

Three-Point Shooter's NCAA Upset to Help College's Bond Deal.

College hoops star Jack Gohlke's three-pointers helped Oakland University upset a college basketball behemoth, the University of Kentucky, in the NCAA tournament. Now, he's helping his school as it prepares to tap the bond market.

The public college in Michigan — which before last month was virtually unknown to large swaths of the US — is selling municipal bonds next week.

"Everyone knows who Oakland is now," said Stephen Mackey, the college's vice president for finance & administration. He said the school's heightened name recognition after March Madness will help the \$18.5 million bond offering draw investors.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright

April 5, 2024

States, Cities Brace for Higher Wage Costs After Hiring Binge.

- **Increased pay, added benefits to pressure municipal budgets**
- **Total public sector jobs topped pre-pandemic total in December**

State and local governments boosted wages, offered bonuses, advertised hundreds of miles away and sweetened benefits to fill jobs lost to the pandemic. Now analysts say it's time to tally the bill.

Buoyed by tax revenue and federal stimulus funds, municipalities across the US didn't hold back when replenishing their workforce. But all the new hiring will come at some cost as wage pressures mount and concerns about the economy linger.

"Following 21 straight months of positive job growth in the sector, we're watching to see budget impacts of this successful hiring campaign," said Geoff Buswick, managing director and sector lead for state governments at S&P Global Ratings.

[Continue reading.](#)

Bloomberg Markets

By Joseph Mysak Jr

If Puerto Rico Bankruptcy Ruling Stands, It Could Devastate Municipal Borrowing.

Congress needs to look into how Puerto Rico is managed after bankruptcy ruling

As a former attorney general of the United States, I find it crucial to shed light on a recent court ruling in Puerto Rico that demands our attention. The decision made by U.S. District Judge Laura Taylor Swain in the bankruptcy proceedings of the Puerto Rico Electric Power Authority (PREPA) has profound implications, particularly for the fairness and efficiency of capital markets, as well as the access of state and local governments to municipal bonds.

It is imperative that we comprehend the potential consequences of this ruling, as it could lead to escalated costs and hindered infrastructure development and also burden taxpayers with higher financial obligations.

In the bankruptcy proceedings of the power utility, Swain sided with borrowers and concluded that special revenue bondholders do not hold a secured claim on current and future net revenues. As The Wall Street Journal explained in March, "A federal judge curbed Puerto Rico bondholders' rights to the electric revenue generated by its public power utility."

Furthermore, the ruling stated that the original legal obligation of the borrowers is not the face value of the debt, but rather what the borrower (in this case "PREPA") can feasibly repay. This ruling raises concerns regarding its broader implications for the municipal bond market.

Municipal bonds play a pivotal role in financing vital infrastructure projects across America. However, Swain's decision poses a significant threat to the traditional free-market principles that underpin the structure and security of municipal bonds, particularly special revenue bonds.

These bonds have provided investors with the assurance of repayment through revenue streams generated by specific projects or utilities. By eroding this sense of security, the ruling fundamentally alters the risk-reward dynamics of municipal bonds, disregarding the principles of free markets and limited-government intervention.

Consequently, state and local governments may encounter elevated borrowing costs when issuing bonds for necessary public investments, hindering fiscal responsibility and the efficient allocation of resources.

The rise in borrowing costs associated with municipal bonds not only burdens taxpayers but also impedes economic growth. Governments should operate within their means, prioritizing fiscal responsibility and minimizing the tax burden on hardworking citizens.

However, with higher borrowing costs, cities may struggle to undertake vital projects that would otherwise contribute to economic expansion and job creation. This hampers the private sector's ability to thrive and stifles the entrepreneurship and innovation that drive economic prosperity.

We must not underestimate the significance of any ruling in U.S. bankruptcy proceedings that undermines the free-market values of fiscal responsibility and limited-government intervention.

The recent ruling in Puerto Rico carries far-reaching implications for the entire municipal bond market, posing a threat to our commitment to free markets and individual liberty. It jeopardizes the ability of local governments to access municipal bonds and manage their finances responsibly.

Therefore, it is imperative that Congress, which has oversight of Puerto Rico's management through the natural resources committees, chaired by Senator Joe Manchin, D-WV, and Representative Bruce Westerman, R-AR, critically examines the detrimental impact of this ruling on the efficiency of America's bond market.

We must demand a reevaluation of policies that hinder economic growth, burden taxpayers and disregard the fundamental tenets of fiscal responsibility. By advocating for a return to market-based solutions, we can ensure the fairness and efficiency of capital markets, safeguard the prosperity of our communities and preserve the principles that make our nation strong.

Fox Business

By Matthew Whitaker

September 5, 2023

Matthew Whitaker is co-chair of the Center for Law and Justice at the America First Policy Institute and the former acting attorney general under the Trump administration.

SIGNAGE - WISCONSIN

[Adams Outdoor Advertising Limited Partnership v. City of Madison, Wisconsin](#)

United States Court of Appeals, Seventh Circuit - January 4, 2023 - F.4th - 2023 WL 33962

Outdoor advertising company brought action alleging that city's sign-control ordinance violated First Amendment.

The United States District Court for the Western District of Wisconsin entered summary judgment in city's favor, and company appealed.

The Court of Appeals held that:

- Claim preclusion barred company's claim that city's sign-control ordinance violated First Amendment;
- Company's claim did not fall within scope of exception to claim preclusion for declaratory judgments;
- Ordinance was subject to intermediate scrutiny under First Amendment; and
- City's digital-sign prohibition did not violate First Amendment.

City's digital-sign prohibition was reasonably related to its stated interests in promoting traffic safety and preserving visual aesthetics, and thus did not violate outdoor advertising company's First Amendment rights; billboards by their very nature could be perceived as esthetic harm, and presence of overhead signs and banners was bound to cause some drivers to slow down in order to read sign before passing it.

Ailing U.S. Roads Would Get Relief in Bill Unleashing Federal Aid.

Bill with bipartisan support would expand the permitted spending of the \$350 billion of American Rescue Plan aid as Treasury guidance provides limited uses for infrastructure

Crumbling U.S. roads and bridges stand to get a boost from legislation in Congress allowing states and local governments to spend pandemic relief aid on a broader array of infrastructure projects.

A bill with bipartisan support in the House of Representatives would allow municipalities to spend unused federal funds on areas like highways and bridges. Such legislation passed the Senate unanimously last month. By one lobbying group's estimate, it could unleash tens of billions of dollars of spending just on the county level.

Representative Carolyn Bourdeaux, a Democrat from Georgia, said in an interview that some localities still have relief money to spend and would like to make a "down payment" on infrastructure work.

"We have a lot of infrastructure needs," she said. She said she expects the bill to pass.

The measure was introduced in the House in October by Bourdeaux and Representative Dusty Johnson, a Republican from South Dakota whose office noted it doesn't increase federal spending.

States and cities have already used aid from the \$350 billion American Rescue Plan to fund water, sewer and broadband infrastructure, categories that are acceptable under the Treasury's interim guidance. West Virginia Governor Jim Justice, for example, is proposing to use \$90 million of his state's allocation as part of a \$1 billion broadband investment.

However, the Treasury guidance doesn't give the green light for broader infrastructure projects, like roads and bridges, that aren't explicitly tied to efforts to combat the economic damage from the pandemic. Some states and cities have been slow to spend the aid, and governments have asked for the funding constraints to be relaxed to make it easier to deploy.

Letting governments use the aid on a wider scope of infrastructure work could reduce the need to borrow for such projects. That risks further suppressing issuance in the \$4 trillion municipal market, where sales are down about 3% year-over-year, according to data compiled by Bloomberg. The diminished supply has helped munis outperform the broader bond market in 2021.

Return Option

The House bill also creates a pathway for "well-off" entities to give back aid, according to Johnson's office. Under the bill, any returned money should go toward reducing the federal deficit.

That provision may appeal to Republican lawmakers like Florida Senator Rick Scott, who said he supported the legislation. He has called for governments to return aid that goes beyond pandemic-related expenses.

A variety of state and local-government lobbying groups have endorsed this infrastructure bill.

The National Association of Counties estimates it would allow counties to use more than \$27 billion for new transportation and infrastructure projects.

"Counties are interested in that extra flexibility," said Eryn Hurley, the group's deputy director of

government affairs.

Bloomberg CityLab

By Amanda Albright

November 4, 2021, 10:43 AM PDT

PUBLIC RECORDS - OHIO

[State ex rel. Ware v. Akron](#)

Supreme Court of Ohio - March 9, 2021 - N.E.3d - 2021 WL 864098 - 2021-Ohio-624

Records requester filed petition for writ of mandamus seeking to compel city and police chief to produce requested public records and seeking statutory damages under the Ohio Public Records Act, and requester filed motion to take judicial notice.

The Supreme Court held that:

- Judicial notice was not warranted under the circumstances;
- City was required to send invoice to requester to inform him of cost of copying records;
- Requester established entitlement to award of statutory damages for city's failure to timely respond to requests; but
- Requester was entitled to only one award of the statutory maximum damages, not two awards.

Supreme Court would not take judicial notice of facts that it ordered briefing schedule, that records requester attempted to file reply brief, and that brief was rejected for filing as untimely when he attempted to file it outside of deadline contained in scheduling order, in mandamus proceeding in which requester sought to compel city and police chief to produce records under Ohio Public Records Act; it was unclear in what manner granting judicial notice would assist in requester's case, requester did not ask for any relief in motion, and facts that requester related were not relevant to substantive issues before the court.

Where city was willing to provide copies of public records related to police department policies and personnel files to records requester upon prepayment of costs, as authorized under Ohio Public Records Act, city was required to send invoice to requester informing him of how much copies of the records would cost, so that requester could decide whether he wished to pay for the copies.

Records requester established entitlement to award of statutory damages under Ohio Public Records Act for city's failure to respond to his public-records requests for nearly nine months, though city asserted that it failed to respond due to illness of employee and cyber disruption that restrained city's ability to communicate via e-mail, that it responded within days of becoming aware of request, and that requester failed to show any actual injury from loss of use of records; requester served requests by certified mail, city did not suggest that nine months was reasonable amount of time for it to respond, any good faith by city was irrelevant to entitlement to damages, and requester was not required to make even minimal showing of actual injury, which was conclusively established by statute.

Records requester was entitled to one award of the statutory-maximum amount damages of \$1,000 under Ohio Public Records Act for city's failure to respond to requests for documents relating to police department policies and personnel files for nine months and its apparent failure to include

invoices for copying costs in its responsive letters, though requester asserted that he was entitled to award of \$2,000 on theory that he served two separate requests; fact that requester served his public-records requests across two letters did not automatically mean that each letter constituted a separate request for purposes of calculating statutory damages, and record indicated that the two letters were sent to city in single envelope.

Fitch Ratings 2021 Outlook: U.S. Water and Sewer Sector -- Amended

Fitch's Sector Outlook: Stable Fitch Ratings' 2021 stable outlook for the U.S. water and sewer sector (the sector) reflects strong sector characteristics and a conservative business model that provides utilities with stability, even during periods of uncertainty and volatility. The fundamental hallmarks of the sector include: essentiality of service, lack of competition and generally autonomous rate-making authority. These underpinning strengths continue to produce favorable financial results and reliable cashflows even in the current environment. Rating Outlook: Stable The rating outlook for the sector is Stable, and only limited rating changes are expected in 2021. As of December 2020, 88% of the water and sewer ratings assigned by Fitch maintained a Stable Rating Outlook. Approximately 8% have a Positive Rating Outlook or are on Rating Watch Positive, and 3% have a Negative Rating Outlook or are on Rating Watch Negative. Ratings trending positive are dominated by utilities with improving leverage profiles. Conversely, ratings trending negative are predominantly driven by utilities with rising leverage as a result of increasing operating or capital expenses without offsetting rate support.

ACCESS REPORT

Up Against Wall Street Bond Giants, Minority Firms Want More.

The push for racial justice has created the opportunity they need.

The big names were familiar: JPMorgan Chase & Co., Goldman Sachs Group Inc., Morgan Stanley. Then there was Blaylock Van. The tiny investment house managed to land a role on the \$10 billion bond sale in August by Alphabet Inc. by bringing something else to the table: diversity.

For decades, minority-owned underwriters such as Blaylock have struggled to gain more than a small fraction of the deals in their traditional arena, the \$3.9 trillion U.S. municipal bond market. Now, amid the national conversation over racism and inequality, these small firms are hoping companies will hire them more often to underwrite corporate bonds in a market that's almost twice as big.

The prospects are daunting. Even though many states and cities have committed to allocating business to minority underwriters, these firms still handle just 5% of all muni sales. Their share of corporate bond deals is even less: 2% to 3%.

[Continue reading.](#)

By Molly Smith and Danielle Moran

December 17, 2020, 4:31 AM PST

[Most U.S. Cities Expect Next Fiscal Year to Get Worse, Survey Finds.](#)

Economic damage from the coronavirus pandemic raises likelihood of more municipal layoffs and service cuts

Most U.S. cities say continuing economic damage from the coronavirus pandemic will leave them in worse financial shape in the coming year than they were earlier in the crisis, raising the odds of deeper municipal layoffs and service reductions, according to a new survey.

Nearly 90% of the 485 cities polled by the advocacy group National League of Cities said they will have a harder time meeting the needs of their communities in fiscal 2021 than in the prior fiscal year, the highest share since the depths of the 2007-09 recession. In 2019, just 24% of finance officers reported that their city was less able to meet fiscal needs, compared with the previous year.

For many cities, the 2021 fiscal year began in July, though some cities start the fiscal year in January or October.

The survey found that all major sources of local tax revenue slowed in fiscal 2020, including an 11% year-over-year decline in sales tax receipts and a 3.4% drop in income tax revenue.

Municipal budget officials on average anticipate that general fund revenues for fiscal year 2021 will come in 13% below 2020 levels, the survey said. General funds typically account for more than half of all city spending and are fueled largely by property and sales taxes, along with income taxes in some cases.

Cities that depend more heavily on sales tax are most likely to suffer financially during both 2020 and 2021, the survey found. Sales taxes are more sensitive to economic shifts than property taxes, which the report said typically reflect property values from 18 months to several years prior.

