CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

February 2, 2011

VIA E-MAIL TO rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-45-10

Ladies and Gentlemen:

I am forwarding this letter on behalf of the Central Harris County Regional Water Authority ("Authority"), a conservation and reclamation district in the State of Texas created by the Texas Legislature in 2005, to provide for the conservation, preservation, protection, recharge and prevention of waste of groundwater, to develop and implement a groundwater reduction plan, and to acquire and develop surface water and groundwater resources for the benefit of the persons with its boundaries. Upon careful review of the SEC's proposed Rules 15Ba1 to 15Ba7 (the "Rule"), ***the Authority requests that the SEC revise its interpretation of the definition of the term "municipal advisor" to exclude appointed board members, or in the alternative, exclude appointed board members appointed by an elected official or a body of elected officials.*** Appointed board members should be categorized no differently than elected board members or employees of a municipal entity. Requiring citizen volunteers to submit to SEC reporting and be subjected to a heightened fiduciary obligation serves no useful purpose and would have the unintended consequence of depleting the pool of citizen volunteers willing to expend their time and expertise as policymakers.

In Release No. 34-63576 (the "Release"), the SEC provided clarification of the term "municipal advisor." In response to comments urging the SEC to exclude persons serving as an appointed or elected member of a municipal entity, the SEC limited the otherwise broad language of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to interpret the term "employee of a municipal entity" to include "a person serving

22/W

WATER LEGISLATION
Bill Status Report

02-02-2011

CJ Water

HB 44	Menendez	Relating to the authority of a property owners' association to regulate the use of certain lots for residential purposes.
	Bill History:	11-08-10 H Filed
HB 725	Callegari	Relating to the operation, powers, and duties of certain water districts.
	Bill History:	01-19-11 H Filed
HB 801	Anderson, Charles	Relating to the territory ... Southern Trinity Ground ...
	Companions:	SB 353 Birdwell 1-13-11 S Filed
	Bill History:	01-21-11 H Filed
HB 805	Callegari	Relating to the requirement ... ensure emergency operation ...
	Bill History:	01-21-11 H Filed
HB 814	Gutierrez	Relating to the Edwards Aquife... transportation of groundwater ...
	Bill History:	01-21-11 H Filed
HB 960	Turner, Sylvester	Relating to the powers of the Central Harris County Regional Water Authority. "appointed"
	Position:	Our Package
	Bill History:	01-27-11 H Filed 1-30-11
HCR 21	Gallego	Resolved, that the 82nd Legi... respectfully urge the United ... Water Resources Developme...
	Companions:	SCR 2 Uresti (Id... 2- 2-11 S Introduc... Senate Natural Res...
	Bill History:	11-12-10 H Filed
SB 181	Shapiro	Relating to the reporting of ... municipalities and water utili...
	Bill History:	01-31-11 S Introduced and r...

(1) I was visiting + Board in SW approved this w/o any understanding

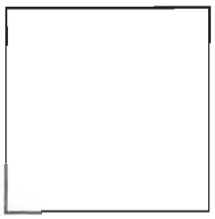
1 Day late Cancel !!!

(2) Cancel this — 1 Day late If you want, read on

direct 713.654.8651 fax 832.239.9015
700 Milam Street, Suite 500, Houston, TX 77002

From: Squire, Sanders & Dempsey [mailto:email@ssdpublications.com]
Sent: Thursday, January 20, 2011 2:25 PM
To: Trey Cash
Subject: Public Finance Alert: Will Appointed Members of Boards of Municipal Bond Issuers Be Caught Under SEC's Proposed Regulations For Municipal Advisors?

View this email as a webpage.



January 2011 **www.ssd.com**

Will Appointed Members of Boards of Municipal Bond Issuers Be Caught Under SEC's Proposed Regulations for Municipal Advisors?

