GOP Expected to Take Aim at Local Tax Deductions.

State and local governments are fighting to avoid becoming big losers in tax reform — and they hope President-elect Donald Trump will be an ally.

Trump and congressional Republicans are aiming to pass tax-reform legislation this year that lowers rates and curbs and eliminates tax breaks.

In the process, two key preferences important to state and local governments, the deduction for state and local taxes and the tax exemption for municipal bonds, may be on the chopping block.

The two preferences are among the most expensive provisions in the tax code. They are also viewed as disproportionately benefiting upper-income people.

Of the two, the state and local tax deduction, which tends to benefit areas that lean Democratic, looks to be more endangered.

A 2015 paper from the Tax Foundation found that the 10 counties that benefit the most from the deduction are located in New York, New Jersey, California and Connecticut.

House Republicans are currently drafting a bill based on a tax-reform blueprint they released in June. That plan would eliminate the state and local tax deduction, since it does away with all itemized deductions except those for mortgage interest and charitable giving.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) said at a Heritage Foundation event in December that he thinks there's "merit" to eliminating the deduction while also lowering rates.

"The added benefit here is that the federal tax code will no longer subsidize higher taxes at the local level," he said. Brady acknowledged that eliminating the deduction would be a big change and asked the public to look at his plan and provide feedback.

The tax plan Trump released in September did not specifically mention the deduction but would cap itemized deductions at $100,000 for individuals and $200,000 for married couples.

Groups representing state and local governments are concerned about the elimination of the deduction because it could reduce the government's flexibility to make tax changes.

"We're big proponents of federalism and we feel this strikes at the heart of it," said Brett Bolton, principal associate for federal advocacy at National League of Cities.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said her group is asking Congress "to honor the commitment they've made which is the partnership between the federal government and state and local governments."

Max Behlke, director of budget and tax policy at the National Conference of State Legislatures, said states with high income taxes are “very wary” about the deduction being eliminated. If the deduction is eliminated, the states could face pressure to lower their taxes.

It’s “definitely possible” that Trump could be sympathetic to keeping the deduction because he’s from a state with a high income tax. However, Trump may defer to Congress on taxes, Behlke said.

The municipal bond tax exemption is more likely to be preserved than the state and local tax deduction, and its preservation is the top tax reform priority for state and local governments.

The exemption allows state and local governments to have lower borrowing costs when they issue debt to finance infrastructure projects.

The House Republicans’ tax-reform blueprint and Trump’s tax plan are both silent on the municipal bond tax exemption, though the blueprint discusses eliminating tax breaks that benefit special interests.

But during a meeting at Trump Tower last month, Trump told a group of mayors that he supports the tax exemption.

While state and local governments are encouraged by Trump’s comments, they are still concerned that changes to the tax exemption will be made. Many of the details about what will be included in tax-reform legislation is unknown, and many of the policy positions of the incoming administration are not firm.

“It’s positive, but again, tax reform still has to go through Congress,” said David Parkhurst, general counsel of the National Governors Association.

Groups held a briefing for Capitol Hill staff on the municipal bond exemption in late November, and they are meeting with lawmakers on the Hill to educate them about the importance of the exemption.

On Tuesday, groups in a public-finance network sent lawmakers a letter in support of tax-exempt bonds.

“They are the best way to implement the infrastructure needs of each community effectively, as the decision to issue bonds for various projects is determined and approved by either the citizens themselves through bond referenda or their elected legislative bodies,” the groups said.

The exemption does have support on Capitol Hill, including from some Republicans. Last year, Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.) launched a municipal finance caucus.

“Tax reform is complex and wrought with many pressures,” Hultgren said in a statement. “I hope to see this key financial tool, which has worked for more than a century, maintained in a much-needed comprehensive tax reform package.”

THE HILL

BY NAOMI JAGODA – 01/10/17

[Municipal Bond Offering Disclosures after a Chapter 9 Filing - A Few Reflections on Orange County and the City of Detroit.]

Although not intended to be classics of literature, we have found tales of two municipalities and their Chapter 9 bankruptcies. One was warm and prosperous and on the West Coast, whose housewives we have followed in the age of reality TV. The other was from a grittier place in the midwest with industrial gothic scenes and rappers who have captured its spirit. Please join us as we discuss the post Chapter 9 filing bond disclosures of Orange County, CA and the City of Detroit.

Please [click here] for video.

The purpose of this podcast is to briefly compare and contrast a couple of examples of primary market disclosure for securities offerings made subsequent to the respective Chapter 9 bankruptcy filings by two of the largest municipal issuers- Orange County, California and the City of Detroit.

The two bankruptcies are similar insofar as they both involved large general purpose governments and were high-profile.

The two bankruptcies and the related securities offerings which we will discuss were notably different in terms of timing (separated by about twenty years) and in the nature and timing of the causes that led to the bankruptcies.

Moreover, they are also notably different in that the Orange County example occurred before the County emerged from bankruptcy whereas Detroit had completed its bankruptcy case prior to the reoffering memorandum examined.

Part of the purpose of our podcast is to examine the impact on disclosures made to the markets when these issuers tried accessing the public markets after Chapter 9 filings.

A review of these issuers' disclosures may also be helpful context given a trend by many issuers in the municipal securities market toward greater disclosure about municipal bankruptcy notwithstanding that a Chapter 9 filing may be remote for the vast majority of such issuers.

We will turn some attention initially to a discussion of some points about Chapter 9.

Chapter 9 refers to the provisions of the Federal Bankruptcy Code which address the process where municipalities (which includes cities, counties and other entities) can seek protection under the bankruptcy laws through a voluntary filing.

Chapter 9 is relatively rare and although it draws upon other provisions of the federal bankruptcy code, such as Chapter 11 relating to reorganization, it has certain unique features.

For purposes of our discussion, it is helpful to keep two unique factors in mind. First, there is no involuntary filing under Chapter 9 initiated by creditors. Second, Chapter 9 does not have a liquidation concept. Chapter 9 presumes that a municipal entity will need to continue to operate and provide public services.

Chapter 9, even apart from Detroit, has taken on increased attention in recent years, particularly since the financial crisis from 2008.

The Orange County, California bankruptcy from the mid-1990s is remarkable in a number of aspects. First, it involved a large issuer in a very prosperous area. The bankruptcy was a surprising event not foreseeable based on a normal examination of the County's demographics, economy and tax base.

The bankruptcy was also notable given its suddenness. Also, noteworthy is the relatively short time period before Orange County was able to return to the capital markets. In fact, as we will discuss further, Orange County was able to undertake a public bond offering while many uncertainties still existed during its bankruptcy case.

At a very high level, the Orange County bankruptcy can be summarized as stemming from an adverse turn in the County's investment pool which led to staggering losses. The County, through its popularly-elected Treasurer, had made ultra vires investments in derivatives and effectively had wagered on short-term interest rates remaining low. An increase in rates by the Federal Reserve Bank in late 1994 precipitated losses. The County's investment pool, after unwinding a number of positions to manage the risk of further losses incurred a total loss of approximately $1.7 billion, $600 million of which was for the County itself (with the remainder related to other County entities, such as local governments and school districts).

The City of Detroit's bankruptcy, filed in the summer of 2013, although involving a large general purpose governmental issuer was quite distinct from Orange County. The circumstances which gave rise to the bankruptcy were developing over a much longer period of time, arguably several decades, and could not be easily attributable to a single series of events or policy decisions.

It is also arguably the case, that even if the City, with the benefit of hindsight, had made the best policy decisions over the years, the City, if not facing Chapter 9, would have been under severe fiscal stress due to economic and demographic changes (e.g., loss of population).

Also in contrast to Orange County, California, and given what we've said already, the filing of the bankruptcy itself was not surprising as evidenced by considerable debate and involvement by the State of Michigan prior to the filing.

For purposes of our discussion we looked at one offering document each for Orange County and the City of Detroit.

In the case of Orange County, it was the official statement for $278,790,000 Refunding Recovery Bonds, 1995 Series A, dated June 13, 1995 which were publicly offered.

In terms of timing, Orange County had filed for Chapter 9 on December 6, 1994 and had not emerged from bankruptcy as of the time of the official statement. Consequently, this was a public offering document produced in the midst of a Chapter 9 proceeding.

In the case of Detroit, it was a reoffering memorandum, dated August 19, 2015, for $245,000,000 Michigan Finance Authority Local Government Loan Program Revenue Bonds, Series 2014F (City of Detroit Financial Recovery Income Tax Revenue and Refunding Local Project Bonds).

In terms of timing, Detroit emerged from Chapter 9 bankruptcy on December 10, 2014. Consequently, this was a public offering document produced subsequent to the bankruptcy proceeding.

A small amount of background on the related bonds is helpful for context.

The Orange County bonds were not ad valorem bonds but rather were payable from all lawfully available funds of the County and additionally secured by a pledge of certain motor vehicle license fees collected by the State of California. The bonds were insured and the County elected to participate in an intercept program related to the motor license fees. Moreover, debt service payments on the bonds, so long as the County remained in bankruptcy, were given an "administrative expense" priority treatment over unsecured claims against the County by order of the bankruptcy court.

The Michigan Finance Authority's bonds issued on behalf of the City of Detroit are secured by, among other things, certain Municipal Obligations issued by the City payable from certain income tax revenues (which are subject to a statutory lien) from a levy of an excise tax on income and a pledge of the City's limited tax full faith and credit.

The original proceeds from both bond offerings were used for refinancing purposes. In the case of Orange County, warrants were refunded. In the case of Detroit, it was to pay off certain classes of claims and to finance certain reinvestment and revitalization projects. In each case, and what is somewhat unique for general purpose governments, certain reserve accounts were also funded.

One interesting factor related to the disclosure and more precisely, the manner of the offerings, was that neither disclosure document indicated that any sort of investor letter would be required or particularly focused on matters of suitability. In each case, the applicable bonds were offered in $5,000 denominations.

This is likely largely due to certain favorable credit features. The Michigan Authority bonds received an investment grade rating. The County's bonds were insured by a then triple A bond insurer.

Both of the offering documents included a risk factors type section and addressed the risk of a potential second bankruptcy. This was not addressed so much in the context of identifying and discussing potential sources of further or recurring financial problems but rather more in the context of potential impact in terms of modifications of rights and the impact on the security of holders.

Due to the particular nature of the bankruptcies, the Orange County disclosure spent considerably more time discussing the factors which contributed to the bankruptcy. This is not surprising given that the Orange County bankruptcy was not anticipated and was due to very specific events which were not necessarily tied to underlying economic circumstances. In contrast, Detroit's fiscal deterioration was something which occurred over a longer period of time and could not be attributed reasonably to isolated events.

Both offering documents devoted substantial attention to recovery plans and governance matters, such as oversight and reorganization, under state law.

Orange County's disclosure addressed a restructuring of the County Administrative Office including the creation in February 1995 of a new Chief Executive Officer position and the establishment of a Treasury Oversight Committee which was comprised of five citizens "to review the Treasurer's investments and ensure adherence to stated policies."

Detroit's disclosure discussed a nine-member Financial Review Commission created in November 2014, about a month prior to the exit from bankruptcy and went into extensive detail about Michigan Act 436, and the role of the Emergency Manager and the City Council in the budget process, the Michigan Financial Review Commission Act 181 of 2014, and Act 182 which requires the City to adopt a multi-year financial plan subject to Financial Review Commission approval.

A somewhat unique aspect of the Detroit financing is its discussion of statutory liens under the Bankruptcy Code and the explicit discussion that Bond Counsel to the City provided a reasoned opinion that any residual interest in the pledged income tax revenues should be subject to a statutory lien in favor of the holders of the municipal obligations. The disclosure elaborated how bond counsel's opinion was based on certain "reasoned conclusions" such as that "both pre-deposit and post-deposit liens are created by Act 279 and that the pre-deposit lien created by Act 279 arises automatically under such Act upon the occurrence of “specified circumstances or conditions” which is a term of art in the definition of statutory lien under the Bankruptcy Code.

The Detroit offering memorandum also discussed in detail Act 279’s provision of a statutorily-created trust for the pledged income tax revenues.

Again, it discussed how bond counsel to the City provided a reasoned opinion that the trust would be enforceable in bankruptcy and should not be reachable by general creditors of the City. Again, the disclosure indicated how the opinion of bond counsel was based on certain reasoned conclusions which were briefly outlined in the disclosure.

In terms of take-aways: disclosure is driven in part by the timing of the bankruptcy proceeding (i.e., where the case stands procedurally at the time of the offering document’s disclosure).

For example, in the case of the particular Orange County official statement examined, the posture of various ongoing litigation and settlements were discussed with more prominence than in Detroit where certain settlements (including with bond insurers) were addressed in the City Appendix III.

Disclosure is also impacted by the causes of a bankruptcy which influence the discussion of remedial or preventative steps.

Orange County focused more on telling the front-end story of its bankruptcy than Detroit where the story slowly (and somewhat painfully) unfolded over a long period of time with very extensive attention in the general media.

The Detroit offering document is somewhat unique in public finance in that it has generally been atypical for reasoned opinions (rather than the typical “clean” opinions) to be given in public finance transactions and to be discussed in detail within an official statement or other offering document. The Detroit case is a leading example of increased attention paid to statutory liens (or other provisions that may give bondholders a stronger position vis a vis general unsecured creditors).

Recognizing that there are many other observations that can be added over time, I found it interesting that the risk factor disclosure, did not go into particularly great detail (or analysis) about economic and similar risks facing the City. There was a very high level and general identification of what reasonably seems to be all the key factors set out in a few clear and concise but modest paragraphs captioned “Uncertainty of Future Income Tax Revenue” and “Economic and Other Factors Affecting the Financial Condition of the City”– which took up less than a single page).

The Michigan Finance Authority disclosure, however, did take a forward-looking perspective on disclosure (which is generally not the case in bond issues for local governments that are tax-supported) by including a “Projected Pledged Income Tax Revenue” table that showed the then-existing projections for four fiscal years (through June 30, 2019) which lined up with the four-year scope of the City’s financial plan. The City Appendix III showed a breakdown of the projections over major revenue and expense categories throughout the projection period. I did not find in the Orange County disclosure any analogous use of projections.

Moreover, there was not a significant discussion (or identification) in the risk factors disclosure of the risks that may arise in relation to the somewhat amorphous area of competing claims of retirees and workers against other creditors. This may be due to two reasons. First, are the inherent uncertainties in this area. Second, and I think easier for me to appreciate, is the consideration (and I caution that I speculate) that statutorily created priorities for these bondholders may, in the City’s view, have obviated a need to try to parse out the uncertain landscape when dealing with unsecured creditors in the context of equities towards a municipality's workers and retirees. The disclosure, however, was very focused on pensions and OPEBs and provided a detailed discussion in the City Appendix III about the nature of the pension and OPEB settlements and how the benefit plans were affected and aligned going forward out of the bankruptcy.

Mark Vacha | Cozen O'Connor

1/10/17

JD Supra Business Advisor

[Six Years After Daley, Emanuel Still Using High-Cost Borrowing Practices.]

Mayor Rahm Emanuel is pitching Wall Street investors on the latest city borrowing plan, a $1.2 billion package that, like previous versions, pushes hundreds of millions of dollars of debt into the future at higher costs to taxpayers.

The mayor is continuing scoop-and-toss borrowing, which involves paying off old bonds with the proceeds from new ones — a practice akin to taking out another mortgage on a house to pay off the old mortgage, kicking payments down the road. An Emanuel budget spokeswoman said this year marks the last scoop-and-toss bond issue.

The administration also said it'll be the last time the city will borrow money to pay for a portion of routine legal settlements and judgments, adding millions in interest to what are short-term expenses. Some of that debt will take the form of taxable bonds, which carry higher interest rates. That's because the federal government doesn't allow the issuance of tax-free bonds for what are considered yearly operating expenses.

Beyond that, the mayor plans to borrow a to-be-determined amount to cover some of the initial interest payments on the new debt the city is taking out, which adds to the overall cost. It's the equivalent of taking out a loan to pay the initial interest on a mortgage.

Emanuel inherited the costly borrowing practices, detailed by the Chicago Tribune in its 2013 "Broken Bonds" investigation, from predecessor Richard M. Daley. Emanuel, now on his sixth spending plan, has used the techniques to prop up a sagging City Hall budget. In 2015, the mayor promised to end the costly financial moves by the end of his second term in 2019.

The administration's plans call for pricing the bonds on Jan. 18-19, when the market will determine the interest rates, and closing on the deal Feb. 1, Emanuel's Chief Financial Officer, Carole Brown, said in a web-based "roadshow" used to pitch the bonds. City finance officials also plan to meet with investors in Chicago, Boston and New York before the bonds are sold to make further pitches, a common tactic Chicago and other major cities have begun to use in recent years.

The city is likely to pay relatively high interest rates because municipal bond market rates recently increased, and continuing financial problems at Chicago Public Schools and the state of Illinois has investors concerned, said Matt Fabian, a partner at Concord, Mass.-based Municipal Market Analytics.

Fabian also said buyers would look more favorably on city debt if it stopped using "budget gimmicks” like scoop-and-toss and borrowing to pay initial interest payments “instead of just talking about how they’re going to stop.”

But he added that “the municipal market has come to see and talk about Chicago as a bit of a success story” after Emanuel set in motion plans to contribute hundreds of millions of additional dollars a year to its pension plans for police officers, firefighters, city workers and laborers.

At Emanuel’s urging, the City Council in recent years increased telephone fees for emergency service, dramatically increased property taxes and enacted a new tax on city water and sewer service to help fund higher contributions to the four pension funds.

But there’s uncertainty about how the city will come up with hundreds of millions of additional dollars in the early- to mid-2020s that will be needed to make even higher contributions to those funds in an effort to prevent them from running out of money. And the plans for the municipal workers’ and laborers’ funds have yet to be approved by a state government mired in partisan gridlock.

Nevertheless, Wall Street bond rating agencies have changed the city’s debt outlook from negative to stable based on the efforts underway to stabilize the pension funds, all of which were at risk of going broke in the 2020s even if the city’s general bond ratings remain low. That could result in the city paying lower interest rates than they otherwise would have when the bonds go to market this month.

Richard Ciccarone, president and CEO of Merritt Research Services, said interest rates also could go higher because of “intangible” factors not directly related to city finances, like a recent “60 Minutes” segment on Chicago’s spiking violent crime rate. “Those kind of things don’t help, even though they are very indirectly related to finance,” he said.

But Ciccarone praised the mayor’s efforts to fix the pension systems, reduce the city’s annual budget funding gaps, rely less on short-term borrowing and beef up city budget reserves. “The city moved forward in 2016 on making real incremental progress,” he said.

The City Council signed off last year on the latest round of borrowing, but the scoop-and-toss total is about $100 million higher than Emanuel finance aides told aldermen was in the works. The dollar amount went up because plans to refinance about $100 million in debt to save money were no longer possible after a recent rise in municipal bond interest rates, budget spokeswoman Molly Poppe said. The city still plans to refinance about $25 million.

Some specifics about the $1.2 billion borrowing plan:

•$440 million in scoop-and-toss borrowing, a long-term delay tactic that adds millions of dollars in interest costs to be paid by taxpayers over the next 20 years.

•About $225 million to pay legal settlements and court judgments. Other cities with sounder finances pay such costs without borrowing that adds millions of dollars to the taxpayer tab.

•About $405 million for construction projects and equipment, including new police vehicles.

Poppe defended the city’s plans to borrow money to cover some of the initial interest costs, saying that’s “common practice” in cases where cities don’t anticipate the construction projects financed by the borrowing to be completed for a while. That way, “debt service expense does not begin until the project is operational and benefiting communities,” she said.

Laurence Msall, president of the nonpartisan Civic Federation budget watchdog group, lauded Emanuel's pledge to end borrowing for scoop-and-toss and legal settlements and judgments, but expressed some skepticism as to whether the mayor could keep the promise.

"Even if the city is able to end most borrowing for operations by 2019, it faces significant financial challenges that could make it difficult to maintain its commitments in the future," said Msall, who called on Emanuel to "present a plan" for covering future debt service payments and paying off legal settlements and judgments.

by Hal Dardick

January 9, 2017

Chicago Tribune

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UBS Hit With Second $18M Ruling Over Puerto Rican Munis.

Wednesday's ruling includes $4 million in punitive damages, while the prior award is being challenged in court

A month after a regulatory panel awarded over $18 million to two clients of UBS over sales of Puerto Rican municipal bonds and closed-end funds tied to these securities, a separate panel issued a similar award to three other clients — including $4 million in punitive damages.

But while UBS is challenging the December award in a U.S. district court with claims that arbitrators failed to disclose key material facts before the case began, attorneys representing the three clients set to benefit from the latest award believe this award will not be challenged.

UBS accepted the Financial Industry Regulatory Authority panel, which included three arbitrators, says attorney Lloyd R. Schwed of Schwed Kahle & Kress in Palm Beach Gardens, Florida, and raised no objections to it.

The panel issued its $18.2 million decision on Wednesday, ruling that the Gomez family — well known on the island for their car businesses and charitable activities — should receive $9.63 million in compensatory damages, $4 million in punitive damages, nearly $4.5 million in attorneys' fees, and $86,550 in other costs.

The three members of the Gomez family (parents Victor and Socorro, along with daughter Madeline), argued that they had been subjected to securities fraud, elder abuse and other violations of the law.

According to their attorneys, this arbitration decision appears to be the first entailing the imposition of punitive damages on UBS in connection with its sales of Puerto Rico municipal bonds and closed-end bond funds; the $70 billion market for these investments collapsed in 2013 and resulted in more than $1.5 billion in customer claims.

The $18.2 million award is among the 20 largest securities arbitration awards given to public clients in the past decade, the attorneys say.

“We are so grateful that these three [FINRA] arbitrators had the courage and integrity to punish UBS for its wrongful conduct that literally destroyed the life savings of the Gomez family and hundreds of other Puerto Rico citizens,” said Schwed, in a statement. “In this case, the system worked: A Wall Street giant was made to pay for its reckless disregard for the rights of its customers.”

It came after nine days of hearings and testimony which took place in San Juan, Puerto Rico, in November and December; the arbitrators then had up to 30 business days to deliberate and issue their decision after the hearings wrapped up on Dec. 9.

(The separate case now being challenged by UBS involves former clients Rafael Vizcarrondo, an attorney and businessman, and his wire Mercedes Imbert de Jesus.)

A ‘Whopper’

The Gomez family alleged that former UBS Vice President Jose “Whopper” Ramirez violated both federal and state securities laws and committed fraud through the sale of some $50 million in Puerto Rican closed-end funds and municipal bonds to the family, which lost over $25 million through these investments in 2013, their attorneys say.

FINRA records state that Ramirez was fired by the company and barred from the securities industry by both the Securities and Exchange Commission and FINRA.

In addition, the clients say UBS failed to properly supervise Ramirez and was “reckless” in allowing him to concentrate so much of family’s savings in “unsuitably risky” Puerto Rico closed-end bond funds underwritten, managed and marketed by UBS.

“Although the arbitrators awarded less than the full damages claimants requested, UBS is disappointed and strongly disagrees with the decision to award any damages,” UBS said in a statement.

“Mr. Gomez was an experienced investor who made a fully informed decision to leverage his investments and concentrate his portfolio in UBS Puerto Rico closed end funds because of their long history of providing excellent returns and substantial tax advantages. UBS is considering its options to overturn the award,” it explained.

UBS has stated in financial documents that investor claims seek some $1.5 billion in damages tied to these and related products. The bank agreed to pay $34 million to regulators in 2015.

ThinkAdvisor

January 12, 2017

The Case Against Tax Money for Stadiums, Movies.

The Tampa Bay Rowdies owner has pledged to privately finance an $80 million renovation of Al Lang Stadium, envisioned above. If the Rowdies and other teams like the Orlando soccer team can pay for stadium renovations, why can’t NFL teams?

Florida’s state legislators from both political parties have resisted corporate welfare schemes in recent years, and taxpayers should celebrate.

Corporate welfare gives a select few industries special handouts at the expense of everyone else. Supporters of corporate welfare claim that such programs create jobs, but the facts demonstrate that's rarely the case. Even when jobs are created, each job comes at a tremendous cost to Floridians.

Take Enterprise Florida, for example, a public-private partnership that promised to create 200,000 jobs by 2005. After $1.7 billion in incentives, it had reached only slightly more than half of its goal as of 2013. And while the program was intended to be funded equally between public and private funds, an estimated 90 percent of its funding came from the taxpayers.

Some claim that while Enterprise Florida was a failure, other programs are still worth the taxpayer's dime. In fact, the Tampa Bay Times editorial board cited sports and tax film credits as worthy programs to keep intact, albeit with appropriate reforms.

But the facts tell another story.

When it comes to sports stadiums financed through Florida's Professional Sports Facilities Incentive Program, according to the state's own economists, for every dollar invested in sports renovation projects, the state sees only 30 cents returned in economic activity — a far cry from a sound investment.

What's more, plenty of sports owners can afford to renovate without a special taxpayer-funded deal.

Case in point: The Orlando City Soccer Club is building its own stadium. And while the Orlando team originally asked for $30 million from the state, it announced it would self-fund the stadium after citizens and lawmakers opposed state funding.

In St. Petersburg, Tampa Bay Rowdies owner Bill Edwards has pledged to privately finance an $80 million renovation of Al Lang Stadium in order to bring a Major League Soccer team to the region.

If these sports teams can renovate on their own, why do other teams such as the NFL's Tampa Bay Buccaneers, Miami Dolphins or Jacksonville Jaguars deserve taxpayer money?

As for film production handouts, they too have a storied past. The state's economists find that the film subsidy program only produces up to 43 cents for every dollar invested.

The program hurts taxpayers, while often going to projects that don't produce any long-term jobs in the Sunshine State. Of course, the film industry lobbying for the special favor alleges the program produces more revenue, but the estimates don't pass muster in comparison to the state estimates.

What's more, state after state that has gone down the road of film tax credits has paid the price of doing so. The University of Southern California conducted a national study on state programs, finding that since 1999 tax credits have created close to zero jobs, even in states like California and New York. Taxpayers, on the other hand, are still on the hook for over $10 billion to Hollywood producers and movie stars.

Floridians have enough legitimate demands on their tax dollars, such as education and transportation expenses. It's not our responsibility to ensure that Ben Affleck's new movie is profitable or that sports executives have enough extra cushion to ensure fans will flock to their fields.

For the past several years, lawmakers have rightly rejected some of these efforts to boost special interests — now is not the time to reserve course. Instead, lawmakers should keep fighting against all forms of corporate welfare so that everyone has a chance to succeed.

Tampa Bay Times

By Chris Hudson

Wednesday, January 11, 2017 3:09pm

Chris Hudson is the Florida state director of Americans for Prosperity, a conservative political advocacy group.

Obama Signs WIIN Act Authorizing Millions in Drinking Water Funding.

In December, President Barack Obama signed the Water Infrastructure Improvements for the Nation (WIIN) Act into law. The bill authorizes $170 million for communities facing drinking water emergencies, including funding for Flint, Mich., to recover from the lead contamination in its drinking water system.
The legislation also authorizes other vital water projects across the country to restore watersheds, improve waterways and flood control, and improve drinking water infrastructure.

The WIIN Act is a measure that includes the Water Resources Development Act (WRDA) of 2016, in addition to provisions to improve drinking water infrastructure around the country, address control of coal combustion residuals, improve water storage and delivery to help drought-stricken communities, address federal dam maintenance backlogs, and approve longstanding water settlement agreements for the benefit of taxpayers and Native Americans.

The WIIN legislation also includes both short-term and long-term provisions related to addressing the continuing drought in California. In the long-term, it invests in a number of water projects to promote water storage and supply, flood control, desalination and water recycling. These projects will help assure that California is more resilient in the face of growing water demands and drought-based uncertainty.

The WIIN legislation, S. 612, along with a four-month continuing resolution (CR) to keep the federal government operating through April (which had already been signed by the president earlier in December), will provide $100 million for lead removal projects in Flint through the Drinking Water State Revolving Fund and another $20 million to EPA to begin issuing loans under the Water Infrastructure Finance and Innovation Act (WIFIA).

The money for WIFIA has been available since funding was made available in the original legislation creating the program in 2014. In previous fiscal years, Congress had only appropriated money for the U.S. Environmental Protection Agency (EPA) to set up the program. However, the SRF money and other funds to help with Flint’s lead crisis had to be authorized before they could be released.

Of the $20 million appropriated for WIFIA, $3 million is to be used for administrative purposes, leaving $17 million to seed loans. WIFIA leverages federal dollars so that for every dollar Congress appropriates, $50 to $60 is expected to be loaned out. That means up to $1.02 billion could be available for loans, according to the AWWA, which helped craft the WIFIA program.

“AWWA is thankful to all those members of Congress and water sector partners who championed WIFIA over the past several years,” said Tracy Mehan, AWWA executive director of government affairs. “With more than $2 trillion needed to repair and expand water and wastewater infrastructure in the coming years, water utilities needed a smart new finance tool to help communities pay for large, critical water projects. Funding WIFIA is a tremendous step forward as we confront the nation’s water infrastructure challenge.”

Meanwhile, the CR will also extend most other federal department and agency budgets at their FY2016 levels through April 28, at which time Congress must finalize an FY2017 spending plan for the federal government.

WIFIA is actually authorized to receive $35 million in 2017 under the law creating the program in 2014. But under the WIIN Act, WIFIA will be funded at the $20 million level as part of Congressional negotiations for moving WIIN/WRDA and the CR forward. In all, the legislation provides:

• $100 million for making capitalization grants to Flint under the Drinking Water State Revolving Funds. These funds will address lead or other contaminants in drinking water, including repair and replacement of lead service lines and public water system infrastructure;

• $20 million for Water Infrastructure Finance and Innovation (WIFIA) grants to finance water infrastructure efforts, including those to address lead and other contaminants in drinking water systems;

• $20 million for a Lead Exposure Registry to collect data on lead exposure and an Advisory Committee to review programs, services, and research related to lead poisoning prevention;

• $15 million in additional funding for CDC’s Childhood Lead Poisoning Prevention Program to conduct screenings and referrals for children with elevated blood lead levels; and

• $15 million in additional funding for HRSA’s Healthy Start Program to reduce infant mortality and improve perinatal outcomes.

“We were hoping WIFIA would receive the fully authorized amount of $35 million,” AWWA CEO David LaFrance said in a press release. “But this is a short-term spending bill, and it is a positive step. Still, there is more work to do, and AWWA will keep working for additional funding to address the country’s water infrastructure needs. Because WIFIA is a loan program, it strikes just the right balance between federal assistance and local responsibility.”

BY TRENCHLESS TECHNOLOGY STAFF ON JANUARY 12, 2017

Munis Are Critical for Infrastructure, Groups Tell Lawmakers.

WASHINGTON – State and local groups told members of Congress that tax-exempt bonds are the cornerstone of infrastructure financing, as the lawmakers consider how to increase spending on roads and bridges as well as tax reforms that could entail restrictions on tax exemption.

Tax-exempt bonds are used by more than 50,000 state and local governments, and nearly 75% of infrastructure funding comes from munis, the 29 groups said in a joint letter to House and Senate members.

“We welcome the chance to work with you to develop new tools as a complement to tax-exempt municipal bonds,” the groups wrote. “We would note that even new ideas – including variations of public-private partnership models – will likely rely on municipal bonds.”

The two-page letter was signed by representatives of the Government Finance Officers Association, the National Governors Association, the U.S. Conference of Mayors (USCM), the National Association of State Treasurers, and the National Association of Counties (NACo) and other groups.

The organizations comprise the Public Finance Network, a coalition of state, local and utility issuers and stakeholders. While the GOP blueprint for tax reform released last year does not mention the muni exemption directly, its intention of repealing unnamed deductions have made state and local groups uneasy of a cap or repeal.

House Ways and Means Committee Republicans said Tuesday that they are “moving forward aggressively” to turn the blueprint into formal legislation that would eliminate special interest provisions they said keep rates high and “increase confusion.”

Michael Belarmino, NACo’s associate legislative director and associate general counsel, said the letter is meant to be a “refresher” for lawmakers as the 115th Congress kicks off.

“I’m hoping that this message continues to resonate with them,” Belarmino said. “It seems pretty clear that there are many things on their agenda at this point and where tax reform is going to fall is anybody’s guess.”

The coalition stressed that issuers save on average roughly two percentage points on borrowing costs to finance infrastructure investments through munis, which they said equates to “substantial” savings for taxpayers.

Munis have financed more than $2 trillion in new infrastructure over the past decade, and are on track to finance another $2 trillion over the next ten years, the coalition wrote.

“As the new administration and Congress seek ways to increase infrastructure investments, we would note an incredibly powerful tool already in hand – tax-exempt municipal bonds,” it wrote.

The groups argued that munis are the most effective method to finance community infrastructure, as bond issuances are determined and approved through citizen referenda or by elected legislative bodies.

Several state and local groups have told The Bond Buyer that they set their sights on Congress after President-elect Donald Trump told the USCM in December that he supports maintaining the muni exemption.

The Public Finance Network also cited as good resources on munis Reps. Randy Hultgren, RIll., and Dutch Ruppersberger, DMd., two major allies of the muni exemption who chair the bipartisan Municipal Finance Caucus in Congress.

The Bond Buyer

By Evan Fallor

January 10, 2017

Trio of Lawmakers to Seek Tax Reform Revenues for Infrastructure.

DALLAS – A bipartisan trio of lawmakers intends to file a pair of House bills that would use revenues from international tax reform to fund infrastructure projects.

Rep. John Delaney, DMd., said Monday that he and Rep. Rodney Davis, RIll., will propose the Partnership to Build America Act that would create the American Infrastructure Fund to finance local and state projects.

As part of the effort, Delaney and Rep. Ted Yoho, RFla., will sponsor the Infrastructure 2.0 Act that would dedicate additional revenues through repatriation of corporate overseas earnings to stabilize and expand the federal Highway Trust Fund.

The proposals would provide an incentive for corporations to bring into the U.S. an estimated $2 trillion in overseas earnings, Delaney said, spurring private sector reinvestment and growth.

Delaney proposed similar measures in 2014 and again in 2015 with significant bipartisan support, but neither gained traction in Congress.

His third attempt at linking the repatriation of overseas earnings by U.S. corporations could be the answer to calls for more infrastructure funding, Delaney said.

“If the next President and leaders in Congress want to rebuild America in a fiscally responsible way that has deep bipartisan support, we’ve given them a blueprint,” he said. “A bold infrastructure-tax deal that combines legitimate support for new projects and progrowth reform would be transformative for the country, for our economy and our quality of life.”

However, Rep. Kevin Brady, RTexas, chairman of the House Ways and Means Committee, has said any revenue resulting from corporate tax reform should be used for overall tax reforms rather than just dedicated to infrastructure.

House Speaker Paul Ryan, RWis., and other House Republicans support Brady’s stance, but Senate Republicans seem to be more open to the idea of linking tax reform with infrastructure funding.

“I think there’s an interest among our members, in both the House and the Senate in doing something on infrastructure, but my guess is if that gets done, it probably hitches a ride on tax reform,” said Sen. John Thune, RS.D., chairman of the Senate Commerce Committee and third ranking Republican in the Senate.

“I don’t know that just an infrastructure bill on its own, a standalone, would go anywhere,”

Thune told reporters last week. “I think it would have to be coupled with something that we view to be really advantageous in terms of stimulating the economy.”

The Partnership to Build America Act would capitalize the infrastructure fund with $50 billion of proceeds from the sale of 50year, 1% fixed rate bonds that would be purchased by companies willing to bring back overseas earnings.

These bonds are not intended to be a good investment on their own but would be transferable, Delaney said.

For every $1 invested in the bonds, the companies would be allowed to bring back an estimated $4 of foreign profits without paying any U.S. tax. The ratio would be set through a reverse Dutch auction, which Delaney said would allow the market to set final rates of return.

Local governments could use low-interest loans from the AIF for transportation, communications, education, and water projects.

At least 25% of the projects financed through the AIF must be public-private partnerships with at least 20% of project financing coming from private capital.

The Infrastructure 2.0 Act would provide six years of Highway Trust Fund solvency by supplementing revenues from federal fuel taxes and other dedicated fees, Delaney said.

The measure would levy a mandatory onetime tax of 8.75% on existing overseas corporate profits to replace the current rate of 35% on earnings brought into the U.S.

The tax proposal would generate $120 billion for the HTF and $25 million for a pilot program of regional infrastructure planning groups, according to Delaney.

The legislation also would create a bipartisan House and Senate joint commission tasked with developing a solution for permanent solvency of the HTF, he said.

The Bond Buyer

By Jim Watts

January 10, 2017

Slowing of Muni Tax Regs Seen in 2017, But Three Projects Watched.

WASHINGTON – Municipal market participants see a slowing of Treasury Department and Internal Revenue Service guidance and rules in 2017, but plan to closely watch rules on political subdivisions, tweaks to management contract guidance, and rules for public approval of private activity bonds.

"The change in the White House to a Trump administration will certainly put a severe damper on any regulatory activities for most of [2017]," said Matthias Edrich, a tax partner with Kutak Rock in Denver. "Not just for public finance but for any regulatory efforts."

Emily Brock, director of the Government Finance Officers Association's (GFOA) federal liaison center, agreed. "I think what we will see is a bit of a calming down of the priority list," Brock said. "One thing that drew our attention … is the political subdivision definition. We'll continue to keep an eye on that."

John Cross, Treasury's associate tax legislative counsel, said that while he can't comment on regulatory priorities that will be set by the incoming policymakers for the new administration, Treasury's two most active existing muni projects at the staff level are The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) public rules for private activity bonds (PABs) and bond reissuance regulations.

He also said the staff has been considering some discrete, clarifying changes to the recent more flexible management contract safe harbors under Rev. Proc. 2016-44, which was issued last year.

In October, the Treasury and IRS released their final 2016-2017 priority guidance plan, which included seven projects for tax-exempt bonds. Three projects were completed in 2016 – final issue price rules, guidance on management contracts, and final rules on arbitrage investment restrictions. The remaining ones are bond reissuance rules, guidance on remedial actions for tax-advantaged bonds, final regulations for public approval of PABs, and a new definition of political subdivisions for this year.

TEFRA Regulations

Perhaps no other pending regulatory measure is as long-awaited as the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which originally date back nearly 35 years.

Bond attorneys and other market participants have long clamored for a clarification of public approval requirements for private PABs, which were written in temporary form in 1983 by Treasury and the IRS.

In 2008, proposed regulations, which were well received by market participants, were released, but have yet to be finalized.

Officials from the National Association of Bond Lawyers (NABL) have previously told The Bond Buyer they believe, and hope, the TEFRA rules will finally be completed in 2017.

NABL has called for a clarification of the TEFRA public approval requirements for PABs, which it said were burdensome. The group has recommended regulators broaden the allowance for PAB proceeds to be used for working capital without the public notice specifically mentioning that purpose.

In order to be tax exempt, PABs must be approved by the issuer and, in some cases, the governmental entity that has jurisdiction over the area where the bond-financed facility will be located. The bonds can be approved by voter referendum or by elected officials following a public hearing.

Ed Oswald, a partner with Orrick, Herrington, and Sutcliffe in Washington, said he will be tracking TEFRA developments closely, which he said are long overdue.

“The original regulations came out in 1983 and are very antiquated,” Oswald said. “I think the muni market would love to have the TEFRA regulations in final form.”

Stefano Taverna, an attorney with McCall, Parkhurst & Horton in Dallas, and the chair of the American Bar Association’s tax-exempt financing committee, was cautiously optimistic about final regs in 2017.

“TEFRA regs have been active for quite some time so hopefully they get that out and publish something later this year,” Taverna said.

Edrich said that the release of final issue price rules last month may indicate the agency is trying to “clear the deck” of its highest priority guidance projects, but warned that the TEFRA regulations could be stalled during the first year of the Trump presidency.

Taverna said he expects market participants to spend the coming months trying to determine the issue price regulations’ impact on certain transactions, particularly competitive sales, since they do not become effective until June of this year.

The issue price regs contain special allowances for competitive sales and establish that the issue price for competitive sales will be the reasonably expected initial offering price under certain conditions.

The final rules are meant to be more flexible and workable, Cross said.

Political Subdivisions

Several muni market participants also said they will be watching developments on definition of a political subdivision for purposes of tax-exempt, tax credit and direct pay bond provisions — another project outlined in the guidance plan.

Most muni market participants felt the political subdivision rules proposed in February of last year by Treasury and the IRS were overly restrictive and could jeopardize the tax-exempt status of some outstanding bonds.

John Vahey, managing director of federal policy for Bond Dealers of America (BDA), said his group is hoping for more clarification for incidental private benefit rules that he feels raise more questions than answers. Vahey said BDA has questions tied to community development projects and how land purchases, for example, impact incidental private benefit.

The proposed rules say, among other things, that political subdivisions must serve a governmental purpose "with no more than an incidental private benefit."

"We're hoping for more clarification for incidental private benefit," Vahey said. "There's a few points that we've raised and that's one of the biggest ones."

The tax regulators began writing rules on political subdivisons after the IRS issued a technical advice memorandum in 2013 that found the Village Center Community Development District in Florida was not a political subdivision and could not have issued tax-exempt bonds because its board was developer-controlled rather than by publicly elected officials.

Bond lawyers complained the IRS was trying to change standards through the enforcement process rather than through public rulemaking, which would allow for public input.

The Treasury and IRS proposed rules on the definition of a political subdivision last February.

Under the current definition, an entity is a political subdivision that can issue tax-exempt bonds if it has a right to exercise a substantial amount of at least one of three recognized sovereign powers of a state or local governmental unit: eminent domain, taxation or police. The proposed rules would add two new requirements: that a political subdivision serve a governmental purpose "with no more than an incidental private benefit" and that it be governmentally controlled.

The agencies received many comments on the proposed rules, most of them critical, saying they were unworkable and could upend the muni market. They asked the rules be reproposed, at a minimum, or simply withdrawn.

Edrich, meanwhile, said that any efforts to "fix uncertainties" in the market created by the proposed regulations relating to the definition of a political subdivision may be stalled during Trump's first year.

Management Contracts

Another regulatory issue for the bond community in 2017 is guidance pertaining to management contracts.

In August, the IRS released Rev. Proc. 2016-44, which extended terms of long-term management contracts to up to 30 years from the previous 15-year limit, and also removed the formulaic fixed fee requirements for manager compensation.

Bond lawyers initially lauded the new management contract safe harbors, which they found to be more liberal than restrictive safe harbors established under Rev. Proc. 97-13 released in 2013.

But questions and concerns soon arose regarding the guidance, which was meant to allow for more incentive compensation, bond-financed infrastructure projects, and public-private partnerships.

NABL said the guidance is confusing and could limit the usefulness of safe harbors in short-term contracts. Concerns were also raised about how the guidance should be implemented.

Questions also surfaced regarding whether the term of a contract is retested when one is modified or a new one is entered into.

Taverna while the guidance made strides in liberalizing management contract guidelines, he hopes comments submitted to Treasury in November will lead to clearer guidance in the coming year.

The guidance "liberalized a lot of guidelines but in that process, it left open some questions," Taverna said. "Particularly what it means to have sharing of land losses and sharing of net profits."

"The purpose of the comments is to ask Treasury for more narrow guidance in respect to the revenue procedure and to provide more certainty to the corners of that guidance," he added. "Other than that I think they've done a very good job with the guidance plan."

Oswald agreed. "We're hoping for some additional guidance or amplification regarding the guidance which is otherwise helpful," Oswald said. "This would fill the void that other practitioners have observed in terms of details."

The safe harbors under Rev. Proc. 2016-44 apply to any management contract entered into on or after Aug. 22, but issuers can also apply the safe harbors to management contracts entered into before that date.

The guidance created three provisions containing limits ensuring no private ownership or leases: a state or local government "must exercise a significant degree of control of the managed property," the state or local government must bear the risk loss for damage of managed property, and the private party must agree not to take any tax position that is inconsistent with being a service provider.

Both Oswald and Taverna said they will also be tracking bond reissuance regulations, another Treasury guidance plan item that has not moved forward.

"The reason they're important is that the rules had been put out over years, somewhat on an ad hoc basis, and a lot were issued during the 2008 downturn when the market needed relief," Oswald said. "The reissuance guidelines need to be reformatted and reorganized."

Taverna said a common concern he has heard in the industry is what type of effect the Trump administration could have on published regs.

“What I find interesting and what a lot of folks are wondering is if the new administration will have an effect on the types of regulations published,” Taverna said. “[Donald] Trump said that for all new regulations that come out you’ll have to take two out. I don’t know if that will have an impact on the streamlining of regs.”

TEB

All eyes for the time being will be on Imraan Khakoo, the acting director of the IRS’ Office of Tax Exempt Bonds (TEB) who replaced Rebecca Harrigal late last year.

Khakoo had been Harrigal’s acting assistant. IRS officials did not specify how long Khakoo will be acting director of TEB.

Mark Scott, a former director of TEB who now has a private practice focused on representing whistleblowers, said he believes Khakoo’s lack of muni tax law knowledge, an area where agents are struggling to apply tax law and where enforcement is lacking, “doesn’t help anything.”

“Efficiency in TEB has gone down and it is getting worse at identifying good cases,” Scott said. “Even when they are identified, [TEB] is struggling to get agents to complete cases. The cases are there and the work can be done. Still, I anticipate this trend continuing.”

The number of agents doing audit work is roughly 60-65 overall, which is lower than the 70-75 agents Scott said he had in his peak when he served as TEB head.

According to IRS spokesman Dean Patterson, TEB closed 570 audits in fiscal 2016 and entered into 18 closing agreements in the same period.

TEB entered into 61 settlements under the voluntary closing agreement program (VCAP), a substantial drop from the 105 VCAP settlements reached during the prior fiscal year.

The 570 closed audits were two more than TEB closed in fiscal 2015, while the 18 closing agreements were one less compared to the prior fiscal period.

The total dollar amount from audit settlements in fiscal 2016, which ended on Sept. 30, was $10.72 million, and $11.68 million for VCAP settlements.

Patterson also noted that TEB does not have any webcasts planned for 2017.

Scott speculated that a reason VCAP figures have been dropping is due to a decrease in refundings, which had spiked several years ago. This trend may continue, he said, due to over-auditing in some areas, and allocating resources inefficiently.

“When you have a strong enforcement program, the voluntary closing agreement program motivates issuers to identify a problem before enforcers come in.,” Scott said. “When an audit program weakens, this motivation is reduced, and the impact of this will eventually be reflected in a lower number of requests for voluntary closing agreements.”

The IRS provided numbers, but not comments for this story.

The Bond Buyer

By Evan Fallor

January 12, 2017

Chao Says Trump Plans to Remove Obstacles to P3s.

DALLAS – President-elect Donald Trump will unleash the potential of private investments and use innovative financing tools to rebuild the nation's transportation networks, Transportation Secretary-designate Elaine Chao told lawmakers at her Senate confirmation hearing on Wednesday.

"As we work together to develop the details of President Trump's infrastructure plan, it is important to note the significant difference between traditional program funding and other innovative financing tools, such as public-private partnerships," she said in her opening remarks before the Senate Commerce, Science and Transportation Committee.

"In order to take full advantage of the estimated trillions in capital that equity firms, pension funds, and endowments can invest, these partnerships must be incentivized with a bold new vision," Chao said.

The Trump administration will look at how to remove current legal and regulatory roadblocks to P3s, she said.

"Private investors are encouraged when they see a bold vision and this president has a bold vision," Chao said. "At the very minimum we need to do away with these impediments."

The new administration will form a task force to look at a variety of financing options for infrastructure projects, she said.

"The government does not have the resources to address all the infrastructure needs in our country," Chao said.

Trump released a 10-year, $1 trillion infrastructure proposal in late October that relies on $137 billion of tax credits to attract private investments in transportation and other infrastructure projects.

She and Trump would support more direct federal funding for infrastructure beyond what is in the five-year Fixing America's Surface Transportation Act adopted in late 2015, Chao said.

"The Highway Trust Fund is in bad shape," she said. "The gasoline tax, which provides 90% of the HTF's revenues, is not as lucrative as it once was."

Restoring the HTF to financial health before the FAST Act expires will be one of Trump's top issues, Chao said.

"The fund will be broke in 2021 unless we do something," she said. "It's a huge issue."

Pressed to provide details on the potential for more direct federal funding by Sen. Bill Nelson, D-Fla., the ranking Democrat on the panel, Chao said she would give the committee a progress report soon after Trump is sworn in.

"I will try for a report in 30 days but I can't promise that," she said. "I can promise that there will be continuous and constant dialogue with Congress on this matter. We cannot do it alone."

Sen. Deb Fischer, R-Neb., said at the hearing that she will file a transportation funding bill in the coming weeks. Fischer in 2015 proposed a national infrastructure bank capitalized with $30 billion from tax revenues on repatriated corporate overseas earnings.

Committee chairman Sen. John Thune, R-S.D., said he expects the committee to approve Chao's nomination on Jan. 20, the first day of the Trump presidency.

Rep. Sam Graves, R-Mo., said at an aviation industry gathering on Tuesday that the proposed $137 billion of tax credits in the proposal would not be enough to bring in the amount of private investments in infrastructure that Trump is seeking.

"President-elect Trump has got a massive infrastructure bill that he wants us to work on," said Graves, who chairs a House Transportation and Infrastructure Committee panel on highways and transit. "He wants to spend $1 trillion. I do not think it will be that big. We just simply can't afford it.

"And we also have to figure out a way to pay for it," he said. "We can't do it all through public-private partnerships that the president-elect is talking about."

The Bond Buyer

By Jim Watts

January 11, 2017

Market Spreads Side with Moody's as Chicago Picks a Fight.

CHICAGO – Chicago Mayor Rahm Emanuel isn't happy with Moody's Investors Service, so he's trying to make the rating agency go away.

Emanuel's administration disclosed Tuesday that the mayor formally asked Moody's to withdraw all of the city ratings. The disclosure came ahead of investor meetings set for this week.

Moody's declined, according to a city official.

Moody's downgraded the city's GO bonds to junk-level Ba1 in May 2015. The rating remains there today, with a negative outlook.

Three other rating agencies assign Chicago ratings in the lowest investment-grade tier of triple-B.

In a stinging letter dated Dec. 8 to Moody's president and chief executive officer Raymond W. McDaniel Jr., Emanuel accused the rating agency of failing to recognize the city's strides on factors identified by Moody's as needed to win an upgrade. The city cited factors such as raising its pension payments to actuarially required contributions and increasing revenue to fund pension obligations.

"With each rating action or market comment, Moody's instead introduces new and sometimes unrelated factors to justify its negative view of the city's credit," Emanuel wrote. "All the while, measurable progress by the city to confront the fiscal challenges do nothing to impact our rating or our outlook.

"It has become increasingly clear that Moody's rating methodology and agenda are far from objective and independent…your current rating does not accurately reflect the city's credit or our ability to pay debt service when due," the letter continued.

If Moody's does not grant Emanuel's request, the mayor said it should be made clear that any opinions from Moody's are based solely on publicly available information.

The city has not sought Moody's ratings on new issues for more than two years.

Moody's rates the city's general obligation, sales tax and motor fuel bonds at Ba1 with a negative outlook. The city's GOs were already trading at speculative-grade levels before Moody's downgraded them to junk in 2015. Moody's rates the city water and wastewater debt in the lowest investment grade Baa tier and airport debt in the single-A category.

The city's 10-year GOs have traded in recent months at the junk-level spread of 250 to 300 basis points to the Municipal Market Data's top-rated benchmark, and its yields on tax-exempt sales over the last year and half have landed within that range. The BBB benchmark on Tuesday was at 3.17%, a 95 basis point spread to the AAA rate. The city carries ratings of BBB-minus and BBB-plus from the three other rating agencies.

The spread on its 10-year paper hitting 200 basis points in November 2014, six months before the Moody's downgrade, dropping some and then rising to 250 basis points in April, a month before the downgrade. After the downgrade, spreads steadily climbed upward, hitting 300 basis points. That marked a doubling of the 145 basis point spread on its 10-year in a primary market outing in March 2014.

A speculative grade spread is a moving target, said one market participant. Currently, a weak investment grade name should price in the mid-to-high 100s, one market participant said. Anything at 225 basis points is considered high yield, another trader said. Another said anything over 200 falls into the high yield category.

"This shows that the market is appropriately skeptical about the other three 'investment grade ratings,' since much of Chicago's near-term outlook still hinges on what happens in Springfield. It's certainly outrageous for Mayor Emanuel to try to bully Moody's into withdrawing its rating and kudos to Moody's for sticking to its 'process,'" said Triet Nguyen, head of public finance credit at NewOak Fundamental Credit. "We believe there's no imminent risk of default at this time, just 'spread risk' or underperformance risk."

Market participants have said the city could see yield penalties narrow a bit if it loses its junk status, but they may not reach investment grade levels. One participant suggested it's more about the city shedding the taint of the label or the risk of further negative headlines from a possible downgrade.

Moody's spokesman David Jacobson said in response to a request for comment that "Moody's has a process for handling requests from issuers to withdraw their ratings and follows that process when such requests are made" and it does not comment on potential future rating actions.

City finance spokeswoman Molly Poppe said Moody's declined to withdraw the ratings.

The timing of the letter last month was aimed at staving off potential negative commentary or action ahead of the city's $1.16 billion GO sale next week, even though Moody's was not asked to rate the bonds.

"The point here is that the mayor is taking steps to protect taxpayers. As you know, investors do their own analysis on whether they are going to buy the city's bonds, but they rely on rating agencies to extract yield," Poppe said.

Moody's in recent reports has made clear that Chicago's path to investment grade requires improved pension funding status. "The city's unfunded pension liability would need to begin to stabilize and decline. The actions the city has taken to date have only enabled their pension problem to get worse at a slower pace," Moody's has said.

The city has put tax-supported funding streams in place to raise contributions to its four pension plans that carry $33.8 billion of net pension liabilities, but payments based on actuarial requirements don't kick in until 2021 and improved funded status in a long way off.

In a November report, Moody's listed factors that could lead to an upgrade including: rapid economic and revenue growth; further budgetary adjustments that accommodate pension contributions sufficient to stop growth in unfunded pension liabilities; and operational stability and improved liquidity at Chicago Public Schools. None has occurred.

When it downgraded Chicago to junk, Moody's described as factors that could lead to an upgrade or stable outlook city or state actions that halt the growth of the city's unfunded pension liabilities and revenue growth and/or reductions in other operating expenditures that enable the city to accommodate increased pension costs into annual operating budgets. The city would argue that it has met the second criteria.

Jacobson countered the city's assessment that the rating agency had wavered.

"We do not advise any issuer on how to improve their credit rating. In our November 7 report affirming Chicago's Ba1 rating and negative outlook, we did note the 2016 pension reforms will help increase pension contributions and the city's economy and liquidity remained strong. However, we also noted the unfunded pension liabilities will continue to increase for several more years, and the deteriorating credit of the Chicago Public Schools (B3/negative) now poses new risks to the city that did not exist earlier."

Moody's dropped the city's rating to junk after the Illinois Supreme Court struck down state pension reforms. The opinion made clear the difficult path ahead for the city to solve its pension crisis. It marked a hard and steady fall from the Aa3 rating Emanuel inherited in 2011 after Moody's began giving greater weight to pension status.

The city faced further ratings fallout from other rating agencies because the drop to speculative grade triggered defaults and termination events on bank products. Still, the city held on to its other investment-grade ratings.

The ratings discrepancies sparked a spirited market debate over the role of rating agencies and how closely they represent investor sentiment.

"No local government's split credit ratings have—in recent memory—spurred as passionate of a debate as Chicago's," Municipal Market Analytics partner Matt Fabian wrote in mid-2015. "It strikes us that underlying this debate may be a discrepancy between what ratings are and what the industry ideally wants them to be."

After the downgrade, Emanuel delivered a stinging rebuke, highlighting the disparity in ratings, calling Moody's out of step and accusing it of trying to force the city's hand on increasing property tax rates.

Market chatter over the downgrade was underscored by Moody's release six days later of a special report to address "questions we are receiving concerning last week's downgrade." Moody's senior analyst Rachel Cortez then took center stage at a long-scheduled discussion of city finances hosted by the City Club of Chicago.

“To us it was pretty clear that benefit reductions under any circumstances are impermissible and in violation of the Illinois constitution,” Cortez said. The rating agency turned out to be right as pending city pension reforms were also later shot down.

Some believed Moody’s acted too swiftly while others said the market already perceived the credit as junk. The junk-level downgrade also shone a light on default risks. Moody’s sought to tamp down concerns, highlighting its analysis that Ba-level credits show just a 5% likelihood of default in the coming years.

The Bond Buyer

By Yvette Shields

January 11, 2017

California Green Muni Bonds Top $1.3 Billion in 2016.

In 2016, California agencies issued over $1.38 billion in labelled green bonds, or nearly a $1 billion over the 2015 total.

In the three years since the State Treasurer’s Office issued the first California green bond, there have been over $2 billion in government issued green bonds in the state.

Continue reading.

Forecasting the Bond Market in 2017: CDFA // BNY Mellon Development Finance Webcast

January 24, 2017 @ 1:00 pm Eastern

Spurred by mid-year refundings in a low rate environment, municipal bond volume reached an all-time high in 2016, surpassing the record previously set in 2010. With the Fed raising rates this past December, and the potential for more on the horizon, how will the municipal bond market respond? What can we expect as we move into 2017? During this installment of the CDFA // BNY Mellon Development Finance Webcast, hear industry experts gaze into their crystal ball and provide a glimpse of the year ahead.

Speakers:

Rena Nakashima, Moderator
Senior Product Manager
The Bank of New York Mellon

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S&P U.S. Public Finance Transportation Sector 2017 Outlook: Stable-T--Positive As Enthusiasm For Infrastructure Investment Could Trump Funding Realities.

S&P Global Ratings' 2017 outlook for business conditions and credit quality across the transportation sector is stable-to-positive depending on the subsector. Specifically, we have a stable outlook across most subsectors with a positive outlook on the toll road and bridge sector as we anticipate traffic levels to grow faster than baseline GDP and the expansion of tolling technology and toll rate increases potentially allow for improved revenue growth. Exposure to disruptive trade or tariff policies, expanded capital programs, or spending by issuers without a commensurate increase in revenue sources, potential for inflation in construction labor costs, as well as industry dynamics in the maritime sector, we view as overall risks to our outlook. We also anticipate movement by policymakers toward a federal infrastructure investment program with varying impacts, though the funding sources and form of any stimulus under the Trump Administration and the new Congress remains unknown.

Key drivers for the transportation sectors continue to be economic and demographic trends that influence movement of people and goods, fuel prices that serve as a cost input for transportation companies and influence individual travel behavior, competitive factors that affect the business profiles of infrastructure providers, and federal transportation policies that facilitate investment by state, regional, and local governments. A fundamental credit feature in support of S&P Global Ratings' rated universe is the ability of public transportation infrastructure providers to set fees and collect their own revenues derived largely from users of their enterprises.

Continue reading.

11-Jan-2017

The Week in Public Finance: Trump's Infrastructure Plan, Risky Pensions and NYC's Surprising Fiscal Health.

A *roundup* of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JANUARY 13, 2017

Trends in Smart City Development.

Our latest report, *"Trends in Smart City Development"* features case studies about how five cities are implementing smart city projects from different approaches. The report also provides recommendations to help local governments consider and plan smart city projects.

National League of Cities

Informed Decision-Making through Forecasting: A GFOA Practitioner's Guide.

Author: Shayne C. Kavanagh Daniel W. Williams

Year Published: 2017

Description: Learn How to Improve Financial Decision-Making through Better Forecasting

The Challenges of Forecasting:

- **Forecasts are not effective.** The ultimate goal of a forecast is to improve financial decision-making; however, decision-makers are often much more influenced by factors other than the financial forecast.
- **Administrative burden/staffing capacity.** Forecasting is just one of many tasks that staff must perform, so forecasting competes for time and energy with those other tasks.
- **Lack of confidence in projections for out-years.** As forecasters look further into the future, the forecast becomes more uncertain.