State and local governments reduced spending at a 5.6% annual rate in the second quarter to offset plunging tax revenues, as the pandemic spurred a shutdown of much of the economy.

Many cities “skimmed from the top” through moves such as hiring freezes or furloughs, said Christiana McFarland, the National League of Cities research director and co-author of a report on the survey. Personnel costs account for a large share of city expenses, so additional budget cuts will likely mean laying off more government workers, she said.

“If the workforce is cut,” she said, “it will have negative consequences on services as well.” Those could include trash pickup, code enforcement, public safety, and parks and recreation, she said.

Ms. McFarland said the survey findings likely understate the seriousness of the concerns, because city officials responded in June, when there was greater hope for a speedier recovery from the pandemic and for substantial federal aid to local governments. “Now, those clearly are either stalled or looking pretty grim for the fall,” she said.

Efforts in Congress to craft a fresh economic relief package have hit a wall, and aid for state and local governments is a key sticking point. Democrats are seeking \$950 billion, while Republicans have offered \$150 billion.

“Government investment in the economy is exactly what is needed during downturns, meaning that the future economic health of our nation relies on fiscally strong cities, towns and villages, along with state and federal investments,” the National League of Cities report says. “Without them, the road to recovery and reopening will be long and tenuous.”

The Wall Street Journal

By Scott Calvert

Aug. 13, 2020 6:00 am ET

[The Case for Microbonds.](#)

A financial tool that could help cities achieve a sustainable fiscal recovery

The current urban-financing crisis could finally make “community microbonds” a serious alternative to traditional municipal bonds. For several decades, municipal issuers have used minibonds—sold in increments significantly less than \$5,000—to access a broader group of potential investors and avoid the fees associated with a standard bond issuance. Microbonds refer to bond denominations of \$100 or less, but there is no common industry standard for the term. In fact, some issuers elect to use the term minibond to refer to bonds denominated in increments as low as \$25.

Designed to be affordable, microbonds are sold in small denominations, opening the door to what advocates call “community-powered finance.” The community can select and fund local-scale projects, such as parks, public art, local clean energy, and affordable housing, while providing investment opportunities for historically marginalized populations. Low-cost interest-bearing instruments aid wealth creation by turning low-income consumers into investors.

Ben Bartlett, a long-serving city councilmember in Berkeley, California, is one of many local government leaders worried about municipal budget stress. He’s especially concerned about declining city revenues, degrading city infrastructure, and increased capital concentration. Bartlett, however, thinks that Covid-19 has “also accelerated many of the changes people have been discussing for years.” Futuristic innovations like telework and telehealth “have become the new norm.”

Bartlett is convinced that “coronavirus impacts will be felt in the world of money,” especially public budgets. He believes that the “solutions will not come from Washington, D.C. or New York City. We are in virgin territory here, and the innovations we need will only arise through local experimentation.” According to Bartlett, and some of his Berkeley city council colleagues, microbonds “offer a quick, flexible, and targeted mechanism for communities to rebound.” He believes that once the “all clear” is sounded, the “community itself is more likely to respond quickly and intelligently to the opportunity to rebuild than the traditional buyers of municipal bonds.” A significant attraction of microbonds, Bartlett holds, is that they “help communities put the resources where local voters and their local representatives see the most impact now.” Tax exemption has been another main attraction for investors in municipal bonds. Fortunately, the federal government has determined that the tax treatment for microbonds will be the same as the favorable tax

treatment received by munis.

When selecting a project to finance through minibonds, issuers tend to focus on smaller, defined projects that have a tangible connection to the local investor base. The objective is to maximize local investor participation by selecting an easily identifiable project that would interest and benefit the community. Minibonds have been used for several decades by municipal issuers to access a broader group of potential investors and avoid the fees associated with a standard bond issuance. In 1990, Mission Viejo, California issued minibonds in denominations of \$500 to finance a portion of renovations to the city hall. The minibond issuance had 35 orders, ranging from \$500 to \$30,000, raising \$140,500 toward the project. The city ended up supplementing the financing with traditional municipal bonds sold through a public offering. In 1991, Anaheim issued \$3.4 million in minibonds. These were issued as zero-coupon bonds (meaning that the bonds were purchased at a discount and bond owners were paid the face value of the bonds at maturity). Unlike many other minibonds, these were not issued as part of a larger financing. Over the last half-decade, there have been minibond issuances in the cities of Vancouver, Washington; Burlington, Vermont; Lawrence, Kansas; Cambridge and Somerville, Massachusetts; and Madison, Wisconsin. Each of these cities is home, or near, to a major university or college. A key consideration for issuing minibonds is community engagement; one participant in the financing of these minibond issuances remarked, “communities that are innovative and engaged are usually college towns. They are the ones with the most participation.”

Recent minibonds have been sold through two primary channels: either directly from the municipal authority or electronically through an underwriter’s retail-distribution network. Due to the complexity of developing an online ordering system, issuing directly from the municipal authority typically requires mailed-in or physical orders, the physical transfer of the bond certificates, and the submission of certificates by bond holders to the municipal authority to receive payment. The minibonds of the early 1990s were sold through this method. Denver’s minibonds, which made headlines in 2014 for selling \$12 million in debt in 20 minutes, were issued directly by the city; orders were delivered online, by mail, and by hand delivery. Denver offered the bonds for sale online two hours before they began accepting mailed-in or hand-delivered orders. As a result, some residents expressed frustration that the bonds sold out before any physical orders were processed.

Until the pandemic hit, the assumption had been that municipal issuers were trustworthy—and that the projects for which they float bonds were worthwhile. Transparency and financial reporting requirements for regular muni bonds are now clearly inadequate. This has led to some very bad kinds of bond offerings, including pension-obligation bonds and capital appreciation bonds. These will haunt municipalities for many years to come. Some will ask whether, and how, financial transparency will be any better for microbonds, and who, if anyone, would rate them or oversee them. So far, nothing has been determined. Microbonds are a new category of borrowing, with no special rules (voluntary or mandatory) applying to them, yet.

In order to maximize community engagement, cities can restrict the bond sale to city or county residents, though this increases the chance of failing to raise enough money. To mitigate the risk of a funding shortfall, a city could consider a priority-sale period for city residents followed by a broader sale period to the general public—statewide or nationwide—to ensure that the full amount is sold. It’s worth noting that if a city seeks to limit the maximum amount of the minibonds that can be purchased by any one investor—to avoid a situation where a trust or other institutional fund buys the bonds through a retail account—there is an increased risk of a funding shortfall.

At a moment when many cities face extraordinary fiscal pressures, microbonds can offer a creative means of raising money from local stakeholders, who are already invested emotionally and physically in the community.

City Journal

Gordon Feller

June 8, 2020

Gordon Feller is the founder of Meeting of the Minds. For several years, he served as a Global Fellow at the Urban Sustainability Lab of the Smithsonian's Wilson Center. He has worked to transform urban economic development in partnership with city governments, national governments, philanthropies, international agencies, and financial institutions. Follow him on Twitter at @GordonFeller.

Virus-Hit Cities in Hurricane Zone Get Moody's Warning on Risks.

American states and cities are dealing with disease, economic collapse and civil strife in the streets. For those in the southeast, Mother Nature's coming next.

Moody's Investors Service says this year's hurricane season poses increased risks for state and local governments along the Atlantic and Gulf coasts that are still struggling to recover from the coronavirus health and economic crisis.

"The disruption, property damage, and costs of recovery from a natural disaster event in the coming months would compound governments' coronavirus health and fiscal challenges," Pisei Chea, an analyst at Moody's, wrote in a report co-authored by five other analysts published Tuesday.

The group said that if the virus does not ease by peak hurricane season in late summer, governments may need to evacuate certain areas and set up shelters that still adhere to social distancing measures, meaning potentially higher costs than past response efforts. Residents wary of the spread of Covid-19 may also choose not to evacuate, which may complicate rescue efforts. At the same time, potentially crowded shelters may lead to spread of the virus, according to the report.

Hurricanes have become more violent and more expensive because of climate change, which is a growing concern for investors in the \$3.9 trillion municipal bond market.

BlackRock, the world's largest asset manager, said in a May 30 [report](#) that investors "must consider the added risk of climate change" since it poses a "dual threat" to places and counties already struggling to recover from the pandemic.

By using climate data assessment, the firm found some counties are exposed to annualized gross domestic product losses up to 2.5% over the next 10 years above the GDP forecast without any pandemic risk. That leads to the risk for rising bond yields ranging from 25 to 80 basis points, depending on the speeds of their recoveries, according to the firm's report. The areas that are exposed to both climate change and pandemic risk will see worse losses.

For example, Miami-Dade County in Florida is forecast to see 0.88% annualized loss of GDP over the next 10 years due to Covid exposure, according to BlackRock's estimates. That projected loss jumps to a combined 2.6% annualized loss when hurricane exposure is taken into account.

"Local finances become even more dire after considering the potential for climate change related risks over the next decade," wrote BlackRock's Amit Madaan and Michael Kent.

Are Municipalities Jeopardizing Their Municipal Bonds By Failing to Take Needed Action to Avoid a Crisis?

Based upon our professional experience, we fear that the failure of municipal entities, which includes cities, towns, counties, hospital districts, water districts, etc., to take immediate action in light of the consequences of the coronavirus pandemic will seriously jeopardize the ultimate payment of outstanding municipal bonds.

As professionals whose careers have spanned decades of dealing with issues associated with bankruptcy, turnaround and insolvency situations, we believe that we are in the midst of a significant crisis with respect to the integrity of municipal bonds. Based upon our professional experience, we fear that the failure of municipal entities, which includes cities, towns, counties, hospital districts, water districts, etc., to take immediate action in light of the consequences of the coronavirus pandemic will seriously jeopardize the ultimate payment of outstanding municipal bonds. Since much uncertainty still remains with respect to the level of federal support municipalities may garner, it is unlikely the support will be adequate to offset the significant revenue shortfalls that municipalities have incurred and will continue to incur until economic activity returns to its pre-COVID 19 levels. Elected officials and their administrative executive teams must act now to not only assess their current financial situation, but they must also initiate contingency plans to curtail an insolvency situation and mitigate the impact of the shortfalls. The organizations with the most proactive, experienced and creative teams are most likely to prevail and survive.

Since this may be the first time that the finance team members for the municipalities have ever faced a situation of this magnitude, many municipalities and other organizations need to benefit from the inclusion of experienced turnaround and restructuring professionals to bolster their teams and rely on the expertise of these professionals to assist in navigating through the crisis. With the recent announced furloughs of police, fire and other municipal employees by the city of Miramar within Broward County, and with the Chapter 11 filing of the municipal bond financed student housing project in Gainesville, we believe that these actions are the proverbial tip of the iceberg of the financial tsunami that will impact municipalities, hospital districts, school districts and other Florida projects financed with municipal bonds. Bond rating agencies are making daily announcements concerning the downgrading of previously highly rated (AAA) municipal bonds as a result of the pandemic.

It has been well publicized that municipalities are being severely impacted as a result of the coronavirus pandemic by the concurrent reduction of tax and other revenues and the increased expenses necessitated by maintaining certain essential services, and providing additional services residents and constituents. Since it appears that any help by way of a Congressional enactment may be stalled as a result of the partisan political wrangling, it is absolutely necessary that municipal bond financed entities need to take immediate proactive steps in order to avoid catastrophic results. Since many retirees and pension funds rely on the integrity of municipal bonds, it is incumbent upon municipal leaders to immediately think outside of the box and not consider business as usual in order to solve these once-in-a-lifetime problems.

Too often, because of perceived constraints that would limit the engagement of outside help, municipal employees are left to solve unique and extraordinary problems on their own, often without adequate expertise. As a result, as was seen in the Chapter 9 municipal bankruptcy filings of Jackson County (Birmingham) Alabama, Detroit, Michigan and Orange County, California, when municipal entities wait too long in order to deal with substantial revenue shortfalls, it is the employees, retirees, communities and the bondholders that suffer the consequences.

There is an unfounded belief held by many that municipal bonds are “guaranteed,” and even in a bankruptcy case, they must be satisfied in full. Unfortunately, that is not the case. Except for certain types of revenue bonds where the revenue can be used to satisfy principal and/or interest of the bond, general obligation municipal bonds are treated just like any other unsecured claim in a bankruptcy proceeding, and history has shown that the holders of these bonds have fared poorly after long delays in municipal bankruptcy proceedings.

Too often, when business executives and municipal leaders are faced with situations that are critical in nature but outside their scope of knowledge, they react instinctively, but that instinct may not be the proper solution when dealing with the current financial distress with no immediate resolution.

Many years ago, Congress enacted Chapter 9 of the Bankruptcy Code provide a vehicle for municipal entities, other than states, to adjust their debts when revenue is insufficient to meet the critical needs on an ongoing basis. However, as was seen in the Detroit Chapter 9 bankruptcy case, the strict rules of the bankruptcy law provide what many believe to be an imbalance or unfairness in the way that different constituent groups of creditors and bondholders are treated. The same is true for those who are the beneficiaries of pension benefits and healthcare rights. Filing of a Chapter 9 proceeding should be a last resort by a municipal entity, utilized only after all possible other actions have been exhausted.

This mandates that municipal entities seek competent professional legal and financial advice from outside professionals prior to the situation reaching a critical stage. For example, financial advisers can review and restate financial plans and forecasts, running a multitude of scenarios and sensitivity analyses and can help management take actions to improve liquidity while taking a critical view to all assets and the ability to profitably monetize such assets. Financial advisers can also model the impact of cost-containment actions such as delays or pauses to capital improvement projects or planned program expansions as well as halting all contractor/temporary workers, etc. From a legal perspective, it is critically important that elected officials and senior staff for the municipalities fully understand and have access to legal advice to properly weigh the legal alternatives and their possible consequences. For instance, seeking protection under Chapter 9 of the Bankruptcy Code may be an excellent strategic opportunity for a municipality in order to be fair to creditors and bondholders, but seeking bankruptcy relief should never have to be done without sufficient advance strategic planning and adequate consideration.

Experienced advisers can bring proven and creative solutions to address revenue shortfalls of a magnitude that nobody could have predicted. When early intervention occurs, in working with outside professionals, the municipal entity’s management team can affect the necessary financial restructuring without having to resort to their dramatic and cost mandates required by the Bankruptcy Code in the Chapter 9 proceeding.

