 or any of its rules at any time.

THE BOND BUYER

BY KYLE GLAZIER

JAN 22, 2015 3:18pm ET

NABL Comments on Notice 2014-67.

NABL has submitted comments to the Internal Revenue Service ("IRS") in response to Notice 2014-67 regarding the interim guidance provided for the participation by governmental persons or 501(c)(3) organizations in accountable care organizations ("ACOs") under the Medicare Shared Savings Program of the Patient Protection and Affordable Care Act and regarding the amplification of the private business use safe harbors in Revenue Procedure 97-13.

Regarding ACOs, NABL asked that the IRS and Treasury Department confirm that (1) the six-prong standard described in section 3.01 of Notice 2014-67 (the "ACO Safe Harbor") is in fact a safe harbor for purposes of determining whether participation in an ACO results in private business use; and (2) the ACO Safe Harbor does not displace the general facts and circumstances approach set forth in the Code and Treasury Regulations or other existing guidance, such as Revenue Procedure 97-13, for purposes of determining whether an arrangement gives rise to private business use. NABL requested that further clarification be included in subsequent guidance with respect to several of the specific ACO Safe Harbor requirements.

Regarding Revenue Procedure 97-13, NABL suggested amendments to clarify the application of the

Management Contract Safe Harbor, including a definition of the term “stated amount” and an extension of the management contract safe harbor to apply to incentive payments based on maximizing revenue or minimizing expense.

The comments were prepared by an ad hoc task force (listed in Exhibit A of the document) and approved by the NABL Board of Directors. The comments on Notice 2014-67 can be seen here.

FERC Declares the City Of Boulder Must Seek FERC Approval in Order to Condemn Xcel Transmission Facilities.

On December 18, 2014, FERC granted a Petition for Declaratory Order filed by the Public Service Company of Colorado (“PSCo”) which requested certain clarifications regarding the application of FERC’s prior approval jurisdiction under section 203 of the Federal Power Act (“FPA”) in the context of the assertion of eminent domain by a political subdivision of a state over the transmission assets of a public utility. In granting the Petition, FERC clarified that transfers by condemnation, regardless of the fact that they are involuntary, are appropriately within the domain of FERC’s 203 prior approval authority.

Currently, PSCo serves the City of Boulder, Colorado (“Boulder”) under the Xcel Energy Operating Companies (“Xcel”) Open Access Transmission Tariff. In 2011, voters in Boulder approved two separate measures relating to the creation of a municipal electric utility with the goal of eventually separating the portion of the distribution system that serves Boulder from Xcel’s larger system. Xcel has refused to sell the assets used to serve Boulder, and to proceed without Xcel’s consent, Boulder will have to condemn the assets through a public domain process. See Nov. 7, 2011 edition of the WER. According to the pleadings, Boulder has maintained that as a political subdivision of the state, it was not included in the definition of a public utility as set out in FPA section 203, and was therefore exempt from seeking FERC approval to consummate the condemnation of Xcel’s transmission facilities. Further, Boulder argued that a taking of facilities through eminent domain does not qualify as a disposition of the facilities as set out in the language of FPA section 203.

FERC disagreed with Boulder’s arguments, explaining that “[i]t is well established that voluntary transfers of jurisdictional facilities to non-jurisdictional entities require Commission approval under section 203, and there is no basis for finding that the involuntary nature of a transfer distinguishes it from this precedent and permits a jurisdictional void.” FERC further explained that, under FPA section 203, FERC in its determination of whether the transfer is in the public interest will continue to consider both its traditional criteria as well as any other factors it deems necessary, as transfers by condemnation are no different from other types of transfers. FERC reiterated that its own exercise of its authority under FPA section 203 would not diminish the authority of the Public Utilities Commission of the State of Colorado to also regulate the transfer of any facilities that are subject to its jurisdiction.

In issuing the decision, FERC explicitly made no determinations regarding whether the transfer of Xcel’s assets to Boulder by condemnation would be consistent with the public interest for purposes of section 203.

To view the order, click here.

Last Updated: January 21 2015

Article by Troutman Sanders LLP

MSRB Urges SEC to Revisit its Municipal Market Disclosure Rule.

The Municipal Securities Rulemaking Board (MSRB) today urged the Securities and Exchange Commission (SEC) to conduct an extensive review of the disclosure requirements in the municipal securities market outlined in SEC Rule 15c2-12. The MSRB pledged its support for a thorough review of the rule in a letter submitted to the SEC in response to a request for comment on the collection of information under the rule mandated by the Paperwork Reduction Act.

Read the MSRB's letter to the SEC.

View the full press release.

MSRB Board of Directors Meeting Discussion Items.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet January 28-30, 2015 where it will discuss the following rulemaking topics:

Professional Qualification of Municipal Advisors

The Board will review a draft content outline for the municipal advisor representative exam.

Gift-Giving by Municipal Advisors

The Board will discuss comment letters received on draft amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, to extend its provisions to municipal advisors.

Pricing Reference Information

The Board will discuss comment letters received on its proposal to require dealers to provide pricing reference information on retail customer confirmations.

Lew: Agreement on Business Tax Reform Possible.

WASHINGTON — Treasury Secretary Jack Lew said Wednesday that congressional Republicans and the Obama administration are too far apart on individual tax reform but could reach an agreement on business tax reform.

The chances of getting business tax reform done by the end of Barack Obama's presidency are "better than 50-50," Lew said at the Brookings Institution.

Lew seemed to discount the possibility of individual tax reform after Senate Finance Committee leaders began pushing for comprehensive tax reform. Finance Committee chairman Orrin Hatch, R-Utah, and ranking minority member Ron Wyden, D-Ore., set up working groups, including one on

community development and infrastructure, in order to boost comprehensive tax reform efforts. Hatch said Tuesday that he wants working groups' efforts to lead to tax reform legislation that will be introduced and voted on in the committee later this year.

But Lew said that the administration and congressional Republicans disagree substantially about individual tax reform. Congressional Republicans want to lower the top individual rate, which Lew doesn't think is the best idea. "I don't think lowering the top individual rate is the way to grow our economy or create a better future for middle-class workers or for the country at large," he said.

However, there are tax changes for businesses that both the administration and congressional Republicans can support, Lew said. He added that he's remained in close contact with the chairmen and ranking minority members of the tax-writing committees and is encouraged that there's interest in having bipartisan discussion on business tax reform.

"I'm optimistic that we can reach an agreement here. I really am. I think there's goodwill on both sides to pursue the conversation," Lew said, though he noted doing business tax reform will be challenging.

The Obama administration wants to do business tax reform that makes changes that help small businesses as well as corporations, Lew said.

The Treasury Secretary spoke about business tax reform the day after President Obama gave his State of the Union address. Both Lew and Obama said that revenues from business tax reform should be used for infrastructure.

Lew said, "Rebuilding America's core infrastructure will have the long-term benefit of making America a more attractive place to invest and do business so that our economy is stronger not just today but for the future." He noted that the tax reform plan put out by former House Ways and Means Committee Chairman Dave Camp also would use temporary revenue created by tax reform for infrastructure.

Lew also criticized the new House rule that will require the Joint Committee on Taxation and the Congressional Budget Office to do "dynamic scoring" for some legislation. Dynamic scoring is when the macroeconomic activity that would or wouldn't occur if legislation went into effect is taken into consideration for revenue estimates.

"We think [the House rule] is unwise given the uncertainty involved in dynamic scoring, the assumptions that have to be made, and the unequal treatment of tax cuts versus pro-growth investments funded through annual appropriations," Lew said. It is very dangerous to use scoring methods that may exaggerate savings and underestimate costs, he said.

Lew praised the bipartisan budget agreement reached in December 2013 that "created a framework that showed we can work through the differences to find a path forward."

The House and the Senate appropriations committees implemented the agreement, which set the discretionary spending levels for fiscal 2014 and 2015, with the spending bill that passed last month. That bill didn't make either Democrats or Republicans completely happy, but it was a compromise that funded government programs through the end of the fiscal year, Lew said.

"Looking ahead, we can build on this momentum and pass bipartisan business tax reform so that our economy is one where innovation and ingenuity thrive, where hard work and determination pay off, and where the opportunity to succeed is available to everyone," he said.

The budget agreement left in place the discretionary spending caps for fiscal 2016 and later that were set by the 2011 Budget Control Act. Lew said he doesn't like the levels of the caps, and that conversations about spending above the levels of the caps will have to include discussions about how to pay for that spending.

THE BOND BUYER

BY NAOMI JAGODA

JAN 21, 2015 3:06pm ET

Obama Avoids Transportation Funding Details, QPIBs In SOTU.

DALLAS — President Obama called on Congress for bipartisan support for a multiyear transportation funding bill in Tuesday's State of the Union address without providing specifics on how to fill a $15 billion per year pothole in the Highway Trust Fund.

Obama said the Republican majority in Congress should be focused on infrastructure projects that boost the economy rather than push for construction of the Keystone XL crude oil pipeline, which he said would create few permanent jobs.

"Twenty-first century businesses need 21st century infrastructure — modern ports, stronger bridges, faster trains and the fastest Internet," he said. "Democrats and Republicans used to agree on this. So let's set our sights higher than a single oil pipeline.

"Let's pass a bipartisan infrastructure plan that could create more than 30 times as many jobs per year, and make this country stronger for decades to come," Obama said.

Obama did not mention the qualified public infrastructure bonds he unveiled last week designed to benefit public-private infrastructure partnerships nor did he respond to suggestions from members of Congress and others that it might be time as oil prices fall to raise the federal gasoline tax.

The sole infrastructure funding source the president cited in the speech was revenue realized through corporate tax reform, which would provide half of the spending in the administration's Grow America Act. The four-year, $302 billion transportation bill he proposed last year included $150 billion from revisions to the tax code on U.S. corporations' overseas earnings.

Agreeing on the need for more infrastructure spending is easy but finding the funding for it is hard, Obama said. "Where we too often run onto the rocks is how to pay for these investments," he said.

"Let's close loopholes so we stop rewarding companies that keep profits abroad, and reward those that invest in America," Obama said. "Let's use those savings to rebuild our infrastructure and make it more attractive for companies to bring jobs home."

Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee, said the committee will seek bipartisan agreement on highway funding in 2015 as it did last year in passing the Water Resources Reform and Development Act and establishing its P3 panel.

"While I'm willing to work with President Obama on finding a way to fix our nation's infrastructure, having to choose between infrastructure or the job-creating Keystone pipeline is a shell game that

costs the American people further energy independence and job creation," Shuster said.

The funding needs highlight the importance of expanding tax-exempt financing options for state and local governments, said Steve Benjamin, mayor of Columbia, S.C., and head of the executive committee at the Municipal Bonds for America Coalition.

"Tax-exempt bonds have promoted job creation and economic growth through helping to generate investments in infrastructure, transportation, and other projects benefiting local communities for 100 years," he said.

SIFMA president Kenneth Bentsen Jr. said the administration's QPIB proposal is a viable vehicle for capital creation in the pursuit of infrastructure projects. "However, this program alone is not enough," Bentsen said.

Proposals to remove or restrict the tax exemption of municipal bonds would put important projects on hold and stifle local job creation, he said.

The president and lawmakers alike have said transportation is a bipartisan issue and a top priority for 2015, noted Pete Ruane, president of the American Road & Transportation Builders Association.

"It leads us to wonder, 'What are you waiting for?' " Ruane said.

A funding solution will require something more than the usual "short-term gimmicks and temporary patches of the Highway Trust Fund," Ruane said.

There's no time to wait on road repairs, said Ray LaHood, Obama's first Transportation Secretary and a former Republican congressman from Illinois.

"America is one big pothole and we're facing substandard roads and bridges that are structurally deficient from coast to coast," said LaHood, currently vice chairman of transportation advocacy group Building America's Future. "This country is facing an infrastructure crisis and we need to take action immediately."

THE BOND BUYER

BY JIM WATTS

JAN 21, 2015 2:08pm ET

Dealers to MSRB: Withdraw Principal Trade Disclosure Proposal.

WASHINGTON – Dealers want the Municipal Securities Rulemaking Board to withdraw a proposed rule that would require them, when acting as principals, to disclose to customers on their confirmations a "reference price" of the same security traded that same day. The dealers are urging enhancements to existing transparency systems as an alternative to the proposed rule.

They made their comments, as did investors and the Securities and Exchange Commission, in responses to the MSRB's request for comment on its draft amendments to Rule G-15 on confirmation.

The MSRB proposed the rule in November. It would apply to principal transactions of less than

$100,000 or those with 100 bonds or fewer, in an effort to attempt to address concerns about hidden markups in so-called “riskless principal transactions.” The Financial Industry Regulatory Association released a very similar proposal simultaneously that would apply to corporate bonds.

David Cohen, managing director and associate general counsel at the Securities Industry and Financial Markets Association, told the MSRB that SIFMA supports the goals of the rule but not this approach to reaching those goals.

“Unfortunately, the proposals fail to leverage the very tools that have led to unprecedented improvement in fixed income price transparency: the price dissemination systems operated by FINRA and the MSRB,” Cohen wrote.

In a brief interview, Cohen told The Bond Buyer that EMMA is a far more meaningful way of informing retail investors about market prices, and that enhancements to the system and further investor education could be part of a better approach. Dealer firms have put too much money into transparency systems through fees paid to the MSRB and FINRA to not utilize them to the fullest, Cohen argued.

“Dealers have invested tens of millions of dollars to fund TRACE and EMMA,” he said. TRACE is FINRA’s transparency system for corporate bonds.

Mike Nicholas, chief executive officer of the Bond Dealers of America, warned that investors could be confused by reference prices on their confirmations. A reference price would not provide an accurate picture of the market conditions, Nicholas wrote.

He urged the MSRB to conduct a thorough study on the burden dealers would bear in altering their trading systems to accommodate the proposed rule, and suggested allowing dealers to use a disclosure methodology of their choice subject to a baseline requirement. The rule should not apply to institutional investors or primary offerings, he added.

Several retail investors also submitted letters. Karin Tex, a California retiree, told the MSRB she has invested in munis and is shocked that transparency is so limited given the available technology. “Disclosure of a municipal bond commission or markup to the general public should be mandatory,” she wrote.

An anonymous investor said dealers should be required to discuss with investors how the firm arrived at the price for a bond, and should know just before a trade what the most recent price for that bond was. Otherwise, the proposal does not go far enough, the investor said.

“Greater transparency should be made available to the customer at the point of purchase/sale, not after the fact,” the investor wrote.

Rick Fleming, the SEC’s Investor Advocate, said his office supports the MSRB proposal.

“By requiring firms to disclose the price to the dealer in a reference transaction and the differential between the price to the customer and the price to the dealer, customers in retail-size trades will be better equipped to evaluate the transaction costs and the quality of service provided to them by dealers,” Fleming wrote.

The MSRB would need SEC approval before the proposal could take effect, and the SEC will likely solicit its own requests for commentary after it receives a request to approve the amendments to G-15.

THE BOND BUYER

BY KYLE GLAZIER

JAN 21, 2015 12:40pm ET

The Bond Buyer's Texas Public Finance Conference.

The Bond Buyer's Texas Public Finance Conference features more than a dozen in-depth sessions focused on the issues facing the Lone Star State in 2015 and beyond. Each presentation was carefully designed to reflect the pressing issues of the day.

February 9-11, 2015 | Omni Barton Creek Resort & Spa | Austin, TX

This is your opportunity to download the brochure and preview the topics that will be covered at the event. Register today at our discount rates!

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Issuers pay only $245, Institutional Investors $495 and All Other Professionals $1,095. For more information, or to register, please contact Austin Hart at (212) 803-8388.

S&P: Why Downgrades Will Outpace Upgrades in the U.S. Not-For-Profit Higher Education Sector.

In this CreditMatters TV segment, Standard & Poor's Senior Director Jessica Matsumori explains why our outlook on the U.S. not-for-profit education sector will remain negative over the next few years.

Watch.

Jan 20, 2015

Hatch: Tax Reform Top Priority, Legislation This Year.

WASHINGTON – Senate Finance Committee chairman Orrin Hatch said tax reform is his top priority and that he is aiming for bipartisan tax-reform legislation to be introduced and voted on by the committee later this year.

Meanwhile, the National Association of State Treasurers sent a letter to Hatch, R-Utah, and other leaders of the tax writing committees Tuesday urging them to preserve the tax-exemption for

municipal bonds.

Speaking at the U.S. Chamber of Commerce on Tuesday, Hatch said, “I don’t want just to release a framework or a proposal that doesn’t go anywhere. My only goal when it comes to tax reform is to make new law.”

Hatch and the top Democrat on the finance committee, Ron Wyden from Oregon, have set up five working groups on the topic, including one on community development and infrastructure.

“My hope is that the committee members in these five bipartisan working groups will use this opportunity to uncover real tax reform solutions and give us real ideas that will aid us through tax reform,” Hatch said.

Addressing those who are skeptical of the intentions of the working group process, Hatch said, “This is not theater, nor is it just for show. This is a very real undertaking.” The groups’ endeavors should lead to the introduction of tax-reform legislation later this year, he said.

Some members of Congress have suggested using budget reconciliation to pass tax reform. Hatch said that he would prefer for items that fall under his committee’s jurisdiction to be done in a bipartisan manner, but that budget reconciliation should not be taken off the table.

He also said that Congress will need to find a way to fund a highway bill, since the current funding expires at the end of May. A gas tax increase is “very unlikely” but Congress can find other solutions, whether highway funding is addressed in a standalone bill or as part of tax reform, he said.

NAST urged the tax-writing committees not to view the new type of bond Obama proposed Friday to help facilitate public-private partnerships for infrastructure as a substitute for traditional tax-exempt bonds. The bonds, called qualified public infrastructure bonds, would have features of governmental and private-activity bonds.

NAST told the lawmakers that while QPIBs “may increase infrastructure investment by permitting public private partnerships to tap into previously unavailable funding sources,” they would not be “a panacea.”

“Tax-exempt municipal bonds remain critical for the financing and construction of schools and other basic infrastructure needs,” said the letter, which was signed by NAST President and Tennessee Treasurer David Lillard and NAST Senior Vice President and Washington Treasurer James McIntire.

Curbing or eliminating the muni exemption would increase state and local governments’ borrowing costs and lead to fewer infrastructure projects and jobs. It’s important for states and localities to be able to save money by using the tax-exempt market since they have constrained budgets, NAST said.

And while states and localities could ask the federal government for more subsidies, “rather than having Congress dictate which projects get built, it’s far more efficient to have state and local governments set their own priorities and shoulder the bulk of the cost of their investments,” the group said.

In addition to talking about tax reform and highway funding, Hatch talked about other items on the finance committee’s agenda.

Congress will also need to address the debt ceiling this year, likely around the middle of the year, Hatch said. The current suspension of the debt limit expires in March. Hatch said it’s uncertain how

the next debt limit extension will be done, but the finance committee will be involved.

In the last Congress, Hatch introduced a pension reform bill called the Secure Annuities for Employee (SAFE) Retirement Act. He said he wants Congress to enact the legislation.

The bill would allow state and local governments to invest in annuity contracts with private life insurance companies for employee retirement benefits. Hatch said that poorly-funded state and local defined benefit pension plans are "bankrupting" governments. He pointed to Illinois as an example.

Also during the last Congress, Hatch worked with Sen. Michael Bennet, D-Colo., to introduce legislation to promote "social impact bonds," or public-private partnerships to promote social interventions. "This approach to social service delivery could offer states and the federal government a viable pathway to innovate with promising strategies to achieve positive results and save taxpayer dollars," he said.

THE BOND BUYER

BY NAOMI JAGODA

JAN 20, 2015 11:47am ET

MSRB to SEC: Do Comprehensive Review of Rule 15c2-12.

WASHINGTON – The Municipal Securities Rulemaking Board is urging the Securities and Exchange Commission to conduct a comprehensive review of its Rule 15c2-12 on muni disclosure, and to consider requiring the disclosure of debt-like arrangements such as bank loans, swap transactions, guarantees and lease financing arrangements.

The MSRB made the request in a letter sent to the commission on Tuesday in response to its request in November for comment mandated by the Paperwork Reduction Act of 1995.

The SEC has received wide-ranging comments on the rule, but lawyers with the Office of Municipal Securities said last month that its staff is only able to respond to comments under the PRA with respect to the amount of time and resources spent providing required information to the SEC.

Rule 15c2-12 requires dealers to review issuers' official statements in primary offerings and reasonably determine that the issuers have contracted in writing to disclose annual financial and operating information, as well as material event notices.

"The MSRB recognizes that the SEC is fulfilling its duty to regularly review the volume of regulatory paperwork involved in complying with its rules," said MSRB executive director Lynnette Kelly. "However we are taking this opportunity to encourage more extensive dialogue about the federal disclosure framework by urging the SEC to conduct a wholesale re-examination of the rule and consider potential changes to improve its operation and reflect current market practices."

The rule's primary disclosure requirements were adopted in 1989. Its secondary market requirements were approved in 1994 and the rule last amended in 2010.

The MSRB has been encouraging issuers to disclose their bank loan debt since 2012, and the board told the SEC that the increasing popularity of bank loans warrant a good look at the current

disclosure regime.

“The MSRB is concerned that bank loans or other debt-like obligations such as swap transactions, guarantees and lease financing arrangements, that create significant obligations and which similarly do not get reported, could impair the rights of existing bondholders, including the seniority status of such bondholders, or impact the credit or liquidity profile of an issuer,” said the letter, signed by chair Kym Arnone, managing director and head of municipal securitization initiatives at Barclays.

“Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported,” said the MSRB’s letter. “The MSRB believes that the availability of timely disclosure of additional debt in any form and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market.”