Readers of *Informed Decision-Making through Forecasting* will learn that overcoming the above challenges will not often be accomplished by adopting more technically sophisticated forecasting techniques. In fact, in some cases, more sophisticated techniques may only exacerbate the problem, as more complex techniques may further strain limited staff resources and be less accessible and understandable to decision-makers, making the forecast results even less likely to be incorporated into the decision-making process.

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GFOA and Issuer Groups' Message to Congress: Munis Build Infrastructure.

On January 10, 2017, GFOA and 28 other issuer groups, including our state and local sister organizations, sent a message to the entire Congress in support of the preservation of the tax exemption of municipal bond interest. The message reiterated that the municipal bond is the only infrastructure financing tool that is accessible to jurisdictions of all sizes to effectively access the capital markets. We emphasize that the municipal bond is the best way to effectively implement the infrastructure needs of each community because decision making is made at the local level. Read our letter.

Will you join the effort? Tell us your story!

GFOA continues to develop information for distribution to Congress about the tax exemption on municipal bond interest, including data showing the costs local governments may incur should the tax exemption come under review in comprehensive tax reform.

But the most effective communication comes from you.

What have municipal bonds built in your jurisdiction? Will you share pictures of the projects built by bonds? Jump on the hashtag #BuiltByBonds and @GFOA along with your Congressional representatives. Please let the Federal Liaison Center know of any communication heading up to your senator or representative, or let us know how we can help your efforts. [Contact Emily S. Brock.]

[Water Act A "WIIN" For Infrastructure.]

Last month, in a strong display of bipartisanship in an otherwise tense post-election political climate, Congress passed the Water Infrastructure Improvements for the Nation Act ("WIIN" or the "Act").1 President Obama signed the bill into law on December 16, 2016.2

The success of WIIN was fueled by bipartisan consensus for the improvement of the nation's water infrastructure and the need to provide federal support to Flint, Michigan and similar communities that have recently been affected by water contamination crises.

This client alert is an update to our two-part article published last October outlining the financing options for US water infrastructure improvements, Funding and P3s for Water Infrastructure Projects3, which described the bills passed by the Senate and the House of Representatives that formed the basis for WIIN. WIIN was the result of the conference committee between the two houses that followed the presidential election.

Below we provide a brief summary of certain provisions of the Act that may be of particular interest to private sector entities pursuing investments in the water sector, including investments through public-private partnerships (or P3s).

WIFIA

As discussed in our October article, the Water Infrastructure Finance and Innovation Act ("WIFIA") was passed in 2014 and authorized as a five-year pilot program. However, no appropriations were provided for WIFIA other than amounts to fund start-up costs at the US Environmental Protection Agency ("EPA"), which will administer the program.

The new law changes that – WIIN includes $20 million in budget authority to WIFIA, with a corresponding appropriation being made in a subsequent continuing resolution passed by Congress in December.4 No more than $3 million of such amount may be used for administrative purposes. While this amount is less than the $70 million amount originally proposed by the Senate in its bill (which itself reflected only part of the $80 million authorized for the program over its first three years under the 2014 legislation), it is nonetheless significant because funds are now available to be loaned out by EPA for eligible projects. EPA estimates that its $17 million in budget authority could support more than $1 billion in credit assistance and more than $2 billion in water infrastructure investment.5

The new law makes other changes and clarifications to the WIFIA program that could be useful to eligible borrowers, which include governmental entities such as municipal water authorities as well as private sector entities. WIIN expands WIFIA eligibility to projects that prevent, reduce, or mitigate the effect of drought. The Act further specifies that financing fees can be covered under loan amounts and clarifies that project costs incurred before a WIFIA loan is received can be credited towards the 51 percent of project costs that must be provided by sources other than WIFIA loans.

The Act also clarifies that Congress intends for WIFIA appropriations to be in addition to, and not instead of, those made to the Clean Water State Revolving Fund (the "CWSRF") and the Drinking Water State Revolving Fund (the "DWSRF" and, together with the CWSRF, the "SRFs"). This statement, along with the additional appropriations to the SRFs described below, should help assuage the fear of stakeholders who have expressed the concern that WIFIA funding would result in the downsizing of the revolving loan funds. Finally, consistent with the Act's focus on Flint aid (described further below), it states explicitly that WIFIA eligible projects may include those to address lead and other contaminants in drinking water systems.

Flint Aid

A critical motivating factor for WIIN's passage was the desire among lawmakers on both sides of the political aisle to support Flint and other communities affected by contaminated drinking water problems. These problems, which the Flint crisis made more visible in 2016, have focused attention on the poor condition of the nation's water infrastructure. In response, the Act authorizes $100 million in capitalization grants to the DWSRFs to fund improvements for public water systems with lead exposure and other drinking water emergencies. An additional $50 million is authorized for various lead-related health programs. These amounts were appropriated in the December continuing resolution.

In order to mitigate future drinking water contamination issues, WIIN authorizes $150 million annually over the next five years for various grant programs to help local public water systems and communities with lead reduction projects and related assistance.

"Buy America"

WIIN maintains a one-year "Buy America" provision for iron and steel on public water system projects funded by the SRFs, consistent with existing law. In the run-up to passage, several prominent Democrats fought unsuccessfully to make such provisions permanent.[6] The Democratic position may nevertheless have support from the incoming Trump administration, which has espoused a "Buy American and hire American" policy since the November election.

Army Corps of Engineers Projects

Since passage of the last water legislation in 2014, the Army Corps of Engineers ("ACE") has made recommendations to Congress for water infrastructure investment projects across the country. Consistent with the proposals of both the Senate and the House of Representatives, WIIN authorizes ACE to carry out certain of these recommendations, which total 30 new projects, as well as eight modifications to existing projects. These projects, which are subject to future appropriation, range across ACE's major mission areas, including navigation, flood risk management, hurricane and storm damage risk reduction, and ecosystem restoration. Seeking to address the backlog in ACE projects, the Act also deauthorizes inactive projects that have not received funding and deauthorizes portions of other active projects that are no longer needed. WIIN also authorizes ACE to conduct feasibility studies for 30 proposed new water projects.

California Drought Aid

In addition to degraded systems, communities across the country—both coastal and inland—have significant water scarcity issues, spurred by both human and natural conditions such as overuse or drought. California, for instance, is in its sixth straight year of drought7 and, by at least one account, has its worst drought conditions in 1,200 years.8

WIIN directs the Departments of Commerce and the Interior to help increase the water supply by expediting review of proposed projects and drought reduction measures, while regulating the amount of water that can be diverted to farms and homes so as not to damage salmon stocks and other wildlife. The Act also authorizes the use of funds from the prepayment of federal water contracts for the expansion of water storage facilities and authorizes other amounts to be applied to water desalination projects and a recycling grant program.

Conclusion

WIIN is a significant development for water industry stakeholders. The bipartisan support for the passage of the Act, and President-elect Trump's prioritization of national infrastructure improvements, suggest that WIIN will not be threatened by the upcoming change in administration.

The Act's political legacy will likely be shaped by the impact of Flint aid and the related lead reduction programs. From an investor's perspective, the appropriation of funds to WIFIA is an important step forward, as it unlocks a program which essentially has been stillborn since its establishment two-and-one-half years ago. Similar to TIFIA in the transportation sector, WIFIA's low-cost, long term financing is likely to attract interest from local water authorities, and private entities contracting with them, seeking to finance greenfield or brownfield water infrastructure projects. To the extent WIFIA funding remains available over the longer term, it could also foster the development of new projects. In this regard, it will be important for the program to demonstrate some early successes in 2017 in order to lay the groundwork for further appropriations.

Special thanks to Shearman & Sterling associate David Ullman for his contributions to this client publication.

Footnotes

1 Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322 (2016). The Senate vote, on December 10, 2016, was 78-21 and the House vote two days earlier was 360-61.

2 Statement by the President on the Water Infrastructure Improvements for the Nation (WIIN) Act (Dec. 16, 2016), https://www.whitehouse.gov/the-press-office/2016/12/16/statement-president-w-ter-infrastructure-improvements-nation-wiin-act.

3 Paul J. Epstein, Funding and P3s for Water Infrastructure Projects, Law360 (Oct. 17-18, 2016), http://www.shearman.com/en/newsinsights/publications/2016/10/epstein-authors-article-funding-partnerships-water.

4 Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254 (2016).

5 US Environmental Protection Agency, Learn About the WIFIA Program, https://www.epa.gov/wifia/learn-about-wifia-program (last visited Jan. 2, 2016).

6 Brody Mullins & Kristina Peterson, Bill's 'Buy America' Provision Sets Up Potential Clash for GOP, Donald Trump, Wall St. J. (Dec. 2, 2016), http://www.wsj.com/articles/water-bills-buy-american-provision-sparks-some-gop-concerns-1480709387.

7 Paul Rogers, 2016 in Review: California drought eased, but it's not over, Mercury News (Dec. 26, 2016),
http://www.mercurynews.com/2016/12/26/fire-and-rain-california-drought-eased-but-not-over/.

8 Angela Fritz, Study: California drought is the most severe in at least 1,200 years, Washington Post (Dec. 4, 2014), https://www.washingtonpost.com/news/capital-weather-gang/wp/2014/12/04/stu-y-california-drought-is-the-most-severe-in-at-least-1200-years/.

Article by Paul J. Epstein

Last Updated: January 9 2017

Shearman & Sterling LLP

MSRB Net Assets of $70M in FY-2016 Almost Triple Those of 2010.

WASHINGTON – The Municipal Securities Rulemaking Board's net assets in fiscal 2016, similar to those for the previous year, are still close to triple where they were in 2010, even after a $5.5 million rebate the self-regulator gave dealers this past year.

The MSRB's $69.3 million in net assets in its fiscal year 2016, which ran from Oct. 1, 2015 through Sept. 30, 2016, was slightly below the $69.5 million it had in its fiscal year 2015, according to MSRB financial documents. The $200,190 decrease in 2016 is the first the MSRB has experienced since 2010, when its net assets dropped $451,000 and the board ended with $26 million in net assets.

The figures are from MSRB financial statements for fiscal years 2012 through 2016. The 2016 data was in an annual report the self-regulator released on its work during the fiscal year.

MSRB executive director Lynnette Kelly said in a letter included in the report that the MSRB aims to keep a financial reserve target that is approximately 12 months of operating expenses plus three-times annual capital needs. The self-regulator determined in July 2016 that its reserves had risen above the targeted levels and decided to issue a $5.5 million rebate to dealers who were assessed underwriting, transaction, or technology fees during the year.

"As we head into 2017, you have my commitment that we will continue the strict financial oversight that enables the MSRB to protect the $3.8 trillion municipal market while striving to allocate the associated costs as fairly and equitably as possible," Kelly wrote.

Leslie Norwood, managing director, associate general counsel and co-head of munis for the Securities Industry and Financial Markets Association, said that as regulatory and other costs of doing business increase for dealers, the fees "serve as a tax on the efficiency of business and a challenge for broker dealers."

She reiterated a past SIFMA request that the MSRB undertake a comprehensive review of its fee structure and budgeting process.

"Among other things, we feel concerned about the amount of financial reserves the MSRB has charged the industry to fund," Norwood said.

The review should focus on allocating costs among all segments of regulated entities, long-term budgeting to let dealers better plan for costs, and attention to the need for fee rebates, according to Norwood.

"While we acknowledge and appreciate the MSRB fee rebates, it would be rational for the MSRB to set fees at a level that does not result in excessive surpluses, necessitating the need for rebates," she said. "Rebates can be problematic for the industry, and instead we strongly prefer the MSRB reduce fees up front, and raise fees if necessary."

The MSRB drew in about $35.4 million in revenue in 2016. That number does not include the $5.5 million rebate. The majority of the self-regulator's revenue in 2016 came from underwriting assessment fees and transaction fees, which brought in $10.3 million and $11.6 million respectively. Those numbers do not include $4 million of the rebate.

All of the fee revenues fell from their 2015 levels except for those encompassing annual and initial fees as well as data and subscriber fees and other revenue. Annual and initial fees nearly doubled to $2.1 million in fiscal 2016 from $1.1 million the year before. Data subscriber fees and other revenue rose to $3.2 million, a 23% increase from the $2.6 million the year before.

The increases are likely from changes the MSRB decided on in 2015 to better distribute costs among regulated entities based on their level of involvement in market activities. The self-regulator raised its initial fee to $1,000 from $100 and its annual fee to $1,000 from $500. It also dropped its underwriting fee to $0.0275 per $1,000 of par value of primary offerings from $0.03 per $1,000.

MSRB expenses rose to $35.6 million in 2016 from $32.2 million in 2015 as spending in four of its five key operational areas increased.

In addition to its annual report, the MSRB has also announced it will add a new issue calendar to its EMMA website. The calendar will list munis scheduled for sale to investors as well as pricing of recently sold issues, the MSRB said. Kelly said that investors will be able to use the calendar to research upcoming offerings and that state and local governments can use it for information about timing on new bonds. Users will be able to filter upcoming bond issues by state, tax status, and whether the offering is bank qualified.

The MSRB is also seeking applicants to fill five positions on its board starting on Oct. 1. The board has 11 public and 10 regulated members. Three of the five positions to be filled are public and two are regulated. One of the regulated seats is for a non-dealer municipal advisor.

The MSRB said in its call for applicants that it is particularly interested in individuals with strong knowledge of muni sales and trading desk operations as well as those with experience in underwriting or syndicate practices. It is also interested in retail and institutional investor applicants.

Three current board members — one public and two regulated — will receive a one-year extension for the MSRB's fiscal year 2018 as part of the self-regulator's transition to four year board terms by 2020.

The Bond Buyer

By Jack Casey

January 9, 2017

BAML, PFM Widen Their Leads in 2016 Rankings.

Bank of America Merrill Lynch and Public Financial Management Inc. widened their leads in municipal market rankings in a record-setting year for issuance.

Rankings

BAML closed 2016 with a par amount of $65.92 billion in 518 issues, or 15.6% market share, compared to $49.27 billion in 470 issues or 13.1% market share in 2015, to top the underwriter rankings, according to data from Thomson Reuters. PFM finished 2016 credited with $73.30 billion in deals, or 20.8% market share, up from the $62.42 billion and 20% market share for 2015.

For the year, BAML was the lead manager on four deals that were greater than $1 billion and 16 deals that were between $500 million and $1 billion. Among the largest transactions that BAML ran the book on were: the New York State Urban Development Corp.'s $1.65 billion sale in March; The state of Illinois' $1.30 billion in October; The commonwealth of Massachusetts's $1.11 billion in March; and the City of Chicago's $1.01 billion in November.

Overall, the top firms combined for a total par amount of $423.88 billion in 12,271 transactions in 2016, compared with $377.64 billion in 12,076 transactions during the same period last year. For the fourth quarter alone, BAML accounted for $16.55 billion in 107 deals.

Citi finished 2016 in second place with $48.89 billion in 529 deals, good for 11.5% market share and an improvement from the $43.50 billion in 486 deals the firm handled in 2015. Citi was also in second place for the fourth quarter, with $10.97 billion in 95 deals.

For the year, Citi was the lead manager on two deals greater than $2 billion and two deals bigger than $1 billion.

Although the largest deal the bank worked on was $2.70 billion from the state of California, the most talked about deal of the year was $2.41 billion from the New York Transportation Development Corp. of special facilities bonds, Series 2016A and B, LaGuardia Airport Terminal B Redevelopment Project, subject to alternative minimum tax.

"We expect to see more discussions around public-private partnership and how they can play a role in infrastructure," said David Brownstein, Head of Public Finance at Citi. "It's important to figure out how to maintain important projects while also coming up with creative ways to get other needed projects done."

JPMorgan finished in third for the year with $41.51 billion in 402 transactions, which compares to the $41.68 billion in 392 transactions the firm completed in 2015. For the fourth quarter alone, JPM finished in fourth place with $8.84 billion span across 80 deals.

"Market volatility post-election made for a challenging environment and we are very appreciative of the many issuers that put their trust in J.P. Morgan to lead them through that tumultuous period," said Jamison Feheley, JPM's head of public finance banking. "We are also very proud of the many value-added solutions we were able to deliver for clients this quarter and throughout the year that aren't reflected in the traditional league table."

Feheley said JPM expects a more challenging year ahead, with new issue volume expected to drop following a record year as uncertainties come into play with a new administration in Washington.

Morgan Stanley concluded the year in fourth place with $33.89 billion in 388 deals, up from $31.68 billion in 431 deals in 20155. Morgan Stanley finished the fourth quarter in third place with $10.63 billion in 93 transactions.

Wells didn't lose any ground in terms of rankings, even after a fake account scandal that prompted issuers including the state of California, the commonwealth of Massachusetts, the state of Ohio and the city of Chicago to curtail business with the firm. Wells Fargo rounds out the top five for the second year in a row, finishing the year with $26.09 billion, up from $24.83 billion a year earlier. Wells had a par amount underwritten of $5.03 billion for the fourth quarter alone.

RBC Capital Markets came in sixth place with a total of $23.61 billion for the year, followed by Stifel with $17.82 billion, Raymond James with $17.77 billion, Barclays with $17.06 billion, Piper Jaffray with $16.42 and Goldman Sachs with $15.80 billion.

Financial Advisors

Public Financial Management increased its par amount and market share from the previous year. For the fourth quarter alone PFM finished with $14.95 billion.

"PFM continues to focus on helping our clients achieve a level of strong financial stability that enables them to enter the market with a strong credit posture both to borrow for vital infrastructure projects and to refinance debt for savings," said John Bonow, managing director and chief executive officer of PFM. "While the market in 2016 was conducive to economic refundings through much of the year, the recent uncertainty about federal economic policies may persist well into 2017."

Bonow said expectations are growing that increased federal assistance to spur infrastructure investments may materialize soon and that the market seems to have found some footing in terms of interest rate stability. Volume may be strong again this year, he said, although it's unlikely to rise to another record.

"We continue to focus on being a strong, independent voice for our clients, providing them with the information and analysis needed to make the major financial decisions. We are deeply appreciative of the trust so many clients have put in us, which has enabled our mutual success," he said.

Hilltop Securities came in second with $34.96 billion after finishing in second in 2015 with $32.74 billion. Public Resources Advisory Group was right behind, finishing in third with $33.49 billion.

After the top three, the gap widens. Acacia Financial Group wound up in fourth place for the year with $13.78 billion, moving up one spot after finishing in fourth in 2015 with 9.11 billion.

Kaufman Hall & Associates Inc. jumped up into fifth place, after finishing ninth last year. In 2016, the firm had a par amount of $8.55 billion, up from $5.16 billion.

Top Issuers

The state of California was the top municipal bond issuer by par amount in 2016, well ahead of the next biggest issuer. The Golden State issued $8.92 billion in 2016, moving up from second place in 2015 when the state issued $6.38 billion.

"The office has greater responsibilities than just the state's general obligation bonds. In total we were responsible for selling roughly $21 billion this past year for all state agencies," said Tim Schaefer, California's deputy treasurer for public finance. "We are pleased that we had a year of very favorable rates, eventually those refundings will save tax payers $1.8 billion in direct savings and $500 million in public benefits."

Schaefer said the highlight of the year came in October when the state completed what is believed to be one of the largest competitive sales in more than 25 years. Although it came in three separate sales, they were all under a common plan of finance, which was various purpose.

"In total the combined sale just under $1.7 billion and that is an important size milestone for the state and for the market," said Schaefer.

The Dormitory Authority of the State of New York finished in second place with $5.92 billion, slipping a bit one year after it finished in first place with $9.02 billion.

Another New York issuer, the Metropolitan Transportation Authority finished in third place with $5.19 billion, up from $3.11 billion in 2015, which was good for eighth place.

Massachusetts came in fourth with $4.83 billion, improving from $2.55 billion, while the New York City Transitional Finance Authority rounded out the top five with $4.75 billion.

The Bond Buyer

By Aaron Weitzman

January 9, 2017

Port Authority Pays $400,000 for Not Disclosing Bond Risks.

- SEC investigation continues as Christie spared embarrassment
- Lawyers had internally opposed financing before 2011 bonds

The Port Authority of New York and New Jersey agreed to pay U.S. regulators $400,000 for failing to disclose risks to investors in $2.3 billion of bonds that helped finance New Jersey roadway projects. In doing so, the Port Authority became the first municipal issuer to admit wrongdoing in a Securities and Exchange Commission enforcement action.

The SEC said the investigation is continuing. The Port Authority failed to mention in bond-offering documents whether the agency "ventured outside its mandate" while the projects, including a renovation of the Pulaski Skyway, "potentially weren't legal to pursue," according to the SEC.

The SEC investigated whether the bi-state agency improperly financed renovations after New Jersey Governor Chris Christie pushed the authority to back a funding arrangement in 2011 that its lawyers initially opposed. The settlement spares Christie from potentially embarrassing revelations if the SEC were to sue the Port Authority.

"The Port Authority represented to the investors that it was authorized to issue bonds while not disclosing known risks that its actions were not legally permitted," Andrew Calamari, director of the SEC's New York regional office, said in a statement. "Municipal-bond issuers must ensure that their disclosures are complete and accurate."

An SEC statement cited an internal Port Authority memo saying, “There is no clear path to legislative authority to undertake such projects.” Another memo identified “the risk of a successful challenge by the bondholders and investors” to the funding.

Roadway Projects

In a separate statement on Tuesday, the Port Authority said no bondholders suffered a loss “as a result of this failure to disclose” because the agency “did not ultimately use bond proceeds to fund the roadway projects.”

The Port Authority hired a law firm to handle the SEC investigation and gave more than 20,000 documents to the federal agency, according to the statement. The law firm concluded that the roadway projects were within the statutory authority of the Port Authority, but “the risk that this conclusion might have been erroneous was not conveyed” to the board or bondholders.

Port Authority lawyers had questioned whether the agency could finance improvements to the Pulaski Skyway, which connects Newark to Jersey City. It leads to the Holland Tunnel, and the lawyers argued that the agency isn’t legally authorized to build access roads to the Hudson River crossing, records show.

In internal discussions over several months, lawyers said the agency was permitted to improve access roads only to the Lincoln Tunnel, several miles to the north. After months of debate among officials from the agency, New Jersey’s transportation department and its attorney general, authority commissioners in March 2011 approved the funding as a Lincoln Tunnel improvement.

Brian Murray, a spokesman for Christie, didn’t immediately respond to an e-mail asking for comment.

In April 2014, Christie said publicly that “dozens and dozens of lawyers from both sides of the river reviewed that financing plan and approved it, as did the commissioners at Port Authority. So I relied upon the advice of lawyers from both sides of the river to come to that conclusion and I’m confident that if the SEC reviews it — that’s what they’re doing — they’ll come to the same conclusion.”

Bloomberg

by David Voreacos and Elise Young

January 10, 2017, 10:40 AM PST

Bloomberg Brief Weekly Video - 01/12

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

Watch the video.

Bloomberg

January 12, 2017

Fitch: Meaningful Pension Reform Critical To Dallas Credit Quality.

Fitch Ratings-Austin-09 January 2017: Maintenance of the City of Dallas' current 'AA' Issuer Default Rating (IDR) and limited tax bond rating, hinges upon the ability of city and Dallas Police and Fire Pension (DPFP) staff and leadership to craft meaningful pension reform legislation that is acceptable to both groups as well as state lawmakers in the upcoming Texas legislative session, according to Fitch Ratings.

Fitch believes that such legislation has reasonable prospects for success and keeps Fitch's assessment of carrying costs and operating performance from deteriorating further at present.

The Rating Outlook on the city's IDR and bond rating is currently Negative, indicating the likelihood of further negative rating action if one or more key rating factors weaken from current levels. Fitch would view additional credit deterioration as a likely outcome if current efforts result in ineffectual or no pension reform in the 2017 legislative session. The session begins January 10.

(Please see 'Fitch Downgrades City of Dallas, TX GOs to 'AA' on Pensions; Outlook Negative' dated Oct. 6, 2016 at www.fitchratings.com for more information related to Fitch's most recent rating action.)

The Rating Sensitivity in Fitch's Oct. 6, 2016 Dallas rating action commentary states 'Maintenance of the current rating will require successful pension reform efforts that stabilize the level of the city's obligations and reduce the risks presented by the deferred retirement option plan.' The city's 'AA' rating continues to reflect strong operating performance enabled by robust economic and revenue growth prospects, strong control over revenues, conservative budgeting , and solid reserve funding.

The city's fiscal 2015 carrying costs (for debt service and retiree benefit outlays) were elevated at 25% of governmental spending, contributing to the 'a' category assessment for expenditure flexibility. The city and DPFP are reportedly seeking consensus on a package of pension reforms to lower benefits and stabilize the system, although implementation requires legislative approval. Fitch believes a reform proposal endorsed by both groups will receive a better reception at the legislature and improve odds for approval. Lack of meaningful DPFP pension reform would put additional upward pressure on pension contributions, which have been driven higher by the magnitude of the DPFP net pension liability, now at nearly $7 billion. Further increases in carrying costs would reduce expenditure flexibility, weaken the city's budget management capabilities, and reduce overall financial resilience. Deterioration of these key rating factors would weaken the city's credit profile and may result in a multi-notch downgrade.

Fitch will monitor closely the Texas 2017 session and track the progress of DPFP pension reform legislation as it winds through the legislative process.

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New York Federal Reserve Staff Report on Regulation and Bond Market Liquidity.

Recently, the New York Fed issued a staff report about the relationship between increased regulation and bond market liquidity entitled, *Dealer Balance Sheets and Bond Liquidity Provision*. The full report can be accessed here. The authors conclude that new bank regulatory constraints faced by the most active bond traders in the market have impacted bond market liquidity. This is a somewhat significant conclusion given that the NY Fed, and other regulators, have argued corporate bond market liquidity has not deteriorated.

BDA will be sure to discuss the report's conclusions during Capitol Hill meetings on the impact of regulations on the fixed-income market. Please contact the BDA if you'd like to discuss the report further. Thank you.

Focus of the Staff Report:

- The authors study the links between dealer balance sheet capacity, bond market liquidity, and the role of increased capital and liquidity regulation (Basel III) and trading activity regulation (Volcker) on bank holding companies with broker-dealer affiliates.
- The banks analyzed are bank holding companies with broker-dealer affiliates and the trading data is based on the supervisory version of TRACE, which means the name of the FINRA member that reports a trade to TRACE is known.

Key Takeaways from the Staff Report:

- The authors state that historically the bonds that are actively traded by banks with with greater leverage, higher trading revenue, higher liquidity mismatch, and higher vulnerability are more liquid.
- However, the authors conclude that since the beginning of the implementation stage of the new bank regulatory regime in 2014 a shift has taken place. And the bonds more actively traded by more leveraged institutions (as described above) have become less liquid than before the implementation of the new regulatory regime.

We hope this information is valuable. Please contact the BDA if you have any questions.

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Bond Dealers of America

January 11, 2017

Puerto Rico Bondholder Lawsuit Revived on Appeal.

Holders of Puerto Rico's pension bonds deserve a hearing in their lawsuit over the territory's emergency measures to conserve cash, a federal appeals court ruled.

The U.S. Court of Appeals for the First Circuit on Wednesday revived a lawsuit filed by bondholders of the Employees Retirement System, Puerto Rico's largest government pension fund, against the territorial government. The bondholders filed a suit after Puerto Rico's former governor invoked a fiscal emergency law to interrupt the payment stream that back the debt.

The appeals court didn't decide whether the disputed funds can be diverted, ordering only that a lower court must hold a hearing to determine whether the lawsuit can proceed.

In the same ruling, the appeals court halted a similar lawsuit brought by holders of bonds issued by Puerto Rico's highway and transportation authority who likewise complained that their collateral had been confiscated. The bondholders failed to show they were harmed, the appeals court said, and aren't entitled to a hearing.

The ruling marks the first time an appellate court has interpreted the debt-related provisions of the Puerto Rico Oversight, Management and Economic Stability Act, or Promesa, but it likely won't be the last.

Congress passed the rescue law over the summer to install a financial oversight board with debt restructuring authority on the financially struggling island, home to 3.2 million U.S. citizens.

The pension and highway bondholders are just two of several investor groups that sued Puerto Rico last year, when former Governor Alejandro García Padilla used a local debt-moratorium law to begin diverting funds that were pledged as collateral to bondholders.

Promesa includes an automatic stay on lawsuits to close the courthouse doors to bondholders while restructuring negotiations are ongoing. The stay, which is currently in effect, can be extended until May 1, but the bondholders argued it didn't apply to them. A federal judge in November disagreed, keeping the stay in place.

Only the pension bondholders and the highway bondholders appealed. The pension bondholders, who are normally paid from employee contributions to the retirement fund, said there wouldn't be sufficient funds to pay them if the moratorium continues.

Judge Francisco A. Besosa of the U.S. District Court for Puerto Rico, is currently weighing whether to apply the stay to halt yet another lawsuit, one with far larger financial consequences. In that case, general obligation bondholders owed $13 billion are laying claim to sales tax revenues that are currently pledged to a competing group of creditors.

The oversight board on Wednesday hired the law firm Dentons to help negotiate with creditors. The appeals court said in its ruling that Judge Besosa was wrong to block the board from participating in the bondholder lawsuits. The board had tried to intervene in the litigation in a bid to keep the lawsuits frozen.

THE WALL STREET JOURNAL

By ANDREW SCURRIA

Jan. 12, 2017 9:40 a.m. ET

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Uber Extends an Olive Branch to Local Governments: Its Data.

The ride-hailing company Uber and local governments often do not play well together. Uber pays little heed to regulation while city officials scramble to keep up with the company's rapid deployment and surging popularity.

But now, with a new data-focused product, Uber is offering a tiny olive branch to its municipal critics.

The company on Sunday unveiled Movement, a stand-alone website it hopes will persuade city planners to consider Uber as part of urban development and transit systems in the future.

The site, which Uber will invite planning agencies and researchers to visit in the coming weeks, will allow outsiders to study traffic patterns and speeds across cities using data collected by tens of thousands of Uber vehicles. Users can use Movement to compare average trip times across certain points in cities and see what effect something like a baseball game might have on traffic patterns. Eventually, the company plans to make Movement available to the general public.

If urban planners embrace the data, that could work toward a future Uber has long dreamed of, one in which the company's transportation options are woven into municipal planning.

"Our relationships with cities have typically been uneven, but there are a lot of places around the world where Uber and the cities we operate in have the same goals," Andrew Salzberg, head of transportation policy at Uber, said in an interview. "We operate better in a world that has policy grounded on data."

The collected trip data is made anonymous and aggregated, Uber said, which it hopes will assuage user privacy concerns.

That data, Uber said, will most likely be much more reliable than what is typically used by urban planners, many of whom hire third-party agencies to study traffic patterns over time. Often, that data is expensive, and it can be out of date by the time it is analyzed. Uber argues that its data is more reliable because all of its drivers use smartphones equipped with accelerometers and global positioning technology.

One challenge for Uber: improving upon the rocky partnerships it forged in the early, one-off data sharing deals it struck two years ago.

In a widely publicized move in January 2015, Uber announced a deal with the city of Boston in which the company planned to share some anonymous data, with many of the same urban planning aspirations it has today.

But that deal quickly soured. Boston officials said the agreement was not practical for city planning and development because it restricted what agencies the city could share the data with and because the data came only in quarterly batches. Boston city employees also grew frustrated with the lack of useful data being shared and Uber's seeming lack of understanding of how to deal with city governments.

“The totality of Uber and Lyft drivers in Boston represent what is effectively the addition of another transit line,” Jascha Franklin-Hodge, chief information officer at Boston’s Department of Innovation & Technology, said in an interview. “The fact that we’re dealing with a whole new line that we don’t have data on and can’t integrate it into our planning is sort of ridiculous.”

Uber seemed to take the criticism to heart. After the Boston partnership, the company created a Seattle-based team to develop an approach to sharing data with city planners across the world. Led by Jordan Gilbertson, a product manager at Uber, that project eventually became the new website, Movement.

City officials said that they appreciated user data privacy concerns but that they also hoped to see more useful information from Uber. Mr. Franklin-Hodge shared a list of detailed requests that could aid future urban development, like demand patterns around car-free tenant housing, locations with likely potholes and the most common pickup and drop-off locations.

Uber maintains that it plans to release more data to cities over time as it rolls out the Movement tool to a wider audience of researchers and to the public. But the company said it would balance that demand for information with concerns about user privacy and the need to protect competitive data that could prove valuable to rivals like Lyft, Hailo and Grab, which are vying for riders across many of the same markets.

“Ideally, we’ll someday find what that middle ground looks like,” Mr. Franklin-Hodge said.

THE NEW YORK TIMES

By MIKE ISAAC

JAN. 8, 2017

Illinois Governor Pans State Legislature's Chicago Pension Fix.

CHICAGO — Illinois Governor Bruce Rauner signaled a likely veto on Monday of newly passed legislation to stave off possible insolvency for two of Chicago’s pension funds.

Credit ratings for the nation’s third-largest city have been plummeting largely due to an unfunded pension liability that stood at $33.8 billion at the end of fiscal 2015 for Chicago’s four retirement systems.

By a 41-0 vote, the Illinois Senate approved the proposed rescue, which cleared the House overwhelming in December. The plan would authorize new city funding for Chicago’s municipal and laborers retirement systems.

The systems are projected to run out of money in the coming decade and were depending on legislative sign-off of the city’s enactment of a water and sewer usage tax and telephone surcharge designed to help get them 90 percent funded in 40 years.

City officials have acknowledged that more money will be needed starting in 2023 when payments will reach actuarially required levels.

“The bill essentially authorizes another property tax hike on the people of Chicago and sets a funding cliff five years out without any assurances that the city can meet its obligations,” Rauner spokeswoman Catherine Kelly said in a statement. “The governor cannot support this bill without real pension reform that protects taxpayers.”

Rauner’s response drew belittlement from Chicago Mayor Rahm Emanuel’s administration.

“Bruce Rauner is Governor Gridlock, and he is showing why nothing gets done in Springfield,” said Emanuel spokesman Adam Collins, who argued the governor should focus on passing a budget and fixing Illinois’ pension woes.

A bipartisan, statewide fix to Illinois’ $129.8 pension crisis did not get called for a vote in the Illinois Senate on Monday as part of a sprawling deal to end an 18-month budget stalemate, pass non-budgetary reforms sought by Rauner and expand casino gambling, among other things.

That package’s architects, Democratic Senate President John Cullerton and Senate Republican Leader Christine Radogno, pledged to reintroduce their plan after a new legislative session begins Wednesday.

On a separate budgetary track, the House on Monday approved a $657.3 million appropriation plan for universities and social service agencies that lost spending authority on Jan. 1.

The House-passed legislation that would fund operations through June awaits Senate approval, but Rauner has expressed past reluctance to support new stopgap spending without other reforms.

By REUTERS

JAN. 9, 2017, 6:45 P.M. E.S.T.

(Reporting by Dave McKinney; Editing by Leslie Adler)

Port Authority Will Pay $400,000 to Settle Federal Securities Charges.

The Port Authority of New York and New Jersey violated federal securities laws when it borrowed money to repair a bridge and roads in New Jersey that its lawyers thought were beyond its bounds, securities regulators said on Tuesday.

The agency, which operates bridges, tunnels and airports in and around New York City, agreed to pay a $400,000 fine in a settlement with the Securities and Exchange Commission. The commission, which polices sales of stocks and bonds, said the Port Authority had admitted to wrongdoing in the matter, making it the first issuer of municipal bonds to do so.

But John J. Degnan, the chairman of the Port Authority, said the agency had not admitted to willful wrongdoing, only to negligence in its failure to disclose all of the risks faced by buyers of its bonds. “I was shocked when I saw the release,” Mr. Degnan said, referring to the commission’s announcement of the settlement.

A lawyer representing the Port Authority, James Sottile, sent a letter to the commission demanding a retraction of its news release.

Mr. Degnan also questioned the timing of the announcement, which came just as Gov. Chris Christie of New Jersey was delivering his State of the State address in Trenton. For Mr. Christie, it was another case of intrigue involving a bridge that could tarnish his legacy.

A spokesman for the governor referred a request for comment to the Port Authority.

The federal investigation stemmed from Mr. Christie's decision in 2010 to halt the construction of a commuter train link across the Hudson River to New York City, a project that was known as the ARC tunnel. Mr. Christie wanted $1.8 billion of Port Authority funds redirected from the canceled tunnel to repairs on the state-owned Pulaski Skyway bridge and other road projects in northern New Jersey.

But Port Authority lawyers were leery of that proposed shift, saying the alternative projects did not fall within the agency's purview. An internal Port Authority memo at the time said, "There is no clear path to legislative authority to undertake such projects."

One big problem was that the projects involved roadways that carry vehicles to and from the Holland Tunnel, which connects New Jersey to Lower Manhattan. The Port Authority operates the tunnel, but according to one of its internal memos, there was no law that allowed it to "construct, own, maintain or operate any of the approaches to the Holland Tunnel."

However, it was permitted to work on roads leading to the Lincoln Tunnel, which connects New Jersey to Midtown Manhattan and which the agency also operates.

So, before the Port Authority's commissioners voted in March 2011 to authorize the road projects, the agency adopted the view that the roads in question also led to the Lincoln Tunnel. An internal memo proposed a "traffic study" to bolster that position.

That was more than two years before allies of Mr. Christie at the Port Authority told tales of another traffic study. That study was the purported reason for the September 2013 closing of lanes of traffic that led to tollbooths at the George Washington Bridge.

The lane closings, which came to be known as Bridgegate, resulted in the convictions last year of Bill Baroni, who was Mr. Christie's top executive appointee at the Port Authority, and Bridget Anne Kelly, a former deputy chief of staff to the governor. Another of Mr. Christie's allies at the Port Authority, David Wildstein, pleaded guilty over his central role in the closings.

Neither the commissioners of the Port Authority nor investors were ever informed of the internal debate over the legality of using Port Authority money for the road projects, the securities commission said. From 2012 to 2014, the Port Authority raised $116 million through bond sales whose proceeds were intended for the road projects, the commission added.

"The Port Authority represented to investors that it was authorized to issue bonds while not disclosing significant known risks that its actions were not legally permitted," said Andrew M. Calamari, director of the commission's New York office.

THE NEW YORK TIMES

By PATRICK McGEEHAN

JAN. 10, 2017

[Transgender Bill Could Cost San Antonio $234 Million, Says Study of Final Four.]

A study for the city of San Antonio predicted that the 2018 Final Four would bring nearly a quarter of a billion dollars in spending to the city, a talking point sure to be raised as debate continues over a proposed Texas law seen by some as discriminatory to transgender people.

A similar law in North Carolina prompted the N.C.A.A. and the N.B.A. to pull events from that state.

According to a memo obtained Friday by The New York Times and verified by a spokeswoman for the local organizing committee, next year's Final Four would lead to $135 million in direct spending and a total economic impact, accounting for money spent by tens of thousands of visitors at other businesses, of $234 million.

The study, conducted by the chief economist of the Sabér Research Institute, projected state tax revenue of $9.5 million and municipal tax revenue of $4.4 million stemming from the event.

Earlier this month, Texas officials, led by Lt. Gov. Dan Patrick, a Republican, proposed legislation that would require transgender people to use bathrooms in government buildings and public schools and universities based on their "biological sex," overriding any local rules to the contrary (potentially including a nondiscrimination ordinance that, the committee spokeswoman noted, San Antonio has). The proposal is known as Senate Bill 6.

Jeff Coyle, San Antonio's director of government and public affairs, declined to comment on the specifics of the bill. "What it all comes down to," he said, "is the message we send to the rest of the country as a state: Are we welcoming, are we open for business, or are we restrictive?"

The N.C.A.A. has not commented on the Texas bill.

The bill strikes many observers as similar to the North Carolina law that prompted the N.C.A.A. to move championship events out of the state, including games in the early rounds of the Division I men's basketball tournament. The N.B.A. moved its All-Star Game, and the Atlantic Coast Conference moved its football championship game in response to the law.

Many of North Carolina's business interests opposed the law, citing economic downsides. The Texas Association of Business has also opposed the bill, in addition to several groups that represent lesbian, gay, bisexual and transgender individuals.

The Texas bill appears to have an exemption for venues "privately leased to an outside entity," which could include a situation such as Houston's NRG Stadium, which is set to host the Super Bowl early next month (likely before the bill would actually be made law), or the Alamodome come March 2018.

It is not clear how such an exemption would affect hotels or restaurants accounted for in the economic impact report. It is also unclear how the N.C.A.A. would assess it. Currently the association quizzes prospective host sites over their abilities to cultivate nondiscriminatory atmospheres.

THE NEW YORK TIMES

By MARC TRACY

JAN. 14, 2017

- MSRB Webinar: Amended Rules on Mark-Up Disclosure and Prevailing Market Price.
- 2016 Year-End Review: Squire Patton Boggs
- Water Research Foundation Publishes Report on Infrastructure Funding.
- GAAP Update Digital Recording Now Available.
- GASB Issues Invitation to Comment in Project Designed to Improve Financial Reporting Model.
- FINRA 2017 Exam Priorities Include MA Registration, Best Execution.
- *UBS Financial Services Inc. v. Asociación de Empleados del Estado Libre Asociado de Puerto Rico* – District Court holds that substance of client's arbitral claims against investment consulting and brokerage service providers, alleging misrepresentation by service providers in connection with investments in Puerto Rico municipal bonds, arose under federal law, and thus federal question jurisdiction existed for court to hear service providers' petition to confirm arbitration award under Federal Arbitration Act.
- And finally, *Greene v. Succession of Alvarado* this week brings us the story of one Donald Greene who – understandably unaccustomed to the concept of icy roads – was stunned to find his truck suddenly skating down a bridge on Louisiana's intercoastal highway. When the caroming finally ceased, Mr. Greene made the rookie mistake of exiting the vehicle, where he was promptly flung from the bridge by the next vehicle to come slaloming along. I understand that you of more northerly climes may be tempted to cast the proverbial first snow plow. But then again, would you know what to do when attacked by an Oyster Po' Boy? Would you?

PENSIONS - CALIFORNIA

San Joaquin County Correctional Officers Association v. County of San Joaquin

Court of Appeal, Third District, California - December 20, 2016 - Cal.Rptr.3d - 2016 WL 7373836

Correctional officers' union brought action against county to challenge reductions in county's retirement contributions.

The Superior Court entered judgment for county. Union appealed.

The Court of Appeal held that Public Employees' Pension Reform Act (PEPRA) did not shield officers' compensation package from a reduction authorized by County Employees Retirement Law (CERL).

Public Employees' Pension Reform Act (PEPRA) did not bar a county from reducing its share of retirement contributions for correctional officers to 50 percent under the County Employees Retirement Law (CERL) provision stating that a resolution authorizing retirement contributions exceeding 50 percent may be amended or repealed "at any time," where the memorandum of understanding (MOU) requiring the county to make retirement contributions exceeding 50 percent had expired, and bargaining had reached an impasse.

IMMUNITY - LOUISIANA

Greene v. Succession of Alvarado

Court of Appeal of Louisiana, First Circuit - December 27, 2016 - So.3d - 2016 WL 7443262

- 2015-1960 (La.App. 1 Cir. 12/27/16)

Motorist brought action against trailing motorist's succession and Department of Transportation and Development (DOTD) arising out of collision on icy bridge which killed trailing motorist and severely injured motorist.

After bench trial, the 32nd Judicial District Court entered judgment in favor of motorist. DOTD appealed.

The Court of Appeal held that:

- Decisions and actions undertaken by DOTD as to maintenance of bridge in a reasonably safe condition, in hours preceding accident, were operational in nature, not policy-making or discretionary, and therefore governmental immunity did not apply to such decisions and actions;
- Evidence was sufficient to support finding that DOTD had constructive knowledge or notice of ice on bridge; and
- Evidence was sufficient to support finding that DOTD failed to take reasonable corrective measures.

UTILITY DISTRICTS - NORTH CAROLINA

City of Asheville v. State

Supreme Court of North Carolina - December 21, 2016 - S.E.2d - 2016 WL 7422422

City brought action against State and sewerage district, seeking injunctive relief and declaration that statute requiring city to transfer public water system to newly created sewerage district was unconstitutional.

The Superior Court granted summary judgment to city. State appealed. The Court of Appeals reversed in part. City filed notice of appeal and petitioned for discretionary review, which was allowed.

The Supreme Court of North Carolina held that:

- Statute was a local law, and
- Statute was related to health, sanitation, and abatement of nuisances, rendering it unconstitutional.

The purpose of the state constitution's prohibition on the enactment of any local, private, or special act or resolution concerning 14 prohibited subjects is to free the General Assembly from the enormous amount of petty detail which had been occupying its attention, to enable it to devote more time and attention to general legislation of statewide interest and concern, to strengthen local self-government by providing for the delegation of local matters by general laws to local authorities, and to require uniform and coordinated action under general laws on matters related to the welfare of the whole state.

Statute requiring one city to involuntarily transfer public water system to metropolitan sewerage district was local law, as required for statute to be unconstitutional local law. Even though legislation appeared to create class of municipalities to which involuntary transfer provisions applied, city was only municipality that would have ever been subject to transfer provisions, and legislation did not explain why every other municipality had right to decide whether to transfer water system or why expected benefits from transfer should not have been made available to other municipal water system customers.

Local statute requiring one city to involuntarily transfer public water system to metropolitan sewerage district had material connection to issues involving health, sanitation, and abatement of nuisances, and thus was unconstitutional local law. Stated purpose of legislation was to provide reliable, cost-effective, high-quality water and sewer services to affected customers, and city was required to comply with Drinking Water Act, located in public health chapter of statutes, and other health statutes regarding water quality.

IMMUNITY - OHIO

Bibler v. Stevenson

Supreme Court of Ohio - December 29, 2016 - N.E.3d - 2016 WL 7645348 - 2016 -Ohio-8449

Driver with right-of-way filed negligence suit against city and driver who failed to stop at stop sign that was obscured by foliage.

The Court of Common Pleas granted summary judgment in favor of city. Plaintiff appealed. The Court of Appeals affirmed. Plaintiff's discretionary appeal was accepted.

The Supreme Court of Ohio held that city was not immune from liability since stop sign was required.

Stop sign at intersection with through highway was "public road" within meaning of statute making political subdivisions liable for failure to keep public roads in repair, and, thus, city was not immune from liability for intersection collision caused by driver who failed to stop at sign obscured by foliage, even though statutory definition of "public roads" excluded traffic control devices unless mandated by Ohio manual of uniform traffic control devices and manual mistakenly, inadvertently, or intentionally did not precisely align with statute requiring stop signs at intersections with through highways. Manual could not override clear statutory mandate, but necessarily incorporated it.

PORT AUTHORITY FINANCING - OREGON

International Longshore and Warehouse Union v. Port of Portland

United States Court of Appeals, Ninth Circuit - December 27, 2016 - F.3d - 2016 WL 7438634

Labor union representing longshore workers filed suit against municipal port and port officials, alleging that programs adopted by the port to mitigate its financial losses, which involved incentive payments to private entities who did business with the port and were funded out of port bank account that contained tax and non-tax revenue violated the Oregon Constitutional prohibition against a public entity raising money for, or lending credit to, any private entity.

The United States District Court granted summary judgment in favor of defendants on certain claims, and subsequently granted summary judgment in favor of defendants on the remaining claims. Union appealed.

The Court of Appeals held that the Court of Appeals would certify question to the Oregon Supreme Court as to whether municipal port's incentive programs violated Oregon Constitutional prohibition against public entity raising money for, or lending credit to, private entities.

ARBITRATION - PUERTO RICO

UBS Financial Services Inc. v. Asociación de Empleados del Estado Libre Asociado de Puerto Rico

United States District Court, D. Puerto Rico - December 22, 2016 - F.Supp.3d - 2016 WL 7408828

Investment consulting and brokerage service providers filed petition to confirm arbitration award issued against client, denying client's claims that service providers violated Securities Exchange Act and Puerto Rico Uniform Securities Act by alleged misrepresentations regarding investments in Puerto Rico municipal bonds.

Client moved to dismiss for lack of subject-matter jurisdiction, or alternatively, for a stay. Service providers removed to federal court.

The District Court held that substance of arbitral claims arose under federal law, and thus federal question jurisdiction existed.

Substance of client's arbitral claims against investment consulting and brokerage service providers, alleging misrepresentation by service providers, arose under federal law, and thus federal question jurisdiction existed for court to hear service providers' petition to confirm arbitration award under Federal Arbitration Act (FAA). Client's statement of claim alleged "violation of the federal securities laws."

OPEN MEETINGS - WYOMING

Cheyenne Newspapers, Inc. v. City of Cheyenne

Supreme Court of Wyoming - December 23, 2016 - P.3d - 2016 WL 7423093 - 2016 WY 125

Newspaper brought action against city, seeking declaration that team created by city to considering staffing and compensation study was subject to Wyoming Public Meetings Act.

City moved for summary judgment. The District Court granted the motion. Newspaper appealed.

The Supreme Court of Wyoming held that:

- Team created by city to consider staffing and compensation study was a "committee" for purposes of Wyoming Public Meetings Act, but
- Team was not created by or pursuant to constitutional, statute, or ordinance, and therefore, did not qualify as an "agency" subject to open meeting requirements.

Team created by city to consider staffing and compensation study was a "committee" for purposes of Wyoming Public Meetings Act, rather than an impermanent, advisory group. Resolution that created team called it a "committee," and city counsel referred business for consideration to the team.

Team created by city to consider staffing and compensation study was not created by or pursuant to constitutional, statute, or ordinance, and therefore, did not qualify as an “agency” subject to open meeting requirements of Wyoming Public Meetings Act. Team was charged to deal with matters of temporary and special nature and appropriately created by resolution, and team was not formed pursuant to statute granting city authority to set and pay employee salaries.

New Year, New Action on Marketplace Fairness.

On January 3, 2017, the City of Roanoke, Virginia, passed a resolution urging the U.S. Congress to act on legislation that will enable state and local governments to collect revenues due to local government. Congressional inaction over the past several years has resulted in an increase in the Virginia state sales tax from to 5.3%, from 5%, and has placed significant limitations on the jurisdiction.

The resolution asks the new Congress to act on legislation this year that would collect and remit sales taxes structured on a system of collection based upon the purchaser’s location. Passing this legislation during the 115th Congress would “send the clear and unequivocal message to states and localities that the United States Congress supports small business women and men who create jobs, produce revenues to support essential infrastructure improvements, and create a stronger and more resilient economy for the benefit of all Americans,” as stated in the resolution, which the City of Roanoke’s City Council passed unanimously at its first meeting of 2017.

This resolution sends a clear message not only Roanoke’s representative, Bob Goodlatte, Chairman of the House Judiciary Committee, but also to the state legislature and its governor, Terry McAuliffe, who has recently proposed a collection on certain out-of-state online retailers to collect sales taxes.

GFOA’s Federal Liaison Center is working with our colleagues at the National League of Cities, U.S. Conference of Mayors, and National Association of Counties to distribute a template of this resolution and work toward a solution that would give marketplace fairness the chance to be considered and passed this year. Stay tuned for more details on this grassroots movement.

Read the resolution here.

Thursday, January 5, 2017

U.S. Municipal VRDO Update, December 2016.

A brief historical stat sheet to the municipal ARS, FRN, and VRDO market ending December 2016. In excel (XLSX) format only.

View the Update.

January 3, 2017

GASB Issues Invitation to Comment in Project Designed to Improve Financial Reporting Model.

Norwalk, CT, January 4, 2017 — The Governmental Accounting Standards Board (GASB) has issued an Invitation to Comment (ITC) on potential improvements to the governmental funds portion of the financial reporting model.

The ITC, *Financial Reporting Model Improvements—Governmental Funds*, is intended to obtain feedback from stakeholders at an early stage of the Board's financial reporting model reexamination project. Interested parties are asked to review and provide input on the ITC by March 31, 2017.

The ITC addresses potential improvements that were initially identified during the research the GASB conducted to evaluate the effectiveness of the existing standards. These potential improvements include:

- Recognition approaches (measurement focus and basis of accounting)
- Format of the governmental funds statement of resource flows
- Specific terminology
- Reconciliation to the government-wide statements
- For certain recognition approaches, a statement of cash flows.

Importantly, the ITC introduces three alternative recognition approaches for governmental fund financial statements:

- Near-term financial resources
- Short-term financial resources, and
- Long-term financial resources.

These three approaches fall on a continuum—from a closer-to-cash approach at one end of the spectrum to a closer-to-economic resources approach on the other. The alternatives were developed to make governmental funds information more useful for financial statement users for making decisions and assessing government accountability.

The project is intended to consider improvements to only selected aspects of the existing financial reporting model. Improvements to other parts of the model are expected to be considered in future due process documents.

"This initial document in the reexamination of the financial reporting model lays out what two years of research indicated were the prime areas for improvement for governmental funds" said David A. Vaudt, GASB chairman. "This is a key opportunity for stakeholders to influence the direction of the Board's deliberations on the fundamental issues related to governmental funds."

Written comments should be addressed to the Director of Research and Technical Activities, Project No. 3-25I, and either emailed to director@gasb.org or mailed to the GASB, 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116.

A series of public hearings and user forums on the ITC are scheduled as follows:

Public Hearings

- April 28, 2017, Atlanta, GA
- May 3, 2017, Dallas, TX

- May 11, 2017, San Francisco, CA
- May 21, 2017, Denver, CO (in conjunction with the annual conference of the Government Finance Officers Association)
- May 24, 2017, at 401 Merritt 7, Norwalk, CT

User Forums

- April 27, 2017, New York, NY
- May 12, 2017, San Francisco, CA
- May 18, 2017, Washington, DC (in conjunction with the annual conference of the National Federation of Municipal Analysts)

The deadline for written notice of intent to participate is March 31, 2017. Additional information is available in the ITC.

Bloomberg Brief Weekly Video - 01/05

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

Watch the video.

January 5, 2017

Bank of America Expands Lead in U.S. Municipal-Bond Underwriting.

- Charlotte, North Carolina-bank increases market share to 15%
- Ramirez & Co. jumps 12 levels after joining NYC's senior banks

Bank of America Corp. is extending its lead in the municipal-bond business.

The Charlotte, North Carolina-based bank held its spot as the top underwriter of U.S. state and local debt for a fifth straight year by overseeing $67.8 billion of sales in 2016, boosting its share of new issues by 2 percentage points to 15 percent, a bigger gain that any other bank, according to data compiled by Bloomberg. Citigroup Inc. also captured a larger piece of the business, overtaking JPMorgan Chase & Co. to become the second-largest underwriter.

The banks benefited from a record pace of municipal-securities sales after yields tumbled to the lowest on record in July, spurring governments to refinance or borrow for public works before the Federal Reserve resumed raising interest rates, as it did last month.

Bank of America was the lead manager for the second-biggest issue of the year, a $2.74 billion sale by New Jersey's Transportation Trust Fund Authority to finance roadwork. Citigroup and Goldman Sachs Group Inc. served as joint senior managers on the biggest deal of the year, a $2.95 billion general-obligation issue by the state of California, according to data compiled by Bloomberg. JPMorgan's biggest deal was another $2.65 billion California sale, on which it served as a co-lead along with Bank of America.

Selena Morris, a Bank of America spokeswoman, declined to comment, as did Citigroup spokesman Scott Helfman. JPMorgan spokeswoman Jessica Francisco also declined to comment.

The pace of municipal-bond offerings are largely projected to decline this year, with refinancing expected to slow because of higher interest rates. Even so, first time borrowing may increase "slightly" as governments whose finances have benefited from the more than seven-year economic expansion pour more money into infrastructure, according to a forecast from Barclays Plc. U.S. state and local governments won approval to sell at least $55 billion of bonds in November ballot measures, debt that governments may start issuing in 2017.

The prices Wall Street banks charged U.S. cities and states to sell bonds in 2016 were little changed. Fees averaged $5.21 per $1,000 of long-term bonds compared with $5.08 in 2015. Among the 20 biggest underwriters of such debt, the weighted average disclosed fees ranged from $3.82 for Loop Capital Markets LLC to as much as $10.61 for Robert W. Baird & Co.

About three-quarters of the long-term debt issued in 2016 was arranged through so-called negotiated offerings, in which banks are picked ahead of time instead of competing against each other in an auction.

One of the firms that boosted its ranking the most was New York City-based Samuel A. Ramirez & Co. The dealer, which has about 80 people in its municipal securities division and was promoted to the ranks of New York City's senior underwriters, rose 12 places to 14th by managing $6.9 billion of bonds in just 30 deals.

In 2016, Ramirez hired Paula Dagen, Morgan Stanley's former lead banker for New York City and plans to expand "selectively and opportunistically," said Ted Sobel, head of municipal finance. New York, one of the largest issuers of municipal bonds, plans to sell about $29 billion of debt through June 2020, according to the city's financial plan.

"Our game plan has been very focused on providing great banking work — ideas, solutions, service, to major clients in core regions and in core competencies," said Sobel, who joined Ramirez in 2009 after 13 years at UBS Group AG. "We've found that's been a pretty good path to success."

Bloomberg

by Martin Z Braun

January 3, 2017, 8:46 AM PST

Puerto Rico's New Governor Takes Over as Debt Crisis Reaches Climax.

- Governor sworn in Monday, just weeks before bond payments due
- Rossello vows to reduce spending, work with creditors

After a series of record-setting defaults, Puerto Rico is slowly moving toward ending its debt crisis under a new governor who has pledged to work with bondholders and federal overseers to restore the island's battered financial credibility.

Ricardo Rossello, a 37-year-old former medical researcher, took office on Monday, ushering in a change of power after the island skipped payments on a growing share of debt under predecessor Alejandro Garcia Padilla, a member of the opposing party.

Faced with projected budget deficits over the next decade nearly as large as its $70 billion public debt, Rossello said he plans to start tightening the government’s purse strings in his first few days in office. He immediately signed orders for agencies to reduce 10 percent of spending by the end of the fiscal year in June and cut the number of political appointees.

“Once we get to our first budget, we’ll make even more adjustments and cuts,” Rossello said in a telephone interview from San Juan, adding that an additional 10 percent of spending would later be cut. “We’re taking the immediate steps that are necessary.”

The measures are aimed at closing the chronic deficits that pushed the government to the brink and prompted the federal government to install an oversight board authorized to approve the budget and any restructuring of debt. That’s left Rossello with considerably less power than any of his predecessors, including his father, who led the commonwealth in the 1990s.

He’s taking office with only weeks to come up with a fiscal blueprint that will serve as the base for talks with bondholders, a plan that federal overseers want to have in place by the end of the month. Another $1.3 billion in debt payments is due in February.

The governor, however, has the ability to extend for two months a debt-moratorium law enacted under Garcia Padilla, who said that only devastating spending cuts would allow the island to meet its obligations. Puerto Rico last month projected that it will have a deficit of at least $2 billion in the current fiscal year if forced to cover bond payments.

On a call with reporters last month, control board officials suggested that the moratorium — or the extension of a federal measure that has kept creditor lawsuits on hold — could be used to avoid the looming cash crunch.

Rossello has said he would like to reach a settlement with bondholders out of court. During his campaign, he said he’d be willing to cover some interest bills if creditors are willing to delay principal payments.

But investors will almost certainly be forced to accept less than they’re owed. The oversight panel has already warned that “substantial, deep” debt reduction and as much as $8 billion in spending cuts are needed to keep the government running while servicing its debt. If some creditors balk, the board can try to force losses on them in court, an option the Puerto Rico governor didn’t have before President Barack Obama enacted the emergency rescue law in June.

The new administration must also find ways to address the expiring tax on multinational businesses, known as Act 154. The levy, which makes up more than 20 percent of the island’s budget, is set to lapse in December. Supplemental funds allocated by the Affordable Care Act will also likely be depleted by 2018, according to estimates by a congressional panel.