Creditors, taxpayers and bondholders alike should urge elected and appointed municipal officers and employees to immediately take the proactive steps necessary to obtain adequate assistance before it is too late.

By Charles M. Tatelbaum and Shelby Faubion | June 04, 2020 at 10:12 AM

Charles M. Tatelbaum is a director of the Fort Lauderdale law firm of Tripp Scott where he chairs the creditors' rights and bankruptcy practice group. He has been concentrating his law practice in the area of complex business litigation, creditors' rights and bankruptcy for more than 50 years.

Shelby Faubion is a resident of Fort Lauderdale and a managing director at Larx Advisors, Inc. Faubion leads the firm's South Florida practice, providing turnaround and restructuring, financial accounting and due diligence and merger and acquisition integration services. Faubion has over 20 years experience providing a variety of financial, accounting and risk management services within public accounting and industry.

How Municipal Bond Issuers Will Navigate the Crisis.

Summary

- Tough times are ahead for municipal bond issuers.
- The recession, sparked by the coronavirus-led shutdown of the US economy, will temporarily reduce most tax and fee revenues pledged to bondholders.
- Yet we expect municipal credit to be more resilient than other markets, and we don't anticipate widespread municipal defaults.

Tough times are ahead for municipal bond issuers. The recession—sparked by the coronavirus-led shutdown of the US economy—will temporarily reduce most tax and fee revenues pledged to bondholders. Continuing negative headlines will also drive issuer ratings downgrades over the coming months. From airports and public transit to education and healthcare, the spread of COVID-19 affects all municipal issuers.

Yet we expect municipal credit to be more resilient than other markets, and we don't anticipate widespread municipal defaults. Here's why.

[Continue reading.](#)

Seeking Alpha

By John Ceffalio

Apr. 21, 2020

Cash is King: Short-Term Strategies to Slow the Flow of Money Out the Door and Keep the Budget Balanced

Local governments need to make sure they have enough cash on hand for essential services. Thus, one of the first things local governments should do is slow the net flow of cash out the door and find ways to rebalance the budget. This could be done by reducing expenditures, delaying expenditures, or even finding new resources. There are many financial retrenchment techniques a government could use to get this done.

This paper presents a number of tried-and-true retrenchment techniques that can improve cash flow during difficult times and provide time and resources for governments to develop strategies to deal with the financial crisis.

[Download](#)

Government Finance Officers Association

Author: Shayne C. Kavanagh Joseph P. Casey, PhD

Bond Downgrades Begin Amid Coronavirus Slowdown.

Credit-ratings firms like S&P and Moody's have stripped away some pristine triple-A marks as the virus disrupts the economy

Credit-ratings firms have issued a wave of downgrades for corporate and government bonds as they reassess the ability of borrowers to repay their obligations amid the coronavirus slowdown.

Credit-ratings firms like S&P Global Inc. and Moody's Corp. have stripped away some pristine triple-A marks or moved other supposedly safe investment-grade bonds into junk territory.

The moves reflect what Moody's has called a "severe and extensive credit shock across many sectors, regions and markets." S&P has said that "the global recession is here and now." Fitch Ratings is bracing for "abrupt interruptions happening simultaneously across all major economies" as a result of the coronavirus pandemic.

The downgrades themselves can add to the turmoil in bond markets, causing damage well beyond the change in ratings for the bonds being downgraded.

Seeking to stop the negative momentum in markets, the Federal Reserve on Monday broadened its efforts to include plans to purchase corporate bonds with high ratings. It is unclear, however, whether the moves will stem further downgrades.

Among the bonds facing potential downgrades are those tied to shopping malls, hotels, airlines, risky corporate borrowers and local governments. The reviews by ratings firms come after years of easing rating assumptions across various sectors.

Even in the face of such a severe stress, a triple-A grade should stay put since the rating is meant to indicate the debt is as riskless as a Treasury bond. But some triple-A bonds are already failing that test.

On Friday, S&P took away the triple-A grade from a \$215 million bond backed by two mortgages on a giant mall in upstate New York. Local officials had ordered the mall, Destiny USA, and others in the area to be closed to slow the spread of the coronavirus. Other states are taking similar steps. S&P's move was part of a larger downgrade of 60 securities linked to various malls. The Destiny-linked triple-A bond is now rated single-A by S&P. A spokesman for Destiny didn't immediately respond to a request for comment.

Destiny's downgrade calls into question a popular transaction in which bond investors agreed to buy a deal backed entirely by mortgage payments from one property or borrower instead of a pool of

loans. Last week Fitch placed all of its single-asset, single-borrower hotel deals on watch for possible downgrades.

By its own tally, S&P has now made more than 100 downgrades linked to the coronavirus, including on airlines like JetBlue Airways Corp., Southwest Airlines Co. and Spirit Airlines Inc.

Companies that have already been struggling are seeing their woes worsen. On Monday, S&P downgraded office-share company WeWork deeper into junk territory, citing its mounting cash flow and liquidity pressure. The high-profile SoftBank Group -backed company was already under stress after its failed initial public offering last year prompted a previous round of rating downgrades.

On Friday, Fitch said it would stress-test all of its ratings on structured securities known as collateralized loan obligations, or CLOs, and warned it may put some on watch for negative rating actions. The deals often buy up loans from highly leveraged companies and sell bonds to investors backed by payments on those loans. S&P said it is reviewing 25 ratings from 15 CLO deals with large exposures to energy sectors for possible downgrades.

Municipal bonds tied to specific projects or taxes are also being downgraded. S&P recently cut the ratings on revenue bonds backed by a student housing project in Corpus Christi, Texas, by six notches, taking the debt from the lowest notch of investment-grade deep into junk territory.

Falling tax collections are also hitting bonds backed by governments' broad taxing powers. On Friday, S&P lowered its rating on Suffolk County, N.Y., a New York City suburb, to the lowest category of investment grade, saying the county would likely face a cash crunch because of falling sales taxes and casino gaming revenue. A county spokesman said Suffolk expects federal and state aid and is taking steps to offset any lost revenue.

There are signs municipal bond investors may be bracing for losses. Assured Guaranty Ltd., which insures many municipal bonds, has seen its stock price fall by more than half since the start of March, outpacing the broader market decline. "Assured Guaranty is well positioned to manage the impacts of the current situation," the company's head of investor relations said in a statement.

The Wall Street Journal

By Cezary Podkul and Gunjan Banerji

March 24, 2020 6:30 am ET

[Five Issues Municipalities May Face in 2020.](#)

As a resource for municipalities and school districts, the MuniBlog has explored evolving issues including changes in technology, finance, and recovering from natural disasters. These issues have confronted municipalities in New York, throughout the country and throughout the world. Here is our forecast of issues that municipalities may face in 2020.

Ride sharing and mass transit

- Exploring Uber, Lyft, scooters, Citibike and Lime to ease congestion and reduce emissions

Transit oriented development/affordable housing

- This includes housing that attracts or retains recent college graduates and young families

Protecting municipal finance

Addressing pensions

Supplementing sales tax in New York state, such as a possible streaming tax on Internet use; Chicago's "cloud tax" on Netflix was upheld as constitutional

Implementing technology such as drones to study vacant storefronts and traffic patterns, as a step toward reducing emissions

Reducing some infrastructure demands

- Undertaking efforts to reduce emissions, such as solar panels; Los Angeles uses reflective covers on roads and buildings
- Rewiring electrical grids to improve traffic signal wait times
- Putting technology to work - while maintaining the public trust

Improving traffic signal wait times

- Identifying areas prone to accidents and other issues to making informed crime predictions
- Becoming smart cities through surveillance: "Why is my municipality following me?"
- Cities must weigh legal and ethical considerations in maintaining public data, while also ensuring robust cybersecurity to prevent hacking and cybercrime.

These are all topics we expect to explore on the Muniblog throughout the year.

December 18, 2019

by David Rothman

Harris Beach PLLC

[Demystifying Climate Scenario Analysis for Financial Stakeholders.](#)

December 4, 2019 - 427 REPORT. Scenario analysis is an essential yet challenging component of understanding and preparing for the impacts of climate change on assets, markets and economies. When focusing on the short term, the warming and related impacts we have already committed to calls for scenarios that are decoupled from economic and policy activities and instead focus on the impacts that are already locked in. This report explores which impacts are already locked in, identifies how Representative Concentration Pathway (RCP) scenarios fit into the conversation, and describes an approach to setting up scenario analysis for near-term physical climate risks.

As the effects of climate change increasingly threaten financial stability, investors and regulators are seeking to understand what impacts lie ahead, and calling for an increase in physical climate risk assessment and disclosure in line with the Task Force on Climate-related Financial Disclosures (TCFD). To assess the scale of financial risk posed by physical climate change it is important to quantify risks under different climate scenarios. How will changes in extreme weather patterns, longer droughts and rising seas differ under various scenarios? Answering these questions through scenario analysis helps uncover the range of risks, allowing investors to identify assets and markets that are more likely to become stranded over time and to begin developing forward-looking

resilience strategies. However, science-driven, decision-useful scenario analysis poses many challenges for businesses and financial stakeholders today, due to complex feedback loops, varying timescales, and multiple interacting factors that ultimately determine how global climate change manifests.

This new report, *Demystifying Climate Scenario Analysis for Financial Stakeholders*, explores which physical impacts are already locked in, identifies how Representative Concentration Pathway (RCP) scenarios apply, and describes an approach to setting up scenario analysis for near-term physical climate risks. Scenario analysis is often approached from the perspective of transition risk, where policy developments and greenhouse gas (GHG) emission targets are the key drivers of risk pathways over the near-term, in the next 10 to 30 years. Physical risk, however, requires a different approach. Impacts over the coming decades are largely locked in, making the emissions scenarios less relevant. Unlike transition risk, GHG emission pathways play a minimal role in the behavior of the near-term climate and GHG emission pathways only begin to meaningfully influence global temperatures near mid-century. The uncertainty in physical climate risks in the near-term is driven by uncertainty in physical processes, rather than in policy decisions.

For organizations looking to construct physical climate risk scenarios for risk management and strategy purposes, it is critical to understand the scientific phenomena driving our plausible climate futures. This report outlines an approach called percentile-based analysis, which allows users to explore the range of potential outcomes based on climate model outputs within a single RCP. This offers a flexible, data-driven approach, suitable for portfolio-level screenings, reporting, and in some cases, direct engagement with asset managers.

Key Takeaways:

- Quantifying climate risks under different scenarios is a key element in understanding how physical climate risks pose financial risks.
- Scenario analysis is often approached from the perspective of transition risk, where policy developments and greenhouse gas emission targets are the key drivers of risk pathways in the next 10 to 30 years. However, physical climate impacts over the coming decades are largely locked in, so physical risk requires a different approach.
- Even if we stopped emitting carbon dioxide tomorrow, many physical climate impacts, such as increasing temperatures, more severe droughts, and rising sea levels, would already be locked in because of the time carbon dioxide stays in the atmosphere and the time it takes the atmosphere to respond.
- The uncertainty in how physical climate risks may manifest in the next few decades is driven by model uncertainty, which should therefore be the focus of scenario analysis for physical climate risks in the near-term.
- Percentile-based analysis offers a flexible, data-driven approach, suitable for portfolio-level screenings, reporting, and in some cases, direct engagement with asset managers.

[Download the report.](#)

ZONING & PLANNING - INDIANA

[VanHawk v. Town of Culver](#)

Court of Appeals of Indiana - November 26, 2019 - N.E.3d - 2019 WL 6314857

Town brought action against dissolved corporation and its officer seeking repair or demolition of

building owned by corporation that was deemed unsafe by county unsafe building committee, and corporation filed motion for preliminary injunction.

The Circuit Court determined building was public nuisance and unsafe building, and ordered it to be demolished. Corporation appealed.

The Court of Appeals held that:

- Any order issued by trial court bound only corporation and did not constitute personal judgment against officer;
- Trial court could not engage in judicial review of committee's determination that building was unsafe;
- Trial court did not have authority to order demolition of building;
- Town, through its building commissioner, sufficiently pleaded a common law public nuisance claim; and
- Hearing authority's prior order determining property was unsafe and needed to be demolished was a final administrative order.

U.S. States Boost Spending at Fastest Pace Since Recession.

- **Transportation sees the largest increase as projects revived**
- **Record economic expansion provides 'now or never moment'**

America's states are increasing their spending at the fastest pace since the end of the Great Recession.

Their budgets swelled by 5.9% in the 2019 fiscal year to about \$2.1 trillion, the biggest annual increase since the recession ended in 2009, according to a report Thursday by the National Association of State Budget Officers. That's up from a 3.7% pace in the year before as state officials pumped more money into transportation projects, pensions and reserves that will help them weather the next economic rout.

The figures show how the record-long expansion is reviving the finances of states that were hit hard by the fallout from the real estate bust. That shift has lifted the credit ratings of California, Washington and Michigan and driven down the yield penalties that investors demand to buy bonds of states such as Connecticut and Illinois.

[Continue reading.](#)

Bloomberg Markets

By Romy Varghese

November 21, 2019, 10:35 AM PST Updated on November 21, 2019, 10:50 AM PST

The Organizers and Officials Behind San Francisco's Push for a Public Bank.

Jacqueline Fielder has been working two restaurant jobs, but in increasingly unaffordable San

Francisco, she's had trouble finding stable, safe housing she can afford. She moved to the Bay Area to go to Stanford, where she earned a bachelor's in public policy and a master's in sociology in just four years. But for the past six months, she's been couch surfing and living out of her van, a green Toyota Previa, model year 1994 — the same year she was born.

In her spare time between shifts, Fielder has continued volunteering as one of the lead organizers behind San Francisco's push for a city-owned public bank that would hold local taxpayer dollars and finance affordable housing, small businesses, student loans and other public needs that conventional banks aren't meeting.

That work takes another step closer with the introduction of local legislation in San Francisco that would begin the process for establishing a public bank — following the pathway laid out by AB 857, the landmark public banking bill [passed into law earlier this year in California](#). That legislation is expected to be introduced today.