The Securities and Exchange Commission's (SEC) proposed final regulations for the registration of municipal advisors (the Rules), if approved in the form proposed, will affect more than traditional municipal advisors. Specifically, appointed board members of a municipal or other public bond-issuing authority (municipal entity) will find themselves subject to the restrictions and registration requirements imposed by the regulations. Under the Rules as proposed, anyone providing advice to a municipal entity or obligated person, whether solicited or unsolicited, compensated or not, will be required to register with the SEC as a "municipal advisor" and be subject to the scrutiny of the SEC regarding competence and background information, in addition to paying any required filing fees. Elected officials and municipal employees are excluded as are attorneys, accountants and engineers (to a limited extent). The proposed Rules have been met with a firestorm of criticism from municipal issuer

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For more information contact your principal Squire Sanders lawyer or any of the individuals in our Public & Infrastructure Finance Practice Group.

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groups and their advocates and must be approved in final form by the SEC before they become effective.

If the proposed Rules concern you, you should let the SEC know by filing a comment with the SEC by February 22, 2011. The SEC has specifically requested comment on this and many other aspects of the proposed Rules. The full text of the proposed Rules, as well as a link to submit comments directly to the SEC, can be found on the SEC's website.

The proposed Rules implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Section 975 of Dodd-Frank makes it unlawful "for a municipal advisor to provide advice to or on behalf of a municipal entity... with respect to municipal financial products or the issuance of municipal securities... unless the municipal advisor is registered in accordance with this subsection."

Dodd-Frank defines "municipal advisor" as "a person (*who is not a municipal entity or an employee of a municipal entity*) who (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, *including advice with respect to the structure, timing, terms, and other similar matters* concerning such financial products or issues..." (emphasis added). Under Dodd-Frank, municipal advisors include financial advisors, guaranteed investment contract brokers, placement agents and swap advisors, and exclude broker-dealers (when acting in a capacity as an underwriter) and certain other persons.

The current controversy arises from the SEC's interpretation of the definition of municipal advisor and those whom the SEC believes should be excluded from, and included in, that definition. In response to a comment received when the temporary registration system was instituted by the SEC on September 1, 2010 (prior to the October 1, 2010 effective date of the registration requirement), the SEC stated that elected members of a municipal bond-issuing authority are excluded from the definition, but appointed members should be included. The SEC explained its position by stating:

> The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a 'municipal advisor.' The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their

actions. In addition, the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity.

At least for now, appointed members of the governing body of a municipal issuer (such as a state-level bond authority, industrial development authority, housing finance authority, joint powers authority, municipal utility authority or similar entity) are not excluded from the definition of municipal advisor for purposes of the proposed Rules. This leads to the question of what it means to "provide advice to" a municipal entity or an obligated person. Would the simple act by an appointed member of the governing board of a municipal entity of publicly stating a basis for a vote in favor of or against a particular bond issue constitute "advice"? The answer is not clear under the Rules as proposed by the SEC, and the uncertainty has been met with sharp criticism in the financial press from state and local government officials and their advocates.

The SEC should be urged to reverse its position by stating clearly in the final Rules that all governing board members are exempt under the Rules and all statements made or positions taken by any governing board member of the municipal entity will not be considered to be advice if the statements are made or actions taken as part of the fact-finding, deliberative or decision-making process of the governing board. Additionally, the SEC should be urged to exclude from the reach of these proposed Rules casual statements made or opinions offered to a municipal entity by any person who is not acting in any professional advisory capacity.

Being required to register with the SEC as a municipal advisor has significant consequences – time, money and legal obligations, as well as becoming the subject of scrutiny by the SEC. The proposed application requires, among other things, that an individual certify that he or she has "sufficient qualifications, training, experience and competence;" will meet, within any applicable required time frames, "such standards of training, experience and competence and other qualifications, including testing, for a municipal advisor, required" by the SEC or other regulatory organizations; and have "necessary understanding of... all applicable regulatory obligations" under federal securities laws, as well as applicable rules promulgated by the SEC and Municipal Securities Rulemaking Board or other relevant self-regulatory organizations. Intentional misstatements in, or omissions of fact from, an application constitute a federal criminal violation. The proposed Rules also impose recordkeeping

requirements, permit the SEC to inspect those records and require annual updates. Failing to comply with the Rules could subject a person to civil fines and sanctions, as well as criminal penalties. These and other issues raised by the proposed Rules are likely to be the subject of many comments to the SEC.