With President-elect Donald Trump and a Republican-controlled Congress threatening to repeal the health-care law and modify the tax code, it’s not clear what additional help, if any, the territory will get. Rossello, in his inauguration speech on Monday, vowed to enact legislation to push for statehood.

“If we as a government start making some tough decisions, and there’s still some gaping holes, the federal government needs to intervene," Rossello said in the interview. "We don't need a bailout. What we aim to have is some areas where Puerto Rico can be treated equally and stand to benefit."

Bloomberg

by Tatiana Darie

January 3, 2017, 2:00 AM PST

Written with the assistance of Bloomberg's Municipal Global Data team.

Why Texas Is Cheering a Tax Lawsuit Loss.

As gloomy government budget news stacks up in Austin, a state appeals court ruling issued Friday appears to erase a huge worry about the state's business franchise tax.

The parent company of AMC movie theaters sued the state over what it is allowed to include in non-taxable cost of goods sold. An initial ruling in the company's favor in May 2015 contained what the state thought was an overly broad definition of "costs" — one that Comptroller Glenn Hegar feared could require $6 billion in tax refunds to various businesses and a $1.5 billion annual reduction in state franchise taxes.

Friday's ruling from the 3rd Court of Appeals leaves the company's victory in place, but uses a narrower definition of costs of goods that apparently won't apply to most other taxpayers.

The difference could be worth billions to the state, allowing it to continue to collect franchise taxes much the way it does now.

The case turns on a legal definition in the state's tax code? of "tangible personal property" that includes "personal property that can be seen, weighed, measured, felt or touched, or that is perceptible to the senses in any other manner."

AMC takes "perceptible to the senses" to include movies and contends all of its costs for space should be included in its cost of goods sold. The comptroller argued that AMC is selling intangible property or a service and that it shouldn't be considered tangible personal property.

To compute its franchise taxes, the movie chain (like other businesses) subtracts its cost of goods sold from its total revenue and pays taxes based on the difference. Increasing the costs lowers the amount being taxed. The court ruled that AMC can include costs of exhibiting films in that calculation — a decision that means the theater chain will get $1.1 million in refunds for taxes it already paid.

The new ruling relies on a less encompassing definition that includes "films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied…"

The state still lost the case, but according to Lauren Willis, a spokeswoman for the comptroller, this ruling doesn't present the kind of threat to other franchise revenue that the earlier ruling did.

The state will have to refund $1.2 million, plus interest and penalties, to AMC. But other taxpayers looking for the same treatment will have to fit within the narrower definition of tangible personal property to get refunds.

AMC's case is one of two lawsuits that threatened to knock big holes in the state's pocketbook. The other big tax case with potentially large implications — involving Midland-based Southwest Royalties — went to the Texas Supreme Court, with Hegar worrying publicly that an adverse ruling would cost the state as much as $4.4 billion. The state won that one in June.

On Monday, a day before the legislative session begins, Hegar will unveil his official revenue estimate which will tell lawmakers how much money will be available for them to write the next two-year budget. Money is expected to be tight, but it won't be because the state lost in court.

THE TEXAS TRIBUNE | JANUARY 9, 2017

By Ross Ramsey

The Week in Public Finance: Repealing Obamacare, How a California Ruling Threatens Pensions and More.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JANUARY 6, 2017

S&P U.S. State Sector 2017 Outlook: Protracted Slow Economic Growth Casts A Shadow.

Credit pressure across the U.S. state sector is likely to remain elevated throughout 2017 as slow tax revenue growth compounded by growing pension contribution requirements and Medicaid expenditures is contributing to fiscal strain for many states. A more pronounced slowdown in state tax revenue growth that began in mid-2015 persisted through 2016 and, following bouts of stock market volatility, is seen in the performance of many states' fiscal 2017 revenues. In the coming year, revenue growth is likely to remain slow and below the rates at which key expenditures are growing. Some of these pressures, years in the making, are already evident in state financial and credit profiles.

In S&P Global Ratings' view, the low-grade fiscal stress that has come to plague the state sector as a manifestation of evolving demographic and structural economic forces is unlikely to abate within our forecast horizon. In addition, the presidential election results raised the prospect that longstanding areas of federal-state fiscal integration will undergo a fundamental reconsideration. And, if enacted policy changes make good on the rhetoric heard in the campaign, federal funding flows are poised to become less responsive to economic cycles. In that case, we would expect state credit ratings to exhibit greater sensitivity to cyclical economic conditions. A shift toward block granting federal Medicaid funds, for instance, could diminish the program's role in functioning as a countercyclical automatic stabilizer. On the other hand, financial markets have–initially at least—been bullish following the presidential election. Equity market appreciation and reflationary signals from the bond markets have favorable implications for states, though it's unclear when—or to what extent—any related capital gains will translate to tax revenue. Nevertheless, the possibility of faster economic growth throughout the next one to two years represents the main source of opportunity for states to strengthen their financial and liability profiles before the next recession.

Continue reading.

05-Jan-2017

Why School Districts Are Operating as Landlords.

As Colorado's housing costs skyrocket, a growing number of school districts, local leaders, and lawmakers are taking steps to make housing more affordable for teachers and staff.

For years, resort communities like Aspen, Colorado, and a rural district in the state's Eastern Plains have leased housing to employees at below-market rates. More recently, subsidized housing for educators has cropped up in pricey urban areas such as San Francisco, Boston, and Baltimore.

But lately, Colorado districts big and small are looking at building their own housing or collaborating with external partners to do so. Such projects are underway now in three rural districts, and Denver Public Schools, the state's largest district, is exploring the idea.

Driving these plans are fears that recruiting and retaining good teachers will shift from hard to impossible as housing costs rise. Compounding the problem is Colorado's perennial school-funding squeeze and the lagging teacher salaries that go with it.

"This year when it comes to hiring season, I will probably struggle to replace four to six teachers because of housing," said David Blackburn, the superintendent of the Salida school district in central Colorado. "It's in the middle of every conversation about quality staff."

In Denver, where an influx of new residents and a wave of gentrification have pushed up housing prices across the metro area, district officials say they're in the earliest stages of figuring out how the district could help employees with housing.

Currently, the Denver-based Donnell-Kay Foundation is compiling information for the district about models of subsidized teacher housing used across the country. Some have been spearheaded by school districts and others by real-estate developers with little involvement from districts. (Chalkbeat, which originally wrote this story, is a grantee of the Donnell-Kay Foundation.)

Allen Balczarek, who works on special projects for Denver Public Schools, said specific recommendations could go before the school board or district leadership team in 2017. He said the lack of affordable housing for teachers isn't yet a crisis in Denver, but called it a very serious issue.

City officials say growing concerns about affordability spurred a new ordinance to raise $150 million over 10 years to create and preserve affordable housing for a wide range of Denver residents, from homeless individuals to families earning $64,000 to $96,000 a year.

Federal tax credits have already helped create affordable housing around the city, though many teachers make too much to qualify.

“There’s some we can help, but there’s probably many we can’t because of their income,” said Brent Snyder, the manager of the company that developed and owns the new WeltonPark apartment complex in Denver’s Five Points neighborhood.

Most of the 223 units, which start around $840 a month, are restricted to tenants earning up to 60 percent of the area’s median income—around $34,000 a year if they’re single. There’s a huge need for housing for middle-income Denver residents—those making more than 60 percent of the area median income, Snyder said.

Jim Wilson, a Republican state representative from Salida, said he plans to introduce a bill during the 2017 session that would give tax credits to employers that offer employee housing. While that wouldn’t directly help school districts or other public entities that don’t pay taxes, he said he’d like to find a way to do that.

Affordable housing is a statewide issue, he said. “It’s going to be a big topic of conversation at the statehouse this year.”

While there’s limited data showing that housing costs directly impact teacher recruitment and retention, there’s plenty of anecdotal evidence that it’s a factor.

The first-year Jefferson County teacher Krista Degerness, 34, said she had no problem finding a job after earning her master’s degree in special education last spring. But paying the bills has been trickier. She moved in with her sister to cut costs, paying $700 of the $1,700 rent for their Centennial, Colorado, townhouse. She earns $42,000 a year.

Degerness loves her job, but says, “The money is very hard.”

Alex Saldivar faced similar challenges when he moved from Indianapolis to Denver for a teaching job with Denver Public Schools in 2015. He and his girlfriend paid $1,250 a month for their one-bedroom apartment, leaving when the rent increased to $1,450 the following year.

“That frankly is untenable,” he said. “They essentially pushed us out.”

Saldivar left his teaching job after a year and now works for a nonprofit organization in Denver.

Some superintendents say they start teacher-candidate interviews with heart-to-hearts about the reality of housing costs in their communities. They don’t want candidates, especially those from out-of-state, jumping in with visions of majestic mountain peaks and not the dollar signs that go with them.

Custer County Superintendent Mark Payler said when he surveyed the southern Colorado district’s newer teachers recently, most indicated they planned to stay for only two to three years. One factor, he said, is the difficulty of securing decent housing on a starting salary of $29,500.

In Denver, a recent exit survey taken by teachers sheds some light on the subject. Of 219 teachers who left the district after the 2015-16 school year, 23 said Denver’s high cost of living was a big factor in their decision. Nearly 50 cited moving as a key reason for leaving, though there is likely overlap because respondents could cite multiple reasons.

Additional evidence comes from a September report from the National Housing Conference and the Center for Housing Policy that examined housing affordability for school employees in the nation’s biggest cities. Denver was among 24 cities where buying a house was unaffordable for teachers as well as lower-paid workers.

The “Paycheck to Paycheck” report also found that renting an apartment in Denver requires an annual salary of at least $49,000. While the district’s average teacher salary is around $54,000 with an average of $5,800 in additional stipends and incentives, the base salary for a beginning Denver teacher with a bachelor’s degree is about $40,000.

The concept of providing subsidized teacher housing has a long history in some Colorado districts.

Take tiny Woodlin on the Eastern Plains. The district owns 14 housing units, including trailers, houses, and apartments—most built around 1960 right on the school campus. Most employees pay rent of $70-$105 per month and the district covers water and propane.

Other rural districts, such as Karval and Deer Trail, offer employees similar deals. Then there’s Aspen, which has 43 units of subsidized housing going for $850-$1,500 a month. Market rate rents easily surpass $2,000 a month there, said the superintendent, John Maloy.

In the last 18 months, three other Colorado districts have launched projects to build employee housing—often with significant support from local civic leaders, banks, and the business community.

One area is converting a vacant district-owned building—formerly a preschool—to four apartments with the help of community volunteers and high-school students in the district’s building-trades class. The one-bedroom units will be ready next July, with rent at $550 a month.

Another district embarked on a similar project this fall, breaking ground for 10 new housing units in a nearby town. They’ll eventually be sold to district employees at below-market rates.

And in western Colorado, the Roaring Fork district has the largest project underway, with plans to build a total of 60 new subsidized apartments in three locations using $15 million from the district’s 2015 bond issue. Those units will become available in 2018.

Superintendent Rob Stein said district officials initially shied away from including money for staff housing in the bond issue. They didn’t think the public would support it. But when two local educators, a beloved principal and his wife, a teacher, departed because they couldn’t afford a house in the area, things changed. “That single story may very well have allowed us to move forward with going to voters for a bond,” Stein said. In turn, such projects may soon spread closer to Denver, and, perhaps, elsewhere.

“I think the mountain towns … are the harbingers of what’s to come,” said Tony Lewis, the executive director of the Donnell-Kay Foundation.

Leaders in districts that already offer subsidized housing say it makes a big difference—serving as extra enticement to prospective teachers and making it easier for veteran teachers to stay.

“I’ve suddenly got a new tool I can go to market with when I’m looking for new teachers,” said Payler, the superintendent of Custer County Schools.

But it also brings up lots of questions: Which employees get first dibs on the housing? Can some units be set aside for hard-to-fill positions? Will employees be allowed to stay in the units indefinitely? What happens if too few district staff need the housing?

For districts that have wrestled with these questions, the answers have evolved. For example, in 2015, the Aspen district established a five-year time limit for employees renting its subsidized units, in the hopes of making it a stepping stone as opposed to a permanent solution.

Beyond eligibility criteria, there's also the fact that school districts with subsidized housing double as landlords, either hiring property-management companies to handle leasing and maintenance or doing it themselves. Rose Cronk, the superintendent in the Woodlin district for more than a decade, said of the district-owned housing, "Sometimes I'm the one over there cleaning rainwater out of the bottom of the basement."

In some districts now considering subsidized housing, administrators worry such projects could distract from their educational goals. Balczarek said one of the key questions for Denver is, "How do we get into this without drifting too far from our mission?" One possibility, he said, is to work with an external partner—maybe the city's housing authority or a nonprofit group—to develop and manage housing on district property.

Even with the many complications involved in financing and managing subsidized housing, some district leaders note that, unlike the state's intractable school-funding system, it's a problem that can be addressed locally. "It's another creative solution to the fiscal crisis schools are facing" Stein said.

THE ATLANTIC

ANN SCHIMKE | JAN 6, 2017

This post appears courtesy of Chalkbeat Colorado.

[Would Trump's Infrastructure Plan Fix America's Cities?]

Public-works projects have historically improved urbanites' access to opportunity and quality of life. But they've also helped the privileged at the expense of the marginalized.

Throughout his campaign, and again in the wake of his victory, President-elect Donald Trump pledged to rebuild America's infrastructure. "We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, hospitals," he said on election night, promising to put millions of people to work building an infrastructure that would be "second to none." In the weeks since his election, infrastructure has emerged as a potential bipartisan meeting ground for Trump and national Democrats. Senate Minority Leader Charles Schumer, for one, said recently that Trump's trillion-dollar plan "sounded good" to him.

But would a federal infrastructure plan be good for America's cities? Infrastructure has played a crucial—yet at times problematic—role in the making, and remaking, of the modern American city. Public works have expanded access to essential goods and to economic opportunities, and they have contributed to universal improvements in the standard of living. But they have also conferred advantages on privileged parts of American society at the expense of the marginalized—a history the Trump administration would do well to consider as it plans for the future. For cities to continue growing and innovating, they need an infrastructure capable of serving as a platform for sustainable development. And they need an infrastructure that serves everyone.

[Continue reading.]

THE ATLANTIC

MASON B. WILLIAMS | JAN 7, 2017

Fitch 2017 Outlook Teleconferences.

Fitch Ratings-New York-04 January 2017: Despite uncertain fiscal, economic and regulatory pressures, U.S. public finance will benefit from modest economic expansion that will support revenue growth and stability, according to Fitch Ratings' 2017 Public Finance Compendium.

The 2017 sector outlook for seven of the eight sectors in the U.S. public finance space is stable, with U.S. not-for-profit hospitals and healthcare systems sector maintaining a negative outlook for 2017.

"The upcoming transition of the federal administration holds potentially significant implications for many sectors across public finance," said Jessalynn Moro, Managing Director of the U.S. Public Finance Group. "The transition creates an unpredictable environment for U.S. states and local governments, which are particularly exposed to policies affecting trade, jointly funded programs and fiscal stimulus."

Given the transition of the federal administration, the uncertain future of the U.S. Environmental Protection Agency creates an unpredictable operating environment for public power and water and sewer.

Fitch will host a series of teleconferences on its outlooks:

- **Nonprofit Healthcare** – Jan. 11th at 2:00 pm eastern. To register, please visit http://dpregister.com/10097562;
- **Higher Education** – Jan. 11th at 3:00 pm eastern. To register, please visit http://dpregister.com/10097568;
- **State and Local Governments** – Jan. 12th at 2:00 pm eastern. To register, please visit http://dpregister.com/10097550;
- **Transportation** – Jan. 12th at 3:00 pm eastern. To register, please visit http://dpregister.com/10097557;
- **Public Power and Water & Sewer** – Jan. 18th at 2:00 pm eastern. To register, please visit http://dpregister.com/10097564.

For more information, a special report titled "2017 U.S. Public Finance Outlooks" is available on the Fitch Ratings web site at www.fitchratings.com.

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What Infrastructure Projects Might Appeal to Trump?

Airports, high-speed rail, and roads, particularly in dense metropolitan areas, could be particularly appealing targets for infrastructure funding under soon-to-be President Donald Trump.

The President-elect's words on the campaign trail and tendencies as a public figure over decades informed those conclusions from stakeholders and infrastructure experts trying to gauge how Trump might be most interested in directing the 10-year, $1 trillion infrastructure plan he campaigned on. The campaign's only formal plan to date is a relatively brief paper proposing $137 billion of tax credits to be authorized by Congress and available only to investors in revenue-producing projects such as toll roads, toll bridges, and airports.

But while Trump's actual infrastructure plan remains light on specific areas of focus, he has left clues in his words and in his actions as a real-estate developer. Trump made very negative mention of the state of U.S. airports during the campaign, characterizing them during the Sept. 26 debate at Hofstra University in New York as "third world." Trump specifically mentioned several large airports, including LaGuardia Airport and John F. Kennedy International Airport in New York City, Newark Liberty International Airport in New Jersey, and Los Angeles International Airport as being inferior to facilities in the United Arab Emirates, Qatar, and China.

"We've become a third-world country," Trump said from the debate stage.

Kevin Burke, president and chief executive officer of airport industry group Airports Council International-North America, said his group believes that major U.S. airports need $75 billion of investment just through 2019.

"We have been happy during the campaign hearing the President-elect talk about infrastructure," said Burke, who believes that Trump recognizes that airports serve not just as transportation hubs but as important economic drivers for the regions where they are located.

"They really are centers of commerce," Burke said. "This is not only helping to build new airports, but it is helping the local economy."

Airports are also highly visible types of infrastructure many millions of people see while traveling through the U.S. Burke said that American hub airports handle about 800 million passengers annually, with that number estimated to grow to more than a billion in the next 20 years. A lot of the upcoming infrastructure investment will be aimed at adapting airports to modern needs, such as post 9/11 security, Burke said, as well as at other land-side infrastructure such as parking garages. Airports use tax exempt bonds for many of their infrastructure improvements, and rely on passenger facilities charges capped by federal law to generate much of their revenue. Trump could be influential as president both in maintaining the tax-exempt status of munis through any tax reform proposal and in supporting the uncapping of PFC charges to allow localities to set them at levels they feel appropriate.

Backers of bullet-trains, popular internationally but not so far in the states, also see hope under a Trump administration.

"We actually think high-speed rail is perfect for Trump," said U.S. High Speed Rail Association president and CEO Andy Kunz. "It's big, it's flashy, it's transformative."

The U.S. currently has no "true" high-speed rail service comparable to the bullet trains operating in some other countries. Amtrak's Acela service along the Northeast Corridor between Washington D.C. and Boston can reach speeds of up to 150 miles per hour, but realistically does not maintain those speeds for the majority of the route. The Japanese Shinkansen trains, by contrast, are capable of 200 miles per hour and have reached even greater speeds on occasion. Efforts to build new high-speed lines have met with resistance and financing troubles, as exemplified by an under-development line connecting cities in Northern and Southern California that has come in over the original cost estimates and been fought every inch of the way by some landowners potentially affected by its construction.

Kunz pointed out that Trump's campaign statements appealed heavily to blue-collar workers concerned about declining manufacturing opportunities that a widespread high-speed rail program could help with. Kunz said that his group sent Trump a letter shortly after his election victory urging him to be a leader on the issue and pointing to a specific project linking Los Angeles and Las Vegas as one that could benefit from Trump's backing right now. That project, XpressWest, has been in development for over a decade and would use electric trains traveling more than 150 miles per hour to cover the distance between the two cities in about 80 minutes.

Kunz said that Trump, as a longtime multi-billion dollar real estate developer, understands the value of train stations and could see the appeal of a project like the XpressWest that could be finished within Trump's first term if expedited.

"He could be showing up at a ribbon-cutting," Kunz said.

Toll roads are also a sector primed for investment under Trump because of the structure of his proposed plan, which emphasizes projects with a revenue stream. But toll roads, especially for heavily trafficked interstates, could face a lot of resistance that could discourage a strong push in that sector.

"Tolling the interstates is a total non-starter," said Chris Spear, president of American Trucking Associations. "It is toxic and we will fight it, tooth and nail. We need national connectivity and tolling is the worst type of approach."

"I can assure you he's going to get a lot of pushback from taxpayers who are tired of these crony-capitalism deals that guarantee huge profits to contractors and investors," said Terri Hall, founder and director of Texans for Toll-free Highways. "Voters trust Mr. Trump will read the tea leaves and advance a transportation vision and policy that's pro-freedom, pro-taxpayer, and pro-worker."

Cato Institute infrastructure expert Randal O'Toole said he didn't believe Trump's plan would significantly increase toll road investment, and that Trump's tax-credit plan doesn't change the fact that the states and localities still largely control what they want to invest in. Muni groups have urged Trump not to support eliminating or capping the tax exemption on muni bonds, preserving them as a cost-effective means of finance. Trump told the U.S. Conference of Mayors earlier this month that he plans to maintain the tax exemption.

"Trump may have a few ideas for selected projects, most of which I would probably disagree with, but the tax credit plan really leaves all decisions to state and local governments," O'Toole said. "Right now, those local governments can issue tax-free municipal bonds; the tax-credits idea just provides an alternative method of funding."

The Bond Buyer

By Kyle Glazier and Jim Watts

December 23, 2016

Revenue Bonds Allow ABQ Leaders to Bypass Voters.

Albuquerque taxpayers have borrowed $63 million over the past two years to build pickleball courts, baseball fields and a new bus system down the middle of Central Avenue.

The package of goodies also includes a new Route 66 visitor center, a library and other projects.

It's a shadow bond program of sorts, allowing Mayor Richard Berry and city councilors to borrow money without the restrictions imposed by the traditional method of financing big capital projects – general obligation bonds, which require voter approval, a shorter borrowing period and a lengthy planning process.

The new financing mechanism centers on revenue bonds, or debt that's repaid with gross receipts taxes. It offers the mayor and council far more flexibility in paying for big capital projects.

There's no need for an election if seven of nine councilors agree to authorize the bonds. And they don't have to repay the debt as quickly as they do for general-obligation bonds.

Perhaps best of all for the mayor and council, they can pick and choose what to fund, bypassing the complicated requirements for the traditional bond program – where policies require certain percentages of the program to be dedicated for specific purposes, such as energy conservation and public art.

Berry has made the revenue bond program a centerpiece of his administration.

It's necessary, he said, because past administrations at City Hall siphoned away money that would have otherwise supported the traditional bond program – $48 million a year, he estimates, in lost financing for capital projects.

That meant finding a new way to pay for "game-changing projects" that make Albuquerque a vibrant city to live in, Berry said in a recent interview.

"I like the agility," he said. "I think it's turned out to be a good hybrid system."

How it works

For a government agency, selling bonds is like taking out a loan – the way a family might take out a mortgage to buy a house. The money must be repaid with interest.

As part of the deal, the city can pledge to make the payments with income from a certain revenue source, such as gross receipts taxes. It's a bit like showing your paycheck when you get a mortgage.

The city of Albuquerque has an excellent credit rating and can generally borrow money at a much lower interest rate than a private company could.

When the city authorized the sale of about $18 million in gross receipts tax revenue bonds this year to finance a variety of projects – including the baseball complex – it got an interest rate of about 2.5 percent. The city plans to make annual payments on the bonds through 2038, or about 22 years.

Going too far?

Tapping into gross receipts taxes – a critical revenue source for the city's operating budget – to issue bonds has won bipartisan support at City Hall. Berry is a Republican, but Democrats and Republicans alike have embraced the chance to find money for their favored capital projects.

But some councilors say they fear going too far. About $7.5 million is now tied up each year to make payments on the revenue bonds. That money would otherwise support Albuquerque's $526 million general operating budget.

The capital projects built with that money will generally squeeze the operating budget in other ways, too. It takes employees, of course, to operate a new library.

"We were criticized for moving (money) from capital to operating in the past," said City Council President Isaac Benton, a Democrat and former chairman of the council's budget committee. "I think perhaps the pendulum has swung too far in the other direction now."

Benton is the only current member of the council who has offered some resistance to the trend toward revenue bonds. In 2012, he and former Councilors Debbie O'Malley and Rey Garduño, all Democrats, refused to authorize up to $50 million in bonds for the reconstruction of Paseo del Norte unless it was sent to voters.

The proposal did end up going to voters that year and passed by a wide margin.

But the remaining $63 million in projects financed through revenue bonds have been authorized by the mayor and council without a public election. That's why a controversial project like Albuquerque Rapid Transit – the new bus system being built on Central Avenue – didn't require direct voter approval. About $13 million in revenue bonds makes up the bulk of the city's contribution to the project, which is largely funded by the federal government.

Meanwhile, the traditional general-obligation bond program – which is backed by property taxes – goes to voters every two years as a series of ballot questions broken up broadly by topic: for library materials, for streets and so on.

Opponents of Albuquerque Rapid Transit have pushed unsuccessfully for an election on the project. About 76 percent of voters last year responded to an advisory question on the ballot by saying the city should schedule an election on ART, but the results aren't binding.

Berry said that, in general, the ability to avoid an election has helped the city move quickly when needed to secure matching funds from other governments.

And because seven of nine councilors and the mayor must agree, officials say, the public is protected from frivolous projects.

"I think we have a system of checks and balances that people can be comfortable with," Berry said.

He would veto the legislation, he said, if he felt councilors had gone too far in doling out pork to their districts.

'A grab bag of sorts'

The level of scrutiny isn't quite the same as required under the traditional bond program, in which a broad outline of what's to be funded is subject to Environmental Planning Commission and budget hearings.

The revenue bonds can be more of a free-for-all, each councilor fighting for projects in his or her district.

“The nature of these things is they become a grab bag of sorts once they’re opened up for discussion,” Benton said.

He added that he fights for his district, too, just as other councilors do.

The largest single project funded so far was the reconstruction of the Paseo del Norte and Interstate 25 interchange. Voters authorized up to $50 million in bonds, but the city ended up borrowing only $42 million.

The second biggest is $21 million for a complex of baseball and softball fields on the West Side, near the new Albuquerque Public Schools stadium. That project is aimed at boosting the economy by luring out-of-state teams for tournaments, and it was a factor in landing the 2019 National Senior Games for Albuquerque.

The next biggest project is $13 million for Albuquerque Rapid Transit. The remaining projects generally get $2 million or less.

“I don’t mind a few projects here and there that aren’t big game changers,” the mayor said. “But we shouldn’t get into the trend of that.”

Stimulating the economy

City Councilor Ken Sanchez, a Democrat and an accountant, said the city must take care to avoid going too far in moving more of its revenue back into capital projects. The operating budget is already under stress, he said, as the state reduces payments to cities and counties to help offset a package of tax cuts.

Nevertheless, Sanchez said, spending on construction helps put people to work.

“In this economy,” he said, “that’s a decision we as policymakers made to keep people working and keep jobs here. We had to do something to help stimulate the economy.”

The consequences will have long-lasting effects on the city budget. The last of the revenue bonds – a $45 million package that helped pay for the baseball fields, Albuquerque Rapid Transit and other projects – won’t be paid off until 2038, a 22-year term.

The annual payment is somewhere in the neighborhood of $2.9 million.

The mayor said it’s worth it. Even with $7.5 million now going to pay off revenue bonds altogether, that’s far from the $48 million a year in property tax revenue that was switched from capital to operations before Berry took office in late 2009.

“When the decision was made to shift those property tax mills, it basically robbed our ability to have a thriving” bond program the traditional way, Berry said.

The Albuquerque Journal

By Dan McKay / Journal Staff Writer

Monday, January 2nd, 2017 at 12:05am

Choice of Clayton for SEC Fits With Deregulation.

WASHINGTON – President-elect Donald Trump's pick of New York lawyer Jay Clayton to lead the Securities and Exchange Commission is in line with his focus on deregulation, but municipal participants will have to wait and see what impact he may have on the municipal securities market, individuals and groups said.

While several lawyers praised his broad experience on Wall Street, consumer advocates and some Democrats worried whether he will be a strong investor advocate.

Trump announced his intention to nominate Clayton, a partner with Sullivan & Cromwell who has worked extensively with Wall Street but seems to lack muni experience, on Wednesday. The lawyer, who has primarily worked with mergers and acquisitions as well as initial public offerings, would fill the role left open after current chair Mary Jo White steps down after President Obama's departure later this month. He would have to be confirmed by Congress. In addition, there are still two open commissioner positions at the SEC.

Paul Maco, a partner with Bracewell here, said Clayton appears to be "a very well-rounded lawyer" and someone whose background "is one that easily lends itself to the full plate of challenges an SEC chair is presented with." Clayton's background of dealing with M&A and IPOs as well as regulated entities in regulatory and enforcement matters is suitable for an environment where a key focus would be on what level of regulation is appropriate and what deregulation may be appropriate, he said.

Trump has made clear he plans to focus on deregulation during his tenure.

"We need to undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers," Trump said in his statement announcing his choice of Clayton. The president-elect called Clayton a "highly talented expert on many aspects of financial and regulatory law."

Trump's choice of Clayton comes after he had considered Debra Wong Yang, a partner with Gibson, Dunn & Crutcher and a former U.S. attorney under George W. Bush, for the post.

The shift away from Wong, who has a similar background to chair White, is an indication that regulatory issues, and particularly deregulation, will play more of a role for the SEC under Trump, according to market participants. Elaine Greenberg, a partner with Greenberg Traurig here, said Clayton's background may mean he will give equal weight to the SEC's mandates of facilitating capital formation and maintaining fair, orderly, and efficient markets, as well as providing investor protection. White, with her background as a federal prosecutor, was believed to have focused more on investor protection.

But participants are less sure of what Clayton's nomination would mean specifically for munis. They generally agree that his background with IPOs and regulated entities will allow him to understand and work with the muni market, but they add it will be important to wait for him to make more public statements about his intended agenda.

Maco said he “certainly doesn’t see anything that stands in the way” of Clayton working on muni issues but added that “the real signals will come in the confirmation hearing” he would have in the Senate.

“You usually get a fairly good preview of the agenda that the SEC chair nominee intends to pursue” during the hearing, Maco said.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said GFOA intends to continue having meetings with the SEC and maintaining its relationships during any transition so it can stay up to speed on what may be expected.

Bond Dealers of America similarly said it is ready to engage with the next SEC chair about the future regulatory environment.

Trump’s plans to nominate Clayton received some criticism from legislators and observers who are concerned about his ties to Wall Street.

“This nomination of a Wall Street insider to regulate Wall Street proves that Donald Trump has no intention of getting tough on Wall Street,” said Maxine Waters, the top Democrat on the House Financial Services Committee.

Dennis Kelleher, president and chief executive of Better Markets, said that “while Mr. Clayton may be an excellent lawyer representing Goldman Sachs and Wall Street’s too-big-to-fail banks, America’s families need to know that he will represent them as zealously and as effectively.”

The Bond Buyer

By Jack Casey

January 4, 2017

FINRA 2017 Exam Priorities Include MA Registration, Best Execution.

WASHINGTON – The Financial Industry Regulatory Authority’s enforcement priorities for 2017 include ensuring municipal advisors are properly registered with regulators, checking broker-dealers’ compliance with best execution requirements, and monitoring firms’ efforts to avoid unsuitable recommendations of securities.

FINRA’s new president and chief executive officer Robert Cook laid out the priorities in a letter released this week that he said is meant to give firms a framework under which to review their compliance and supervisory programs as well as address their internal training and communications. FINRA arrived at the priorities after taking input from member firms, regulators, and investor groups, among others.

Cook announced in the letter that, starting this year, FINRA will be publishing a report that outlines key findings from examinations in selected areas, after numerous prior requests for such summaries. The report will be designed to show firms what the self-regulator is seeing from a national perspective so that the firms can adjust their own processes, he said.

The letter said one of the enforcement priorities will be monitoring municipal advisor registration.

FINRA is responsible for examining dealer MAs while the Securities and Exchange Commission examines non-dealer MAs.

“FINRA has found that some firms are not registering correctly with both the SEC and Municipal Securities Rulemaking Board or are not properly updating their registration information as it changes,” Cook wrote in the letter. “Further, firms may not be identifying all individuals who are engaged in municipal advisor activity as required for submission to EDGAR on SEC Form MA-I.”

FINRA will be monitoring firms that choose not to register as MAs but still provide MA services under statutory exclusions or regulatory exemptions, like the exception given when an issuer has an independent registered municipal advisor, Cook said.

“We will assess whether these firms properly apply the exemptions and exclusions to municipal advisory registration under SEC rules,” he said.

FINRA’s examinations will also touch on best execution, a long-time requirement for taxable securities but something that only took effect for munis on March 21 of last year. MSRB Rule G-18 on best execution requires dealers, whether acting as agents or principals, to use “reasonable diligence” to determine the best market for a security and to then buy or sell the security in that market so the price for the customer is as favorable as possible under prevailing market conditions. The best execution standard does not necessarily mean a dealer must find the best price.

Dealers are exempted from the rule if their customer is considered a sophisticated municipal market professional under MSRB rules. The rule also does not apply to trades between dealers, but it covers trades that are cleared through other dealers.

“Firms should consider … how recent advances in trading technology and communications in the fixed income markets affect their order-handling decisions and factor those changes into their review of the execution quality they provide customers,” Cook wrote.

FINRA additionally will focus on concerns about the suitability of investments that Cook said can arise in connection with numerous products.

“Firms should make sure that they perform and supervise customer-specific suitability determinations,” he wrote. “More generally, firms should carefully evaluate their supervisory programs in light of the products they offer, the specific features of those products, and the investors they serve.”

One area of particular interest for FINRA over the last several years has been the over-concentration of Puerto Rico residents’ investments in closed-end funds that hold a significant amount of the commonwealth’s bonds. FINRA has found that some firms, including UBS, ignored investors’ risk profiles when concentrating investors’ assets into funds that held a lot of these increasingly risky bonds. When the commonwealth’s economy started its steep decline over the last few years, many of the investments suffered losses.

The largest FINRA award to date related to the failed investments from overconcentration was $18.5 million that went to two individuals. Mercedes Imbert De Jesus and Rafael Vizcarrondo had originally requested UBS pay more than $20 million over losses the two Puerto Rico residents experienced after investing in closed-end mutual funds concentrated in Puerto Rico bonds.

UBS has since challenged the $18.5 million arbitration finding in Puerto Rico federal court, arguing that the award should be vacated because two of the three individuals who sat on the FINRA arbitration panel had engaged in misconduct before sitting on the panel.

One panel member, Susan Meek, had not disclosed that a jury had found her guilty of fraud while the other, Frances Wright, did not disclose that she had been a lead plaintiff in a securities fraud class action, according to the UBS filing.

"Wright's failure to disclose her involvement as a plaintiff in a securities fraud case similar to Vizcarrondo's not only supports [vacating the finding and award] … but is strong evidence of partiality toward claimants in general," UBS said in its filing. The bank added that Meek and Wright's failures "prevented UBS from selecting a neutral and qualified panel to which it was entitled, and from receiving a fundamentally fair hearing."

The Bond Buyer

By Jack Casey

January 5, 2017

Water Research Foundation Publishes Report on Infrastructure Funding.

The Water Research Foundation (WRF), a leading sponsor of innovative research supporting the water community, has published a new report to help utilities assess several new and emerging capital financing alternatives. The report indicates that while the new capital funding options may help, utilities still need sufficient and sustained revenue to pay for the financing, and that revenue will need to come from rates.

The project, "*New and Emerging Capital Providers for Infrastructure Funding (#4617)*," was funded because more than $650 billion is needed for water and wastewater infrastructure upgrades and renewal over the next 20 years. The extraordinary capital funding needs, and the demands and expectations of water utility stakeholders create a challenging capital financing environment for water utilities, leading policymakers to look for innovative ways of lowering borrowing costs and achieving other benefits, such as risk mitigation, greater public awareness, and value capture. New and emerging financing alternatives may be able to help utilities obtain these benefits while helping to close the infrastructure funding gap.

The research report documents the current state of financing alternatives in the water industry, identifies new and emerging capital financing alternatives, and discusses benefits and limitations of each. The research team facilitated interviews with utility managers, investors, investor advisors, and other organizations involved in municipal capital financing to gather perspectives on why various alternatives were used, how the process worked, what benefits were realized, and what lessons were learned. The research also gathered perspectives on the current level of investor interest and participation in these financing alternatives, and opportunities to increase said interest and participation.

In addition to examining the new funding options, the project found that the real problem with infrastructure funding is not the lack of traditional or innovative financing alternatives, but rather the limited amount of sufficient and sustained revenue funding sources that can pay for the financing. Ultimately, utility service rates are the primary means to fund capital investments in water utilities.

"While there are many new financing options for utilities to pursue in funding aging infrastructure, none are a silver bullet." said Rob Renner, CEO of the Water Research Foundation. "Utilities will continue to need sufficient revenue to bridge the infrastructure gap."

The final deliverables include 11 case studies, covering financing alternatives including green bonds, century bonds, public-private partnerships, public-public partnerships, private placements, WIFIA, self-financing, and integrated financing. These case studies are provided as a separate document.

The project also produced an interactive decision support tool to assist utility finance managers in assessing the potential applicability of the various new and emerging capital financing alternatives highlighted in this research report. This tool is not a specific endorsement or recommendation for any specific capital financing approach. Users of this tool should discuss capital financing alternatives with any and all internal or external registered municipal advisors that it deems appropriate before making any capital financing decisions.

The principal investigator for this project was John Mastracchio, CFA, vice president, Arcadis, U.S. Inc. The project was managed by Jonathan Cuppett, WRF research manager.

BY MIKE KEZDI ON DECEMBER 29, 2016

2016 Year-End Review: Squire Patton Boggs

Despite an increase in the federal funds rate by the Federal Open Market Committee in December, municipal bond interest rates throughout 2016 were (and still are) extremely low when compared to historic rates. As a result, the volume of municipal bond issues reached an all-time high in 2016.

As discussed below, the Treasury Department released a number of highly anticipated and significant proposed and final regulations during 2016. In addition, to accommodate public-private partnerships, Treasury issued Revenue Procedure 2016-44, which allows issuers to enter into longer-term management contracts without resulting in private business use.

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on January 9, 2017

Squire Patton Boggs

States Will Have Increase in PAB Capacity in 2017.

WASHINGTON – States will have a modest increase in their capacity to issue private activity bonds in 2017 due to population increases and higher cap space allowed by the Internal Revenue Service.

The 50 states, the District of Columbia and the Commonwealth of Puerto Rico will have a total of roughly $35.69 billion of new capacity in 2017, an increase of 9.84% from the $32.49 billion in 2016.

Click here to see PAB chart

The 9.84% increase is more than nine percentage points higher than the increase heading into 2016, which was a 0.76% increase from the prior year.

The increase is due to the higher minimum amount of cap allowed by the Internal Revenue Service as well as population gains across the board. The PAB volume cap limit is based on the latest state population estimates released by the U.S. Census Bureau on Dec. 20 and a revised PAB cap formula published by the Internal Revenue Service in October.

The 2017 PAB volume cap for each state is the greater of $305.32 million or $100 per capita for each state for 2017. That’s a slight change from the 2016 cap formula, which had the same per capita amount but a lower minimum of $302.88 million. The 2016 U.S. population as of July 1, 2016 was 326.54 million, up from the 324.37 million revised estimate for 2015.

A total of nine states will have PAB volume caps of $1 billion or greater in 2017. California, the nation’s most populous state, will have a $3.93 billion cap in 2017, followed by Texas at $2.79 billion and Florida at $2.06 billion.

The remaining states with a cap of greater than $1 billion are Georgia, Illinois, New York, North Carolina, Ohio, and Pennsylvania. All had populations of 10 million or greater in 2016.

All but six states or territories will see increases in their new capacity to issue PABs in 2017.

Florida, at 1.68%, will have the biggest percentage increase in cap in 2017 compared with 2016. The Sunshine State had a $2.03 billion volume cap in 2016. Washington State is next, with a 1.64% increase in cap to $728.80 million, followed by Oregon with a 1.60% gain in cap to $409.35 million.

Connecticut, Illinois, New Jersey, New York, Pennsylvania, and Puerto Rico will all have decreased PAB volume caps next year compared with 2016. All but New Jersey experienced population decreases between 2015 and 2016.

Puerto Rico, at 1.81% to $341.13 million, will have the biggest drop in capacity for the coming year, followed by Illinois, with a 0.45% decrease to $1.28 billion, and Connecticut, with a 0.40% reduction to $357.65 million.

A total of 21 states and the District of Columbia will use the minimum amount of $305.32 million in 2017.

Private activity bonds are used by state and local governments to provide low-cost financing for projects that provide some kind of public purpose but include some private involvement.

Qualified PABs subject to the volume cap are exempt facility bonds such as water and sewage facilities, hazardous waste facilities and other utility facilities, as well as qualified mortgage revenue bonds, small issue bonds, student loan bonds and redevelopment bonds.

Qualified PABs not subject to the volume cap include exempt facility bonds such as airports, docks and wharves, as well as qualified veterans’ mortgage revenue bonds and qualified 501(c) (3) bonds.

No states or territories will have an increase or decrease of 2% or higher in 2017; nine will have a fluctuation of greater than 1%.

The Bond Buyer

By Evan Fallor

December 23, 2016

New York Transit Bonds Lead Next Week's U.S. Muni Supply.

New York’s Triborough Bridge and Tunnel Authority will lead next week’s U.S. municipal bond calendar with a $665 million deal that is the largest of some $8.9 billion in sales.

The authority, a unit of the Metropolitan Transportation Authority, will price $400 million of refunding bonds and $265 million of general revenue bonds in a negotiated deal through lead underwriter Goldman Sachs & Co.

The MTA plans fare and toll increases and is continuing to reduce costs, according to its most recent disclosure statement.

It is also attempting to rein in expenses by paying down its pension liability when possible, cutting health and debt service costs, and hedging fuel purchases.

Issuers in New York state plan to sell nearly $4.3 billion of debt in the first quarter, about 70 percent of which will be new money, according to a tentative schedule from New York State Comptroller Thomas DiNapoli on Thursday.

Also next week, Wisconsin will price about $524 million in negotiated general fund refunding bonds, while Texas will be the most heavily represented state, with $1.1 billion in total negotiated deals. That includes $389 million in revenue bonds by the Texas A&M University System and about $347 million by the city of Austin for airport system revenue bonds.

The largest competitive bond deals will come out of Washington state, which on Tuesday plans to issue $473 million in new various purpose general obligation bonds and $136 million in GO refunding bonds. Seattle will price $190 million of water system improvement refunding bonds on Wednesday.

Given the potential for tax reforms such as a repeal of the Affordable Care Act, municipal bonds “are not extremely appetizing,” Barclays analysts said in a research note on Friday.

“Munis can have some upside near-term,” they said, citing stabilizing Treasury yields and light dealer balance sheets, but “we think it is likely to be limited.”

Reuters

Jan 6, 2017 | 1:52pm EST

(Reporting by Nick Brown and Hilary Russ in New York; Editing by Lisa Von Ahn)

U.S.-Based Bond Bunds Score 1st Net Inflow Week Since Election.

NEW YORK, Jan 4 U.S.-based bond funds netted cash for the first time since the U.S. election shook the fixed-income market, Investment Company Institute data released on Wednesday showed.

Bond mutual funds and exchange-traded funds gathered $1.9 billion in the seven days through Dec. 28 as strong demand for taxable bonds offset a two-month municipal debt fund sell-off, ICI said.

It was the first week of net inflows for the funds since the week through Nov. 9, according to the trade group.

Stocks have rallied on the potential for lower U.S. corporate taxes and fewer regulations, after the Nov. 8 election gave Republicans who support such policies control of the presidency and the U.S. Congress.

But many bond prices have sunk as investors fear those policies could spark inflation, the bane of the fixed income market.

That sell-off reignited long-running predictions of what is known in financial markets as a “great rotation” from bonds to stocks.

While some money has moved out of bonds, funds have also rotated from munis and Treasuries, which lose value when rates rise, to other fixed-income products.

These include floating-rate corporate debt funds, which pay more interest as rates rise, and “hedged” and “low duration” products also designed to do better in that environment.

“There was a little bit of a rally going into year-end, and that helped fixed-income flows,” said Sebastian Mercado, ETF strategist at Deutsche Bank. “And we’re seeing a steady rotation from rates into floating-rate products.”

Taxable bonds took in $4.7 billion during the latest week, while municipal bonds reported $2.7 billion in outflows, ICI said.

Stock funds attracted $1.4 billion, with that about evenly split between domestic and international equity funds.

Commodity funds, hurt by a gold sell-off since the election, saw outflows slow to just $240 million in withdrawals from an average of $1.3 billion over the six prior weeks.

Gold is highly sensitive to higher rates, which diminish the appeal of holding an asset that pays no interest. Higher rates also boost the dollar, in which the metal is priced.

The following table shows estimated ICI flows, including ETFs (all figures in millions of dollars):

	12/28	12/21	12/14	12/7	11/30/2016
Equity	1,376	1,435	19,924	5,372	2,716
-Domestic	687	190	18,636	2,959	2,779
-World	689	1,244	1,288	2,413	-63
Hybrid	-1,087	-2,032	-6,657	-1,423	-984
Bond	1,912	-2,191	-951	-173	-4,088
-Taxable	4,652	1,723	2,564	4,208	-624
-Municipal	-2,740	-3,914	-3,515	-4,381	-3,463
Commodity	-240	-936	-576	-1,724	-854
Total	1,961	-3,724	11,740	2,052	-3,210

(Reporting by Trevor Hunnicutt; Editing by Richard Chang)

Reuters

By Trevor Hunnicutt

(Reporting by Trevor Hunnicutt; Editing by Richard Chang)

Trump Calls for Federal Takeover of Chicago if Decline Continues.

President-elect Donald Trump today took on Chicago Mayor Rahm Emanuel for his sub-par performance, noting that the city, whose bond rating last year dropped to junk status, ended 2016 on an even more sordid note: as the murder capital of the world.

“Chicago’s murder rate is record-setting,” Trump commented on Monday via the Twitter social media platform. “Four-thousand, three-hundred and thirty-one shooting victims with 762 murders in 2016. If Mayor can’t do it, he must ask for federal help.”

The city has more murders than Los Angeles and New York combined, and last year had 1,100 more shooting incidents than in 2015.

By contrast, the U.S. Pentagon had only 13 civilian casualties, including nine killed in action, last year in Iraq, according to the U.S. Department of Defense.

With the city’s municipal bonds last year downgraded to junk bond status, and rated Ba1 by Moody’s Investment, the city is perilously close to becoming a failed state, like Somalia, in geopolitical terms, analysts have said.

The mayor of Chicago was a former fundraising aide to Bill and Hillary Clinton, during the 1990s, and was the first Chief of Staff for the outgoing Obama White House back in 2009.

Illegal aliens and illegal guns from Mexico are said to have overtaken the city. Mayor Emanuel has taken a stance that the city will not enforce federal immigration laws and will continue to be a “sanctuary city” for undocumented illegals from Latin America and other foreign countries.

“It is almost like there is a pull-back so they, the gangs, can kill each other,” said Rev. Marshall Hatch, a leading minister in the black community in Chicago, told reporters over the weekend, as he, Rev. Jesse Jackson and Fr. Michael Pfleger, among other famous clergy, marched on city hall to demand an end to the violence.

On Wall Street, Chicago has $9.8 billion in general obligation (GO) bonds outstanding and $486 million in sales tax revenue bonds.

Moody’s lowered the city’s bond rating from Baa2 last March, and has another recalculation of the value of the debt coming up this spring.

Investing.com

Jan 02, 2017 05:39PM ET

Will Trump's Lower Income Tax Rates Really Hurt Muni Bonds?

There was some paranoia a couple years back surrounding the muni market. Those fears are cropping up again, but infrastructure momentum could make munis a safe bet.

It feels like deja vu all over again in the municipal bond market.

All the chatter of how President-elect Trump's lower income tax rates may hurt munis reminds us of the Meredith Whitney scare back in 2011.

She went on CBS's 60 Minutes program and claimed that more than 100 American cities could go bankrupt.

Oops.

O.K., we'll give her Puerto Rico and Detroit, but other than that, the muni market basically has been just fine.

Until recently. Remember, the income on a municipal bond is generally tax-free. As a result, lower income tax rates decrease a muni's attractiveness, at least on the tax front. So there are a bunch of naysayers, channeling their inner Meredith Whitney and claiming the sky may fall again in the muni world.

"And just the potential for lower tax rates immediately hit the bond market and brought municipal bond returns [yields] up and values [prices] down," says Bernie Kent, tax expert and Chairman, Schechter Investment Advisors, in Birmingham, Mich. (Remember, a bond's price moves in the opposite direction of its yield.)

But let's not panic.

We don't know when (or even if) tax rates will officially change, and history has shown it can take a while.

"Don't forget that both Reagan and Bush took a full year to get a tax cut in place," reminds Jim Robinson, bond expert and founder of Robinson Capital in Grosse Pointe, Mich.

Plus, there are some other variables to consider.

Granted, Lower Rates Could Make a Difference

The top federal tax rate for those making $500,000 or more, realistically could be over 44% these days. The top federal tax rate is currently 39.6%. Then you have to throw in the 3.8% Obamacare surtax and this pesky stealth surtax on high net worth individuals, says Kent. Without getting into the weeds of the calculation (it's called the Pease tax), you could find yourself taxed at 44%.

So if the top bracket drops to 33%, as both Trump and Paul Ryan suggest, the tax benefits of a municipal bond decrease.

A quick calculation shows you why.

In really simple terms, divide the municipal bond rate by (1 minus your tax rate).

Let’s say the muni is yielding 5% and your tax rate is 40%. So the equation looks like this: 5/(1-0.40) = 8.3%.

Consider that your cut-off when choosing between a corporate bond and a municipal one. If you find a corporate bond yielding more than 8.3% (good luck with that), take it, because you may be better off with that bond even if you have to pay taxes on the income.

But let’s say your rate drops to 33%, 7.46% becomes your cut-off. Granted it’s lower, but it’s still tough to beat in the corporate world.

The decision is never based on just one factor, though. Don’t forget about the quality of the bond, the duration, fees etc., says Kent.

But Trump Is a Big Infrastructure Guy

So he’s not going to want to kill the funding.

Remember, muni bonds are debt obligations issued by states, cities, counties and other governmental entities to raise money for schools, highways, hospitals or other public projects.

So when you buy a muni, you’re essentially lending money to the project in return for your money back and some additional interest. And as we mentioned, a bigger perk is that the income is often federal and state tax free.

And while we don’t have details, Trump may promote policies that actually help these bonds, says Mark Luscombe, principal analyst at Wolters Kluwer, a tax and accounting services company.

We know that some Trump’s infrastructure proposals may include tax incentives to create private-public partnerships for infrastructure. He also has signaled that he’d consider Build America Bonds.

And We Know There Will Be Interest Rate Increases

But even that is hedged into the calculation, says Robinson.

Short-term debt is already the optimal choice compared to longer-term bonds, because no one really knows what the interest-rate future looks like either.

There is Talk of Decreasing the Tax on Interest Income

One potential tax change that could benefit corporate bonds is if the tax on interest income is reduced. Bonds pay interest to their holders (usually) semi-annually. Currently that interest is taxed at the ordinary income rates, which could be as high as 44%, as we mentioned above.

“There is talk of implementing a cap at 16.5%,” says Robinson, (which is basically 50% of the highest proposed rate of 33%).

“If that happens, we’ll see a rally in corporate bonds as opposed to munis getting beaten up,” Robinson adds.

So What Should You Do?

Rates have gone up and down over the years and munis have managed to beat out their taxable counterparts. And even with all this noise, the relationship between munis and corporates is about the same as it was 12 months ago, notes Robinson.

If you are a high-net worth individual, you probably still will need municipal bonds in your portfolio regardless of what happens.

And many will argue that now's a good time to buy them. Especially with variables like market volatility and the Fed and Trump presidency.

To boot, municipalities may have to increase their yields to keep investors coming, which will only help investors.

So don't overreact like the market did. Just take advantage of it.

TheStreet

by Tracy Byrnes

Jan 3, 2017 1:33 PM EST

Amendments To California PACE Financing Statutes Become Effective January, 1 2017: Orrick

On January 1, 2017, certain amendments to California's current statutory schemes for authorizing Property Assessed Clean Energy (PACE) financing programs will become effective. The amendments primarily prescribe additional statutory requirements that must be met in order for PACE financing to be provided to the owners of residential properties with four or fewer units (Residential Properties). The additional statutory requirements enacted through the amendments apply whether or not the PACE financing is undertaken under the voluntary contractual assessment provisions of the California Streets and Highways Code (commonly referred to as Chapter 29 or the AB 811 version of PACE) or the special provisions of the Mello-Roos Community Facilities Act of 1982 (commonly referred to as SB 555 version of PACE).

With respect to Residential Properties, the additional statutory requirements enacted by the amendments consist of the following:

- The total amount of the annual property taxes and assessments (including the annual special taxes or assessments that result from the PACE financing) may not exceed 5% of the market value of the property, as determined at the time that the PACE financing agreement with the property owner is approved.
- The PACE financing recipients must be the legal owners of the property.
- The PACE financing recipients must be current on mortgage and property tax payments.
- The PACE financing recipients must not be in default or in bankruptcy proceedings.
- The PACE financing must be for less than 15% of the value of the property, up to the first $700,000 of the value of the property, and must be for less than 10% of the remaining value of the property above $700,000.
- The total mortgage-related debt and PACE financing on the property must not exceed the value of the property.
- If the improvements financed are energy efficiency improvements, the energy efficiency improvements must follow applicable standards of energy efficiency retrofit work, including any guidelines adopted by the State Energy Resources Conservation and Development Commission.
- The property owner must be given a three business day right to cancel the PACE financing agreement and must receive (in printed form unless the property owner agrees to an electronic

copy) a statutorily prescribed form of right to cancel document or a substantially similar document that displays the same information in a substantially similar format.
- Prior to the consummation of a PACE financing agreement by a property owner, the property owner must be given (in printed form unless the property owner agrees to an electronic copy) a statutorily prescribed form of financing estimate and disclosure document or a substantially equivalent document that displays the same information in a substantially similar format.
- In addition, the amendments generally prohibit the making of monetary or percentage representations to property owners regarding the effect that the PACE financed improvements will have on the value of the property unless the estimate of value is derived through the use of an automated valuation model, a broker's price opinion from a state licensed real estate broker or an appraisal conducted by a state licensed real estate appraiser.

The full text of the amendments is contained in Assembly Bill No. 2693, which was approved by the Governor and filed with the Secretary of State on September 25, 2016, and Assembly Bill No. 2618, which was approved by the Governor and filed with the Secretary of State on September 29, 2016.

Last Updated: December 29 2016

Article by Brandon Dias

Orrick

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

OUTLOOK: Markup Disclosure, MA Rules On Tap for 2017 Despite SEC Uncertainty.

WASHINGTON – In the regulatory and legislative arenas next year, dealers will have to grapple with how to set up compliance programs for markup disclosure rules while municipal advisors try to adjust to the many rules adopted in 2016 and issuers work to improve disclosure to stave off legislation.

Their actions will come against a backdrop of uncertainty with new leadership at the Securities and Exchange Commission and a more powerful Republican Congress focused on deregulation.

Much of the uncertainty stems from questions about who President-elect Donald Trump will name to chair the SEC. The commission has been working with only three of five commissioners for roughly a year and SEC chair Mary Jo White has said she will step down as President Obama leaves in January.

The individuals named to fill the vacated positions will control how much the SEC focuses on the municipal market as well as efforts to roll back the Dodd-Frank Act.

The amount of time it takes to fill the SEC positions will also affect regulatory actions in 2017, participants said.

"At this moment, we're barely a month after the election and the idea that everything is possible in 2017 is in obvious conflict with the amount of time" regulators and Congress will have, said John Vahey, managing director of federal policy for the Bond Dealers of America. "For the regulatory agencies to get in there and organize and adopt a new regulatory agenda there's obviously some natural constraints as to what is likely to happen in the next 12 months."

Officials in the SEC's Office of Municipal Securities declined to comment, citing the large number of unknowns at the commission.

Dave Sanchez, senior counsel with Norton Rose Fulbright in San Francisco and a former SEC muni official said that he does not see anything "big picture" like new rules happening at the SEC in 2017.

"But the kind of stuff like staff guidance and coordination with the Office of Municipal Securities and Division of Trading and Markets at the staff level, I think that can be accomplished for sure," Sanchez said.

He added that munis are not really partisan and that the "determinative factor" for whether there is action in the muni market is whether those who are appointed to fill the empty SEC slots have an interest in munis.

"That's the best test of whether you will see action," Sanchez said. The other question, he said, is whether the SEC's OMS staff will be able to get enough of the commissioners' attention to take certain steps such as producing guidance for muni rules.

Ernesto Lanza, senior counsel with Clark Hill here, said that despite the challenges the changeover and possible deregulation may present for rulemaking, there will be rules that will get through either because they need to or because they are not controversial.

However, he added that a regulatory slowdown could extend to self-regulatory organizations like the Municipal Securities Rulemaking Board.

"SROs are one step removed so there's more of an ability to move forward," Lanza said. "I'm not sure how much harder it is going to be at the SRO level, but I do think it will trickle down to an SRO basis."

Colleen Woodell, chair of the MSRB, said the board stays apolitical and has worked with a number of different administrations and parties throughout its existence. She said she expects that the MSRB will work similarly with the new administration.

Lynnette Kelly, the MSRB's executive director, echoed Woodell, saying the self-regulator's mandate of protecting investors and issuers "is kind of mom-and-apple-pie so it's hard to disagree with a lot of it."

Market participants said that some of their uncertainty about the new year also rests with Congress. They pointed to one piece of legislation, the Financial CHOICE Act, as a potentially important bill for financial regulation.

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said that if Congress decides to dedicate some energy to revisiting financial regulation, it may not enact the CHOICE Act, but the legislation "is an indication of where they might start."

The bill, proposed by Rep. Jeb Hensarling, R-Texas, would, among other things, divert funding the MSRB gets from enforcement actions over its muni rules to the Treasury Department, move the Office of Municipal Securities back under the Division of Trading and Markets, and repeal the Volcker Rule, which prohibits banks from trading on a proprietary basis and restricts their investments in hedge funds and private equity.

It is a wide-ranging piece of legislation designed to roll back Dodd-Frank regulations and implement other changes that Republicans have been considering.

Hensarling, who chairs the House Financial Services Committee, was able to shepherd the bill through his committee but the measure did not move any further during the congressional session. The Texas lawmaker has since said he intends to review and improve on the bill before reintroducing it in the next congressional session. It is unclear whether the parts of the bill affecting munis will remain and it is also possible that he could add new sections with implications for the muni market.

Paul Maco, a partner with the law firm Bracewell here, said the bill shows a focus on controlling and winding back regulation to some degree, but that he believes most Dodd-Frank cutbacks would not directly impact the muni market.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said the group wants to make sure that there are no changes to Dodd-Frank or the SEC's MA Rule that would water down the fiduciary duty for all MAs. She added that NAMA would also like to see OMS kept independent as it believes the office has done well in its standalone capacity.

BDA hopes the bill will bring "reasonable regulatory relief" from Dodd-Frank as well as other improvements like requiring regulators to put more emphasis on cost-benefit analyses.

Muni market participants are also watching to see if there will be further movement on a proposed bill from Rep. Gwen Moore, D-Wis., that was introduced earlier this month. The bill would follow the SEC's 2012 Report on the Municipal Market in shifting municipal disclosure responsibilities to issuers and borrowers from underwriters. The SEC cannot currently directly regulate issuers' disclosures. It can only take enforcement action under federal securities antifraud laws and rules.

The Moore measure would give the SEC authority over the content and timing of muni issuers' bond-related disclosures as well as the accounting systems they use.