[Continue reading.](#)

NEXT CITY

by OSCAR PERRY ABELLO

NOVEMBER 12, 2019

[Building a Data-Driven Future: Digital Cities 2019 Revealed.](#)

The winners of this year's Digital Cities Survey from the Center for Digital Government are those making smart investments in technologies from infrastructure and citizen engagement to data storage and cybersecurity.

This past year could be dubbed "the year of the refresh" for the winners of the 2019 Digital Cities Survey, presented by the Center for Digital Government.*

The IT leaders and elected officials of these top cities have braced themselves for the next decade by leveraging vendor solutions, identifying infrastructure upgrades and making government-wide changes to philosophy. Many of these initiatives were implemented during the past year, but other winners have thrived on existing foundations in IT operations.

None of these winning cities wants to be hindered by hindsight, and they share the belief that the user, whether it be a city resident, business owner or passing tourist, should be the guiding factor in the deployment of new or emerging technologies.

[Continue reading.](#)

GOVERNING.COM

BY PATRICK GROVES, GOVERNMENT TECHNOLOGY | NOVEMBER 16, 2019 AT 3:01 AM

Muni Bonds Contain New Fine Print: Beware of Climate Change

The underwriters of municipal bonds are disclosing more about cities' exposure to higher temperatures and rising seas.

Investment banks have begun quietly sounding alarm bells about climate change. Their worries are showing up in the documents that accompany municipal bonds they underwrite.

When state and local governments issue debt, federal securities laws hold their bankers accountable for making sure that states and cities adequately disclose the risks bond buyers are taking on. These might include any lawsuits a town is facing, or how the sales taxes used to pay back bondholders could fluctuate in a recession. Now many of these documents include language about climate change, hurricane risks, and rising seas. "Every bank should be asking their clients about this risk," says Christopher Hamel, a senior fellow at Municipal Market Analytics and former head of municipal finance at RBC Capital Markets.

Bloomberg News analyzed more than a dozen due diligence questionnaires prepared by banks or legal counsels and sent to governments in coastal Florida, and over 40 official statements for prospective bond investors. About half of the questionnaires and the majority of the statements included language on storm-related risks or climate change. The questions about climate risk sometimes come from the banks or their lawyers, and sometimes from disclosure counsels who are hired by cities to prepare for a bond deal.

During the preparations for Jacksonville's sale of \$197 million in bonds in August, a disclosure counsel asked if the city had long term plans to implement projects that increased resilience against storm related risks. Questions like that are new, says Randall Barnes, the treasurer of Jacksonville, Florida's largest city. "We had been asked about impacts of hurricanes before, but not specifically on what we are doing for the future," he says.

Scientists predict that global warming and rising seas could lead to more intense storms such as Hurricane Maria, which devastated Puerto Rico in 2017. Tidal flooding—already happening in Miami Beach and other cities—could force residents to move inland. BlackRock Inc. says that within a decade, more than 15% of debt in the S&P National Municipal Bond Index will come from regions that could suffer average annualized losses from climate change of as much as 0.5% to 1% of their gross domestic product.

The questions asked by the banks or legal counsels in the documents Bloomberg reviewed varied in specificity. For example, before JPMorgan brought \$162 million in bonds to market for Miami Beach, one of its counsels asked the officials to answer three questions that directly address climate change and its effects on the city's financial health. The Florida Keys Aqueduct Authority was asked by Citigroup to explain the impact of Hurricane Irma on the utility system. Michael Carlson, JPMorgan's head of public finance infrastructure, says that the climate discussion is "very much a part of our due diligence," and he's seen an "exponential increase" in disclosures in recent months.

Thomas McLoughlin, head of munis at UBS Financial Services, says the turning point in awareness came when Superstorm Sandy hit the New York area in 2012. As the storm forced the Hudson River into the streets and subways of lower Manhattan, Wall Street financiers saw first-hand the damage those types of events could do to cities' infrastructures, most of which are financed by muni bonds. McLoughlin says concern was elevated in the last two years as fires ravaged California and hurricanes slammed the East Coast.

Climate risk isn't necessarily showing up in muni bond pricing yet—communities that are more

susceptible to these hazards do not seem to pay any penalty in the form of higher yields. Even so, some investors say many bond issuers still aren't disclosing enough. "Climate disclosure has to increase," says Daniel Rabasco, head of municipal bonds at Mellon Investments Corp. "There is a broad trend to do it, but more needs to be done." Most official statements analyzed show a paragraph or two, mentioning that climate change is an investment consideration. Tom Doe, president of Municipal Market Analytics, says these are usually "enough to satisfy investors today," but he thinks bond buyers will be demanding more within the next five years. "Vague presentations of adaptation strategies and cursory actions taken will not suffice," he says.

Florida's director of bond finance is trying to get ahead of that shift. Ben Watkins says he's talking with investors to get an understanding of what kind of climate-risk information they want. "What we have now is just the start," he says. "We have more work to do about that."

Bloomberg BusinessWeek

By Danielle Moran

November 5, 2019

Green Bond Trend Catches on in the Muni Market.

- **Governments step up sales of bonds for environmental projects**
- **As climate change politicized, states seen picking up pace**

Environmentally conscious investing may finally be gaining traction in a \$3.8 trillion market that seems made for it.

U.S. state and local governments — which finance public transit, water works and other projects with positive environmental impacts — sold \$1.9 billion of so-called green bonds during the third quarter, the most for the period on record, according to data compiled by Bloomberg. Another \$440 million have been issued so far this month.

The niche has some obstacles to overcome: neither buyers nor sellers are yet reaping any monetary benefits, for one, because their yields differ little or at all from debt that's not marketed as green.

But mutual funds and other money managers are fielding demand from investors who want to see their cash finance projects that benefit the environment. And local governments have become increasingly comfortable with the disclosure investors want for bonds billed as green, such as posting updates on how the proceeds are flowing to designated works.

"Issuers are starting to hear the message loud and clear from the investor community that even if there are no immediate and quantifiable pricing benefits, there are other qualitative and reputational benefits to issuing a green bond," said Ksenia Koban, a municipal-credit analyst at Payden & Rygel Investment Management in Los Angeles.

Sales still remain a sliver of the overall market and have slipped from the \$10 billion peak hit in 2017, when issuers sold a record amount of debt for fear that Trump's tax cut law would roll back the subsidies for a big chunk of bond deals. And some municipal governments see little reason to get a green certification if they don't achieve a lower borrowing cost in return.

Philadelphia, which sells debt several times a year, hasn't yet issued a green bond, said Treasurer Christian Dunbar. "I don't know if the demand would be so strong that it will have an effect on our pricing," he said by telephone.

But analysts and underwriters expect offerings to increase in the municipal-bond market, which as the traditional venue for raising funds for infrastructure makes it a natural fit. While the deals may not all end up being billed as green, more than half of the cities surveyed by Moody's Investors Service said they plan to sell debt to fund projects easing the risks from their changing climate such as flooding.

With environmental issues becoming politicized nationally, it's "difficult to envision a federal plan to fund sustainable projects," said Glenn McGowan, director in municipal underwriting at RBC Capital Markets. "States and local governments will likely need to proceed in financing projects they deem appropriate in the absence of federal support, and the municipal market will play a key role in that process."

Bloomberg Markets

By Romy Varghese

October 9, 2019, 10:30 AM PDT

— *With assistance by Sowjana Sivaloganathan, and Maria Elena Vizcaino*

[Despite Complications and Costs, SF to Push Ahead on Public Bank in Wake of New State Bill.](#)

Advocates for a public bank in San Francisco are rejoicing over Gov. Gavin Newsom signing legislation that will allow them to create a local institution to finance priorities like low-income housing, public infrastructure and small businesses.

Introduced by Assemblyman David Chiu, D-San Francisco, AB857 allows local governments to apply for a banking license for the first time. Newsom signed the legislation, which caps the initial number of public banks at 10, on Wednesday.

Public banks are financial institutions set up and operated by a local government. Support for them across the country swelled in the wake of the 2008 financial collapse, which multinational investment banks played a central role in creating. States and cities across the country are considering public banks, but North Dakota is the only state currently operating one.

Supporters have pushed San Francisco officials for years to consider municipal banks as an alternative to traditional commercial institutions, whose interests prioritize creating value for their shareholders over benefiting the communities where they do business. But setting up a public bank will be a complicated, time-consuming and expensive process — it could take the city 10 to 30 years to break even. But supporters are undeterred by the hurdles.

"We want to get as much of our city's taxpayer dollars out of Wall Street so we can recapture that money to invest in our city," said Jackie Fielder, co-founder of the San Francisco Public Bank Coalition. The coalition, she said, is "ecstatic" at the news that Newsom signed the bill.

"It's about keeping our taxpayer dollars here in our city, in our region. That's not happening right now because Wall Street is investing our money around the world into entities that we have no clue about how they fit into our priorities and addressing the crises here," she said.

Chiu echoed that sentiment.

"Our public money should serve a public purpose and our local communities — not lining the pockets of Wall Street investors," Chiu said. Municipal banks, he said, also allow local governments to avoid doing business with institutions that invest public money "in industries not in line with the values of most Californians," like gun manufacturers, private prisons and the oil and gas industry.

Public banks could also be a boon to the legal cannabis industry. Marijuana's status as an illegal drug under federal law has made most traditional banks reticent to do business with cannabis growers or retailers.

The idea has also enjoyed broad support among San Francisco officials. Former Supervisors John Avalos and Malia Cohen and current Supervisor Sandra Lee Fewer have backed the idea. But enthusiasm has waxed and waned, in part because of the staggering complexity and the potential costs.

San Francisco keeps about \$100 million available to conduct business on any given day. Most of the city's commercial banking is done with Bank of America and U.S. Bank.

Under the safeguards laid out in Chiu's legislation, setting up a public bank will still take years, and any local government looking to do so will have to pass through a gamut of regulatory hurdles to prove to state regulators they can operate the bank — and protect the public's money.

Still, backers of the idea say it's well worth it. Public banks, they argue, could allow the city to provide financing for important projects and priorities that might be less attractive to commercial banks. Public banks would still have to turn a profit to stay solvent, but not nearly at the rate required by commercial institutions.

San Francisco Treasurer José Cisneros released a report in March to help suss out the complications and costs of setting up a public bank. The report was the culmination of nearly two years of work by a task force made up of financial experts, government officials and community organizations.

There are several models the report identified, each with varying degrees of complexity and both long- and short-term costs. Focusing just on lending for things like affordable housing and other community priorities would cost the city about \$184 million over a decade — when the city could expect to break even. Divesting from Wall Street entirely would cost about \$1.6 billion and take 31 years to break even.

Before San Francisco can apply to state regulators for a banking license, the Board of Supervisors must commission a feasibility study. Fewer said in a statement that her office is "actively exploring the next steps needed to realize our vision for municipal public banking."

Not everyone is on board with the idea. The state legislation was opposed by the California Bankers Association, which argued Chiu's bill would siphon money away from community banks and "potentially" put taxpayer dollars at risk.

"We remain opposed to the concept of public banks, and hope that community leaders and elected officials will take note of the risks associated with establishing a municipal bank, before opting to explore this unnecessary and unwanted public option," the organization said in a statement.

San Francisco Chronicle

by Dominic Fracassa

Oct. 3, 2019

Without Help From Washington, Governors Chart Own Path on Infrastructure.

A long-awaited transportation bill advanced in Congress this week. The National Governors Association isn't waiting on its passage to make road funding and safety its top priorities.

SPEED READ:

- A U.S. Senate committee unanimously advanced a \$287 billion transportation bill on Tuesday.
- Awaiting final federal action, 13 states raised gas taxes this year.
- The National Governors Association is making infrastructure funding and road safety its top priorities.

Congress this week took a small step toward providing new funding for the nation's infrastructure needs, but state leaders remain nervous about how much help they'll actually get from Washington.

The Senate Environment and Public Works Committee voted unanimously on Tuesday to advance a \$287 billion bill that would replace the current five-year surface transportation program, which is set to expire in September 2020. The bipartisan bill would increase spending by 27 percent over current levels.

[Continue reading.](#)

GOVERNING.COM

BY ALAN GREENBLATT | JULY 31, 2019 AT 4:59 PM

EASEMENTS - VIRGINIA

Robinson, Trustee for Jane Washburn Robinson Living Trust v. Nordquist **Supreme Court of Virginia - July 18, 2019 - S.E.2d - 2019 WL 3227503**

Landowner brought action against neighbors, seeking declaration that neighbors improperly denied access to easement, and seeking damages and injunctive relief for intentional trespass and private nuisance.

The Circuit Court granted neighbors' plea in bar and demurrer, and denied landowner's petition for a rule to show cause. Landowner appealed.

The Supreme Court held that:

- Issue of whether trespass and nuisance claims were barred by five-year statute of limitations could not be resolved by plea in bar;

- Easement was not unenforceable for vagueness;
- The Circuit Court erred in defining “open yard” in deed as “free of all buildings and structures;”
- Landowner was not entitled to rule to show cause; and
- The Circuit Court’s procedure for landowner to access easement was reasonable.

Issue of whether landowner’s trespass and nuisance claims against neighbors were barred by five-year statute of limitations could not be resolved by plea in bar, where it was not clear from face of amended complaint when first measurable damage occurred or whether water encroachments were continuous or intermittent, as landowner described water encroachments as “on-going” and “continuous,” but also stated that they were “repeated and intermittent,” and landowner alleged that water discharges were intentional, suggesting separate volitional acts.

Perpetual easement, which granted access to neighboring property to keep and maintain openings overlooking premises for purpose of admitting light and air through openings, was not unenforceable because term “light and air” was vague, ambiguous, or without dimensions; language of easement described its purpose, and thus easement’s dimensions could be inferred to be such as were reasonably sufficient for accomplishment of this object.

Deed, which affirmed and enlarged prior easement, required median to be both “open yard” and “free of all building and structures,” and thus trial court erred in defining “open yard” as “free of all buildings and structures;” trial court disregarded conjunction between phrases and rendered term “open yard” meaningless.

Landowner was not entitled to rule to show cause, despite contention that neighbors violated trial court’s order on easement by refusing to provide pest control company with access; order granted landowner access to enter the yard for purpose of maintaining the openings and ventilation outlets, and order neither addressed manner in which access should be provided nor addressed whether easement could be used for pest control purposes.