The board said the SEC could take various measures to enhance the quality of disclosure, even looking at corporate “Form 8-K, as precedent for events that might be appropriate to include for continuing disclosure by municipal issuers as additional material events.”

The MSRB also told the SEC that the commission’s estimates for the disclosure costs to MSRB are understated. The MSRB’s costs have grown with increased EMMA use in the wake of actions by the SEC, Arnone told the board, including the issuance of a March 2012 risk alert warning issuers and underwriters about potential violations of the rule and the recent Municipalities Continuing Disclosure Cooperation Initiative. The MCDC allowed issuers and underwriters to self-report instances in which they sold bonds with offering documents containing false claims that they were in compliance with disclosure requirements.

The MCDC showed a lot of issuers were not meeting their self-imposed deadlines for disclosing annual financial and operating information.

The SEC had estimated the MSRB would require 9,360 hours each year for work related to 15c2-12, but last fiscal year, which was from Sept. 30, 2013 to Oct. 1, 2014 the board required 12,699 hours and at least $10,000 in hardware and software costs for that job, the letter said.

THE BOND BUYER

BY KYLE GLAZIER

JAN 20, 2015 5:28pm ET

NABL: Donations Accepted for Ballard Scholarship Fund.

The National Association of Bond Lawyers has renamed its existing Fundamentals of Municipal Bond Law Seminar scholarship program to honor longtime NABL member Frederic L. “Rick” Ballard, Jr. who passed away in 2014. NABL’s decision to bestow this honor on Mr. Ballard stemmed from his longstanding commitment to educating young bond attorneys. As Mr. Ballard’s contributions to NABL touched so many of its members, NABL is confident that the Frederic L. Ballard, Jr. Memorial Scholarship Program will become part of his enduring legacy.

In recognition of the newly named program, the law firm of Ballard Spahr LLP made a generous donation in his memory to the Scholarship fund. That donation was followed by another generous

donation from the American College of Bond Counsel. NABL invites all of its members to support the continued funding of the Frederick L. Ballard, Jr. Memorial Scholarship Program. Contributions should be made to NABL's affiliated 501(c)(3) nonprofit corporation, the Robert H. Hilderbrand, Jr. Fund, which will oversee and administer the scholarships with assistance from NABL's Education and Member Services Committee. NABL encourages each of its members to consider enhancing NABL's educational outreach with a gift to the Hilderbrand Fund to be dedicated to the Frederic L. Ballard Jr. Memorial Scholarship Program.

Current NABL President Tony Martini remarked, "Rick Ballard was a giant in the municipal bond world. He was known in the industry as a highly skilled attorney who generously shared his time and knowledge of municipal bond law with all, especially new associates. The NABL Board of Directors felt that renaming our annual Fundamentals scholarship program in his honor would be a fitting and lasting tribute to his legacy, recognizing not only his many contributions to NABL, but to the industry as a whole."

The scholarship program began with the 2012 Fundamentals Seminar, for which NABL's Education and Member Services Committee selected five law students from a pool of nearly twenty applicants to attend the Fundamentals Seminar at no cost. In three years, the scholarship program has given fifteen law students/clerks early exposure to public finance not available in most law schools. Several of the scholarship recipients have started their legal careers practicing bond law, and some of the earliest recipients have already returned to the Fundamentals Seminar as NABL members.

NABL Board member Teri Guarnaccia, a partner at Ballard Spahr LLP and the Chair of the 2014 Fundamentals Seminar, said, "The scholarship program gives a unique opportunity for an early exposure to our field in one of the best ways to experience it. Many of us remember Fundamentals as not only the time when we began to solidify our burgeoning knowledge of public finance concepts – but forged friendships that have lasted throughout our careers. Rick was certainly one of the most patient and wonderful teachers in the business – support of this program to allow law students to attend Fundamentals is a perfect way to honor him!"

Those interested in contributing to the Scholarship Fund can download this form and submit it along with the donation to Linda Wyman, NABL's Chief Operating Officer. NABL will recognize those members who contribute to the Hilderbrand Fund for the benefit of the Frederic L. Ballard, Jr. Memorial Scholarship Program in various publications throughout the year.

The Hilderbrand Fund was established in 1981 and renamed in 1986 in honor of Robert H. Hilderbrand, Jr., a partner in the Philadelphia firm of Saul, Ewing, Remick & Saul, who perished in an airplane accident on November 11, 1985. The members of the NABL Executive Committee also serve as the members of the Board of Directors of the Fund. Donations to the Fund are tax deductible to the extent provided by law.

Foley: IRS Releases Guidance on Performance and Quality Standards for Small Wind Energy Property.

The IRS recently released Notice 2015-4 (the Notice), which provides performance and quality standards that small wind energy property (defined under section 48(c)(4) of the Code as property utilizing a "qualifying small wind turbine" with a nameplate capacity of not more than 100 kilowatts (kW)) must meet to qualify for the section 48 investment tax credit (ITC).

ITC eligible small wind energy property acquired or placed in service after January 26, 2015, must now meet the performance and quality standards set forth in either:

(1) American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA); or

(2) International Electrotechnical Commission 61400-1, 61400-12, and 61400-11 (IEC).

The Notice further explains that small wind turbines must comply with the applicable AWEA or IEC performance and quality standards in effect at the time of acquisition, defined for these purposes as the time the taxpayer that constructed, reconstructed, or erected the small wind turbine places it in service.

Manufacturers of small wind turbines may certify that the turbine meets the AWEA or IEC performance and quality standards by providing the taxpayer with a certification that satisfies the Notice's requirements. Taxpayers can then rely on the certification to claim the ITC. In the event that the IRS later determines that a manufacturer issued an erroneous certification, the manufacturer may be subject to penalties and its right to provide a certification to future purchasers will be withdrawn. Taxpayers that purchase the small wind turbines after the IRS publishes an announcement withdrawing the manufacturer's certification cannot rely on the certification, but taxpayers that purchased the equipment on or prior to the date on which the announcement of the withdrawal is published can still continue to rely on the certification (even if the equipment is not installed or the credit is not claimed before the announcement of the withdrawal is published).

Takeaways: The Notice imposes performance and quality standards on small wind energy property while providing a convenient and clear certification process that manufactures can utilize to advertise their equipment as meeting these standards and which taxpayers can then rely on to claim the ITC. Going forward we recommend that taxpayers purchase property certified pursuant to this Notice and then ensure that they maintain this certification in their records.

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: January 17 2015

Article by John A. Eliason and Kurt R. Rempe

Foley & Lardner

Proskauer: FINRA's New Background Investigation Rule Will Likely Increase Firms' Costs and Potentially Increases Exposure for Firms in Customer Disputes.

Recently, the SEC approved FINRA's proposed new Rule 3110(e) relating to background investigations of registered persons. FINRA Rule 3110(e), which replaces NASD Rule 3010(e) and goes into effect on July 1, 2015, streamlines and clarifies the rule language by providing that "each member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration." The rule further clarifies that a firm is required to review a copy of an applicant's most recent Form U5, if available.

Most importantly, the rule requires that firms adopt "written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 calendar days after the form is filed with FINRA."

The written procedures required under new FINRA Rule 3110(e) must provide for, at a minimum, a national search of reasonably available public records for the verification of the accuracy and completeness of information provided by a registered representative on his Form U4 and such a national search must be satisfied no later than 30 days after the initial or transfer Form U4 is filed with FINRA. FINRA explained that this verification requirement is meant to be complimentary, not duplicative, of the investigation requirement and while the rule provides that the verification requirement be completed no later than 30 days after a registered representative's Form U4 is filed with FINRA, nowhere does the rule state that the verification process cannot start prior to the 30-day window after the form is filed. Depending on circumstances, FINRA noted that firms may find it necessary to conduct a more in-depth search of public records as the required national search of reasonably available public records is a minimum or base requirement under the rule. For additional details on new FINRA Rule 3110(e)'s requirements, see here.

The requirement that Firms develop written procedures that require, at a minimum, a national search of reasonably available public records in order to verify the accuracy and completeness of information provided by a soon-to-be or new hire will likely result in increased costs for firms. While most firms already conduct background checks on potential and new hires, these new requirements will likely require that firms either retain an outside vendor or dedicate additional time, resources and in-house personnel to complete. Additionally, national searches of reasonably available public records for each applicant, to the extent not currently being performed by firms, may take some time to complete, further driving up costs.

Generally, FINRA rules do not create a private cause of action. But claimants suing their firms and/or brokers in FINRA arbitration have argued that the failure to act in conformity with such rules is evidence of a breach of one's duty of care and, hence, evidence (or proof) of negligence. Thus, by creating new requirements for firms in the on-boarding process of its brokers, firms are faced with increased potential exposure for negligence or negligent hiring claims absent careful compliance with this new rule and the procedures firms create pursuant thereto. Firms are thus encouraged to implement workable and practical written procedures.

Last Updated: January 16 2015

Article by David A. Picon and Massiel Pedreira

Proskauer Rose LLP

TAX - LOUISIANA

Pot-O-Gold Rentals, L.L.C. v. City of Baton Rouge

Supreme Court of Louisiana - January 16, 2015 - So.3d - 2014-2154 (La. 1/16/15)

Taxpayer that operated waste removal business brought action against city seeking refund of sales taxes. The District Court granted taxpayer summary judgment. City appealed. The Court of Appeal reversed and remanded. Taxpayer sought review.

The Supreme Court of Louisiana held that lease of portable toilet with cleaning services included was not taxable pursuant to sales tax statute.

The “true object” of the transactions was, in the least, debatable, requiring the court to adopt the interpretation urged by the applicant as the least onerous to the taxpayer, and, to hold that providing cleaning services for portable toilets was not a taxable event if the toilet was owned by someone else, but was a taxable service if the toilet was owned by the lessor, would have created an absurd result.

Bankrupt San Bernardino to Impair Bondholders, not Calpers, in Exit Plan - City Attorney.

(Reuters) – Bankrupt San Bernardino will significantly impair its bondholder creditors while paying pension fund Calpers in full in a plan to be presented in May, City Attorney Gary Saenz said on Thursday.

San Bernardino has also not held any talks with its capital market creditors since September and has no immediate plans to do so before it presents its bankruptcy exit plan by a court-ordered date of May 30th, Saenz said.

Major creditors are viewed as less important creditors than Calpers, California’s public pension fund, he said.

Capital market creditors in the San Bernardino bankruptcy include Luxembourg-based Europäische Pfandbrief-und Kommunalkreditbank AG (EEPK), holder of about $50 million in pension obligation bonds; Ambac Assurance Corp, which insures a portion of those bonds; and Wells Fargo Bank, the bond trustee and the flagship bank of Wells Fargo & Co.

Saenz said the city definitely intends to cut its debt to EEPK, Ambac and Wells Fargo under its bankruptcy plan, but in a way the judge will view as reasonable.

“Our bankruptcy plan will include an amount that is fair and reasonable to impair those creditors,” Saenz said, referring to EEPK, Ambac and Wells Fargo. Until now, no representative has publicly said that the city intends to impair its bondholders.

San Bernardino, a city of 205,000, 65 miles east of Los Angeles, declared bankruptcy in July 2012 with a $45 million deficit. It is one of a handful of municipal bankruptcies that has been closely watched by the $3.6 trillion U.S. municipal bond market.

Bondholders and public employees want to understand how distressed cities handle their debts to Wall Street, compared with other creditors such as Calpers.

The future health of San Bernardino after it emerges from bankruptcy will depend on a workforce that has reliable pensions, Saenz told Reuters.

While impairing bondholders might impact the city’s ability to borrow money at a later date, that is less of a concern to city officials than having a healthy pension plan, Saenz said.

San Bernardino struck a deal last year with the California Public Employees’ Retirement System (Calpers), America’s biggest public pension fund with assets of $300 billion, to pay it in full under any bankruptcy plan.

EEPK and Ambac sued San Bernardino this month, arguing that they should be treated as equal

creditors to Calpers. Representatives were not immediately available for comment.

Saenz said the city will present its bankruptcy plan in May to give creditors a clear idea of how much the city can afford to pay them. The city was preparing for months of challenges and possible litigation from unhappy creditors after the plan is presented, he said.

“From their perspective, they see some impairment of Calpers as reasonable if they are going to receive a significant impairment,” Saenz said, referring to EEPK, Ambac and Wells Fargo. “But we need to compare that argument to our ability to provide services for our city. And that needs a workforce. And you can’t have a workforce without pensions.”

Under the city’s bankruptcy plan that is being drafted, cutting its debt to its pension obligation bondholders “will not have the same impact on the city post-banktruptcy if we impaired pensions,” Saenz said.

Mediated talks between San Bernardino officials and its capital market creditors ended in September without agreement, Saenz, and a bondholder source familiar with discussions, told Reuters. Specific sums were discussed in mediation as to the extent to which the city wanted to cut that debt, but the parties ended the talks far from agreement, they said.

No conversations between the city and its capital market creditors have been held since and no further negotiations are scheduled, they said. The city has been ordered to produce a bankruptcy exit plan by May 30th.

Saenz said the city had been keeping a close eye on the bankruptcies of Detroit, Michigan, and Stockton, California. Both cities have had bankruptcy plans approved. In Stockton, Calpers was left untouched, and in Detroit pensioners emerged relatively unscathed, compared to Wall Street creditors.

BY TIM REID

Thu Jan 22, 2015

Texas Supreme Court to Hear Public School Finance Case.

AUSTIN, Texas (AP) – The Texas Supreme Court agreed Friday to hear the state’s gargantuan, multiyear school finance case – and set a timetable that ensures there won’t be a decision until after the legislative session ends in June.

Austin-based District Judge John Dietz had ruled last year and in 2013 that the way the state pays for public schools was unconstitutional, saying funding levels were inadequate and unfairly distributed around the state. The attorney general’s office has appealed to Texas’ highest civil court of appeals.

No date was set for oral arguments. But that paperwork schedule means the case will continue for more than six months at least. The legislative session that began last week ends June 1.

If the Supreme Court eventually upholds the previous rulings and strikes down the school finance system, new Gov. Greg Abbott will likely have to call lawmakers into a special session to devise a new one.

Abbott was Texas' attorney general before being sworn in as governor on Tuesday. He did not argue the case personally, but his office has maintained that, while far from perfect, Texas' school finance system is constitutional.

New Attorney General Ken Paxton will now continue the appeal.

In the meantime, it's unlikely that lawmakers will attempt to overhaul the school finance system during the current session since any changes they make may have to be redone based on the Supreme Court decision. That may doom an ambitious bill filled by Rep. Jimmie Don Aycock, a Killeen Republican who chairs the House Public Education Committee.

Texas doesn't have a state income tax, meaning public education funding relies heavily on property taxes levied in different areas. Though he knew the ongoing case could hurt his bill's chances, Aycock proposed consolidating for tax purposes the state's 1,200 school districts – thus making it easier for districts to share property tax collections.

The case grew out of the Legislature cutting $5.4 billion from classrooms in 2011, prompting the school districts responsible for educating three-quarters of Texas' 5 million-plus public school students to sue, claiming they could no longer afford to properly educate students.

The districts also argued that the current "Robin Hood" system, which mandates that schools in wealthy areas share portions of their income tax revenue with schools in poorer areas, was unfair to both.

In 2013, state lawmakers restored about $3.4 billion in school funding. That prompted Dietz to briefly reopen the case to hear new evidence, but he affirmed his original 2013 ruling with a lengthy, written decision last August.

By WILL WEISSERT

Associated Press – Friday, January 23, 2015

Stadium Solution Requires Pros, Not Task Force.

I was a member of the Chargers task force in 2003. I have taught sports law at USD law school for 10 years, and I have business and legal experience in the sports world, so when the mayor announced that he was going to create another task force, several people asked if I was interested. Initially, I said "sure," but as I think about, I've decided that a task force — a group of citizens working for free in their spare time — is not what we need now.

San Diego needs to hire a first-class team of paid professionals working eight, 10 or 12 hours a day to analyze the issues, look for solutions, discuss the matter with city officials, the Chargers and whomever else they choose, and recommend the very best solution in a few months.

The team of professionals should probably include a real estate expert, an investment banker (preferably with some sports facilities experience) and a municipal finance expert, but one could debate the exact makeup. My point is that we need paid professionals, working full time, to find the best solution, not a group of well-meaning and intelligent citizens meeting at 7 p.m. every few weeks.

A task force is useful at the beginning of a project when you need to survey widely about the issues, gathering data and listening to every point of view. But that has been done. We know the options, but not likely to identify the most viable solution without professional guidance. This is not quite as challenging as astrophysics, but finding a solution which is affordable to the city, acceptable to the Chargers and can win at the ballot box is very difficult.

A real estate expert could analyze the various locations, and some of the more creative options suggested over the years, such as selling the Qualcomm site (and possibly the Sports Arena) and using the money to acquire land and/or build a stadium elsewhere. The investment banking expert could look for creative financing schemes. The municipal finance professional could ensure that the method chosen complies with California law. This cannot be done at meetings held every other Wednesday by a task force of people who whose expertise lies elsewhere

There are many important issues that a task force is simply unsuited to answer.

• Could the Q be modernized as was done in Green Bay and Chicago, providing a cheaper solution than a new stadium?

• Is it more or less viable to propose that a stadium be built in close coordination with a Convention Center expansion?

• Could a stadium be built on cheaper land elsewhere, as earlier discussed in connection with Chula Vista or Oceanside?

• What is the proper role of the county in this regional enterprise? Why is this exclusively a city problem?

• How large a contribution is reasonable from the city or county given the precedents in other cities?

• How likely is it that the city or county will recoup that contribution through additional tax revenues or otherwise over the next two decades or so?

• Will a new stadium get us Super Bowls or other big events, how often, and with what financial gain for the city?

• What would the city do about the Q if the Chargers left? The deferred maintenance on the Q — necessary fixes that have been put off for years — is a huge expense, but knocking the place down puts Aztec football out of business. We are between a rock and a hard place with our aging stadium, and “just say no” may not be a satisfactory answer.

Undoubtedly, there are more questions to be addressed, but this gives you the idea. A task force can discuss these questions, but it really cannot answer them definitively, and certainly not by September

So let’s not do a task force, let’s hire a few of the best and brightest. Yes, it will cost some money, but it’s worth it. Also, it would be a prestige retention for the experts, so maybe we can get them at a public service discount, with a “success bonus” to be paid out of stadium funds if a deal gets done. There is nothing like financial incentives to get things done right. And any reasonable cost for experts would be a small price to pay for addressing the Chargers, the Aztecs and our aging stadium.

U-T San Diego

By Len Simon JAN. 21, 2015

Simon is an attorney and law professor in San Diego.

Low Oil Prices Could Bring New Energy to Municipal Bonds.

Cheaper oil and gasoline will be a boon to municipal bonds that benefit when drivers hit the road.

Energy bonds have been whacked by plunging oil prices lately. But at least one corner of the fixed-income market is now poised for outperformance thanks to the collapse of crude: municipal bonds backed by revenues from toll roads and airports. Americans are driving and flying more, boosting those transportation-linked munis. And that, say experts, has created an attractive buying opportunity.

Municipal bonds in general are appealing because their interest payments are exempt from federal (and sometimes state and local) taxes. And right now, munis represent good value, says Janney Montgomery Scott municipal analyst Tom Kozlik, whose firm rates municipal bonds as "our strongest conviction overweight call for 2015." High-quality, longer-term munis have historically yielded less than U.S. Treasury bonds of comparable maturities. But as of early January the average yield on triple-A-rated 30-year muni bonds was 2.7%, topping the 2.5% rate for 30-year Treasury bonds.

Tollway and airport debt is especially attractive now, says Michael Zezas, head of municipal research at Morgan Stanley MS -1.07% . For starters, drivers are getting a big break at the pump. As of early January the average national retail price for regular unleaded gasoline had fallen by more than 40% since last summer, according to the U.S. Energy Information Administration. As a result, Moody's Investors Service estimates that toll-road traffic will grow by about 1.5% in 2015 and average toll revenues will rise by 5%, as operators hike rates.

Investors should also look at airport municipal bonds, which are tied to all the revenues (including fees from food concessions, parking, and rental car operators) an airport generates. The average U.S. household this year will spend $550 less on gasoline than in 2014, according to the EIA. And that increased discretionary income bodes well for airport travel, says Randy Gerardes, senior municipal analyst at Wells Fargo Securities. Gerardes also notes that for every 10% drop in aviation fuel prices, air travel increases by more than 10%. He is bullish "specifically on large international gateway airports with significant cargo operations."

You can buy individual municipal bonds through most brokerages. Large municipal issuers have roughly $400 billion in transportation-related debt outstanding, leaving investors plenty of choice. Some of the largest borrowers include the Port Authority of New York and New Jersey, the Bay Area Toll Authority (San Francisco), and the North Texas Tollway Authority. Zezas advises that investors avoid the lowest-rated junk issues and focus on investment-grade offerings.

An even simpler way to gain exposure to toll-road and airport bonds is to purchase the Deutsche X-trackers Municipal Infrastructure Revenue Bond Fund, an ETF that tracks an index of investment-grade infrastructure munis. Transportation-linked bonds currently make up about 54% of the portfolio. Continued low energy prices should help drive up the fund's returns.

Fortune

by Janice Revell

JANUARY 22, 2015, 7:52 AM EST

A former compensation consultant, Janice Revell has been writing about personal finance since 2000.

This story is from the February 2015 issue of Fortune.

Nantucket Sells Refunding Debt After Winning Record Moody's Mark.

Nantucket, the Massachusetts island that's a tourist destination and summer getaway, is issuing $3.4 million of debt after earning its highest Moody's Investors Service grade.