While many muni participants said the bill in its current form will not get traction, they noted that it sends a message to the industry, and specifically issuers, about the real possibility of such a shift. The idea follows in the wake of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which showed continuing disclosure violations were widespread in the market.

Leo Karwejna, chief compliance officer with The PFM Group, said the proposed legislation is "a bit of a test balloon" but that he ultimately thinks "the drumbeat has continued to grow louder … on how to more directly regulate issuers themselves."

"I think people take that as a shot across the bow as what could happen," he added. "It's probably in everyone's collective best interest for [the disclosure] focus to continue."

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said that the bill wasn't "a gigantic surprise and punch to the gut" because of the group's knowledge of the 2012 report recommendations. GFOA will continue to have comprehensive conversations about disclosure and will be "sure to mobilize if the threat does pop up," Brock said.

The SEC, despite the turnover, may also reasonably be expected to open up its Rule 15c2-12 on disclosure in the municipal market, some said.

Sanchez said that MCDC showed the difficulty that existing SEC staff guidance creates for issuers that are trying to keep a uniform continuing disclosure regime. Those issuers may be monitoring continuing disclosure agreements that span a 20 to 30-year period.

"The information provided [and] the way it is provided, just even the agreements themselves, are all going to change in minor ways," Sanchez said. "That makes it very hard to be in 100% compliance."

He added that he thinks the updated guidance "has a really strong chance of happening" and that "there's no reason not to do it."

"It's something the entire market is looking for the SEC to do," Sanchez said. "As a matter of good faith, the SEC should undertake to provide that kind of clarifying guidance."

Market participants, along with the MSRB, have also been urging the SEC to address the issue of bank loan disclosure in the market. Bank loans have become a more attractive debt vehicle for issuers in recent years, but analysts, rating agencies and others have expressed concern that the lack of disclosure of these loans has clouded issuers' finances. An issuer may have obligations that are hidden from the rating agencies and investors.

Many market participants would like the use of bank loans to be disclosed as material events under the SEC's Rule 15c2-12. Several market participants said the SEC may open the rule up next year to make that change.

Aside from the speculation about what a new administration and Congress can accomplish, there are several areas of regulation that participants believe they will be working with in 2017.

The MSRB plans to continue with its steps toward rulemaking related to syndicate practices and pre-trade price transparency, both of which Woodell and Kelly have said will be complex, multi-year initiatives.

The self-regulator will also focus on modifying its existing prohibitions on trading below a bond's stated minimum denomination. Other plans include work on: continuing education requirements for municipal advisors; an advertising rule that could affect both MAs and dealers; development of an exam for MA principals; guidance for solicitor MAs; and further improvements to its EMMA website.

The MSRB will add a new issue calendar to EMMA starting in January and Woodell said there is a possibility the system will include third-party yield curves by the end of 2017.

Bill Oliver, industry and media liaison for the National Federation of Municipal Analysts, said EMMA improvements will continue to be a focus for the NFMA next year.

"I think [EMMA] has exceeded its original goal of being a repository but it's been so successful that it has pointed out the need to go to the next level and become a more sophisticated database with better technology," he said.

One item that stands the most chance to take up participants' attention in the new year is the implementation of the MSRB's recently approved rule changes requiring dealers to disclose their markups and markdowns on certain transactions.

Leslie Norwood, managing director and co-head of munis for SIFMA, compared dealer efforts to come into compliance with the markup rule by its effective date on May 14, 2018 as a "full court press."

Vahey said the rule is going to require "a very big build from a tech, personnel, operational, and compliance standpoint for all dealers."

The markup requirements are the culmination of a years-long process that came to fruition this year through changes to MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The rule changes mandate that a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security in an amount that in aggregate equals or exceeds the size of the customer trade, discloses its markups and markdowns in the confirmation it sends the customer. The amendments also establish a waterfall of factors for determining prevailing market price, which dealers are to use to calculate their compensation.

Dealers have expressed concern that it will be difficult and costly to automate compliance with the waterfall of factors.

Lanza agreed that there will be a lot of work in 2017 to get the markup disclosure rule implemented correctly and added the requirements exhibit a concern he has with rulemaking while reliance on technology is expanding. He said the rule is "fundamentally backward-looking" in that it is based in the tradition of notification by paper.

"I just get worried that it is going to be a costly effort that [dealers] are going to have to rebuild five years from now anyway because the entire underlying structure of how things are done is going to change," he said.

Municipal advisors in 2017 will continue their adjustments to the still relatively new regulatory structure that applies to them while asking the regulators for additional guidance, according to MAs.

"Continued implementation of G-42 will be one of, if not the biggest, thing for the next year," Karwejna said. "When you think about G-42, there's a lot of room for interpretation and inconsistency."

MSRB Rule G-42 on core duties of MAs says municipal advisors owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

Karwejna said that he and other MAs are hoping for more specific guidance on G-42 and other rules, as advisors are often relying on their own rule interpretations to get through examinations by the SEC's Office of Inspections, Compliance, and Examinations (OCIE).

"As compliance officers, we can interpret and say what we believe the rule says and write policies based on that, but really the more guidance we can get from the regulators themselves, the better the consistency at which we all can deliver the end result," Karwejna said. "The last thing you want to do is be sitting at a table with an examiner saying, 'That's not really how we think about it.'"

Karwejna and Gaffney both said it would be helpful if the OCIE examiners put an alert or other document together explaining their findings in their first rounds of examinations.

The end of the year-long window in which already practicing MAs can take the Series 50 professional qualification exam will also be a major development for MA regulation in 2017, Gaffney and Karwejna said. The exam program, which gives MAs a year from September 2016 to take and pass the test, is expected to lead to some decrease in the amount of advisors practicing in the muni market, but the exact change that it could help precipitate remains to be seen.

One other development MAs may see is some regulator guidance or indication of how they should handle work with issuers that are pursuing bank loans or private placements. There has been concern in the past that an MA's work with such products could place it in situations where it is actually engaging in broker-dealer activities without being registered to do so.

Sanchez said he thinks the SEC will need to give additional guidance on the whole exemption from broker-dealer registration for MAs. He said it could be done through a no-action letter or some other staff-level guidance, either of which would be an easy way to accomplish the important goal.

The Bond Buyer

By Jack Casey

December 27, 2016

TAX - WASHINGTON

City of Snoqualmie v. King County Executive Dow Constantine

Supreme Court of Washington, En Banc - December 22, 2016 - P.3d - 2016 WL 7421401

City brought action challenging the constitutionality of statutory provision, which required Indian tribes taking advantage of property tax exemption for tribal property to make payment in lieu of leasehold excise taxes if property was not leased.

The Superior Court granted partial summary judgment in favor of the city. Department of Revenue appealed to Supreme Court, and Supreme Court retained the case for review.

The Supreme Court of Washington held that:

- City had direct standing to challenge constitutionality of statutory provision under more liberal standing requirements for cases of public importance, and
- Payment in lieu of leasehold excise taxes was not a "tax," and thus, payment was not subject to State Constitution's tax requirements.

City had direct standing to challenge constitutionality of statutory provision, which required Indian tribes taking advantage of property tax exemption for tribal property to make payment in lieu of leasehold excise taxes if property was not leased, under more liberal standing requirements for cases of public importance. Issue of whether payment in lieu of taxes was a tax would impact Indian tribes throughout the state, and several other tribes would be directly affected by invalidation of exemption and accompanying payment in lieu of taxes.

City had representative standing on behalf of its residents to challenge constitutionality of statutory provision, which required Indian tribes taking advantage of property tax exemption for tribal property to make payment in lieu of leasehold excise taxes if property was not leased. Residents had been subjected to tax shift, payment in lieu of taxes could not compensate for the total loss, and residents suffered injury from the exemption and payment in lieu of taxes.

Payment to county by Indian tribes, which took advantage of property tax exemption for tribal property, in lieu of leasehold excise taxes was not a "tax," and thus, payment was not subject to

State Constitution's tax requirements. Purpose of payment was to offset the burden created by property tax exemption in order to compensate county for services that tribal exempt land required, payment was essentially reimbursement or prospective payment for municipal services rendered, and payment was made because of municipal services the land received, as evidenced by negotiation process between tribe and county.

TAX - CONNECTICUT

Nutmeg Housing Development Corporation v. Town of Colchester

Supreme Court of Connecticut - December 27, 2016 - A.3d - 324 Conn. 1 - 2016 WL 7374650

Taxpayer sought judicial review of decision of town's board of assessment appeals upholding town's valuation, for property tax purposes, of taxpayer's land, on which age and income restricted apartment complex was located.

The Superior Court rendered judgment for town. Taxpayer appealed.

On transfer from the Appellate Court, the Supreme Court of Connecticut held that:

- Clear error standard governed review, and
- Taxpayer failed to demonstrate aggrievement, as initial burden in obtaining relief from town's valuation.

Supreme Court would review under the deferential clear error standard the trial court's decision rejecting taxpayer's challenge to town's valuation of taxpayer's land for property tax purposes, where trial court's rejection of taxpayer's valuation was based on court's credibility determination in light of flaws it perceived in the data used by taxpayer's appraiser, rather than a determination as to the proper standards governing the valuation.

Taxpayer failed to demonstrate aggrievement, as initial burden in obtaining relief from town's valuation, for property tax purposes, of taxpayer's parcel, on which age and income restricted apartment complex was located. Valuation of taxpayer's appraiser relied on unrestricted market properties to determine reasonable income and expense figures, town's appraiser testified that adjustments were required given the age and income restrictions, and taxpayer provided no testimony to support its calculation under statute providing capitalized value of net rental income as basis for property valuation.

MSRB Seeks Board of Directors Applicants.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.8 trillion municipal securities market, is accepting applications for its Board of Directors. The Board sets the strategic direction of the organization, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations.

The MSRB is seeking individuals with broad municipal market expertise able to apply their knowledge to policymaking related to market structure, transparency and transactions. Ideal candidates possess the ability to shape rules for municipal finance professionals and to guide the continued development of the MSRB's Electronic Municipal Market Access (EMMA®) website — a vital tool used by market participants to monitor municipal security trade price and disclosure information.

The MSRB Board consists of 11 independent members that are representative of the public, including investors, municipal entities and other non-MSRB regulated entities. The Board also has 10 members that represent MSRB-regulated entities, including broker dealers, bank dealers and municipal advisors. The MSRB is seeking applicants to fill three public and two regulated-entity positions, one of which is a non-dealer municipal advisor. New Board members will begin their four-year terms on October 1, 2017.

Qualified individuals from around the country representing diverse experiences and market perspectives should consider applying. Of particular interest are applicants with strong knowledge of municipal securities sales and trading desk operations, and those with experience in underwriting or syndicate practices. The MSRB is also interested in retail and institutional investor applicants. MSRB Rule A-3 outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a public or regulated Board member. As always, qualified candidates representing the municipal market's gender and minority diversity are encouraged to apply.

To be considered for a position on the MSRB Board of Directors, submit an application, which is available on the [MSRB Board of Directors Application Portal,] no later than February 17, 2017. Questions can be directed to Mallory Bucher, Board Administrator, at 202-838-1349 or at mbucher@msrb.org.

Date: January 9, 2017

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

MSRB Publishes 2016 Annual Report and Audited Financial Statements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its 2016 Annual Report, which describes the organization's initiatives to increase fairness, transparency and efficiency in the municipal securities market.

In a year in which the MSRB addressed key retail investor protections and consistent standards for all municipal finance professionals, it also worked collaboratively with fellow regulators to ensure cross-market consistencies in rulemaking to provide appropriate continuity in the securities regulation framework.

The annual report documents the MSRB's implementation of a best-execution rule and the finalization of mark-up disclosure rule, which are aimed at ensuring municipal bond prices are fair and transparent for investors. The report also details the MSRB's completion of foundational rules and standards for municipal advisors consistent with those that have long applied to municipal securities dealers.

The MSRB also focused on improvements to its Electronic Municipal Market Access (EMMA®) website, aimed at enhancing transparency of municipal market disclosures. On the education front, a key event in 2016 was the MSRB's launch of MuniEdPro, the first suite of interactive, online courses about municipal market activities and regulations. The courses complement significant existing educational resources for market stakeholders.

Each MSRB annual report presents financial highlights for the fiscal year, with a link to full audited financial statements on the MSRB's website. The 2016 Annual Report includes a message from Executive Director Lynnette Kelly that speaks to the seriousness with which the MSRB approaches financial stewardship of the organization. In 2016, the MSRB rebated $5.5 million to brokers and dealers and recalibrated several of its fees to appropriately allocate funding across the diverse universe of regulated entities in a manner that ensures long-term organizational stability.

Read the report.

Date: January 6, 2017

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

MSRB Requests Comment on Modernization of Customer Account Transfers.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to modernize MSRB Rule G-26, on customer account transfers. The draft amendments are designed to promote market efficiency and reduce risk by creating a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers that are engaged in municipal securities activities. Comments should be submitted no later than February 17, 2017.

Read the request for comment.

Announcing the T+2 Settlement Conference: March 29, New York Marriott Downtown.

The industry is moving to a shorter settlement cycle from trade date plus three business days (T+3) to T+2 in the U.S. for most securities with a target date of September 5, 2017. The instruments subject to the shortened settlement cycle include corporate and municipal bonds, equities, unit investment trusts, and financial instruments comprised of these products. Join us on March 29, 2017, at the T+2 Settlement Conference in NYC for a deep dive into the next phase of the industry's migration to T+2. This conference will address behavioral, systems, operational and regulatory changes necessary to meet the T+2 implementation date. Reserve your seat today!

Click here to learn more, and to register.

GAAP Update Digital Recording Now Available.

Thank you to thousands who participated in GFOA's 21st Annual Governmental GAAP Update. GFOA has released a digital recording of the 2016 GAAP Update presentation.* For those who participated in the original program, the recording is a great way to refresh your memory of the material. If you were unable to participate, the recording is a great way to catch up and is ideal for in-house training. Download your copy today!

Order form
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Save the date: GFOA's 22nd *Annual Governmental GAAP Update* will take place on **November 2, 2017**, with an encore presentation on **December 7, 2017**, both at 1:00–5:00 pm Eastern.

*Please note that CPE credits are not awarded for watching the recorded program. The recording is only available electronically. To purchase using the GFOA e-store, log into your e-store account and add the recording to your cart. When you have completed your order, click the "Audio/Video" tab and follow the instructions to access the recording. If you submit your order via mail, fax, or e-mail, you will receive an e-mail with instructions when your recording is available to download.

MSRB Webinar: Amended Rules on Mark-Up Disclosure and Prevailing Market Price.

Amended MSRB Rules G-15 and G-30 on Required Disclosure of Mark-ups and Mark-downs to Retail Customers on Certain Transactions and to Provide Guidance on Prevailing Market Price

Thursday, January 12, 2017
3:00 p.m. – 4:00 p.m. ET

During this free webinar, staff will review key provisions of amendments to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and MSRB Rule G-30 on prices and commissions related to disclosure of mark-ups and mark-downs on certain customer confirmations and guidance on prevailing market price. Staff from the Financial Industry Regulatory Authority (FINRA) will join MSRB staff at the conclusion of the webinar to answer questions, as time permits, about the MSRB amendments as well as FINRA's parallel requirements for the corporate and agency bond markets.

At the end of this webinar, participants will be able to:

- Identify the mark-up and mark-down disclosure requirements for all applicable transactions in municipal securities with retail customers;
- Identify the time of execution and disclosure requirements for transactions in municipal securities with retail customers including a hyperlink to a webpage on EMMA®; and
- Understand the key elements of the guidance to determine prevailing market price of a municipal security.

Click here to register.

- In American Towns, Private Profits From Public Works.
- 5 Hot Topics Hitting Public Finance in 2017.
- Muni Investors: Beware Of The De Minimis Tax Rule.
- NASACT Webinar: Getting Ready for Infrastructure Change.
- *Matter of Application of The Oklahoma Turnpike Authority* – Supreme Court of Oklahoma holds that bonds requested by Oklahoma Turnpike Authority to finance four turnpike construction projects all related to the construction and/or improvement of turnpikes, and therefore, statute providing funding for the four projects under one bond issue did not violate single subject rule contained in the state constitution.
- And finally, Worth a Try! is brought to us this week by *Western Petroleum, LLC v. Williams County Board of Commissioners*, in which an oil company set up a trailer park for its itinerant workforce (your editor gets a special tingly feeling each time he hears the term, "man camp") and was subsequently fined for a violation of the county temporary housing regs. The applicable fine is $1k/day, but the county assessed a $1k/day per (purported) violation fine. Given the number of days, and the number of trailers, Western Petroleum's tab came to $29,635,000. We did a little digging and learned that the entire 2017 annual operating budget for Williams County is $22.7 million. The ND Supreme Court wasn't buying it, but ya' gotta dream. Ya' gotta dream.

PUBLIC CORPORATIONS - ALABAMA

Water Works Board of City of Arab v. City of Arab

Supreme Court of Alabama - December 23, 2016 - So.3d - 2016 WL 7428391

City brought action against city water board, seeking declaration that board was bound by resolutions adopted by city directing board to fluoridate city's water supply and requesting a preliminary injunction enjoining the board from halting fluoridation.

The Circuit Court denied the board's motion to dismiss and entered the preliminary injunction requested by city. Board appealed.

The Supreme Court of Alabama held that:

- Board was an independent public corporation, not a mere agency of city, and
- Doctrine of waiver or of laches did not require board's continued compliance with city's resolutions.

City water board was an independent public corporation tasked with operating city's waterworks system, not a mere agency of city, and thus board was not required to comply with city resolutions directing board to fluoridate city's water supply. Because municipal resolutions had to be read in pari materia with other state laws, the legislature, by statutorily establishing the board as an independent public utility corporation and vesting it with all authority over the waterworks system, limited city's authority to pass resolutions regarding the waterworks system, and allowing city to control board's operational decisions by adopting resolutions would mean that the board would not be truly separate and independent, contrary to the legislature's intent.

Fact that city water board began to fluoridate city's water supply after city adopted resolution directing board to do so did not mean, pursuant to the doctrine of waiver or of laches, that board was required to continue to fluoridate the water supply. Even if board took into consideration the resolution in deciding to fluoridate the water supply, that did not change fact that the Board alone, as an independent public corporation separate from the city, had the authority, as derived from the legislature, to make all operational decisions concerning the waterworks system.

EASEMENTS - INDIANA

Duke Energy of Indiana, LLC v. City of Franklin

Court of Appeals of Indiana - December 16, 2016 - N.E.3d - 2016 WL 7333575

Holder of utility easement in land underneath proposed intersection expansion project brought action against city, alleging that the city lacked sufficient property rights to complete the project and that the project would impermissibly interfere with the holder's easement rights.

The Superior Court denied the holder's request for a preliminary injunction, and it appealed.

The Court of Appeals held that:

- Holder lacked standing to challenge city's property interests, and
- Holder failed to demonstrate reasonable likelihood of success at trial.

Holder of utility easement in land underneath proposed intersection expansion project lacked standing to challenge project based on city's purportedly insufficient property rights in the land. Holder was essentially pursuing an ejectment action against the city based on alleged trespass, and holder did not have a possessory interest in the land that would it to maintain such an action.

Holder of utility easement in land underneath proposed intersection expansion project failed to demonstrate a reasonable likelihood of success at trial with respect to its claim that project would permissibly interfere with its easement rights, as required to support holder's request for preliminary injunction preventing city from completing the project. City demonstrated that project was part of effort to beautify corridor, enhance motorist safety, and spur commercial and business growth, and holder failed to show that its ability to repair and maintain its transmission lines would be affected apart from having to employ some additional traffic control measures.

LAND USE & ZONING - IOWA

Residential and Agricultural Advisory Committee, LLC v. Dyersville City Council

Supreme Court of Iowa - December 9, 2016 - N.W.2d - 2016 WL 7175256

Community members filed petition for writ of certiorari challenging city council's decision that rezoned agricultural land to commercial land in order to facilitate the development of baseball and softball complex.

The District Court denied the petition and denied members' motion to modify the order. Members appealed, which was transferred. The Court of Appeals reversed and remanded. Members filed second writ of certiorari in response to city council's vote approving ordinance correcting description of rezoned land. Members' motion to consolidate the two writs was granted. Following trial, the District Court annulled the writs. Members filed appeal, which was retained.

The Supreme Court of Iowa held that:

- City council's rezoning decision was not arbitrary, capricious, or unreasonable;
- City council's rezoning decision was made in accordance with city's comprehensive plan;
- City council's rezoning decision did not constitute illegal spot zoning;
- City council proceedings concerning ordinance, which sought to correct legal description contained in rezoning ordinance, substantially complied with statutory zoning requirements, and thus, ordinance was valid;
- City council's rezoning decision met rational basis test, and thus did not violate equal protection; and
- Community members were afforded procedural due process.

PUBLIC EMPLOYMENT & BENEFITS - MASSACHUSETTS

Retirement Bd. of Stoneham v. Contributory Retirement Appeal Bd.

Supreme Judicial Court of Massachusetts, Middlesex - December 22, 2016 - N.E.3d - 2016 WL 7390971

Municipal retirement board sought review of decision by Contributory Retirement Appeal Board that municipal board could not unilaterally terminate membership of part-time school department employee on ground that scheduled working hours dropped below 30.

The Superior Court Department reversed Appeal Board's decision. Employee appealed, and case was transferred from the Appeals Court.

The Supreme Judicial Court held that:

- Municipal board lacked absolute discretion to terminate membership when employee's second job ended, and
- Separation from service did not occur when second job ceased and employee continued working in first job for several more years.

Municipal retirement board's "full jurisdiction" to determine eligibility referred only to its authority to set initial eligibility criteria and did not give absolute discretion to terminate part-time municipal employee's membership when her second job with school department ended and she ceased to satisfy eligibility requirement of at least 30 hours of scheduled work per week. Statutorily enumerated events supporting termination of member's status did not include subsequent failure to satisfy eligibility criteria that led to that member's admission, and member's status as member in service continued even if member ceased to satisfy criteria that initially qualified member for admission into the retirement system.

Separation from service terminating membership in municipal retirement system did not occur when part-time municipal employee's second job with school department ceased and she continued working in first job for several more years, and, thus, she remained in service in non-full-time capacity and was eligible for retroactive membership.

ZONING & LAND USE - NORTH DAKOTA

Western Petroleum, LLC v. Williams County Board of Commissioners

Supreme Court of North Dakota - December 20, 2016 - N.W.2d - 2016 WL 7368813 - 2016 ND 249

Company appealed decision by county board of commissioners assessing a $29,635,000 penalty against company for violating temporary housing regulations.

The District Court affirmed the penalty. Company appealed.

The Supreme Court of North Dakota held that company was subject to $1,000 penalty per day for violating temporary housing regulations, rather than $1,000 penalty on a per housing unit, per day basis. Plain language of the regulations stated it is unlawful to violate any of its provisions, and the penalty for violating the provisions was $1,000 per violation.

PUBLIC RECORDS - OHIO

State ex rel. Caster v. Columbus

Supreme Court of Ohio - December 28, 2016 - N.E.3d - 2016 WL 7448756 - 2016 -Ohio-8394

Attorney who was involved in innocence project petitioned for writ of mandamus to compel city to comply with public records request for law enforcement records concerning convicted defendant whose direct appeals ended more than four years earlier.

The Supreme Court of Ohio held that:

- Specific investigatory work-product exception to disclosure does not extend beyond completion of trial for which the information was gathered, overruling *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83, and *State ex rel. WLWT–TV5 v. Leis*, 77 Ohio St.3d 357, 673 N.E.2d 1365;
- City and police chief should have produced records; and
- Attorney was entitled to attorney fees.

Specific investigatory work-product exception to disclosure under Public Records Act (PRA) does not extend beyond completion of trial for which the information was gathered; overruling *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83, and *State ex rel. WLWT–TV5 v. Leis*, 77 Ohio St.3d 357, 673 N.E.2d 1365.

City and police chief should have produced to attorney, who was involved in innocence project, all records that were withheld based on claim that the records constituted specific investigatory work product, where criminal defendant's original trial had long been completed.

Attorney's public records request was sufficiently different from prior requests denied by police chief to constitute new request, and, thus, award of attorney fees was mandatory for failure of chief to respond to request for records concerning criminal defendant under consideration for innocence project. Attorney's letter was responsive to chief's earlier refusals, pointed out deficiencies in the prior responses, and added information that criminal case was complete, direct appeal process had concluded, and there were no pending collateral attacks.

CONTRACTS - OHIO

Colaianni Constr., Inc. v. Indian Creek Local School Dist.

Court of Appeals of Ohio, Seventh District, Jefferson County - December 12, 2016 - N.E.3d - 2016 WL 7291139 - 2016 -Ohio- 8156

Contractor on school construction project sought arbitration of contract dispute with school district.

The Court of Common Pleas granted contractor's motion to compel arbitration. District appealed.

The Court of Appeals held that state, rather than district, was public owner of project, and thus contractor's remedy was to file action in court of claims.

State, rather than school district, was public owner of district's project to construct new school facility, even though contractual promise to establish and maintain escrow account was made by school district, and thus contractor's means to seek release of retainage from escrow was to file action in court of claims rather than to file for arbitration. All actions taken by district under contract, including entry into escrow agreement and controlling of escrow account, were actions made in district's agency function, and contract explicitly named court of claims as exclusive jurisdiction for action or proceeding by contractor.

BONDS - OKLAHOMA

Matter of Application of The Oklahoma Turnpike Authority

Supreme Court of Oklahoma - December 13, 2016 - P.3d - 2016 WL 7212488 - 2016 OK 124

Oklahoma Turnpike Authority applied to the Supreme Court for approval of an issuance of bonds for four turnpike construction projects. Protestant filed objection to the application.

The Supreme Court of Oklahoma held that statute providing funding for four projects under one bond issue did not violate single subject rule.

Bonds requested by Oklahoma Turnpike Authority to finance four turnpike construction projects all related to the construction and/or improvement of turnpikes, and therefore, statute providing funding for the four projects under one bond issue did not violate single subject rule contained in the state constitution. Authority had the express legislative authority to issue bonds for turnpike projects and to combine multiple projects for purposing of issuing bonds.

IMMUNITY - TEXAS

Byrdson Services, LLC v. South East Texas Regional Planning Commission

Supreme Court of Texas - December 23, 2016 - S.W.3d - 2016 WL 7421392

Contractor brought action against Regional Planning Commission to recover payments allegedly due on contracts funded by Commission, for repairs to homes that were damaged in hurricane.

The 60th District Court denied Commission's plea to jurisdiction. Commission appealed. The Beaumont Court of Appeals reversed. Contractor appealed.

The Supreme Court of Texas held that suit fell within statutory governmental immunity waiver contained in Local Government Code.

Contractor's suit against Regional Planning Commission to recover payments allegedly due on contracts funded by Commission for repairs to homes damaged by hurricane fell within provision of Local Government Code that waived governmental immunity if the contract, among other things, provided goods or services to the local governmental entity. Texas homeowners were primary beneficiaries under contract, but they were not the only beneficiaries, as contract also benefitted the local governmental entity, directly so, providing rebuilding work the entity was obligated to provide itself.

TAX - VIRGINIA

Western Refining Yorktown, Inc. v. County of York

Supreme Court of Virginia - December 15, 2016 - S.E.2d - 2016 WL 7242276

Taxpayer challenged county's valuation of refinery's machinery and tools for purposes of levying machinery and tools tax.

The Circuit Court upheld valuation. Taxpayer appealed.

The Supreme Court of Virginia held that:

- Evidence supported finding that tax assessor did not overvalue refinery's machinery and tools by valuing them at a static 25% of original cost;
- County commissioner of the revenue adequately considered appraisal submitted by taxpayer's expert;
- Evidence supported finding that commissioner adequately considered market conditions; and
- County did not impermissibly assume inconsistent positions by arriving at higher value of machinery and tools than value it had determined for refinery in separate real estate litigation.

Evidence supported finding that tax assessor did not overvalue refinery's machinery and tools by valuing them at a static 25% of original cost, regardless of age or value, in levying machinery and tools tax. Legislature had authorized assessment of machinery and tools based on percentage of original cost, county commissioner of the revenue testified that methodology tended to approximate fair market value over time, refinery was regularly upgraded and maintained, and taxpayer's need for cash could have had dampening effect on price of sale of refinery that occurred shortly after relevant period.

In assessing refinery's machinery and tools when levying machinery and tools tax, county commissioner of the revenue adequately considered appraisal submitted by taxpayer's expert. Record established that commissioner reviewed appraisal and conducted additional research to determine whether it was well-founded, commissioner issued detailed written explanation for why she rejected expert's appraisal, and commissioner concluded that cost approach would yield unknown result due to lack of information about cost to restart refinery.

Evidence supported finding that county commissioner of the revenue, in levying machinery and tools tax, adequately considered market conditions in valuing refinery's machinery and tools. Taxpayer had told its shareholders through securities filings and state through tax returns that refinery was worth a great deal more than commissioner's assessment, and taxpayer made a business decision to sell refinery at low value due at least in part to its need for cash and to gain tax advantage.

In levying machinery and tools tax on refinery, county did not impermissibly assume inconsistent positions by arriving at higher value of machinery and tools than value it had determined for refinery in separate real estate litigation. Expert had no occasion to value machinery and tools in real estate litigation and had expressly stated that he was valuing real property only, there was evidence that equipment could have been returned to use when market conditions improved and that equipment did not have "salvage" value only, and taxpayer had sold refinery when it found itself short of cash and decided to sell refinery when entire refining industry was in slump.

Muni Investors: Beware Of The De Minimis Tax Rule.

- The recent rise in interest rates has exposed certain municipal bonds priced at a market discount to the de minimis tax rule.
- This rule causes the accretion of the bond discount to be taxed at the marginal income tax rate.
- Muni investors unaware of the de minimis rule could buy a bond at a seemingly attractive yield to later find out the effective yield is much lower.

The recent rise in interest rates has created a situation where tax-exempt municipal bonds trading at a discount could be subject to what is known as the "de minimis" tax rule. The rule applies to bonds purchased at a market discount below a threshold determined by the IRS.

This is a problem because most investors choose municipal bonds for tax-free income. Giving up a portion of your return to the IRS is not something any investor wants to do.

Your broker or bond salesman should advise you if a bond you are considering purchasing or selling qualifies for the de minimis tax. Don't rely on your broker. Become an informed investor by learning about the rule for yourself.

Continue reading.

Seeking Alpha

Joshua Hudson, CFA

Jan. 1.17

TAX - WISCONSIN

Regency West Apartments LLC v. City of Racine

Supreme Court of Wisconsin - December 22, 2016 - N.W.2d - 2016 WL 7407487 - 2016 WI 99

Owner of apartment complex subject to low income housing tax credits brought actions against city to recover refunds from claimed excessive taxation.

The Circuit Court dismissed the claims. Owner appealed, and the Court of Appeals affirmed. The

Supreme Court granted owner's petition for review.

The Supreme Court of Wisconsin held that:

- Income approach required calculation of net operating income based on income and expenses specifically projected for the complex;
- Appraiser could not derive the capitalization rate from market-rate properties;
- Sales of three properties were not "reasonably comparable" arms-length sales as required for assessor to rely on the sales when assessing apartment complex; and
- Evidence was sufficient to meet burden of showing that city's assessed value of $4,169,000 was excessive.

Using best information available, income approach to valuing apartment complex property required calculation of net operating income based on income and expenses specifically projected for the subject property, rather than calculation of net operating income through mass appraisal techniques.

An appraiser must not value federally regulated housing as if it were market-rate property, as doing so causes the assessor to pretend that the subject property is not hindered by federal restrictions. The restrictions and underlying agreements implicit in federally regulated housing will affect the property's value.

Sales of three properties were not "reasonably comparable" arms-length sales as required for assessor to rely on the sales when assessing apartment complex. While subject complex was built using tax credit program, one comparable sale property was mostly market-rate rentals, while others used Section 8 rent subsidy credits, and rents at subject property were not subsidized by the government.

Apartment complex owner's evidence in tax refund action was sufficient to meet burden of showing that city's assessed value of $4,169,000 was excessive. Complex used third tier direct capitalization of income appraisal which employed actual expenses and income for the property upon which the net income was calculated, appraisal derived its capitalization rate from a market for tax credit properties, and appraisal determined that the property's value was $2,730,000.

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5 Hot Topics Hitting Public Finance in 2017.

In what could be a tumultuous year for state and local finances, these five issues are likely to take center stage.

Tax Reform

Many Capitol Hill watchers expect federal tax reform to roll forward in some fashion in 2017 now that a Republican will be in the White House. There are two major proposals on the table that could directly result in higher costs for states.

For starters, many in Congress have been supportive of limiting the tax-exempt status of municipal bonds. Removing this tax perk for bond investors would force governments to offer higher interest rates on the debt, thus increasing their cost of paying off that debt.

It's hard to overstate the potential impact of such a move. One estimate pegged the current tax perk savings for state and local governments at about $714 billion from 2000 to 2014. For its part, the federal government estimates it loses as much as $30 billion in potential income tax revenue each year as a result of the perk.

President-elect Donald Trump recently told a group of mayors he would protect the tax exemption. The comment was the first time he'd specifically mentioned the issue and it was immediately met with hopeful praise from industry groups like the National Association of State Treasurers and the Council of Development Finance Agencies.

But how far that pledge will go remains to be seen.

Second, the tax reform discussion may also include eliminating the ability for tax filers to deduct their state and local taxes from their taxable income at the federal level.

Naysayers of the deduction argue it subsidizes high-tax states. While eliminating this perk wouldn't have an immediate impact, said Michael Mazerov, senior fellow at the Center on Budget and Policy Priorities (CBPP), it would have a long-term impact on states' ability to raise additional revenues through tax hikes. This is particularly true for higher-tax states where citizens would no longer get a substantial tax break at the federal level.

"Certainly," he said, "the elimination could have one of biggest impacts on state and local finances."

Budget Shortfalls

Weak revenues are causing the highest number of state budget shortfalls since the Great Recession, and that trend is expected to weigh on lawmakers as they draw up their fiscal 2018 budgets in the coming months.

According to the National Association of State Budget Officers' annual state spending survey, half of all states saw revenues come in lower than projected for fiscal 2016. And nearly as many states (24) are seeing those weak revenue conditions carry into fiscal 2017. It marks the highest number of states falling short since 36 budgets missed their mark in 2010.

Unless lawmakers make significant corrections, some believe the picture could look bleaker as 2017 wears on.

"I tend to think it's going to skew toward worse nationally," said Matt Fabian, a partner at Municipal Market Analytics. "That means more budget gaps and reduced aid to local governments." Any changes at the federal level, Fabian added, "are probably going to make it worse."

Medicaid funding could also cut into state finances. Trump and other Republicans have proposed converting the program into a block grant. A Congressional Budget Office (CBO) assessment of earlier Medicaid block grant proposals projected declines of between 4 and 23 percent in federal funding over 10 years. Aid from the feds makes up approximately 15 percent of total state expenditures.

If the CBO's estimates are accurate, Fitch Ratings said, "reductions of this magnitude would have a significant effect on states' budgets."

Tax Break Transparency

A new accounting rule, called GASB 77, will result in more hard data than ever on what was a previously murky part of state and local finances.

The rule requires governments to report the tax breaks they give to businesses as forgone tax revenue on their balance sheets.

While some wish the rule included more specific requirements — such as naming the companies receiving the breaks — most believe the new disclosures will be a watershed moment for transparency. The new data will likely inform policy discussions for years to come.

New York City has already reported its foregone revenue, disclosing that it waived more than $3 billion in potential tax revenue in 2016 alone, mostly in uncollected property taxes.

Noting that many states already produce tax expenditure reports, the CBPP's Mazerov predicts that the new reporting requirements will be particularly revealing at the city and county level, as "there's so little information locally about economic development giveaways."

Increasing Pension Contributions

State and local retirement benefit expenditures have grown roughly twice as fast as revenues and most other spending areas in recent years, according to a new analysis by Fitch Ratings. While much of this growth has been driven by pensions, a rise in health-care and Medicaid costs have also played a part.

Meanwhile, the last two years have seen pension plans significantly miss their target rate of return (7.5 percent), which will trigger higher pension bills in the coming years. Governments with well-funded plans are much better positioned to absorb any increases. But many plans have less than three-quarters of the assets they need to fully meet their liabilities. The lower-funded the plan, the more extreme the impact of low-investment returns will be on a government's pension bill.

The last 10 years have seen retirement benefit expenditures growth exceed or crowd out growth rates for all other major spending categories.

"With tax rate increases remaining politically challenging and due to the historically slow economic and revenue recovery after the financial crisis, state and local governments have been forced to hold the line on spending for other services," Fitch said. "This trend is likely to continue over the near term."

Online Sales Tax Battles

After more than a decade of badgering Congress to solve the issue nationally, states have taken it upon themselves to win the right to tax online purchases made by their residents.

Generally, consumers are only taxed on purchases from retailers with a physical presence in their state. But legal challenges by states are moving forward on several fronts.

First, Colorado recently scored a win when the U.S. Supreme Court effectively upheld a 2010 law by refusing to hear the case and letting the lower court ruling stand. The law makes collecting an online sales tax from Colorado consumers more palatable than going through the reporting requirements for companies that don't do so.

Other states have already begun to follow suit, and both Louisiana and Vermont have enacted similar laws that take effect in 2017.

"At this point," said Matt Walsh, Sovos Compliance's vice president of tax, "we would also expect to see many states move to enact similar legislation early in 2017."

Meanwhile two other states have cases moving forward that also challenge the status quo.

One company is challenging Alabama's new sales tax rule that bases the tax on revenue, not location. In South Dakota, several companies are challenging the state's 2016 law that outright permits it to collect a sales tax on Internet purchases from remote retailers who have a so-called "economic presence" in the state.

Many believe the South Dakota case could be fast-tracked to the Supreme Court as early as 2017.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 29, 2016

Tax-Exempt Bonds Already Pinched by Proposed Trump Tax Cuts.

Investors pulled another $2 billion from U.S. municipal bond funds in the latest week, underscoring fears that potential sweeping tax changes under President-elect Donald Trump and a Republican Congress will undermine the tax-exempt debt market.

Trump's plans to cut taxes and increase fiscal spending have already boosted inflation expectations. As a result fixed-income markets, already weighed down by forecasts for tighter U.S. monetary policy, have see prices slump while stocks have reached record highs.

Since the Nov. 8 election, munis suffered more than any other fixed-income sector with a negative total return of 3.229 percent, according to Bank of America Merrill Lynch indices.

Trump wants to reduce the current seven tax brackets to three: 12 percent, 25 percent and 33 percent. This mirrors a June tax proposal by U.S. House Republicans but the House proposal would also allow taxpayers to deduct 50 percent of their capital gains, dividends and interest income, shrinking overall taxes even further.

"It just seems that municipals would have to readjust in terms of yield, a little bit higher yield, to bring itself back into parity proportionately with other asset classes to remain competitive," said Jim Colby, chief municipal strategist at VanEck.

Tax-exempt bonds, which outperformed other fixed-income assets in 2015, are on track to have the only negative return, albeit a small one, for all of 2016.

As of last Wednesday, munis returned a negative 0.078 percent versus positive returns of 0.551 percent for Treasuries and 5.158 percent for corporate bonds, BAML reported.

The corporate tax rate, as envisioned by Trump, would fall to 15 percent from 35 percent, making muni bonds less attractive for tax-exempt debt buyers like banks and property and casualty insurance companies.

Wealthy investors subject to federal income tax rates currently as high as 39.6 percent are traditional buyers of tax-free bonds sold by states, cities, schools, nonprofits and other issuers.

Investors are fleeing from muni bond funds. The net outflows have grown for six straight weeks to $13.5 billion since the U.S. election, according to Thomson Reuters Lipper service. The muni market is $3.7 trillion overall and until recently was the beneficiary of 54 straight weeks of fund net inflows.

DO TAX RATES MATTER TO MUNIS?

While there is talk of a tax reform bill moving through the House relatively quickly, past history indicates a vote by the August recess, setting up a Senate vote in the fall and potential signing by Trump before year-end. If progress stalls, tax reform could lay dormant during 2018's election year.

Some question the tax impact on the municipal bond market though.

Philip Fischer, municipal research strategist at BAML, said tax rates are no longer the driving force behind muni purchases and that tax-sheltered investment vehicles have replaced competition from other fixed-income assets.

"What is going on is that munis have to yield enough so they are competitive with other tax sheltered instruments like 401k's," he said.

The tax-exempt market should have some time to adjust before the first major U.S. tax changes materialize since 1986's massive reform law.

"We really believe if it really does happen it's more of a 2018 event not a 2017," said Dan Heckman, national investment consultant at US Bank.

Meanwhile, muni issuers are facing higher borrowing costs than just six months ago.

A rise in yields on Municipal Market Data's benchmark triple-A scale from record lows reached this summer accelerated after the election.

The yield on top-rated 30-year bonds ended Friday at 3.11 percent, which is 118 basis points up from its 1.93 percent low. For 10-year bonds, Friday's 2.39 percent yield was 110 basis points over the all-time low of 1.29 percent.

Issuers took advantage of historic low rates to refund old debt and sell new bonds, pushing 2016 issuance to $423.5 billion as of Friday, just short of 2010's record $430.35 billion supply, according to Thomson Reuters data.

"We could envision a market totaling $350 billion (in 2017), about $100 billion less than this year, but this of course depends heavily on how the proposals play out," Natalie Cohen, a senior analyst at Wells Fargo, said in a December report on potential tax changes.

Refundings of existing bonds, which accounted for about 61 percent of 2016 issuance, would not screech to a halt given the impending 10-year call on hefty amounts of debt issued in 2007, she added.

Reuters

By Karen Pierog

Tue Dec 27, 2016 | 7:00am EST

(Reporting By Karen Pierog, additional reporting by David Morgan in Washington; Editing by Daniel Bases)

CA State School Bond System Needs Overhaul: Editorial

Over the objections of Gov. Jerry Brown, California voters passed Proposition 51, a $9 billion bond measure to construct and modernize the state's public school, charter school and community college facilities. Now the governor is redoubling his efforts to reform the state's costly and convoluted school bond system, worrying school districts that construction project funds might be delayed or denied.

We understand communities' desperate need for new and modernized school facilities after 10 years without new bond funding — that's why The Chronicle supported Prop. 51. But the governor is right. California needs to find more fair, cheaper and faster ways to finance school and community college facility construction.

School districts and Prop. 51's sponsor, California's Coalition for Adequate School Housing, are nervous about changing the rules because so much rides on obtaining the funds: students need modern facilities; construction workers need jobs and the municipal bond industry needs business. San Francisco Unified School District, for example, has 23 modernization projects dependent on Prop. 51 funding, including projects at Washington and Lincoln high schools, and A.P. Giannini and Denman middle schools. While enrollment statewide is flat or declining, some districts, including Dublin and Fremont, need new schools to accommodate growth.

The governor's office swept aside last week concerns around delaying fund distribution or reordering the queue. "We are going to implement Prop. 51," said H.D. Palmer, spokesman for the state Department of Finance. "The people spoke; it is the law of the state."

The governor however is calling together stakeholders — school districts, builders, the financial industry and state agencies involved with funding applications — to figure out a new system going forward. His concerns are:

Cost: Prop. 51 loads an additional $500 million onto the $2.4 billion the state is paying annually to retire old school bonds.

Efficiency: 10 state agencies must approve bond funding, resulting in long time lines and "fragmented oversight."

Fairness: Larger districts that can afford personnel to bird-dog the applications tend to get funding, leaving out smaller or poorer districts with significant need but less ability to compete.

Flexibility: Current standards can result in costly new construction when maybe public dollars are better spent on educational programs or different kinds of facilities. Districts need more flexibility in how they raise and spend funds.

It is in every Californian's interest to keep borrowing costs low. Repaying Prop. 51 bond principal and interest crowds out general fund spending on other needs — affordable housing, transportation and water infrastructure, pensions. And everyone benefits when students have facilities to prepare them well for 21st century jobs. Prop. 51 addressed the short-term needs; now we should support the governor's efforts to address the long-term concerns that affect our state's future.

San Francisco Chronicle

Updated: December 25, 2016 2:00pm

IRS Issus New Guidance On The Beginning Of Construction Safe Harbor For Renewable Energy Projects: Foley & Lardner

The IRS recently issued Notice 2017-4 (the "Notice") which makes two important changes to its "beginning of construction" rules for taxpayers seeking to take advantage of the section 45 renewable electricity production tax credit (PTC) for wind and other renewable energy facilities including geothermal, biomass, landfill gas and certain hydropower and marine hydrokinetic energy projects. Under prior IRS guidance, including Notice 2016-31 discussed in our blog post here, taxpayers have two ways to establish that they started construction. They can either show that they began physical construction of a significant nature (the "Physical Work Test"), or incurred at least 5% of the total cost of the eligible facility (the "5% Safe Harbor"). However, once construction has begun or cost have been paid or incurred, the IRS requires taxpayers to make continuous progress towards completion to satisfy both the Physical Work Test and the 5% Safe Harbor ("Continuous Construction Requirement"). Taxpayers are deemed to satisfy the Continuous Construction Test provided they began construction on the facility prior to January 1, 2015, and place it in service prior to January 1, 2017 (the "Continuity Safe Harbor").

The Notice now permits taxpayers to fall within the Continuity Safe Harbor provided that they place the facility in service by the later of (1) a calendar year that is no more than four calendar years after the construction of the facility began or (2) December 31, 2018. This provides additional time for developers that have satisfied the Physical Work Test or 5% Safe Harbor to complete construction and place the facility in service without having to demonstrate that the Continuous Construction Requirement was satisfied. For example, if construction begins on January 15, 2013, and the facility is placed in service by December 31, 2018, the facility will meet the Continuity Safe Harbor.

The Notice also provides that the prohibition on taxpayers using both the Physical Work Test and 5% Safe Harbor methods in alternating years to push forward the facility's placed in service deadline does not apply to taxpayers that began construction on a project under either test prior to June 6, 2016. (The date that Notice 2016-31, which established this rule, was published.) Accordingly, taxpayers that began construction before this deadline can show that they have made continuous progress towards construction by relying on the Physical Work Test in one year and then relying on the 5% Safe Harbor the following year after they have paid enough costs to meet the 5% threshold. This is helpful because taxpayers acquiring projects may not have been satisfied with the manner in which the prior developer demonstrated the commencement of construction. The new rule permits them to "requalify" the project under a different method.

Last, the Notice provides guidance for developers using the 5% Safe Harbor for repowering and retrofitting existing projects. In order to take advantage of the tax credit, the facility must be "new" as determined by the 80/20 rule, which means that the cost of new parts must be four times the value of the used parts. The Notice clarifies that for purposes of satisfying the 5% Safe Harbor, the cost of the new property includes all costs properly included in depreciable basis, meaning that indirect costs that are allocated to the new property's depreciable basis should count towards the 5% Safe Harbor.

Last Updated: December 28 2016

Article by John A. Eliason, David B. Weisblat and Kurt R. Rempe

Foley & Lardner

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Kroll: Chicago Transit Authority's Second Lien Sales Tax Receipts Revenue Bonds, Series 2017 Rating Report.

Read the Report.

NASACT Webinar: Getting Ready for Infrastructure Change.

Start Date: 1/25/2017 2:00 PM
End Date: 1/25/2017 4:00 PM
Event Website: http://www.nasact.org/webinars
Organization Name: NASACT
Contact: Pat Hackney
Email: phackney@nasact.org
Phone: (859) 276-1147

OVERVIEW
Getting Ready for Infrastructure Change
Strategies to Prepare for the Expected Increase in Infrastructure Financial Capacity

State financial managers have always been on the front lines of infrastructure investments – from project identification and funding through delivery and operations. And state leaders, especially financial leaders, know the relationship between the state of good repair and economic vitality. Infrastructure renewal has become a topic front and center to the public during this last presidential campaign, and the public has included infrastructure renewal and investment in their thinking. As funding becomes available, how can states prioritize and better manage investments?

In this webinar we will review how state financial managers can:

- Help select/prioritize the right projects, including applying decision criteria techniques.
- Improve and increase transparency through controls, analytics and enhanced grants management.
- Leverage innovations, including RFID tags/newer technologies/techniques, to drive financial visibility into cost and safety.Join this session for insight into how state leaders can get behind projects and talk about their state's ability to deliver projects with confidence – on time, on budget, with the right type of funding and financing.

Speakers:

- Avi Schwartz, Principal, Deloitte Financial Advisory LLP
- Steve Dahl, Managing Director, Deloitte Consulting LLP

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CDFA | Dec. 28

Will the Muni Market Have a Voice on Trump's Infrastructure Task Force?

LOS ANGELES – Donald Trump could and should include municipal finance experts on an infrastructure task force that sources say the president-elect is interested in putting together, lobbyists and industry sources said.

Trump's administration appears to be in the early stages of forming a task force to determine how to carry out his promised $1 trillion infrastructure agenda, a force which The Washington Post reported may include son-in-law Jared Kushner, senior counselor Stephen K. Bannon, and others who are close to Trump but do not have experience in planning or financing public assets. According to a lobbyist familiar with transportation finance issues, the muni industry is likely to have an opportunity for input as well.

"It's not surprising that the transition team would begin thinking now," said Michael Decker, a managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association. "It's a topic that can draw on lots of different areas of focus" including the private sector and state and local government representatives.

Decker said infrastructure finance will be a big issue for SIFMA, and that the group has been thinking about and compiling ideas on policies that it believes make sense.

Jessica Giroux, general counsel and managing director for federal regulatory policy at the Bond Dealers of America, said that her group is interested in learning more about the task force and especially in reinforcing the need to protect the municipal bond tax exemption, something Trump has said he supports.

Trump's published infrastructure plan, which experts generally agree is incomplete if he wants to reach his 10-year $1 trillion investment goal, relies heavily on tax credits to incentivize private sector investment in projects like toll roads and others that produce isolatable revenue streams. And while it is still far from clear who will be on Trump's task force and how its role would differ from or complement the Department of Transportation and other departments handling infrastructure, it appears those close to Trump are seeking advice from the muni finance community.

"We are aware that some people on the transition team have been asking those in the industry for some thoughts on what can be done in the immediate sense, meaning, what can the administration do to make immediate changes that doesn't require new legislation or regulations," said the lobbyist, who spoke on condition of anonymity.

While an infrastructure task force could produce some recommendations for the Trump White House, much of the power will remain in the hands of legislators. The Republicans who now control both houses of Congress, may not support large spending increases or reauthorization of a Build America Bonds-type program, options that experts believe Trump may attempt but which Republicans have declined to embrace during the Obama administration.

Marcia Hale, executive director of Building America's Future, an infrastructure advocacy group, said she has heard that the Trump administration plans to huddle with the House and Senate and have a unified infrastructure plan. Trump seems likely to want to call the shots, she said.

"I know the president-elect is very serious about more infrastructure funding," Hale said. "No congressman or senator is going to be able to tell him how to get projects done or buildings built. That's his comfort zone."

The Bond Buyer

By Kyle Glazier

December 28, 2016

Jim Watts contributed to this story

A Budgeting Break for Small (and Big) Governments.

With less people and money, small towns are prone to making big and expensive errors. One company wants to change that.

Small towns and districts know all too well about limited resources. Their departments are made up of just a few employees; they have almost no support staff; and they can't afford fancy software that might help speed things along.

For finance directors, this makes budgeting a difficult and time-consuming task. In most less-populated places, the process is stuck in the 20th century: Budgets are created on Microsoft Excel, and directors are expected to consolidate versions between different departments.

At best, it's arduous work. At worst, it leaves a lot of opportunities for errors.

"As different people set up different accounts in the ledger, they might get the set up wrong," said Connie Maxwell, the budget director for Burnet, Texas. "Airplane revenue might show up under 'interest earned' because someone selected the wrong code."

Indeed, the low-tech process has lead to costly oversights.

In 2013, a Massachusetts school district was forced to suddenly lay off nearly a dozen employees after it discovered an error in the previous year's $34 million budget. The mistake had left the Groton-Dunstable Regional School District with a $400,000 shortfall halfway through the 2013-2014 school year.

In the small Napa Valley city of St. Helena, the discovery of a bookkeeping error last year exacerbated the California city's budget woes by adding another $500,000 to the existing $1 million deficit. The total shortfall represented 15 percent of the city's annual spending.

Maxwell said she typically spent nights and weekends finalizing the next year's budget proposal. But that changed this year when Burnet and a few other governments beta-tested a new tool from OpenGov that does for government budgets what TurboTax does for individual tax filers.

Among other things, OpenGov's Budget Builder automatically pushes relevant data into a government's accounting system, eliminating the need for finance directors to do that manually when there are changes. Instead of reconciling multiple spreadsheets to create a master one, the budget is stored as a project on OpenGov's cloud and users within each department can add budget requests to that one project. Changes are tracked, which helps people catch any errors. Users can also see the critical budget numbers in real-time — such as whether the proposed or current budget is running a deficit — and the system automatically builds charts and graphs to help users visualize their work.

A critical component is the price, which is where small localities often get left behind. According to OpenGov cofounder Nate Levine, the Budget Builder's cost depends on the size of the government and the annual fee can range from $10,000 to six figures.

"Typically, the solutions out there are sold as add-ons to existing products," he said. But the best, "government-centric [add-ons] are expensive and only accessible to larger governments."

For OpenGov, the product is another tool to lure governments to its growing web of resources and services. The end goal for the company is to create the world's first smart government platform — a cloud-based one-stop shop for budgeting, reporting and open data.

Now that the product has moved out of beta, it's rapidly catching on. This month, more than 20 other local governments including Harford County, Md.; Long Beach, N.Y.; and Culpeper, Va., announced they're rolling out Budget Builder.

The promise of less hassle has had tangible results. Those who have used the test version say they finished their budget at least one month earlier than usual.

With the extra time, Judy Smith, finance director of the Jackson County, Ga., Water and Sewerage Authority, said she's had more time to conduct her year-end financials and get ready for the new year. She's also been able to do helpful extras, like an inventory analysis.

In Burnet, which gets audited every year but doesn't produce a comprehensive annual financial report (CAFR), Maxwell said she hopes to publish such a report for the first time.

"After months of doing budgeting, CAFR was a dirty word," she said. "That potential is much more realistic for us now."

GOVERNING.COM

BY LIZ FARMER | DECEMBER 27, 2016

Are U.S. Territories Now Junk? Puerto Rico Creates Ratings Rift.

- Fitch cuts Guam's revenue bonds to junk; S&P holds A rating
- Pacific island struggles with budget deficits, high debt

The U.S. effort to help pull Puerto Rico from a fiscal crisis has two major rating agencies at odds over another U.S. territory's debt.

Fitch Ratings cut Guam's business-tax revenue bonds to junk last week, arguing that Puerto Rico's rescue law, known as Promesa, "fundamentally" alters the premise used to rate debt issued by territorial governments. Even though the act doesn't apply to the Pacific island 9,300 miles (15,080 kilometers) from Puerto Rico, analysts say it has set a precedent that could let other territories escape from obligations to bondholders.

S&P Global Ratings disagrees. It holds an A rating on the securities, reflecting the island's ability to pay investors.

Promesa "currently only applies to Puerto Rico. The idea that it already applies to Guam, in our view, is not correct," said Paul Dyson, an analyst with S&P. "We have no indication that Guam is going to do something similar to Promesa."

Unlike its Caribbean counterpart, Guam's economic outlook is stable, according to S&P. The territory, home to American Air Force and Navy bases, stands to benefit from U.S. plans to expand its military operations on the island, which is the closest U.S. territory to potential hot spots in Asia. Representatives for Donald Trump's transition team did not respond to requests for comment on whether the president-elect will reconsider the military buildup on the island.

Guam, however, shares some of Puerto Rico's fiscal challenges, such as unbalanced budgets, rising pension liabilities and swelling debt. It has $3.2 billion in obligations and a population of about 165,700, according to data compiled by Bloomberg.

The possibility that other territories will be given legal recourse to cut their debts — an idea that Guam officials have repeatedly rejected — has prompted some investors to reduce their positions. Daniel Solender, head of municipals at Lord Abbett & Co., which manages $20 billion of state and local securities, said he's sold some of the island's debt after Promesa was enacted on June 30 and doesn't own any of its business-tax bonds, in part because of Promesa.

"When the outcome of an investment might determined by a political process rather than the originally agreed upon terms, that makes the investment much more risky," said Solender, whose portfolio still holds some of the Pacific island's utility bonds. "Guam is not near that, but it opens up as a possibility now, which is hard to quantify."

Along with the downgrade, Fitch has since withdrawn its ratings on the territory because the government decided to stop its participation in the process.

Bloomberg Markets

by Tatiana Darie

December 28, 2016, 8:59 AM PST

Written with the assistance of Bloomberg's Municipal Global Data team.

[The Fall, Rise, Fall and Rise of Stamford, Connecticut.]

The world's largest trading floor is just up the street from the train station in Stamford, Connecticut. It was built in the mid-1990s for Swiss Bank Corp., and now covers 103,000 square feet. It's also empty.

UBS Group AG, which merged with Swiss Bank in 1997, was set to move the last of its employees out of the office complex at 677 Washington Boulevard this month. The mortgage on the building is in default and for sale, with the purchaser likely to take control of the troubled property. As the Wall Street Journal's Peter Grant put it last week:

Continue reading.

Bloomberg

10DEC 29, 2016 1:54 PM EST

By Justin Fox

[Fitch: New Jersey Quarterly Pension Payments Credit Neutral.]

Fitch Ratings-New York-21 December 2016: [Fitch Ratings-New York-20 December 2016: New Jersey's recently enacted Senate Bill 2810 (S2810), requiring quarterly payments to the state's pension systems beginning in fiscal 2018, is not likely to have a meaningful impact on the state's liquidity, budgetary flexibility or on the funded status of its pension systems, according to Fitch Ratings. However, it could result in higher cash flow borrowing in the future. The state's 'A' Issuer Default Rating/Stable Outlook, is well below most other states, reflecting its structural fiscal challenges and persistent underfunding of pension liabilities. Fitch expects these factors to remain unchanged with enactment of the bill.

S2810 will require the state, starting with fiscal year 2018, to make its annual employer pension contribution in level quarterly payments by the final day of each quarter, a change from the current practice of a year-end contribution. As the payment schedule is statutory, rather than constitutional, it does not limit the governor's executive authority to strike or reduce pension contributions during the fiscal year should the state experience an unanticipated revenue shortfall. That authority was upheld by a state superior court ruling in 2014.

S2810 also provides flexibility to the executive branch to make contributions at a time of its choosing within the quarter, and to net off any debt service cost associated with the increased cash flow borrowing necessitated by scheduling pension contributions earlier in the fiscal year. For fiscal 2017, the state has $1.5 billion in privately placed tax and revenue anticipation notes outstanding.

New Jersey's pension contribution, because it has historically been paid at fiscal year-end rather than periodically through the fiscal year, has become by default a form of budgetary cushion, notably when spring personal income tax (PIT) collections lag forecast expectations. In fiscal 2014, the governor slashed the annual pension payment by $883 million as a means to address a late-year $1 billion budget gap created, in part, by disappointing April PIT collections. Although S2810 may reduce the budgetary cushion available at fiscal year-end, a still sizable balance would remain to be paid in the last quarter of the fiscal year; $600 million in fiscal 2018 from an expected $2.4 billion pension system payment. New Jersey retains expansive powers to address budgetary weakness.

Fitch expects the new law to have little positive impact on the state's very strained pension systems in the near term. S2810 does not change the governor's one-tenth ramp-up schedule of annual contributions to reach the actuarially determined level in fiscal 2023. While contributions earlier in the fiscal year may result in higher accrued investment earnings over time, such gains are likely to be at a far lower rate of return than the unrealistic 7.9% assumed return level used by the systems. Moreover, given the forecast depletion dates for six of the state's seven plans, Fitch expects the systems' funded status to continue to erode, requiring shorter duration investments to support benefit outflows.

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Fitch: Declining Consumption Manageable for US Public Power.