Trial court’s procedure for landowner to follow in order to access neighboring property pursuant to easement was reasonable and permissible, despite contention that procedure improperly added restrictions to landowner’s right of access; procedure required landowner to provide neighbors statement of purpose for which she needed entry, name of company that would be accessing property, and three proposed dates, while requiring neighbors to respond within 48 hours, easement was silent regarding how landowner could access relevant area, and no language established unfettered right of access.

Are U.S. Cities Fiscally Insolvent?

Some Municipal Balance Sheets Raise Concerns, but Most Cities Are Okay.

When Detroit went bankrupt in 2013, it was a basis for pundits to make negative projections on urban America. After all, a city with decades of Democratic rule and left-wing policy had declared itself insolvent. It was just a matter of time, the thinking went, before politically-similar cities followed.

Six years later, the specter of mass municipal insolvency still holds sway for some. Famed investor Warren Buffett has warned about purchasing municipal bonds or opening companies in states with excessive debt. Strong Towns, an urban affairs non-profit, makes similar claims. But these warnings do not reflect any broader condition about U.S. cities. Rather, the threat of fiscal insolvency is a

problem in specific cities, for specific reasons, and have very specific solutions.

First, let's look at the general outlook of U.S. cities: are they fiscally insolvent? Existing data and market signals suggest no. Muni bonds - which represent city-issued debt that investors buy on the open market - have long been considered among the safest investments. City governments generally have bond ratings [listed as high quality or better](#), because they have a history of paying debts. Municipal default is extremely rare, and bankruptcy is almost non-existent. During the Recession, 1 in 1,668 general-purpose local governments filed for bankruptcy.; and there have only been 600 bankruptcies in U.S. history, out of 90,000 municipalities.

[Continue reading.](#)

Catalyst

By Scott Beyer

July 9, 2019

[Nuveen Had 'Zero Tolerance' for Banks Dealing With Bond Rival.](#)

- **Unsealed court filings show Preston Hollow target of boycott**
- **Companies are waging antitrust fight in Delaware state court**

Nuveen LLC created a "zero-tolerance policy" for doing business with banks or bond traders who signed deals with rival Preston Hollow Capital LLC, according to unsealed transcripts of calls Nuveen employees made to those financial institutions.

Preston Hollow Capital said audio recordings it got as part of a lawsuit show Nuveen used its market power as one of the biggest buyers of U.S. state and local government bonds to organize a boycott of the Dallas-based lender, whose role in financing risky projects posed a competitive threat.

John Miller, co-head of Nuveen's fixed income unit, is "going to every single major bank and broker-dealer that we do business with and telling them, 'If you choose to do business with Preston Hollow, we will not be conducting business with you,'" an unidentified Nuveen employee said in an undated transcript.

The documents were made public in Delaware Chancery Court, where Preston Hollow filed a complaint in March accusing Chicago-based Nuveen of running an intimidation campaign to keep the smaller rival from competing with it for debt deals. Nuveen manages more than \$140 billion of municipal bonds.

Preston Hollow alleged that Miller and his staff threatened to use their power to pull tens of millions of dollars in business from banks that underwrote limited offerings with Preston Hollow and financed the loans.

Nuveen is accused in the suit of violating antitrust laws by organizing the boycott and pressuring big banks, such as Wells Fargo & Co., JPMorgan Chase & Co., Goldman Sachs Group Inc. and Citigroup Inc. to shun the Texas bond fund. Preston Hollow has loaned \$2 billion to finance hospitals, real estate developments and student housing.

'Distorted View'

"The selected passages from the transcripts, as presented, offer a distorted view of how we engage with broker-dealers on a day-to-day basis and therefore don't reflect our overall approach to the municipal bond market on behalf of our clients and all investors," Stewart Lewack, a Nuveen spokesman, said Monday in an emailed statement.

"Nothing about these recordings changes Nuveen's view of the case," Lewack added. "Nuveen continues to maintain the claims have no merit and will vigorously defend itself."

Nuveen, which had almost \$1 trillion in assets under management as of March 31, is the investment manager of TIAA, which is known for offering financial products to teachers.

In transcripts of Nuveen's calls unsealed June 28, Nuveen accused Preston Hollow of misleading investors about the bond firm's practices and charging exorbitant rates for deals that don't "pass the sniff test." Officials also said Preston Hollow engaged in "predatory lending."

That prompted the Nuveen to launch its unprecedented effort to get the rest of the bond market to ostracize Preston Hollow, according to the transcripts. "It's a business policy shift for us to do this," one Nuveen executive said on a call, according to a transcript of the conversation.

Preston Hollow quotes Miller as saying he had obtained agreements from 90% of major Wall Street dealers and banks to stop working with Preston Hollow and was working on 100%. "I feel my chances are pretty good at getting there," according to the transcripts.

A long-time colleague of Miller's said in a call with officials of Deutsche Bank AG -- which provided financing to Preston Hollow -- that he'd never seen the executive "so serious about anything. I mean, nothing gets him more upset than these Preston Hollow deals that pull supply away."

Miller's pique centered on Curtis Erickson, the head of capital markets at Preston Hollow who allegedly told an unidentified issuer that Nuveen wouldn't agree to certain bond covenants and "would rather put you through bankruptcy," according to the transcript.

The Nuveen executive also claimed in the transcript that Erickson had said the same thing about Nuveen when he worked at Mesirow Financial Inc., a Chicago-based bond dealer.

"Nothing makes John madder to know that this guy is still out there doing that," an unidentified Nuveen employee said, according to the transcripts. "When Wells Fargo told us exactly what Preston Hollow said, it just set him off." Erickson declined to comment Monday on the allegations.

Wells Fargo worked with Preston Hollow to underwrite a private placement for a project in Chicago. After the deal closed, Preston Hollow marked up the bonds and attempted to sell the securities to Nuveen, according to the transcripts made public in Delaware.

While Preston Hollow accuses its rival of leaning on Deutsche Bank to yank Preston Hollow's financing, Nuveen counters it was trying to protect the bond market rather than kill a competitor.

'Consistent Stance'

"This is not about penalizing Deutsche Bank," the unidentified Nuveen official said in an undated call. "This is about a consistent stance about certain market practices that we think are harmful to not only Nuveen, but the market as a whole."

In that call, a Deutsche Bank employee noted Nuveen's blackballing of Preston Hollow was "devastating news." Another official complained the effort to put the competing bond firm on the

shelf had more immediate adverse consequences for the Frankfurt-based bank than other financial institutions.

“We’re getting the bigger punch in the stomach rather than Wells Fargo or BAML or Morgan Stanley,” the female employee said, according to the transcript. “We’re losing business, ongoing, you know.”

“The recordings demonstrate Nuveen was not just pressuring broker dealers to supply Nuveen with bonds rather than” Preston Hollow, according to court filings. “Nuveen was trying to choke off PHC’s liquidity from Deutsche Bank and any other sources of liquidity that Nuveen could identify.”

The case is Preston Hollow Capital LLC v. Nuveen LLC, 2019-0169, Delaware Court of Chancery (Georgetown).

Bloomberg Business

By Jef Feeley and Martin Z Braun

July 1, 2019, 11:05 AM PDT Updated on July 1, 2019, 2:11 PM PDT

[Open Spaces To Basis Points: An 'Open' Mind Frame Improves Muni Bond Credit](#)

Many years ago, I had the chance to be shown a real estate listing for a Park Avenue apartment in Manhattan. This was an apartment in name only. Replete with maid’s quarters and a formal dining room with 11 foot ceilings and a working fireplace, not only did it overlook Park Avenue, but also, according to the listing, it had a “view of Central Park.” Way out of my league. Just out of grad school, I was living in a 500 square foot studio apartment overlooking a parking lot. Didn’t matter. You don’t say no to this.

Darling I Love You, But Give Me Park Avenue

It was classic. A crisply uniformed doorman with white gloves opened the burnished oak door with gleaming brass handles to let me into this time-piece from the 1920s. As the real estate agent toured me through what seemed a maze of rooms, I was looking through every window for that Central Park view. Not seeing it, I finally asked, as delicately as I could, what room had the view of the park? She led me to a guest bathroom. If I lowered the single frosted glass window and looked through the space between two other buildings, I could see the park. Indeed, there was a sliver of green if you looked hard enough.

We love our parks, particularly those who are city dwellers. It’s one of those funny contradictions. People move to population-dense cities for the social interaction, economic opportunity and cultural enrichment. But once there, one of the things people value highest is open space.

That value is quantifiable in the pricing of urban real estate, notes Tom Monti, a Corcoran Group Member and real estate professional in Manhattan. “Central Park is the focus in Manhattan,” he observed, continuing “apartments on the park, namely Fifth Avenue, Central Park West and Central Park South, have greater value than those that are further from the park.” He offered a specific example: a Fifth Avenue apartment with direct views of the park will command a 40% to 50% premium to a comparable unit, on the same floor, in the same building with no park view.

Keep Manhattan, Just Give Me That Countryside

It isn't just residences on the toniest of city avenues that gain additional value from open-space proximity. In bucolic Chester County, Pennsylvania (Moody's: Aaa; Standard & Poor's: AAA)—known as the mushroom capital of the nation—the county maintains an Open Space Preservation program. To quantify “proximity value,” the county prepared a detailed report. Homes located within half of a mile of a park, preserved farmland or privately conserved lands saw values \$11,000 higher than homes further away. Quarter mile access increased values \$13,119. That boosted the county's coffers to the tune of \$27.4 million in property tax revenues and transfer taxes.

Cities, towns and counties alike are aware of the value of open space and fund the purchase, improvement and care with municipal bonds. In 2018 there were 33 ballot measures to approve issuing municipal bonds to fund a variety of open-space measures. In a strong plurality, voters in 18 states, from Rhode Island to California, approved 31 of the measures, green-lighting an expected \$7,973 million in bond issuance for open space initiatives.

Green Infrastructure

To make sure those initiatives are having the intended positive impact in a community requires clearly defined and quantifiable metrics. The American Planning Association (APA) offers some insights. Using Green Infrastructure as the broad rubric; the APA assigns specific categories and metrics to assess and measure green infrastructure in a community. This includes the percentage of tree canopy coverage, distance to park entrances, community gardens, and acres of park land per 1,000 population.

Open Space to Basis Points

It's well-established that open space adds value to homes. In turn, this adds credit value to bonds. Adding open-space metrics and measures as part of investment analysis can offer some further insight into both the stability of the existing residential tax base and the potential for those values increasing over time. And those municipal bonds funding those parks and open spaces? Those might provide a bit of green themselves to an investor's portfolio.

Forbes

by Barnet Sherman

Jun 3, 2019, 09:34am

[Hackers Hold Baltimore Hostage.](#)

Ransomware has shut down the city's computers for three weeks, as officials play the blame game.

Discontent in Baltimore is usually high at this time of the spring as Orioles fans already watch their playoff hopes fade. But this year local residents have more to be angry about. For more than three weeks the city government's computers have been offline. That means no emails have been going in or out of city hall, and the systems used to settle parking fines, pay water bills, property taxes and more are out of commission. These are online systems that most of us take for granted—until they stop working.

Baltimore's IT infrastructure is being held hostage by ransomware, the malicious code used to hijack online systems and extort users for payment. The hackers' ransom note demanded their payment in cryptocurrency: 13 bitcoins (worth about \$100,000) in exchange for total control, or an à la carte option of 3 bitcoins per computer system. Mayor Jack Young has rightly refused to pay these nameless and faceless criminals. But pressure is mounting to find a solution.

Failing that, some city officials thought they'd at least found an excuse when the New York Times reported over the weekend that a "cyber weapon" stolen from the National Security Agency in 2017 had "boomeranged back" against Baltimore. City Council President Brandon Scott is now pointing his finger at the neighboring spy agency and petitioning the federal government for reparations in the form of emergency funds to cover most of the estimated \$18.2 million in damages.

Nice try, Mr. Scott. Baltimore faces an emergency, but it's not of the NSA's doing. It's true that the city government's vulnerability resides in old Microsoft software that, according to former NSA employees, the NSA had been lawfully exploiting for years to gather intelligence. The NSA disclosed the bug to Microsoft in 2017 after the spy agency reportedly learned that its tool had been stolen by a hacking group called the Shadow Brokers. Microsoft promptly released a "patch," an update that would render the hacking tool useless. But two years later, Baltimore still hasn't implemented the fixes across its vulnerable infrastructure.

These troubles are not unique to Baltimore; the same malware has been reported in Texas and Pennsylvania. Last year the U.S. attorney's office in New Jersey unsealed an indictment against two Iranians who, beginning in 2015, allegedly unleashed ransomware on more than 200 victims, including municipal governments, state agencies and hospital networks in 43 states. That two hackers can wreak havoc with tens of thousands of systems, causing \$30 million in damages, should trouble all Americans who entrust state and local governments with personal information and rely on them for critical, sometimes lifesaving, services.

So who's at fault? It would be easy to blame Baltimore's elected officials and their technology staff for not fixing their systems. I might do so myself if not for my experience maintaining a vast and federated array of legacy infrastructure during my tenure in state government. Updating and repairing a network of old servers comes at a massive cost, with significant human-capital requirements that place governments at a unique disadvantage relative to industry, which has far more access to funding and talent. I also spent countless hours on the phone with municipal ransomware victims as they weighed two bad options: Give in to the hackers' demands and hope for the best, or refuse to pay and deprive constituents of services.

These attacks will continue and intensify unless two things happen. First, software and hardware manufacturers must begin to cater to the lowest common denominator when building hacking-mitigation techniques into their products. Governments and companies should be able to easily patch their computers the way ordinary consumers update their iPhones. Only then can we reasonably transfer more liability from the technology's makers to its users and elevate barriers to entry for hackers. For now, more liability should reside with the makers.

Second, the federal government must find and bring to justice bad actors in cyberspace. Someone, somewhere is responsible for waging a digital assault on an American city. Instead of blaming the NSA, Baltimore's officials should ask for its help in tracking down these criminals. Perhaps the NSA can also lend Baltimore a hand in getting back online.