The general-obligation bonds, to be sold Thursday in a competitive offer, will refinance higher-cost borrowings, according to Brian Turbitt, the director of municipal finance. Moody's raised Nantucket's $83 million in general obligations Jan. 16 to Aa1, one step below the top and a high for the municipality from the company.

The island, about 30 miles (48 kilometers) south of Cape Cod, has a year-round population of about 11,000 that can soar to about 50,000 during the summer. Buoying its finances, the municipally owned airport hasn't received subsidies from the general fund for two years, according to Turbitt.

"We believe the airport itself has stabilized," he said in an interview. Under a new manager, there has been better review of the facility's revenue and spending, according to Turbitt.

With benchmark municipal interest rates the lowest since May 2013, Nantucket stands to save about $340,000 by refinancing, Turbitt said.

"We certainly could've played the waiting game to see if it got better," he said. "But it just made sense to do it based on that projection."

The median home value on the island is about $930,000, compared with about $330,000 across Massachusetts, according to U.S. Census data. Its primary revenue comes from property taxes. The median family income of about $93,000 exceeds the statewide level of about $85,000.

Bloomberg

By Meenal Vamburkar Jan 21, 2015

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QPIBs Provide a Level Playing Field for Public-Private Partnerships.

The proposed creation of the innovative new municipal bond (MUB) (TFI), or QPIBs (Qualified Public Infrastructure Bonds), has another purpose. The bonds would help provide a level playing field for public-private partnerships, or P3s.

Currently, P3 arrangements combine complete public ownership with private sector management and operations expertise. This arrangement doesn't allow P3s to take advantage of the municipal bonds' benefits. The QPIBs will extend municipal bonds' benefits to P3s. Since these partnerships would involve long-term leasing and management contracts, the QPIBs would help lower the cost of borrowing while attracting new capital.

PABs versus QBIPs

Similar bonds from the past

A similar program, known as private activity bonds, or PABs, has already been used to support infrastructure financing of over $10 billion in the US. However, PABs differ from the proposed QPIBs in certain aspects. The differences are listed in the above chart.

In the US (SPY) (IVV) (DIA), the Obama administration will make more details available on the QPIBs in the upcoming budget proposal. The proposal will be released on February 2, 2015.

Market response

The QPIBs were primarily seen as a welcome move. However, the proposed bonds still require legislative approval from Congress. As a result, certain entities question whether the QPIBs will become a reality.

Market Realist

By Stephanie Johnson • Jan 21, 2015 2:05 pm EST

Abbott Takes Reins in Texas as Crude Stalks Economy: Muni Credit.

(Bloomberg) -- Greg Abbott, Texas's first new governor in 14 years, takes over as an oil boom that helped stoke the economy and tax collections shows signs of fading.

Abbott, a 57-year-old Republican who was sworn in Tuesday, faces the challenge of extending the "Texas Miracle" that added 1.5 million jobs since the end of the recession and left the government with a $7.5 billion budget surplus. He confronts pressure to cut taxes and bolster the second-mos--populous state's infrastructure even after crude prices sank more than 50 percent since June.

"The major price correction represents a significant change in Texas," said Robert Dye, chief economist at Comerica Inc., a Dallas-based bank. "It will result in slower economic growth, and will result in lower revenues to the state as well."

Abbott, Texas's former attorney general, follows Republican Rick Perry, the longest-serving governor in state history and a former presidential contender who may try again in 2016.

Perry Era

The economy, equivalent to the world's 13th-largest as of 2013, expanded under Perry as the population swelled, businesses moved in and energy discoveries revived oil and natural gas production.

The state has added 2.2 million jobs since Perry took office in December 2000, accounting for more than a quarter of the growth in the U.S.

The crude-price slide — to about $47 a barrel from above $100 in June — casts a pall over the biggest oil-producing state. The energy industry has benefited from new drilling technologies, including fracking, that are unlocking shale reserves. The discoveries reversed a decades-long decline in production, creating high-paying jobs and lifting tax collections.

The Federal Reserve Bank of Dallas said in a report this month that job growth may slow to as little as 2 percent this year from 3.6 percent in 2014. Comptroller Glenn Hegar forecasts that economic growth will slow to about 3 percent this year, from 3.7 percent in 2014.

Tax Trickle

That may trickle through to tax collections, said Douglas Benton, senior municipal credit manager for Cavanal Hill Investment Management, a Tulsa, Oklahoma-based company that handles about $6 billion, including Texas municipal bonds.

"We'll look closely at those holdings that will be impacted," said Benton, who works from the firm's Richardson, Texas, office. "It will have a ripple effect that will be felt in other parts of the state's economy."

The biggest and third-largest oil-field service providers, Schlumberger Ltd. (SLB) and Baker Hughes Inc. (BHI), are cutting about 16,000 workers. The second-largest, Halliburton Co. (HAL), said on Tuesday it expects to make reductions in line with its competitors. Though the companies are mainly based in Texas, the cuts will come worldwide.

Abbott said last month that there would still be money for schools and infrastructure.

Spending Money

Texas may have $113 billion for general-purpose spending through 2017, an increase of about 10 percent from the previous two years, according to the comptroller. It has top ratings from Standard & Poor's and Moody's Investors Service.

The state faces rising costs for pensions to make up for underfunding the plans, according to Moody's. The Employee Retirement System, the main plan for state workers, requested a 59 percent funding boost for the next two-year budget cycle, according to Moody's.

The governor didn't mention oil prices during his inaugural address.

"I will ensure that we build the roads needed to keep Texas growing," he said in a speech on the steps of the Capitol in Austin. "Taxes raised for roads will be spent on roads. I will speed up our needed water projects, and I will secure our border."

Texas has struggled to build roads and infrastructure fast enough to accommodate new residents.

While the population has grown by 125 percent over the past four decades, to 27 million, capacity on the state's roads and highways has increased by only 19 percent, said Scott Haywood, president of

Move Texas Forward, a group that advocates more spending on transportation projects.

Wall Street hasn't punished the state yet. In August, Texas sold $5.4 billion of one-year notes at a record low 0.13 percent yield to cover the cost of schools and other expenses before tax money flows in. It was the state's smallest short-term note sale since 2007, underscoring how its finances have strengthened since the recession that ended in 2009.

1980s Shadow

Comptroller Hegar said in a press conference this month that he didn't expect Texas to repeat the 1980s oil-induced recession, when plunging crude prices led to a crash in housing prices and bank failures.

"I — in no shape, form or fashion — am saying that Texas is going into a recession," he told reporters earlier this month.

The Texas economy is more diverse than three decades ago, cushioning against plummeting oil. The industry comprises 2.7 percent of employment, compared with 4.5 percent in the early 1980s, according to the Dallas Fed.

JPMorgan Chase & Co. Chief U.S. Economist Michael Feroli foresaw a broader impact in a December report. He warned that a prolonged slump in crude prices may push Texas into recession.

"The challenge for the state is going to be in meeting all of its spending expectations amid slower revenue growth," said Nick Samuels, a Moody's senior credit officer. "This is going to a very different story for Texas."

Bloomberg Muni Credit

By Lauren Etter and Darrell Preston

Jan 21, 2015

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5 Reasons To Own Muni Bonds In 2015.

After a robust performance by municipal bonds in 2014 (see chart below), what should investors watch for in the year ahead? The MacKay Municipal Managers (MMM) team has published its five key insights for 2015. The overall conclusion is that the team sees attractive opportunities in certain segments of the market and believes that positive returns are best achieved through active management.

1. Demand should be strong. Institutional clients such as insurance companies have been adding munis to their core portfolios, and the team expects that to continue. What's new is that banks' proprietary trading desks, many of which exited the muni market after the 2008 crisis, may start coming back, lured by favorable market conditions and regulatory developments. And that would

also improve liquidity in the market.

2. Supply could be higher than expected, but still tight. The team expects new issuance to exceed $375 billion, surpassing consensus expectations, as the U.S. starts to come to terms with its infrastructure needs. That said, net new supply will remain negative for the fifth year in a row and the overall municipal market will continue to shrink. One reason is refinancing, as issuers take advantage of low yields to replace existing high-coupon debt with lower-cost financing.

3. Yield curve likely to flatten. The team expects a flattening yield curve—i.e. yields on short-maturity bonds rising by more than those on long maturities. So they believe high-grade bonds on the short-to-intermediate part of the yield curve should be avoided in 2015. AA and AAA-rated municipal bonds in the 3 to 7-year maturity range are currently looking expensive, and their high correlations with Treasurys mean they have higher exposure to interest-rate hikes than most other segments of the municipal market.

4. Monolines should continue their comeback. The decline of monoline insurance companies during the 2008 credit crisis caused investors to shun insured munis. But certain monolines are well on the road to recovery, helped by a number of legal settlements allowing them to claw back mortgage-related losses suffered during the crisis period. Strong performance by monoline-wrapped bonds last year, notably during the Puerto Rico debt crisis, has brought them back onto investors' radar. The team expects insured bonds in the new issue market to exceed 10% for the first time in six years, and says that bonds backed by insurance policies should continue to experience spread-narrowing as outstanding legal settlements are resolved and the value of bond insurance rises.

5. Tobacco should outperform. As municipal borrowers refinance higher-coupon bonds at lower rates, the team expects more investors to look to tobacco settlement bonds to replace income in their portfolios. While the tobacco sector will likely experience periods of higher volatility in 2015, the MMM team believes it will be one of the top performing sectors in 2015.

The year of active management. The team argues that the best way to take advantage of these trends will be through active management, based on careful security selection. Yield-curve strategy is a good example. Passive muni portfolios tend to have a "ladder" structure with equal weights along the maturity spectrum. If investors want to get defensive on rates without sacrificing income, then an active approach is required—in the team's opinion, emphasizing longer-dated, higher-coupon bonds and de-emphasizing low-coupon, short dated issues. Another example is the tobacco opportunity. While the team expects the sector to perform well overall, research-driven security selection can help identify the most attractive issues at the right price.

Forbes
Jeffrey Phlegar, Contributor

[Congress Extends QZABs, New Markets Tax Credits; Continuing Effect of Sequestration: McGuire Woods]

On Dec. 19, 2014, President Barack Obama enacted the Tax Increase Prevention Act of 2014 (the "Act"), commonly referred to as the tax extenders bill (H.R. 5771), which you may read here. Generally, the Act extends many programs that expired at the end of 2013.

This Client Alert focuses on the extension of Qualified Zone Academy Bonds (QZABs), New Markets Tax Credits (NMTCs), and empowerment zone employment credits and on the enduring impact of sequestration on direct-pay bonds.

Qualified Zone Academy Bonds

The Act authorizes the Secretary of the Treasury to allocate an additional $400 million in QZABs for 2014. Prior to the Act, no additional allocations of QZABs were to be available to the states after Dec. 31, 2013. The 2014 round of QZABs allocations will expire if not issued on or before Dec. 31, 2016. QZABs issued under the 2014 allocations are eligible only for the tax credit and may not use the direct-pay option. This limitation also applies to QZABs issued under the 2013 allocations that expire at the end of 2015.[1]

As a reference, QZABs benefit a "qualified zone academy" (typically, a public school) that is designated as such by the "applicable local education agency," which is oftentimes the governing local school board or district. As more fully described in Section 54A of the Internal Revenue Code of 1986, as amended, a holder of a QZAB receives a credit against federal income taxes.

New Markets Tax Credits

The Act also authorizes $3.5 billion in allocations for the New Markets Tax Credit program. This authorization is for 2014. Prior to the Act, the last round of allocation related to 2013. The 2014 allocations must be used by Dec. 31, 2019.

The New Markets Tax Credit program is designed to encourage investment in qualifying low-income communities. An investor receives a tax credit in return for equity investments in community development entities that use those invested funds for eligible purposes aimed at targeted populations and low-income areas. The credit is 39 percent, taken over seven years. Many states have programs similar to the federal New Markets Tax Credit program.

Empowerment Zones

Moreover, the Act extends the benefits of empowerment zone designation by providing that any existing empowerment zone will remain designated as such until Dec. 31, 2014. Previously, the designation of existing empowerment zones expired on Dec. 31, 2013.

The benefits of empowerment zone status include the empowerment zone employment credit, which provides employers a federal tax credit equal to 20 percent of qualified zone wages paid during a calendar year. Qualified zone wages are wages paid to an employee who lives in an empowerment zone and performs substantially all of his or her employment in that empowerment zone. Other tax benefits include increased deductions for equipment placed in service in empowerment zones and delayed recognition of any gains on the sale of qualifying empowerment zone assets.

Federal Sequestration and Direct-Pay Bonds

All direct-pay bonds, including QZABs, Build America Bonds, Qualified School Construction Bonds, New Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds and Recovery Zone Economic Development Bonds, remain subject to the ongoing effects of federal sequestration. For fiscal year 2015 (which ends on Sept. 30, 2015), the direct-pay subsidy for those bonds issued as

direct-pay bonds is subject to a 7.3 percent reduction.

Unless a law is enacted that cancels or otherwise amends the sequestration, the existing subsidy reduction will remain in effect through the end of fiscal year 2024.

1. Included as Title II of H.R. 5771 is the "Tax Technical Corrections Act of 2014." See Section 202(d) for the above-mentioned provisions relating to QZABs.

New P3 Legislation To Take Effect in Washington, D.C.: Ballard Spahr

A new law intended to encourage more widespread use of public-private partnerships (P3s) in the District of Columbia is set to become a reality in the coming weeks. The Public-Private Partnership Act of 2014 (P3 Act) was approved by the Mayor on December 29, 2014, after its unanimous passage by the Council of the District of Columbia. The P3 Act provides specific authority for the development, solicitation, evaluation, award, delivery and oversight of P3 projects by the District. It will take effect upon the expiration of the 30-day congressional review period required under the District of Columbia Home Rule Act.

Adoption of the P3 Act adds the District to a growing list of jurisdictions (including neighboring Maryland and Virginia) that have enacted laws seeking to encourage innovative types of public financing. While the use of P3s is not a new concept in the District (several P3 projects have been developed under existing procurement laws and special legislation), P3s have been limited by the absence of comprehensive legislative and regulatory guidance.

The establishment of a specific P3 program will provide a more predictable, flexible, and effective framework for the District to work with potential private partners in developing projects that will benefit the District. The P3 Act formalizes the process for evaluating both solicited and unsolicited proposals and clarifies the essential requirements for any P3 agreement. It is designed to offer increased transparency, efficiency, and predictability in an effort to attract private investors.

A summary of the law's key provisions follows.

P3 Office

The P3 Act establishes a new Office of Public-Private Partnerships (Office) within the Office of the City Administrator, as the primary District government entity to carry out the intent of the P3 Act. Under the leadership of an Executive Director, the Office will facilitate the development, solicitation, evaluation, award, delivery, and oversight of P3 projects involving the District. The Office will be the point of contact for both private sector entities and District agencies interested in pursuing P3 projects.

The Office is required to develop rules, policies, and procedures for implementing the P3 Act in consultation with the Office of the Chief Financial Officer. Within 90 days of the appointment of the Executive Director, the Office must submit proposed rules to the Council. The proposed rules will be deemed approved if the Council takes no action on them within 45 days.

The Office will not have the power to pledge the full faith and credit of the District (or any revenue of the District) or issue any general obligation of the District for the financing of any P3 project, unless authorized by an act of the Council.

The Office may charge fees for the costs of processing, reviewing, and evaluating pre-qualification applications and unsolicited proposals submitted by private entities. Such administrative fees are required to be deposited into the Public-Private Partnership Administration Fund, a special fund to be administered by the Executive Director.

P3 Projects

The P3 Act authorizes a broad range of P3 projects to be developed within the District. Specifically, a qualified P3 project includes the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, or ownership of:

- Transportation facilities, including roads, highways, bridges, tunnels, parking lots or garages, public transit systems, and airports
  Utility facilities, including sewer, water treatment, storm water management, energy, telecommunications, information technology, recycling, and solid waste management facilities
- Education facilities
- Cultural or recreational facilities, including parks, libraries, theaters, museums, convention centers, community centers, stadiums, athletic facilities, golf courses, or similar facilities
- A building or other facility that is beneficial to the public interest and is developed or operated by or for a public entity
- Improvements necessary or desirable to any District-owned real estate
- Any other facility, the construction of which will be beneficial to the public interest as determined by the Office

Procurement Process

The P3 Act sets forth a detailed process for the procurement of P3 projects, including procedures for solicitation of proposals by the Office and unsolicited proposals. Although parties to P3 agreements are exempted from most aspects of the Procurement Practices Reform Act of 2010 (PPRA), the law governing procurement practices in the District, PPRA provisions regarding Council review of contracts, prohibition of collusion between the government and vendors, bonding of contractors, and the jurisdiction of the Contract Appeals Board regarding disputes will apply.

<u>Proposals Solicited by the P3 Office</u>

For P3 projects initiated by the District, the Office can only solicit private entities through a competitive bid process by issuing a request for information (RFI), a request for qualifications (RFQ) and/or a request for proposals (RFP).

Requests for Information. The Office may, but is not required to, issue an RFI from companies that may be interested in a potential P3 project. This will help guide the Office in formulating the scope of the P3 project that will ultimately be procured through an RFP.

Requests for Qualifications (Prequalification). The Office may, but is not required to, provide for a prequalification process for private entities by issuing an RFQ. If the Office determines that a prequalification process is appropriate, it will prequalify a certain number of bidders during the RFQ stage, and only RFP responses submitted by prequalified private entities will be considered.

To be prequalified, a private entity must demonstrate that, among other things, it has the financial resources, capacity, and expertise necessary to carry out the P3 project and is qualified to conduct business in the District.

Requests for Proposals. An RFP must contain a detailed description of the scope of the proposed P3 project, the material terms and conditions for the procurement and resulting contract, and the criteria to be considered by the Office in evaluating the bids received, including the relative weight given to each criterion (including, for example, cost, value, delivery time, financial commitment required for public entities, expertise, technical merits, and public benefit).

Generally, the Office must provide public notice of an RFP and allow respondents 30 days to submit proposals. Before the award of the P3 agreement, an executive summary of each responsive proposal will be made available to the public. After the award of the P3 agreement, the proposal will be subject to the Freedom of Information Act. Information that has been designated as confidential or proprietary strictly in accordance with the P3 Act will not be made available to the public.

The Office may pay a stipend to an unsuccessful proposer in certain circumstances. All conditions for a stipend must be clearly set forth in the RFP.

Prior Approval by the Council. Council approval is required before the issuance of an RFP. Before submitting any request for approval to the Council, the Office must hold at least one public hearing, with notice of the hearing to be provided to affected Advisory Neighborhood Commissions at least 30 days in advance, and to be published in the District of Columbia Register at least 15 days in advance.

A proposed RFP for a P3 project expected to cost $50 million or more or extend for a term of 10 years or more will be deemed approved by the Council upon the expiration of a 45-day review period, unless the Council adopts a resolution to approve or disapprove the proposed RFP.

A proposed RFP for a P3 project expected to cost less than $50 million or extend for a term of less than 10 years will be deemed approved by the Council upon either of the following:

- The expiration of a 10-day review period, during which no member of the Council has introduced a resolution to approve or disapprove the proposed RFP
- If such resolution has been introduced, the expiration of a 45-day review period during which the Council has not approved or disapproved the proposed RFP

Following the Council's approval of an RFP, a P3 agreement must be entered into within two years, at which time the Council approval will expire if not extended by a further act of the Council.

Unsolicited Proposals

The Office may consider, evaluate, and accept an unsolicited proposal for a P3 project if the unsolicited proposal addresses an identified need of the District, is independently prepared without District supervision, demonstrates a public benefit, includes a financing plan that complies with applicable District budget and finance requirements, and includes sufficient detail and information necessary for an objective and timely evaluation by the Office.

Within 90 days of receipt of an unsolicited proposal that meets the above criteria, the Office must complete a preliminary evaluation. If the preliminary evaluation is favorable, the Office will notify the proposer that the Office will comprehensively evaluate the unsolicited proposal and publish the unsolicited proposal in the District of Columbia Register for a period of at least 30 days, during which time other potential proposers may submit alternative proposals.

After a comprehensive evaluation of the unsolicited proposal and any alternatives submitted, the Office may commence negotiations with a proposer, provided the proposal meets strict criteria. Such criteria include whether the P3 project duplicates existing or pending projects or services, whether the proposal demonstrates a unique approach or concept, certification by the Office of the Chief

Financial Officer regarding the availability of District funds to be contributed and that the P3 project will not adversely affect the District's bond ratings, and certification by the Office of the Attorney General concerning legal sufficiency.

P3 Agreements

After selecting a solicited or unsolicited proposal from an offeror for a P3 project, the Office or a designated public entity will enter into a public-private partnership agreement (P3 Agreement) with the selected offeror for a term of up to 99 years. The P3 Act sets forth a number of provisions that must be included in P3 Agreements, including detailed descriptions of the project; the responsibilities of the public and private entities; the terms of the planning, acquisition, financing, design, construction, maintenance, operation, ownership, and leasing of the facilities; the rights the public and private entities have in facility revenue; terms by which the private entity may charge fees to the public for use of the facilities; liability insurance coverage if the private entity operates the facility; disposition of the facility at the end of the term of the agreement; grounds for termination; defaults and remedies; and reporting requirements.

If the P3 Agreement authorizes the collection and use of user fees, no new fees may be imposed, or approved fees amended, unless authorized by subsequent action of the Council.

The P3 Act also authorizes the District to enter into regional P3 Agreements with other local and state government agencies.