Fitch Ratings-New York-27 December 2016: Public power issuers will likely manage the projected long-term decline in residential electricity consumption by using their inherent rate flexibility and lowering capex, according to Fitch Ratings. Despite expectations of higher electric sales during the next four months, average household electric demand is forecast to decline by 11% through 2040, according to the US Energy Information Administration (EIA).

The long-term decline in electricity demand will likely be driven by conservation efforts, more efficient lighting technologies, increasing efficiency standards and growth in distributed generation, particularly rooftop solar. Improvements in battery storage technology, expanded federal investment incentives and favorable net metering arrangements in some states, could push electric sales down even further.

The EIA's Short-Term Energy Outlook forecasts the average residential customer will consume 4% more electricity from December 2016 through March 2017, than the same period last winter. The projected increase reflects the record warmth of the winter of 2015-2016 and not a reversal in the trend of declining residential consumption.

The EIA has forecast that overall residential electricity will grow by just 9.0%, or roughly 0.3% per annum, from 2015-2040 on growth in the number of households alone. Average household electric demand is forecast to decline by 11%. Residential users represent the largest customer segment for public power and cooperative issuers.

Fitch's outlook for the public power and electric cooperative sector is stable through 2017, despite expectations of declining consumption. While lower electric sales could pressure public power issuers' unit costs, and force changes to budgeting and resource planning, factors including the sector's autonomous rate-setting authority and improved rate design should limit this risk.

We also believe potential long-run consumption declines will be managed through reductions in planned investment, particularly new generating capacity. Many issuers already adopted this strategy. Capital investment, as a percentage of depreciation, steadily declined throughout the public power sector since 2010. Among other factors, consumption trends and ample access to excess energy production led to this decline. We expect capex spending to remain low during the near term as issuers delay plans for new production units and leverage opportunities to exploit market overcapacity.

Together, these strategies should reduce revenue requirements and moderate required rate increases throughout the sector, while supporting the sector's fundamental mission of providing safe, reliable and low-cost electric service.

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27 DEC 2016 10:52 AM EST

In American Towns, Private Profits From Public Works.

In American Towns, Private Profits From Public WorksDesperate towns have turned to private equity firms to manage their waterworks. The deals bring much-needed upgrades, but can carry hefty price tags.

BAYONNE, N.J. — Nicole Adamczyk's drinking water used to slosh through a snarl of pipes dating from the Coolidge administration — a rusty, rickety symbol of the nation's failing infrastructure.

So, in 2012, this blue-collar port city cut a deal with a Wall Street investment firm to manage its municipal waterworks.

Four years later, many of those crusty brown pipes have been replaced by shiny cobalt-blue ones, reflecting a broader infrastructure overhaul in Bayonne. But Ms. Adamczyk's water and sewer bill has jumped so much that she is thinking about moving out of town.

"My reaction was, 'Oh, so I guess I'm screwed now?'" said Ms. Adamczyk, an accountant and mother of two who received a quarterly bill for almost $500 this year. She's not alone: Another resident's bill jumped 5 percent, despite the household's having used 11 percent less water.

Continue reading.

THE NEW YORK TIMES

By DANIELLE IVORY, BEN PROTESS and GRIFF PALMERDEC. 24, 2016

Tribal Corporation Sues Wisconsin City Over Power Plant.

GREEN BAY, Wis. — A tribal corporation is suing the Wisconsin city of Green Bay, seeking damages from a failed waste-to-energy plant.

The Oneida Seven Generations Corp. received the city's permission in 2010 to build a power plant fueled by municipal solid waste. However, after construction started, the city revoked the conditional use permit under pressure from citizens opposed to the plant.

The tribal corporation now wants to recover damages.

In the complaint filed Friday in federal court, the corporation says it lost around $21 million in profits and expenses, plus substantial legal expenses.

The Wisconsin Supreme Court last year affirmed an appeals court ruling that Green Bay improperly revoked the plant's permit.

The city attorney's office says it isn't ready to comment.

By THE ASSOCIATED PRESS

DEC. 27, 2016, 2:00 P.M. E.S.T.

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of fiduciary duty, and breach of contract claims against broker-dealers, investment advisors, and fund administrator on behalf of putative class of investors; detailed analysis of applicable statutes of limitation.
- And finally, Our Work Here Is Done is brought to us this week by *Trimble v. City of Albany*, in which firefighters hosed down a minor house fire, struck heroic poses, and instructed the family to pack up a few things and spend the night with relatives. And so they did. The minor glitch in the plan smoldered in a window well as they slept, eventually erupting into flame. The family returned, only to find a pile of ash. The fire department returned, only to find a lawsuit. And the circle of life rolls on.

UNIONS - CALIFORNIA

City of Palo Alto v. Public Employment Relations Board

Court of Appeal, Sixth District, California.November 23, 2016 - Cal.Rptr.3d - 5 Cal.App.5th 1271 - 2016 WL 6902091 - 2016 L.R.R.M. (BNA) 392, 764

City petitioned for a writ of extraordinary relief annulling Public Employment Relations Board's (PERB) decision ordering city to rescind its resolution referring a measure to the voters. The Court of Appeal granted a writ of review.

The Court of Appeal held that:

- City failed to consult in good faith with firefighters' union over city's vote to repeal city charter provision requiring binding interest arbitration upon impasses in wage negotiations;
- Requirement to consult in good faith with firefighters' union did not violate the charter city home rule provisions of the California Constitution;
- Evidence supported finding that city council was notified of union's desire to negotiate;
- Separation of powers doctrine barred PERB from ordering city to rescind resolution that violated Myers-Milias-Brown Act (MMBA);
- PERB was authorized to grant relief by declaring that city council's resolution was void; and
- Initiative's passage in election did not render the unfair practice charge moot.

City failed to meet its obligation under the Meyers-Milias Brown Act (MMBA) to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, where the city did not meet and discuss the issues.

The Meyers-Milias Brown Act (MMBA) did not violate the charter city home rule provisions of the California Constitution and the constitutional authority of the city council to propose charter amendments, in requiring a charter city to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, since the MMBA consultation requirement did not make the amendment process significantly less expedient.

Public Employment Relations Board's (PERB) decision did not represent such a sea change in California law as to preclude retroactive application of its decision that the Meyers-Milias Brown Act (MMBA) did not violate the charter city home rule provisions of the California Constitution and the constitutional authority of the city council to propose charter amendments, in requiring a charter city to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, since there was no previously settled rule that binding arbitration was not a mandatory subject of consultation.

Public Employment Relations Board (PERB) did not improperly deprive city of due process and fairness, in considering and rejecting several possible defenses that the city had not argued before sustaining firefighters' union's unfair practice charge against the city for failing to consult in good faith with union under the Meyers-Milias Brown Act (MMBA), since the issue of whether any valid defense existed for the city's acts was encompassed within the broader issue of whether the city violated the MMBA.

Public Employment Relations Board's (PERB) conclusion that firefighters' union gave city council adequate notice to preserve its right to negotiate over city's plan to place on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the conditions of employment for the city's firefighters, in ordering city to rescind its resolution referring the measure to the voters, was supported by substantial evidence, including evidence that the union specifically stated in writing that it wished to consult with the city about proposed changes to the provision and asked the city to comply with the Meyers-Milias Brown Act (MMBA), and evidence that city continued to consider the possible changes until it placed the measure on the ballot one year later.

The separation of powers doctrine barred Public Employment Relations Board (PERB) from ordering city to rescind its resolution placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the conditions of employment for the city's firefighters, as a remedy for the city's violation of the Myers-Milias-Brown Act (MMBA), since PERB's order would compel a legislative act.

A declaration by Public Employment Relations Board (PERB) that city council's resolution was void would be proper relief, on union's Myers-Milias-Brown Act (MMBA) unfair practice charge for city council's failure to negotiate with firefighters' union before placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the firefighters' conditions of employment, since such relief would effectively return the parties to the status quo ante, and would have the affirmative effect of "undoing" the invalid act without impermissibly infringing on legislative powers.

Union's Myers-Milias-Brown Act (MMBA) unfair practice charge, for city council's failure to negotiate with firefighters' union before placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the firefighters' conditions of employment, was not rendered moot or merely advisory by the passage of the measure in the election, since Public Employment Relations Board (PERB) was able to determine that the city engaged in an unfair practice, and PERB was able to order the city to cease and desist from refusing to meet with the union's members prior to adopting ballot measures to establish or modify rules or regulations for the administration of employer-employee relations.

ZONING & LAND USE - CALIFORNIA

[Orange Citizens for Parks and Recreation v. Superior Court]

Supreme Court of California, California - December 15, 2016 - P.3d - 2016 WL 7241419

City filed petition for writ of mandate and complaint for injunctive and declaratory relief, seeking to stop a ballot referendum that sought to nullify a general plan amendment providing that golf course property was designated low density residential.

Citizens filed cross-petition for writ of mandate and cross-complaint for declaratory relief, seeking to set aside zoning change and development agreement as inconsistent with city's general plan. City filed another petition for writ of mandate and cross-complaint for declaratory relief, specific performance, and injunctive relief, seeking to establish that project was consistent with general plan even without general plan amendment.

After bifurcation, the Superior Court entered judgment in favor of city, and citizens filed a petition for writ relief. The Court of Appeal affirmed in part, reversed in part, and remanded. The Supreme Court granted petition for review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- City council resolutions not adequately reflected in planning documents did not validly zone the property for residential development, and
- Residential development was inconsistent with the property's zoning for open space.

City abused its discretion in interpreting its general plan to include a city council resolution that upheld a planning commission recommendation to designate a subdivision for low density residential development in the land use element of the general plan, or a later resolution that purportedly amended the general plan's land use element to permit low density residential development in the subdivision, where the city never updated the land use policy maps of the general or specific plans to include the low density designation, any members of the public who requested a copy of the specific plan would have received a copy of the earlier resolution but not the underlying planning commission recommendation, the city later adopted a general plan amendment stating that a residential construction project in the subdivision was consistent with the general plan, opponents of the construction successfully conducted a referendum campaign against the amendment, and there was no evidence that city officials intentionally flouted the city council's directive to update the plan documents and map.

IMMUNITY - NEW YORK

[Trimble v. City of Albany]

Supreme Court, Appellate Division, Third Department, New York - November 23, 2016 - N.Y.S.3d - 144 A.D.3d 1484 - 2016 WL 6883669 - 2016 N.Y. Slip Op. 07912

Property owners whose home was destroyed, when fire re-ignited from undiscovered embers located in vicinity of window well after municipal fire department employee represented that it had been fully extinguished, brought negligence action against municipality.

The Supreme Court, Albany County, granted defendants' motion for summary judgment, and property owners appealed.

The Supreme Court, Appellate Division, held that:

- Property owners sufficiently raised genuine issue of material fact, of kind sufficient to preclude entry of summary judgment for municipality in negligence action, as to whether lead investigator's representations were sufficient to give rise to special relationship between municipality and

property owners, and
- Municipal firefighters' alleged failure to remove stack of firewood and the remains of lawn furniture from area of window well in violation of department protocol, following their containment and purported extinguishment of fire when it first broke out at property owners' home, did not involve the exercise of reasoned judgment.

Property owners whose home was destroyed, when fire that was represented to be fully extinguished by municipal fire department's lead investigator re-ignited from embers that remained undiscovered near window well, sufficiently raised genuine issue of material fact, of kind sufficient to preclude entry of summary judgment for municipality in negligence action, as to whether lead investigator's representations were sufficient to give rise to special relationship between municipality and property owners to protect property owners from dangers posed by risk that fire might re-ignite, on which property owners relied to their detriment in leaving home unattended for the night and foregoing other available avenues of protection.

Municipal firefighters' alleged failure to remove stack of firewood and the remains of lawn furniture from area of window well in violation of department protocol, following their containment and purported extinguishment of fire when it first broke out at property owners' home, did not involve the exercise of reasoned judgment of kind typically producing different acceptable results, as required for municipality, if such a violation of department protocol were established, to successfully assert governmental immunity defense to liability for firefighters' negligence in representing that fire had been fully extinguished and in allowing fire to re-ignite and destroy home from smoldering embers located underneath this stack of firewood.

SECURITIES FRAUD - PUERTO RICO

Fernandez v. UBS AG

United States District Court, S.D. New York - December 7, 2016 - F.Supp.3d - 2016 WL 7163823

Investors in Puerto Rico tax-free closed-end mutual funds brought putative class action against broker-dealers, investment advisors, administrator of funds, and officers of one of the broker-dealers, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract.

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

The District Court held that:

- Investors had Article III standing to assert claims on behalf of putative class;
- Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against same broker-dealer;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against different broker-dealer;
- Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied to claims alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing;
- PRUSA's two-year statute of repose did not apply to claims alleging breach of an express contractual provision imposing an obligation to conduct a suitability analysis;

- Claims alleging breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty, failed to plead fraud with sufficient particularity; and
- Only those investors whose contracts contained a provision obligating defendants to perform a suitability analysis sufficiently stated a claim for breach of contract.

Investors in Puerto Rico tax-free closed-end mutual funds had Article III standing to assert breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims against broker-dealers, investment advisors, and fund administrator, on behalf of putative class of investors in Puerto Rico tax-free closed-end mutual funds administered by same party. While not all investors had invested in same funds, the underlying allegations regarding defendants' misconduct applied to all of the funds, and the funds were all alleged to be structured the same way and to hold the same types of assets by the same defendants.

Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims, in putative class action alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims, regardless of whether the claims sounded in fraud, because no misrepresentations were alleged to have been made in connection with the purchase or sale of covered securities.

Investors discovered or reasonably should have discovered broker-dealers' alleged breach of their fiduciary duty, triggering Puerto Rico's one-year limitations period for tort claims, when reports of lawsuits and administrative proceedings against broker-dealer, which were probative of alleged breach of fiduciary duty, were publicized.

Publicized reports of lawsuits and administrative proceedings against broker-dealer, and accompanying media coverage, did not put investors on notice of their breach of fiduciary duty claims against a second broker-dealer, as would trigger Puerto Rico's one-year limitations period for tort claims, where second broker-dealer was not explicitly named in reports or media coverage.

Investors' claims against broker-dealer, alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, sounded in fraud, rather than mere negligence, and thus Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied, where the main thrust of the claims was that broker-dealer misrepresented the risks involved in investing in Puerto Rico tax-free closed-end mutual funds and pushed investor to invest in the funds in order "to line their own pockets," without disclosing all of their conflicts of interest and without assessing the suitability of the investments for their clients, when broker-dealer knew or should have known how risky the funds were because it helped underwrite the bonds that comprised the bulk of the funds.

Investors' breach of contract claims against broker-dealers, which were premised on an alleged breach of an express provision imposing an obligation to conduct a suitability analysis, were not subject to Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose, as such breach of contract claims did not rely on allegations of fraudulent conduct.

General allegations that broker-dealer pushed investors to invest in Puerto Rico tax-free closed-end mutual funds, by representing that they were safe when they were actually risky, did not plead fraud with sufficient particularity, as required to state claims of breach of fiduciary duty and breach of implied covenant of good faith; allegations did not include the required who/what/where/why/when of the alleged misrepresentations or omissions.

Blanket allegations that broker-dealer and fund manager breached implied covenant of good faith and fair dealing, based on misrepresentations and omissions, did not satisfy rule requiring fraud be pled with particularity; investors failed to attribute the purported misrepresentations and omissions to any particular defendant, and it was unclear as to when, where, or by whom the alleged misrepresentations or omissions were purportedly made.

Under Puerto Rico law, investor whose contract did not contain a provision obligating broker-dealer to perform a suitability analysis failed to state a claim for breach of contract based on broker-dealer's failure to conduct such analysis.

PUBLIC UTILITIES - RHODE ISLAND

Portsmouth Water and Fire District v. Rhode Island Public Utilities Commission

Supreme Court of Rhode Island - December 6, 2016 - A.3d - 2016 WL 7105876

Water district petitioned for writ of certiorari, challenging order of Public Utilities Commission finding that net-cost savings realized by city water utility were available to city water utility to reduce its payables to city, and further recognizing that savings city water utility realized through specific types of efficiencies were a means for city water district to commence required repayment of debt city water utility owed to city.

The Supreme Court of Rhode Island vacated the Commission's order and remanded for more specific findings of fact. On remand, the Commission entered an order identifying, inter alia, specific areas of savings and reductions in reference to efficiencies and certain excess revenues city water utility could use to repay debt to city. Water district petitioned for writ of certiorari, challenging Commission's remand order.

The Supreme Court of Rhode Island held that:

- Commission complied with Supreme Court's remand order directing Commission to make more specific findings of fact; and
- Commission lawfully and reasonably defined "efficiencies"; but
- Commission's order on remand ruling that city water utility could use certain excess revenues to repay certain debts owed to city exceeded scope of remand order.

Public Utilities Commission complied with Supreme Court's remand order directing Commission to make more specific findings of fact to support Commission's conclusion that city water utility complied with Commission's initial order permitting water utility to use savings realized from efficiencies to pay down accounts payable balance water utility owed to city, since, in order on remand, Commission clearly identified 12 areas in which water utility realized savings through efficiencies and quantified total amount saved, and even though Commission did not provide detailed itemization of savings that water utility achieved or create line item that corresponded to each efficiency identified, Court did not require such degree of specificity.

Public Utilities Commission lawfully and reasonably defined, identified, and quantified "efficiencies," following Supreme Court's remand order directing Commission to make more specific findings of fact to support Commission's conclusion that city water utility complied with Commission's initial order permitting water utility to use savings realized from efficiencies to pay down accounts payable balance water utility owed to city. In making definition, Commission gave examples of what it deemed to be efficiencies, and instead of looking only at specific items that created savings, Commission considered totality of water utility's operations.

Public Utilities Commission's order on remand ruling that city water utility could use certain excess revenues to repay certain debts owed to city exceeded scope of Supreme Court's remand order, since remand order limited Commission to making more specific findings of fact to support its conclusion that water utility complied with Commission's initial order permitting water utility to use savings realized from efficiencies to pay down accounts payable, and initial order was silent on whether excess revenues could be used to reduce the debts water utility owed to city.

PUBLIC UTILITIES - SOUTH DAKOTA

In re Black Hills Power, Inc.

Supreme Court of South Dakota - December 14, 2016 - N.W.2d - 2016 WL 7245331 - 2016 S.D. 92

Intervenors appealed Public Utility Commission's approval of amended stipulation for rate increase for electricity provider.

The Circuit Court affirmed. Intervenor appealed.

The Supreme Court of South Dakota held that:

- Provider was entitled to file adjustments to its cost analysis after its initial application;
- Commission did not act arbitrarily or capriciously in considering five-year period of pension normalization without considering sixth year; and
- Evidence supported Commission's decision to consider provider's incentive-compensation plan.

Under rule requiring analysis of system costs for test year prior to approval of rate increase, electricity provider was entitled to file adjustments to its cost analysis after its initial application for rate increase.

In considering electricity provider's application for rate increase, Public Utility Commission did not act arbitrarily or capriciously in considering five-year period of pension normalization without considering sixth year. There was no indication that Commission's acceptance of five-year normalization was in any way based on personal, selfish, or fraudulent motives or that information was in any way false.

Evidence supported decision of Public Utility Commission to consider electricity provider's incentive-compensation plan in cost analysis when considering application for rate increase. Significant amount of plan concerned employee safety and other nonfinancial goals, such as retaining key employees.

SPECIAL ASSESSMENT LIEN - VIRGINIA

Cygnus Newport–Phase 1B, LLC v. City of Portsmouth

Supreme Court of Virginia - September 22, 2016 - 292 Va. 573 - 790 S.E.2d 623

Property owner brought action against city and community development authority, alleging that a special assessment lien, recorded after a deed of trust, was extinguished by the foreclosure sale and that the special assessments were void.

The Circuit Court granted the pleas in bar and dismissed the complaint. Owner appealed.

The Supreme Court of Virginia held that:

- Special assessment liens have priority over previously recorded deeds of trust;
- Special assessment lien was enforceable against property owner; and
- Owner's belated challenge to special assessments was foreclosed.

Special assessment lien was enforceable against property owner after foreclosure sale on deed of trust, even though deed of trust was recorded before lien, where city filed in deed book of circuit court clerk's office an abstract of ordinance authorizing improvements, which made lien enforceable against any person deemed to have had notice of assessment, and owner had notice of assessment and lien when it acquired deed of trust and property at foreclosure.

State constitution and code foreclosed property owner's belated challenge to special assessments on property that owner acquired following foreclosure sale on deed of trust. Owner acquired its interest long after assessment agreement with former owner had been finalized and recorded, assessments approved and recorded, and bonds issued, owner filed suit approximately nine years after special assessments were imposed and bonds issued, and state constitution and code did not contemplate endless challenges from subsequent purchasers who bought property with notice of existence of assessment, notice of agreement with former owner, and notice of what infrastructure had been constructed.

EMINENT DOMAIN - WEST VIRGINIA

Mountain Valley Pipeline, LLC v. McCurdy

Supreme Court of Appeals of West Virginia - November 15, 2016 - S.E.2d - 2016 WL 6833119

Landowners brought action against private pipeline company, seeking declaratory judgment that company could not enter their property to survey the area as potential location for natural gas pipeline that company planned to construct.

The Supreme Court of Appeals held that company's proposed natural gas pipeline was not being constructed for "public use," and thus, statute governing entry on lands by incorporated companies did not allow company to enter landowners' property to survey the area as potential location for the pipeline.

Private company's proposed natural gas pipeline was not being constructed for "public use," and thus, statute governing entry on lands by incorporated companies did not allow company to enter landowners' property to survey the area as potential location for the pipeline, where owners of natural gas were affiliates of the company, company could not identify single West Virginia consumer or natural gas provider who was not affiliated with the company who would derive benefit from the pipeline, and company had no firm agreement to ship natural gas through the pipeline for anyone other than affiliated companies.

Early Views On The US Energy And Infrastructure Sectors Under A Trump

Administration: Sherman & Sterling

Energy and infrastructure policy was as at the forefront of the presidential election discussion and has continued to be highlighted as a focus for the Trump administration. Here, we take an early look at how a Trump administration could affect the US energy and infrastructure sectors.

Renewables

- The current renewable energy industry continues to rely on tax credits for growth. The Production Tax Credit (PTC) is primarily utilized by the wind energy industry, while the Investment Tax Credit (ITC) is utilized by investors in both wind and solar. Predictability for these tax credits has been critical for future investment – for example, investment in wind has historically significantly slowed in past periods leading up to an expiration date.
- The FY16 Omnibus Appropriations Bill passed in December 2015 included the extension, step-down and, ultimately, phase-out of both the ITC and the PTC. Despite the phase-out, the renewal of the ITC and PTC programs is expected to spur new investment into the 2020s.
- The advent of the new administration, at a minimum, plays a role in creating a degree of uncertainty around the previously assumed stability of the tax credits. While Congress has the power to repeal the credits, including as part of a comprehensive tax reform which has been discussed by Trump, there are many factors that make major changes to the tax credits unlikely.
- Over the past eight years, wind turbines and solar panels have begun moving into states held by GOP politicians, lending renewable energy increasing bipartisan support in key geographic areas of the country.
- In 2008, just 12 US House Republicans represented districts where utility-scale solar facilities are located; in 2016, the number has risen to 89.1 In that same time span, the number of House Republicans with utility-level wind power facilities in their districts increased from 34 to 67.2
- In terms of the production capacity of wind power, the top states in 2015 were Texas, Iowa, California and Oklahoma.3 The states opening the greatest number of wind power facilities between 2008 and December 2015 were Texas and Iowa (opening 74 and 60 wind facilities, respectively).4 Since 2008, North Carolina has opened 281 solar-power facilities, second only to California.5 In terms of state-by-state representation, Republican senators now represent approximately half of the top wind energy states and half of the top solar energy states.6
- There are, of course, Republicans and Republican organizations that oppose credits as an unfair subsidy. And while Trump himself has been a vocal opponent of President Obama's executive actions on climate, Trump did not openly oppose the tax credits and even supported the wind credit, as phased out over the next years.
- On balance, the changeover of agency control at the IRS and Treasury could be more likely to have an effect on the ITC and PTC. Treasury and IRS have the ability to affect the implementation of the credits, by issuing guidance on their use. However, these changes in guidance cannot alone repeal the credits.
- Another potentially powerful factor to consider is the effect of Trump slashing corporate tax rates from 35% to 15%. If corporations have a drastically lower overall tax liability, there could be less need for corporations to engage in tax-equity investments to round up offsetting credits. While, in the past, demand for tax-equity outpaced supply, the tax-equity investment market in renewable energy could lose momentum at a time when wind and solar projects are expected to require approximately $56.2 billion over the next four years.7 Those in the industry expect that demand will not fall so much that tax-equity will run dry, but investors should keep an eye on this space.

Oil, Gas and Coal – Outlook

- Throughout his campaign, Trump has promised to "unleash America's $50 trillion in untapped shale, oil and natural gas reserves."8 However, Trump's energy plan by itself may not have the ability to achieve this goal. In the current economic climate, many oil and gas companies have slowed down on new drilling activity because there is already a glut of supply brought on by the shale revolution. Last year, the US produced its highest average of oil per day since 1972, doubling the 2008 average.9 Crude prices hit a low of $26.21 a barrel in New York in early February.10 Continued increases in production resulting from a Trump plan to further lift regulations on the oil and gas industries could have the effect of driving prices down. Additionally, any changes in US policy will need to be viewed in light of macroeconomic forces such as the recent OPEC decision to reduce production.

- It also has not necessarily been clear that production activity was significantly affected by environmental regulations. Oil and gas companies have in many cases scrapped significant projects because of the low price of oil rather than burdensome regulation. Investment is expected to increase only as it becomes commercially attractive again, whether or not environmental rules and regulations have been nullified.
- One part of the oil and gas market that may grow under a Trump administration is the midstream pipeline market. Trump has pledged to approve certain pipelines currently blocked by the Obama administration on the grounds of environmental concerns. Trump-led agencies are also expected to be an asset to midstream players, incentivizing investors to lower the risk premium currently imposed on companies seeking to build out this type of infrastructure. In turn, the enhanced infrastructure and transportation for petroleum products would also improve economics for major upstream operators.
- The coal industry has celebrated Trump's victory, following his promise to put miners back to work. As natural gas has become a cheaper alternative fuel source, however, utility companies have naturally reduced their reliance on coal as an energy source. Since 2008, over 300 coal-fired power plants across the nation have closed.11 While many countries still import American coal, coal exports fell 23% overall in 2015 and fell another 32% in the first six months of 2016.12 Any help given to the natural gas industry by a Trump administration may further affect the opportunities for a bounceback in the coal industry. It appears unlikely that investors would seek out new coal opportunities in great numbers, especially considering that any regulations removed or blocked from implementation under a Trump presidency (such as the Clean Power Plan), could be imposed by a successor administration.
- In summary, the mix of power generation may very well stay similar to what it is today – market forces could have more impact than a Trump administration, though Trump-led agencies may nudge up the production of oil and gas and the expansion of the coal industry.

Infrastructure

General

- The first policy statement that President-Elect Trump made in his acceptance speech in the early hours of November 9 was his desire to create jobs by rebuilding the country's infrastructure so that it would be "second to none." This statement was consistent with the Trump-Pence campaign's message during the run-up to the election.
- Although he has not yet proposed specific policy programs, Trump's "Contract with the American Voter," which sets forth his agenda for his first 100 days in office, makes reference to a proposed American Energy and Infrastructure Act that would involve the investment of $1 trillion in infrastructure over 10 years.
- Trump's initial statements on infrastructure, and the prevalent bipartisan view in favor of infrastructure improvement to spur job growth, could result in a significant increase in private investment opportunities in the sector.

Private Investment and P3s

- Trump's infrastructure plan could provide significant opportunities for investments in public-private partnerships (or P3s) in particular, specifically major projects with ample revenue streams.
- Trump has spoken favorably regarding P3s and other innovative procurement methods to stimulate investments in major projects and to complete them on time and on budget, which governments frequently struggle to do. During the campaign, Trump pledged to eliminate regulatory red tape that would enable projects to be completed faster and at lower cost. As set forth in his Contract with the American Voter, the central tenets of Trump's infrastructure plan include "leveraging public-private partnerships" and the creation of tax incentives to fuel equity investment. Given his real estate development background, where tax incentives are often key investment drivers, these views are not surprising.
- Some details regarding Trump's plan were outlined toward the end of the campaign by two of his senior policy advisors, Wilbur Ross, a private equity investor (who has been tapped as the proposed Secretary of Commerce), and Peter Navarro, a UC-Irvine business professor, in a paper contrasting Trump's and Clinton's proposals on infrastructure.13 The paper has attracted significant commentary, both positive and negative, from lawmakers and other stakeholders on both sides of the political aisle.
- Under the plan outlined in the paper, Trump envisions the private sector contributing $167 billion of the contemplated $1 trillion investment in the sector. In return, investors would receive an 82% tax credit, which would be repaid to the government from the incremental tax revenues resulting from project construction (realized primarily through wage income growth and contractor profits). The overall equity return on these investments would be roughly 9-10%.
- This investment plan dovetails with Trump's plan to incentivize the repatriation of corporate income held overseas by offering a reduced tax rate on profits of 10 percent, instead of the 15 percent that would apply under Trump's tax plan (or 35 percent under current tax law). The paper suggests that these firms could, in turn, recoup their tax payments through the infrastructure tax credit described above.
- The paper also suggests that Build America Bonds (BABs) or similar instruments could provide a viable, low-cost source of debt financing. BABs, notably, have historically had significant bipartisan support. They are less expensive to the Treasury than traditional tax-exempt bonds and provide tax credits to issuers for a portion of the interest payments on the notes. Trump has suggested since the election that such bonds could be issued by a dedicated infrastructure fund.
- In addition, the paper focuses on projects with revenue streams sufficient to attract significant private sector investment. It does not discuss potential sources of financial support for projects, P3s or otherwise, which either have no dedicated revenue stream (or a limited one) and/or would not qualify for debt financing through BABs or other instruments.
- It is important to bear in mind that the US infrastructure is driven by policies and facts and circumstances affecting states and localities. Thus, even with a push by Trump, the sector will still need considerable cooperation by states and local authorities, and the existence and form of investment opportunities will be shaped in large part by policy makers at those levels of government.

Sales of Brownfield Infrastructure Assets

- Over the last few years, the US market has seen a significant uptick in investment opportunities in mature infrastructure assets, in particular in the toll road space, marked by the multi-billion dollar sales of the Indiana Toll Road and neighboring Chicago Skyway in 2015 and early 2016, respectively, and the recently agreed sale of the Pocahontas Parkway. Other road and parking assets are currently on the block and attracting investor attention.
- Trump's plan points to a continuation of such trend. In addition to the tax incentives inherent in

the plan, increased investment opportunities in greenfield projects could result in further opportunities in mature assets, as the funds that own these assets approach the end of their investment period or developers look to create dry powder for new investments.

Legislation

- In December 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act, a five-year bill that reauthorized, at then-current levels, the core programs providing federal transportation funding to the states. Notably, the FAST Act was the first long-term transportation bill passed in 10 years.
- The FAST Act also continued key programs within the US Department of Transportation (USDOT) that have provided support to P3s, including the Transportation Infrastructure Financing and Innovation Act (TIFIA) loan program and the use of Private Activity Bonds (PABs) to finance the construction of surface transportation projects and water projects.
- Given their positive track record, and the projected funding need, it would seem likely for these programs to continue to play a significant role in infrastructure financing under the Trump Administration. Trump's selection for Secretary of Transportation, Elaine Chao, is well-versed on federal transportation policy matters and should be familiar with these programs and given her former role as deputy secretary of USDOT. However, given Trump's focus on privately-led investment solutions, it seems less likely that any new transportation legislation would increase the budget authority of these programs, or create a National Infrastructure Bank, which had been suggested by President Obama and Hillary Clinton, among others.
- In the water sector, the houses of Congress have been discussing their respective proposals for the Water Resources Development Act (WRDA), which would authorize numerous Army Corps of Engineers projects and provide funds to support communities like Flint, Michigan that have suffered due to contamination. The Senate's version of the bill also includes additional funding for the state revolving funds (SRFs) – under which states provide loans and grants to municipalities for water projects and appropriations for the Water Infrastructure Finance and Innovation Act (WIFIA) program, which would make low-cost loans to public and private entities for water infrastructure improvements. There is optimism for passage of the WRDA during the current lame duck session, which is currently scheduled to run until December 16.
- During the campaign, Trump pledged to make clean water a high priority and in particular to triple funding to the SRFs in order to upgrade critical drinking water and wastewater infrastructure. Even if no WRDA is passed this year, it seems likely that Congress will take up a new version of the bill in its next session.
- Once Trump is sworn into office, investors will be waiting to see the extent to which new legislation on infrastructure takes shape that could create new programs such as those referred to above or otherwise incentivize private investment in the sector.

Footnotes

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2 Id.

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4 Fitzpatrick, supra note 1.

5 Id.

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7 Joe Ryan & Brian Eckhouse, Trump's Tax Proposals Would Threaten Wind and Solar Investment, Bloomberg (Nov. 7, 2016).

8 Donald J. Trump, An America First Energy Plan, https://www.donaldjtrump.com/policies/energy (last visited Dec. 2, 2016).

9 Matt Egan, Does Donald Trump's Plan to Drill More Oil Make Sense?, CNNMoney (May 31, 2016).

10 Clifford Krauss, Oil Prices: What's Behind the Volatility? Simple Economics, N.Y. Times (Nov. 2, 2016).

11 Sheryl Gay Stolberg, Trump's Promises Will Be Hard to Keep, but Coal Country Has Faith, N.Y. Times (Nov. 28, 2016).

12 US Energy Information Administration.

13 Wilbur Ross & Peter Navarro, Trump Versus Clinton on Infrastructure, http://peternavarro.com/sitebuildercontent/sitebuilderfiles/infrastructurereport.pdf (last visited Dec. 2, 2016).

Last Updated: December 9 2016

Article by Robert N. Freedman, Paul J. Epstein and Alyssa Cowley

Shearman & Sterling LLP

U.S. Department Of Treasury Announces 2015-16 Round Of New Markets Tax Credit Allocation For Financing Projects And Businesses In Low Income Communities.

In late November, the U.S. Department of Treasury's Community Development Financial Institution (CDFI) fund announced the latest, eagerly awaited round of New Market Tax Credits (NMTC) allocations. The CDFI selected 120 community development entities (known as CDEs) out of a pool of 238 applicants. The current NMTC allocation, totaling an unprecedented $7.0 billion dollars of tax credit availability, represents a combined 2015-2016 round. NMTC's are targeted to attract private investment capital for qualifying businesses and real estate projects in urban and rural low income communities nationwide.

The highly successful federal NMTC program was created through the Community Renewal Tax Relief Act of 2000 to facilitate economic and community development in low income, distressed communities by providing investors with a 39 percent tax credit for investing in qualifying projects. Since its inception, the NMTC program has sourced significant amounts of low cost capital for projects that were otherwise difficult or impossible to finance through conventional lending. Now in its 13th year of funding, NMTCs have historically been in high demand by developers seeking creative solutions to project financing.

If you are developing a project located in an urban or low income community, we encourage you to contact the attorneys at Fox Rothschild to discuss the potential use of NMTC financing for your project.

Last Updated: December 13 2016

Article by Daniel V. Madrid

Fox Rothschild LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

The New Issue Price Regulations – "Bought Deals," Bored Bidders, and Other Problems.

As you have heard, and as we noted last week, Treasury and the IRS recently released final regulations that tell issuers how to calculate the "issue price" of tax-advantaged bonds that are issued for money. The regulations don't take effect until June 7, 2017, so we can spend some time luxuriating in their nuances and preparing for the new order of things until the appointed hour arrives. As ever, though the new regulations seem to carve out some discrete rules, interesting [sic] questions lurk in the margins.

Continue reading.

By Johnny Hutchinson on December 22, 2016

The Public Finance Tax Blog

Squire Patton Boggs

TAX - CALIFORNIA

In re Transient Occupancy Tax Cases

Supreme Court of California, California - December 12, 2016 - P.3d - 2016 WL 7187624

Online travel companies petitioned for writ of mandate challenging city's determination that companies were responsible for paying transient occupancy tax on their service fees.

The Superior Court granted writ of mandate. City appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that tax was not payable on amounts retained by travel companies above the amounts remitted to hotels as the agreed wholesale costs of room rentals plus the hotel-determined markup.

City transient occupancy tax, which was charged as percentage "of the Rent charged by the Operator," was not payable on amounts retained by online travel companies above the amounts remitted to hotels as the agreed wholesale costs of room rentals plus the hotel-determined markup.

Travel companies were not “operators” under the ordinance and did not act as agents for purposes of setting and collecting additional markups from room occupants, and contractual provisions between hotels and travel companies apportioning tax responsibility did not create tax liability.

EPA RFC: Fees for Water Infrastructure Project Applications Under WIFIA.

SUMMARY:
EPA is proposing to establish fees related to the provision of federal credit assistance under Subtitle C of the Water Resources Reform and Development Act of 2014 (WRRDA), which is referred to as the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). WIFIA authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects and to charge fees to recover all or a portion of the Agency’s cost of providing credit assistance and the costs of retaining expert firms, including financial, engineering, and legal advisory services, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments. The agency seeks comment on all aspects of this proposal.

DATES:
Comments must be received on or before February 17, 2017.

To learn more, and to comment, click here.

EPA RFC: Credit Assistance for Water Infrastructure Projects.

SUMMARY:
The Environmental Protection Agency (EPA) is issuing an interim final rule to implement a new program authorized under Subtitle C of the Water Resources Reform and Development Act of 2014 (WRRDA), which is referred to as the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). WIFIA authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. Projects will be evaluated and selected by the Administrator of the EPA based on criteria set out in this rule using weightings established in a separate Notice of Funding Availability (NOFA). Following project selection, individual credit agreements will be developed through negotiations between the project sponsors and EPA. EPA is soliciting comments on an interim final rule that establishes the guidelines for the new credit assistance program for water and infrastructure projects and the process by which EPA will administer such credit assistance. The interim final rule primarily restates and clarifies statutory language while establishing approaches to specific procedural issues left to EPA’s discretion. This interim final rule pertains to a matter involving a federal loan and loan guarantee program and is therefore exempt from the rulemaking requirements of the Administrative Procedure Act. As such, EPA is issuing this rule as interim final.

DATES:
Effective December 19, 2016. Comments must be received on or before February 17, 2017.

To learn more, and to comment, click here.

CDFA Fundamentals of Economic Development Finance WebCourse.

January 25-26, 2017 | Daily: 12-5pm (Eastern)

The Fundamentals of Economic Development Finance WebCourse is the foundation for all of CDFA's educational offerings. This course will help you understand the variety of development finance tools available, from bonds, tax credits and TIF, to federal financing programs, RLFs, and access to capital lending resources.

The Fundamentals Course is based on CDFA's Practitioner's Guide to Economic Development Finance, the only comprehensive reference guide dedicated to building and utilizing the development finance toolbox. The Practitioner's Guide provides the insight and practical information needed to critically understand how economic development is financed and the tools, strategies and techniques used to build strong communities.

This course qualify for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Complete three courses and you will fulfill half of the requirement for the DFCP Program. Start down the road to personal and professional advancement today.

To learn more, and to register, click here.

Register before January 6, 2017 for early-bird rates.

MBFA: Sign Our Letter to Save the Muni-Exemption.

Municipal Bonds For America will be sending a letter to all House and Senate Leadership, House Ways & Means and Senate Finance Committee Members urging them to retain current law on municipal bonds as a part of their upcoming legislative debate.

The letter was intentionally drafted to be short and simply focuses on urging Members to oppose any efforts to limit or repeal the exemption.

The intent of the letter is not to get Members to focus on its content, but to get them to focus on who signed the letter from their state or district.

MBFA's goal is to collect a minimum of 300 signatures for this letter.

We strongly encourage each of you and your organizations to immediately take the following action:

1. Obtain sign-off from your parent organization to have your organization's name affixed to the letter–and follow the instructions (below) to make that happen.
2. Alert your organization's individual members regarding the opportunity to join with other like-minded organizations in supporting municipal bonds. MBFA wants to include the signatures from as many airports, hospitals, education entities, transportation authorities, mayors, broker/dealers, construction companies, and all others as signatures to this letter.
3. To view and add your signature to the letter please click here.

The deadline for affixing your signature to this letter is Thursday, January 19, 2017.

Thanks for your help. If you have any questions please feel free to reach out to Justin Underwood at justin@munibondsforamerica.org.

For more information on the MBFA please visit www.munibondsforamerica.org

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NABL Teleconference on Final Issue Price Regulations.

Find out what you need to know about the recently released final issue price regulations by registering for NABL's free teleconference, "What You Need to Know About the Final Issue Price Regulations."

Join moderator Tom Vander Molen, Dorsey & Whitney LLP, and panelists John Cross, Associate Tax Legislative Counsel, U.S. Department of the Treasury; Arthur Miller, Goldman, Sachs & Co.; and Linda Schakel, Ballard Spahr LLP as they provide their government, underwriting and private practice perspectives on the these new regulations.

This NABL members only teleconference will take place on **Tuesday, January 10, 2017, from 1:00-2:30 pm Eastern**. No CLE will be offered. The registration deadline for this teleconference is, Friday, January 6, and all participants will receive the teleconference materials and dial-in instructions via email on Monday, January 9.

Register for this free teleconference today!

Fitch: Pension Demands on U.S. States and Locals Rising Quickly.

Fitch Ratings-New York-21 December 2016: State and municipal retirement benefit expenditures grew approximately twice as fast as revenues and most other spending areas in recent years, according to an analysis of newly released US Census data by Fitch Ratings. Similar growth has been seen in government contributions to pension plans, reported separately by the Census Bureau.

Rising pension demands for contributions to trust funds from employers and for benefit payments from trust funds have effectively offset much of the revenue gains realized by state and local governments over the last several years, leaving less for other spending categories. This appears likely to continue as governments are forced to address persistent pension funding gaps.

Between 2004 and 2014, retirement benefit expenditures increased by approximately 89% or $122 billion in nominal terms. That easily outpaced the 47% growth in "own source" revenues, primarily from taxes and fees that governments collected over the same period. Higher retirement benefit expenditures equaled almost 18% of the $692 billion in nominal revenue growth.

Retirement benefit expenditures growth exceeded corresponding growth rates for all other major spending categories during the period, including hospitals, police and K-12 education. Retirement benefit expenditures expanded as a share of overall expenditures nationwide, to 8.0% in fiscal 2014 from 6.1% in fiscal 2004.

Shifting spending priorities across the large number of jurisdictions reporting to the Census Bureau have contributed to the changing expenditure mix. Retirement benefit expenditure pressures have mounted, but a similar acceleration in spending growth has been reported in areas such as health care and Medicaid.

Looking across the major expenditure categories reported in the Census data over an 11-year period, growth rates for transportation and education were among the lowest at 36% and 38%, respectively, falling short of the 47% revenue growth rate and barely exceeding the inflation rate.

At the same time, employer contributions to pension trusts along with asset returns supporting retirement benefit expenditures, have risen due to heightened concerns over pension sustainability. According to the Census Bureau's separate Public Pension survey data, contributions rose 82% over the 2004-2014 period, or $75 billion. Total contributions have remained at around two-thirds of annual benefit payments over that period. Taken together, these two trends indicate that pensions are "crowding out" other spending needs.

BDA to Submit Petition for SEC Rulemaking: Amendments to Form ADV.

Today, Bond Dealers of America will submit a letter that petitions the SEC to engage in a rulemaking to amend Form ADV. BDA's recommendations, if adopted, would make client prospecting more efficient for dealer sales personnel.

BDA's letter recommends three changes to Form ADV:

Recommendation 1: Harmonize the client and client-related asset under management percentages in Item 5, section D2 with the percentage-breakdowns in section D1. This would allow for a more detailed understanding of not only who an adviser's clients are, but what percentage of AUM is related to each client type.

Recommendation 2: Often investment advisers will input AUM attributable to credit unions in the section (m) for "other". BDA believes it would be more valuable to report those assets under (c) so that all AUM attributable to financial institutions be reported in a single line item. Therefore, BDA recommends 'credit unions' be explicitly added to section (c).

Recommendation 3: BDA recommends adding a new section titled F3 to Item 5, which would add a percentage breakdown of adviser AUM by asset type. While it is important to have the total value of AUM reported in section F, BDA believes that adding a section that shows the types of assets, including fixed-income assets, held would be valuable.

We hope this information is helpful. Please contact the BDA with questions or comments.

Jessica Giroux at jgiroux@bdamerica.org
John Vahey at jvahey@bdamerica.org
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rcrodriguez

December 19, 2016

Financial Reporting Model Invitation to Comment Coming Soon.

In the coming days, we'll be issuing the first document for public comment in the project reexamining the financial reporting model. The document is titled Invitation to Comment, *Financial Reporting Model Improvements—Governmental Funds*. The Board believes this project will have significant impact on the foundation of state and local governments' accounting and financial reporting.

This phase of the project addresses the following potential improvements to governmental fund reporting:

- Recognition approaches (measurement focus and basis of accounting)
- Format of the governmental funds statement of resource flows
- Specific terminology
- Reconciliation to the government-wide statements, and
- For certain recognition approaches, a statement of cash flows.

Input from you and other stakeholders on these specific areas will inform the proposals the Board issues in the future of this project. Your feedback and ideas will be critical factors in both shaping the future of this project and ensuring that the GASB heads down the best path toward making improvements in the model.

The following additional topics will be considered for inclusion in a Preliminary Views in the next phase of the project:

1. *Government-Wide Statement of Activities* — The Board will consider alternatives for the format of the statement of activities.
2. *Proprietary Fund Financial Statements* — The Board will consider reporting alternatives related to the existing requirement to separately present operating and nonoperating revenues and expenses.
3. *Budgetary Comparisons* — The Board will consider the appropriate method of communication (as a basic financial statement or required supplementary information) for budgetary comparison information and which budget variances, if any, should be required to be presented.
4. *Permanent Funds* — The Board will consider alternatives for reporting information about permanent funds.

The following additional topics will be considered for inclusion in an Exposure Draft in a future phase of the project:

1. *Management's Discussion and Analysis* — The Board will consider alternatives for enhancing the financial statement analysis component of management's discussion and analysis (MD&A), eliminating components of MD&A that are boilerplate and no longer necessary for understanding the financial reporting model, and clarifying guidance for presenting the section of MD&A on currently known facts, decisions, or conditions that are expected to have a significant effect on financial position or results of operations.
2. *Debt Service Fund Presentation* — The Board will consider alternatives for providing additional information about debt service funds, either individually or in aggregate, in the basic financial statements.
3. *Extraordinary and Special Items* — The Board will consider alternatives to improve the consistency of application of the guidance for reporting extraordinary and special items.

4. *Other Issues* — As appropriate and in conjunction with other topics, the Board will consider alternatives that could permit more timely financial reporting or that could reduce complexity overall.

Help GFOA Preserve Muni Bond Tax Exemption.

On Wednesday, December 14th and Thursday December 15th select members of Ways and Means will convene to discuss the Blueprint for Tax Reform, a legislative proposal for comprehensive tax reform that will be introduced in the 115th Congress that begins in January.

In order to achieve Chairman Brady's overall objectives to simplify the tax code, all tax exemptions are at risk, with the exception of the mortgage interest deduction and the deduction for charitable donations.

The Federal Liaison Center is still not certain about the specific contents of the Blueprint, but we would like to be sure that the tax exemption on municipal bond interest is not at risk.

Now is the time for GFOA members to engage your member of Congress to explain how the municipal bond underpins our infrastructure and drives our local economies. Reach out today and tell them:

- Tax-exempt bonds are the primary financing mechanism for state and local infrastructure projects—they have been used for more than 100 years and provide essential funding for states, counties and localities.
- Three-quarters of all public infrastructure projects in the U.S. are built by states and localities, and tax-exempt bonds are the primary financing tool utilized to satisfy these infrastructure needs.
- If the tax exemption is eliminated or reduced, states and localities will pay more to finance projects, leading to fewer projects and fewer jobs, or project costs will be transferred to local tax and rate payers.
- ***Describe to them specific projects in their districts that municipal bonds have built!***

Reaching out to your members of Congress and describing how the muni bond has been used to provide essential infrastructure in your jurisdiction is now more important than ever. Please feel free to access materials and to stay in touch during this hectic and exciting time via the FLC's Federal Tax Exemption on Municipal Bond Interest Resource Center.

Deloitte 2017 Power and Utilities Outlook.

Trends and opportunities

Rising costs have been a big challenge for utilities planners. Fortunately, new regulatory structures and business models may help manage them. A new industry outlook highlights the trends and opportunities in the power and utilities industry:

- Impacts from a new administration
- Utilities sector transformation
- Ways to manage costs

Scott Smith, US Power & Utilities Leader, shares his insight on the continuing transformation of the industry.

Puerto Rico Ten-Year Deficit Forecast Raised to $68 Billion.

- Projection is higher than governor's previous estimates
- Board wants to reach voluntary agreement with creditors

Puerto Rico is facing a budget shortfall of $67.5 billion over the next decade, almost $10 billion more than previously projected by Governor Alejandro Garcia Padilla, underscoring the need for the island to cut its debts and turn around the faltering economy.

The forecast was released Tuesday by the U.S. board that was installed after the territory's worsening fiscal crisis led it to default on a growing share of its $70 billion debt. The seven-member panel said it plans to restart negotiations with creditors this week, seeking to secure a voluntary agreement with bondholders instead of imposing losses on them in court.

"We are doing everything we can to be correct with the creditor community," Jose Carrion, the chair of the board, said during a press call on Tuesday. "We're moving in that direction."

The board also said that the government needs to cut spending because the deficit is so large that even wiping out all of its debt — an option that's not legally available — wouldn't be enough to balance the budget.

"This reality requires the government of Puerto Rico to step up to the plate and propose the initiatives and measures necessary for Puerto Rico to meet the enormous fiscal challenge it faces," José Ramón González, a member of the Financial Oversight and Management Board for Puerto Rico, said in a statement.

Puerto Rico is veering toward the largest restructuring ever in the U.S. municipal-bond market after borrowing for years to pay its bills as the economy contracted. Garcia Padilla, who will leave office next month, has been defaulting on bonds to avoid deep cuts to services on an island where nearly half of the 3.5 million residents live below the poverty line.

The resolution will now largely be up to the oversight board. Members plan to work with the Governor-elect Ricardo Rossello to approve a turnaround plan by the end of January.

The revised financial projections exclude additional health-care funding from Washington and don't assume any revenue from an excise tax on multinational businesses that's set to expire. The levy, which U.S. corporations can take as a credit on their federal income taxes, made up 28 percent of revenue in the first five months of the 2017 fiscal year, according to the island's Treasury Department.

Bloomberg

by Tatiana Darie

December 20, 2016, 9:26 AM PST December 20, 2016, 12:30 PM PST

California Drivers Pay for Underfunded State Patrol Pension.

- Pension is the lowest funded among those in largest U.S. plan
- Motorists will pay $10 more in April to meet rising costs

Training officers watch over cadets as they march in formation at the California Highway Patrol Academy in West Sacramento, California. Photographer: David Paul Morris/Bloomberg
Californians in April will start paying more to register their cars — not to help maintain roads, but to keep the pension checks rolling for the motorcycle cops who policed them.

The retirement fund for the California Highway Patrol is worse off than any other managed by California Public Employees' Retirement System, the largest U.S. pension, as payments by the state and employees fail to keep up with benefits locked in during the dot-com bubble. As a result, the state's contributions jumped 14 percent this year to $415 million and are projected to continue rising. A $10 increase to registration fees will help cover the expense.

"It's a pension tax — call it what it is," said state Senator John Moorlach, a Republican who introduced a bill that would implement measures to cut pension costs. "It's like a tumor that's growing inside the budget."

The situation facing the Highway Patrol underscores the consequences to taxpayers whose state and local governments have about $2 trillion less than they need to cover promised retirement benefits. On Wednesday, the Calpers board voted to lower the target investment return by half a percentage point to 7 percent over three years, which would require larger contributions from California and its municipalities to make up for the smaller projected gains.

Jon Hamm, who in May retired as the chief executive officer of the California Association of Highway Patrolmen, said before the meeting that Calpers should lower that target to below 7 percent "so we can deal with real numbers."

"We want to do everything in our power to make sure our members get what they've been promised, and everything in our power includes what we can do as an entity to fix the problem," such as possibly higher contributions from officers, said Hamm, who continues to work for the union.

The fund for the patrol, whose officers gained some fame from the late-1970s television series "CHiPs," had 62 cents for every dollar in obligations as of the year ended June 2015, according to a September report. The state must pay about 50 percent of its costs this year, compared with a rate of 13 percent in 2000.

Moorlach, the state senator, lays part of the blame on deciding to boost benefits during the Internet stock bubble, wagering that the market's gains would pay for them. The change allowed officers to retire at the age of 50 with pension checks based on a higher percentage of their salaries. The average pension received by an officer who retired in 2015 was about $77,000, according to Calpers.

Although stocks are again at record highs, the combination of enhanced benefits, longer lifespans and fewer employees paying into the system has left many pensions underfunded. For the past decade, beneficiaries of the highway patrol pension have outnumbered active members, documents show. At the same time, Calpers's 20-year investment return is lagging its goal, forcing individual plans to make up the difference.

"It creates a financial hole, a very deep financial hole, very quickly," said Joe Nation, a pension researcher and professor at the Stanford Institute for Economic Policy Research. “Unless you respond very quickly, it’s hard to get out of it.”

While California meets pension obligations for many workers through its general budget, for the Highway Patrol’s operations it taps the motor vehicle account, funded mostly through revenue generated from cars and licenses. The patrol takes up about 78 cents out of every dollar in registration fees drivers pay.

Governor Jerry Brown requested the increase to the base vehicle registration fee by $10 to $56 to deal with the agency’s rising costs from salaries and pensions, said H.D. Palmer, a spokesman for the finance department. He declined to say what action the administration may take if Calpers reduces the investment return.

“We just had that increase,” Palmer said. “We want to evaluate how that is addressing some of those issues.”

Moorlach thinks it’s inevitable that fees will rise, although the drivers may not understand why. “Everyone will think, we’re fixing roads, but that money is going to be diverted into pension plans,” he said.

Blomberg

by Romy Varghese

December 21, 2016, 2:00 AM PST December 21, 2016, 9:52 AM PST

— Written with the assistance of Bloomberg’s Municipal Global Data team

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Nobody Traded When JPMorgan Put Chicago School Debt Up for Sale.

- Offered notes at yield corresponding to even lower rating
- It may have been way to gauge value amid selloff, analyst says

JPMorgan Chase & Co. offered a crucial lifeline to the ailing Chicago Public Schools by purchasing almost $1 billion of short-term notes from the junk-rated system in the last four months. When the New York-based bank put some of its holdings up for sale, nobody made the trade.

On Nov. 22, JPMorgan offered $50 million to $100 million of the notes maturing Dec. 2017 with potential for more depending on demand, according to people familiar with the matter. The notes had a coupon of 70 percent of the three-month London interbank offered rate plus 400 basis points, which, according to the notes’ official statement, would apply if the rating was between CCC+ and CCC, only a few notches above debt that’s already in default. The school system’s general-obligation bonds are currently rated B3 by Moody’s Investors Service and B by Standard & Poor’s.

It’s unclear whether JPMorgan was trying to sell the securities, or just gauge their value during the market rout that followed Donald Trump’s election. Brian Marchiony, a spokesman for the bank, declined to comment.

“It could have been price discovery to get a sense of how much those notes are worth,” said Matt Fabian, a partner with Municipal Market Analytics Inc. “In the middle of a market-wide selloff, I think they were hard to value.”

The yields quoted by JPMorgan underscore the riskiness of the loans and suggest the district may pay a high price if it follows through with a planned $600 million note sale in January, a month before it must deposit more than $400 million for debt service. If Chicago's schools can't issue the debt, it faces some difficult decisions, said Naomi Richman, a managing director at Moody's.

"They could try to cut expenses, although that's certainly a very high magnitude of expenses to have to cut," said Richman. "They could ask the state of Illinois for assistance, which they have been doing, but the state has budget issues of its own."

Expenses at the third-largest U.S. school system consistently exceed operating revenue and the district is counting on more than $200 million in state aid — and a $250 million credit from the its pension board — to cover a $720 million retirement-fund payment due in June.

JPMorgan has close ties to Chicago, where it's the third-largest private sector employer, and the bank has been the biggest lender to the school system. Chief Executive Officer Jamie Dimon was head of Bank One Corp. when JPMorgan bought the Chicago-based bank in 2004. William Daley, son and brother of Chicago mayors Richard J. Daley and Richard M. Daley, served as vice chairman at JPMorgan. JPMorgan loaned $500 million to Chicago's schools in 2015, according to data compiled by Bloomberg.

Chicago's schools, whose enrollment has declined 5.6 percent over the last five years, began the fiscal year July 1 with a $1.1 billion deficit. The district's cash position declined to $83 million at the end of fiscal 2016 from about $1.3 billion at the beginning of fiscal 2012, according to a recent bond offering statement, and the district's reliance on short-term borrowing has grown by $850 million in two years.
Illinois Governor Bruce Rauner has said bankruptcy for the school system might be the best option, though the Democrat-controlled legislature has bucked his suggestion that state law be changed to allow it.

"The big risk here is bankruptcy between now and 2017 when they come due," said Paul Mansour, head of municipal research at Conning, referring to the district's notes. "Investors are more nervous about that than anything else."

Last week, the district had little trouble finding buyers for its more highly rated securities. It sold about $730 million of bonds secured by a dedicated share of the city's property tax, which won the debt investment grade ranks of A from Fitch Ratings and BBB from Kroll Bond Rating Agency. Debt maturing in 30-years were priced to yield 6.25 percent, almost 2 percentage points more than generic bonds with the same rating, according to data compiled by Bloomberg.

Bloomberg Markets

by Martin Z Braun

December 22, 2016, 2:00 AM PST

[Your Next Retirement Plan Could Be Run by City Hall.]

The Obama administration says some municipalities can help you build a nest egg.

More than a third of full-time private-sector workers in the U.S. don't have a way to save for retirement on the job. On Tuesday, the Department of Labor offered a new way to fill that gap: Let cities and counties get involved.

A new rule would clear regulatory barriers that might otherwise stop large municipalities such as New York from setting up plans for all workers—not just those who work for local government. Officials in the Big Apple, as well as in Seattle and Philadelphia, have already expressed interest.

The outgoing Democratic administration of President Barack Obama had wanted to create automatic individual retirement accounts that would follow workers through their careers. That went nowhere in the Republican controlled Congress, but then states started exploring the idea of launching their own, so-called auto-IRA programs.

The Labor Department gave its final blessing to these state plans in August. The U.S. government made clear that state auto-IRAs were legal and wouldn't be subject to the very complicated federal rules that govern other retirement plans.

Now officials are amending that rule to let local and municipal governments get in on the act.

Not every city or county could set up an auto-IRA, however. Out of almost 90,000 local governments in the U.S., the Labor Department estimates that only about 88 would be eligible. First, jurisdictions would need authority under state law to set up the program. They also couldn't overlap with an existing statewide retirement plan, so Los Angeles and San Francisco couldn't set up their own plans.

Finally, they'd need to have a population greater than the least-populous state. (That's Wyoming, population 586,000.)

With 8.6 million people, New York City is larger than all but 11 states. In October, Comptroller Scott Stringer proposed that the city create a "NYC Roth IRA" to cover the three in five workers who, he estimated, don't already have a retirement plan.

Philadelphia Controller Alan Butkovitz and a member of Seattle's City Council have signaled that their cities may move in that direction as well. Seattle, with 684,000 people, and Philadelphia, with a population of 1.6 million, would both be eligible under the new rule.

