

THE BOND BUYER

Why pending bill in Michigan Senate is so controversial

By

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WASHINGTON – Municipal bond market players in Michigan are at odds over a bill pending in the state Senate would require localities to sell municipal bond issues over \$500,000 on a competitive or public basis to the underwriter offering the lowest interest cost.

The municipalities also would have to publish a notice of sale at least seven days before the sale under amendments to the Revised Municipal Finance Act (Senate Bill No. 1054), which was drafted by John Axe, senior counsel at Clark Hill in Detroit.

The measure was introduced on June 7 by Senate Finance Committee Chair Jack Brandenburg, a Republican from the eighth district in Harrison Township.

Axe, who said his clients include the Detroit Legal News, said the bill is an attempt to go back almost 20 years ago when the Municipal Finance Act required local governments to sell bonds competitively with public notices of the sales.

In 2001, he said, the Michigan Legislature revised the Municipal Finance Act to allow municipalities to sell bonds on a negotiated or a competitive basis. At the time, state lawmakers promised to revise the new law if it didn't work, Axe said.

During the last four years, fewer than 10% to 15% of bond issues have been sold on a competitive basis, which saves issuers money, Axe said, adding, "We even require competitive bidding for a garbage truck."

"It's changed dramatically," said Axe. "But there's no way of tracking it because there's no public sale notice requirement."

But Patrick McGow, a principal at Miller Canfield and head of its public finance group, said the earlier bill, which dated back to the 1940s, only required certain bond issues to be sold competitively and contained many exceptions. The

Revised Municipal Finance Law was passed in 2001 to allow local governments to decide how to sell their bonds, he said. The pending bill would amend that law.

“From my perspective, we oppose [the bill] because the legislation would restrict the ability of local governments and school districts to select the best method to sell bonds at the lowest rate and cost to the taxpayer,” he said. “There are many issuers, credits, financial structures, and programs where a competitive sale is not the best choice.”

McGow also noted the bill would treat state and local issuers differently.

Mike Nicholas, chief executive officer of the Bond Dealers of America, warned the bill “would create unintended consequences by increasing debt cost for municipalities and schools, reducing timely access to the capital markets, and isolating municipalities from much of the municipal securities market and advisors in that market.”

Nicholas stressed that BDA is not taking a position in the long-standing debate over whether competitive or negotiated underwritings are more cost-effective for municipal issuers.

“However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwritings will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances,” Nicholas said. “The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments.”

“We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money,” he said.

Some legislative observers in Michigan said the bill doesn’t have much of a chance of passage because the Legislature is currently out on summer recess and there are not many legislative days left in the session.

“At this point I don’t think it has much legs,” said one source who did not want to be identified.

But Axe said, “I think we’ve got a good chance of getting it passed.”

Brandenburg is term-limited and must leave the Michigan Senate at the end of the session. State senators are limited to two four-year terms, sources said. Brandenburg would like this bill to be part of his legacy, they said.