Before entering into any P3 Agreement, the Office must submit a comprehensive report to the Council outlining the details of the selected proposal. Such details include the identity of the participating private entities, significant terms of the P3 Agreement, total cost of the P3 project, cost to be borne by the District, value-for-money analysis and public sector comparator analysis, time for completion, delivery method, a list of all respondents to the RFP, how those responses were scored, and the selection methodology. The Office must provide public notice of the report submitted to the Council.

Compliance with Federal and District Laws

The P3 law identifies a number of other laws that will apply to P3 projects. These include laws that would otherwise be generally applicable to most projects and other government procurement matters in the District:

- The First Source Employment Agreement Act of 1984 (requiring that District residents are given priority for new jobs created by municipal financing and development programs)
- The Living Wage Act of 2006 (or the rate established by a project labor agreement the Office receives notice of prior to its solicitation of proposals)
- The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005
- Subchapter II of Chapter 28 of Title 47 of the D.C. Official Code (requiring clean hands before receiving a license or permit)
- The Green Building Act of 2006
- The Anacostia Waterfront Environmental Standards Act of 2008
- The Hotel Development Projects Labor Peace Agreement Act of 2002

Additionally, private participants in P3 projects in the District must comply with the federal Davis-Bacon Act of 1931 (requiring contractors to pay locally prevailing wages).

by Brian Walsh, Steve T. Park, Pauline A. Schneider, and Rebecca S. Flynn

Attorneys in Ballard Spahr's P3/Infrastructure Group routinely monitor and report on new developments in federal and state infrastructure programs. For more information, please contact P3/Infrastructure Practice Leader Brian Walsh at 215.864.8510 or walsh@ballardspahr.com, Steve T. Park at 215.864.8533 or parks@ballardspahr.com, Pauline A. Schneider at 202.661.2249 or schneiderpa@ballardspahr.com, Rebecca S. Flynn at 202.661.2233 or flynnr@ballardspahr.com, or the member of the Group with whom you work.

Texas Bill Would Take Away Eminent Domaine Power for Private Road Builder.

A bill introduced in the Texas legislature would strip the Texas Turnpike Corp. of its eminent domain authority, preventing it from building a private toll road northeast of Dallas.

The company was founded one day before the legislature's 1991 repeal of a law allowing private toll road companies to use eminent domain to build private highways went into effect.

"They're the only private company that is currently able to do this kind of turnpike because they fall under grandfathered rights," state Rep. Cindy Burkett (R), who filed House Bill 565, told the Texas Tribune. No other company that would be impacted by her bill, her staff discovered.

The state has used P3s to build many new highways in recent years, allowing companies to build, operate and maintain the projects, but in those P3s, the state maintains ownership of the property.

The Texas Turnpike Corp.'s bid to build the Northeast Gateway on the northern outskirts of Dallas faced strong opposition from the public.

"There was no justifiable transportation need … and it was a private company trying to take private land," said Christopher Kurinec, a resident who opposed the plan. "I think those things combined really undid it."

The North Central Texas Council of Governments reversed an earlier recommendation to approve the toll road and the firm is no longer moving ahead with the project.

NCPPP

By Editor January 22, 2015

North Carolina Toll Project Faces Citizen Lawsuit.

A citizen advocacy group on Tuesday filed a lawsuit against the state of North Carolina and its private sector partner to block the construction of toll lanes on I-77 in Charlotte, N.C., arguing the project is not in the best interest of the public.

Widen I-77, an anti-toll community group, claims the $655 million project includes illegal contracts, violates public policy and benefits the private company more than drivers.

“The state has unconditionally delegated taxing authority and failed to provide appropriate limitations on taxing powers it has delegated,” Widen I-77 attorney Matt Arnold, told WSOC TV.

The group expects the lawsuit to permanently stop the toll road, but hopes to have a hearing on their preliminary injunction request in the next few weeks. A trial would likely take more than a year.

The lawsuit comes two days before Mobility Partners, the private sector team formed by Spanish-owned Cintra, was supposed to have secured financing. The North Carolina Department of Transportation, however, granted Mobility Partners an extension as two move toward completing all contractual requirements.

I-77 currently has one high-occupancy-vehicle (HOV) lane in each direction. The 26-mile project stretching from Charlotte to Mooresville will convert those HOV lanes to express lanes. The company also will build a second express lane alongside the converted HOV lane on I-77 North and South.

NCPPP

By Editor

January 20, 2015

S&P: Why U.S. Availability Projects are Not Rated the Same as the Counterparty.

Because federal and state spending on U.S. infrastructure is limited by budgetary issues, and banks, long a mainstay of private funding for big projects, continue to curb lending while they shore up their balance sheets, more entities are looking to public-private partnerships (P3s) as a viable option for financing. So-called “availability projects” are a type of P3 project.

Availability projects get their name because they earn revenue from payments from the government sponsor for operating and maintaining the project in line with performance-based specifications. The project is developed by a government, such as a state transportation department, that enters into a contract with a private entity to design, construct, finance, operate, and maintain the project for the concession term, which is typically 30 years in the U.S. Payments depend on the project’s reaching certain milestones, such as construction progress and completion by a contract’s deadline, or performance and availability standards for the operation and maintenance of the project. Failure to meet the standards normally results in an abatement against the availability payment.

Standard & Poor's Ratings Services rates 85 availability projects globally, the majority of which are in Europe (55%) and Canada (29%). Most of our rated projects are social availability projects such as student accommodation and health care facilities (75%), and the balance are road (25%) assets. The average rating is in the 'BBB' category. In the U.S., the use of availability projects is growing. Most are in the transportation sector because these projects have more options for low-cost financing, such as tax-exempt debt and a federal loan program as part of the Transportation Infrastructure Finance and Innovation Act (TIFIA). However, we expect the market for social availability projects to grow as more states and cities develop such programs.

Yet, even once construction is complete, the ratings on an availability project are not equal to the ratings on the government sponsor, even though the sponsor is the sole source of project revenue.

Continue reading.

16-Jun-2014

S&P: Obama's Infrastructure Proposal Could Stimulate Much-Needed Investment.

NEW YORK (Standard & Poor's) Jan. 16, 2015–Municipal issuers in the U.S. may get a new tool to finance infrastructure under a proposal announced yesterday by President Obama. Obama proposed creating a new municipal bond—a "Qualified Public Infrastructure Bond" (QPIB)—in a broad proposal aimed at increasing infrastructure investment. Standard & Poor's Ratings Services thinks this could be a low-cost approach to stimulating much-needed infrastructure investment. But there is a cost associated with it, and as a result extensive deliberation in Congress is likely.

The new proposal follows the administration's Build America Investment Initiative, launched in July 2014.

The QPIB is intended to extend the benefits of municipal bonds to public-private partnerships, with the goal of lowering the cost of borrowing and attracting new sources of capital. While few details are known yet, the proposal is expected to be included in the executive budget to be released in February. We believe the QPIB could benefit capital financing of infrastructure projects by providing a cost-effective vehicle to move a diverse range of projects forward. However, increased debt issuance could increase the leverage of some issuers we rate. Issuers could face downward rating pressure if they are unable or unwilling to maintain margins and liquidity levels. QPIBs would definitely provide a spark to start-up projects, advancing projects that might not have gotten off the ground otherwise. For these projects the rating outcome will ultimately be determined by our assessment of the project's construction risk and the financial resources and contingencies available to the project in case it deviates unfavorably from forecast.

But for now, the big question, in our view, is: will it be approved?

We have previously noted that interest in the public-private ("P3") approach is growing, and many states are developing programs that combine public ownership with private sector management and operations expertise. The financing structures can be complex and generally have not benefited from tax exemption, but states and other municipal market issuers have found them to be an attractive alternative to deliver large-scale infrastructure projects. If the financing becomes more cost-

effective, we expect that interest could grow. Currently, 33 states have authorized P3s and many projects have been financed or are in the planning stages. The U.S. projects have primarily focused on transportation, such as roads, toll lanes, and transit projects. However, the Long Beach Courthouse in California is an example of a social infrastructure P3 project, and other states with active transportation P3 projects are also considering approving legislation allowing social infrastructure P3s. We have also started to see interest at the local level.

There are currently Private Activity Bonds (PABs) available to augment private investment projects, but their scope has been limited in terms of eligible projects and the amount available is capped. Under the White House proposal, QPIBs will expand the scope of PABs to include financing for airports, ports, mass transit, solid waste disposal, sewer, and water, as well as for more surface transportation projects. Unlike PABs, the QPIB bond program will have no expiration date, no issuance caps, and interest on these bonds will not be subject to the alternative minimum tax. The QPIBs are not expected to be available for privately owned facilities or privatizations of public facilities.

We have frequently said that infrastructure needs in the U.S. — and worldwide -- are very high, and that failure to meet those needs could limit a government's economic competitiveness. In the U.S., investment has been restrained at the state level and for other municipal issuers, as evidenced by lower debt issuance over the past several years. In addition, pay-as-you-go contributions have been restrained by a wide range of other cost pressures and because less revenue was available following the Great Recession and the slower than average recovery.

Getting Smart About the Water We Use.

Modern metering systems can save money and make water management more efficient. Local officials are finding ways to overcome obstacles to putting them in place.

Water and wastewater management are among the most challenging issues that local officials across the country must grapple with. It's easy to see why. Costly federal mandates impose a heavy burden on already strapped municipal budgets. Environmental requirements confront half-century-old pipes and facilities, necessitating expensive improvements. Historic drought in the West, particularly in California, forces local leaders to take the lead on managing precious water supplies for drinking, bathing and farming. The results: water bills keep rising.

In this challenging environment, local officials are taking action to minimize water-related costs for their governments and the residents they serve. Some are fashioning creative private-sector partnerships related to leases or contracts for operations and management. Yet whether relying on public or private management, many localities are embracing the solution of wireless "smart" water meter systems to make the measurement of water usage more effective and efficient.

Typically replacing decades-old systems that required city workers to manually read water meters, these new technologies eliminate human error and provide more frequent readings. They generally rely on transmitters attached to meters to wirelessly send precise water usage data to fixed or roaming devices, which then upload the data to a billing office. The wireless metering system that New York City unveiled several years ago provided benefits both to residents (by providing more transparency into their bills and usage) and to the city (by eliminating the need for expensive manual meter reading and by catching leaks and other problems more quickly).

Yet despite the clear advantages of these systems, the technology has faced pushback from groups and individuals, both inside and outside government, in communities across the country. Their concerns tend to focus on perceived pitfalls. Here are some of the most common obstacles that cities face in attempting to improve their water management systems, along with strategies some have used to overcome these challenges:

Cost: With price tags in the tens of millions of dollars, the cost of investing in a smart water meter system is often the most significant barrier to modernization. Still, cities have found ways to alleviate these costs. Bismarck, N.D., for instance, saved money with a public-private partnership that allowed its water utility to share a communications network with the electricity and gas provider, the Montana-Dakota Utilities Co. Cities also can build public support for a pricey project by being forthcoming about its benefits, as Pittsburgh did with a campaign focusing on cost savings of about $120,000 a year. And to alleviate concerns about public-employee layoffs, utilities must also make it clear that there is so much work to be done that meter readers who are not involved in the new system can be placed elsewhere in the utility.

Accessibility: A frequently voiced concern is that more frequent data transmission is useless if customers aren't checking their bills more often. Cities can address this issue by tackling billing accessibility alongside meter modernization. In San Francisco, as a part of a larger smart water meter installation project, city officials launched an online site that allows residents to monitor their water usage in real time and compare their numbers to city averages and their own past consumption.

Safety: Although scientists and regulators agree that smart meter systems pose no danger to public health, some individuals and groups have continued to express concerns about radiation exposure. To assuage these fears, cities should clearly and calmly communicate that the technology is safe by citing relevant studies. Baltimore's website, for instance, presents unambiguous language addressing the issue, referencing studies showing that the devices' low-frequency radio waves cause "no harmful side effects."

Privacy: As is the case in all data collection efforts, city officials installing smart water meter systems must take care to ensure that privacy controls are in place and properly communicated to the public.

By tackling these potential obstacles head-on, cities can better position themselves for success. At a time when it's important to implement efficient solutions to the challenges surrounding water management, acting proactively on these considerations can go a long way.

GOVERNING.COM

BY STEPHEN GOLDSMITH | JANUARY 21, 2015

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The Wrong Way to Keep Cops and Firefighters on the Job.

As Dallas has learned with a gold-plated pension enhancement, it would be smarter to just pay better salaries.

The systems we live under vary from place to place, but no system can change the human impulse to

shift problems to someone else. Yet another example of this comes from Dallas, where the Police and Fire Pension System has indefinitely suspended admission to its breathtakingly costly Deferred Retirement Option Plan (DROP) beginning on April 1.

Like most public-safety DROPs, Dallas' version was designed as a recruitment tool and an incentive to keep experienced police officers and firefighters on the job. It allows officers and firefighters who have served for at least 20 years to collect a pension even as they continue to work. Instead of going into employees' pockets, however, the payments are deposited into separate accounts with guaranteed interest rates of 8-10 percent annually that are paid by the pension system. Police officers and firefighters can contribute to DROP for as long as they continue to work.

The plan is certainly a potent incentive for attracting and retaining public-safety personnel. One DROP member has an account of more than $3 million, 13 have accumulated over $2 million and 283 have more than $1 million socked away. The average account contains $422,000.

But it isn't so good for the Police and Fire Pension System. Maintaining the plan has cost the system about $325 million and threatens its long-term viability. The $1.35 billion invested in DROP accounts for more than 40 percent of the pension system's assets.

DROP was created in 1993 because Dallas police and fire salaries were — as they continue to be — lower than those in other north Texas municipalities. The problem is that the pension incentive ends up costing the taxpayers far more than simply raising police and fire salaries would. But salaries are paid out of police and fire budgets, whereas the DROP approach shifts the burden to the pension system.

Employees become eligible for DROP after 20 years because that's the point at which police officers and firefighters can retire and begin collecting a pension. Although experience is surely important, the miracle of compound interest creates an incentive for 60-somethings to stay as long as possible in very physically demanding jobs. As Lee Kleinman, who is a member of both the Dallas city council and the Police and Fire Pension System board, told the Dallas Morning News, the city could hire two younger officers, who might be more attuned to the latest policing technologies, for the cost of an older, better-paid officer.

DROP also shines a light on the underlying problem of a system that allows public workers to begin collecting pensions after 20 years, regardless of age. While I have no problem with enhanced pensions for public-safety workers, taxpayers should not be expected to provide ex-police officers and firefighters in their 40s with pensions for life as those former public employees embark on second careers.

It's easy to shift the burden of attracting and retaining police officers and firefighters from department budgets to the Dallas Police and Fire Pension System, but it's not right. Political leaders' have a fiduciary responsibility to city taxpayers, and that responsibility should lead them to take the far more cost-effective approach of ensuring a high-quality public-safety workforce by offering competitive police and fire salaries.

GOVERNING.COM

BY CHARLES CHIEPPO | JANUARY 23, 2015

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Austerity Age Fades as Road Work Pushes Atlanta to Borrow.

For the first time since 2001, Atlanta is seeking voter approval to sell bonds for infrastructure. For years, black nets underneath downtown Atlanta's 106-year-old Courtland Street bridge kept broken concrete from hitting cars and pedestrians below — and regularly snagged on the roofs of trucks.

Now, for the first time since 2001, Atlanta is seeking voter approval to sell bonds for infrastructure, including a replacement for the derelict span. If approved on March 17, officials say the $250 million would begin addressing $1 billion of needed improvements to roads, traffic signals and other public works.

"We have maintenance that's been put off for years and years and years," said Richard Mendoza, commissioner of the Public Works Department. "The $250 million is what we are able to afford without raising property taxes."

Atlanta's decision is part of a shift for American states and cities as the economy expands at the fastest pace in over a decade: They're using the taxpayer credit card again. After a budget-cutting push led governments to pay off debt by the most on record, the $3.6 trillion municipal-bond market may grow this year for the first time since 2010 because of borrowing for construction projects.

Critical Stage

State and local governments are expected to sell $357.5 billion in debt this year, an increase of $9.4 billion from 2014, according to a survey of 14 investment banks released last month by the Securities Industry and Financial Markets Association, a New York-based group that represents Wall Street.

"The infrastructure in this country is reaching a critical stage in its degree of performance," said Phil Fischer, head of municipal-bond research for Bank of America Merrill Lynch in New York. At a certain point, he said, "infrastructure is not optional."

America's governments would need to spend about $3.6 trillion through 2020 to put everything from roads and water to sewers and electricity networks into adequate shape, according to a 2013 report by the Reston, Virginia-based American Society of Civil Engineers.

Atlanta may seize on interest rates close to a 50-year low to chip away at projects put on hold as the housing-market crash and recession led it to raise taxes and cut spending.

Rating Raised

Its finances are now on the mend. Standard & Poor's in June raised Atlanta's rating three steps to AA, its third-highest rank. In October, Moody's Investors Service changed its outlook on the city to positive, indicating it may lift the grade from Aa2, also the third-highest rating.

When the city of 448,000 last sold bonds in October, 10-year securities yielded 2.3 percent, about 0.2 percentage point more than benchmark debt, according to data compiled by Bloomberg.

"Atlanta was hit hard by the recession and by foreclosures, but we believe they have rebounded nicely," said Dan Close, a senior vice president at Nuveen Asset Management in Chicago, which manages two Georgia municipal bond funds with a combined $388 million in assets.

The Atlanta real-estate market has revived since 2012, when it had the nation's second-highest rate of foreclosures. Home repossessions are now back to pre-recession levels, which has lifted property-tax rolls.

Falling Concrete

Atlanta's backlog of infrastructure work includes replacing the Courtland bridge, which spans city streets, alleys and parking lots near Georgia State University.

The city took the nets beneath it down more than a year ago and began patching the underside instead. The temporary fix will need to be repeated in three or four years if the bridge isn't replaced, said Michael Ayo, bridge engineer for the city.

The draft list of projects also includes a new indoor swimming complex to replace one that was closed in 2012 because the 90-year-old warehouse it was built upon was in danger of collapsing.

"We're not untypical of major cities," said Mendoza, the public works commissioner. "We have not kept pace with the investment needed in infrastructure."

The city plans meetings over the next two months to pitch its plan to the public.

Residents may be an easy sell. Voters already signed off on many of the proposed projects when they voted two years ago in favor of a one-cent-per-dollar sales-tax increase to pay for them. The measure, which was metropolitan Atlanta's first attempt to deal with its infrastructure needs as a region, failed because city voters were outnumbered by suburbanites who opposed it. The bond sale doesn't face that hurdle.

Atlanta Mayor Kasim Reed began talking about selling bonds after the sales tax failed. If successful, it could become the first of a series, said Mendoza.

"This bond is intended to be the first down payment to address the backlog," he said. "Maybe we'll do another $250 million in five years."

Bloomberg

By Margaret Newkirk

Jan 22, 2015

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Atlantic City Rating Cut by Moody's on Emergency Manager Plan.

Atlantic City, New Jersey's struggling gambling hub, had its rating cut six levels deeper into junk by Moody's Investors Service after Governor Chris Christie appointed an emergency-management team.

The reduction to Caa1 from Ba1 on on the city's $344 million in general-obligation debt follows the

governor's decision Thursday to install a management team that includes Kevyn Orr, who shepherded Detroit through its record $18 billion municipal bankruptcy last year. Orr will serve as a consultant, with Kevin Lavin taking the role of emergency manager.

"The downgrade to Caa1 reflects the appointment of an emergency management team of two bankruptcy specialists mandated to consider debt restructuring, which could involve a loss to bondholders," analysts Josellyn Gonzalez Yousef and Naomi Richman said in a statement.

Adding to the increased risk of default is the city's plan to sell about $12 million of bond-anticipation notes next week to refund debt maturing Feb. 3, the analysts said. The one-year notes, to be sold Jan. 27, will refund an equivalent amount of securities issued a year ago, according to data compiled by Bloomberg.

Speaking in Atlantic City Thursday, Orr and Lavin both dismissed questions of a possible bankruptcy as premature. Orr declined to answer questions about the appointment and the note sale. Kevin Roberts, a spokesman for Christie, declined to comment.

Revenue Down

Christie, a 52-year-old Republican in his second term, has struggled with a five-year plan to turn around Atlantic City. Casino revenue dropped to $2.9 billion last year, from a peak of $5.2 billion in 2006, as Pennsylvania, Delaware, Maryland and New York expanded gambling. Moody's dropped the city's rating to junk in July because of dependence on casinos.

The city has borrowed $345 million since 2010 to cover tax appeals and municipal deficits, and debt service now makes up about 15 percent of its budget, according to the executive order Christie signed authorizing Orr and Lavin. The city is relying on "unsustainable bond issuances" in part to fund pension payments of $23 million this year and $25 million next year, the order said.

Investors are demanding more additional yield to buy Atlantic City general obligations. Debt sold December 2013 and maturing December 2021 traded Friday at an average yield of 5 percent, the highest since August, data compiled by Bloomberg show.

Michael Stinson, the city's revenue director, said he didn't think Moody's "has a clue'" about a bills pending in Trenton that would help the city. The legislation would have the state-administered Casino Reinvestment Development Authority cover as much as $30 million in debt payments and have the casinos enter into payment-in-lieu-of-taxes agreements to guarantee debt service.

"I'm speechless; I'm in shock,," Stinson said. "These guys came in with the governor's blessing. Up to this point, any additional state involvement has been met positively by the market."

Bloomberg

By Terrence Dopp Jan 23, 2015 9:16 AM PT

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Moody's: Texas Pension Costs Rising for State and Its Local Governments.

New York, January 21, 2015 — The State of Texas (Aaa stable) and some of its local governments face rising pensions costs due to a history of contributions below actuarial requirements, Moody's Investors Service says in a new report, "Cost Deferrals Drive Rising Pension Challenges for Texas and Some Locals."