In Philadelphia, 54 percent of employees, or about 334,000 people, don't have access to a workplace retirement plan, Butkovitz estimates. "By including local governments, local policymakers will gain a tool that may be able to help them to address the serious issue of retirement security that is facing our communities," he wrote in a September letter to the Labor Department.

It's not clear yet how the change of presidential administrations will affect retirement plan rules. The Department of Labor's final rule on local government auto-IRAs goes into effect in 30 days. That's Jan. 19, the day before Republican President-elect Donald Trump takes office.

Bloomberg

by Ben Steverman

December 20, 2016, 10:21 AM PST

Bloomberg Brief Weekly Video - 12/22

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch the video.

Bloomberg

December 22, 2016

KKR Seeks Buyer for Water Ventures, Testing Appetite for Trump-Style Infrastructure Deals.

Private-equity firm owns 90% stake in water systems in New Jersey and Pennsylvania

KKR & Co. is shopping its stake in ventures that provide water services to two U.S. cities, a test of whether Wall Street has found a way to profitably invest in public works at a time when President-elect Donald Trump has promised to steer private money to aging infrastructure.

KKR and partner Suez SA, the French company formed to build the Egyptian canal of the same name, in recent years struck deals to pay off public debt and assume responsibility for operating and repairing municipal water systems in Bayonne, N.J., and Middletown, Pa. In exchange, they are due decades of payments from billing the systems' customers.

Now KKR is seeking a buyer for its 90% interest in the water pacts, according to people familiar with the matter. The firm, best known for its takeovers of public companies, invested roughly $175 million in the ventures and has committed more than $200 million for repairs and maintenance over the course of the agreements, 40 years in the case of Bayonne and 50 years in Middletown.

The firm is pitching the water deals to long-term investors seeking steady returns, such as insurance companies and pensions, the people said. Suez plans to keep its minority stake and continue operating both systems, they said.

A profitable sale would help validate the structure that KKR and its partners crafted to invest in municipal utilities at a time when Wall Street has raised more cash than ever to invest in public works.

Investors committed a record of $57.5 billion to private infrastructure funds this year, according to data provider Preqin, pushing to more than $140 billion the amount of ready-to-invest cash in such funds.

Water and sewage systems have been singled out by politicians, civil engineers and government agencies as particularly in need of investment. The Environmental Protection Agency has said that more than $655 billion is needed to repair and expand U.S. water and sewage systems over the next two decades.

Mr. Trump has proposed $1 trillion of new infrastructure spending that relies on private investment, proposing tax breaks to draw investors to spend on roads, pipelines and ports.

But deals of this kind come with a special set of challenges for Wall Street. Relationships with the counterparties and customers are often tenuous and can quickly turn contentious, especially because such deals usually outlast the political administrations that make them.

Carlyle Group LP earlier this year sold a package of three western water systems to Canada's Algonquin Power & Utilities Corp. for $250 million, more than twice what the Washington, D.C., firm paid for them. Yet that profit came at the expense of bruising public relations and court battles.

Three years after Carlyle purchased the water systems, Missoula, Mont., successfully sued under eminent domain laws to take back the system operating there, claiming Carlyle skimped on upkeep and repairs while enriching itself.

Missoula is now waiting for a judge to tell it how to take over the system and how much it would have to pay Algonquin for the system. A court determined last year that Missoula should pay $88.6 million, though that could rise if legal fees and other expenses are added.

Apple Valley, Calif., has filed its own eminent domain suit to wrest control of another of the three water systems Algonquin bought from Carlyle. Officials from the city east of Los Angeles say rates have risen too much under private ownership. "Our only recourse is to condemn the water company," said Apple Valley Mayor Scott Nassif.

Algonquin and Carlyle have defended their management of the systems.

It took KKR two years to negotiate terms and win approval from state regulators to lease the system from Bayonne, which sits across the Hudson River from New York City. The deal involved an upfront payment of $150 million, used mostly to pay down debt, and a commitment to spend $157 million maintaining the system over the next four decades.

Tim Boyle, who heads the city's utilities department, said the city's current leadership, which took office two years into the deal, was initially skeptical. But they warmed to the pact once they considered improvements that were being made, such as the repair of a leaky water main that runs beneath the Passaic River and installation of equipment that enables workers to clear storm-water outflows without climbing into the sewers.

A contractual cap on KKR's profits helped, too. "They are not free to gouge away at the ratepayers," Mr. Boyle said.

The investors are guaranteed minimum revenue for the life of the deal. This year's revenue is about $27 million before operating and capital expenses and is set to rise about 4% annually. If the utility doesn't produce enough revenue, rates could be increased above the roughly 3.5% outlined in the deal. That happened last year when projections that proved too optimistic and unexpected repairs necessitated a 13.25% increase, or about $12 for the average monthly bill.

If revenue rises above projections, the extra cash is to be banked away to limit future rate increases.

KKR can't hold its water deals for their duration. The ventures were funded with its 2011 infrastructure fund, which only has a lock on investors' cash for 10 years.

THE WALL STREET JOURNAL

By RYAN DEZEMBER and HEATHER GILLERS

Dec. 22, 2016 9:24 a.m. ET

Write to Ryan Dezember at ryan.dezember@wsj.com and Heather Gillers at heather.gillers@wsj.com

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Trump's Commitment to Infrastructure Vow Is Being Questioned.

WASHINGTON — It’s not at all clear that President-elect Donald Trump’s plans to spend massively on infrastructure are going to unfold as he promised.

Trump made rebuilding the nation’s aging roads, bridges and airports very much part of his job-creation strategy in the presidential race. But lately lobbyists have begun to fear that there won’t be an infrastructure proposal at all, or at least not the grand plan they’d been led to expect.

From the day he entered the presidential race to the moment he declared victory, Trump pledged an infrastructure renewal. He cited decaying bridges, potholed roads and airports like New York’s LaGuardia that he said reminded him of the “third world.”

Trump or his campaign also mentioned schools, hospitals, pipelines, water treatment plants and the electrical grid as part of a job-creation strategy that would make the U.S. “second to none.” It was a rare area in which House Minority Leader Nancy Pelosi and other Democrats hoped for common ground with the president-elect. The possibility of a major infrastructure spending plan is one of several factors that have fueled the recent run-up in stock prices.

Senate Majority Leader Mitch McConnell tried to tamp down expectations last week, telling reporters he wants to avoid “a $1 trillion stimulus.” And Reince Priebus, who will be Trump’s chief of staff, said in a radio interview that the new administration will focus in its first nine months with other issues like health care and rewriting tax laws. He sidestepped questions about the infrastructure plan.

In a post-election interview with The New York Times, Trump himself seemed to back away, saying infrastructure won’t be a “core” part of the first few years of his administration. But he said there will still be “a very large-scale infrastructure bill.”

He acknowledged that he didn’t realize during the campaign that New Deal-style proposals to put people to work building infrastructure might conflict with his party’s small-government philosophy.

“That’s not a very Republican thing — I didn’t even know that, frankly,” he said.

Since the election, Trump has backed away — or at least suggested flexibility — on a range of issues that energized his supporters during the campaign, including his promises to prosecute Hillary Clinton, pull out of the Paris climate change accord and reinstitute waterboarding for detainees.

Trump transition officials didn’t immediately respond to a request for comment.

The mixed signals on infrastructure have lobbyists and lawmakers puzzled.

“We’re worried,” said Brian Turmail, a spokesman for the Associated General Contractors of America, which represents more than 26,000 construction companies and 10,500 service providers and suppliers.

“Are we hearing signs that people just don’t know what the plan is?” he asked. “Or signs that people don’t want any kind of plan? We don’t know the answer.”

Lobbyists have responded by flooding the Trump transition team with briefing memos, lining up meetings and privately pitching their proposals to what they hope will be a more receptive Congress.

Trade associations are urging their local members to seek out their senators and House members while they're home for the holidays. The contractors' association held a news conference in front of a bridge construction project in Little Rock, Arkansas. The American Road and Transportation Builders Association has given members form letters to send their lawmakers, while quietly floating a plan for new transportation fees to provide reliable sources of additional income for the federal Highway Trust Fund.

Leaders of the U.S. Conference of Mayors emphasized their support for an infrastructure program in a recent meeting with Trump and urged him to protect the municipal bond tax exemption, one of the primary ways localities raise money for projects.

The Airports Council International-North America is lobbying to raise the limit on fees airports charge airline passengers. The money goes to renovate or expand terminals and increase the number of gates.

Trump's campaign pitch for infrastructure improvements included few details. A paper circulated after the election recommends using $137 billion in federal tax credits to generate $1 trillion in private-sector infrastructure investment over a decade. To offset the cost of the credits, U.S. corporations would be encouraged to bring home profits that they have parked overseas to avoid taxes, in exchange for a lower tax rate. But private investors are typically interested only in projects that create revenue, such as tolls, so that they can recoup their investments.

What states and communities need most is more direct spending, rather than tax credits, to help pay for upkeep and replacement of existing roads, bridges and transit systems, said Bud Wright, executive director of the American Association of State Highway and Transportation Officials. "Those aren't necessarily projects that lend themselves to generating revenue," he said.

It's also possible tax credits would provide a windfall to investors in existing projects while failing to generate new ones.

Some lawmakers from both parties are urging the creation of a federal "infrastructure bank" to make low-cost loans to projects.

"Everybody is putting together their Christmas lists for what they want to see in an infrastructure bill," said Kevin Gluba, executive director of the Alliance for Innovation and Infrastructure. "The biggest question: Who is going to pay for it? Many of the ideas floating around are far too pricey to make into law."

By THE ASSOCIATED PRESS

DEC. 20, 2016, 4:01 A.M. E.S.T.

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AP White House Correspondent Julie Pace contributed to this report.

[Calpers Cuts Investment Targets, Increasing Strain on Municipalities.]

The board of California’s state public pension system, Calpers, voted Wednesday to lower expectations for future investment returns, a step that will increase pressure on the budgets of towns and cities across the state.

Calpers, a giant with roughly $300 billion in assets, has long been a bellwether among America’s thousands of public pension funds because of its sheer size and influence in the investment industry. It manages the investments for more than 1.7 million current and future retirees, making it the nation’s largest public fund outside the federal government. Calpers’ move to lower its investment expectations is likely to prompt pension systems in other states to do the same.

“This is very monumental for the organization,” one trustee, Richard Costigan, said at a public meeting just before the vote.

With the move, Calpers is changing its business plan, so that investment returns will cover less of the cost of retirees’ pensions than previously. That will force local governments to pay more, either through higher taxes or reduced public services. Public workers in California will have to chip in more, too.

At the same time, the move has little chance of satisfying critics of public pension systems who have argued for years that the sector’s methodology is dangerously flawed — not just because many investment projections are overly optimistic, but also because pension plans use those projections to calculate their liabilities, violating basic economic principles.

Such critics, many of them economists, say that because public pensions are virtually risk-free for recipients, their values should be based on the returns of safe investments like Treasury securities, which have recently hovered around 2.5 percent for 10-year bonds. Calpers now uses Treasury rates only when a city wants to drop out of its system.

Under all other circumstances, Calpers currently assumes that its investment portfolio will return an average of 7.5 percent a year over the long term, and bills its member governments accordingly. Its trustees agreed Wednesday to reduce that to 7 percent, phasing in the reduction over the next three years.

Many other state pension systems have even higher expectations, according to a survey of 127 plans by the National Association of State Retirement Administrators. Most were expecting to earn 7.5 percent to 8 percent over the long term. The second-largest group was counting on annual returns of 7 percent to 7.5 percent.

The differences may sound small, but just a slight reduction in the assumed rate drives up the cost sharply, because it is multiplied across decades and for thousands of retirees.

Shifting expectations down to 7 percent will force the State of California to contribute an additional $2 billion a year for state workers, according to Eric Stern, a policy adviser for the California Department of Finance who briefed Calpers board members about the measure on Tuesday.

All public pension funds pool money and invest it in the hope that returns will cover most of the cost of retirees’ benefits. But those costs are rising quickly now, as the baby boom generation retires, and investment returns have not nearly kept pace.

Even before the change takes effect, some cities in California have complained that their pension plans are too costly. Calpers bills them once a year for their share, assuming the investments will return 7.5 percent in the future. Calpers confirmed in a recent risk report that for some types of pensions — especially those for police — those bills are higher than ever before.

Some local governments say they simply cannot keep up, yet they are not allowed an easy exit from the system. Pensions thus played a prominent role in the municipal bankruptcies of Vallejo, Stockton and San Bernardino, with Calpers arguing that the cities could not lower their pension contributions or switch to less costly plans, even though companies routinely do so in bankruptcy. Those arguments prompted the judge in Stockton's bankruptcy case, Christopher Klein, to call Calpers "a bully" with "an iron fist."

The waning California town of Loyalton took matters into its own hands three years ago, voting to simply drop out of Calpers. In response, Calpers sent a bill for a hefty withdrawal payment; Loyalton said it was broke and could not pay.

In November, Calpers responded by cutting the pensions of each of Loyalton's four municipal retirees by 60 percent — the first time on record that Calpers had cut anyone's pension.

Marcia Fritz, president of the California Foundation for Fiscal Responsibility, said the additional pension costs might push more local governments over a fiscal cliff.

"The ones that are hurting the most are the small, non-volunteer fire districts in rural areas," Ms. Fritz said.

They lack a tax base big enough to cover the substantial cost of keeping firefighters on duty around the clock, she said. Some have been experimenting with other revenue sources but have not found a permanent fix, and rising pension costs could be their death knell.

Despite those concerns, Calpers board members decided they had no choice but to lower investment expectations. Outside advisers have been urging the system to do so for years. Its chief investment officer, Ted Eliopoulos, said last summer that investment returns for the previous year were close to zero, and that it would be a big challenge for Calpers to get through the next three to five years.

With rising numbers of retirees drawing their benefits, Mr. Eliopoulos said this week that he had been scaling back the risk level in Calpers' investment portfolio. Stocks — both domestic and global — had been reduced to 46 percent of the investment portfolio from 51 percent, for example.

Lowering risk, however, generally means lower returns as well.

NEW YORK TIMES

By MARY WILLIAMS WALSH

DEC. 21, 2016

- Final Issue Price Regulations Significantly Change Current Rules.
- Final Issue Price Regulations Issued: Squire Patton Boggs
- IRS Releases Final Issue Price Regulations with Significant Changes: Andrews Kurth
- NABL: The Bond Lawyer – Fall 2016
- Municipal Advisors: Mark Your Calendars with Annual Compliance Dates.
- The Creative Financing Behind New Jersey's Mega-Mall Project.
- Municipal Advisors: Mark Your Calendars with Annual Compliance Dates.
- *Move, Inc. v. Citigroup Global Markets, Inc.* – Court of Appeals holds, as a matter of first impression, that Federal Arbitration Act (i.e. Finra arbitration) is subject to doctrine of equitable

tolling.

- And finally, the court in *People v. Hoyt* this week publicly exposed us to the generosity of the Empire State when it informed us that the state legislature, "did not intend to occupy the entire field of offenses involving public lewdness." So book a ticket and pack your trench coat. We're just hoping that the field's upstate, very clearly marked, and hey, maybe a fence wouldn't be the worst idea.

ARBITRATION - CALIFORNIA

Move, Inc. v. Citigroup Global Markets, Inc.

United States Court of Appeals, Ninth Circuit - November 4, 2016 - 840 F.3d 1152 - 2016 Daily Journal D.A.R. 11, 106

Investor filed complaint seeking to vacate arbitration award based on misrepresentations made by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets. Brokerage firm moved to dismiss.

The United States District Court for the Central District of California denied investor's motion to vacate and granted firm's motion to dismiss. Investor appealed.

The Court of Appeals held that:

- As an issue of first impression, Federal Arbitration Act (FAA) is subject to doctrine of equitable tolling;
- Investor was entitled to equitable tolling of three month limitations period under FAA; and
- As an issue of first impression, investor's rights were prejudiced as result of deceit by arbitrator, warranting vacatur.

Federal Arbitration Act (FAA) is subject to doctrine of equitable tolling. Text of statute does not preclude equitable tolling, FAA's structure is not incompatible with equitable tolling, and equitable tolling would not undermine the basic purpose of the FAA, which was enacted to make valid and enforceable written provisions or agreements for arbitration of disputes.

Investor was entitled to equitable tolling of three month limitations period under Federal Arbitration Act (FAA) in challenge to arbitration award based on misrepresentations made by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets. Investor acted with due diligence in pursuing its claim, as it justifiably relied on information provided by non-governmental organization regarding arbitrator, and tolling would not prejudice brokerage firm.

Investor's rights were prejudiced as result of deceit by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets, as required to vacate arbitration award under Federal Arbitration Act (FAA). Upon submitting claim against brokerage firm to arbitration, investor made clear throughout panel selection process that it was critical for attorney to chair proceedings, investor believed that arbitration of complex securities claim required a chairperson with requisite experience to understand and interpret sophisticated legal concepts, and as a result, investor struck candidates from proposed roster who were not experienced attorneys and ranked arbitrator first on its chairperson list, relying on arbitrator disclosure report in which arbitrator falsified credentials to state that he was attorney when he was not.

REFERENDA - CALIFORNIA

Eblovi v. Blair

Court of Appeal, First District, Division 3, California - December 1, 2016 - Cal.Rptr.3d - 2016 WL 7011551

Proponent of a citizen-sponsored city initiative filed a petition for writ of mandate seeking an order directing city's interim clerk to strike ballot arguments submitted by other electors.

The Superior Court denied petition. Proponent appealed.

The Court of Appeal held that city initiative ballot argument statute is permissive and thus does not restrict participation by unnamed people or entities.

The statute providing that persons filing a city initiative petition "may file a written argument in favor of the ordinance" and "the legislative body may submit an argument against the ordinance" is permissive and thus does not restrict participation by other unnamed people or entities.

MUNICIPAL GOVERNANCE - MISSISSIPPI

McAdams v. Perkins

Supreme Court of Mississippi - December 8, 2016 - So.3d - 2016 WL 7180151

Unsuccessful candidate in city's mayoral election filed bill of exceptions challenging city council's resolution to employ counsel, which was the same law firm employed by the city's mayor, to represent the city's interest in upholding the validity of the election.

The Circuit Court reversed, finding that the resolution was beyond council's scope or power and in violation of the Mississippi Constitution. Mayor appealed.

The Supreme Court of Mississippi held that:

- Mayor was not estopped from raising issues on appeal by virtue of her certification of bill of exceptions;
- Resolution was permitted under statute allowing municipalities to employ legal counsel for defense of "any claim, demand, or action";
- Resolution was permitted under "home rule" statute;
- Resolution did not authorize an unconstitutional donation of public funds to a private individual; and
- Mayor had authority to pursue appeal without specific authorization from council.

On appeal of trial court's decision determining that city council was not permitted to pass resolution employing counsel to defend city's interest in mayoral election contest, city's mayor was not estopped from raising issues by virtue of her certification of bill of exceptions, which was filed by her election opponent and challenged the resolution. Although the bill of exceptions reflected the actions taken and the decision made, the mayor's signature did not constitute an agreement with opponent that the resolution was prohibited by law or otherwise improper.

Statute allowing municipalities to employ legal counsel for the defense of "any claim, demand, or action" permitted city council to employ counsel to defend city's interest in mayoral election contest, even though the contest was an action between private litigants and no claims were asserted against city's mayor in her official capacity; city was permitted to employ legal representation to defend all "claims" challenging official actions of municipal officers, to require that formal litigation be filed against the city before the council may retain legal representation would place a significant limitation on the council's authority, and if legislature had intended such a limitation, it would have limited the statute's language to "demand or action brought."

City council's resolution to employ counsel to represent city's interest in mayoral election contest did not authorize a donation of public funds to a private individual in violation of the Mississippi Constitution, even though city's mayor employed the same counsel to represent her personally. Resolution did not authorize payment of mayor's personal attorney's fees, and fact that counsel's services could provide "overlapping support" to both mayor and council and result in decreased attorney's costs to the mayor did not transform the resolution into an unlawful donation.

City's mayor had authority to pursue appeal on behalf of city without specific authorization from city council. statute governing mayoral powers provided that mayor had superintending control of all the officers and affairs of the municipality, and there was no evidence that the council voted to prohibit the appeal or objected to it.

REFERENDA - MISSOURI

MacMann v. Matthes

United States Court of Appeals, Eighth Circuit - December 9, 2016 - F.3d - 2016 WL 7174117

City residents brought state court action alleging that city violated their rights under city charter, Missouri Constitution, and First and Fourteenth Amendments by interfering with their participation in a municipal referendum process to appeal two ordinances passed by city council in connection with a student-housing development project.

City removed action to federal court. The United States District Court for the Western District of Missouri entered summary judgment in city's favor. Residents appealed.

The Court of Appeal held that:

- Under Missouri law, rights of city residents to challenge ordinances were governed by city charter rather than by provision of Missouri Constitution conferring on Missouri citizens right to challenge by referendum laws enacted by state legislature;
- Under Missouri law, city did not violate city residents' rights established under charter by enacting second ordinance after referendum process had been initiated in response to city's first ordinance;
- Under Missouri law, city did not violate city residents' rights established under city charter by issuing construction-related permits;
- City did not violate city residents' First Amendment rights by introducing second ordinance;
- City residents did not have protected property interest in participation in referendum process; and
- Provision of second ordinance conditioning repeal of first ordinance on residents' abstention from referendum process did not violate First Amendment.

Under Missouri law, city residents' right to challenge two ordinances passed by city council in connection with a student-housing development project were governed by city charter rather than by provision of Missouri Constitution conferring on Missouri citizens the right to challenge by referendum laws enacted by the state legislature.

Under Missouri law, city did not violate city residents' rights, established under city charter, to approve or reject at the polls any ordinance passed by the city council by enacting second ordinance in connection with a student-housing development project after municipal referendum process had been initiated in response to city's first, materially identical ordinance in connection with the project. Charter required suspension of further action under an ordinance subject to a referendum petition only after the referendum petition had been certified by city clerk, city council adopted second ordinance before referendum on it had been certified, and once referenda on ordinances were certified, city council reconsidered and repealed the ordinances.

Under Missouri law, city did not interfere with city residents' referendum rights, established by city charter, by issuing construction-related permits for student-housing development projects while municipal referendum process challenging ordinances passed by city council in connection with the projects was ongoing. Although city charter granted residents power to approve or reject by referendum any ordinance passed by the council, city charter did not grant residents any right to challenge the issuance of permits by city administrative departments, and city issued permits as part of its ministerial duties once valid permit applications were submitted.

City did not violate city residents' First Amendment right to free speech or to petition the government when, after referendum process was initiated, in accordance with city charter, regarding city ordinance in connection with a student-housing development project, city council introduced a second ordinance that was materially identical to first ordinance. Neither the referendum process itself nor the city's conduct in responding to the referendum process interfered in any way with the message the residents sought to communicate, restricted their ability to circulate either referendum petition, regulated the content of their speech, or infringed on their ability to communicate with other voters or the manner by which they could so communicate.

City residents did not have protected property interest in participation in referendum process for challenging city ordinances, and thus city did not violate residents' Due Process rights when, after municipal referendum process was initiated, in accordance with city charter, regarding city ordinance in connection with a student-housing development project, city council introduced a second ordinance that was materially identical to the first ordinance and authorized permits for the project. Under Missouri law, any opportunity to participate in the municipal referendum process was subject to the procedures set forth in the city charter.

Provision of second ordinance passed by city council in connection with a student-housing development project, conditioning repeal of city's first, identical ordinance, on city residents' abstention from referendum process under city charter, did not violate First Amendment. There was no constitutional right at stake in the referendum process.

PRESCRIPTIVE EASEMENTS - NEW HAMPSHIRE

Jesurum v. WBTSCC Limited Partnership

Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177669

Town resident brought action against landowners seeking declaratory judgment that both the resident and the public had right to prescriptive easement over portion of landowners' property, which was connected to beach by walking path, for parking and access to the beach.

The Superior Court determined that members of the public had acquired prescriptive easement and awarded attorney’s fees to resident. Landowners appealed.

The Supreme Court of New Hampshire held that:

- Public’s use of portion of landowners’ property, which was connected to beach by walking path, for parking and access to the beach was adverse, as required to support resident’s claim for prescriptive easement;
- Scope of public’s prescriptive easement over portion of landowners’ property was not limited to digging for worms and searching for shellfish;
- Landowners did not interrupt the public’s ability to park on portion of their property by conducting three construction projects in the area over the course of nearly a decade, and thus, public’s use of the property was continuous, as required for the public to attain prescriptive easement over the property; and
- Award of attorney’s fees against landowners, as private litigants, under the public benefit theory was unwarranted.

MUNICIPAL ORDINANCE - NEW YORK

People v. Hoyt

Criminal Court, City of New York, New York County - November 29, 2016 - N.Y.S.3d - 2016 WL 6989398 - 2016 N.Y. Slip Op. 26391

A defendant charged with serial acts of public lewdness moved to dismiss the count.

The Criminal Court of the City of New York held that local law prohibiting serial acts of public lewdness was not preempted by state law.

New York State Legislature’s enactment of public lewdness statute and public lewdness in the first degree statute did not intend to occupy the entire field of offenses involving public lewdness, and therefore city’s enactment of local law prohibiting serial acts of public lewdness was not preempted by state law and complied with constitutional home rule provision conferring broad police power upon local government relating to the welfare of its citizens; neither state statute conflicted with local law and state’s public lewdness in the first degree statute was enacted after the local law and was silent on preemption.

SECURITIES FRAUD - OHIO

United States Securities and Exchange Commission v. Crowe

United States District Court, S.D. Ohio, Eastern Division - October 20, 2016 - F.Supp.3d - 2016 WL 6125401 - Fed. Sec. L. Rep. P 99, 438

The Securities and Exchange Commission (SEC) brought action against lobbyist, alleging violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b–5 thereunder, and Section 17(a) of the Securities Act of 1933. Lobbyist moved to dismiss for failure to state a claim.

The District Court held that:

- SEC was entitled to bring action in federal court against lobbyist, even though its complaint referred to violation of state campaign finance laws;

- SEC sufficiently alleged misrepresentations and omissions made by lobbyist's client and its principal occurred "in connection with" securities sale, as required to state a claim for aiding and abetting securities fraud;
- SEC sufficiently alleged that lobbyist caused concealed campaign contributions to be made, which coincided with a securities transaction, as required to state a claim for securities fraud; and
- SEC sufficiently alleged that lobbyist had a general awareness that his role was part of an overall activity that was improper, as required to state a claim for aiding and abetting securities violations.

Securities and Exchange Commission (SEC) action against lobbyist, alleging he engaged in a "pay to play" scheme that resulted in securities fraud was not precluded, even though Adviser's Act rule governing "pay to play" practices by investment advisers did not apply to conduct by lobbyist. The SEC did not bring action against lobbyist under the Adviser's Act rule, which was not the exclusive vehicle by which the SEC could bring enforcement actions based on "pay to play" allegations.

Securities and Exchange Commission (SEC) was entitled to bring action in federal court against lobbyist, alleging violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b–5 thereunder, and Section 17(a) of the Securities Act of 1933, even though its complaint also alleged that lobbyist knowingly violated state campaign finance laws. The SEC did not bring its case under federal or state campaign finance laws, so the question for the District Court on lobbyist's motion to dismiss for failure to state a claim was whether the SEC stated a claim that lobbyist violated federal securities laws, as alleged in the complaint, given that lobbyist did not argue that Ohio's campaign finance statute limiting contributions preempted federal securities laws.

The Securities and Exchange Commission (SEC) sufficiently alleged that misrepresentations and omissions made by lobbyist's client and its principal occurred in connection with an offer, sale, or purchase of securities, as required to state a claim for aiding and abetting securities fraud against lobbyist. While lobbyist argued that the omissions and misrepresentations were made to facilitate his client's receipt of contracts to be a subcustodian of state employees' pension funds, the subcustodian services were inextricably intertwined and integral to facilitating and effecting transactions in securities on behalf of the pension funds in the subcustodian's care, and because of the fraud alleged in the SEC's complaint, state pension funds were told that lobbyist's client would be the most favorable custodian and executer of their securities transactions which was material to the decision to buy and sell through lobbyist's client.

The Securities and Exchange Commission (SEC) sufficiently alleged that lobbyist repeatedly caused concealed campaign contributions to be made on behalf of his client, which coincided with a securities transaction, as required to state a claim for securities fraud. The alleged fraud "coincided" with the purchase or sale of securities because the fraud involved influencing the state Treasurer's choice of lobbyist's client to serve as subcustodian of state pension funds, which bore an adequate connection to the purchase or sale of securities, given that the services of a subcustodian were inextricably intertwined with transactions in securities on behalf of the pension funds.

The Securities and Exchange Commission (SEC) sufficiently alleged that lobbyist had a general awareness that his role was part of an overall activity that was improper, as required to state a claim for aiding and abetting securities violations by lobbyist's client and its principal. Though lobbyist was not alleged to have seen the false "no improper influence" certifications signed by his client through its principal, given lobbyist's fundraising experience, alleged filtering of illegal payments to state Treasurer's campaign through his own bank account, and alleged reimbursement of campaign donations, if true, constituted extraordinary conduct requiring less evidence of his complicity, and lobbyist allegedly took pains to cover his tracks.

EMINENT DOMAIN - SOUTH DAKOTA

State ex rel. Dept. of Transp. v. JB Enterprises, Inc.

Supreme Court of South Dakota - December 7, 2016 - N.W.2d - 2016 WL 7157632 - 2016 S.D. 89

State instituted quick-take condemnation action.

The Circuit Court granted summary judgment to State. Owner appealed.

The Supreme Court of South Dakota held that:

- Owner did not agree to elimination of taking;
- State was not entitled to eliminate taking; and
- Owner was entitled to compensation for loss of its right to access highway.

Property owner did not agree to elimination of taking that was part of highway reconstruction project. Owner acknowledged change in scope of public improvement but never wavered from its position that State's public improvement caused compensable loss to property.

Under statute prohibiting abandonment of condemnation proceedings, State was not entitled to eliminate any actual taking by amending its petition to include revised plans for highway reconstruction.

Once title vests in the State following a declaration of taking, it is not permitted to reduce or abandon the interest acquired. It is merely permitted to minimize damage to the landowner's remaining property that results from being severed from the property actually taken.

In condemnation action, even if property owner still had ability to access highway from its property, it was entitled to compensation for loss of its right to do so as a result of State's taking.

EMINENT DOMAIN - SOUTH DAKOTA

State ex rel. Dep. of Transp. v. Miller

Supreme Court of South Dakota - December 7, 2016 - N.W.2d - 2016 WL 7157636 - 2016 S.D. 88

State instituted quick-take condemnation action.

The Circuit Court entered judgment on jury verdict awarding owners $551,125. State appealed.

The Supreme Court of South Dakota held that:

- Whether separate lot was to be considered as contiguous with owners' other lots was question for jury;
- Relevant values of property were values before and after taking; and
- Court's determination that a change in access amounts to a substantial impairment of access is a prerequisite to obtaining compensation for the change in access, overruling *Schuler v. Board of Supervisors of Lincoln Township*, 12 S.D. 460, 81 N.W. 890.

Trump’s Infrastructure Mistake.

The president-elect wants to draw in private money—but do investors swoon to fix leaky school roofs?

Divining what Trumponomics will look like is guesswork at this stage, but there is one prominent exception. Late in the campaign, two of Donald Trump’s top economic advisers—Peter Navarro and Wilbur Ross, who is now the nominee for commerce secretary—offered a detailed infrastructure plan. Unsurprisingly, the program seems more about rewarding private-equity investors than about rebuilding America’s crumbling infrastructure.

Infrastructure plans come in three phases: selecting projects, lining up financing, and executing construction. The third step is normally left to private contractors, because state and local governments don’t employ stables of construction workers. As such, government’s role is concentrated in the first two steps.

Traditionally, a higher level of government sends money to a lower level (from federal to state, or from state to local). The Trump plan would rely more on private investors motivated by huge tax breaks.

Follow the money. Messrs. Navarro and Ross propose an 82% tax credit to attract private-equity investors into the infrastructure business. Yes, 82%! A $3 billion public-private “partnership,” according to their plan, could be financed like this: $2.5 billion in municipal bonds, $410 million in tax credits from the federal government, and $90 million in private equity. This means $90 million in private money winds up controlling a $3 billion asset. Mr. Trump likes leverage, but isn’t 33-to-1 a little ridiculous?

What return on capital would private investors demand on such investments? Messrs. Navarro and Ross say between 9% and 10%. Add in the general partner’s carried interest, and that is about 12%. It could be higher, however. History suggests that building roads and bridges is not a low-risk investment. According to a 2015 Congressional Budget Office report, 14 privately financed road projects have been completed in the U.S. since 1995. Of these, three went bankrupt and one required a public buyout—29% failure rate.

By contrast, the New Jersey Turnpike authority can still borrow for 30 years at 3.4% despite the best efforts of Gov. Chris Christie to destroy his government’s credit rating. States with higher ratings pay less.

So much for financing. What about selecting projects?

To attract private money, projects must offer investors cash returns—derived, for example, from tolls on highways. In some cases, this is possible, even desirable. But for many important projects, charging fees can be impractical. Think of building schools in poor neighborhoods or repairing crumbling bridges that have no tolls.

In truth, much of America’s most critical infrastructure needs are for repair and maintenance work—whether it is pothole-laden roads or schools with leaky roofs. Economists find that such unglamorous repair work often offers the highest returns for society.

Infrastructure projects selected in the traditional way, by governments, are chosen based on public benefits, the community’s ability to pay—and sometimes crass political favoritism. It would be nice to get rid of the latter, which is the main argument for a public infrastructure bank.

Under the Trump plan, project selection would be left to profit-seeking investors, using the same criteria they use to decide which hotels to build, for example. Ironically, Messrs. Navarro and Ross criticize President Obama's modest 2015 infrastructure proposals because, "These will not fix the 237,600 water mains that break each year. Nor will they stop the 46 billion gallons of water lost each day from pipe leaks." Does the Trump team really think private-equity investors will swoon over repairing plumbing?

There are many better alternatives. One example is Build American Bonds (BABs), a special breed of municipal bonds whereby municipalities issue taxable debt but receive a subsidy from the federal government—35% under the 2009 Recovery Act. In the two years the program lasted, more than $180 billion of bonds were issued, financing thousands of projects from community college construction to road maintenance.

BABs leave project selection to municipalities, which can use them for routine maintenance and other projects that lack a revenue stream. Unlike Mr. Trump's plan and conventional tax-exempt bonds, BABs are attractive to investors who do not pay U.S. taxes, such as pension funds, endowments and sovereign-wealth funds. That increases demand and lowers borrowing costs.

There may be some projects for which private-equity investments, encouraged by tax incentives, make sense. But for the great bulk of infrastructure needs, BABs would be a far superior solution. If the Trump administration is serious about making our public infrastructure great again, it should worry less about finding ways to make the rich richer.

THE WALL STREET JOURNAL

By ALAN S. BLINDER and ALAN B. KRUEGER

Dec. 18, 2016 5:13 p.m. ET

Messrs. Blinder and Krueger are professors of economics at Princeton University.

U.S. Municipal Market Begins to Wind Down With Light Issuance Week.

Debt sales in the U.S. municipal market will cool off next week as issuers bring fewer offers in advance of the Christmas and New Year's holidays, with new issuance totaling about $500 million next week.

The biggest competitive offer will come from Massachusetts, which is offering two general obligation refunding deals totaling $188 million.

Market participants overall remain neutral on whether the lack of supply and participation will keep municipal trading subdued and in a tight range, according to a survey by MMD, a Thomson Reuters company.

Loop Capital Markets on Tuesday said municipal debt volume will come in at $395 billion next year, down an estimated 13 percent from forecasts for 2016 as the incoming Trump administration's impact on economic growth will fall short of expectations.

The Federal Reserve's announcement on Wednesday that it would raise interest rates a quarter percentage point with three additional increases next year made yields jump on Thursday.

But bulls in the muni market believe the meager supply next week combined with more appealing rates and Jan. 1 reinvestment money will push yields lower into the new year, according to the MMD survey.

Muni yields have risen dramatically since the Nov. 8 presidential election. In the first month after the election, muni yields rose more than 80 basis points, John Mousseau, executive vice president at Cumberland Advisors, said in a note on Friday.

"The move up in taxable as well as tax-free yields has been swift and sharp," Mousseau said. "Essentially, what could be characterized as a year's worth of movement in bond yields was compressed into a month."

As of market close on Friday, the yield on top-rated 10-year paper was 77 basis points higher than it was the day of the election. The 30-year yield has also risen 67 basis points since then, MMD data showed.

Fear of a Trump administration led the market to immediately discount a higher growth rate, increased government borrowing, and expanded infrastructure spending, as well as accompanying wage growth and higher inflation, Mousseau said.

An expected cut in the marginal tax rate and a potential increase in the supply of municipal bonds as a result of increased infrastructure spending also worked against munis, he said.

REUTERS

By Rory Carroll | SAN FRANCISCO

Fri Dec 16, 2016 | 5:18pm EST

(Reporting by Rory Carroll; Editing by James Dalgleish)

The Creative Financing Behind New Jersey's Mega-Mall Project.

This is the fourth installment of Mall Madness, a five-part series on the American Dream retail and entertainment complex under construction in the Meadowlands. The series was produced through a reporting collaboration between WNYC, NJ Spotlight, and Bloomberg Businessweek. The first story, second story, and third story are also available online. The mall is schedule to open in the fall of 2018

Tim Lizura, president and chief operating officer of the New Jersey Economic Development Authority, has more than 20 years with the agency over two different tenures. He also worked on World Trade Center redevelopment for the Port Authority.

Yet he didn't hesitate to answer, "Yes," when asked if Triple Five's American Dream was the most complex state project he's worked on.

"What makes it complex is the financing that sits behind the analysis," Lizura said.

Creative financing 101

That complex financing includes a state sales-tax incentive that could be worth up to $390 million, approved by Lizura's agency last year. Then there's a local-redevelopment tax incentive that could be worth up to $800 million. And rather than waiting to redeem those incentives over several decades, Triple Five intends to use them to back more than $1 billion in tax-free municipal bonds that could be sold as early as next month through a public-finance agency in Wisconsin, all to cover construction costs.

The developer is also planning to raise another $1.5 billion for construction through a private loan, which would run the total price tag of the project up to $5 billion, counting the $2 billion value of a vacant building inherited from prior developers. And a $185 million government-funded rail line that opened in 2009 will carry customers to and from the planned mall, which is located on state-owned property in the Meadowlands.

Investors not taxpayers assume risks (theoretically)

Triple Five's attorneys, government-agency lawyers, and other officials say it's the very complexity of the finance plan — the way the bond sale has been structured and the tax-incentive programs designed — that ensures taxpayers are 100 percent protected if Triple Five to falls flat — as did two of the project's prior developers. Others take issue with government being involved at all, arguing that Triple Five, which is owned by a family worth an estimated $2.5 billion according to Bloomberg's Billionaires Index, shouldn't need tax incentives in a state where property taxes are at an all-time high and priorities like education and public-employees pensions routinely go underfunded.

Bonds needed for the mall to open

The reason Triple Five wants to raise $2.65 billion in new financing is to resume construction on a 90-acre site near the New Jersey Turnpike in East Rutherford, which was left abandoned by two developers when the project was called Xanadu. Triple Five, which owns the Mall of America in Minnesota, renamed its project "American Dream," and wants to turn it into a three-million-squa-e-foot shopping/entertainment complex, one that will feature a waterpark, amusement park, full-size ice rink, and observation wheel.

But to do so, the developer needs the bond sale to go through. And to get this far that has meant getting approvals from three different agencies in recent months due to the involvement of the state and local-redevelopment incentive programs. The bond issue also survived a legal challenge this summer.

One component of the bond sale involves the financing of payments-in-lieu-of-taxes (PILOTs) that Triple Five has agreed to make to the borough of East Rutherford instead of paying conventional property taxes. Since New Jersey law allows such payments to be used to finance upfront construction costs for priority redevelopment projects, Triple Five plans to back as much as $800 million in bonds using the pledged payments, with a maturity date of 2049, according to a summary submitted to the state Local Finance Board in August.

Another $350 million in bonds will be backed by the up-to $390 million sales-tax break that was approved in 2015 by the Economic Development Authority. To qualify for that tax incentive, the developer had to demonstrate its project would create a net benefit for the state, and that the company couldn't generate enough financing to finish construction without the state's involvement. In this case, the incentive is 75 percent of the project's future sales-tax revenue over two decades.

What Wisconsin has to do with this

The combined $1.15 billion in unrated revenue bonds will be sold through a two-step process involving the New Jersey Sports & Exposition Authority and the Wisconsin Public Finance Authority. The Wisconsin agency — located nearly 1,000 miles from the Meadowlands — is legally authorized to issue tax-exempt bonds for projects that aren't required to be within its borders. According to Bloomberg, the agency has become a popular partner for projects across the country that provide some kind of social or economic benefits and are willing to pay fees for the issuance of tax-exempt bonds.

Assessing the risks of the bonds

Yet the bond sale has already been delayed several times this year, and there are several issues that could give investors pause. The American Dream site stands on slightly higher ground in the Meadowlands than other parts of a region commonly referred to as a swamp, but a climate-change report released just last week by the Regional Plan Association warns that critical infrastructure running through the Meadowlands could be threatened by three feet of sea-level rise — a scenario that scientists believe could happen as soon as the 2080s. A map released by the RPA also suggests American Dream could eventually become an island surrounded by a large saltwater bay.

Another possible concern for investors is an issue raised by the Federal Reserve Bank of New York in research published online in 2012 about municipal bonds, which are generally considered to be safe if unspectacular investments. The research noted defaults for municipal bonds are higher than is often reported by rating agencies because unrated bonds are usually not factored into their assessments. The report also labeled revenue bonds such as those being sold by Triple Five as being particularly risky compared with government general-obligation bonds, which are typically backed directly by tax revenues.

What is Triple Five risking?

Christopher Leinberger, an experienced developer who chairs George Washington University's Center for Real Estate and Urban Analysis, also raised questions about how much of its own cash equity Triple Five is putting on the table. According to documents submitted to the Economic Development Authority, that amount appears to be $200 million, but Tony Armlin, Triple Five's vice president, said it's actually north of $350 million.

Still, even the higher amount remains just a small fraction of the overall $2.65 billion that Triple Five is trying to raise from investors to complete the development project.

"I'll make the prediction that there will be a recession, and when it comes — I just can't tell you when — when it comes, this project is going to have some very lean years as far as the revenues that it generates," Leinberger said. "To carry it through those lean years you need more than 10 percent equity in the deal. That's why banks are demanding 20 percent to 40 percent equity."

But Armlin has stressed at government meetings in recent months that there is absolutely no risk being placed on the state or the taxpayers by Triple Five's bond issue. Instead, he said the risk is entirely on the investors because the bonds are being sold as a "non-recourse," issue. That means the lenders will have no grounds to go after taxpayers if the project doesn't take off, but it also means they will expect a higher yield.

"Triple Five's project has been completely transparent and fully satisfied every local, state, and federal approval required," Armlin said during a New Jersey Sports & Exposition Authority meeting in September.

Tax incentives similar to Revel deal

Lizura, the EDA executive, said there are also protections built into the state tax incentives themselves. He said the tax breaks approved by his agency will never make it to Triple Five unless the project opens and is profitable. As an example of how they work, he pointed to a $261 million tax-incentive package approved for the failed Revel casino in Atlantic City in 2011. Because the casino went belly up, it never redeemed its tax breaks.

“I think we would have been better off if it operated, for sure, because the state would have gotten a bunch more money and we would’ve given some of that back, but there’s really no public money at risk in the way the program is run,” Lizura said.

Triple Five representatives have also pushed back strongly against claims that the developer is getting a sweetheart property tax break through its deal with East Rutherford. The borough will still be receiving an upfront payment of $21.5 million, and then $2.7 million per year through the agreement even as the investors are also paid off, Triple Five’s representatives said. They also note that it was a previous developer that struck the deal to move the mall from a privately owned tract to the state-owned sports complex.

“No real estate taxes are being diverted from the State of New Jersey or the Borough of East Rutherford,” Triple Five’s statement said.

East Rutherford Mayor James Cassella also offered assurances that borough taxpayers are completely protected, even against a lawsuit if the developer ends up going under. And he said the borough won’t have to provide the complex with police or other emergency services in return for the PILOTs. The state police are in charge of patrolling the sports complex, and the Sports Authority has a Meadowlands Fire Department.

“There isn’t much you could sue us on because we didn’t conceive this, give any money to it, or whatever,” Cassella said. “We’re just saying if you open up, you’re going to pay us,” he said.

But Jeff Tittel, director of New Jersey’s Sierra Club and a longtime critic of American Dream’s tax incentives, said the bigger issue is what else could be done with the tax revenue that has been pledged to Triple Five to help fund its construction costs. “All of this money could clearly be better spent on building new schools, taking lead out of our drinking water, and cleaning up our toxic sites,” Tittel said. “This is clearly one of the biggest sellouts and largest subsidies in state history.”

BY JOHN REITMEYER, ILYA MARRITZ, AND SUSAN BERFIELD

DECEMBER 15, 2016 NJ SPOTLIGHT SERIES: PART 4 OF 5

John Reitmeyer is the budget and public finance writer for NJ Spotlight. Ilya Marritz is a reporter/producer for WNYC. Susan Berfield is a reporter for Bloomberg Businessweek.

NJ Spotlight, an independent online news service on issues critical to New Jersey, makes its in-depth reporting available to NewsWorks.

The Mall Madness series continues tomorrow with a closer look at politics and the American Dream project, including campaign contributions from lawyers, government officials and others involved in the project. The series was produced through a reporting collaboration between WNYC, NJ Spotlight, and Bloomberg Businessweek.

[Startups Seek to Democratize the Muni Market.]

They're bringing in new investors, big and small, to disperse the power and lower interest rates. It's already paying off for some governments.

For all the post-recession financial market reforms, few ultimately made their way to the municipal bond market. For the most part, the muni market remains a low-tech place by Wall Street standards, and one that's still largely controlled by the same group of big investors.

"The muni market has a lot to do with relationships, power and influence," said Rob Novembre, a former trader who has spearheaded a new alternative bond trading system. "The bigger you are as an account, the more attention you get from sellers. If you buy bigger blocks [of bonds], that gets you more power."

Thanks to Novembre's new startup and another in San Francisco, though, that's starting to change. The two companies are not only set to give the market a tech update but also to bring it more buyers. The idea is that more buyers will increase demand for municipal bonds and, in turn, will net governments lower interest rates on their debt.

The startup in San Francisco, Neighborly, goes about finding new buyers by marketing muni bonds to investors with a personal or social interest in the project those bonds are funding. A key component of Neighborly's tactic is that it uses technology to cut down on the costs associated with brokering bonds. This allows it to sell the bonds directly to individuals and in smaller denominations — such as $1,000 blocks — than is typical.

"Like any financial product, it's supply and demand," said head of public finance, James McIntyre. "What we're trying to do is increase the demand side … by helping individuals and institutions find the bonds that meet their investment criteria."

Neighborly recently announced six projects it plans to help take to market next year, ranging from parks improvements in Burlington, Vt., to a new fire truck for Lawrence, Kan.

The other startup, ClarityBidRate, brings in new buyers by focusing on variable rate debt, which went out of fashion after the 2008 market collapse but is making a comeback in the current low interest rate environment. Unlike a 30-year bond that pays out the same "fixed" interest rate for the life of the bond, variable rate debt's interest rates reset weekly. It's a way of paying short-term rates, which are lower, for debt that is long term.

Traditionally, marketing agents for an issuer reset the interest rate themselves. The rate is determined by what the buyers who work with that agent's trading desk will accept. But Novembre's Clarity sidesteps the middleman and essentially works like an electronic stock exchange solely for variable rate debt. So instead of an agent resetting the price, buyers bid on the bonds every week. The buyers aren't just big institutions but anyone who has signed up to trade on the platform. The interest rate is set by the lowest price for which the bonds will sell each week.

Clarity has already drawn the attention of Ohio, which recently put $32.3 million of its variable rate debt on the platform. Up until now, rate-setting by marketing agents has been done "in a black box," said Seth Metcalf, the state's deputy treasurer. Metcalf says he's never sure if he's getting the best possible interest rate every week on his debt.

"I want to trust these people but … I'm concerned there's disproportionate influence within the buyers' market," he said.

The experiment is paying off. On the fifth interest rate reset, Ohio's variable rate debt fetched a better interest rate on Clarity than the industry average for issuers like Ohio. The rate even beat three of the four marketing agents that Ohio has working on a separate package of variable rate debt it issued through traditional channels.

Clarity also gives sellers the benefit of seeing real-time information about who's buying his debt, and he's been pleased to find that it is indeed attracting buyers large and small.

"It democratizes power," he said. "It doesn't matter if you're a little broker dealer in small town Ohio or the largest fund in the world. I'm going to pay the best interest rate that somebody's willing to take."

GOVERNING.COM

BY LIZ FARMER | DECEMBER 15, 2016

The Week in Public Finance: What the Rate Hike Means, a Legal Win for Online Sales Taxes and More.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 16, 2016

Local Governments Suffer Tax Blow at California Supreme Court.

In a loss for local governments, the California Supreme Court decided Monday that online travel companies such as Expedia Inc. are exempt from paying hotel occupancy taxes.

The ruling came in one of several lawsuits filed by California cities and counties against the online firms, including Hotwire Inc. and Priceline.com.

The local governments have been attempting to get the firms to pay hundreds of millions of dollars in back taxes.

Lawyers for the government argued the tax should be based on the total amount the companies collect from consumers, not the lower dollar figure the hotels receive. Cities and counties wanted the online sites to pay the difference.

The state high court agreed the tax should be based on the higher amount but said the online companies were not obligated to pay it.

"It changes the rules in California," said Kent L. Richland, who represented the city of San Diego in the case decided Monday. "It is going to affect all these cases because they are going to have to be decided under new rules."

Several cities and counties still have cases pending, including a lawsuit by Los Angeles.

So far, the online travel firms have won most of the disputes, which have been litigated across the country.

California's top court, examining a San Diego transient occupancy ordinance, said it applied only to hotel operators, not the online businesses.

Online travel companies "are not operators," the court said in a unanimous decision written by Justice Kathryn Mickle Werdegar.

San Diego sued the companies in an attempt to recover about $21 million in back taxes.

Hotels contract with online sites to provide rooms at discounted rates. The sites charge a higher rate and require consumers to pay a charge for taxes and fees.

Hotels have been paying occupancy taxes based on the amounts they received for their rooms, not the higher price paid by consumers to the travel firms

Industry officials say online travel companies typically mark up the wholesale price by 8% to as high as 22%, but there is no standard for this.

Local governments may still be able to recover the additional tax revenue by suing hotels, which were not a party in Monday's case.

If hotels are sued, the Internet firms could end up footing the bill anyway, Richland said.

Most hotels have contracts that obligate online travel companies to compensate them for any taxes eventually owed, Richland said.

San Diego has not yet decided what to do to next, he said.

A spokesman for the California Hotel and Lodging Assn., a trade group for the state's hotels and inns, said the good news is that the ruling calls on online travel companies to pay taxes based on the rate they charge guests, not on the wholesale price charged to them by the hotels.

But it also means that hotel owners will be responsible for finding out from the online travel companies how much they marked up the rooms and collect tax on that higher rate. "It means more work on the part of the hotels," said Lynn Mohrfeld, president and chief executive for the trade group.

In order to change city laws to make online travel companies pay taxes on the total charged to guests, Mohrfeld said an ordinance must be placed before voters and approved by a two-thirds majority.

"Getting a two-thirds majority is an awfully tall order," he said.

The Travel Technology Assn, the trade group that represents online travel companies such as Expedia and Orbitz, declined to comment on the court ruling.

BY TRIBUNE NEWS SERVICE | DECEMBER 13, 2016

By Maura Dolan

NASBO Annual State Spending Survey.

Almost half the states cut their budgets this year, and that trend is likely to continue into 2017.

Weak revenues are causing the most state budget shortfalls since the Great Recession.

According to the National Association of State Budget Officers' (NASBO) annual state spending survey, half of all states saw revenues come in lower than budgeted in fiscal 2016 and nearly as many (24) are seeing those weak revenue conditions carry into fiscal 2017, which ends in summer 2017 for most states. It marks the highest number of states falling short since 36 budgets missed their mark in 2010.

As a result, 19 states made mid-year budget cuts in 2016, totaling $2.8 billion. That number of states "is historically high outside of a recessionary period," according to the report.

The revenue slowdown is caused mainly by slow income tax growth, even slower sales tax growth and an outright decline in corporate tax revenue.

Overall, state spending totaled $786 billion last fiscal year, a 3.7 percent annual increase. Although it marks the seventh straight year of spending growth, it represents a slowdown from fiscal 2015 when spending increased by 4.4 percent. When accounting for inflation, 32 states are still spending less than they did before the Great Recession and total state spending also has yet to surpass pre-recession levels.

States reached at least one positive recession-related milestone this year: They're now saving more of their revenue in rainy day funds than they did before the recession hit in 2008. On average, states' rainy day savings represent more than 5 percent of their spending, compared to 4.9 percent in 2008.

They might need that money in the coming years.

State revenues have significantly weakened, increasing just 1.8 percent to $781 billion in fiscal 2016, compared with the previous year's growth of 5 percent. For fiscal 2017, states are projecting to make 3.6 percent more in revenue, to total $809 billion, but NASBO President-elect Michael Cohen said he expects that figure to come down.

He stopped short, however, of predicting a national downturn.

"Certainly a recession is coming sometime soon," said Cohen, who is also California's finance director. "But I think economists in all of the state offices would tell you that's a really hard economic forecasting [task] of predicting when that's going to happen."

NASBO had previously predicted that fiscal 2016 would mark the full recovery of state budgets from the recession, but the cutbacks and increased inflation has delayed that at least another year.

On the spending side, states budgeted to spend a total of $820 billion in fiscal 2017 — roughly $34 billion, or 4.3 percent, more than the previous year. But that's likely to be trimmed in the event of slower revenues. As in recent years, K-12 education and Medicaid are the main targets of spending increases.

Not all states budgeted for increased spending, though. Eight (including energy-producing states like Alaska, North Dakota and Oklahoma) planned to spend less in 2017.

On the other side of the spectrum, 11 states planned to up their spending by 6 percent or more next year. The reason they can do that? In some places, sales tax increases have boosted their revenue.

Louisiana, for example, expects a 17 percent increase in revenue, driven by an expected $800 million increase in sales tax collections.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 13, 2016

The Trumpian Trio of Concern of Muni Bonds.

Stimulus talk is driving a sell-off but there is a positive side

The US president-elect poses a triple threat to the country's municipal bond market. This has been the conclusion of investors in the wake of Donald Trump's election — and why the $3.8tn market for state and local government debt has suffered some of the sharpest selling seen in fixed income markets. A recovery over the past few days was then cut short by a warning from Janet Yellen, the Federal Reserve chair, that monetary tightening may be more aggressive than expected next year.

Here is the trio of concerns.

First (and not unique to municipal bonds), a Trumpian stimulus from tax cuts and infrastructure spending would raise interest rates and hit the bond market generally.

Continue reading.

FINANCIAL TIMES

DECEMBER 15, 2016 by: Stephen Foley

IRS Releases Final Issue Price Regulations with Significant Changes: Andrews Kurth

On December 9, 2016, the Internal Revenue Service (the "IRS") released final regulations regarding issue price for tax-exempt obligations (the "Final Regulations") that will be effective for bonds sold on or after June 7, 2017.

Summary of Current Law

The Existing Regulations define issue price generally as the first price at which ten percent of the bonds of any maturity is sold to the public. The Existing Regulations further provide that the issue price of bonds for which a bona fide public offering is made may be determined as of the sale date based on reasonable expectations regarding the initial public offering price. Most bond counsel now interpret this rule to permit issuers to determine the issue price of any maturity of bonds for which at least 10% was not sold to the public based on a certificate of the underwriters regarding their reasonable expectations on the sale date.

Summary of Final Regulations

The Final Regulations provide three options for determining issue price: the general actual facts rule, a special reasonable expectations rule, and a special rule for competitive sales. Underwriters will be required to provide certain certifications in order to fall under the special reasonable expectations rule and special rule for competitive sales. An issuer may use its discretion to select among the rules and may select a different rule for different maturities of the same issue, but must identify the rules selected in its books and records on or before the issue date of the bonds.

1. General Rule (Actual Facts Test)

A. Public Offerings

The Final Regulations provide that generally the issue price of bonds issued for money is the first price at which a substantial amount (ten percent) of the bonds is sold to the public.

B. Private Placements

For a bond issued for money in a private placement to a single buyer that is not an underwriter or a related party to an underwriter, the issue price of the bond is the price paid by that buyer.

2. Special Reasonable Expectations Rule (Hold-the-Offering Price Rule)
In addition to the general rule, an issuer may treat the initial offering price to the public as the issue price of the bonds if:

A. The underwriters offered the bonds to the public at a specified initial offering price on or before the sale date, and the lead underwriter in the underwriting syndicate or selling group (or, if applicable, the sole underwriter) provides, on or before the issue date, a certification to that effect to the issuer, together with reasonable supporting documentation for that certification, such as a copy of the pricing wire or equivalent communication; and

B. Each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of (1) the close of the fifth (5th) business day after the sale date, or (2) the date on which the underwriters have sold at least 10% of the bonds of that maturity to the public at a price that is no higher than the initial offering price to the public of that maturity. Sales of bonds to anyone at a price that is lower (rather than higher) than the initial offering price to the public during the holding period are allowed.

We expect the certifications required in (B) will be included in bond purchase agreements and any agreements among underwriters for bonds sold after the Final Regulations take effect on June 7, 2017.

3. Special Rule for Competitive Sales

For bonds issued for money pursuant to an eligible competitive sale, an issuer may treat the reasonably expected initial offering price to the public as of the sale date as the issue price of the bonds if the issuer obtains a certification from the winning bidder regarding the reasonably expected initial offering price to the public of the bonds upon which the price in the winning bid is based.

For purposes of this special rule, the Final Regulations define “competitive sale” to mean a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to underwriters at specified written terms and that meets the following requirements:

A. The issuer disseminates the notice of sale to potential underwriters in a manner reasonably designed to reach potential underwriters;

B. All bidders have an equal opportunity to bid;

C. The issuer receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and

D. The issuer awards the sale to the bidder who offers the highest price (or lowest interest cost).

4. Definitions

“Public” is defined for purposes of determining the issue price of tax-exempt bonds to mean any person other than an underwriter or a related party to an underwriter.

“Underwriter” is defined to mean:

A. Any person that agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or with a lead underwriter to form an underwriting syndicate; and

B. Any person that, on or before the sale date, directly or indirectly enters into a contract with any of the foregoing to sell the bonds.

5. Standard for Reliance on Certifications and Consequences of Violations

The Existing Regulations treat an issuer’s expectations or actions as reasonable only if a prudent person in the same circumstances as the issuer would have those same expectations or take those same actions, based on all the objective facts and circumstances. The Preamble to the Final Regulations states that the existing due diligence standard under the Existing Regulations will apply to any certificate under the Final Regulations and that a certificate from the underwriter of the first price at which 10% of a maturity of bonds were sold to the public is an example of reasonable supporting documentation for establishing the issue price of the bonds of any maturity under the general rule in the Final Regulations.

If the issuer selects a rule for determining issue price but a specific eligibility requirement of that rule is not met, issue price may not be determined under that rule and a redetermination of issue price under a different rule will occur. An example of failing to meet a specific eligibility requirement is an underwriter’s breach of its hold-the-offering-price agreement under the special reasonable expectations rule.

A false statement by an underwriter in a certification or in the agreement among underwriters under one of these special rules may result in a penalty against the underwriter under section 6700, depending on the facts and circumstances.