In addition, members of Congress and executive-branch officials should debate when and how the NSA discloses software bugs to U.S. and foreign companies. The public deserves greater assurances that NSA tools won't fall into the wrong hands.

The Trump administration has done more than any previous administration to address this problem. In November 2017 it spelled out a transparent and fair process to “disseminate vulnerability information to the vendor/supplier in the expectation that it will be patched, or to temporarily restrict the knowledge of the vulnerability” to the U.S. government for national-security purposes. The man behind this transparency, former White House cyber czar Rob Joyce, also led the NSA unit that reportedly built the since-stolen tool.

The need to balance security and privacy is greater in the digital age than ever before. Let’s not forget that Baltimore is a victim. It’s time for governments and agencies to stop blaming each other and unite against the attackers.

WSJ Opinion

By Dave Weinstein

May 30, 2019 6:52 p.m. ET

Mr. Weinstein is chief security officer at Claroty and a former chief technology officer of New Jersey. He also served at U.S. Cyber Command.

Puerto Rico Debt Repudiation Raises New Risks for Munis.

- **Island’s move to void debt would shake confidence if it wins**
- **Trading prices show buyers speculate lawsuit won’t succeed**

Congress created Puerto Rico’s oversight board in 2016 to allow the bankrupt U.S. territory to “achieve fiscal responsibility and access to the capital markets.”

Yet a lawsuit filed by the board — in what is widely seen as tactic to strengthen Puerto Rico’s hand in negotiations with bondholders — could undermine confidence in the \$3.8 trillion state and local government debt market if it succeeds in court.

The overseers Thursday sued dozens of banks and bondholders to claw back more than \$1 billion in fees and interest payments tied to as much as \$9 billion of debt that Puerto Rico is seeking to repudiate on the grounds it breached the constitutional debt limit. The claim marks a stark about face for Puerto Rico, which assured investors at the time that the bond sales were safely within the cap, and raises the risk that others states or cities could try to someday void debts they said were legally sound.

“The oversight board is challenging the basic underpinning that bond investors can rely on information given by issuers,” said Kenneth Naehu, founder and managing director at Banyan Tree Asset Management in Los Angeles, who oversees about \$1 billion of municipal bonds, of which less than 0.2 percent are from Puerto Rico. “If muni investors should be held responsible if an issuer provides false information, that will send a loud warning to muni buyers.”

The move by the oversight board is another example of how Puerto Rico’s bankruptcy is upending the secure reputation of one of the world’s safest havens for investors. In March, an appeals court upheld a ruling that Puerto Rico’s highway agency can raid tolls and other fee revenue dedicated to bondholders until the bankruptcy is settled. The legal fight, which could go to the U.S. Supreme Court, has the potential to erode the value of billions of dollars in bonds sold for highways, airports

and water systems.

The debt repudiation lawsuit will likely be settled before it results in a court ruling, Nuveen analyst Molly Shellhorn wrote in January, when the commonwealth first said it would seek to invalidate the bonds. The prices of some of the securities have also been little changed, with those due in 2035 trading at an average of 51 cents on the dollar Friday, indicating that investors are speculating they won't be invalidated outright.

Matthias Rieker, a spokesman for the oversight board, said it has a duty to act in the best interests of Puerto Rico and all its creditors. "Although we are mindful of the perceived unfairness to holders of invalidating bond debt and recovering these funds, we are also mindful that it is neither fair nor legal to burden Puerto Rico's residents with that against which their Constitution protects them," Rieker said in an email.

False Alarm?

It's not the first time that investors have said that a municipal bankruptcy could set a dangerous precedent, and warnings that governments such as Detroit and Jefferson County, Alabama, would face grave consequences from having their debts written down have proven off base. But a ruling invalidating Puerto Rico's bonds on legal grounds — an idea that was raised, but not implemented in Detroit's case — could cause the frequently skittish individual investors who dominate the municipal-bond market to pull back for fear that other fiscally stressed borrowers like Illinois, New Jersey and Connecticut could some day follow suit.

"When liquidity dries up, everything goes south — see Bear Stearns and Lehman," Naehu said.

Congress created the oversight board in 2016 as part of a bipartisan deal to manage the restructuring of Puerto Rico's crippling debt load. The seven-member board would develop responsible budgets, ensure fair treatment of investors and restore the island's access to credit markets, according to U.S. Representative Rob Bishop, a Utah Republican, who was at the center of negotiations.

'Bait and Switch'

Pulling a bait-and-switch on bondholders doesn't demonstrate financial prudence or build credibility with investors that Puerto Rico will need to provide capital for economic growth, said Jim Spiotto, managing director at Chapman Strategic Advisors and a municipal bankruptcy expert.

"If they want to be treated like Ecuador, Brazil, Argentina and Greece, it's a pretty good way of starting," he said.

One argument for allowing Puerto Rico to annul debt without paying restitution is that investors are sufficiently informed to evaluate a loan's legality, wrote Mark Weidemaier, a law professor at the University of North Carolina at Chapel Hill wrote in January on the Credit Slips blog.

It's difficult to gauge the impact because no state or territory has repudiated their debts in modern times, though it isn't unprecedented. Following the financial panic of 1837, eight U.S. states and one territory, Florida, did so for debt issued for transportation projects and banking services. As a result, they either were locked out of the market or, if they could obtain financing, had to pay a 32 percent interest rate, according to Spiotto.

By the late 1840's, seven of the eight states had renounced their repudiation and resumed debt payments so they could obtain market access at a lower cost.

“It’s one thing to say we don’t have the ability to pay,” said Spiotto. “It’s another thing to say I defrauded you, I represented to you something that wasn’t true and so I’m not going to pay anything. That’s an unwillingness to pay.”

Bloomberg Markets

By Martin Z Braun

May 3, 2019, 8:58 AM PDT Updated on May 3, 2019, 2:40 PM PDT

— *With assistance by Michelle Kaske, Steven Church, and Amanda Albright*

CHARITABLE ORGANIZATIONS - SOUTH CAROLINA

[Myat v. Tuomey Regional Medical Center](#)

Court of Appeals of South Carolina - April 3, 2019 - S.E.2d - 2019 WL 1461570

Doctor who allegedly fell as result of liquid on floor while walking through hospital brought personal injury action against hospital.

The Circuit Court granted hospital’s motion to reopen its case at trial to prove its charitable tax status, and reduced \$2.5 million jury verdict to \$300,000 pursuant to liability limitation of the South Carolina Solicitation of Charitable Funds Act. Doctor appealed.

The Court of Appeals held that:

- Doctor was not prejudiced by amended answer;
- Doctor was not prejudiced by order allowing hospital to reopen record; and
- Evidence supported conclusion that hospital was charitable organization.

Doctor who brought personal injury action against hospital was not prejudiced by hospital’s amended answer after close of discovery, asserting new affirmative defenses under the Solicitation of Charitable Funds Act; doctor knew the hospital was a charitable entity and should have known that the statutory cap on damages would apply, and defense was pled before trial and doctor had an opportunity to refute it.

Doctor who brought personal injury action against hospital was not prejudiced by order allowing hospital to reopen record after trial for additional evidence regarding its charitable status; doctor was allowed to conduct discovery on hospital’s tax status and charitable cap on liability, and hearing was held to present testimony and evidence on the issue of Hospital’s charitable immunity.

Evidence supported conclusion that hospital was charitable organization under the Solicitation of Charitable Funds Act, and thus Act’s \$300,00 damages cap applied in personal injury action brought by doctor against hospital; there was no evidence that hospital acted in a manner inconsistent with its stated charitable purpose, the Internal Revenue Service (IRS) had not taken any action to revoke hospital’s charitable status, and hospital met the statutory definition of charitable organization.

[When to P3: New Report Examines Use of Public-Private Partnership Model in](#)

Water.

The American Water Works Association (AWWA) has collaborated on a new report with Ernst & Young Infrastructure Advisors, LLC that examines the relevance and potential of the public-private partnership (P3) project delivery model in the water sector.

The report, *"To P3 or not to P3,"* presents results and insights from a joint AWWA/EYIA study of P3s as an alternative delivery model to address infrastructure repair and replacement costs, affordability concerns, environmental regulation and demographic changes and long-term risk and resilience in response to extreme weather events and climate trends.

The survey defined a traditional delivery method for developing and constructing an asset as one in which the risks are maintained by the public sector. A P3, in contrast, is a performance-based contract that allocates risks to the party best suited to manage them. It links public-sector payments to contractual performance obligations of the private-sector partner.

EYIA, an EY member organization, conducted a 2018 survey of AWWA's municipal water and wastewater system members in the U.S. and Canada to determine their understanding of and interest in P3s. Participants responded to questions about perceived benefits and barriers of P3s, views of private financing, and types of projects most suitable for P3 delivery.

"Survey results show that municipal utilities are well-informed about options for water infrastructure delivery, and they understand the concept of public-private partnerships," said Tracy Mehan, AWWA's executive director of government affairs. "They view P3s as a strategy to bring additional resources, skills and project delivery experience to specific subjects, rather than replacing existing services."

Stephen Auton-Smith, EYIA managing director, said that although P3s currently are not widely used in the water sector, they provide potential advantages for municipal utilities in certain circumstances.

"A P3 delivery model is more likely to be used in infrastructure areas where municipal utilities do not have the capacity or experience to deliver and maintain assets using their existing staff and resources under traditional methods. As the water sector increasingly invests in advanced wastewater treatment, energy recovery, potable water reuse, desalination and other complex infrastructure, P3s will have a key role to play in advancing a number of these critical projects," Auton-Smith said.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

MARCH 25, 2019

What We Need To Do To Fix Infrastructure In the U.S.

America's infrastructure is more than just a network of roads, bridges, tunnels, ports, railroads and airports connecting our towns, cities and states. It serves as a backbone of economic growth and preserves our safety, quality of life and prosperity. The United States has long been a global leader in innovation, transportation and smart fiscal policies, yet the infrastructure that keeps our country

open for business is now far out of date.

According to the American Society of Civil Engineers, the current condition of our infrastructure earns a grade point average of D+, and there is an estimated \$2 trillion funding gap to bring it to a state of good repair by 2025. While we have benefited from past centuries of building, neglect has befallen our once greatest achievements – in the 1930s, 4.2 percent of the country's GDP was spent on infrastructure investment, but by 2016, that number fell to 1.5 percent. In other words, our nation's infrastructure is crumbling, and we need real, sustainable investment – and we need it now.

For many of these challenges, Americans must be willing to pay, rates and fees that reflect the true cost of using, maintaining and improving all infrastructure, including our water, waste, transportation and energy services. Most Americans support this approach. In last November's elections, 79 percent of all state and local ballot measures supporting transportation infrastructure investments passed. Voters across 31 states raised their own taxes and fees in exchange for better roads, bridges and transit.

There is no single funding solution that will solve all our infrastructure investment challenges. It is important that we have a large toolkit of funding and financing options available that can be utilized to provide the infrastructure we need. Our funding plan brings together a collection of 10 bold ideas to significantly invest in our nation's infrastructure.

The first – and most logical – step in raising money for infrastructure should be to raise the federal tax on gasoline and diesel. Eventually, this would give way to a system that would impose a tax on vehicle miles traveled, as we adapt to increasing fuel economies and the proliferation of hybrid or all-electric vehicles. The fuel tax has not been raised since 1993, and since that time, the money generated from those taxes has lost over 40 percent of their purchasing power. Rep. Peter DeFazio (D-Ore.), chairman of the House Transportation and Infrastructure Committee, continues to point out that we're borrowing \$16 billion a year to backfill the Highway Trust Fund, while the majority of states around the country have raised their gas tax. It's time we put the Highway Trust Fund on a long-term path to solvency, and raising the existing user fees is the only way to achieve this.

Other user fees include updates to the Harbor Maintenance Fee, raises to the Airline Passenger Facility charge, and the introduction of a new Rail Passenger Charge – each helping to fund direct capital investments for their respective users.

These long-term funding streams will need to be leveraged in the short term to provide the capital needed to get large infrastructure projects underway. By issuing bonds backed by the projected revenue of long-term solutions, the federal government will deliver the vital capital needed to jump start infrastructure revitalization across the country.

Beyond fees and bonding, we're proposing the expansion of programs like the Transportation Infrastructure Finance and Innovation Act, Water Infrastructure Finance and Innovation Act and Railroad Rehabilitation & Improvement Financing, as well as making new money available through federal loans for infrastructure improvement. There are also a set of easily achievable suggestions that could help move along current and future projects, such as streamlining the regulatory process, removing statutory and regulatory barriers to promote private-public partnerships and supporting municipalities implementing their own funding mechanisms like congestion pricing in New York City.

The Building Congress believes that a robust, long-term federal infrastructure modernization program, combined with greater investment by state, local and private stakeholders, can engender the partnership necessary to ensure America has a 21st century infrastructure network. However,

without a serious commitment from federal lawmakers, we will not make the kind of progress demanded by the challenges we're facing.

Infrastructure investment has a history of creating jobs and strengthening the economy in this country. Direct funding from the federal government has resulted in some of the most transformative infrastructure projects that have had the greatest lasting effects. From the Hoover Dam, to rural electrification and the interstate highway system, significant investments in infrastructure have paved the way for our country's current economic success.

We have an incredible opportunity to use the momentum and support from the American people for infrastructure investment to provide long-term, sustainable revenue as part of an infrastructure package. The Building Congress calls on Congress and the Trump administration to put forth and approve a robust and comprehensive bipartisan package that includes sustainable funding to get America's infrastructure not just back to a state of good repair, but to make us a global leader. If we do not invest now and fail to rise and meet this crisis, then we cannot guarantee America's long-term economic development, productivity and international competitiveness.

The United States must be at the forefront of the world, and the foundation of our position is our infrastructure.

THE HILL

BY CARLO A. SCISSURA, OPINION CONTRIBUTOR — 03/25/19

CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Carlo A. Scissura is president and CEO of the New York Building Congress.

[Give Schools Taxing Power? Officials Have Concerns.](#)

What if school districts were independent fiscal authorities, with budgeting and taxing powers separate from municipal finance boards, mayors and selectmen? A bill before the legislature proposes just that, and is drawing concern from local officials.