While the state has a broad ability to tackle pension funding challenges, many local government pension plans are subject to state constitutional protection.

"Most Texas local governments face greater legal constraints and procedural hurdles to pension reform, while the state has substantially more legal flexibility to change and adjust benefits to its plans," said the report's author and Moody's Assistant Vice President — Analyst, Thomas Aaron.

Texas participates in four single-employer plans, with the majority of costs associated with the Employee Retirement System (ERS), and the Teachers Retirement System (TRS). In order to address an ongoing funding challenge, the ERS requested a 59% increase in the state's contribution rate for the fiscal 2016-17 biennium for that system alone, a cost increase of nearly $540 million across all of the state's funds.

Local governments can have one or more single-employer plans, and may also participate in either the Texas Municipal Retirement System (TMRS), or the Texas County and District Retirement System (TCDRS). The state's largest cities — Houston, Dallas, San Antonio, and Austin – face varying levels of projected pension cost and liability growth, driven in part by divergent historical contributions compared to plan funding requirements.

While state statute governs TRS, TMS and TCDRS, the control of benefits and contributions for local single-employer plans varies. Some local single-employer plans are solely governed solely by state statute, while in other cases state law delegates authority to local control. However, local control does not necessarily translate to unilateral authority to enact benefit changes for local governments, because many share authority over their pension systems with the plan boards of trustees.

In August 2015, the City of Fort Worth (Aa1 stable) will head to federal court to settle a disagreement regarding whether its reduction to the future pension benefits of current employees violates state constitutional protections.

The report can accessed at:
https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1002263

GASB Adds External Investment Pools to Its Technical Agenda.

Project Description: The objective of this project is to improve financial reporting by external investment pools and pool participants that report positions in investment pools. Improvement will be achieved by addressing recognition, measurement, of investment pools and their disclosures.

EXTERNAL INVESTMENT POOLS—PROJECT PLAN

Background: In order to qualify for amortized cost reporting, current GASB literature in Statement 31 links local government investment pools to Securities and Exchange Commission (SEC) Rule 2a7, requiring that pool sponsors follow specific 2a7 criteria. In 2014, the SEC significantly revised its

rules affecting money market funds. The pre-agenda research indicated that those rules will affect investment pools to such an extent that few governments will be in a position to adopt the 2014 amendments. Those effects include the inability of pool participants to transact at a floating net asset value per share and the potential imposition of liquidity fees or redemption gates. Pre-agenda research indicated that some local government investment pools differ from many SEC-registered money market funds. For example, pool sponsors may have a more complete understanding about cash flow and liquidity needs of pool participants, pool participation may be involuntary, and alternative investment vehicles may be limited.

The pre-agenda research results suggested that some investment pools are assuming significant interest rate risk. In the event of an increase in interest rates, pool investments could suffer fair value losses. The extent of those losses, if any, will depend in part on the maturities of a pool's investments. The longer an investment's term-to-maturity, the greater an investment's exposure to fair value losses arising from interest rate risk. To portray accurately the financial position and economic condition of a pool, the proposed project would examine the interest rate risk of and structures of different investment pools in order to determine the appropriate measurement criteria and disclosure requirements.

Accounting and Financial Reporting Issues: The project will consider the following issues:

- If a cost-based measurement for investment pools is developed, what criteria or defining characteristics describe such pools
- For all investment pools, what additional note disclosures are essential information for financial statement users?
- For pool participants, what additional note disclosures are essential information for financial statement users.

History:

Pre-agenda research proposed: August 2014
Proposed for addition to the current technical agenda: December 2014

Status:

Added to Research Agenda: August 2014
Added to Current Agenda: December 2014

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Board Meetings Topics to be considered:

January 2015: Measurement of investment pool assets and net asset value per share. Criteria for cost-based investment pools.
March 2014: Continuation of cost-based criteria.
April 2015: Investment pool and participant disclosures.
May 2015 (T/C): Review draft standards section of an Exposure Draft.
June 2015: Review preballot draft of an Exposure Draft.

June 2015 (T/C): Review ballot draft and issue Exposure Draft.
July-August 2015: Comment Period (60 days).

BDA Submits Comment Letters: FINRA and MSRB Proposed Pricing Reference Disclosure Rules.

Today, BDA submitted comment letters to both FINRA and MSRB in response to their request for comment on a proposed rule to require a pricing reference disclosure on certain retail-size fixed income trades.

BDA submitted an identical comment letter to both FINRA and MSRB in response to their request for comment on a proposed rule to require a pricing reference disclosure on certain retail-size fixed income trades. The BDA's letter can be accessed here.

The BDA's letter focuses on several core issues with the proposed rule.

- Regulators have yet to explore or even begin to understand what this proposal means from a day-to-day operational standpoint for dealers. BDA requests that regulators engage in a feasibility study in order to be informed of the operational and technological impact of this proposal.
- The scope of the universe of trades that the proposed rule applies to is too broad and is not based on any empirical, market-based data. BDA urges regulators to provide an data-driven explanation for why the time scale and trade size makes sense.
- The proposed disclosure would trigger a requirement to disclose information to investors that is incomplete and potentially misleading without the appropriate context.
- BDA urges regulators to explore alternatives to the proposed rule that would allow the regulators to meet their goals through improvements to EMMA and TRACE.
- BDA urges regulators to allow dealers to make the specialized disclosure in whichever way best fits with their existing system capabilities.
- Finally, BDA urges regulators to exclude 'retail-size' trades with sophisticated institutional investors from the scope of the proposed rule. Additionally, BDA urges regulators to focus the proposed rule on secondary market trades and exclude primary market transactions.

01-20-15

Stockton, Calif., Can Leave Bankruptcy During Appeal, Judge Rules.

Forcing Stockton, Calif., to remain in bankruptcy while an unhappy bondholder group protests the city's plan to cut millions of dollars would unfairly delay payments to the city's retirees, a federal judge said Tuesday.

From his Sacramento courtroom, U.S. Bankruptcy Judge Christopher Klein ruled that mutual-fund giant Franklin Templeton Investments shouldn't be allowed to hold up the city's departure from bankruptcy protection.

Franklin Templeton's lawyers wanted the city to remain in bankruptcy while they appeal Judge Klein's Oct. 30 decision approving a plan that pays Franklin-managed funds about $4 million for their roughly $37 million claim. The fund manager says the 300,000-resident city can afford more

than that.

On Tuesday, Judge Klein ruled that the Franklin-managed funds aren't likely to win that battle and that a delay during the appeals process would unfairly tie up payments to retired city workers who have agreed to give up their health-care benefits and accept a one-time payment instead.

"Since we're dealing with retirees who presumably are in the later stages of their lives, longer term delays are very obviously and poignantly to their detriment," Judge Klein said. He added that cities and counties that borrow money in the roughly $3.6 trillion municipal bond market "are served by some definitive resolution of cases."

Earlier Stockton's leaders said that delaying implementation of the plan also would make it hard for the city's police department to recruit new officers and prevent some city workers from moving out of an aging municipal building that has a leaky roof and rat problem.

The Franklin-managed funds are the only creditors to continue to challenge the city's bankruptcy-exit plan.

The city spent some of the municipal-bond money extended by the Franklin funds on fire stations and parks. The municipality made four interest payments before it missed a payment on March 1, 2012.

Stockton filed for bankruptcy protection in June 2012, with more than $700 million worth of debit, making it the largest city to seek bankruptcy protection under Chapter 9 until Detroit's filing about a year later.

Stockton, which is some 80 miles inland from San Francisco, was hit hard by the housing crash.

Judge Klein blamed the city's financial woes on former leaders who offered overly generous pay to municipal workers and took on debt for new projects that Stockton couldn't afford.

Throughout the bankruptcy, the city cut costs. Voters also approved a new 3/4-cent sales tax to pay for more police officers.

Stockton leaders didn't try to reduce costs by paying less money into a pension plan administered by the California Public Employees' Retirement System, even though Judge Klein decided that a California city's pensions could indeed be cut using bankruptcy's power.

THE WALL STREET JOURNAL

By KATY STECH

Jan. 20, 2015 3:29 p.m. ET

Write to Katy Stech at katherine.stech@wsj.com

WSJ: Detroit's Lawyers and Advisers Defend Billing.

The lawyers and advisers who guided the city of Detroit through the largest municipal bankruptcy in U.S. history are now defending their work's multimillion-dollar price tag.

In court papers, lead law firm Jones Day and others that helped Detroit navigate its historic debt restructuring made a case—at the request of U.S. Bankruptcy Judge Steven Rhodes—for why their hourly billing rates and final tab are reasonable.

Officials at Jones Day, who pointed out they had already cut $17.7 million from their tab, defended the $53.7 million in fees charged for roughly 17 months' work.

"Nothing in the Chapter 9 case suggests that Jones Day's fees and expenses were irrational or overreaching," firm officials said in court papers.

The firm's defense raises a novel issue in a municipal bankruptcy cases: the rules laid out in the U.S. Bankruptcy Code for Chapter 11 cases related to how professionals can bill clients don't apply to Chapter 9—the type of bankruptcy used by struggling cities and counties.

Shortly after Detroit filed for bankruptcy in July 2013, Judge Rhodes made it clear that its lawyers shouldn't be charging the struggling city for first-class flights, alcoholic beverages or movies in hotel rooms. His instructions are the most detailed legal-fee instructions given to a city or county in a modern municipal bankruptcy case.

In Detroit's case, some firms said they refrained from making unnecessary or overly aggressive moves that would have run up the bill for the 680,000-resident city. Lawyers at Dentons U.S. LLP who spoke for the city's 23,500 retirees said that they also cut their bill by $3.4 million. The firm charged $14.6 million for helping explain the claims and voting process to retirees who were unfamiliar and "largely hostile" to the bankruptcy, firm officials said in court papers.

The Clark Hill PLC law firm, which charged $6.3 million for work in representing the city's retirement systems, said its final bill is "eminently reasonable relative to the complexity of the matters addressed, the resources demanded by the case, and the interests at stake." Investment banker Miller Buckfire & Co. LLC which helped the city negotiate bond reductions, reorganize the city's water and sewer department and find $120 million in bankruptcy financing argued that city officials knew early on how much that work would cost.

Bankruptcy judges have less power over the fees charged to cities and counties that file for Chapter 9 protection because federal courts give states and the municipalities more latitude to govern. Specifically, the Code says that "the court may not by any stay, order, or decree, in the case or otherwise, interfere with…any of the property or revenues of the [municipality in bankruptcy]."

Even with taxpayers footing the bill, the watchdog in typical Chapter 11 corporate bankruptcy cases—the U.S. trustee's office—doesn't monitor the financial operations in municipal bankruptcy cases.

Other judges have used a hands-off approach in municipal bankruptcy cases, including Stockton, Calif.'s bankruptcy judge who decided that he doesn't need to approve settlements struck by city officials that, in a Chapter 11 corporate case, would normally need court clearance.

Detroit emerged from bankruptcy in December after cutting $7 billion in debt owed to Wall Street firms, city retirees and others.

Throughout the city's bankruptcy, Detroit leaders fought pressure from some Wall Street creditors and others to sell the city's valuable art collection to repay a greater portion of the city's debt. Federal mediators helped negotiate a deal to use more than $800 million from private foundations and the state of Michigan to avoid that sale and make the cuts to city's worker pensions less severe.

City leaders who blamed tax revenue that fell after the real-estate crash and the city's population decline are now planning to spend $1.7 billion to revitalize the city by removing blighted buildings and boosting police and fire services in the city.

THE WALL STREET JOURNAL

By KATY STECH

Jan. 20, 2015 3:57 p.m. ET

(Dow Jones Daily Bankruptcy Review covers news about distressed companies and those under bankruptcy protection. Go to http://dbr.dowjones.com)

Write to Katy Stech at katy.stech@wsj.com.

Atlantic City Bankruptcy Talk 'Premature': Turnaround Team.

ATLANTIC CITY NJ/NEW YORK — It's "premature" to talk about bankruptcy for troubled gaming resort Atlantic City, Detroit's former turnaround expert said Thursday as he signed on with the latest bid to revive a city some see as bound to follow the path taken by the Motor City.

Atlantic City's lifeblood, gaming revenue, has been decimated as newer casinos in nearby states such as New York and Massachusetts lured gamblers away from the storied but downtrodden New Jersey shore locale.

New Jersey Governor Chris Christie on Thursday appointed a turnaround team, including former Detroit emergency manager Kevyn Orr – a step the struggling casino town has resisted.

"There's only one reason to hire Kevyn Orr after Detroit and that's if you're going into bankruptcy, said Tamara Lowin, Municipal Analyst at Belle Haven Investments.

Christie, a potential 2016 presidential candidate, acknowledged multiple bipartisan attempts to get the city on firm financial footing, but said they had failed. All of those plans required significant state resources.

"We are digging out of an enormous hole," Christie said. "We have problems we have to fix… none of them are unfixable if in fact we have the political will to be able to get them done."

The team will be led by Emergency Manager Kevin Lavin, who previously worked for turnaround specialist FTI Consulting. Lavin is an expert in "delicate discussions with constituencies with different interests," said John Rapisardi, a bankruptcy lawyer at O'Melveny & Myers, who has worked with him.

Orr will support Lavin as special counsel. A former corporate bankruptcy lawyer at the firm Jones Day, Orr most recently guided Detroit through the biggest-ever U.S. municipal bankruptcy.

Orr said it was "premature" to talk about bankruptcy for the city, which must repay a $40 million bridge loan from the state by March 31. It would take about 90 days to implement a plan and another 90 days to see results, he said.

Still, observers said that the appointment was a clear indication of direction.

“(New Jersey) does have a path to municipal bankruptcy in its statutes – given that, the appearance of Mr. Orr is surely making a impression on the municipal finance community,” said Melissa Jacoby, a law professor at the University of North Carolina.

In New Jersey, a city must win permission from the Local Finance Board to file for Chapter 9 municipal bankruptcy.

“If Chris Christie is moving this forward then presumably that access wouldn’t be denied,” said bankruptcy lawyer Michael Sweet.

The appointment of an emergency manager was rejected by Atlantic City lawmakers earlier this month as they endorsed steep budget cuts.

“I’m not in support of it, but if we do get an emergency manager, I’ll work with him,” said State Assemblyman Vince Mazzeo, who represents Atlantic City, ahead of the announcement.

There were, however, doubts that Orr can work magic on a city that saw four of its 12 casinos close in 2014. A fifth, Trump Entertainment’s Taj Mahal, narrowly averted closing but remains in bankruptcy. The operating unit of Caesars Entertainment, the owner of Bally’s Atlantic City and Caesars Atlantic City, filed for bankruptcy earlier in January.

“No one should expect that the appointment of a very competent fiscal manager is the solution for Atlantic City,” said Peter Reinhart, professor and director of the Kislak Real Estate Institute at Monmouth University, as it would not solve the underlying problems of a stagnant tourism and casino industry.

Atlantic City has some parallels with Detroit in the importance of casino revenues – Detroit’s reliance on casino cash to help fund a recovery was criticized during its restructuring process.

Still, Detroit turned to its art collection to ease cuts to pensions as it climbed out of bankruptcy.

When asked about comparisons to Detroit, Orr said each place was different and “had to be taken on its own.”

By REUTERS

JAN. 22, 2015, 6:02 P.M. E.S.T.

(Additional reporting by Tom Hals, Lisa Lambert, Curtis Skinner, Megan Davies, writing by Megan Davies; Editing by Diane Craft and Christian Plumb)

Christie Uses Executive Order to Appoint an Emergency Manager in Atlantic City.

Moving to take greater control over Atlantic City, which is struggling financially as its casino industry shrinks, Gov. Chris Christie on Thursday appointed a corporate finance lawyer to be the city’s emergency manager.

Along with the lawyer, Kevin Lavin, Mr. Christie brought in Kevyn Orr — the lawyer who led Detroit through the bankruptcy it emerged from last month — as a consultant. Mr. Christie said the

appointments were not intended to “marginalize or minimize” the roles of the city’s elected government, led by Mayor Don Guardian.

But the governor’s move, made through an executive order, came just two weeks after Mr. Guardian flatly rejected the proposal of an emergency manager, saying that it would simply add another layer of bureaucracy. The appointments drew immediate fire from the president of the state Policemen’s Benevolent Association, Patrick Colligan, who called the managers “hatchet men.”

Three casinos are the latest victims of Atlantic City’s troubled gambling industry. Showboat is scheduled to shut down Aug. 31.Like a Domino, Another Atlantic City Casino FallsJUNE 27, 2014 Police and Fire Department officials are wary because a report issued in November by a commission appointed by the governor recommended reducing the size of Atlantic City’s police and firefighting forces as one way of saving money. That report, which also suggested installing an emergency manager, said that the city’s property tax revenue would fall to $8 billion in the 2016 fiscal year, less than half of what it was three years ago.

Atlantic City has never fulfilled the hopes that led lawmakers to legalize gambling there almost four decades ago. But its financial problems turned into a crisis after neighboring states, most notably Pennsylvania, created their own casinos and siphoned off many of the gamblers who had streamed to the Jersey Shore.

Four of Atlantic City’s 12 casinos closed last year, and a fifth, Trump Taj Mahal, barely averted a shutdown last month. The closings left about 9,000 casino workers unemployed.

The steady deterioration led Mr. Christie to declare on Thursday that he could not “wait any longer.” He said that “more aggressive action” was needed, and that “it’s time to confront the dire circumstances.”

Mr. Christie said his appointees would provide the city’s elected officials with tools to help them resolve the city’s financial problems. His executive order calls for Mr. Lavin to report back within 60 days with “a plan to place the finances of Atlantic City in stable condition on a long-term basis by any and all lawful means.”

Despite such strong language, some close observers of the situation expressed relief that the governor’s action was not more autocratic.

“I was loaded for bear this morning,” said Bill Dressel, the executive director of the New Jersey State League of Municipalities. “I was ready to roll the cannon out of the closet and aim it at the golden dome.”

He said he had been prepared to criticize the governor for usurping the authority of the city’s elected officials. But after reading the order and talking with Mr. Guardian, Mr. Dressel said he was pleasantly surprised by the tone of the first-day discussions.

Continue reading the main storyContinue reading the main storyContinue reading the main story In a statement, Mr. Guardian said that “although no timetable was given, they communicated to us that they wanted to get in, help us fix the city’s finances, and get out.”

Assemblyman Vince Mazzeo, who has proposed legislation aimed at stabilizing Atlantic City’s tax base, issued a statement backing Mr. Guardian and opposing Mr. Christie’s action.

“The appointment of an emergency manager is not something that I support, but I will work with him and his team in a cooperative manner to fix and reform Atlantic City’s dire property tax

situation," Mr. Mazzeo said. He added that "even with the appointment of an emergency manager — and some questions about his powers and what he's going to be able to accomplish — the need to reform and stabilize the Atlantic City tax structure is still the most pressing fiscal issue facing our region."

The appointment of Mr. Orr, who was the emergency manager of Detroit for about 20 months, is not an indication that Atlantic City is likely to file for bankruptcy, Mr. Dressel said. He said that New Jersey laws effectively ruled out a municipal bankruptcy, and that there had not been one in the state since the Great Depression.

But now that he will be working closely with Mr. Orr, Mr. Guardian may regret a line or two he uttered last week in his State of the City speech. "At least we're not Detroit," the mayor said, as he ran through a series of quips.

Then he gave his reaction to the idea of appointing an emergency manager. "Yeah, of course," he said then. "It's a great idea to have the state monitor monitor the state monitor who's already monitoring me."

THE NEW YORK TIMES

By PATRICK McGEEHAN

JAN. 22, 2015

SIFMA Supports Increased Bond Market Price Transparency for Investors; Urges Greater Access to and Usage of Existing Data on FINRA and MSRB Systems.

New York, NY, January 20, 2015 -SIFMA, in a comment letter filed today with the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board on their Matched Trade Proposals, expresses that it shares the goal of regulators to enhance bond market price transparency for retail investors. But because the enormous costs and burdens associated with the proposals would significantly outweigh the purported benefits, SIFMA recommends that the proposals be withdrawn in favor of a uniform rule that encourages increased usage of the extensive pricing data already available on the existing Trade Reporting and Compliance Engine ("TRACE") and Electronic Municipal Market Access ("EMMA") systems rather than the creation of something new.

"SIFMA fully supports increasing transparency in the municipal and corporate bond markets in a cost-effective manner that meets investor protection goals and promotes efficient functioning of the markets, which is important to investors' interests," said Randy Snook, executive vice president, business policies & practices at SIFMA. "We believe leveraging the existing FINRA and MSRB systems to inform investors is a better approach towards achieving this goal than what the proposals suggest."

SIFMA believes FINRA and the MSRB should promote TRACE and EMMA as the solution for increased transparency, using the power of the internet to reach the ever-increasing portion of retail investors who rely on it on a daily basis for communications and commerce of every sort. This is a more sensible approach than requiring the proposed matched trade disclosure on traditional paper confirmations.

Any new confirmation disclosure should be designed to encourage retail bond investors to access TRACE or EMMA and should coincide with renewed education efforts to help those investors better understand the information available on those systems. In contrast to the steep costs and uncertain benefits associated with the Proposals, enhancing retail investors' use of these existing systems – developed over the past two decades after considerable and ongoing investment – would constitute a more cost-effective use of limited resources and result in greater price transparency for investors.

Educational efforts to make investors more aware of the availability of information on the TRACE and EMMA systems could be made in connection with account opening documents, customer statements, or trade confirmations. This would provide greater information about bond prices and transactions. There are also greater opportunities for direct access to TRACE and EMMA by retail customers through their online brokerage account platforms, as well as retail investor education efforts more generally.