Effective Date

These regulations are effective for bonds sold on or after June 7, 2017.

History of Issue Price Regulations

On June 18, 1993, the Department of the Treasury (Treasury Department) and the IRS published comprehensive final regulations in the Federal Register (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150. Since that time, those final regulations have been amended in various limited respects, including most recently in final regulations published in the Federal Register (TD 9777, 81 FR 46582) on July 18, 2016 (the regulations issued in 1993 and the various amendments thereto are collectively referred to as the Existing Regulations).

A notice of proposed rulemaking was published in the Federal Register (78 FR 56842; REG-14865--07) on September 16, 2013 (the 2013 Proposed Regulations), which, among other things, proposed to amend the definition of "issue price."

Subsequently, the Treasury Department and the IRS withdrew §1.148-1(f) of the 2013 Proposed Regulations regarding the definition of issue price and published another notice of proposed rulemaking in the Federal Register (80 FR 36301; REG-138526-14) on June 24, 2015, which re-proposed a definition of issue price (the 2015 Proposed Regulations).

National Law Review

by Cathleen Chang, Robert M. Collie, Jr., Gregg Jones, Barbara Jane League

Andrews Kurth Kenyon Law Firm

Tuesday, December 13, 2016

Mexico City Issues First Municipal Green Bond in Latin America.

Mexico City has closed a US$50 million municipal green bond, the first in Latin America.

The bond, which was oversubscribed by two and a half times, has a five-year maturity, and will finance climate-resilient infrastructure and transport, paving the way for further issuances in Mexico City in 2017.

Proceeds of the bond will go towards providing potable water, wastewater, energy efficient public lighting and infrastructure for metro transport.

The bond is the fourth to be issued from Mexico and is its second to be issued in local currency.

Mexico is committed to reducing greenhouse gas emission under the Paris agreement by 22 percent by 2030. According to Climate Bonds Initiative, the country has US$1.3 billion in outstanding climate bonds. The country has one labelled green bond, issued at US$500 million by local development bank Nacional Financiera (NAFIN) in November 2015.

Viola Lutz, a consultant at sustainable energy firm South Pole Group, told Cities Today: "I would say that we see interest in green bonds from financial institutions and cities all over Latin America, particularly in Mexico, Brazil and Colombia–these are the most likely places to see an issuance."

She added that national and regional development banks, as well as commercial financial institutions were also likely to comprise a large share of the uptake in future.

In September 2016, banks that include Citigroup, HSBC and JP Morgan began marketing the first of what could reach up to US$6 billion in green bond trades. The bonds will go towards funding the construction and operation of a new international airport in Mexico City.

The Mexico City International Airport (NAICM) aims to achieve a carbon neutral footprint, and is due to begin operating in 2020.

CitiesToday

by Jack Aldane

14th December 2016

U.S. Municipal Debt Volume to Retreat in 2017: Loop Capital

Municipal debt volume will come in at $395 billion next year, down an estimated 13 percent from 2016 levels as the incoming Trump administration's impact on economic growth will fall short of expectations, an investment bank said on Tuesday.

"Our volume forecast assumes the President-elect will have less success in stimulating the economy, and therefore, interest rates will not rise to the same degree as the market generally expects," Loop Capital Markets said in a forecast note.

Sales of municipal bonds and notes in 2016 are likely to set a new record, with a volume of $445 billion, outpacing the previous high-water mark set in 2010 of $433.3 billion, Chicago-based Loop Capital said.

New money volume into the market should represent the largest year-over-year increase during the period of new money austerity, which started in 2011 and has continued in the years since, Loop Capital said.

Supply in the $3.7 trillion U.S. municipal market surged during the second half of the year as states, city and other public agencies clamored to sell bonds and notes at low interest rates.

The Federal Reserve is expected to announce a quarter-point increase in interest rates on Wednesday, and experts anticipate additional increases in 2017.

Reuters

By Rory Carroll

Tue Dec 13, 2016 | 4:34pm EST

(Reporting by Rory Carroll; Editing by Jonathan Oatis)

[Municipal Bond Markets after the US Presidential Election: When the Dust Settles.]

Municipal bond markets are healthy, especially relative to overleverage in the US Treasury and US corporate bond markets, according to Peter Coffin, president of Breckinridge Capital Advisors.

A 30-year veteran municipal bond analyst and portfolio manager, Coffin gave his thoughts on major trends in the US municipal bond markets, including possible scenarios in the post-election world, at the CFA Institute Conference: Fixed-Income Management 2016.

Favorable supply and demand dynamics, combined with greater transparency and disclosure by municipalities, have recently made these markets more attractive to investors. However, Coffin issued a caution on the “chronically distressed” state and local governments that continue to “kick the debt can down the road” until the inevitable day of reckoning.

Evolution of the Municipal Market Since the Financial Crisis

The US municipal bond markets have been “changing for the good” in terms of disclosure and reporting since the financial crisis, Coffin observed.

Prior to 2008, it was sometimes difficult to for active municipal bond managers to demonstrate their value-add to performance. Because of widespread municipal bond insurance, Coffin said, moral hazard and complacency on the part of issuers and investors had crept into the municipal bond markets.

Everything changed during the financial crisis with the near demise of municipal bond insurers. Investors had to adapt to a new framework. “Today investors are much better equipped,” Coffin noted. There are more repositories of financial information — from specialty research and data providers to ratings agencies. “In 2011, only 60,000 municipalities filed financial statements,” he said. “This year, it’s over 100,000 and growing.”

Municipal bonds were the one part of the bond world that didn’t over-lever in the period leading up to the financial crisis, and more recently, during the zero interest-rate policy (ZIRP) period. One of the primary reasons for this: State and local municipalities have constitutional or statutory restrictions on the amount of debt they can issue. “In the 1840s, when half the states defaulted to Europe, many state and local constitutions were rewritten so it would never happen again,” said Coffin. These laws have endured, so voter referendums are required to issue debt — a definite disincentive for local officials.

Supply and Demand Factors: Different from Other Bond Markets

Annual municipal bond issuance is still relatively moderate compared with corporate bonds and Treasuries, with the overall size of the market at $3.7 trillion. “We’re only replacing what’s being retired,” Coffin said.

With over 40,000 issuers, municipal bond markets are unique. After six months, individual issues trade infrequently or not at all. Retail investors buy the bonds for tax-free income and are often reluctant to sell and convert their investments to a taxable capital gain. This long-term perspective adds to the stability and resilience of these markets. “To me, it’s like standing on the bank of a river,” Coffin said. “There’s a constant flow of new issues. We’re looking upstream to see what’s coming. Then it trades and goes away."

On the demand side, strong cash continues to flow into the sector, bolstered by demographic trends. Baby boomers with their eye on their retirement years are looking for investments with "a little more income and a little less risk," Coffin said. Over the long term, this bodes well for the bond market.

Of course, tax free does not mean risk free. In our low interest rate environment, Coffin worries that retail investors are stretching for yield without understanding the duration risk, as mutual fund data suggests many have moved out of money market funds into higher yielding bond funds. "I don't know how well equipped they are to cope with the risks," he said.

Volatility, Regulation, and Liquidity

Volatility in the municipal bond market comes from several factors. "It's a challenge for dealers to hedge municipal bond risks because there's no investable index," Coffin said. "Trading in these markets is a little sloppy and they're more prone than other bonds to be oversold or overbought." As with the corporate bond sector, the Dodd-Frank Wall Street Reform and Consumer Protection Act and other banking regulations have caused dealers to reduce their municipal bond inventories. Coffin is concerned about Wall Street's capacity to help in a liquidity crisis.

Short-term municipal bonds have experienced a decrease in value due to the SEC's Money Market Fund Reform Rules that were supposed to help the stability of shorter-term securities. Investors have pulled $64 billion out of municipal money market mutual funds, preferring to invest instead in government-only money market funds not subject to the reform rules requiring floating net asset values, liquidity fees, and gates in certain conditions. "Municipal bonds experienced an unusual 45 bps increase in the one-year spot rate this year," Coffin observed.

Regulators have also been pushing hard on local government officials. One example occurred when the SEC brought fraud charges against the mayor of Harrisburg, Pennsylvania, after he gave a speech that painted "too rosy" an economic forecast.

Opportunities in Taxable Municipals

Larger muni-bond issues, such as bonds issued by the Greater Orlando Aviation Authority in October 2016, usually come to market with a tax-exempt portion, an alternative minimum tax portion, and a taxable portion. Because of their relative attractiveness and higher yield, taxable municipal bonds are more interesting to institutional investors, particularly foreign investors that can list them as US government bonds on their balance sheets. Coffin observed, "If we have sweeping tax reform (a high priority of the Trump administration), you may see more taxable municipals coming."

Coffin also noted that in the taxable municipal bond market, investors can expect liquidity on par with the tax-free munis issued by the same entity. He added that during the financial crisis, taxable municipal bond values actually held up better than corporate bonds and had less correlation with equities. The significantly lower historic default risk of taxable munis versus corporates accounts for their relatively solid performance.

General Obligation (GO) vs. Revenue Bonds

Recent significant haircuts to creditors in the distressed general obligation (GO) bond market had investors turning their focus to revenue bonds. "In bankruptcy situations, outcomes are much less certain today for GOs," Coffin said. The Detroit bankruptcy was a case in point. There, a federal judge affirmed that bankruptcy law superseded state laws protecting pensions and contracts. But

Coffin noted that after the GO bonds and other Detroit debt were restructured, bondholders recovered just a little over 70 cents on the dollar. “I tell people, I have a front-row seat to the epic struggle between labor and capital,” he said, “and round one has gone to labor.”

Coffin advises investors to be very selective and opportunistic in the “chronically distressed” issues. BCA Research deemed the combined obligations of certain states — New Jersey, Hawaii, Connecticut, Illinois, Kentucky, Alaska, and Massachusetts — the “elephant in the room.” Coffin noted that “these states are woefully underfunded,” taking into account the high debt, underfunded pension obligations, and other post-employment benefits (OPEB) such as health care.

Not only does New Jersey have high combined obligations, but the state was also hit with a subpar economic recovery that led to a political impasse. The state negotiated with the state employees’ unions to extend retirement ages and reduce benefits and cost of living allowances in exchange for the state’s promise to make scheduled contributions to the pension funds. The New Jersey government failed to make the promised pension contributions and said it was not under a contractual obligation to do so. The unions sued and the state supreme court upheld the state’s right not to fund. “These problems will ultimately get resolved, but right now they’re getting worse and worse,” Coffin said.

Resolution needs to begin soon. As Coffin stated, the “hope is once we get through the US presidential election, there is meaningful restructuring.”

Despite the chronically distressed issuers, Coffin applauded the recent resiliency of the municipal bond markets. “Municipal bond investors were able to look through situations like San Bernadino, California; Jefferson County, Alabama; Stockton, California; and Puerto Rico,” he said. He doesn’t believe this will be the norm going forward, however. “Bankruptcy is a very unlikely scenario for the vast majority of bonds,” Coffin observed. “Politicians can’t just repudiate their debt.” In most cases, the law will focus on the municipality’s “full faith and credit” obligation and say that taxes should be raised.

Municipal Bonds as the Most Sustainable Investment

Coffin never takes the tax-exempt status of municipal bonds for granted, but with favorable supply and demand dynamics and a modestly improving US economy, the sector continues to look attractive. Property taxes are improving as a result of increased real estate values at the local level. Sales and excise taxes, particularly in the oil and gas states, are cyclical, which has been reflected in widening spreads. Coffin is more cautious and selective in health care, a sector that has been performing well.

He encourages investment managers to talk more about municipal bonds as sustainable investments. “What could be better than investing in local infrastructure, health care, and education?” he asked. “We need to talk more about the positive impact municipal bond financing has on a local community. It allows small communities access to capital, and that’s a good thing for our country.”

Enterprising Investor

14 December 2016

By Julie Hammond, CFA

Fund Manager Q&A: What Should Muni Bond Investors Do Now?

NEW YORK — The past year has meant a wild ride for investors in municipal bond funds.

Between September 2015 and this past October, municipal bond funds had 54 straight weeks of inflows, with investors pouring some $68 billion into them. Muni fund owners were rewarded handsomely: In the first six months of 2016, the BlackRock Strategic Municipal Opportunities fund returned 4.7 percent, for example. The 10-year yield on the AP Municipal Bond index, which moves inversely to bond prices, hit a low of 1.69 percent in July.

Then the bear came out roaring.

In early October, the flow of dollars into muni funds stalled as bets increased that the Federal Reserve would raise interest rates late this year. Selling accelerated after Donald Trump's surprise victory on expectations that his plans to boost economic growth would hurt the price of bonds. In November alone, investors yanked over $10 billion from muni funds, according to the Investment Company Institute. BlackRock's Strategic Municipal Opportunities fund fell 4.4 percent.

Peter Hayes, co-manager of the $4.7 billion BlackRock Strategic Municipal Opportunities fund, recently talked about the about-face for munis, and how investors can best navigate the current uncertainties. Answers have been edited for length and clarity.

Q: Muni bonds have just undergone an intense sell-off. Do you think it has gone too far?

A: Well, every big sell-off winds up being a good long-term buying opportunity, at some point. It's a question of finding the right entry point.

This sell-off has been so dramatic that it created value in a short amount of time. Municipal bonds are yielding more than Treasurys right now, and last week we began to see some stabilization of the market.

But given the headwinds, I'm not sure we are completely out of the woods yet.

Q: Which headwinds worry you the most?

A: Interest rates continue to be a concern. If rates go higher, that will scare investors from long-term assets.

Q: What about tax rates? Some believe that the Trump administration will slash tax rates for higher earners, which would diminish the value of muni bonds' tax-free income.

A: That's a potential headwind as well, but it's much longer term. I think we need to get past the inauguration and see what the new administration is really most concerned with.

Q: With all the talk of tax reform, some have wondered if the municipal tax exception could be at risk.

A: We emphatically don't believe that we will lose the muni tax exemption. Taxes are a bit of an overhang to the market, but a lot of that's already been factored into the price of the bonds today.

Q: Sounds like taxes are a wildcard. But it does seem likely that President-elect Trump will try to boost infrastructure spending. How do you think that will impact the muni market?

A: The initial reaction to the infrastructure proposals was that it would be negative, because it would mean more issuance in the muni market. That is usually a headwind for performance, given that we don’t know what the demand is going to be.

But if you really look at the Republican proposals, they’re talking about an infrastructure bank and private tax credits. That doesn’t translate into increased muni issuances.

It’s also important to keep in mind that this year, about 60 percent of new issuance was related to issuers that were refinancing their debt.

If rates move higher, refunding will be less attractive. So I don’t see the current proposal as we know it today translating into higher issuance in the muni market in 2017, especially if the first half of the year is driven by all this insecurity around tax policy. Altogether, I don’t see infrastructure as a big headwind.

Q: So what’s the best strategy for investors right now?

If you already own munis, don’t sell. The market has already sold off significantly.

If you need a bit of income and want to take a position, shorter-term bonds look cheap. For the most part, stay in the three- to five-year range, where you will be less exposed to a change in tax policy and a potential rise in longer-term interest rates. Because the correction has been so large, those looking for more income might want to put a portion of their money in the 10- to 15-year part of the curve.

Otherwise, I suggest waiting on the sidelines. The severity and size of the move is likely to have scared investors. The next several weeks are very important. If the fund flows continue to be very negative, we have to be cautious. If they stabilize, then I think we can be more confident that the worst is over.

The Associated Press

by Cybele Weisser

1 p.m. EST December 13, 2016

Municipal Advisors: Mark Your Calendars with Annual Compliance Dates.

As regulated entities, municipal advisors have multiple obligations throughout the year to maintain their registration status with the MSRB and ensure compliance with MSRB rules. Municipal advisors should be aware of the following key compliance dates in 2017.

2017: Rule G-44 Compliance Certification
On an annual basis, the chief executive officer or equivalent officer at each municipal advisor firm must certify that it has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable rules. See MSRB Rule G-44.

January 1-26, 2017: Annual Registration Affirmation
Each January, all municipal advisor firms registered with the MSRB are required to affirm or correct

their registration information on MSRB Form A-12. See MSRB Rule A-12.

January 31, 2017: Form MA-I
Recognizing that the MSRB's professional fees are calculated based on the number of Forms MA-I a municipal advisor firm has on file with the Securities and Exchange Commission as of January 31 each year, the MSRB recommends firms verify the accuracy of their Forms MA-I by January 31, 2017. See MSRB Rule A-11.

April 30, 2017: Annual Municipal Advisor Professional Fee
Invoices for the MSRB's municipal advisor professional fee, which is equal to $300 per Form MA-I on file with the SEC as of January 31 of each year, are sent the first week of April, and payment is due by April 30. See MSRB Rule A-11.

September 12, 2017: Series 50 Grace Period Ends
Municipal advisor professionals have until September 12, 2017 to take and pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) to continue to engage in municipal advisor activities.

October 31, 2017: Annual Registration Fee
Each municipal advisor firm registered with the MSRB must pay an annual fee of $1,000 by October 31. Invoices are sent the first week of October. See MSRB Rule A-12.

Final Issue Price Regulations Issued: Squire Patton Boggs

The Treasury Department issued final "issue price" regulations on December 9, 2016 (T.D. 9801) (the "Issue Price Regulations"). Below is a summary of the general and special rules for determining issue price under the Issue Price Regulations:

- General Rule. The general rule, retained from the existing regulations, provides that issue price is determined by actual sales to the public of 10% of those bonds having the same credit and payment terms (generally, each maturity of an issue).
- "Hold the Price" Bonds. For bonds offered to the public, issue price may instead be determined based on a certification from the underwriter, accompanied by supporting documentation such as a copy of the pricing wire, that states the price at which the bonds were initially offered to the public. However, the underwriter or underwriters must each agree not to sell the bonds at a higher price until the earlier of more than five business days after the sale date or 10% of the bonds have been sold to the public.
- Competitive Sales. For bonds that have been sold in a competitive bidding process meeting specified requirements, including that at least three bids are received, the issuer may rely upon the reasonably expected initial offering price that is certified by the winning bidder.
- Private Placements. For private placements to a single buyer, the issue price is the actual price paid by the buyer.

If more than one issue price rule could apply, the issuer may select which rule to apply but must do so on or before the issue date. Read below for additional information regarding the Issue Price Regulation.

The Issue Price Regulation also adds and modifies definitions:

- "Public" now means any person other than an underwriter or a related person. Under the existing regulations, the term public did not include “bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers.”

- “Underwriter” means (1) any person who participates in the initial sale of bonds to the public pursuant to a written contract with the issuer (or with a lead underwriter) and (2) any person that participates in the initial sale to the public pursuant to a written agreement with a person described in the former clause (for instance, pursuant to a retail distribution agreement).

As discussed on this blog (here, and more light-heartedly, here), the Treasury has previously issued proposed regulations that were not well received. The preamble to the Issue Price Regulation notes that “overwhelmingly negative comments” were received regarding parts of the proposed regulations. In response to comments, various changes were made by Treasury (for example, the private placement rule was added, and an issuer may select which rule to apply.)

The Issue Price Regulations apply to bonds sold to the public on or after June 7, 2017, provided of course that Congress does not take action under the Congressional Review Act or otherwise.

The Public Finance Tax Blog

By Alexios Hadji on December 16, 2016

Squire Patton Boggs

Dealers, MAs Push for MSRB to Fix Proposed Rule Changes on Complaints.

WASHINGTON – Market groups and firms are asking the Municipal Securities Rulemaking Board to rethink proposed rule changes related to complaints, saying they should be adapted to better fit the differences in the relationships that municipal advisors have with clients and dealers have customers.

The groups and firms made their requests in letters sent to the Securities and Exchange Commission, which must approve the rule changes.

The MSRB, which proposed changing three of its rules to amend the complaint process for dealer customers and then extend that process to MA customers, did not solicit comments before submitting to the SEC, to the chagrin of dealers and MAs.

The proposal would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The National Association of Municipal Advisors, in a letter authored by its executive director Susan Gaffney, said that the regulation, in some ways, “is trying to fit a square peg into a round hole.”

“While we have stated on numerous occasions that the new MA regulations should mirror current broker/dealer regulations whenever possible, this is an example where an alternative approach is warranted due to the difference between the nature of a broker/dealer ‘customer’ and a municipal advisor ‘client,'” Gaffney wrote.

The PFM Group agreed with NAMA, saying that the amendments are a “mismatch of good intention” and a lack of “effective execution.”

“This important distinction between the respective relationships is evidence by the disparate treatment of municipal advisors as a fiduciary under the Dodd-Frank Act and the ensuing Municipal Advisor Rule when compared to the regulatory standard of suitability for broker-dealers,” PFM wrote.

The non-dealer advisory firm added: “Regrettably, the proposed rule changes do not include needed input from municipal market participants,” referring to the MSRB’s decision not to go out for public comment before submitting to the SEC.

Bond Dealers of America said the MSRB “is proceeding with unnecessary haste” in not first asking for public comment and, like NAMA and PFM, pointed out the “wholly different” business relationships that dealers and MAs have with their clients.

The proposed amendments would change Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint. They would eliminate the need to send a brochure and instead require other disclosures for dealer customers and MA clients. The dealer and MA requirements would mandate the firms give notification of: their registration with the MSRB and the SEC; the MSRB’s website address; and the brochure available on the MSRB’s website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and MAs would have to share the information “promptly,” but no less than once a calendar year over the course of the MA relationship.

NAMA and PFM proposed that instead of using G-10 to require that information, the MSRB should have MAs send the information along with the conflicts of interest and disciplinary disclosures that are required under MSRB Rule G-42 on core duties of MAs. PFM said that path “would be immensely more effective and less burdensome.”

The firm and NAMA additionally asked for specific information about the contents of the MA brochure as well as a chance for input. BDA urged that a new brochure be created specifically for MAs instead of trying to repurpose the existing one for dealers.

The proposed revisions to Rule G-8 would require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log would have to include information about the identity of a client and the timing of the complaint as well as a description of the complaint and the action, if any, the dealer or MA took in response. NAMA is asking that the MSRB more specifically describe what it means by “complaints” and “action” while also providing examples of how to create and maintain the logs.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements. PFM and NAMA requested that the MSRB allow MAs to give input on those codes. BDA asked that the MSRB work with FINRA to ensure that the problem codes are uniform and harmonized so that they do not lead to a heightened regulatory burden on firms registered with both self-regulators.

Rule G-9 would be amended to require both dealers and MAs to retain their complaint records for six years. Both NAMA and PFM argued the MSRB should keep the MA requirement at five years.

The MSRB has said the amendments would be effective six months after they are approved. BDA, citing other regulatory adjustments that dealers are currently facing, asked that the MSRB extend the effective date to one year after approval.

The Bond Buyer

By Jack Casey

December 14, 2016

SEC Ends MCDC Settlements, Turns to Violators That Didn't Participate.

WASHINGTON – The Securities and Exchange Commission will not bring any more settlements under its Municipalities Continuing Disclosure Cooperation initiative and will instead focus on those underwriters and issuers that did not voluntarily disclose violations under the MCDC.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, told The Bond Buyer about the unit's shift in focus on Tuesday, ending months of speculation about the future of the MCDC.

"We currently do not expect to recommend enforcement action against any additional parties under the initiative," she said. "We now think it is appropriate to turn our attention to issuers and underwriters and obligors that didn't participate."

The unit's enforcement lawyers view the underwriters and issuers who may have committed violations but did not self-report as part of MCDC as a high risk for future violations, Gaunt said, adding, "That is a group of particular interest to us and we intend to devote significant resources to identifying violations by those parties."

The enforcement lawyers would also like to learn about any instances where some violations were not self-reported even though the issuer or underwriter self-reported others, according to Gaunt.

There have been indications in the past that the commission may also pursue individuals that were associated with the violations that were reported under the initiative.

Market participants had been waiting for an indication from the SEC about MCDC's future since the commission released its round of issuer settlements in late August.

The SEC's decision to conclude the initiative was guided by the knowledge that MCDC both raised the level of awareness of continuing disclosure problems in the market and led to improvements to be put in place for "the key gatekeepers" in the market, according to Gaunt. MCDC also raised the quality of disclosure and due diligence in the market, she added.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. In total, the initiative led to settlements with 72 issuers from 45 states, including a 2014 settlement with California's Kings Canyon Joint Unified School District. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of $18 million in MCDC settlements.

Issuers that settled under the initiative did not have to pay penalties but agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding their continuing disclosure obligations to ensure compliance with federal securities laws. They also agreed to designate an individual or officer to be responsible for ensuring they are compliant with their policies and procedures. The designated individual is also responsible for implementing and maintaining a record of the issuer's disclosure training.

The issuers also have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Underwriters that settled paid fines based on their size and number of violations, up to a maximum of $500,000, and agreed to hire an independent consultant. The consultant was tasked with analyzing the underwriters' policies and procedures and submitting a report to the underwriter detailing recommendations for changes or improvements to the policies and procedures. The underwriters, which were announced in a series of three settlements between June 2015 and February 2016, paid a total of $18 million.

At the time MCDC was announced, some market participants had said continuing disclosure problems were mostly concentrated among small, infrequent issuers. They said most issuers had cleaned up their act after the SEC's Office of Compliance, Inspections, and Examinations issued a risk alert in 2012. The risk alert highlighted due diligence and disclosure failings OCIE had uncovered and urged market participants to establish adequate procedures to help them stay in compliance with federal securities laws related to disclosure.

"Among the things that I think the initiative revealed is that these kinds of failures were committed by issuers of all types and sizes, not just small, infrequent issuers," Gaunt said. "I think the initiative also revealed that this was not a historical problem, but rather, involved misconduct as recent as 2014, when the [MCDC] initiative was announced."

The Bond Buyer

By Jack Casey

December 13, 2016

California Bill Would Provide $6B in Annual Infrastructure Funding.

On Dec. 5, California Assemblyman Jim Frazier (D – Oakley) introduced a new bill that offers a plan to repair the state's crumbling transportation infrastructure, East County Today reports.

AB1 would raise an additional $6 billion in annual funding to repair state and local roads, improve trade corridors and support public transit, and will also include measures for accountability and the streamlining of projects.

"My commitment to passing a comprehensive funding plan that addresses California's failing transportation system will not waiver," stated Assemblyman Frazier in a press release. "This proposal dedicates billions to road and highway repairs that our state so desperately needs while also creating tens of thousands of good paying jobs."

"The transportation crisis in California affects each and every part of our state," Assembly Speaker Anthony Rendon (D-Paramount) said in the press release. "If we don't step up and solve it, our economy will decline and the people we represent will suffer. Transportation funding has traditionally been a bipartisan issue and our goal is to work across the aisle to come to a comprehensive solution."

"We have been working closely with Assemblyman Frazier for more than two years on a variety of concepts to provide the resources local governments need to fix our roads and bridges," said Kiana Valentine, Legislative Advocate for the California State Association of Counties, in the press release. "It's no secret that our vital infrastructure is crumbling and we're at a tipping point. We urge the Governor and Legislative Leadership to keep their promise to advance this vital legislation early in the 2017 session."

Some of the highlights of the proposed AB1 bill include the following:

- The creation of the Office of the Transportation Inspector General with a term of six years;
- An increase of $0.012 per gallon in the gasoline tax, with an inflation adjustment;
- An increase of $38 in the vehicle registration fee every year, with an inflation adjustment;
- A new $165 annual vehicle registration fee for zero-emission vehicles, with an inflation adjustment; and
- A $0.20 per gallon increase in the diesel fuel excise tax.

Kerry Clines | December 12, 2016

Missouri Lawmaker Wants to Stop Use of State Money for Stadiums.

A lawmaker's proposed legislation to eliminate a panel which is now considering whether to award tax credits for a St. Louis soccer stadium.

Republican state Senator Rob Schaaf has filed a bill to strip the Missouri Development Finance Board, or MDFB, of its power to grant loans or issue bonds or tax credits. He contends the board has already wasted millions of dollars in a failed attempt to build a second football stadium for the now departed Rams.

Schaaf doesn't mince words over what the board's currently discussing. "And so now if MDFB is going to get $40 million to build a soccer stadium, then I think they just need to go away."

The city of St. Louis has applied to the Development Finance Board for $40 million of state tax credits to help finance a stadium for a future Major League Soccer team. The board's expected to announce its decision on December 20th. St. Louis is also poised to ask city taxpayers to approve $80 million to go toward the stadium in an April election.

Schaaf is highly critical of outgoing Democratic Governor Jay Nixon's recent moves to restrict Medicaid spending by almost $41 million, while calling for the NDFB to meet and consider the $40 million tax credit request from St. Louis city for the stadium.

He says Nixon attempted to steer hundreds of millions of tax payer dollars toward building a second

St. Louis football stadium in an effort to keep the NFL Rams from moving. Schaaf contends that, at the same time, the MDFB was draining taxpayer money for the same purpose.

"They've cost us many millions of dollars that we'll never get back that they spent trying to build the second St. Louis football stadium, which didn't pan out" said Schaaf. "We're out all those millions of dollars."

The Rams moved to California this year after plans for a $1 billion stadium fell through. The Development Finance Board had pledged $50 million in state tax credits to assist in building the structure. Schaaf noted the state is still spending $12 million a year on the first football stadium built for the Rams, which they moved into in 1995.

He's filed another measure which more broadly addresses the use of tax dollars for sports complexes. Senate Joint Resolution 2 would block the state from entering into an agreement with any sports complex authority which would require the state to pay back any newly issued bonds without legislative or voter approval.

Schaaf says it would put an end to the use of state taxpayer money for stadiums. The resolution, if passed by the legislature, would be required to go to a public vote because it would make changes to the state constitution.

Schaaf thinks it will be warmly received. "I think the people of Missouri would vote for it overwhelmingly."

MISSOURINET

DECEMBER 12, 2016 BY JASON TAYLOR

NABL: The Bond Lawyer - Fall 2016

The Fall 2016 issue of The Bond Lawyer® is now available. Click here to download the document.

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members and associate members of the Association. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

Final Issue Price Regulations Significantly Change Current Rules.

On Dec. 9, the IRS released final Treasury Regulations (the "Final Regulations") relating to the "issue price" of tax-exempt bonds for purposes of arbitrage investment restrictions. Although on balance an improvement to the proposed Treasury Regulations released in 2015, the Final Regulations represent a departure from the current Treasury Regulations (the "Current Regulations") and will affect long-held practices regarding the documentation of issue price. As such, issuers, underwriters, financial advisors and others involved in the municipal bond market will need to determine how they will comply with the Final Regulations, which are effective for bonds sold on or after June 7, 2017.

Set forth below is a general summary of pertinent provisions of the Final Regulations.

Actual Sales Test Adopted for Publicly Offered Bonds
Unless the issuer elects to use one of the two “special rules” for determining issue price, the issue price of bonds that are publicly offered is the first price at which a substantial amount (i.e.,10%) of the bonds is sold to the public. However, unlike the Current Regulations, which allow the issue price to be determined as of the sale date based on reasonable expectations regarding the initial public offering price, the Final Regulations provide that the “issue price of bonds issued for money is the first price at which a substantial amount [defined as 10%] of the bonds is sold to the public.” Thus, the Final Regulations adopt an actual sales test to determine issue price for publicly offered bonds, a significant change from the Current Regulations.

Special Rule for Use of Initial Offering Price to the Public
As an alternative to the “actual sales” test, the Final Regulations include a “special rule” for determining the issue price of publicly offered bonds, pursuant to which an issuer may treat the initial offering price to the public as of the sale date as the issue price of the bonds if the following requirements are met:

- The underwriters offered the bonds to the public for purchase at a specified initial offering price on or before the sale date, and the lead underwriter in the underwriting syndicate or selling group (of, if applicable, the sole underwriter) provides, on or before the issue date, a certificate to that effect to the issuer, together with reasonable supporting documentation for that certification, such as a copy of the pricing wire or equivalent communication; and
- Each member of the underwriting syndicate agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of (i) the close of the 5th business day after the sale date or (ii) the date on which the underwriters have sold a substantial amount (i.e., 10%) of the bonds to the public at a price that is no higher than the initial offering price to the public.

Special Rule for Competitive Sales
Recognizing that competitive sales inherently “favor competition and price transparency that may result in better pricing for issuers,” the Final Regulations include a special rule for competitive sales. Specifically, the Final Regulations provide that, for bonds issued in an eligible competitive sale, the issue price is the price produced based on the winning bid and requires the winning bidder to provide an appropriate certification regarding the reasonably expected initial offering prices of the bonds.

An eligible “competitive sale” is a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to the underwriters pursuant to specified written terms and that meets the following requirements:

- The issuer disseminates the notice of sale to potential underwriters in a manner reasonably designed to reach potential underwriters;
- All bidders have an equal opportunity to bid;
- The issuer receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and
- The issuer awards the sale to the bidder who offers the highest price (or lowest interest cost).

Issue Price in Private Placements
The Final Regulations expressly provide that, for a bond issued for money in a private placement to a single buyer that is not an underwriter or a related party to an underwriter, the issue price of the bond is the price paid by the buyer.

Determining Issue Price when More than One Rule is Available
The Final Regulations include more than one way to determine issue price (i.e., the general rule, the special rule, and the competitive bid rule). Accordingly, the Final Regulations provide that for bonds for which more than one rule for determining issue price is available, an issuer may select the rule it will use to determine the issue price at any time on or before the issue date of the bonds by identifying the selected rule in the books and records maintained for the bonds.

Definition of Underwriter
The Final Regulations define "underwriter" to mean (i) any person that agrees pursuant to a written contract with the issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the bonds to the public and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in (i) to participate in the initial sale of the bonds to the public (for example, a retail distribution agreement between a national lead underwriter and a regional firm under which the regional firm participates in the initial sale of the bonds to the public).

Conclusion
Although it is too soon to tell exactly how the Final Regulations will affect the way in which issuers, underwriters, financial advisors and others approach issuances of tax-exempt bonds, the Final Regulations will affect the way that issue price is established and documented and may have other ancillary effects on the municipal bond market. Market participants should review the Final Regulations carefully and consult their advisors, as appropriate.

The Bond Buyer

By Victoria Ozimek and Brian Teaff

December 14, 2016

Victoria Ozimek is a member of Bracewell LLP's Public Finance practice in Austin, and Brian Teaf is a member of its Public Finance practice in Houston.

Charles L. Almond, Stephen H. Gerdes and Todd Greenwalt, members of Bracewell Public Finance practice in Houston, contributed to this article.

GASB Forms Revenue and Expense Recognition Task Force.

GASB Chairman David A. Vaudt recently appointed a task force to assist with the Board's objective of developing a comprehensive application model for the recognition of revenues and expenses that arise from nonexchange, exchange, and exchange-like transactions.

The Intersector Project Hosts Summit: An Intersector Process for U.S. Infrastructure.

On Tuesday, December 13, leading groups met in Washington, D.C., to discuss the key issues facing U.S. infrastructure. SIFMA's Michael Decker discussed muni bonds, stating, "Muni bonds finance 75% of US infrastructure. It's important to preserve their tax-exempt status."

[Intersector Project Summit Recap]

P3 Digest Week of December 19, 2016

Powered by P3 INGENIUM: the most comprehensive source for P3 project updates in North America.

Read the Digest.

NCPPP

NCPPP Exclusive: An Inside Look at the Darcy and the Flats, a Challenging Mixed-Use Development Project in Bethesda, MD.

StonebridgeCarras, LLC, is a real estate development and investment firm whose portfolio includes several of the Washington, D.C., region's most successful mixed-use projects, which are built near public transit and feature a combination of office, retail, residential and hotel space. One example is the transformation of two county-owned parking lots in suburban Bethesda, Md., into The Darcy and The Flats. This project, which opened in June 2015, has increased Montgomery County's residential and commercial tax base, added affordable housing, and enhanced a portion of a public trail while improving the quality and availability of public parking in a very busy dining and shopping destination. We asked Jane Galbraith Mahaffie, a principal at StonebridgeCarras, to talk about the project and provide an overview of other P3 projects in the StonebridgeCarras portfolio.

NCPPP: Describe your role at StonebridgeCarras, both generally and in terms of your participation in development of The Darcy and The Flats.

JM: At StonebridgeCarras (SC) I am one of two principals who oversee the entitlement and development of all SC projects. In this role I direct the multi-faceted mixed-use developments and public-private initiatives with a combined value of more than $1 billion. The Darcy/Flats are a great example of the public–private projects that SC is involved in. At over $200 million it included both private and public partners and required extensive entitlement processes and community outreach. My role at SC is quite directed to leading the firm's efforts on the public/private partnership projects in the Washington metropolitan area.

NCPPP: What organizations did StonebridgeCarras partner with to build The Darcy and The Flats and what were their roles?

JM: Montgomery County Department of Transportation (MCDOT) was the public entity responsible for The Darcy/Flats development. The team of StonebridgeCarras and PN Hoffman joined forces and responded to the request for proposals that MCDOT issued in 2004. That team, Lot 31 Associates, remained partners throughout the project. Northwestern Mutual Life Insurance and Buvermo Investments joined the team as additional debt/equity investors in the project.

MCDOT was a very active partner throughout the development, and at the conclusion of the development, they own the 900-space public parking garage in the project. PN Hoffman and SC became a completely integrated team in project management, construction oversight, leasing and condominium sales of the project. It was a bit unusual, but the teams really worked well together.

NCPPP: What types of challenges did you encounter in conducting this project and how did you overcome them?

JM: The project was 3.3 acres in the heart of Bethesda. Given the size of the garage the schedule was an additional one year of construction, predominantly all below-grade work. We shut down a road for the construction and were adjacent to both residential mid-rise and high-rise and single-family homes. The garage was designed in a way that included a large transfer beam at the ground level that had post tension beams taller than me. Then above grade were two residential buildings with 40,000 square feet of retail, reconstruction of a road (now effectively a bridge above the garage) and significant public outdoor space.

The greatest challenge was the schedule, the understanding that we were really constructing three projects, and the public expectations. When you have significant below-grade work, the schedule runs through many seasons. In Washington, D.C., where you have four true seasons, site and foundation–to-grade work is very susceptible to weather. As it happened, the two winter seasons during below-grade work/foundation-to-grade were horrific in D.C. Success came with adjusting schedules and working with the county and adjoining neighbors. Additionally, when you have three projects in one, you have efficiencies but not in every category. Manpower adjustments had to be made by us, the design team and the contractor to successfully navigate some significant issues because we were working with three distinct projects.

P3 projects naturally have expectations by the public. In The Darcy/Flats we had road closures and a significant area under construction in a major downtown area of Bethesda. Our team very quickly established a bimonthly newsletter that was widely distributed among neighbors, our county partners, county regulators and elected officials. We also established working teams among agencies to react quickly as needed. These were just some aspects of additional communication that is clearly required in P3 projects.

NCPPP: What lessons did the firm learn in pursuing this project?

JM: Every project presents its own opportunities and challenges. The Darcy/Flats was a very exposed project (locational). Communication and flexibility surrounding schedules was a key element learned on this project.

NCPPP: How was this project similar to projects your firm usually leads? What were some of the significant differences?

JM: SC develops very complex multi-faceted mixed use projects. The degree of difficulty was similar to many that we have developed and are in our pipeline. As a P3 project, it was similar in understanding that P3 projects bring many constituents and varied expectations. As noted above, the most significant difference was the size below grade and the multiple implications that 500,000 feet below grade presented in schedule and technical challenges.

NCPP: Can you describe other P3 projects StonebridgeCarras is conducting or plans to pursue?

JM: SC and our joint venture partner, Bozzuto, were awarded a P3 project with Montgomery County to develop a new headquarters for Maryland-National Capital Park and Planning Commission (M-NCPPC) that includes leased space for significant Montgomery County agencies. This 300,000- -square-foot building will begin construction in 2017. It also includes a public parking garage and significant town square in downtown Wheaton. At the conclusion of its construction, SC/Bozzuto will retain the land currently housing M-NCPPC for private development.

In the District of Columbia, SC and our joint development partners, ProFish and The Jarvis Companies, will be developing a residential, retail, and industrial mixed-use project including renovating the historic Crummell School for the community in the Ivy City neighborhood. This project is exciting as it retains a neighborhood industrial company with the development of additional retail and residential, including affordable housing. In addition, the development team will be working with the community as we together prescribe the uses to be housed in the renovated school.

NCPPP: How is the landscape for real estate P3 projects changing? What interesting trends have you observed since the start of the recession?

JM: I think that P3 projects continue to be a great vehicle for both the public entities and the private developers. Public agencies provide a site previously unavailable to the private market, which benefits both groups. Public agencies can also benefit from the opportunity of more private financing of projects that benefit communities. I am not sure if directly observed as result of the recession, but I think that as the P3 model has matured, the projects tend to be more complex in both opportunity and expectations. P3 projects are not for the faint at heart. Firms responding have to understand the complexity of the deals and time required for a successful development.

NCPPP

December 19, 2016

[Mayors Startled When Trump Promises to Keep Tax-Exempt Bonds.]

Tax exemptions on municipal bonds are hardly the sexiest political issue surrounding Donald Trump's transition. But a group of mayors, meeting with the president-elect at Trump Tower on Thursday, were surprised with welcome news when they pressed Trump to keep the exemptions.

"He's the president-elect, and he said he would keep it," said Tom Cochran, the CEO and executive director of the U.S. Conference of Mayors. "My lobbyist has been up on the Hill, and they said to us everything is on the table. We didn't know what would happen."

He added: "As soon as the sun comes up, I will be contacting the authorities in Speaker Ryan's office and others on the Democratic side that we were encouraged by the president-elect."

A spokesman for Trump, who convened the mayors in Trump Tower for about 30 minutes, didn't respond to a request for comment. Trump has vowed to overhaul the country's tax code when taking office, and mayors have feared the exemption could be in jeopardy. It has been targeted by some Republicans as too pricey, particularly when the bonds are used to build sports arenas and stadiums.

In a 2009 report, the Congressional Budget Office called the tax-exempt bonds a "costly mechanism." A 2015 report from the Joint Committee on Taxation said the tax-exempt bonds will cost the government more than $180 billion between that year and 2019.

The exemptions are vitally important to mayors, they say, because they enable cities and counties to build roads, schools and other projects without paying the burden of taxes on the borrowing. Between 2003 and 2012, states and local governments financed $3.2 trillion in projects, according to the National Association of Counties. Trump seemed to understand that and emphasized how committed he was to spending money on infrastructure, the mayors said.

Two other mayors in the room said they were also surprised with Trump's declaration. "I didn't necessarily think we'd hear an opinion back," said Mick Cornett, the Republican mayor of Oklahoma City. "I was very encouraged."

"He definitely said he would keep the exemptions," said Steve Benjamin, the Democratic mayor of Columbia, S.C. A spokesman for New Orleans Mayor Mitch Landrieu, a Democrat also present at the meeting, said he wasn't available for comment.

The U.S. Conference of Mayors, had struggled to secure Trump's attention during the presidential race. And a number of liberal mayors have vowed to oppose many of Trump's proposals, like on immigration.

On Thursday the mayors present said he seemed interested in attending their next meeting and sending members of his Cabinet.

The mayors said they discussed a number of other municipal issues, like community block grants for cities. Trump seemed interested in how cities received money, the mayors said, and how they spent it.

Benjamin said that while he vociferously opposed Trump's candidacy, he was trying to be "optimistic" after the meeting. Cornett said "because Trump has lived in cities, I think he has a good understanding."

"You didn't know what to expect going in," Cochran, the CEO and executive director said. "We're in uncharted waters with this president-elect. We felt like that he was listening to us. We're trying to get to know him. He's the president. We got to get to know him."

POLITICO

By JOSH DAWSEY

12/15/16 07:21 PM EST

TAX - NEW HAMPSHIRE

Bishop of Protestant Episcopal Diocese in New Hampshire v. Town of Durham

Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177763

Church appealed town's assessment of property tax on 24 spaces in church parking lot that church leased to state university students.

The Superior Court entered summary judgment for town, and church appealed.

The Supreme Court of New Hampshire held that spaces in church's parking lot leased to state university students were not exempt from property tax.

Spaces in church's parking lot leased to state university students were not "used and occupied directly for religious purposes," within meaning of statutory exemption from property tax for "houses of public worship, buildings, and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination." University students were using parking spaces for their own private and secular purposes, i.e., parking for about six hours each week, plus special event days and during snow plowing and repair operations, and church did not argue that leasing spaces to university students was reasonably necessary to carry out its mission.

TAX - LOUISIANA

Arrow Aviation Company, LLC v. St. Martin Parish School Board Tax Sales Dept.

Supreme Court of Louisiana - December 6, 2016 - So.3d ----2016 WL 7118912 - 2016-1132 (La. 12/6/16)

Taxpayer petitioned to recover amount of sales and use tax paid under protest, claiming collector failed to apply a legislative tax exclusion.

The 16th Judicial District Court, St. Martin Parish, ruled in favor of the collector, finding the exclusion to be unconstitutional. Taxpayer appealed

The Supreme Court of Louisiana held that:

- A legislative tax exclusion must treat all local governmental subdivisions, school boards, and other political subdivisions the same, otherwise it is prohibited by the constitution's uniformity provision, abrogating *Anthony Crane Rental, L.P. v. Fruge*, 833 So.2d 1070;
- State constitution's uniformity provision did not act to compel statewide local tax authorities to apply a permissive tax exclusion adopted by a different local tax authority;
- Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was constitutional as applied to taxpayer for audit periods during which the exclusion could be applied by tax authorities in all parishes in the same form, manner, or degree; but
- The exclusion was unconstitutional as applied for audit periods during which the exclusion was mandatory for tax authorities in one particular parish, but optional for tax authorities in all other parishes; and
- Unconstitutional portion of the statute would be severed and removed.

State constitution's uniformity provision placed a limitation on the legislature, rather than on local tax authorities, and therefore, did not act to compel statewide local tax authorities to apply a permissive tax exclusion from sales and use taxes adopted by a different local tax authority, as permitting one local tax authority to direct the actions of another would undermine each authority's power to tax.

Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was constitutional as applied to taxpayer for audit periods during which the exclusion could be applied by tax authorities in all parishes in the same form, manner, or degree.

Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was unconstitutional as applied for audit periods during which the exclusion was mandatory for tax authorities in one particular parish, but optional for tax authorities in all other parishes, as an example of non-uniformity prohibited by the constitution.

Unconstitutional portion of statute mandating tax authorities in one parish apply tax exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, would be severed and removed. Because earlier versions of the exclusion did not mandate that only one parish apply the exclusion, the purpose of the statute was not dependent on the unconstitutional portion.

GFOA Members Warn Disclosure Bill Could Push Some Issuers Out of Market.

WASHINGTON – A bill introduced by Rep. Gwen Moore, D-Wis., that would shift municipal disclosure responsibilities to issuers and borrowers from underwriters could drive some localities out of the market, issuer officials warned Moore's chief of staff on Thursday.

The warnings came from members of the Government Finance Officers Association's debt committee at a meeting here after the bill was introduced earlier in the day.

Jonas Biery, the debt committee's chair, said that hears from small issuers throughout the nation that over the past three or four years there has been continued confusion and fear about the increased complexity of regulatory and enforcement actions in the muni industry.

"I think there's some anecdotal, if not data supported, evidence that some of those issuers are backing out of the market," Biery said. "Smaller, typically rural issuers are saying they can't comply and take the risk so they're not going to enter the market."

He added that he thinks there is a valid concern that initiatives like the bill are going to continue to push this "important sector" out of the market.

Ben Watkins, an ex-officio member of the committee and the bond finance director for Florida, said that the bill is "obviously something that from an institutional standpoint [GFOA has] a long history of resisting." GFOA's position won't change, he said.

"It's very difficult for us to reconcile what has historically been a record of support for the muni industry and state and local governments with this proposal," Watkins said. "I believe the consensus in the room would be that this is extraordinarily misguided and counterproductive."

Watkins said the bill is the beginning of a snowball that rolls downhill and has a logical conclusion of creating "a tremendous obstacle and impediment for state and local governments' access to very efficient and inexpensive financing, which really finances the infrastructure of the country."

Moore's bill would authorize the SEC to establish baseline mandatory disclosure requirements, including on content and timing, for primary offerings. But it would leave room for the commission to vary the requirements for different classes of issuers or borrowers.

That is a complete reorientation from the current disclosure regime, which puts disclosure responsibilities on underwriters. Under the Securities and Exchange Commission Rule 15c2-12, firms cannot underwrite an issuer's bonds unless that issuer has contractually agreed to disclose financial and operating information at least annually as well as material events as they occur.

Sean Gard, Moore's chief of staff, told the committee members that the bill didn't come out of

Moore's mind all of a sudden because she wanted to come down hard on the muni market. Instead, Moore sees the bill as a way to strengthen the market, he said.

"If you look at the legislation, you will see that it is well-drafted. It's not a Hail Mary," Gard said. "For most issuers, there's nothing in this legislation that comes out of left field," Gard said.

He also cited ongoing conversations among a number of market groups, including GFOA through its best practices, that there is market focus on improving disclosure.

"This is just our addition to that [disclosure] discussion," Gard said.

He noted that the bill and industry discussions follow SEC enforcement division findings through its Municipalities Continuing Disclosure Cooperation initiative that found 72 issuers, including two states, did not comply with their continuing disclosure requirements and then lied to investors about that.

"The industry wouldn't be having these conversations around disclosure if there wasn't something there," Gard said.

At the same time, Gard said, it is important for industry participants to recognize that the bill was introduced on the last day of the congressional session, meaning it will not get a committee hearing in the session and won't move forward.

"[Moore] doesn't have any plans to sneak this in," Gard said. "She does want to engage the issuer community and have this conversation."

The legislation, which aims to codify recommendations made in the SEC's 2012 Report on the Municipal market, would not repeal the Tower Amendment of the Securities Exchange Act of 1934, which prohibits the SEC and Municipal Securities Rulemaking Board from requiring issuers to file bond-related documents with them before the sale of those bonds.

Issuers and borrowers with more than $10 million of outstanding municipal securities would have to adopt internal controls and systems, including written policies and procedures that, at a minimum, identify each official responsible for each aspect of disclosure as well as the process by which official statements are drafted and reviewed.

The bill would authorize the SEC to adopt a rule allowing issuers and borrowers to comply with those provisions through a state-wide system of disclosure controls and education.

It would also authorize the SEC to prescribe accounting methods for state and local bond documents and bond-related financial information. Alternatively, the SEC could require issuers to use the reporting and accounting standards from a standards-setting body, such as the Government Accounting Standards Board. The bill does not specifically mention GASB or any other standards-setting body.

The bill as drafted provides a safe harbor for forward-looking statements made by issuers and borrowers.

In addition to the new disclosure requirements, the bill would remove the muni exemption from registration for private activity bonds so PAB transactions would either have to be registered with the SEC or fall under some other exemption such as the one for private placements. Bonds for nonprofit hospitals and universities would continue to be exempted from registration under their 501(c)(3) exemption.

The SEC has recommended that PAB or conduit deals that involve corporate borrowers be registered, since corporations must register corporate deals.

Laura Lockwood-McCall, director of the debt management division of the Oregon State Treasury, questioned why corporate deals would need to be registered.

“You just increase the cost to communities across the country that are working with the private sector to spur our economies,” she said.

The legislation includes twelve types of information an issuer would be required to include in an official statement but gives the SEC the discretion to require more disclosures.

The OS would need to identify and describe any issuer or other borrower with respect to the securities being offered as well as provide a description of any legal limitations on the incurrence of indebtedness by the issuer, borrower, or taxing authority of the issuer. It would also need to describe the issuer’s or borrower’s debt structure, including information with respect to amounts of authorized and outstanding debt, estimated short-term debt, security of debt, and debt service requirements, as well as the nature and extent of their other material contingent liabilities or commitments.

Other information would have to be disclosed about: defaults; whether securities are supported by taxes; the issuers’ financial statements if they are material; the intended use of the proceeds of the offering; and any material conflicts of interest of the issuer or other obligated person and any other party involved in the offering.

The Bond Buyer

By Jack Casey

December 8, 2016

[With Trump's Support, Muni Exemption Advocates Take Battle to Congress.]

WASHINGTON – U.S. mayors and other municipal market participants are stepping up pressure on Congress to maintain the tax exemption on municipal bonds, after President-elect Donald Trump said he supports the tax break that they say is crucial for funding infrastructure projects.

Mike Belarmino, associate legislative director and associate general counsel for the National Association of Counties, said although the group is “highly encouraged” by Trump’s statement, it will now focus its efforts on making sure lawmakers also recognize the importance of the muni exemption.

“We will remain vigilant and stay focused on protecting the tax exemption as a top priority for counties, because it will take a combined effort of the administration and the U.S. Congress to achieve any comprehensive tax reform,” Belarmino said.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, called Trump’s support of the muni exemption an “encouraging development” that she said comes as a result of the lobbying and education BDA and other organizations have been engaged in on the Hill. However, she added that Trump’s statements do not mean the groups’ work is done.

“We have a complicated road ahead with regard to tax reform,” Giroux said.

“Still, this is a very important public step with what the president-elect has said,” she added. “It’s extremely encouraging and we’re happy the meeting went as well as it did.”

Trump told the U.S. Conference of Mayors (USCM) during a 15-t0-20 minute conversation on his infrastructure plan on Thursday that he plans to maintain the tax-exempt standing of municipal bonds. The Republican president-elect’s 10-year infrastructure plan utilizes $137 billion of tax credits that he says will leverage $1 trillion of private investments.

Speaking to reporters at Trump Tower in New York City on Thursday, Columbia, S.C., mayor and USCM second vice president Stephen Benjamin said that Trump “was clear that his support of the tax exemption was there and that was wonderful news.” “Protecting the tax exemption on municipal bonds … is sacrosanct to us delivering on infrastructure.

“[Trump] listened to our issues and concerns and our desire to see a significant investment in infrastructure and the protection of the tax exemption of municipal bonds as a key part of that plan,” he added.

Because Trump’s tax plan still lacks details and doesn’t mention munis directly, state and local groups had expressed concern that the muni exemption could be in jeopardy.

Earlier this year, House Republicans proposed a blueprint for tax reform, which doesn’t mention munis directly, but does suggest limiting or repealing unnamed special-interest provisions.

Because roughly 75% of U.S. infrastructure has been financed using munis, Benjamin said the exemption was an “important piece” of the discussion with Trump.

“A focus on infrastructure goes hand-in-hand with a commitment to preserving the exemption on municipal bond interest,” said Emily Brock, director of the Government Finance Officers Association’s federal liaison center. “But our work isn’t done. We will continue to work with our champions in the House and the Senate to ensure the exemption stays intact during the 115th congress, especially as discussions on tax reform proceed.”

USCM has stressed the low-cost borrowing the muni exemption provides issuers as well as the $1.65 trillion in debt issued for infrastructure by state and local governments from 2003 through 2012. Opponents, meanwhile, have argued that the exemption is an inefficient method for financing infrastructure and costs the federal government in the long run.

In addition to infrastructure investment, USCM representatives discussed public safety, unfunded federal mandates and immigration priorities with Trump, according to the group.

At its bipartisan meeting earlier this fall, the mayoral organization stressed that the next president must maintain the tax exemption for municipal bonds or risk costing cities up to $500 billion in spending.

USCM is scheduled to hold its winter meeting in Washington next month, where nearly 300 mayors are expected to meet with representatives from the Trump administration.

The Bond Buyer

By Evan Fallor

December 16, 2016

Fitch: 2017 Outlook for U.S. States Stable Despite Significant Federal Uncertainty.

Fitch Ratings-New York-13 December 2016: Although the upcoming change in federal administration introduces significant uncertainty for U.S. states, the U.S. State outlook for 2017 remains stable on credit stability and the states' strong powers, according to a Fitch Ratings report. Both the rating and sector outlooks are stable for 2017.

"At this early stage it is not possible to predict what policy choices will be made by the Trump administration, or what they will mean for states," said Laura Porter, Managing Director.

"The transition of federal administrations creates many uncertainties for U.S. states, which are exposed to policies affecting the U.S. and global economies, as well as decisions related to jointly funded programs."

Federal changes with a significant impact on states are generally implemented in a way that allows states to adjust, taking advantage of their strong powers to manage budgets and download fiscal challenges.

President-elect Trump's proposal to convert Medicaid to a block grant program, if enacted, would likely lead to materially lower federal funding to states. Reduced Medicaid aid could cause states to tighten overall spending and reduce transfers to local governments.

"The biggest concern would be decisions that shift costs from the federal government to states while continuing service level mandates," said Porter.

The Trump administration's trade policy proposals could be significant for both state economies and revenues, particularly for state economies with pronounced links outside the U.S. Immigration policy changes could also have specific sector or regional implications.

The likelihood of federal tax cuts in 2017 could lead to volatility in personal and corporate income tax revenues for the current fiscal year as taxpayers consider shifting income to 2017 to take advantage of lower rates. The effects could reverberate for several years, similarly to the 2013 federal tax law changes.

If the federal government enacts fiscal stimulus simultaneously with tax cuts, it may mean higher federal debt, higher inflation and higher rates. This could put wage pressure on states and locals, raise borrowing costs, create headwinds for export-oriented sectors, and, positively, potentially help pension returns, though for the latter this could be offset by higher cost of living adjustments.

Fitch will hold a teleconference on Jan. 12th at 2:00 pm eastern to discuss its 2017 U.S. state and local government outlooks. To register for the call, please visit http://dpregister.com/10097550.

For more information, a special report titled "2017 Outlook: US States" is available at www.fitchratings.com.

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How Trump Can Build the Best Airports and Roads.

Many critics of President-elect Donald Trump's infrastructure plans are missing the point. He doesn't want to pour hundreds of billions of dollars into upgrading roads, bridges and airports to give the economy a Keynesian jolt. Creating jobs isn't even his primary goal. He wants visible symbols of competence and pride. "We're becoming a third world country, because of our infrastructure, our airports, our roads," Trump said when he announced his candidacy. He repeated the theme throughout the campaign.

Trump sometimes sounds like a jet-setting Davos Man, as he bellyaches about airports in New York and Los Angeles compared with those in Doha and Shanghai: our old metropolitan airports versus their sparkling new international hubs. (Has he never been through Denver or Minneapolis?) He is, however, voicing a frustration that unites Americans across the economic and political spectrums. You know there's a highway problem when a popular rock song includes the lyrics, "I'm driving here I sit/Cursing my government/For not using my taxes to fill holes with more cement." (The hit duo Twenty One Pilots is even from the political battleground of central Ohio.) Rundown airports and pitted roadways are everyday reminders that the government isn't doing its job.

Because Democrats also like the idea of infrastructure spending (although many prefer metro rail systems over roads), a bipartisan deal seems possible early in the Trump administration. The question, then, is how can Trump live up to his promises and not simply waste a lot of money? What's the best way to pick projects? What are the barriers to the quality infrastructure and speedy construction that his supporters expect? And how do we pay for all this?

What to build: The worst possible thing Trump could do is take the advice to “build something inspiring,” as James B. Stewart put it in the New York Times. Lavishing money on a few showcase projects won’t do anything for Trump’s trucking-company friend who complains that he has to buy “the cheapest trucks and the strongest tires” because the highways are so bad. It wouldn’t improve most Americans’ everyday experiences. Repairing roads may not be as inspiring as an optimistically priced $100 billion maglev train from Washington to Boston, but it’s likely to create much more value for the money.

“You’re building projects that have to be maintained and run for decades, and if costs are higher than benefits or the revenues, that means that they will be a drag on the economy,” observes Bent Flyvbjerg, a professor at Oxford University’s Said Business School who studies major infrastructure projects. To identify and support high-value projects, he recommends giving states and municipalities block grants and the freedom to decide how to spend the money. As long as there’s accountability to avoid corruption, decentralized decision-makers are more likely to respond to local needs — especially when they don’t have to sell federal officials on the sexiness of a given project. It’s an approach Scandinavian countries have used successfully. “If Trump’s infrastructure plans would involve actually fixing local problems, maintaining the existing infrastructure to a high level of quality, that would be a great thing,” Flyvbjerg says.

