

**THE COUNCIL OF STATE GOVERNMENTS
RESOLUTION OPPOSING AMENDMENT OR REPEAL OF THE TOWER
AMENDMENT**

Resolution Summary

The Tower Amendment to the Securities Act of 1933 was enacted in 1975 as part of legislation creating the Municipal Securities Rulemaking Board (“MSRB”). The Tower Amendment prohibits direct or indirect federal regulations of municipal issuers. It recognized the unique place that state and local governments occupy in our federal system and was developed to balance these unique interests with the need for additional market regulation. The legislative history of the Amendment indicates that Congress sought to limit federal oversight of state and municipal issuers.

In a white paper (“Disclosure and Accounting Practices in the Municipal Securities Market”) submitted to senior leadership of the House Financial Services Committee and Senate Banking Committee on July 27, 2007, SEC Chairman Christopher Cox proposed increasing federal authority over state and local issuers of municipal debt.

The proposals would require Tower to be amended or repealed and include: making municipal disclosure more like corporate disclosure; creating a centralized Web-based free site, such as the SEC's EDGAR, through which investors could access such disclosure information; clarifying the legal responsibilities of municipal transaction participants; requiring municipal issuers to use generally accepted accounting standards, which are issued by the Governmental Accounting Standards Board; and providing an independent source of funding for and SEC oversight of GASB.

The municipal marketplace is already regulated by a combination of state blue sky laws, federal tax laws, the anti-fraud enforcement power of the SEC, Rule 15c2-12 and MSRB regulations on broker/dealers participating in the buying and selling of municipal securities, the analysis of independent credit rating agencies, and the demanding requirements of the capital markets. Indeed, it is reasonable to conclude that the substantial growth of the market and the increased percentage of municipal debt holdings by individuals are, in part, because investors recognize the safety, liquidity, transparency and efficiency of the municipal bond market. They reasonably rely on existing regulations and oversight to make informed investment decisions.

Nevertheless, the National Association of State Treasurers (NAST), an affiliate of The Council of State Governments, has been active in enhancing the efficiency and transparency of the municipal marketplace. For example, NAST along with other market participants created the Central Post Office as a central repository of issuers’ secondary market disclosure information. NAST supports the MSRB’s proposed “access equals delivery” protocol for electronic delivery of primary offering materials. More recently, NAST endorsed in concept the creation of a web-based, central repository of primary and secondary market disclosure information under development by the MSRB.

This resolution expresses The Council of State Government's opposition to the revision or repeal of the Tower Amendment and to the enactment of legislation that would subject state and local government issuers to federal disclosure laws.

Additional Resource Information

National Association of State Treasurers, www.nast.org

United States Securities and Exchange Commission, www.sec.gov

Management Directives

Management Directive #1: CSG will support its affiliate, the National Association of State Treasurers, in its opposition to the revision or repeal of the Tower Amendment and to the enactment of legislation to subject state and local government issuers to federal disclosure laws.

Management Directive #2: CSG staff will post approved resolution on CSG's web site and make available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

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WHEREAS, The regulatory structure of the municipal market is unique. Underwriters, brokers and dealers in municipal securities are regulated by the Municipal Securities Rulemaking Board (MSRB); and

WHEREAS, Under a provision of the federal securities laws known as the “Tower Amendment,” the United States Securities and Exchange Commission (SEC) and the MSRB are prohibited from requiring state and local government issuers of municipal securities, either directly or indirectly through their underwriters, to file any document prior to the sale of securities; and

WHEREAS, The MSRB is prohibited from directly or indirectly requiring any document or information to be furnished by an issuer to prospective purchasers after the securities have been sold; and

WHEREAS, State and local government issuers of municipal services are subject to the antifraud provisions of the federal securities laws; and

WHEREAS, State and local government issuers are subject to state securities law pertaining to the issuance of municipal securities. Each state’s securities laws specify whether municipal securities issuers must disclose any information at all, and if so, what type of information must be provided; and

WHEREAS, The Tower Amendment recognized the constitutional prerogatives of state and local governments, and was crafted to balance those prerogatives with the perceived need for additional market regulation. The legislative history of the Amendment makes it clear that Congress sought to limit federal oversight of state and local municipal issuers. A Senate report on the legislation states that “nothing in the legislation contemplates direct regulation of issuers or the registration of their securities....” Further, the report states that the SEC’s rulemaking authority with respect to transactions in municipal securities is limited to control of fraudulent, manipulative, and deceptive practices; and

WHEREAS, The SEC has presented recommendations to Congress regarding federal oversight of municipal securities that would require the Tower Amendment to be altered or repealed; and

WHEREAS, Repeal or amendment of the Tower Amendment could result in the federal

government dictating to issuers the timing, form, and content of official statements and annual financial reports; requiring federal review and approval of bond issues; dictating state and local accounting standards and practices; and preempting state oversight of the debt issuance process; and

WHEREAS, Repeal or amendment of the Tower Amendment could lead to substantial increases in the issuance costs for state and local governments.

NOW, THEREFORE BE IT RESOLVED, that The Council of State Governments opposes preemption of state and local finance authority and state oversight of the debt issuance process through revision or repeal of the Tower Amendment or enactment of legislation to subject state and local government issuers to federal disclosure laws.

BE IT FURTHER RESOLVED, that The Council of State Governments supports the self-regulatory structure of the municipal market, and the commitment of all issuers of municipal securities with federal and state laws and Securities and Exchange Commission rules.

Adopted this 31st Day of May, 2008 at the
CSG 75th Anniversary Celebration and Spring Meeting
in Lexington, Kentucky



Governor M. Jodi Rell
2008 CSG President



Representative Kim Koppelman
2008 CSG Chair

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