SIFMA raises the following points in its letter:

- The FINRA and MSRB Proposals must be uniform in design and terminology. Despite an effort to be uniform, the Proposals use different terms, phrases, and structure. In the context of the Proposals, there is no policy justification for having divergent approaches or terminology.
- The cost-benefit analysis undertaken by FINRA and the MSRB is inadequate. Nothing in the Proposals suggests that FINRA or the MSRB has even begun to compile a record – as required under federal law and their own policies – that would either permit an informed analysis of the costs and benefits presented by the Proposals or allow an appropriate review by the SEC. Nor do the Proposals even purport to comply with federal laws governing new recordkeeping requirements or burdens on small businesses.
- The Proposals require a number of critical changes to minimize the risk of investor confusion and to mitigate the unnecessary implementation challenges if FINRA and the MSRB continue to pursue a new confirmation disclosure obligation with specific price references.
- The same day trade window would create confusing and misleading disclosure to investors by paring or matching trades in a manner that creates too much variability in what the price difference would represent.
  Any confirmation disclosure obligation with specific price references should be better tailored to retail trades and investors by using defined terms to exclude institutional and other sophisticated investors and more appropriate quantity thresholds.
  If FINRA and the MSRB continue to pursue a disclosure obligation with a specific price reference, SIFMA recommends more carefully tailoring the obligation to avoid investor confusion by limiting the proposed confirmation disclosure to riskless principal transactions involving retail customers and making additional changes to mitigate the excessive burdens and costs associated with the current formulation.

The letter is available here.

MSRB Urges SEC to Revisit Its Municipal Market Disclosure Rule.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today urged the Securities and Exchange Commission (SEC) to conduct an extensive review of the disclosure requirements in the municipal securities market outlined in SEC Rule 15c2-12. The MSRB pledged its support for a thorough review of the rule in a letter submitted to the SEC in response to a request for comment on the collection of information under the rule mandated by the Paperwork Reduction Act.

“The MSRB recognizes that the SEC is fulfilling its duty to regularly review the volume of regulatory paperwork involved in complying with its rules,” said MSRB Executive Director Lynnette Kelly. “However we are taking this opportunity to encourage more extensive dialogue about the federal disclosure framework by urging the SEC to conduct a wholesale re-examination of the rule and consider potential changes to improve its operation and reflect current market practices.” SEC Rule 15c2-12 was adopted in 1989 and last amended in 2010.

Since 2009, the MSRB’s Electronic Municipal Market Access (EMMA®) website has served as the SEC-designated centralized platform for disclosure of offering documents and continuing disclosures under SEC Rule 15c2-12. The MSRB maintains EMMA with the goal of facilitating public access to disclosure information and minimizing the burden on dealers and issuers of compliance with disclosure requirements.

“The availability of information about municipal issuers and their debt obligations on the EMMA website is essential to the integrity of the municipal securities market and the protection of investors,” Kelly said.

In its letter, the MSRB noted that changes in the municipal market, including the increasing prevalence of bank borrowing by issuers, necessitates an extensive look at the disclosure regime. The letter encourages the SEC to look to its disclosure standards for the corporate market as a precedent for disclosure of off-balance sheet obligations such as bank loans. “Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported,” the MSRB’s letter says. “The MSRB believes that the availability of timely disclosure of additional debt in any form and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market.”

The MSRB first encouraged state and local governments in 2012 to make information about their bank loans publicly available on a voluntary basis on the EMMA website. Read about the MSRB’s market leadership on municipal market disclosure.

Read the MSRB’s comment letter to the SEC on Rule 15c2-12.

Date: January 20, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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NABL Submits Comments on IRS Notice 2014-67.

NABL has submitted comments to the Internal Revenue Service (“IRS”) in response to Notice 2014-67 regarding the interim guidance provided for the participation by governmental persons or 501(c)(3) organizations in accountable care organizations (“ACOs”) under the Medicare Shared Savings Program of the Patient Protection and Affordable Care Act and regarding the amplification of the private business use safe harbors in Revenue Procedure 97-13.

Regarding ACOs, NABL asked that the IRS and Treasury Department confirm that (1) the six-prong standard described in section 3.01 of Notice 2014-67 (the “ACO Safe Harbor”) is in fact a safe harbor for purposes of determining whether participation in an ACO results in private business use;

and (2) the ACO Safe Harbor does not displace the general facts and circumstances approach set forth in the Code and Treasury Regulations or other existing guidance, such as Revenue Procedure 97-13, for purposes of determining whether an arrangement gives rise to private business use. NABL requested that further clarification be included in subsequent guidance with respect to several of the specific ACO Safe Harbor requirements.

Regarding Revenue Procedure 97-13, NABL suggested amendments to clarify the application of the Management Contract Safe Harbor, including a definition of the term "stated amount" and an extension of the management contract safe harbor to apply to incentive payments based on maximizing revenue or minimizing expense.

The comments were prepared by an ad hoc task force (listed in Exhibit A of the document) and approved by the NABL Board of Directors. The comments on Notice 2014-67 can be seen here.

Jan 22, 2015

- Bond Dealers of America – 2014 Year in Review.
- Att. Gen's Brief Supports Town in Prism-Bonds Case.
- Obama Proposes New Muni Bonds for Public-Private Investments.
- Indy Justice Center Draws Big Guns to U.S. P3 Market.
- Cash-Flow Crunch Wanes as Note Sales Set Record Low: Muni Credit.
- Muni Market Participants Applaud QPIB, Water Proposals.
- Webinar on MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities.
- IRS Tax Exempt Bonds Director's Updates for Fiscal Year 2015.
- MSRB: Municipal Financial Disclosures Rise Sharply in 2014.
- And finally, our earlier supposition that requiring middle-school girls to participate in a mixed martial arts (i.e. cage fighting) tournament as part of their phys-ed requirements would likely end in tears was confirmed this week by *Pierre v. Ramapo Cent. School Dist.* As if that wasn't enough the legal term of art "infant plaintiff" conjured the absolutely priceless image of toddlers placing each other in choke holds. "And in this corner, Lily 'The Pacifier' Edwards!"

IMMUNITY - CALIFORNIA

Pierce v. San Mateo County Sheriff's Department

Court of Appeal, First District, Division 1, California - December 31, 2014 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 100 - 2015 Daily Journal D.A.R. 46

Resident brought action against sheriff's department and individual officers under § 1983 to challenge a warrantless search of her home. The Superior Court sustained demurrer without leave to amend. Resident appealed.

The Court of Appeal held that:

- Resident stated claim that warrantless search of her home violated Fourth Amendment;
- County sheriff's department was not a "person" subject to a suit for damages under section 1983; and
- Officers of sheriff's department were "persons" potentially liable under section 1983 to the extent that they were sued in their individual capacity.

DAMAGES - ILLINOIS

Geraty v. Village of Antioch

United States District Court, N.D. Illinois, Eastern Division - January 8, 2015 - Not Reported in F.Supp.3d - 2015 WL 127917

A jury found that the Village of Antioch discriminated against Geraty, a police officer in the Village, on the basis of her gender by failing to promote her to the position of sergeant and by failing to transfer her to the position of detective. The jury awarded Geraty $250,000 in compensatory damages.

At issue here was which Title VII damages cap was applicable. If the Village had 200 or fewer employees during the relevant time period, Geraty's compensatory damages are capped at $100,000, but if the Village had 201 or more employees, a $200,000 cap applies.

After an exhaustive analysis of the definition of "employee" and the arguments of the parties regarding the applicable criteria for designating an individual as an "employee," the court ruled that the $200k cap applied.

MUNICIPAL ORDINANCE - INDIANA

Anderson v. Gaudin

Court of Appeals of Indiana - January 12, 2015 - N.E.3d - 2015 WL 143920

In 2007 the Brown County Commissioners enacted an ordinance establishing a county-wide fire-protection district. In 2011 the Commissioners amended the ordinance, reducing dramatically the scope of the ordinance and the powers granted to the Board of Trustees. County-resident freeholders first filed suit for declaratory judgment, and then the Commissioners and the freeholders filed cross motions for summary judgment, asking the trial court to determine whether the amended ordinance was a valid exercise of the Commissioners' authority.

The trial court granted summary judgment in favor of the freeholders, finding that the amendment was a de facto dissolution of the ordinance, in contravention of the Fire District Act. The Commissioners appealed, contending that the amended ordinance was a valid exercise of their authority.

The Court of Appeals affirmed, finding that the "amendment" made to the ordinance amounted to a de facto dissolution, and that the Commissioners did not have the authority to amend the ordinance at all.

LIABILITY - MISSISSIPPI

Hill v. City of Horn Lake

Supreme Court of Mississippi - January 15, 2015 - So.3d - 2015 WL 179270

Construction company employee, who was seriously injured when trench he was working in collapsed, and wrongful death beneficiaries of another company employee, who was killed in trench

incident, brought action against city, alleging that city was liable for company's negligence on the basis of respondeat superior and also for its own negligence in maintaining the site. The Circuit Court granted the city's motion for summary judgment on all issues. Employee and wrongful death beneficiaries appealed.

The Supreme Court of Mississippi, en banc, held that:

- City, which had contracted with construction company, was not vicariously liable for company's negligence;
- Though an important factor, the existence of a formal contract is not a prerequisite for a finding of independent-contractor status; and
- Statute, requiring parties entering into a construction or public works contract with a municipality to furnish proof of general liability insurance coverage if the contract exceeds $25,000, was not applicable, and thus, employee and beneficiaries could not establish negligence per se claim against city based on this statute.

City, which had contracted with construction company, did not exercise more than a supervisory role over the construction project, which was not sufficient to trigger a master-servant relationship, and as such, city was not vicariously liable for company's negligence which resulted in serious injuries to company's employees at construction site. Company was responsible for obtaining its own equipment to complete the project, record did not indicate that company had anything but full discretion in choosing the equipment used for the project, city did not assist in construction, and city's involvement at planning stage was not enough to trigger a master-servant relationship.

Statute, requiring parties entering into a construction or public works contract with a municipality to furnish proof of general liability insurance coverage if the contract exceeds $25,000, was not applicable since contract between city and company for the completion of the project did not exceed $25,000, and thus, construction company employees, who were injured at construction site, could not establish negligence per se claim against city based on this statute.

ZONING - NEW JERSEY

Myers v. Ocean City Zoning Bd. of Adjustment

Superior Court of New Jersey, Appellate Division - January 16, 2015 - A.3d - 2014 WL 7565888

Landowners brought action against city seeking to compel city to adopt zoning change or to endorse, affirmatively, maintenance of zoning ordinance notwithstanding proposed change. The Superior Court entered judgment in favor of landowners. City appealed.

The Superior Court, Appellate Division, held that statute addressing a governing body's authority to adopt a zoning ordinance and the ordinance's conformity with municipality's master plan, stating that the body "may adopt or amend a zoning ordinance" and that "[s]uch ordinance shall be adopted after the planning board has adopted the land use plan element and the housing plan element of a master plan" does not require a governing body to affirmatively act in response to a master plan re-examination report; rather, the statute imposes conditions upon a governing body when it decides to act.

LIABILITY - NEW YORK

Pierre v. Ramapo Cent. School Dist.

Supreme Court, Appellate Division, Second Department, New York - January 14, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 00348

Student was injured while competing in her high school's "self-defense tournament," a voluntary competition open to female students who were enrolled in a self-defense class taught by physical education teacher. The self-defense class was one of several electives that female students could take to satisfy the district's physical education requirement.

Plaintiffs alleged that, since the self-defense class was in actuality a mixed martial arts class, the defendant breached its duty of care to the infant plaintiff by allowing the class to be instructed by a person with little martial arts training, and allowing that person to referee the tournament. The plaintiffs contended that the students in the class were not properly or sufficiently trained and that teacher did not have the requisite knowledge and experience to recognize the dangers posed by the moves being performed in the tournament.

The defendant moved for summary judgment dismissing the complaint, arguing that the doctrine of primary assumption of risk barred the action and that any negligent supervision on its behalf was not a proximate cause of the infant plaintiff's injuries in any event.

The appellate court denied defendant's motion, holding that:

- Student had not, by voluntarily participating in the self-defense tournament, consented to the risks associated with the move that ultimately caused her injuries; and
- Defendant also failed to establish, prima facie, that its alleged lack of adequate supervision was not a proximate cause of the infant plaintiff's injuries.

ZONING - NEW YORK

Mimassi v. Town of Whitestown Zoning Bd. of Appeals

Supreme Court, Appellate Division, Fourth Department, New York - January 2, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 00075

Petitioner commenced Article 78 proceeding seeking, inter alia, to annul town zoning board of appeals determination to deny his application for area variance. The Supreme Court, Onondaga County, denied petition, and petitioner appealed.

The Supreme Court, Appellate Division, held that:

- Determination was not arbitrary and capricious because board failed to adhere to its precedent, but
- Board was required to engage in necessary balancing test, weighing benefit to applicant of granting variance against any detriment to health, safety and welfare of the neighborhood or community affected thereby, taking into account five statutory factors.

PUBLIC CONTRACTS - PENNSYLVANIA

Perrotto Builders, Ltd. v. Reading School Dist.

Commonwealth Court of Pennsylvania - January 9, 2015 - A.3d - 2015 WL 117020

Perrotto Builders, Ltd. appealed the order of the County Court of Common Pleas that denied its request for a preliminary injunction to stop the implementation of a construction contract to renovate several school buildings in the Reading School District.

Perrotto contended that the School District did not adhere to the terms of its own bidding procedures because it changed the stated basis for awarding the contract after the bids were opened when the School District reduced the budget amount for the project from $40 million to $33 million in order to fund emergency repairs that were expected to develop until such time as it could issue new bonds. The School District removed the elementary schools from the scope of work involved and recomputed the total base bid on the remaining project for each bidder, which resulted in the contract being awarded to another contractor.

Perrotto acknowledged that the School District could revise the scope of the work for budgetary reasons, but contended that the School District had to award the contract solely on the basis of the lowest total base bid on the full project. The School District would then be required to award the contract to Perrotto and then use a change order to reduce the scope of work.

The trial court refused to grant the preliminary injunction for several reasons. Chief among them was its finding that the School District did, in fact, follow the terms of its bid procedures.

The appeals court affirmed, holding that the School District was permitted by the bidding documents to change the scope of the project and the calculation of the lowest total base bid after opening the bids.

LABOR - RHODE ISLAND

Town of North Kingstown v. International Ass'n of Firefighters, Local 1651 AFL-CIO

Supreme Court of Rhode Island - January 9, 2015 - A.3d - 2015 WL 127889

Firefighters union brought declaratory judgment action against town, alleging ordinance reorganizing fire department was invalid, that town had violated the Firefighters Arbitration Act (FFAA) and the State Labor Relations Act (SLRA), and seeking injunctive relief. The Superior Court issued decision finding ordinance invalid, and that unilateral changes to wages, hours, and terms and conditions of employment was improper. Town appealed.

The State Labor Relations Board (SLRB) issued a complaint against town, alleging the manner in which town implemented a three-platoon structure for fire department violated state law. Town appealed. Town brought declaratory judgment action alleging SLRB was without jurisdiction to enforce unfair labor practice charge, that its implementation of the three-platoon system was lawful, and seeking to stay arbitration with firefighters union. The Superior Court found the town's actions in implementing the three-platoon system to be unlawful, that the SLRB had jurisdiction over the unfair labor practice charge, that the arbitration panel had no jurisdiction to decide any unresolved issue between town and union, and ordered town to reinstate wages, hours, and other terms of employment that existed prior to the implementation of the three-platoon system. Town appealed.

Following consolidation of the three appeals, the Supreme Court of Rhode Island held that:

- Town's decision to implement a three-platoon structure for fire department was a lawful management right of the town;
- The 120-day period for the union to provide notice of a request for collective bargaining with regard to any such appropriation began to run 120 days before the first Wednesday in May, the ordinary date for final approval of the town's budget;
- The 30-day period for union to provide notice to town of its demand for arbitration on any unresolved matters began to run on the first date bargaining occurred with regard to matters requiring the appropriation of money; and
- Firefighters union waived its right to demand interest arbitration by failing to provide town with the requisite notice, and thus, the arbitration panel was without jurisdiction to determine the town's decision to implement the new structure, or to decide any unresolved issues between the parties.

IMMUNITY - TEXAS

Texas Department of Aging and Disability Services v. Cannon

Supreme Court of Texas - January 9, 2015 - S.W.3d - 2015 WL 127829

Representative of state school resident's estate filed suit against Department of Aging and Disability Services, which operated school, and several school employees, asserting claims for wrongful death and survival and claims under § 1983, arising out of resident's death by asphyxiation while employees were attempting to physically restrain resident. The District Court denied Department's plea to jurisdiction and employees' motion to dismiss. Defendants appealed. The Houston Court of Appeals affirmed in part and reversed in part. Defendants petitioned for review.

The Supreme Court of Texas held that trial court could consider amended petition, asserting § 1983 claims against employees, which was filed after Department and employees filed motion to dismiss, disapproving Villasan v. O'Rourke, 166 S.W.3d 752, City of Arlington v. Randall, 301 S.W.3d 896, and Brown v. Ke–Ping Xie, 260 S.W.3d 118.

Department of Aging and Disability Services employees did not have an absolute right to dismissal of action upon filing of motion to dismiss under election of remedies provision of Tort Claims Act, but instead, a court order along with certain findings was required to effectuate dismissal, and thus trial court could consider amended petition, asserting § 1983 claims against employees, which was filed after Department and employees filed motion to dismiss, in tort action arising when state school resident died while Department employees were attempting to restrain him. Although election of remedies provision required that employees be "immediately" dismissed upon filing of motion, such language indicated only that dismissal by the trial court is mandatory, not discretionary, and did not preclude court from considering claims in amended petition prior to ruling on the motion, disapproving Villasan v. O'Rourke, 166 S.W.3d 752, City of Arlington v. Randall, 301 S.W.3d 896, and Brown v. Ke–Ping Xie, 260 S.W.3d 118.

In an action under the Tort Claims Act that has been filed against both a governmental unit and its employees, when the governmental unit files a motion to dismiss the employees under the election of remedies provision of Tort Claims Act, the plaintiff is not foreclosed from amending her petition to assert claims that are not brought under the Tort Claims Act, and such claims are properly before the court for its consideration in ruling on the motion to dismiss.

INVERSE CONDEMNATION - TEXAS

City of Galveston v. Murphy

Court of Appeals of Texas, Houston (14th Dist.) - January 13, 2015 - S.W.3d - 2015 WL 167178

Two multi-family dwellings were flooded by Hurricane Ike. The City of Galveston required a series of repairs and renovations, during which time the City declared the property unfit for habitation and evacuated the tenants.

During the course of the repairs, City officials suddenly informed the property owners that, because the property had been unoccupied for over six months, it had lost its "grandfathered" non-conforming status and would require a Specific Use Permit (SUP) to be occupied as multi-family dwellings. The property owners duly submitted an application for a SUP to the City Council, which was denied.

The Property Owners filed suit against the City, alleging that the SUP denial, as well as the City's "purported" invocation of the six-month vacancy used to then require the SUP, constituted a regulatory taking under both the Texas and federal constitutions.

The City filed a plea to the jurisdiction, which the trial court denied. The City appealed, asserting that the trial court lacked subject-matter jurisdiction because the property owners' claims were not ripe for review because they never obtained a final decision regarding their use of the property as an apartment complex. According to the City, its denial of the SUP primarily was based on code safety and structural concerns with the property and that it had encouraged the owners to bring the property within compliance and reapply, which they had not done.

The property owners responded that their case is ripe. In particular, the property owners contend the record contradicts the City's position that the SUP application was denied due to safety concerns. The property owners also argued that the City Council hearing was a "sham" designed to wear them down into acquiescing to demands for density reduction, and that any attempts to make further applications of any kind would be futile.

The Court of Appeals held that:

- City's denial of the SUP did not constitute a final decision such that one could know to a reasonable degree of certainty the extent of permitted usage of the property; but
- Property owners had sufficiently alleged a regulatory taking with regard to the City's earlier decision to revoke the property's grandfathered non-conforming status.

ZONING - WHOLE DAMN COUNTRY

T-Mobile South, LLC v. City of Roswell, Ga.

Supreme Court of the United States - January 14, 2015 - S.Ct. - 2015 WL 159278

Telecommunications service provider brought action against city, challenging its denial of provider's application to build a cell phone tower as violative of Telecommunications Act. The District Court entered summary judgment for provider, and city appealed. The Court of Appeals reversed, and provider appealed.

The Supreme Court of the US of A held that:

- A locality must provide reasons when it denies a siting application;
- A locality's reasons for denying a siting application need not appear in same writing that conveys locality's denial, but the locality must provide or make available its written reasons at essentially the same time as it communicates its denial; and
- City did not comply with Telecommunications Act's requirement that its decision be in writing and supported by substantial evidence.

A locality must provide reasons when it denies an application to place, construct, or modify a cell phone tower under the Telecommunications Act; however, those reasons need not be elaborate or even sophisticated, but simply clear enough to enable judicial review.

A locality's reasons for denying an application to place, construct, or modify a cell phone tower under the Telecommunications Act need not appear in the same writing that conveys the locality's denial of the application; abrogating *Southwestern Bell Mobile Systems, Inc. v. Todd*, 244 F.3d 51; *New Par v. City of Saginaw*, 301 F.3d 390; and *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715. However, a locality cannot stymie or burden the judicial review contemplated by the Telecommunications Act by delaying the release of its reasons for a substantial time after it conveys its written denial of an application to place, construct, or modify a cell phone tower; rather, the locality must provide or make available its written reasons at essentially the same time as it communicates its denial.