What to reform: Like many infrastructure enthusiasts, including Trump adviser Steve Bannon, Stewart is nostalgic for Depression-era projects. In his Times piece, he writes that President Franklin Roosevelt’s

> Public Works Administration and Works Progress Administration, using combinations of public and private money, solicited proposals from states and cities, hired millions of workers and eventually built 78,000 bridges, 650,000 miles of roads, 700 miles of airport runways, 13,000 playgrounds and 125,000 military and civilian buildings, including more than 40,000 schools — in most cases to high standards of quality and design.

Note, first of all, that it was the many relatively small projects, not the few showcases, that transformed America. They’re why people remember those New Deal programs as public benefactors.

Then consider how long it takes to get anything built today. The bottleneck isn’t the actual construction. It’s the ever-more-detailed analyses, reviews and redesigns required — and often litigated — beforehand. For a megaproject, actual construction takes three or four years, estimates Robert D. Thornton, a Los Angeles lawyer who advises state and regional infrastructure authorities on environmental issues. Before that three or four years starts, however, “the planning and design process will be 10 to 15 years,” he says. Thornton recalls a conference of road builders where company after company boasted of getting projects done in 20 years. “I got up and said, ‘In any other business you’d be out of business, because you couldn’t take 20 years to deliver a product,’” he says. “But in transportation, we just accept it.”

To cut delays, Thornton recommends some simple procedural changes. Rather than reinventing and relitigating an air-quality model for each new project, local governments should be able to use the Federal Highway Administration’s model as a safe harbor. “Then the only issue is, Did they follow the model?” Similarly, to get federal transportation funding in the first place, a local government has to have an approved metropolitan transportation plan that meets Clean Air Act standards. Any new project that fits into the already-approved plan, Thornton argues, shouldn't have to prove once again that it meets federal requirements. Like fixing potholes, these incremental reforms may not be glamorous, but they could significantly reduce the time and money it takes to deliver infrastructure improvements.

How to pay for it: Even if a new infrastructure bill decentralizes project selection and reforms the review process, the biggest challenge remains finding the money. Per-gallon gas tax revenue, the major source of transportation funds, is declining. Inflation has slowly eroded governments' buying power, while better gas mileage has reduced the amount collected. But hybrid drivers still use the roads. The logical alternative is a tax per mile driven, with different weight classes to reflect degrees of wear and tear. It could be collected with an odometer reading before annual car registration. A mileage tax might also make all drivers, not just the ones with gas guzzlers, think twice about incremental trips, reducing traffic congestion. (Such mileage-based use taxes also shouldn't go to fund other kinds of transit.)

The second major challenge is that the Interstate Highway System is a half century old. The highways weren't designed to last much longer. That's why Trump's trucking pal complains that the highways have never been so bad. "You need to reconstruct and modernize — basically replace — the Interstate Highway System as it is right now," says Robert Poole, director of transportation policy for the Reason Foundation. "There's not a ghost of a chance of enough tax money being available in our lifetime to do that set of megaprojects." (Disclosure: Poole was my boss in the 1990s, when I was editor of Reason magazine and he was president of the Reason Foundation.)

The good news is that international companies are eager to invest in U.S. infrastructure through public-private partnerships financed in the capital markets. Although rare in the U.S., such arrangements are common in Australia, Europe and Latin America. Once a project has made it through the planning and permitting process, investors bear most of the risk. ("They'll take the construction risk and the completion risk, but they won't take the environmental risk," Thornton says.) Tolls, user fees or dedicated taxes provide a stream of revenue. The $1 trillion infrastructure plan prepared by Trump advisers Wilbur Ross and Peter Navarro envisions extensive use of such partnerships "to a magnitude that would be up to the task of the interstate system," Poole says.

One such arrangement is already tackling Trump's pet peeve: the sad state of LaGuardia Airport. The Port Authority of New York and New Jersey has set up a public-private partnership to replace the central terminal. Commercial partners will make money from fees charged to airlines and passengers — and from maximizing revenue from shops and restaurants. "This is the model," Poole says. "When Margaret Thatcher privatized the British Airports Authority, BAA reinvented airport retail. They came up with the idea of competing, name-brand shops and restaurants, not the old generic food and beverage contractors and that was it." The attractive, stimulating airports that travelers enjoy were invented not as public works but as a way to make money. If Trump thinks about infrastructure more like a businessman and less like a showman, we might just get everyday improvements we can also be proud of.

Bloomberg View

By Virginia Postrel

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

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Uber, Lyft Face Pushback From Hometown Taxis Taking a Stand.

- San Francisco taxi says ride-hailing sites get unfair edge
- California regulator wants lawsuit tossed, citing state law

A San Francisco taxi operator, desperate to protect a troubled industry’s turf, is trying to tighten the rules for Uber Technologies Inc. and Lyft Inc. in their hometown.

In a struggle playing out across the U.S. and in Europe, traditional cab companies have gone to court complaining they’re at a grave disadvantage because upstart ride-hailing services got a pass from regulators.

With the number of San Francisco licensed taxis at 1,800 and shrinking, compared with 45,000 drivers working mostly for Uber and Lyft, Flywheel Taxi is asking a federal judge to flatten what it calls an “unlevel and unequal field.” Similar fights are under way in New York, Boston and Philadelphia, while a Chicago federal appeals court in October thew out a challenge by a local taxi lobbying group.

Flywheel, a 2011 reinvention of Desoto Cab Co., claims to be the first app-oriented taxi fleet. Calling itself San Francisco’s oldest and biggest taxi service, Flywheel argues it was hobbled by a state regulator’s 2013 decision to usurp regulation of ride-hailing companies from the city.

It contends that by creating a new category to classify Uber and Lyft as transportation network companies, or TNCs, the California Public Utilities Commission allowed them to “operate free from the rules and regulations that govern all other taxi companies in San Francisco, and without incurring the associated costs of complying with local rules and regulations,” according to a court filing.

“Uber and Lyft got their foot in the door, then it was swung wide open by the CPUC,” Flywheel President Hansu Kim said in an interview. Looser regulations under the TNC classification allowed drivers for the ride-hailing platforms to flood San Francisco’s streets, he said. “Essentially anyone with a car can act as a taxi and sell rides.”

Seeking to undo the 2013 decision, Kim says Flywheel’s costs amount to as much as $9 million annually for medallions, permits and registration, along with liability insurance to cover $1 million per incident and workers’ compensation insurance for all drivers.

Taxi cabs must also meet fuel efficiency and clean-air standards, and taxi drivers must be commercially trained, licensed and screened with background checks. While their companies must comply with price controls, Uber profits from raising fares during peak demand, according to the court filing.

The CPUC Thursday asked U.S. District Judge Edward Chen in San Francisco to throw out the case. Chen has already ruled against Uber in other cases involving its disruption of the transportation-fo--hire business, allowing its drivers to sue as a group to seek some employee benefits despite the company designating them as independent contractors.

Matt Kallman, an Uber spokesman, and Lyft spokeswoman Chelsea Harrison declined to comment on the taxi case.

Jonathan Koltz, a lawyer for the CPUC, said taxis continue to enjoy at least one important edge over Uber and Lyft: they can pick up passengers hailing them from the street.

‘Breaking the Law’

“If an Uber driver picks up a street hail they are breaking the law,” Koltz said. “They can be fined or lose their permit to operate.”

More importantly, Koltz said, the CPUC was following state law when it assumed regulatory control of the nascent ride-hailing business three years ago. That view was confirmed by a law passed by California lawmakers the following year, he said.

“The legislature said, ‘OK, CPUC, you’ve asserted jurisdiction over TNCs, looks good,’” Koltz said. “It’s pretty well settled at this point under California law that we got it right.”

Flywheel argues that Uber and Lyft perform the same function of taxis but benefit from lighter regulation, in violation of the constitution’s guarantee of equal protection under the law. To make that case, Flywheel has to demonstrate the ride-share companies are similar to taxis.

‘Key Distinction’

“There’s no question there are many similarities,” Chen said in court. “It does seem to me the key distinction comes down to street hails,” and that may warrant “a different level of regulation,” he said. The judge will issue a written decision later.

Flywheel has an unlikely ally in its fight — its regulator, the San Francisco Municipal Transportation Authority. While the agency isn’t directly involved in the lawsuit, it issued comments urging the CPUC to revisit its regulation of ride-sharing companies. Its concerns echo some of Flywheel’s.

“These are drivers operating commercially on our streets” with “very limited regulation and almost zero enforcement,” Kate Toran, head of taxi regulation for the municipal agency, said in an interview.

If Flywheel loses the battle with the CPUC, it still has another fight. It has sued Uber directly in the same court over claims the startup relied on billions of dollars in funding to drive competitors out of business through predatory pricing. Uber hasn’t filed a response yet.

“Uber and Lyft are taking their mounds of money, of venture capital, to destroy the taxi market by subsidizing rides,” Kim said.

The case is Desoto Cab Co. Inc. v. Picker, 15-cv-04375, U.S. District Court, Northern District of California (San Francisco).

Bloomberg Markets

by Joel Rosenblatt

December 15, 2016, 11:18 AM PST December 15, 2016, 6:29 PM PST

Bond Market's Silver Lining Playbook: Slicing Next Year's Taxes

- Record stock market meets worst muni returns since 2013
- 'Tremendous volume' of tax-loss swaps, Breckinridge CIO says

Investors see a silver lining in the municipal-bond market rout: Tax-loss swaps.

Thanks to the technique, bondholders are selling securities that have tumbled in value and reinvesting the cash in similar, higher-yielding bonds. The losses that locks in are offsetting gains from a record-setting stock prices, cutting next year's tax bills.

"There is a tremendous volume of this going on," said David Madigan, who oversees $25 billion of municipal bonds as chief investment officer at Breckinridge Capital Advisors in Boston. "We are aggressively pursuing what we can get done."

The rush stems from a financial-market schism that's widened since Donald Trump's presidential victory last month, with his pledge to cut income taxes and boost spending on infrastructure stoking speculation that that the Federal Reserve will need to increase interest rates more rapidly.

The Dow Jones Industrial Average of stocks has risen 14 percent this year and is closing in on 20,000. Meanwhile, the prospect of higher rates caused municipal bonds to tumble in November, putting the securities on pace for the first loss since 2013. Investors who bought state and local government debt this summer — when prices reached a record high — have seen the value tumble by as much as 6.3 percent, according to Bank of America Merrill Lynch indexes.

The ability to use such losses to reduce coming tax bills are a rarity for municipal-debt investors. Before 2013, when the Federal Reserve's decision to wind down its bond-buying spree caused investors to pull out their money, the municipal market hadn't dropped since the 2008 financial crisis. The last money-losing year before that was 1999, another record-setting time for stocks.

This year, tax-loss swaps are giving investors a money-saving opportunity to adjust their portfolios before Trump takes office, said Kathleen McNamara, a municipal strategist at UBS Wealth Management in New York. The Republican's election has changed market expectations about inflation, tax policy and the trajectory of federal spending.

"There are so many factors that changed people's view on how they should be positioned," said McNamara.

To comply with Internal Revenue Service rules, investors executing tax-loss swaps need to avoid a wash sale, when securities are sold for the purpose of establishing a tax loss but the same or a "substantially identical" security is purchased 30 days before or after the sale.

Complying with the rule is easier in the municipal market, where there are more than 50,000 issuers and more than 1 million outstanding bonds.

Tax-loss swaps make the most sense for investors who bought bonds between May and August, otherwise transaction costs minimize the benefit, Breckinridge's Madigan said. He said his firm has executed $60 million tax-loss swap block trades in the last three weeks.

"It's a rare instance," Madigan said. "We had a big market rally and then in November we had a big market sell-off, so we actually have losses now that it makes sense to try to capture."

Bloomberg

by Martin Z Braun

December 16, 2016, 2:00 AM PST

Bloomberg Brief Weekly Video - 12/15

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

Watch the video.

Bloomberg

December 15, 2016

Fitch Teleconference Replay: Chicago Board of Education

Members of Fitch's Analytical and Legal teams discussed how Fitch arrived at the 'A' rating for the upcoming $500 million Chicago Board of Education dedicated capital improvement tax bonds, series 2016. The teams discussed how the specific features of the bonds meet Fitch's criteria for rating special revenue obligation debt without consideration of the issuer's general credit quality and how Fitch arrived at the 'A' rating for the bonds.

The call was chaired by Arlene Bohner, Senior Director and Francis Phillip, Assisant General Counsel.

Listen to the replay.

The Looming Threat to Tax-Free Munis.

Donald Trump and House Republicans have proposed lower rates on taxable investment interest; such moves would lessen the advantages of munis

Thousands of municipal-bond investors have benefited from tax advantages for much of the past three decades. Pretty soon, those advantages could shrink dramatically.

That is because both President-elect Donald Trump and Republicans in the House of Representatives have proposed lower rates on taxable investment interest. Such moves would lessen the advantages of tax-free munis in ways that range from relatively minor to severely disruptive.

The most radical proposal, advanced by House Republicans led by Paul Ryan (R., Wis.) and Ways and Means Committee Chairman Kevin Brady (R., Texas), would lower the top rate on interest on taxable bonds, such as Treasurys and corporate debt, to 16.5% from 43.4%, a 62% drop.

Here is how the math works: Say an investment in a taxable bond pays annual interest of 5%. Of that interest, the government currently collects as much as 43.4 cents on every dollar. If the tax rate drops, the investor keeps more of the payout on the bond.

By comparison, tax-free municipal bonds are just that, tax-free, meaning that they don't benefit from a tax-rate cut, while taxable bonds do. This means tax-free bonds would be less desirable to investors, potentially denting prices, while demand would rise for taxable bonds.

"The math on munis is changing, and structurally the tax exemption will be less valuable—we just don't know to what degree," says Robert Gordon, who heads Twenty-First Securities, a tax-strategy firm in New York.

The smallest change, and the one with the broadest support, is repeal of a 3.8% surtax on net investment income such as interest, dividends and capital gains. This levy takes effect at a threshold of $250,000 of income for married couples and $200,000 for singles, and both Mr. Trump and many in Congress have called for its elimination.

Without this surtax, the top rate on interest from munis' taxable competition would be 39.6% rather than the current 43.4%. Other things being equal, the recent benchmark yield of 2.37% on a 10-year muni would need to rise to about 2.55% for top-bracket investors in order to provide an equivalent return, says Richard Ciccarone, a muni specialist who heads Merritt Research Services in Chicago. Bond yields rise as prices fall.

In another proposal, Mr. Trump has called for lowering the top rate on "ordinary" income such as wages and interest to 33% from 39.6%. If this is enacted along with the surtax repeal, then the recent benchmark yield would need to rise to about 2.80%, says Mr. Ciccarone. Absent other market changes, the value of a $10,000 investment would shrink to $9,627, according to Mr. Gordon.

The third and most disruptive proposal is in the House GOP tax reform blueprint. It would give investment interest the same tax-favored treatment that long-term capital gains and certain dividends now receive, ending the decadeslong practice of taxing interest at ordinary-income rates.

The blueprint's proposed top rate on taxable interest is 16.5%. In that case, the yield would need to rise nearly 50%, from 2.37% to 3.50%, according to Mr. Ciccarone, in order to provide an equivalent return for top-bracket investors.

Not since the 1986 tax reform lowered the top rate on taxable interest from 50% to 28% have munis faced such a big shift. During that period, the yield on a common muni index rose from 6.54% to a high of 9.17% as Treasury yields also rose, says Mr. Ciccarone.

How likely is a 16.5% top tax rate on interest for individuals? It's a serious proposal, say tax policy specialists, but it's part of a package that also denies net interest deductions to businesses. This denial "will face opposition from leveraged businesses that don't want to lose deductions," says Alan Cole, an economist with the Tax Foundation in Washington.

Ahead of possible tax shifts, Natalie Cohen, who heads municipal-bond research at Wells Fargo

Securities, counsels caution both in buying and selling. Other factors besides tax rates affect munis, she says, such as the perception that they are a safe investment.

Muni-fund investors raced out of the sector immediately after the election, sending yields higher, but prices have rebounded a bit lately. Meanwhile, holders of individual bonds can collect their coupons regardless of what happens in the market.

“Tax reform is still full of unknowns,” says Ms. Cohen.

THE WALL STREET JROUNAL

By LAURA SAUNDERS

Dec. 16, 2016 11:02 a.m. ET

Write to Laura Saunders at laura.saunders@wsj.com

Struggling Chicago Schools Increase Size of Bond Deal by 46 Percent.

NEW YORK — Chicago’s financially struggling public school system boosted the amount of its planned bond sale on Thursday by 46 percent to $729.6 million, taking advantage of a new type of debt that priced at lower interest rates than its existing bonds.

Strong investor demand allowed the Chicago Board of Education to increase the capital improvement tax bonds deal that was originally set for $500 million.

Bonds maturing in 2046 with a 6 percent coupon priced at a 6.25 percent yield, according to a pricing sheet obtained by Reuters.

That is 243 basis points higher than similarly rated debt and 309 basis points over triple-A rated benchmark debt. It is lower, however, than where the district’s outstanding debt has been trading, which recently has been at a spread of 375 to 390 basis points over top-rated bonds, according to Municipal Market Data.

“For an untested tax stream that’s brand new for them, it was obviously well-received,” said Eric Kazatsky, a municipal credit analyst at Janney Montgomery Scott in Philadelphia. “They were able to lower their borrowing costs at the end of the day.”

The deal likely drew some investors who do not typically buy the district’s debt, he said.

Forty-five investors participated in the deal, which also priced 200 basis points tighter than the district’s February general obligation sale, Senior Vice President of Finance at Chicago Public Schools Ronald DeNard said in a statement.

The proceeds will be used only to fund “much-needed capital investments like relieving overcrowding, modernizing schools and making critical repairs,” DeNard said.

The deal received an investment grade rating of A from Fitch Ratings because of the bonds’ ability to withstand a hypothetical bankruptcy filing.

The district’s new debt calls for the bonds to be secured solely with a capital improvement property tax that can, if needed, be intercepted and sent directly to the bond trustee.

Fitch's A rating is eight steps above the district's overall junk rating of B-plus with a negative outlook. The school system has $6.8 billion of outstanding general obligation bonds.

The deal had an investment-grade BBB rating from Kroll Bond Rating Agency and was not rated by Moody's Investors Service or S&P Global Ratings.

By REUTERS

DEC. 15, 2016, 4:03 P.M. E.S.T.

(Reporting by Hilary Russ in New York; Additional reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Peter Cooney)

- Third Circuit Appellate Court Rules That Post-Acceleration Payment in Bankruptcy Constitutes Optional Redemption: Mintz, Levin
- Final Issue Price Rules Make Allowances for Competitive Sales.
- IRS Publishes Issue Price Definition for Tax-Exempt Bonds.
- New Type of Chicago School Debt Gets Investment-Grade Rating.
- Fitch Rates $500MM Chicago Board of Ed (IL) Bonds 'A' on Special Revenue Analysis; Outlook Stable.
- Kroll Bond Rating Agency Assigns the Long-Term Rating of BBB with a Negative Outlook for the Chicago Board of Education Dedicated Capital Improvement Tax Bonds, Series 2016.
- *Becker v. Bank of New York Mellon Trust Company, N.A.* – District Court certifies class action by bondholders against indenture trustee that had failed to maintain perfected security interests in the property securing the bonds, allegedly resulting in a reduced award to the bondholders by the bankruptcy court in issuer's Chapter 11 bankruptcy.
- And finally, The Wheels On the Bus Go Buelta y Buelta is brought to us this week by *McNair v. City and County of San Francisco*, in which school bus driver Michael McNair's professional qualifications were called into question after he (oh, so very *inter alia*) "improperly drove a group of children from San Diego, California to Tijuana, Mexico." Field trip! Mr. McNair's explanation for this little incident features the mother of all understatements, "I made a mistake and just didn't think." Appreciate the candor, but we'll be hanging on to the keys all the same.

IMMUNITY - CALIFORNIA

McNair v. City and County of San Francisco

Court of Appeal, First District, Division 4, California - November 22, 2016 - Cal.Rptr.3d - 2016 WL 6879277

Patient brought action against city and physician employed by the city's department of public health for breach of contract and violation of the California Confidentiality of Medical Information Act (CMIA).

The Superior Court granted summary adjudication on patient's intentional tort cause of action and nonsuit on his breach of contract claim. Patient appealed.

The Court of Appeal held that:

- Litigation privilege barred patient's CMIA cause of action based on physician's disclosure of patient's cognitive deficits to the Department of Motor Vehicles (DMV);
- Catchall provision of the CMIA authorized physician's disclosure of patient's cognitive deficits to the DMV; and
- Litigation privilege barred patient's breach of contract cause of action based on physician's disclosure of patient's cognitive deficits to the DMV.

The litigation privilege barred patient's cause of action under the California Confidentiality of Medical Information Act (CMIA) arising from physician's report to the Department of Motor Vehicles (DMV) that patient suffered from cognitive deficits calling into question whether it was appropriate for him to have a commercial driver's license, even assuming that the physician's report did not comply with the statute providing that a physician may report a patient's condition to a local health officer upon a good faith belief that the report will serve the public interest, since the letter to the DMV was a communication "authorized by law."

A voluntary disclosure of confidential medical information falls within the reach of the catchall provision of the California Confidentiality of Medical Information Act (CMIA) if a public policy exists encouraging such disclosure, the disclosure involves issues of public safety, and it is a communication which would otherwise be immunized by the litigation privilege.

The litigation privilege barred patient's breach of contract cause of action against city and a city-employed physician arising from physician's report to the Department of Motor Vehicles (DMV) that patient suffered from cognitive deficits calling into question whether it was appropriate for him to have a commercial driver's license, where the contract did not clearly prohibit the physician's conduct.

JUDGMENTS - CALIFORNIA

Sutter Health v. Eden Township Healthcare District

Court of Appeal, First District, Division 1, California - November 29, 2016 - Cal.Rptr.3d - 2016 WL 6958654

Nonprofit health system brought action against township healthcare district for specific performance of a written agreement to convey real property and for damages. District cross-complained for declaratory and injunctive relief.

The Superior Court granted summary judgment for health system on cross-complaint and denied district's motion for summary adjudication. District appealed. The Court of Appeal affirmed. The Superior Court denied health system's motion for attorney fees. Health system appealed, and the Court of Appeal reversed and remanded. District filed a motion to pay a judgment in up to 10 annual installments on the basis that prompt payment would impose an "unreasonable hardship." The Superior Court granted the motion, and effectively amended the judgment nunc pro tunc to decrease the postjudgment interest rate retroactively from the date the judgment was entered. Judgment creditor appealed.

The Court of Appeal held that:

- District's financial straits supported a finding of "unreasonable hardship," but
- Interest accrued prior to the trial court's grant of relief could not be reduced retroactively.

Trial court's finding that prompt payment of a $19.5 million judgment would impose an "unreasonable hardship" on township healthcare district, in authorizing payment in up to 10 annual installments, was supported by substantial evidence, including testimony of an accountant that a 10-year installment plan was necessary to avoid significantly impacting district's "ability to continue to service its residents," evidence that district was unable to borrow the funds necessary to pay the judgment in a lump sum, and evidence that a sale of assets to finance payment of the judgment would threaten bankruptcy by depriving the district of the funds required for it to operate.

Under the statutes providing that a local agency may pay a judgment in up to 10 annual installments upon a showing that prompt payment would impose an "unreasonable hardship" and that the interest rate for such judgments is the one-year United States Treasury bill rate, interest accrued prior to the trial court's grant of relief could not be reduced retroactively to the Treasury bill rate.

Township healthcare district's failure to challenge the constitutional default seven percent rate of postjudgment interest, either at the time a judgment was entered against the district or on appeal, waived any argument that the seven percent rate was not the correct rate for the trial court to impose upon the Court of Appeal's reversal of the trial court's order imposing the one-year United States Treasury bill rate retroactively under the statute authorizing a local agency to pay a judgment in up to 10 annual installments where prompt payment would impose an "unreasonable hardship."

ZONING & LAND USE - MAINE

Fryeburg Trust v. Town of Fryeburg

Supreme Judicial Court of Maine - December 1, 2016 - A.3d - 2016 WL 7010513 - 2016 ME 174

Adjacent landowner sought review of local board of appeals decision upholding local planning board's approval of neighboring private secondary school's application to use an agricultural land parcel for primarily outdoor teaching purposes and use a residential land parcel for administrative offices.

The Superior Court affirmed in part and vacated in part. All parties appealed.

The Supreme Judicial Court of Maine held that:

- Proposal to use agricultural lot as an outdoor classroom constituted using the lot as a place where courses of study that fit state education requirements were taught, and
- Proposal to use residential lot for school administrative offices concerned a task that was so integral to the functioning of the school that it was indistinguishable from the school.

Private secondary school's proposal to change use of agricultural lot and use it as an outdoor classroom instead constituted using the lot as a place where courses of study that fit state education requirements were taught, as required by local land use ordinance, despite argument that no complete courses would be taught on the lot, much less all mandated courses. School's planned courses for the lot included those in the state-required subjects of physical education and science, and nothing within the text of the ordinance required that all of the courses required by the state or the entirety of those courses be taught on each piece of property or in each building where a secondary school operated.

Private secondary school's proposal to change use of residential lot to use it for school administrative offices instead concerned a task that was so integral to the functioning of the school that it was indistinguishable from the school and, therefore, permissible under local land use ordinance governing uses by secondary schools, despite ordinance’s definition of a secondary school as a “place where courses of study are taught”; administrative offices were integral to the functioning of a school.

EMINENT DOMAIN - NEBRASKA

Strode v. City of Ashland

Supreme Court of Nebraska - October 28, 2016 - 295 Neb. 44 - 886 N.W.2d 293

Husband and wife landowners brought action against city and county, alleging zoning regulation inverse condemnation and alleging that bridge load limit constituted a taking.

The District Court dismissed husband’s inverse condemnation claims as time barred, and granted summary judgment for city and county. Landowners appealed.

The Supreme Court of Nebraska held that:

- As a matter of first impression, cause of action for inverse condemnation based on a regulatory taking begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city’s infringement, or an attempt at infringement, of a landowner’s legal rights in the property;
- City’s letter to landowners providing notice of nonconforming use and the city’s intention to institute legal action began running of 10-year statute of limitations on husband landowner’s cause of action for inverse condemnation;
- Statute of limitations on wife landowner’s separate claim for inverse condemnation began to run on date husband received letter from city; and
- Load limit on bridge to property did not constitute a “regulatory taking.”

In the context of a regulatory taking, a cause of action for inverse condemnation begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city’s infringement, or an attempt at infringement, of a landowner’s legal rights in the property.

At the latest, city’s letter to landowners providing notice of nonconforming use and the city’s intention to institute legal action if landowners did not conform their use began running of 10-year statute of limitations on cause of action for inverse condemnation, as city’s actions had an adverse economic impact on the landowners’ right to use the property in the commercial manner that they wished.

Statute of limitations on wife landowner’s separate claim for inverse condemnation began to run on date husband received letter from city providing notice of nonconforming use and the city’s intention to institute legal action if landowners did not conform their use, rather than any date on which wife received actual notice of land use ordinance affecting the property, as letter constituted an infringement or attempted infringement on wife’s right to use the property as she wished and gave rise to her right to institute and maintain a lawsuit.

Load limit on bridge to property did not constitute a “regulatory taking”; while load limit restricted landowner to using either semitrailer trucks that weighed less for access across the bridge or trucks of a limited height for access through railroad underpass, restriction was not an injury different in kind than injury to the general public, bridge limit did not decrease the economic value of the property, and bridge limit, which was posted prior to landowners’ purchase of the property, did not interfere with any reasonable investment-backed expectations.

BONDS - NEW JERSEY

Mollica v. Township of Bloomfield

Superior Court of New Jersey, Appellate Division - October 17, 2016 - Not Reported in A.3d - 2016 WL 6068242

The Township of Bloomfield adopted Ordinance 3729 on August 11, 2014. The Ordinance appropriated $10,500,000 for the acquisition and improvement of a tract of land to be used as a public park, and authorized the issuance of $9,975,000 in Township bonds or notes to finance part of the cost. The property had previously been approved by the Township Planning Board for construction of a 104-unit townhouse development known as Lion Gate.

A group of Township residents filed an action in lieu of prerogative writs challenging the validity of the Ordinance. They also sought to enjoin the Township from issuing the bonds. The residents alleged that Councilman Nicholas Joanow had a disqualifying interest when he voted on the Ordinance under both the common law and the Local Government Ethics Law (LGEL) due to the fact that he owned a home that directly bordered the property. Joanow also cast the deciding vote approving the Ordinance.

The trial court found that Joanow did not have a disqualifying personal conflict of interest because the acquisition of the park constituted a benefit to the public.

The appeals court reversed. “Applying the statutory standards set forth in the LGEL, as well as established common law authority, we hold that Joanow’s ownership of a home directly bordering the property that the Township sought to acquire disqualified him from voting on the bond ordinance.”

The Township argued that the adoption of the bond Ordinance was a legislative act arising under the Local Bond Law, and not a judicial or quasi-judicial function involving review of a zoning application under the MLUL. However, the court found no legal or public policy basis not to apply the same conflict of interest standard regardless.

COLLECTIVE BARGAINING - PENNSYLVANIA

Americans for Fair Treatment, Inc. v. Philadelphia Federation of Teachers

Commonwealth Court of Pennsylvania - November 21, 2016 - A.3d - 2016 WL 6833073

Nonprofit organization brought action against school district and teachers’ union, seeking declaration that provision of collective bargaining agreement providing for union leaves of absence was unlawful.

School district and union moved to dismiss, for lack of standing. The Court of Common Pleas granted the motion. Organization appealed.

The Commonwealth Court held that:

- Allegations by organization were insufficient to establish associational standing, and

- Organization could not establish taxpayer standing.

Allegations by nonprofit organization were insufficient to establish associational standing to maintain an action against school district and teachers' union to challenge a provision in collective bargaining agreement providing for union leaves of absence. Organization alleged that many of its members were teachers with lower seniority that teachers who were on leave, but complaint lacked any factual allegation sufficient to show that this lower seniority had any direct and non-speculative, immediate effect on the organization's members.

Nonprofit organization could not establish taxpayer standing to challenge lawfulness of union leaves of absence under collective bargaining agreement. School district was better situated to assert claim that union leaves were unlawful, any teachers who were affected by the leave policy could challenge it, and organization did not allege any adverse effect on taxpayers as a whole.

ZONING & LAND USE - PENNSYLVANIA

Lower Mount Bethel Township v. Gacki

Commonwealth Court of Pennsylvania - November 30, 2016 - A.3d - 2016 WL 6993996

Township filed zoning enforcement action against landowners. The magisterial district judge entered judgment against landowners, and landowners appealed.

The Court of Common Pleas entered judgment in favor of township and awarded attorney fees. Landowners appealed.

The Commonwealth Court held that:

- Township had geographic jurisdiction over retaining wall and backfill which landowners alleged were located in the Delaware River;
- Landowners' failure to appeal zoning violation notice to zoning hearing board resulted in a conclusive determination that their retaining wall and backfill violated floodplain ordinance; Award of over $20,000 in attorney fees to municipality was reasonable;
- Permanent injunction directing landowners to remove the retaining wall and backfill was warranted; and
- Imposition of $1,200 fine was warranted.

Township had geographic jurisdiction over retaining wall and backfill which landowners alleged were located in the Delaware River, in township's zoning enforcement action. Federal law granted Commonwealth authority over the portion of the river bed that was within the Commonwealth's boundaries, boundary of township and Commonwealth was the middle of the Delaware River, and interstate compact with New Jersey extended boundary line of township to river's New Jersey shore.

If a landowner does not appeal a zoning violation notice to the zoning hearing board, the failure to appeal renders the violation notice unassailable; therefore, in the event a landowner does not appeal to the zoning hearing board and the municipality files an enforcement action with a district justice, neither the district justice nor a common pleas court may conduct a de novo review of the question of whether the landowner violated the zoning ordinance, and the only question before the district justice and the Common Pleas Court is whether the penalty imposed for the violation was proper.

Award of over $20,000 in attorney fees to municipality was reasonable in zoning enforcement action. Landowners' failure to appeal violation notice resulted in conclusive determination of their violation of ordinance, and landowners' counsel stipulated that amount of attorney fees was reasonable.

Permanent injunction directing landowners to remove the retaining wall and backfill that violated township's zoning ordinance was warranted; landowners constructed the retaining wall and backfilled the property without applying for a permit, and failed to appeal violation notice.

Imposition of $1,200 fine was warranted for landowners' violation of township zoning ordinances; landowners remained in violation of magisterial district judge's judgment that their retaining wall and backfill violated the ordinance for 687 day

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BANKRUPTCY - PENNSYLVANIA

Becker v. Bank of New York Mellon Trust Company, N.A.

United States District Court, E.D. Pennsylvania - October 5, 2016 - Slip Copy - 2016 WL 5816075

Plaintiff Leonard Becker moved to certify a class comprising holders of revenue bonds ("Bondholders") who were entitled to a distribution under the Plan for reorganization of the bond debtor, Lower Bucks Hospital ("LBH"), which Plan was confirmed under Chapter 11 of the Bankruptcy Code.

The Bondholders were awarded $8,150,000 by the Bankruptcy Court in the reorganization. That amount was distributed to The Bank of New York Mellon Trust Company ("BNYM") as the successor Indenture Trustee. None of those funds were disbursed to the ninety-five Bondholders.

BNYM opposed certification. Its primary argument was that a finding of predominance was precluded because the proximate cause of the bondholders' alleged losses could not be proved with evidence that was common to all class members.

Plaintiff had previously sued BNYM under the multi-party agreements that created the bond financing transaction. The Complaints alleged that BNYM was negligent and breached its fiduciary and contractual duties to the Bondholders by failing to maintain perfected security interests in the property securing the bonds. Plaintiff alleged that the Bondholders were allowed less in LBH's bankruptcy than they would have been allowed if the security interests had been perfected.

Plaintiff had also sued for a declaratory judgment that the Bondholders were entitled to prompt disbursal of the funds allowed for them under the Plan, and that BNYM was not entitled to deduct from those funds any amounts that it incurred asserting its personal interests in the bankruptcy proceedings or in this litigation. Plaintiff also sued for equitable remedies — an injunction compelling BNYM to distribute the Bondholders' funds, an accounting of those funds, and damages for conversion and for money had and received.

Relevant to this litigation was the fact that the proposed pre-confirmation Plan included a stipulated third-party release of potential claims by the Bondholders against BNYM based on its alleged failure to maintain perfected security interests and liens against the property securing the bonds. Upon being made aware of the proposed release, the Bondholders objected. The Bankruptcy Court denied confirmation of the third-party release and struck it from the Plan because the release was inadequately disclosed before the Bondholders voted to accept the proposed plan.

The District Court took up the motion to certify the purported class of Bondholders.

The Court began its analysis by reviewing the facts of this case against Rule 23(a). The Court concluded that the proposed class met the requirements of numerosity, commonality, typicality and adequacy.

The Court then turned to Rule 23(b), finding that common questions predominated over any questions affecting only individual class members, as required under Rule 23(b)(3).

The Court concluded by certifying the class, certifying Plaintiff Becker as the class representative, and appointing class counsel.

Kroll Bond Rating Agency Assigns the Long-Term Rating of BBB with a Negative Outlook for the Chicago Board of Education Dedicated Capital Improvement Tax Bonds, Series 2016.

NEW YORK, NY (December 8, 2016) – Kroll Bond Rating Agency (KBRA) has assigned a BBB long-term rating and Negative outlook to the Board of Education of the City of Chicago (the "Board") Dedicated Capital Improvement Tax Bonds, Series 2016. KBRA also affirms the BBB rating and Negative outlook on the Board's Unlimited Tax General Obligation Bonds (Dedicated Revenues), Series 2016A and Series 2016B and affirms the BBB- rating and Negative outlook on the Board's Unlimited Tax General Obligation Bonds (Dedicated Alternate Revenues).

The rating is based on two KBRA methodologies, primarily the General Property Tax/Assessment Revenue Methodology and secondarily the U.S. Local Government General Obligation Rating Methodology.

To view the report, please click here.

S&P Public Finance Credit Forum.

Jan. 19, 2017 | Denver, CO

On behalf of the U.S. Public Finance team, we are pleased to invite you to our inaugural Denver U.S. Public Finance Credit Forum on Thursday, January 19th, with Keynote Speaker Arturo Perez, Director at the National Conference of State Legislatures.

Click here to learn more and to register.

S&P's U.S. Public Finance Podcast (Rating Actions on U.S. Virgin Islands & Proposed Criteria Changes for Housing Finance Agencies and Social Enterprise Lending Organizations)

Listen to the podcast.

Dec. 9, 2016

S&P: Why Massachusetts Charter Schools Haven't Damaged Municipalities' Credit Quality.

On Nov. 8, 2016, Massachusetts voters defeated a referendum to increase the number of charter schools in the state, thus maintaining the existing cap on charter school expansion. Had it passed, the referendum would have allowed as many as 12 new charter schools to open each year regardless of the budgetary impact on cities and towns.

Continue reading.

Dec. 5, 2016

S&P: Pennsylvania School Districts Could Face More Funding Pressure Due To Sluggish State Revenue Growth, Rising Costs.

Debate over funding for public education has contributed to Pennsylvania's last two budget impasses. Generally, state lawmakers have agreed that public education spending should increase over the past two budget cycles, but given slow revenue growth and other rising required costs (e.g., pensions), they have struggled over how to increase education funding. In our view, recently projected budget deficits for fiscal years 2017 and 2018 increase the likelihood that education funding could be a key budget issue again in fiscal 2018, potentially contributing to another year of protracted deliberations. In addition to the possibility of a late budget, given limited discretionary spending, lawmakers could turn to education funding cuts to balance the budget. Both outcomes would increase credit pressure on Pennsylvania school districts.

Overview

- Education funding could again become a key budget issue as Pennsylvania grapples with projected deficits in fiscal 2017 and 2018.
- Rising pension costs will be an ongoing burden for all school districts.
- Reliance on state aid varies from district to district.

Continue reading.

01-Dec-2016

SIFMA Continuing to Work to Improve Disclosure.

The Securities Industry and Financial Markets Association will be focused on several municipal bond industry initiatives in including disclosure in 2017, the group said at its annual "State of the Industry" briefing in New York on Wednesday.

SIFMA will be working with issuers, underwriters, bond counsel, investors, auditors and credit analysts to improve transparency in the wake of the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, said SIFMA's President and CEO Kenneth Bentsen.

“We have been working with all the various stakeholders … trying to develop an industrywide initiative to improve issuer disclosure,” Bentsen said, “including having the states take a greater role in regulating and policing local government issuer disclosure.”

Additionally, Bentsen said SIFMA was looking at a revisions and updates to SEC rule 15c212; disclosure regarding bank loans and direct placements; the SEC guidance with respect to the outstanding continuing disclosure agreements; and improvements to the Municipal Securities Rulemaking Board’s EMMA online website.

Some of the other initiatives the group will be focused on are backing the SEC’s proposal on a shortened settlement cycle (T+2), working to aid senior citizen investors with the Senior $afe Act, and promoting cyber security and preparedness, he added.

Timothy Scheve, chair of SIFMA’s Board of Directors, said that he would be focused on promoting the benefits of the U.S. capital markets, pushing for a comprehensive best interest standard for retail investors, and preserving equal access for its members to all SIFMA business models.

The Bond Buyer

By Chip Barnett

December 7, 2016

New Type of Chicago School Debt Gets Investment-Grade Rating.

A new type of debt for the Chicago Public Schools (CPS) earned an investment-grade rating of A from Fitch Ratings on Thursday, based on the bonds’ ability to withstand a potential bankruptcy filing by the financially struggling district.

The A rating on $500 million of capital improvement tax bonds is eight steps above the junk rating of B-plus with a negative outlook Fitch has assigned the school system’s $6.8 billion of outstanding general obligation bonds.

Fitch attributed the difference to its assessment “that the pledged revenues meet the definition of ‘special revenues’ under the U.S. Bankruptcy Code and therefore, bondholders are legally insulated from any operating risk of the board.”

The United States’ third-largest public school system is struggling with pension payments that will jump to about $720 million this fiscal year from $676 million in fiscal 2016, as well as drained reserves and debt dependency. The fiscal woes have pushed its GO credit ratings deep into the junk category and led investors to demand fat yields for its debt.

The $500 million of bonds will be secured solely by a capital improvement property tax approved by the Chicago City Council last year and not by the district’s GO pledge. The property tax revenue, initially totaling $45 million, can only be used to fund capital projects and not operations, and is subject to an intercept mechanism that will send the funds directly to the bond trustee.

CPS cannot currently file for municipal bankruptcy in Illinois, although there have been proposals to change state law to allow such a move.

Fitch said legal opinions for the new bonds “provide a reasonable basis for concluding that the tax revenues levied to repay the bonds would be considered ‘pledged special revenues.'” The opinions on a “hypothetical bankruptcy” by CPS concluded that payments on the new bonds would not be automatically stopped by a federal bankruptcy court and that bondholders would retain a lien on the tax revenue.

Reuters

Thu Dec 8, 2016 | 12:44pm EST

(Reporting By Karen Pierog; Editing by Jonathan Oatis)

U.S. Muni Bond Market Shrinks to $3.831 trln in Q3 - Federal Reserve.

The U.S. municipal bond market shrank slightly to $3.831 trillion in the third quarter from a revised $3.838 trillion in the second quarter, according to a quarterly report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.591 trillion of muni bonds compared with $1.598 trillion the previous quarter.

Property and casualty insurance companies bought $19 billion of munis in the third quarter after a revised $1.9 billion of acquisitions in the second quarter. Life insurance companies added $7.6 billion to their muni holdings, while U.S. banks picked up $40 billion.

U.S mutual funds bought $75.9 billion of munis in the third quarter, and exchange-traded funds added $6.2 billion.

Foreign owners bought $14 billion of muni bonds. Their third quarter holdings were $93.3 billion, the highest level on record.

Reuters

Thu Dec 8, 2016 | 12:04pm EST

(Reporting by Hilary Russ)

Final Issue Price Rules Make Allowances for Competitive Sales.

WASHINGTON – The Treasury Department and Internal Revenue Service have finalized issue price rules that contain special allowances for competitive sales.

Under the rules, which are to be published in the Federal Register on Dec. 9 and would take effect 180 days later, the issue price for competitive sales will be the reasonably expected initial offering price if several certain conditions are met, including that the issuer receives bids for the bonds from three underwriters.

The rules also clarify that, for bonds issued for money in a private placement to a single buyer that is not an underwriter or related party, the issue price is the price paid by that buyer.

In addition, the rules contain a simplified “hold-the-offering-price” anti-abuse rule, place less emphasis on certifications, and narrow the definition of an underwriter.

“We tried to respond to the comments and make the final rules more flexible and more workable,” said John Cross, Treasury’s associate tax legislative counsel.

On competitive sales, Cross said, “As a policymaker, we think that competitive sales promote competition and price transparency and we wanted to provide a workable rule to accommodate this important market sector.”

Market participants praised some aspects of the new rules, but said they have questions about and want to review other provisions more closely.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said, “We are pleased to see the Treasury and IRS addressed our concerns with regard to competitive pricing.” She said the GFOA’s debt committee plans to discuss the three-bid requirement for competitive sales and the five-day “hold-the-offering-price” requirement with Cross at its meeting here tomorrow.

Cliff Gerber, president of the National Bond Lawyers Association, also is pleased to see the special rule for competitive sales. “And they’ve now created a modified hold-the-offering-price rule, which I think is good,” he said. But he worried that bad underwriter behavior could hurt issuers’ bonds under the final rules.

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said, “We are pleased that the issue price rule is now final. While we are still reviewing the release, several provisions of the final rule represent welcome changes. In particular, we support the provision specifying that the general rule will apply at any time the 10-percent sales threshold is met as well as the clarification that underwriters can sell bonds at prices below the initial offering price without breaking the rule. We are also pleased about the provision for special treatment for competitive offerings.”

John Vahey, Bond Dealers of America’s director of federal policy, said, “BDA appreciates the efforts of the IRS and Treasury to adopt improvements to the issue price rule. However, we have concerns with how the final rule’s requirement to hold the initial offering price for five days will alter the market and, also, how the three-bid requirement for competitive deals has the potential to negatively impact the competitive offerings of smaller issuers.”

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements. It is also used to determine whether federal subsidy payments to issuers for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules that have been in place for years, the issue price of each maturity of bonds that is publicly offered is generally the first price at which a substantial amount, defined as 10%, is reasonably expected to be sold to the public.

But tax regulators became concerned several years ago that some dealers were “flipping” bonds — selling them to another dealer or institutional investor who then sold them again almost simultaneously — with the prices continually rising before the bonds were eventually sold to retail investors. The regulators worried that the “reasonably expected” issue prices for bonds were not representative of the prices at which the bonds were actually sold.

To address their concerns, the Treasury and IRS proposed issue price rules in 2013, eliminating the reasonable expectations standard and basing the determination of issue price on actual sales. They also proposed raising the "substantial amount" of bonds standard to 25% from 10%.

The rules were strongly criticized as unworkable by issuers and underwriters. They complained about the 25% standard and said they often don't sell 10% or 25% of every maturity right away.

The tax regulators scrapped those rules and re-proposed them in June 2015. Under the re-proposed rules, the issue price for each maturity of bonds generally would be the price at which the first 10% of the bonds are actually sold to the public.

Issuers could use an "alternative method" of determining issue price when 10% of a maturity was not sold by the sale date. The issue price would be the initial offering price of the bonds sold to the public as of the sale date, as long as the lead or sole underwriter certified to the issuer that no underwriter filled an order from the public after the sale date and before the issue date at a higher price, unless market changes justified the higher price. The lead underwriter would then have to document any market changes that justified a higher price.

Dealers complained about the lead underwriter having to provide certifications about the actions of other underwriters.

The final rules contain a general rule under which the issue price is the price at which the first 10% of a maturity of bonds is actually sold to the public.

The rules include a special rule, under which the issue price is the initial offering price as long as the underwriter sticks with the IOP for bond sales during the five business days after the sale date (or a shorter period if 10% of a maturity of bonds is sold to the public at a price that does not exceed the IOP).

The five-day "hold-the-offering-price" provision is an anti-flipping or an anti-abuse provision. The lead underwriter must certify the IOP to the issuer, as well as provide documentation, such as the pricing wire. Each underwriter in a syndicate must agree in writing that it will not offer or sell the bonds at a price higher than the IOP for five business days after the sale date.

Under a special rule for competitive sales, an issuer may treat the reasonably expected IOP of the bonds to be sold to the public as the issue price if the issuer obtains a certification from the winning underwriter bidder as to the reasonably expected IOP upon which it based its bid.

To achieve a competitive sale: the issuer must disseminate the notice of sale in a manner reasonably designed to reach potential underwriters; all bidders must have an equal opportunity to bid; the issuer must receive bids from at least three underwriters "who have established industry reputations for underwriting new issuances of municipal bonds;" and the issuer must award the bonds to the bidder who offers the highest price or lower interest cost.

Issuers have the option of using any of these rules up until the closing (issue) date for their bond transactions.

The IRS also modified the definition of "underwriter" in response to concerns that it was vague and unworkable.

The definition still says "an underwriter is any person that contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form an underwriting syndicate."

But the final rules remove the phrase "or other arrangement" from provisions that say an underwriter "includes any person that, on or before the sale date, directly or indirectly enters into a contract or other arrangement with any of the foregoing to sell the bonds."

The tax regulators certified that the final rules "will not have a significant economic impact on a substantial number of small entities.

The Bond Buyer

By Lynn Hume

December 8, 2016

Michigan Municipal League Wants to Reform State Municipal Finance.

Great places make for a strong economy, and the research supports that contention. By employing community-based placemaking strategies, we strengthen both our economic and social future. On behalf of the Michigan Municipal League, I am pleased to be coming to Adrian on Monday to explain how at the heart of great places are strong cities, but in Michigan we are failing our communities.

Across the country, cities account for over 80 percent of GDP, but in Michigan we are disinvesting in this vital resource.

A recent report, "Michigan's Great Disinvestment: How State Policies Have Forced Our Communities into Fiscal Crisis," was prepared for the League using information from state and local records as well as census data. The report details the economic challenges facing Michigan's communities.

Michigan is the only state where total municipal revenue declined from 2002 to 2012, an 8 percent reduction before considering inflation. Revenues remain below the 2002 level for most communities.

Michigan has cut state support for cities more than any state in the nation. Since 2002, the state has diverted from communities more than $7.5 billion in revenue sharing to balance its own budget shortfalls. For example, Lenawee County communities have seen their revenue sharing cut by $25 million over the last 14 years. Adrian's revenue sharing has been cut by $9.4 million; other cities throughout Lenawee lost between $119,000 and $2.9 million since 2002. As a result, most communities in the county have had to reduce their police and fire forces, cut back on road and sidewalk repairs, and generally reduce their services to citizens – including rural residents who often work or play in communities from Tecumseh to Morenci.

How is this possible? State policies that hamstring cities by over constraining property tax growth, cuts in state revenue sharing and few local options for raising revenue. Michigan is one of only a handful of states that so aggressively limits the ability of local governments to raise their own revenues to address their issues, while simultaneously reducing state support.

After years of working within the existing paradigms, the League and other partners are undertaking a major legislative and policy push detailed at saveMIcity.org. This Save Michigan

Cities effort is aimed at reforming municipal finance in Michigan to encourage renewed investment in our communities.

As part of this initiative, the League is traveling throughout the state discussing the state's broken system for funding municipalities. This statewide tour comes to Adrian for a public saveMIcity event 3:30 p.m. Monday, Dec. 12, at Siena Heights University, 1247 E. Siena Heights Drive in Adrian at Dominican Hall's Rueckert Auditorium. The event is free and open to the public.

This is intended to be an examination of how we can do things differently in Michigan to assure that local government can't just survive, but can thrive. To that end, the League is developing policy recommendations around three themes: Cost Containment, Revenue Enhancement, and Structure of Government.

We are taking this three-pronged approach to break away from the historically limiting tactic of incremental change within the context of where we are today. We also want to hear your ideas and innovative approaches, so that together we can take bold action to create a new future for communities around Michigan.

Tony Minghine is the associate executive director and chief operating officer of the Michigan Municipal League, which is involved in local government in Michigan. Minghine will speak about state municipal finance Monday, Dec. 12, in Adrian.

Michigan Municipal League

By Tony Minghine

www.mml.org

Posted Dec 9, 2016 at 9:37 AM

Third Circuit Appellate Court Rules That Post-Acceleration Payment in Bankruptcy Constitutes Optional Redemption: Mintz, Levin

The recent advisory discusses a recent Third Circuit Court of Appeals ruling that held a "make-whole" optional redemption premium to be due upon a refinancing of corporate debt following its automatic acceleration upon bankruptcy. As noted in the linked advisory, the Second Circuit Court of Appeals also is considering this issue; whether it will come to the same conclusion remains to be seen. One way or another, these decisions will have spillover effect on judicial interpretation of optional redemption provisions in municipal bond transactions, and shine a spotlight upon the discrepancies between optional redemption provisions and other early payment provisions in most municipal bond indentures.

The Third Circuit case involved a debtor, Energy Future Holdings, that filed for bankruptcy for the explicit purpose of refinancing the debt at favorable interest rates while avoiding the hefty make-whole premiums payable upon an optional redemption of the refinanced notes. The bankruptcy court and the federal district court found nothing in the applicable corporate indenture requiring payment of a make-whole following an acceleration. The Third Circuit reversed, interpreting the applicable corporate indenture's "optional redemption" provisions to be applicable to the bankruptcy-triggered acceleration followed by repayment of the accelerated debt via a refinancing.

The Third Circuit's ruling that the repayment following acceleration was an "optional redemption" may have been driven by the factual context of what could be characterized as an "optional bankruptcy" filed solely or primarily to jettison the make-whole payments and lock in lower rate replacement financing. The indenture's acceleration provision was, as is usual, a remedial provision entirely separate from the indenture's optional redemption provisions, and, as is typical but not universal, did not specify a premium to be due upon payment of the accelerated debt. Although once the accelerated payment was due there was nothing "optional" about paying it, the appellate panel opined that the payment on the applicable date was "optional" because the issuer chose to file for bankruptcy and chose not to deaccelerate the debt after the bankruptcy triggered the automatic acceleration. The fact that the bondholders objected to repayment without a make-whole premium also seems to have factored into the court's determination that the payment by the issuer was "optional."

The federal appellate court also concluded that under New York law a "redemption" may occur at or before maturity of bonds, and that therefore a "redemption" is not synonymous with a prepayment. (Indeed, the court suggested that if the make-whole premium had been labeled a "prepayment" premium rather than an "optional redemption" premium, it may have held the make-whole inapplicable, a curious distinction that leads back to the question of under what circumstances payment of an amount that has become due can be deemed optional.) The court disregarded indenture provisions that were technically inconsistent with its determination that the payment was an "optional redemption", such as the optional redemption requirement of prior notice from the issuer to the bondholders. According to the court: "[The issuer] offers no reason why it could not have complied with [the redemption] notice procedures. In any event, it cannot use its own failure to notify to absolve its duty to pay the make-whole."

By interpreting the indenture's optional redemption provisions as applicable to the payment of the accelerated debt, the Third Circuit panel mooted and declined to address the noteholders' alternate argument that the bankruptcy court should have granted relief from the bankruptcy stay to permit the bondholders to deaccelerate the accelerated debt. Whether that would have provided a more straightforward means of getting to the same result is debatable, as debt generally is deemed accelerated upon a bankruptcy whether or not it is contractually accelerated by the terms of the indenture.

The optional redemption provisions that are typical in municipal bond indentures refute the equivalence found by the Third Circuit between an optional redemption and a payment after acceleration. In contrast to the permissibility in corporate transactions of optional redemption at any time at a make-whole premium, the norm in municipal bond transactions is a lockout period (often 10 years) during which optional redemption is impermissible, followed by a declining fixed optional redemption premium. The fact that municipal indentures permit acceleration whenever there is an event of default, including upon bankruptcy, while imposing a lockout period for optional redemption, suggests that in the municipal bond context there may be less receptiveness by courts to the notion of deemed equivalence between an optional redemption and a payment following acceleration. Accordingly, a court may be less likely to deem an optional redemption premium applicable to a post-acceleration payment on a municipal bond absent express language requiring a premium in a post-acceleration context.

Whether corporate or municipal bonds are at issue, the best way to ensure the intended result is to draft clearly and specifically. Municipal bond indentures often permit or require bonds to be paid ahead of schedule not only upon acceleration but upon a so-called extraordinary redemption. These provisions, which typically permit payment ahead of schedule at par, are infrequently deployed relative to optional redemption provisions. Use of bankruptcy as a means of avoiding a prepayment premium is less likely in the municipal context, where the prepayment premium is typically 3% or less versus the often substantially larger make-whole premium, but “default refundings” of municipal bonds have been attempted to circumvent the optional redemption lockout period. There is no difference in the economic impact to a bondholder of early payment, no matter the degree of optionality or lack of optionality from the issuer’s perspective, and whether an early payment premium is expressly provided by the indenture in cases other than “optional redemption” is primarily a risk allocation question.

Drafting acceleration provisions and/or extraordinary redemption provisions in a manner that applies an equivalent premium to the optional redemption premium upon their exercise during the post-lockout period, and a make-whole or other premium during the optional redemption lockout period, provides better protection against any perceived risk of abuse of those provisions than reliance on the courts to figure out what the parties intended and/or is equitable in borderline scenarios.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Tuesday, December 6, 2016

by Leonard Weiser-Varon

Len is active in both municipal finance and corporate finance, with an emphasis on financings for 501(c)(3) institutions, project finance, secured lending, structured finance transactions, workouts and restructurings, corporate debt, and Section 529 college savings programs.

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To Prepare for the Next Recession, States Take Stress Tests.

No government can be fully prepared for every economic twist and turn. Still, some are

trying.

The Great Recession was uniquely devastating for states and localities because it hit all three major tax revenue sources: income, sales and property. It was a scenario that few, if any governments, were really prepared to absorb. As a result, governments were forced to make massive budget cuts.

Now, as the recovery trudges on longer than most, a growing number of states are making sure they aren't blindsided by the next downturn.

Enter stress testing. The idea, which was borrowed from the U.S. Federal Reserve, essentially throws different economic scenarios at a state budget to see how revenues would be impacted.

"We're in an environment where everyone is starting to think about the next downturn and what that's going to look like," said Emily Raimes, a Moody's Investors Service analyst. "A stress test is a tool for states to think about what types of programs they should commit to and how much to save now."

Credit rating agencies, in fact, are among the practice's biggest fans. Earlier this year, Moody's stress-tested budgets of the 20 most populous states and found that Missouri, Texas and Washington are in the best position to handle a recession because of their strong reserves, spending flexibility and lower revenue volatility. (Low revenue volatility means a state's income doesn't change too drastically from one year to the next. In other words, it's more predictable.)

California and Illinois, however, found themselves at the other end of the spectrum in Moody's stress test. California is endangered by its high revenue volatility and lower reserves, according to the report. And Illinois is vulnerable because of its extremely low reserves and inflexible governance.

S&P Global Ratings also stress-tests state budgets. In August, the agency performed a stress test on the top 10 borrowing states' fiscal 2017 budgets. The scenario focused on what would happen if global economies like the United Kingdom or China slowed down more than anticipated.

The results — some of which overlap with Moody's — show that Connecticut, Illinois, New Jersey and Pennsylvania are most likely to feel significant fiscal stress, while Florida, New York and Washington are best positioned for a downturn.

A few states are forging the way with their own stress-testing systems, while even more are looking into the idea.

Utah has the most robust practice, and it's something credit rating agencies have held up as an example. Last year, the state tested its budgets against a moderate and severe recession — think 2001 versus 2008. The results told policymakers that Utah has enough in reserves to weather a moderate downturn, but a severe one would likely require cutting nearly $1 billion in spending over two to three years in addition to using most of the state's reserves.

The process was so informative that Utah Office of Management and Budget Director Kristin Cox and her colleagues are developing additional scenarios to test. For instance, what happens to specific revenue streams if the state's biomedical industry slows down? Or if oil prices shoot back up? (Utah's stress testing is one of the reasons Governing recently awarded Cox with a Public Official of the Year award).

Minnesota also uses a form of stress testing to evaluate its revenue volatility and inform its rainy day fund policy. It's one of just four states that requires periodic evaluations to make sure its savings targets actually reflect the state's revenue volatility. It's also the only state to determine its risk tolerance — that is, the tolerance policymakers have for not fully covering a potential shortfall. Its current savings target is the amount deemed necessary to cover 90 percent of all possible downturn scenarios.

California, which saw its revenues drop 20 percent during the Great Recession, recently started using stress tests. The state Legislative Analyst's Office now includes estimates of what would happen to the state's budget under an economic growth scenario and a mild recession scenario. The most recent analysis concludes that, in the event of a mild recession in 2018, the state would have enough reserves to cover most of its operating deficits through the 2020–2021 fiscal year.

Of course, no government can be fully prepared for every economic twist and turn.

"We're trying to create certainty in an environment that is inherently uncertain," said Cox. "Instead our approach should be, how prepared are we to respond to different scenarios?"

The unusual recession and equally unusual recovery period has sent the message to budget officials that they can't afford to be caught unprepared. Since presenting Utah's stress-testing methods at a National Conference of State Legislatures meeting, Legislative Fiscal Analyst Jonathan Ball said he's gotten calls from Colorado, Nevada and Vermont, among others.

"It's gotten a lot of traction," he said. "We didn't know if it was going to work at first. We're kind of learning as we go and sharing our experience with other states."

GOVERNING.COM

BY LIZ FARMER | DECEMBER 12, 2016