Lawyers in the Squire Sanders Public & Infrastructure Finance Practice Group are available to answer any questions about or further discuss the implications of the proposed Rules.

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State lawmakers are once again weighing changes to Iowa's eminent domain laws in order to clarify what is necessary for property to be acquired. The legislation, sparked in part by a dispute over a water reservoir in southern Iowa, is currently in a House subcommittee.

House File 64 stipulates that the property acquisition phase of a project cannot begin without signed authorization of the governor. It also changes the standard of proof in eminent domain cases from a "preponderance of the evidence" to "clear and convincing evidence."

Debate over eminent domain has raged in Iowa for several years. In 2005, the U.S. Supreme Court ruled that it was permissible for state and local governments to take private property for private business development. That inspired legislation in Iowa to counter the ruling and require governments to prove beyond a certain threshold that taking the property would be for the public good, not simply for economic development.

Gov. Tom Vilsack vetoed the legislation, arguing that curbing eminent domain hurts the state's potential to grow. His veto was eventually overridden by a special legislative session called that summer, with the House voting 90-8 and the Senate voting 41-8.

Flash forward to today, and officials in Clark County say a new reservoir is a critical public need because the area's current water supply is being used nearly to capacity. Neighbors of the rural area where the reservoir would be constructed have alleged that the water need has been drastically overestimated, and that the underlying goal of the project is to increase recreation and tourism. The legislation would prohibit eminent domain from being used for recreational projects.

Also included in the bill would be a prohibition on the condemnation of property on the National Register of Historic Places. It would also prohibit any project that receives state funding or assistance through specified economic development, tourism or community betterment programs to be defined as "public use" and adds reasonable attorney fees, up to $100,000, to be reimbursed to the property owner by the acquiring agency.

Jay Byers, vice president of public policy for The Greater Des Moines Partnership, said his organization is opposed to the legislation because it would "increase restrictions rather than ease them."

"The Partnership supports easing the restrictions on the responsible use of eminent domain to promote sustainable revitalization and redevelopment in slum and blighted areas in urban renewal areas, while preserving agricultural land," he said in an e-mail to The Iowa Independent.

The legislation is sponsored by four Republican lawmakers — Pat Grassley of New Hartford, Jeff Kaufmann of Wilton, Kim Pearson of Altoona and Annette Sweeney of Alden.

In a statement to The Iowa Independent, the Iowa Farmers Union said the bill strengthens "personal property rights, and provided individuals the resources necessary to protect their land, homes and livelihoods from unnecessary hostile acquisition."

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PRESS RELEASE

Kenny:Shifting the Burden of Proof in Eminent Domain Would be 'Litigation Nightma

By CNoel | May 7th, 2007 - 5:00pm

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KENNY: SHIFTING THE BURDEN OF PROOF IN EMINENT DOMAIN WOULD BE â€˜LITIGATION NIGHTMAREâ€

Â Â Â Â Â Â Â Â Â Â Â Â **TRENTON â€"** Senate Majority Leader and Budget and Appropriations Committee Chairman he strongly objects to State Public Advocate Ronald K. Chenâ€™s proposal that transparency in eminent domain can from landowners to public entities, after the Senate Budget and Appropriations panelâ€™s hearing with the Departme

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Senator Kenny argued that shifting the burden of proof would create a â€œlitigation nightmare development.

Â Â Â Â Â Â Â Â Â â€œThe issue of eminent domain is a critical one, one that Public Advocate Chen has made clear th been used as a tool for tremendous growth in New Jersey, especially in many of the urban areas where we have seen â€œI agree with Mr. Chen that reform is necessary in the area of compensation because now, owners are paid for the given on the proposed value and use of the land post-revitalization.

â€œI also agree that the process should be more transparent â€" public and private land owners deserve to be kept a Transparency procedures are in need of reforms that will make the process more open, more public and should be en

â€œMr. Chen argues that transparency relies on the shifting of the burden of proof to municipalities, which is a legal n made more transparent without having to change the burden of proof.Â Changing the burden of proof has nothing to negative impact on allowing municipalities to use eminent domain.â€?

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