City's denial of telecommunications service provider's application to build a cell phone tower did not comply with Telecommunications Act's requirement that city's decision be in writing and supported by substantial evidence, even though city provided its reasons in writing in form of detailed minutes from a city council meeting, where city failed to provide its reasons essentially contemporaneously with its written denial, in that it issued its minutes 26 days after date of its written denial and just four days before provider's time to seek judicial review was to expire.

Obama Proposes Tapping Private Investors to Fund Infrastructure Projects.

WASHINGTON — The White House unveiled a tax proposal and administrative actions on Friday that are aimed at promoting private investment in roads, bridges, water systems and broadband networks.

The plans are an attempt to find ways to finance the vast backlog of American infrastructure projects without using any new federal money.

President Obama has repeatedly said that a broad effort to address the nation's infrastructure needs is a potential area of agreement between his administration and the Republican Congress, although deep divisions remain on how to handle such projects.

Vice President Joseph R. Biden Jr. is scheduled to discuss the plans here on Friday afternoon at the construction site of the Anacostia River Tunnel, which would handle the two billion to three billion gallons of contaminated sewage water that pour into the river each year.

One proposal that could draw bipartisan backing would create so-called qualified public infrastructure bonds that could be issued to finance airports; roads; mass transit, water and sewer systems; and other projects. They would be the first type of municipal bonds available for public-

private partnerships and would be exempt from the alternative minimum tax.

The White House did not detail the cost of Mr. Obama's bond proposal, which officials said would be included in his budget, or how it would be paid for.

The Environmental Protection Agency and the Agriculture Department will also use existing federal funds to encourage private investors to finance infrastructure projects, including drinking-water and wastewater systems and rural energy and broadband projects, White House officials said.

On top of those public-private initiatives, Mr. Obama's advisers said the president still wanted Congress to increase federal financing for highways, bridges and transit projects along the lines of legislation he proposed last year that would authorize $300 billion for the work over four years.

"Private capital is not a substitute for public investment," the White House said in a fact sheet outlining the plan. "But in the absence of Congress acting on this common-sense proposal, the president will continue to do whatever he can through his own authority to promote American economic growth where there is need or opportunity. And right now, there is a real opportunity to put private capital to work in revitalizing U.S. infrastructure."

The announcements come at the end of a week during which Mr. Obama has previewed a number of domestic proposals that will be featured in his State of the Union address on Tuesday. They include new policies on paid family leave, broadband access and cybersecurity. Last week, he outlined a plan to make community college tuition-free.

THE NEW YORK TIMES

By JULIE HIRSCHFELD DAVIS

JAN. 16, 2015

New Illinois Governor Orders Spending Freeze.

CHICAGO — Illinois' new governor, Bruce Rauner, took his first shot Monday at addressing the state's crippling financial crisis, ordering all state agencies to freeze non-essential spending.

State workers were also instructed to turn down office thermostats and turn off lights to save money when their offices are not in use, according to a wide-ranging executive order from the Republican first-time officeholder and former private equity investor.

In his inaugural address, Rauner said Illinois' history of bad fiscal management was hurting the state's ability to compete.

"Our government has spent more than we could afford; borrowed money and called it revenue," he said. "Rather than responsibly budgeting the money we had, we implemented programs we couldn't afford."

The Land of Lincoln is buckling under a chronic structural budget deficit and the lowest credit ratings and worst-funded pension system among the 50 states. The fiscal crisis is the worst the state has seen for decades and could be the nation's biggest. The crisis is also weighing on its largest city Chicago, which is struggling with a big pension funding burden of its own.

Rauner ordered agencies to produce lists of contracts that could be terminated and to put a hold on new state contracts and grants until July 1 with certain exceptions. He also ordered a halt on planning for highway projects pending reviews, put limits on state worker travel and said the state should sell equipment it does not need.

On Friday, his transition team said an effective plan would include spending cuts and tax reform.

Rauner also said the fifth-largest state is facing moral and ethical crises and that he will sign an order on Tuesday to improve ethics and accountability in the executive branch of state government.

To make progress, Rauner will need to find a way to work with a legislature dominated by longtime Democrat power broker Mike Madigan, speaker of the Illinois House."You have a Democratic legislature and a Republican governor, so they're going to have to figure out some way to work together," said David Merriman, an Illinois budget expert at the University of Illinois.

Rauner pledged "to work on a bipartisan basis to drive results and get things done." A Madigan spokesman said the speaker will "work with the governor in a professional and cooperative manner."

Pension payments are projected to jump to nearly $7.6 billion in fiscal 2016 from $6.8 billion this fiscal year as the state defends cost-saving reforms in court. Outgoing Democratic Governor Pat Quinn's budget office recently estimated Illinois' unpaid bills will climb to $9.8 billion at the end of fiscal 2016, from $4 billion this year. The state's projected general fund deficit is expected to balloon to nearly $5.8 billion, from $180 million this fiscal year.

"In the modern era… the state has never been in this poor of a financial condition," said Laurence Msall, president of Chicago-based government finance watchdog group Civic Federation.

Continue reading the main storyContinue reading the main storyContinue reading the main story
In a pre-inaugural tour on Saturday, Rauner told local media outlets that his team discovered unpaid bills stashed in drawers. Rauner's spokespeople did not respond to requests to confirm the reports.

Robert Amodeo, a portfolio manager at asset manager Western Asset, put Illinois in the same class with the most troubled municipal bond issuers in the nation. "We will continue to monitor developments in Puerto Rico, New Jersey and especially Illinois, all of which face challenging fiscal conditions," Amodeo said.

To sell its debt, Illinois has had to offer hefty yields. Illinois bonds due in 10 years yield about 140 basis points more than stellar AAA-rated debt, according to Municipal Market Data. California, which is bouncing back from its fiscal morass, has a so-called credit spread of only 24 basis points.

Illinois' credit ratings, at A-minus and A3, are the lowest among the states, and rating agencies have warned of further downgrades. An immediate concern is the Jan. 1 partial expiration of 2011 temporary tax hikes that dropped the personal income tax rate to 3.75 percent from 5 percent, and the corporate rate to 5.25 percent from 7 percent.

Rauner said the tax hike hurt Illinois' economy and put more stress on the state's social safety net. "As a result, today Illinois is not as competitive as we need to be and cannot be as compassionate as we want to be," he said.

By REUTERS

JAN. 12, 2015, 9:09 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by David Greising, Eric Walsh, Megan Davies, Dan Grebler and Ken Wills)

Obama Announces Moves to Encourage Expansion of Public Broadband Networks.

CEDAR FALLS, Iowa — President Obama announced executive actions on Wednesday to expand high-speed Internet access and make it more affordable, including an effort to spur the creation of municipal broadband networks that could challenge the nation's large telecommunications companies.

"In too many places across America, some big companies are doing everything they can to keep out competitors," Mr. Obama said at Cedar Falls Utilities, a municipal service that provides one-gigabit broadband — 100 times the national average speed — to a city of 40,000. "We've got to change that — enough's enough."

Pointing to Cedar Falls as the "guinea pig" for unfettered expansion of broadband service, Mr. Obama called on the Federal Communications Commission to override state laws that keep communities from providing high-speed Internet.

The telecommunications industry reacted angrily to the president's move, saying that it was circumventing Congress and state legislatures. The industry is also opposed to Mr. Obama's proposal that the F.C.C. regulate the Internet as a public utility, which he announced in November.

"The private sector is much better at deploying capital efficiently than the government," said John E. Sununu, a former Republican senator from New Hampshire who is now co-chairman of Broadband for America, an industry coalition.

"Standing up in public and saying you're taking on the big guy always inspires some populist sentiment," said Mr. Sununu, who is also on Time Warner Cable's board of directors. "But I think what the president is doing here is giving up on Congress, undercutting state laws and pushing rhetoric that doesn't match the facts."

It is not clear how far Mr. Obama can go in clearing the obstacles to broadband competition. Nineteen states restrict cities' ability to provide high-speed data service.

Still, his advisers said, the president hoped the F.C.C. could "level the playing field." Two other cities that offer high-speed Internet service — Chattanooga, Tenn., and Wilson, N.C. — have petitioned the agency to override state laws that prohibit them from expanding their service.

Michael K. Powell, who served as F.C.C. chairman under President George W. Bush, said Mr. Obama was chasing "false solutions."

"While government-run networks may be appropriate in rare cases, many such enterprises have ended up in failure, saddling taxpayers with significant long-term financial liabilities and diverting scarce resources from other pressing local needs," said Mr. Powell, the president and chief executive of the National Cable & Telecommunications Association, an industry group.

In his speech on Wednesday, the president criticized large Internet providers that he said had a near monopoly in many markets around the country and often provided subpar service.

“You’re stuck on hold, you’re watching the loading icon spin, you’re waiting and waiting and waiting,” Mr. Obama told an audience of about 200 in a utility warehouse as he stood in front of a pegboard full of tools and shelves of router boxes and cable. “Meanwhile, you’re wondering why your rates keep getting jacked up when your service doesn’t seem to improve.”

Mr. Obama’s initiative includes an effort by the Commerce Department to help communities build broadband infrastructure. It would also provide Agriculture Department loans and grants to Internet providers in rural areas, and it would create an interagency council to speed up broadband deployment, White House officials said.

The president will also convene a meeting of mayors and local officials at the White House in June to discuss broadband expansion efforts.

The moves are in line with Mr. Obama’s efforts to improve American competitiveness and spur innovation and with his recent emphasis on policies meant to ensure that the economic recovery is felt more broadly throughout the country.

“I’m going to focus on how we can build on the progress we’ve already made and help more Americans feel that resurgence in their lives,” Mr. Obama said.

THE NEW YORK TIMES

By JULIE HIRSCHFELD DAVIS

JAN. 14, 2015

White House Proposal Would Encourage Public-Private Infrastructure Projects.

WASHINGTON—The White House will propose new policies designed to make it easier for the private sector to work with governments on infrastructure projects such as roads, ports, public transportation and utility networks.

As part of a series of policy rollouts in advance of next week’s State of the Union address, the Obama administration is proposing the creation of a new kind of municipal bond to help finance projects that are jointly managed or financed by both government and the private sector.

The proposed new securities, called Qualified Public Infrastructure Bonds, wouldn’t expire and would offer new tax advantages over current options for public-private municipal partnerships. The administration says the proposed new bonds would help lower the cost of borrowing for cities and towns. The bond proposal would require a vote from Congress.

The Obama administration has also launched a new initiative at the Environmental Protection Agency to help attract more private-sector investment in drinking water and wastewater systems, as well as one through the Department of Agriculture that would find new opportunities for private-sector investment in rural water, energy and broadband projects.

Vice President Joe Biden will discuss the administration’s proposals at a stop in southeast Washington, D.C. on Friday, appearing with EPA administrator Gina McCarthy, Secretary of Agriculture Tom Vilsack, and Washington, D.C. Mayor Muriel Bowser.

President Barack Obama has repeatedly stressed the need for greater investment in infrastructure, and has identified the topic as one potential area of compromise with congressional Republicans during his final two years in office.

In his State of the Union, he is expected to call on Congress to vote on a separate four-year, $300 billion transportation proposal.

THE WALL STREET JOURNAL

By BYRON TAU

Jan. 16, 2015 9:53 a.m. ET

—John D. McKinnon contributed to this article.

Don’t Let Muni-Bond Markups Sap Your Returns.

Investors seeking to buy municipal bonds should watch out for the markups that plague the market for debt sold by U.S. cities, states and other public entities.

A trio of U.S. regulators has begun heightening their surveillance of those fees, collecting troves of electronic bond quotes and scrutinizing trading in the $13 trillion corporate, agency and municipal bond markets.

For investors looking for individual bonds, the Electronic Municipal Market Access website, known as “Emma,” provides a wealth of information that can help people determine prices and avoid steep markups. Run by the Municipal Securities Rulemaking Board, Emma stores municipal issuers’ disclosures, documents, trade data and other information.

Last year, the site added a price-disclosure tool, allowing investors to compare the trade histories of bonds with similar characteristics, helping to establish comparable prices for securities that don’t change hands often. New features also let users graphically display what others are paying for a security on any given day.

Investors buying both municipal and corporate bonds could also soon see more pricing transparency on their trade confirmations under new rules proposed by the MSRB and the Financial Industry Regulatory Authority. The proposal would require brokers to disclose on the confirmations the prices they paid that same day for the same bond issue. The disclosure would go to anyone buying less than $100,000 in bonds.

Some financial advisers suggest mom-and-pop investors stay away from buying individual bonds, because even small markups can eat up the returns on low-yield securities, and those fees can be hard to identify.

Allan Roth, founder of Colorado Springs-based Wealth Logic, says most people should instead buy low-fee bond funds. The markups funds pay are smaller, because fund companies buy in bulk and know the market. Funds also help investors diversify, by holding bonds from many different issuers.

“Even if I have $5 million to buy municipal bonds, I really can’t diversify enough by buying individual bonds,” Mr. Roth says. “And if I have $500,000, then I really can’t diversify.”

Buying municipal bonds from your home state often provides the biggest tax breaks, but it also ties your bond investments to the same economy that supports your job and the market for your home, he says. Muni bonds make up about 10% of the bond market, but comprise closer to 90% of many investors' bond portfolios. Mr. Roth says the limit should be 20% to 25%.

With interest rates low, some analysts and advisers recommend staying with short- or intermediate-term funds, because longer-term debt is the most vulnerable to losses when rates rise. Investment researcher Morningstar recommends several such funds with low fees, including the Fidelity Intermediate Municipal Income Fund, the T. Rowe Price Summit Municipal Intermediate Fund and the Vanguard Intermediate-Term Tax-Exempt Fund.

Vanguard Group also recently filed regulatory paperwork to launch its first municipal-bond index fund, to be called Vanguard Tax-Exempt Bond Index Fund. The target benchmark is the S&P National AMT-Free Municipal Bond Index and the firm says the fund is designed to offer exposure to investment-grade municipal bonds across the entire yield curve.

THE WALL STREET JOURNAL

Jan 14, 2015

By AARON KURILOFF

Regulators Want Data on Bond-Trade Fees.

As Sherry Dixon was researching her retirement in 2010, the 63-year-old home builder from Albuquerque, N.M., asked her broker to buy her municipal bonds for safety.

Two years later, she was shocked to learn that fees she had paid on some trades were far larger than she expected.

"I learned how naive I'd been and I never enjoy that," said Ms. Dixon, who switched financial advisers and sold one-third of her bonds.

Experiences like Ms. Dixon's have led a trio of U.S. regulators to take closer looks at buy and sell orders in the bond market, scrutinize trading and heighten their surveillance of brokers' markups on retail clients' trades.

Wall Street firms are pushing back at those measures, which arrive decades after initial calls to protect individual or "retail" investors from unreasonable charges in the $13 trillion corporate, agency and municipal bond markets.

The Securities and Exchange Commission has asked for reams of bond quotations from operators of retail-oriented electronic bond-trading platforms, in some cases asking for pricing data from August to November of last year to be delivered by the third week of January, said people familiar with the matter.

THE WALL STREET JOURNAL

By KATY BURNE and AARON KURILOFF

Jan. 13, 2015 6:55 p.m. ET

The Other Debt Bomb in Public-Employee Benefits.

Underfunded health-care obligations may be close to $1 trillion. Many cities and states are in for big trouble.

Public-pension funds have garnered attention in recent years for being underfunded, but a more precarious situation has received much less notice: health-care obligations for public retirees.

Unlike pension plans, governments are not required to contribute to separate trusts to support health-care promises. As a result, only 11 states have funded more than 10% of retiree health-care liabilities, according to a November 2013 report from the credit-rating agency Standard & Poor's. For example, New Jersey has almost no assets backing one of the largest retiree health-care liabilities of any state—$63.8 billion.

Only eight out of the 30 largest U.S. cities have funded more than 5% of their retiree health-care obligations, according to a study released last March by the Pew Charitable Trust. New York City tops the list with $22,857 of unfunded liabilities per household.

What exactly are retiree health-care obligations? State and local governments typically pay most of the insurance premiums for employees who retire before they are eligible for Medicare at age 65. That can be a long commitment, as many workers retire as early as 50. Many governments also pay a percentage of Medicare premiums once retired workers turn 65.

Total U.S. unfunded health-care liabilities exceeded $530 billion in 2009, the Government Accountability Office estimated, but the current number may be closer to $1 trillion, according to a 2014 comprehensive study released by the National Bureau of Economic Research.

Governments usually finance health-care spending with current revenues from property taxes and other sources. They'll need to reverse this spending growth to have enough revenue to pay for essential services such as schools and police.

For years, state and local governments could promise more health-care benefits without much accountability. To provide more transparency, the Government Accounting Standards Board since 2006 has required governments to disclose retiree health-care benefits in their financial reports.

In 2014 the GASB proposed major improvements to the disclosure requirements. Perhaps most important, the new rules would require state and local governments to include these liabilities on their balance sheets, rather than in financial footnotes.

The GASB also proposed that all governments use the same discount rate—equal to the interest rate on AA-rated municipal bonds. Governments use an assumed investment yield when figuring out the amount of current assets needed to finance future benefits. Many governments have assumed unrealistically high yields to understate the current funding shortfall.

At the same time, some state and local governments are attempting to reduce their health-care obligations. This is much easier legally than reforming pension benefits, which often are protected expressly by state constitutions. But reductions in retiree health-care obligations are still subject to collective bargaining and sometimes litigation.

Since 2010 more than 15 states have passed laws to reduce health-care cost-of-living adjustments—automatic benefit increases linked to the consumer-price index. Courts in eight states

upheld these reductions on grounds that cost-of-living adjustments should not be considered a contractual right. Only Washington's law was struck down in 2011, and the case is now on appeal.

Some state and local governments—Nevada and West Virginia, for example—have increased deductibles and scaled back premium subsidies. Others like Ohio and Maine have reduced the health-care benefits provided to retirees.

Several years ago Pennsylvania changed early retirement eligibility to 20 years of service from 15. In Massachusetts, however, public employees with 10 years of part-time service still qualify for retiree health care.

In a few jurisdictions, public retirees now must purchase health insurance through Affordable Care Act exchanges, rather than directly from a private insurance company. This allows retirees to receive premium subsidies from the federal government, reducing the burden on state and local governments. Of course, this does not change the actual costs of retiree health care.

The GASB should adopt its recent proposals despite significant resistance from governmental groups and officials like Ohio Auditor Dave Yost, who testified against the rule, arguing that health-care benefits should not be considered liabilities since they are not legally binding like pensions.

Taxpayers could use the new information to examine the trajectory of their city and state's retiree health-care obligations, and consider reform. One possible approach: Tie the level of health-care subsidies to the number of years in public employment above a reasonable minimum. Another idea: Apply the reductions in health-care benefits mainly to new or younger workers, while maintaining the benefits of retired employees.

In any event, states and cities should set up separate trusts with enough investment assets to support over time whatever health-care benefits they have promised. Then these commitments will have more credibility with public employees, and governments can avoid a time bomb that could explode on future budgets.

THE WALL STREET JOURNAL

By ROBERT C. POZEN

Jan. 15, 2015 7:10 p.m. ET

Mr. Pozen, a senior lecturer at Harvard Business School and a senior fellow at the Brookings Institution, is the author of "Extreme Productivity: Boost Your Results, Reduce Your Hours" (HarperBusiness, 2012).

CBPP Policy Basics: State and Local Borrowing.

State and local investments in schools, roads, hospitals, and other infrastructure provide the foundation for a vibrant economy and high quality of life. Borrowing — by issuing bonds — is a tried-and-true way to finance the cost of building and maintaining this infrastructure. Projects financed with bonds can give a state's economy both a short- and long-term boost.

There are sound reasons that states and localities borrow to pay for infrastructure, rather than use annual tax collections and other revenues. Public buildings, roads, and bridges are used for decades

but entail large upfront costs; borrowing enables the state to spread out those costs. As a result, taxpayers who will use the infrastructure in the future help pay for it, which promotes intergenerational equity. Borrowing also makes infrastructure projects more affordable by reducing the pressure on a state's budget in any given year.

Read the full report.

Fitch: More US Defense Budget Cuts May Raise Housing Bond Risk.

Fitch Ratings-New York-15 January 2015: The cuts to the growth in Basic Allowance for Housing (BAH) rates are unlikely to have an immediate impact on taxable military housing bonds at their current levels. However, if the US Department of Defense (DoD) continues cuts in coming years, Fitch Ratings expects that changes in the demand dynamics for privatized military housing transactions could potentially affect those projects' bottom lines and their debt-service coverage levels over time. This was the first time BAH rates have been sized at less than 100% of market rates since 2005.

The bonds or certificates that were issued to finance privatized military housing are commonly secured by a first lien on all receipts from privatized housing on military bases, which can be made up of one or multiple projects and/or bases. The 2015 BAH aggregate rates for military housing rose by 0.5%. Because some of the bases and rank levels were positively impacted and some were negative, the net change for most Fitch-rated transactions will be small. The BAH in higher rent areas, such as California, received sizeable increases, while more rural areas declined.

How the cut is implemented for those residing in on-base privatized housing will play a role in how great an impact there will be on individual project's bottom lines. Service members who receive the BAH are subject to internal rate protection as new BAH rates do not take effect unless the military service member has a change of station and is assigned to another base in 2015. The current BAH rate is grandfathered at the higher level until the service member is sent for permanent duty at another location or moves. Tenant turnover has been estimated at 30% per year.