"Oh yeah. It showed up over the weekend," First Selectman Rudy Marconi said of 'HB-7319, An Act Concerning The Fiscal Independence Of School Districts.'

"This bill is concerning for a lot of us," he said.

The bill would require local and regional school districts with fewer than 15,000 students — Ridgefield's school system is about a third that size — to become taxing authorities, separate from any municipality.

[Continue reading.](#)

THE RIDGEFIELD PRESS

BY MACKLIN K. REID

MARCH 12, 2019

How Issuers Can Avoid the “Issuer Dead Zone”

“The Dead Zone” is an excellent book written by Stephen King that was adapted into a movie in the early 1980’s. During my time on the issuer side, the title of this book (and movie) occurred to me often when I was about to launch a public bond sale.

I’m convinced that I was not alone in thinking of this phrase as a future bond sale goes on the radar screen. I think most issuers in the bond market are explicitly or implicitly aware of the anxious period of time when you know you are about to issue bonds, but no one in the bond market – or at least no one on the buy-side – is aware of the upcoming sale. The POS or NOS is not yet public and bond ratings are not back from the rating agencies’ meaning the underwriter you’ve chosen can’t release a wire announcing the sale. So, what happens? Generally speaking, nothing happens. Nothing. In their own minds, the issuer is on the clock. They start really focusing on market conditions. But no matter the level of preparation, the issuer knows they are taking market risk everyday: the risk is that new-issue supply will build and interest rates will significantly move higher as the financing date approaches.

In talking with other issuers around the country, it’s standard practice for bond sales to be approved internally two or three months (or more) in advance of the actual sale. The public announcement of the sale typically occurs with the release of the POS, however, which in most situations occurs only about a week prior to the sale.

Issuers always have flexibility to move dates around for a future financing, but in reality they are actually pretty limited. Too many steps have to occur in sequence on the issuer side – like lining up a bond counsel, preparing a POS, updating disclosure, etc. – that makes it difficult to indiscriminately move a sale date around on the calendar. Generally, when a decision to issue bonds has been made, issuers target a certain week on the calendar when they are expecting to price. The sale might slide sooner or later by a week, but typically not by more. Another consideration that also could bind issuers: often-times bonds are issued to reimburse the government for capital spending that has already occurred. This means that bond proceeds are really needed. For all of these reasons, issuers can be locked in to their sale dates months in advance of the sale.

You are locked in as the issuer, taking market risk every day, yet it’s too early for the underwriting team to market the bonds. This period is the Issuer Dead Zone.

Based on feedback from bond investors, however, it’s also a missed opportunity to stand out as an issuer. Consider the average weekly volume of bonds sold (by par) in the primary and number of transactions over the last five years: over \$7.5 billion in 226 different transactions per week. It’s a firehose of bond sale activity. The solution is to market your own bond sale.

Issuers can avoid the so-called Dead Zone by announcing their own bond sale via press release and on their investor website as soon as the bond sale is authorized. Even if the exact dates or even the exact week of the sale has not yet been identified, issuers can signal to the market that they expect to issue bonds in a future month or in a future fiscal quarter (with a caveat like ‘subject to change’). By announcing the sale publicly and well in advance, an issuer raises awareness of the sale for both traditional and non-traditional investors including local buyers. Non-traditional investors who are not plugged into the muni bond market calendar need to be aware of the sale and they need more time to prepare in order to make a decision to place an order for bonds.

For traditional investors, early announcement of the bond sale gives the credit analyst covering the

issuer more time to dig into the details in order to complete a full evaluation. The more details he or she has as an analyst, the more comfortable they are in the credit (whether the story is good or bad). Comfort leads to larger and better orders in the primary market, and enhanced liquidity for similar bonds that may be available in the secondary market. For the portfolio manager, the early awareness of the bond sale allows them to prepare their portfolio – like freeing up cash – for the new-issue bonds.

For issuers, the best practice is this: don't hide the ball. In fact, do the opposite and let the market know well in advance of the sale. Announcing the upcoming sale a week in advance with the release of a POS is not optimal for your investors. It's your bond sale and you are responsible for the outcome: so avoid the Dead Zone and market the bonds yourself.

By the way, this is also point #6 on the list of 10 Muni IR Fundamentals – Communicate Your Bond sale. We'll have more to say on this topic soon.

COLIN MACNAUGHT
BondLink CEO & Co-Founder

FEBRUARY 19, 2019

UTILITY CONNECTION FEES - IDAHO

[North Idaho Building Contractors Association v. City of Hayden](#)

Supreme Court of Idaho, Boise - August 2018 Term - December 28, 2018 - P.3d - 2018 WL 6817041

Building contractors association filed action to have city's sewer connection/capitalization fee declared unlawful because as an impermissible tax, rather than a fee for services.

The District Court held fee was lawful and dismissed complaint. Association appealed. The Supreme Court of Idaho vacated and remanded. On remand, the District Court entered summary judgment that fee was impermissible tax, treated the taking as regulatory taking and denied equitable defenses and awarded compensation and attorney fees and costs. City appealed, and association cross-appealed.

The Supreme Court of Idaho held that:

- Study on reasonableness of fee was relevant and should have been considered before trial court granted summary judgment on remand;
- Allowing city to present the evidence would not offend notions of fair play and justice;
- Association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim;
- Association's failure to seek review under Regulatory Takings Act did not bar its federal takings claim;
- Factual issues as to whether city conferred a benefit on association as result of sewer connection fee precluded summary judgment on city's equitable defense of unjust enrichment; and
- Simple interest, rather than compound interest, applied to federal takings claim.

Study on reasonableness of city sewer connection/capitalization fee was relevant and should have been considered, after remand from Supreme Court, before trial court granted summary judgment to building contractors association that fee was impermissible tax; trial court misread Court's

reversal of prior summary judgment.

Allowing city to present evidence of reasonableness of city sewer connection/capitalization fee in response to building contractors association's summary judgment motion following remand from Supreme Court decision would not offend notions of fair play and justice; city was not required to conclusively establish fee's purpose when imposed, its evidence, construed in its favor, established case for reasonableness, and allowing determination to stand could lead to a windfall to developers at taxpayer expense.

Genuine issues of material fact arising from consulting study on city's \$2,280 sewer connection/capitalization fee precluded summary judgment for building contractors association that fee was impermissible tax.

Building contractors association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim arising from city's sewer connection/capitalization fee.

Building contractors association could not seek compensation under Regulatory Takings Act for city's sewer connection/capitalization fee, and, thus, association's failure to seek review under the Act did not bar its federal takings claim.

Genuine issues of material fact as to whether city conferred a benefit on building contractors association as result of sewer connection fee precluded summary judgment on city's equitable defense of unjust enrichment in association's suit challenging fee.

Simple interest, rather than compound interest, applied to federal takings claim, as post-judgment interest was a procedural matter governed by state law.

Fitch Rtgs: Gov't Shutdown Effects Limited for US Public Finance Credits

Fitch Ratings-New York-10 January 2019: The ongoing federal government shutdown should not have significant effects on U.S. public finance credits, says Fitch Ratings. The partial shutdown is only affecting around 20%-25% of the federal government, and funding critical to rated sectors remains in place. However, there are risks of localized economic effects in areas with large concentrations of federal employees and the potential for credit risks will grow the longer the shutdown continues. In addition, the political deadlock in Washington is a negative signal for federal policymaking that could have longer term implications for states.

Federal government transfers to states are largely for Medicaid and, to a lesser extent, transportation. Both areas are largely unaffected by the current shutdown. Indirect economic effects could feed very quickly to state revenues, given state governments' reliance on personal income and sales taxes. However, the partial nature of the shutdown should limit these effects.

At the local level, the shutdown could have a disproportionate effect on areas with a high concentration of federal employees, particularly if it continues for much longer. The federal government accounts for around 25% of non-farm payrolls in the District of Columbia. Maryland, Hawaii, Alaska and Virginia are the states with the highest proportion of federal employment but only account for around 5% in each of these states. Moreover, most federal employees, including Defense and the U.S. Postal Service, which account for about 40% of federal employees nationally, are not affected by the shutdown. In addition, furloughed federal employees have been compensated for missed pay during previous shutdowns, so assuming this remains the case, consumption that has

been affected is likely to only be deferred.

That said, a prolonged shutdown without a clear path or timeline to resolution could trigger significant concern among unpaid federal employees leading to at least temporary economic effects in localities with high federal employment concentration. The first potential missed federal payroll date since the start of the shutdown will be on Friday.

The District of Columbia is operating fully under its locally enacted fiscal 2019 budget owing to a provision in the federal fiscal 2018 budget bill. This is a notable difference from the 2013 shutdown when the District did not have full authorization to operate its local budget and instead made temporary draws on ample reserves to remain operational.

Healthcare credits should also be unaffected as Medicare and Medicaid program are not part of the shutdown.

Parts of Housing and Urban Development are affected, specifically the Housing Finance Agencies (HFA). Federal Housing Administration (FHA) loan applications will be delayed for new single family FHA mortgages and multifamily properties with FHA risk share loans. This will delay the addition of new mortgage assets to programs, and there will be a negative impact on HFA loan programs and debt repayments

Higher education and non-profit credits maintain sufficient expense flexibility and liquidity to manage a short-term revenue impact but will also see a greater effect in the event of a prolonged shutdown. The Department of Education is not affected by the shutdown; however, grant funding agencies such as the National Science Foundation and National Endowment for the Humanities (among others) have been impacted. As such, the effect of the shutdown on recipient institutions will increase the longer it lasts, as grant funds are not being disbursed and new grant applications are not being processed. Grant revenue is not a primary source of revenue for the sector but can be material for some rated research institutions.

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[The Federal Shutdown's Impact on States and Localities.](#)

Programs that help the most vulnerable populations — including food stamps, cash welfare and child care — are most affected.

SPEED READ:

- In prior shutdowns, states have kept most programs and services running and been reimbursed by the feds. But sometimes, they aren't fully or quickly reimbursed.
- Programs that help the most vulnerable populations will be most affected.
- About two-thirds of federal grant funding to states is considered mandatory and is generally not impacted by a shutdown.

As the federal government shutdown wears on, millions of low-income families are increasingly at risk, and state and local governments may not have the resources to pick up the tab.

On Tuesday, Trump administration officials announced that food stamp recipients are guaranteed access to their benefits only through the end of February. But beyond that, funding for the nutrition program run by the now-shuttered U.S. Department of Agriculture is questionable.

The same is true for WIC, the women, infants and children program.

[Continue reading.](#)

GOVERNING.COM

BY LIZ FARMER | JANUARY 2, 2019 AT 12:14 PM

Fitch: US State Revenue Outlook is Uncertain.

Fitch Ratings-New York-02 August 2018: Fiscal 2018 revenues for many US states were notably higher than the prior year. However, most of the increases could be one-time, making future revenue forecasts less certain, Fitch Ratings says.

States' median tax collections grew 5% yoy in fiscal 2018, nearly triple the median growth rate of 1.7% for fiscal 2017, based on data from states reporting fiscal 2018 revenue results. We reviewed all publicly available monthly revenue reports for fiscal 2018 (31 states) and fiscal 2017 (38 states). All but four of these states use a June 30 fiscal year end. Fitch used total state revenue figures if total tax collections were not specifically provided but in all cases tax revenue was by far the dominant source of collections.

Sales and use tax (SUT) collections grew faster in fiscal 2018 than last year but gains in personal income tax (PIT) grew much faster. Through June 2018, 30 states reported median yoy growth in SUT of 4% compared to 2% in June 2017 for 35 reporting states. The pickup in growth is a promising sign for states that this key revenue source could be returning to patterns more consistent with a long-standing national economic expansion. The recent decision in the '*Wayfair v. South Dakota*' U.S. Supreme Court case could add some more momentum over the long term as it expands states' ability to directly tax online retailers.

Total PIT collections, generally net of refunds, are up 7% yoy for 28 reporting states through June 2018, compared with just a 1% increase reported in June 2017 by 32 states. Policy changes including significant rate increases in Illinois and Kansas contributed to roughly 40% yoy gains in these states.

Eliminating these states from the analysis does not materially affect the median yoy growth through June 2018.

We first noted a spike in PIT non-withholding collections beginning in December in many states due to House Resolution 1, the Tax Cuts and Jobs Act (TCJA) of 2017. Data since then supports our view that the well-above-trend growth in non-withholding collections since passage of TCJA is due at least partially to taxpayers accelerating state non-withholding PIT payments into tax year 2017 to avoid the cap on state and local tax deductions, among other changes in the bill. Strong 2017 capital markets performance could also be a factor as investors cash out gains. In some states, including Connecticut, New York, and New Jersey, repatriation of overseas hedge fund profits, a direct effect of Section 457A of the federal Internal Revenue Code passed in 2008, could also be a factor.

These factors, and the significant uncertainty that remains around PIT and corporate tax collections, which were arguably even more affected by TCJA, could complicate states' ongoing revenue forecasting efforts. The increase in non-withholding PIT collections for fiscal 2018 generally continued through April and into June. But several states remain wary about non-withholding trends and note in monthly revenue reports the tax collection season extends until at least October when six-month extensions expire. A significant increase in PIT refund requests then could trigger unanticipated revenue shortfalls in fiscal 2019. Generally, Fitch anticipates individuals and businesses will adjust to the significant changes in the TCJA and make adjustments over the next several years that could drive difficult-to-predict movements in tax revenue, outside of macroeconomic factors states typically focus on in forecasting. Less revenue certainty could mean more volatile budgetary management.

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Additional information is available on www.fitchratings.com. The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

[SCOTUS - 2 Major Rulings With Positive Implications For Municipal Bond](#)

Credit Quality.

The Supreme Court of the United States (SCOTUS), on June 27th, ruled in a 5-4 vote that government workers who choose not to join unions may not be required to help pay for collective bargaining and other union endeavors. Bloomberg estimates that this ruling will affect 5 million workers. Many feel that governments have been at a disadvantage, noting the conflict of interest that may arise when politicians must negotiate with the constituents that elect them. Fewer dollars flowing into the political operations of organized labor may give governments a better negotiating position regarding municipal employee salaries and the pension and other post-employment benefits that are becoming outsized burdens on governments and taxpayers. Later in this commentary, we compare right-to-work states (where employees cannot be required to pay agency fees to a union) and their pension funding status with the 22 non-right-to-work states. The upshot: 76.1% funded compared with 59.3% funded, respectively.