The potential for further cuts to the BAH through future defense budgets is uncertain, as are annual changes to BAH rates. The DoD has indicated it needs to reduce personnel spending to meet budgetary goals. While the DoD originally intended to cut the BAH by 5%, the current National Defense Authorization Act only cut the BAH by 1% and set rates to cover 99% of the estimated cost of local housing. Personnel costs are more than one-third of the DoD's non-war 2015 budget. In February 2015, the Military Compensation and Retirement Modernization Commissions will deliver their recommendations to Congress, which may include additional cuts.

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Kansas Follows Red-Ink Road With Brownback Tax Cuts: Muni Credit.

Kansas Governor Sam Brownback is touting tax cuts enacted in 2012 as the way to achieve the economic strength of oil-rich Texas. The question is whether his government will go broke first.

The reductions that the second-term Republican championed are producing hundreds of millions of dollars of deficits and placing the state of 2.9 million in a tightening fiscal vise. Brownback stayed the course in his 2016 budget Friday, while acknowledging the stress and altering his approach.

“We will continue our march to zero income taxes,” Brownback told lawmakers Thursday night in Topeka, the capital.

Yet the march is about to slow. Responding to the fiscal crisis, Brownback, 58, proposed making the reductions more gradual and recommended raising taxes on tobacco and liquor.

His plan would lift the cigarette tax to $2.29 per pack from 79 cents, while the alcoholic beverage levy would rise to 12 percent from 8 percent. The moves would raise an additional $394 million over two years, helping close a gap of more than $710 million for that period, according to the budget document.

Payoff Wait

As Kansas awaits the payoff from Brownback’s Tea Party-inspired tax-cutting wager, the governor and legislature are racing time as the treasury runs out of money. Moody’s Investors Service cut Kansas’s credit rating in April and Standard & Poor’s lowered it in August, potentially increasing borrowing costs for agencies and municipalities.

“The challenge for the state is in the interim — how do you make up for the shortfall?” said Dan Heckman, a senior fixed-income strategist in Kansas City at U.S. Bank Wealth Management, which oversees $126 billion.

Because the tax cuts produced greater revenue losses than anticipated, the state faces a $280 million shortfall for the remainder of this fiscal year, which ends June 30.

“We must acknowledge that the most recent data regarding state government revenue and expenditures present a clear challenge that must be addressed,” Brownback said Thursday night.

While he repeated his conviction that states without income taxes grow faster than those with high levies, the slower pace of cuts and recommendations for higher consumption levies are a nod to the stress Kansas faces.

November Victory

The response will be instructive to states such as Oklahoma and Missouri that have followed suit with tax cuts aimed at stimulating their economies.

While Republican governors as a group have advocated reductions, Brownback stands out for leading his state to the precipice, triggering the credit downgrades and the elimination of a $700 million surplus.

Brownback won re-election in November in a race that was a referendum on the cuts. He offered oil-rich Texas, which has no income tax, as the model for Kansas.

“If lawmakers look at the situation and say they will try to cut their way out of it, then it is a dramatic turning point for the state because you’re talking about significant downsizing of services,” said Duane Goossen, a former budget director under Republican and Democratic Kansas governors.

Court Decision

There are more complications looming after a state court ruled that Kansas was unconstitutionally underfunding schools. While the decision is expected to be appealed, S&P said this month that the case “could require substantially higher education funding.”

The company said next fiscal year’s budget “will be an important component” of Kansas’s credit quality.

Part of Brownback’s solution to balance this year’s spending plan is to cut the state’s contribution to its retirement system by $40 million. Kansas has the fifth-weakest pension among U.S. states, according to data compiled by Bloomberg.

“We’d like to see some sort of balance,” David Hitchcock, an analyst at S&P in New York, said in an interview. One-time fixes won’t address the longer-term structural deficit, he said.

In 2012, the legislature cut the top income-tax rates 26 percent, eliminated levies on about 191,000 small-business owners and increased standard deductions for married and single head-of-household filers. While revenue declines were anticipated, the degree was greater than state budget analysts forecast.

‘In Trouble’

Brownback, a former U.S. senator and 2008 presidential candidate, has insisted the reductions will eventually spur growth.

Goossen, a senior fellow at the Kansas Center for Economic Growth, a nonprofit in Topeka that researches budget and tax policy, said Kansas can’t wait.

“The state’s in trouble right now,” he said.

While Kansas doesn’t issue general-obligation debt, the Moody’s downgrade to Aa2, two steps below the top, affected $2.8 billion of securities, including bonds for highway improvements. S&P dropped it to an equivalent AA.

“Governor Brownback does believe that eventually this will lead to greater economic activity and will bring additional revenue sources to the state,” said Heckman at U.S. Bank. “But his time frame has to meet up with the revenue, and I think that’s a bit of a mismatch.”

Bloomberg Muni Credit

By Tim Jones

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Obama Proposes New Muni Bonds for Public-Private Investments.

President Barack Obama is proposing a new class of municipal bonds to spur private investment in U.S. infrastructure projects.

The program, called Qualified Public Infrastructure Bonds, wouldn't expire, and there'd be no cap on issuance, the administration said in a statement Friday. The debt also wouldn't be subject to the Alternative Minimum Tax, which limits the tax benefits and exemptions that high-earning individuals can claim.

"QPIBs will extend the benefits of municipal bonds to public private partnerships, like partnerships that involve long-term leasing and management contracts, lowering the cost of borrowing and attracting new capital," the administration said in the statement. The bonds will serve "as a permanent lower cost financing tool to increase private participation in building our nation's public infrastructure."

The proposal for a new type of security in the $3.6 trillion municipal market is part of a broader White House plan calling for more investment in roads, bridges and other infrastructure in advance of the administration's budget proposal that will be released Feb. 2.

Building Block

The market contracted in 2014 for an unprecedented fourth straight year as local officials refrained from borrowing even as tax-exempt interest rates were close to generational lows.

The last time the market expanded was in 2010, the final year of the federal Build America Bonds program. The initiative, popular with local officials and Wall Street investors, gave municipalities a subsidy on interest costs for issuing taxable debt to finance infrastructure work.

The new type of debt for public-private partnerships, or P3s, would build upon the $10 billion private-activity bond market by including funding for airports, ports, mass transit, water and sewer initiatives. There's a $15 billion limit to issuance of private-activity bonds. The proposed bonds can't be used to privatize public systems or finance privately owned facilities.

America's federal, state and local governments need to spend $3.6 trillion through 2020 to put the nation's critical systems in adequate shape, according to a 2013 report from the American Society of Civil Engineers. Without higher spending, the group projects the costs of travel delays, power and water outages will reach $1.8 trillion by 2020.

Alternative Appeal

"The interest in P3s has clearly been growing, and we've seen states in particular launch a lot of these projects," said Robin Prunty, who oversees state credit ratings at Standard & Poor's in New

York, said in an interview. “The availability of an attractive alternative with cost-effective financing, certainly from a strict muni perspective that’s a positive.”

Obama has made previous calls for increased infrastructure investment since the end of Build America Bonds, which were part of his 2009 stimulus plan. He asked Congress in 2013 to create a national infrastructure bank and recommended a program called America Fast Forward Bonds. He sought the same initiatives last year after they failed to advance in Congress.

Because the new munis would require legislative approval, it’s unlikely they’ll become reality, said Matt Posner at Municipal Market Analytics.

“MMA suggests clients put the reality of these bonds ever entering the marketplace at a very low probability,” Posner, a managing director at the Concord, Massachusetts-based research firm, wrote in a note today.

Tax Threats

The president has also recommended altering the century-old policy of giving a tax exemption to interest on muni bonds. He’s recommended a 28 percent cap on income-tax deductions for the wealthiest households since 2011.

The tax break also has faced challenges in Congress amid a push to curb the federal deficit, including from Oregon Senator Ron Wyden, the top-ranked Democrat on the Finance Committee. No proposals have advanced.

While it’s unclear how much of Obama’s latest initiative may be implemented, the plan for the new bonds is welcome, said Robert Poole, director of transportation policy at the Reason Foundation, a nonprofit in Los Angeles that advocates free markets.

Many people who track public-private partnership deals are concerned that the cap on private-activity bonds will be reached in the next few years, he said.

“Eliminating that cap — mainstreaming level playing-field financing for P3 projects — is huge,” Poole said by e-mail.

Bloomberg

By Brian Chappatta

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California Zooms Past Russia, Italy and Soon Brazil in Economic Might.

California is overtaking Brazil as the world’s seventh-largest economy, bolstered by rising employment, home values and personal and corporate income, a year after the most-populous state surpassed Russia and Italy.

The Golden State, with an equivalent gross domestic product of $2.20 trillion in 2013, expanded last year by almost every measure, according to data compiled by Bloomberg. Brazil's gross domestic product, in contrast, declined 1 percent from $2.25 trillion in the first three quarters of 2014 as its export of raw materials fell.

Governor Jerry Brown, 76, sworn in this month to an unprecedented fourth term, is presiding over the turnaround as he steers away from persistent deficits and fiscal turmoil that prompted Republican presidential candidate Mitt Romney in 2012 to compare California to Greece, which has about a 10th of its GDP. California-based companies from Apple Inc. to Walt Disney Co. handed investors a total return of 119 percent since January 2011, when Brown returned to the governor's office, compared with 96 percent for the Standard & Poor's 500.

"It's the diversity of the California business environment, from movies to the Internet to agriculture — the incredible array of businesses that make up the state," Brown said yesterday in an interview at his office in Oakland, where he was mayor from 1999 to 2007. "Certainly getting our finances in line as a state is also helpful: the new investments in our schools; solid universities; investments in water and energy. All this gives security and keeps California very much in the forefront of investment, change, cultural adaptation and leadership."

Sustained Momentum

Brown's economy has sustained its momentum since 2013, when the value of goods and services produced in the state topped that of Russia and Italy to vault California to No. 8 in the world. California grew an average of 4.1 percent annually during the first three years of Brown's most recent term.

Economists in Brazil, with a population five times bigger than California's 38.3 million, cut their growth estimate and raised their inflation forecast for this year on Jan. 12, as the central bank raises rates in the world's second-biggest emerging market. Its economy grew 0.1 percent in the third quarter over the three previous months, after contracting 0.6 percent in the second quarter.

"Resource-rich nations are traditionally subject to boom and bust," Brown said. "We're not just dependent on one particular industry or resource."

Renewable Energy

Brown, in his inaugural speech on Jan. 5, said the California economy can expand even as the state grows more aggressive in requiring the use of renewable energy sources and reducing the use of gasoline.

"We have to prove to the world that you can move forward with progressive and forward-thinking climate change policies while growing the economy simultaneously," Kevin De Leon, a Democrat and state senate president pro tem, said yesterday in an interview in Sacramento. "They're mutually compatible and inclusive as opposed to exclusive."

Brown's policies, for the most part, are proving beneficial to the long-term economic health of California, said Chris Thornberg, principal at Beacon Economics LLC, a Los Angeles-based research company. Thornberg credited larger forces, though, from Federal Reserve policy to the purging of bad loans from the real-estate market for the state's recovery.

'Better Job'

"From an investor standpoint, I don't think anybody could have done a better job," said Michael E.

Johnson, managing partner at Gurtin Fixed Income Management in Solana Beach, California.

California's ascendance comes as the World Bank cut its forecast for global growth this year, with the improving U.S. economy and lower fuel prices failing to offset disappointment elsewhere in the world.

"The global economy today is much larger than what it used to be, so it's a case of a larger train being pulled by a single engine, the American one," World Bank Chief Economist Kaushik Basu told reporters on a Jan. 13 conference call. "This does not make for a rosy outlook for the world."

California leads U.S. states in agriculture, technology and manufacturing revenue growth, Bloomberg data show. It's home to more companies on the S&P 500 than any other state. The state's job growth outpaced the nation's in the first nine months of last year. California's non-farm employment of 15.7 million people is at an all-time high.

Poverty Rate

Challenges remain. While employment rebounded last June to levels from before the 18-month recession that ended in 2009, its jobless rate of 7.2 percent as of November was tied with Mississippi for the second-highest among U.S. states.

Almost a quarter of Californians live in poverty, the highest rate in the nation, according to the U.S. Census Bureau. Spending on welfare remains lower than before the recession began.

"We've brought our unemployment rate down rather quickly and we've recovered the jobs deficit that we incurred during the recession, which in percentage terms was bigger than the nation's," said Robert Kleinhenz, the chief economist for the Los Angeles County Economic Development Corp. "It dug itself into a deeper hole but it did manage, through faster growth, to recover almost as quickly."

California has rebounded from when Romney, the former governor of Massachusetts, dismissed the state as a failed economy as it grappled with the prospects of tax increases and budget cuts.

'Like Greece'

"Entrepreneurs and business people around the world and here at home think that at some point America is going to become like Greece or like Spain or Italy, or like California — just kidding about that one, in some ways," Romney said, to laughter from his audience.

Like California, the city of Oakland, of which Brown was mayor for two terms, has experienced an economic revival.

"The proximity of San Francisco and being located in the Bay area" are the pivotal factors behind Oakland's resurgence, Brown said. "There is a dynamic interplay. Oakland is closer to San Francisco than San Francisco is to itself. West Oakland is closer to the financial district and even south of Market than most of San Francisco. I did push condo development and responsible policing to keep the crime down."

The new Oakland mayor, Libby Schaaf, was a former Brown aide and City Council member who emerged as frontrunner after winning the governor's endorsement in October.

More Bullish

Analysts are more bullish on California-based businesses than on U.S. companies, as measured by

the Russell 3000 index, Bloomberg data show. Companies based in the state will provide a 15 percent return to investors in the coming year, compared with 12 percent for the index.

To those who assert that California's tax and regulatory structure make it a hostile place to do business, Brown offers an anecdote: He tells a story about a Silicon Valley investor he met at a cocktail party who started and sold three technology-related businesses.

The man told the governor he's in California because the state has "more smart people with money and more people who know how to spend that money by way of tech companies and ventures that are constantly sprouting up."

The cost of protecting bonds of California from default tumbled the most among all the states in the four years ended Dec. 31. Credit-default swaps, which investors use to hedge against losses or to speculate on creditworthiness, declined 201 basis points to 104 basis points, Bloomberg data show.

Investor Confidence

Credit swaps, which typically decline as investor confidence improves and rise as it deteriorates, pay the buyer face value if a borrower fails to meets its obligations, less the value of the defaulted debt. A basis point equals $1,000 annually on a contract protecting $10 million of debt.

"That huge deficit was a shock to the political sensibility," Brown said. "I was able, in that context, to win substantial cuts on the part of government spending. I was also able to win approval of Proposition 30 to inject more revenue into the economy. All of that together brought us a place of more stability."

While final figures for 2014 for the California economy won't be available until June, projections in Brown's proposed state budget show the gains.

Per-capita annual income in California was estimated to have increased by $1,700 to $50,338 in 2014, according to state data. California home prices climbed an average of 12 percent last year through Sept. 30.

'Growing Faster'

"California is growing faster than the U.S. economy, which is a bright spot in the global economic situation," said Sung Won Sohn, a professor at California State University-Channel Islands in Camarillo who was chief economist at Wells Fargo & Co. "California is always more volatile than the U.S. We tend to go down more rapidly and we tend to rise more rapidly."

Brown's Jan. 9 budget proposes spending a record $165 billion. Temporary sales and income tax increases that he championed in 2012, combined with surging capital gains revenue tied to stock market gains, have left the state with a $5 billion surplus in the fiscal year that begins in July. The governor is seeking to store much of that surplus in reserves to cushion against economic downturns.

California-based technology companies brought in $692 billion in revenue in the past 12 months, about half the industry's sales across the U.S. The value of manufacturing in California climbed 8 percent to $204 billion in 2012, compared with a 7.4 percent increase in Texas to $176 billion.

California Agriculture

Agriculture in California produced $21.4 billion in revenue in 2012, three times more than the $6.8

billion in second-ranked Iowa. The number of companies in California that rank in the top 500 in the world in terms of market capitalization rose almost 48 percent since 2009.

High-technology jobs in the business and professional services sector in California were forecast to grow to 15.7 percent of the economy in 2014, up from 15.4 percent a year earlier.

“I’ve found that people get very stuck in what is,” Brown said. “I very much like tradition, but you have to be able to change and disrupt while balancing tradition. The continuity and the change blending together is your creative task.”

Bloomberg

By Michael B. Marois and Shin Pei

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Munis Still Cheap as Best Rally in a Year Can’t Match Treasuries.

The $3.6 trillion municipal market is rallying the most in 12 months. It still looks cheap compared with Treasuries.

Benchmark 10-year muni yields have fallen 0.28 percentage point in January to a 20-month low of 1.83 percent, data compiled by Bloomberg show. If that decline holds, it would be the steepest monthly drop since January 2014.

While muni interest rates are the lowest since May 2013, the debt is close to the cheapest since December 2013 relative to federal debt. The ratio of interest rates on state and local bonds relative to Treasuries touched 106 percent on Thursday in New York. That signals tax-free bonds have weakened relative to their federal counterparts, which are on pace for the strongest month since August 2011.

“Despite the performance in munis over the last 10 days, it’s lagged Treasuries,” said Adam Buchanan, vice president of sales and trading at Ziegler, a broker-dealer in Chicago. “There’s still room to run here.”

The municipal market rallied in 2014 by the most in three years. Analysts including Michael Zezas at Morgan Stanley predicted smaller gains in 2015 amid rising interest rates on Treasuries. Instead, yields plunged anew this week after Switzerland’s unexpected decision to abandon its currency cap drove investors to the safest assets.

Resurgent Rally

At 1.75 percent, 10-year Treasury yields are close to the lowest since May 2013. The Treasury market has gained 2.28 percent this month, compared with 1.45 percent for munis, Bank of America Merrill Lynch data show. The local-government market hasn’t earned that much since rallying 2.27

percent in January 2014.

Individuals poured $1.34 billion into muni mutual funds in the week through Jan. 7, the most in two years, Lipper US Fund Flows data show. They added $689 million in the week through Jan. 14.

The muni-Treasury ratio has historically been below 100 percent because interest on state and local debt is tax-exempt. The 1.83 percent yield on AAA munis is equivalent to 3.03 percent taxable for top earners.

Investors looking to capitalize on the relative cheapness have the chance next week. States and cities plan $8.8 billion of bond sales next week, the most in about a month. U.S. bond markets are closed Jan. 19 for Martin Luther King Jr. Day.

Bloomberg

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Michigan Budget Facing Shortfall as Businesses Use Tax Credits.

Michigan faces a $324.6 million shortfall in its $9.5 billion budget, mostly because businesses are cashing in more tax credits aimed at stirring economic growth, according to state economists.

A separate $12.3 billion fund that pays for public schools is running a $35.8 million surplus because it relies more on sales-tax revenue that reflects a healthier economy, according to an agreement on the numbers announced Friday by the treasury, House and Senate. The figures will shape the current budget and the fiscal 2016 spending plan Governor Rick Snyder will propose to lawmakers on Feb. 11.

The projected net shortfall will rise to $526.5 million in fiscal 2016, which begins Oct. 1. The deficits are based on revenue predictions from May.

“We will be making reductions in real services,” said Budget Director John Roberts, following a semi-annual meeting at the Capitol to forecast revenue. Roberts said he didn’t know if those cuts would result in layoffs.

Although total revenue is increasing, money for programs is being reduced by higher-than-expected use of business tax credits. The credits were granted before 2012 to businesses on the condition that they invest in facilities and hire specified numbers of people.

As the economy improved, hiring increased and more businesses qualified for the credits, said Mary Ann Cleary, director of the House Fiscal Agency. In some cases, rules for tax credits were eased after they were granted to make them easier to cash in, Cleary said.

The state next month will pay $195 million to Detroit's pension funds as part of the city's bankruptcy settlement. The money will come out of payments received from tobacco companies in a multistate lawsuit settlement.

Bloomberg

By Chris Christoff Jan 16, 2015

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Morgan Keegan Settles Lawsuit Over Failed Missouri Sweetener Plant.

Jan 14 (Reuters) – Morgan Keegan & Co on Wednesday settled a class action lawsuit accusing the brokerage of bilking investors who bought $39 million of municipal bonds meant to build a Missouri artificial sweetener plant that failed.

Terms were not disclosed. The settlement averted a civil trial set to begin on Wednesday against Morgan Keegan, now a unit of Raymond James Financial Inc.

It also came two months after Bruce Cole, the former chief executive of Mamtek U.S. Inc who oversaw the project, was sentenced to seven years in prison for fraud and theft.

Roughly 133 investors accused Morgan Keegan of securities fraud over its underwriting of bonds issued by the Industrial Development Authority of the City of Moberly, located in north-central Missouri, and sold from July 2010 to September 2011.

These bonds were issued to help fund Mamtek's construction of a plant to produce the low-calorie sweetener sucralose, and create about 600 jobs.

Investors said the bonds became worthless after Mamtek defaulted in August 2011, leaving behind an unfinished factory. They said Morgan Keegan failed to do proper due diligence to ensure that the bond offering documents were accurate.

Jurors had been seated on Tuesday for the trial against Morgan Keegan in the federal court in Jefferson City, Missouri.

Raymond James bought Morgan Keegan from Regions Financial Corp in April 2012.

Regions spokeswoman Evelyn Mitchell declined to comment. Raymond James spokeswoman Katy Barrett declined immediate comment. Rich McLeod, a lawyer representing the investors, said his clients were pleased to settle.

Missouri Attorney General Chris Koster has said Cole pleaded guilty after diverting bond financing for his own use, including to stop the foreclosure of his Beverly Hills, California home, and winning tax credits by falsely promising to create jobs.

The case is Cromeans et al v. Morgan Keegan & Co et al, U.S. District Court, Western District of Missouri, No. 12-04269.

By Jonathan Stempel

(Reporting by Jonathan Stempel in New York; Editing by Christian Plumb)