On June 21, 2018, the SCOTUS also ruled 5-4 to allow taxation of internet-based sales by ruling against the physical presence rule in the case of South Dakota vs. Wayfair (NYSE:W). This ruling overturned past rulings that were predicated on an economy that did not depend on internet commerce; the historic Quill case was based on catalog sales. We think this ruling will benefit states and localities that have sales tax as a major revenue component and increase debt service coverage on bonds that are secured by sales taxes. The change in sales tax collection may encourage more businesses to have a local presence because they would no longer be at such a competitive disadvantage with online retailers. Such a trend would further local employment and grow the local tax base.

We think these SCOTUS rulings are favorable for municipal credit, as discussed in further detail in our comments below and as mentioned in John Mousseau's recent commentary, ["Tax Free Munis Continue to Perform"](#).

[Continue reading.](#)

Seeking Alpha

David Kotok
Chief Investment Officer, Wealth Preservation, portfolio strategy
Cumberland Advisors

By Patricia Healy, CFA

EDUCATION FUNDING - PENNSYLVANIA

William Penn School District v. Pennsylvania Department of Education

Supreme Court of Pennsylvania - September 28, 2017 - A.3d - 2017 WL 4287879

School districts, individuals, and public-education interest groups brought action against Department of Education, Secretary of Education, Governor, and legislative leaders to challenge the constitutionality of the commonwealth's financing of public education and to seek declaratory and injunctive relief to constrain the executive branch's administration and enforcement of the school-financing system.

The Commonwealth Court sustained preliminary objections and dismissed. School districts, individuals, and interest groups appealed.

The Supreme Court of Pennsylvania held that:

- Claim that commonwealth's system of funding public education violated commonwealth's constitution's education clause was a justiciable claim, and
- Claim that commonwealth's system of funding public education violated commonwealth's constitution's equal-protection clause was a justiciable claim.

Claim by school districts, individuals, and public-education interest groups that commonwealth's system of funding public education violated commonwealth's constitution's education clause, which provided for the "maintenance and support of a thorough and efficient system of public education," was a justiciable claim. Education clause did not imply that legislature exclusively could grade its efforts at following the clause without judicial recourse, and it was feasible for a court to give meaning and force to the constitutional mandate.

Claim by school districts, individuals, and public-education interest groups that commonwealth's system of funding public education violated commonwealth's constitution's equal-protection clause was a justiciable claim regardless of whether the equal-protection claim was independent or derivative of the parties' claim that the funding system violated the commonwealth's constitution's education clause, which provided for the "maintenance and support of a thorough and efficient system of public education." the equal-protection claim concerned commonplace inquiries in the courts, claim involved neither undiscoverable nor unmanageable standards, and claim did not implicate initial policy considerations best left to the legislature.

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.

[Bloomberg Brief Weekly Video - 06/23](#)

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

[Watch the video.](#)

June 23, 2016

[SIFMA Submits Comments to the MSRB on Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans.](#)

SIFMA provides comment to the Municipal Securities Rulemaking Board (MSRB) on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans. The proposal is to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients.

[Read the Comment Letter.](#)

May 27, 2016

[Morning Meeting: Morgan Stanley's 2016 Muni Outlook.](#)

Michael Zezas, head of municipal strategy and research at Morgan Stanley, joins Bloomberg's Matt Miller to discuss the 2016 municipal bond market. He speaks on "Bloomberg GO."

[Watch the video.](#)

January 5, 2016

LABOR - MASSACHUSETTS

[Town of Athol v. Professional Firefighters of Athol](#)

Supreme Judicial Court of Massachusetts - October 23, 2014 - N.E.3d - 2014 WL 5369123

Town filed complain seeking to vacate labor arbitration award, determining that town had violated collective bargaining agreement with firefighters' union by unilaterally increasing copayment amounts that union members paid for medical services under their health insurance plans.

The Superior Court Department confirmed the portion of the arbitration award compelling the

parties to bargain collectively over changes to copayment rates, but vacated two remedial aspects of the award. Union appealed, The Appeals Court affirmed. Union applied for further appellate review.

The Supreme Judicial Court of Massachusetts held that arbitrator did not exceed her authority by ordering town to restore prior rates of contribution and requiring restitution.

ZONING - MASSACHUSETTS

[Palmer Renewable Energy, LLC v. Zoning Bd. of Appeals of City of Springfield](#) **Massachusetts Land Court - August 14, 2014 - Not Reported in N.E.3d - 2014 WL 4049881**

Palmer Renewable Energy, LLC filed suit to challenge the decision of the Springfield City Council to revoke a Special Permit it had previously issued to Palmer to construct a biomass energy plant (the "Project").

Following hearings before the MassDEP and concerns over potentially toxic air emissions, Palmer changed its source of fuel from recycled wood to green wood chips. The City then revoked the Special Permit, claiming violations of local ordinance.

The Land Court held that the Project did not require a special permit and reinstated the previously-revoked building permits.

[S&P: Tender Option Bonds And The Volcker Rule: An Update.](#)

Standard & Poor's Ratings Services has received many questions about the Volcker Rule (Section 13 of the Dodd-Frank Act), in particular as the rule relates to tender option bonds (TOBs). Standard & Poor's currently rates securities issued by approximately 2,375 TOB trusts, which have a total par value of approximately \$65 billion. This article is a brief update to our Dec. 19, 2013, article "[Q&A On The 'Volcker Rule' And Tender Option Bonds](#)".

Because there are currently no explicit exemptions for TOB programs under the Volcker Rule, we understand that TOB market participants are working to develop possible ways of structuring TOB programs to enable them to qualify for an exemption under the Volcker Rule. Although we expect to see revisions to existing TOB documents, as of the date of publication of this article, we have not been asked to review any such revisions. The responses to the following questions provide some insight to the potential solutions currently being discussed by TOB market participants.

Frequently Asked Questions

What solutions are currently being contemplated?

We understand that several different types of TOB program restructurings are being discussed to enable TOB programs to qualify as exempt under the Volcker Rule. However, two possible TOB program restructurings have been in the forefront of possibilities: restructuring the TOB program as a joint venture or restructuring the TOB program so that the banking entity would be participating as an unaffiliated third party.

Under the joint venture scenario, existing TOB programs would be restructured as joint ventures. The Volcker Rule restricts a banking entity's investments in and interactions with what are defined in the rule as "covered funds". Under certain circumstances, a joint venture, however, is excluded

from the definition of covered fund if the joint venture (i) is between a banking entity or any of its affiliates and no more than 10 unaffiliated co-venturers, (ii) is in the business of engaging in activities that are permissible for the banking entity other than investing in securities for resale or other disposition, and (iii) is not and does not hold itself as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities.

Under the unaffiliated third-party scenario, existing TOB programs would be restructured so that the banking entity would participate in the program only as an unaffiliated third party. The Volcker Rule prohibits a banking entity from providing credit or liquidity support if it serves in a capacity covered by section 13(f) of the Bank Holding Company Act. But if a banking entity is an unaffiliated third party and does not have a relationship with the TOB sponsor, the banking entity may provide the TOB with credit or liquidity enhancement. Our understanding is that this would be accomplished by having the banking entity provide credit or liquidity enhancement for a TOB program that is not its own TOB program. Therefore, the banking entity's participation in the program would be exempt under the Volcker Rule. Under this scenario, the sponsor of the TOB program must be unaffiliated with the liquidity provider.

How will Standard & Poor's view the proposed solutions?

We have not yet reviewed any revisions to TOB documents that have been designed to enable a TOB program to potentially qualify for an exemption under the Volcker Rule. That being said, however, to maintain our ratings on TOB-issued securities, or to assign new ratings on such securities, we will look for comfort that any current or new TOB structures that issue rated securities fall under one of the exemptions to the Volcker Rule. Although we will evaluate each situation on a case-by-case basis as the structures are presented to us, we expect such confirmation to be presented to us in the form of an opinion of counsel that the program or transaction at issue is exempt under the Volcker Rule.

What happens if there are no solutions for creating a Volcker Rule exemption?

Barring any extensions, if banking entities that sponsor TOB programs are not able to comply with the Volcker Rule by July 21, 2015, we expect to see an unwinding of trusts resulting in a sale of trust assets along with draws on liquidity facilities supporting such trusts.

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Muni Groups Issue White Paper on Bank Loan Disclosure.

A municipal bond market task force issued a paper on Wednesday urging state and local issuers and conduit borrowers to consider voluntarily disclosing certain information about bank loans.

Bank loans — a bank's purchase of bonds directly from an issuer or direct loans a bank makes to an issuer — have become increasingly popular as an alternative to bond financing since 2009 because they can be structured with fixed or variable rates but do not need credit enhancement, which has

been hard to secure in recent years. In addition, there are no disclosure requirements or offering documents as with municipal bonds.

Groups to Issue Bank Loan Disclosure Guidance in Early 2013

Growing concerned about the lack of disclosure on bank loans, the Municipal Securities Rulemaking Board issued a notice last year encouraging issuers to voluntarily post information about them on EMMA. The board said “the availability of timely information about bank loan financings is important for market transparency and promoting a fair and efficient market” and that bondholders and potential investors need such information to assess their muni holdings or make muni investment decisions.

The 10 groups, which included the National Federation of Municipal Analysts and National Association of Bond Lawyers, as well as dealer, banker, issuer, financial advisor and other organizations, joined together to help issuers and other market participants decide whether to disclose information about bank loans.

“This is a significant achievement, which demonstrates the industry’s commitment to reach consensus on a framework to analyze important disclosure issues,” said Allen Robertson, a shareholder at Robinson, Bradshaw & Hinton, PA who is to become NABL’s president in October. “This paper encourages careful consideration of making voluntary disclosure about bank loans, while acknowledging that issuers and borrowers may conclude not to provide voluntary disclosure about a particular bank loan depending on the facts and circumstances.”

If the issuer or borrower decides to disclose, the paper provides “a comprehensive discussion ... about how, when and what information might be disclosed,” he said.

The NFMA and Government Finance Officers Association may follow up with drafting best practice documents that provide further guidance for issuers and other market participants, said Robertson and Lisa Washburn, a managing director at Municipal Market Advisors who is NFMA’s secretary.

In their paper, the groups said, “Because the incurrence of additional debt, including bank loans, is not one of the material events for which disclosure is required under Rule 15c2-12, holders of an issuer’s outstanding bonds may not become aware of a bank loan or its impact on the issuer’s creditworthiness until the issuer’s next financial audit is released or new bonds are sold.”

Rule 15c2-12 is the Securities and Exchange Commission’s rule on muni disclosure.

Bondholders and investors may want such information as whether the bank loan increases the issuer’s outstanding debt or whether certain assets previously available to secure bonds are pledged to the bank as security for the bank loan, the groups said.

The groups said issuers could voluntarily disclose on the MSRB’s EMMA system, documents relating to a bank loan, such as the loan or financing agreement.

An alternative would be for the issuer to disclose on EMMA a summary of some or all of the features related to the bank loan.

This information could include: the date of incurrence, principal amount, maturity and amortization, the interest rate; the purpose of the proceeds; any collateral or security pledge; related hedges such as swaps or caps; information about what would constitute a default and remedies, if different from outstanding bonds; any ratings; and terms under which the loan could be transferred or sold.

"The list is nonexclusive and the issuer is free to add or delete features," the groups said.

The paper recommended voluntary disclosures be made in the same time frame as other material events under Rule 15c2-12, within 10 business days of the execution of the bank loan.

Lynn Hume

The Bond Buyer

The full report can be found at:

<http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank.loan.5.13.pdf>

Schools Describe Impact of Proposed Employer Shared Responsibility Regs.

Many school administrators, board members, and teachers have commented on proposed health insurance regulations (REG-138006-12) implementing the employer shared responsibility provisions, addressing how the regs would affect their schools, staff, and students.

[Editor's Note: The document at this citation contains a representative sampling of a larger number of comment letters submitted to the IRS on REG-138006-12.]

To Whom It May Concern:

The impact of the RULE being proposed for education concerning the PPACA is going to be very detrimental to our school corporation. The majority of our employees have traditionally worked only nine (9) months out of the year. They work for our school corporation because they like being off work in the summer when their children are off school. This saves families the expense of child care year round. These employees are truly seasonal or part-time and therefore should not be included in the rule that forces school corporations to provide insurance to employees working over 30 hour per week. They should be viewed the same as a person that works at a theme park or pool for the summer.

Funding for school corporations keeps getting reduced every year. As a result of limited funds we will be forced to reduce hours for most of our part-time employees who are already on a limited income. In some instances we will have to hire more part-time employees in order to keep offering the same services to our students. Several of the employees that we will be forced to offer insurance to have the spousal rule, but these employees are better off financially on their spouse's insurance. Some of them have already told us that they will quit if they are offered insurance thus making this rule a financial hardship for the employee and the school corporation.

Please reconsider this interpretation of the act so as to not adversely affect the education of our students. Our primary concern is the best education we can provide for the students in our school corporation. As our expenses continue to increase this becomes increasingly more difficult to accomplish.

Sincerely,

[signed]

Deputy Treasurer
Southeast Dubois County School
Corporation
Ferdinand, IN

* * * * *

March 6, 2013

To Whom It May Concern,

I would like to express my concern over the proposed IRS regulation 138996-12. Since the Patient Protection and Affordable Care Act was enacted three years ago, public schools were told that they were exempt from the rule because a large number of our school employees work only 180 days a year. On January 2, 2013 this assumption changed with a new IRS regulation. The new rule for public schools will force our school (which has only 200 employees) to provide hundreds of thousands of dollars in health insurance for employees. Public schools have been underfunded since 2007 and this comes at a time when schools cannot afford health insurance for part-time employees. We have also been in deficit financing since 2005 and this has placed a huge strain on the schools.

Although cost is an issue, public schools believe we have been singled out by the rule. Our attorney has informed us that businesses do not have to provide health insurance for their workers who work the 180 days a year. This new rule you are proposing requires public schools to provide health insurance for individuals while businesses are exempt.

Our school would appreciate if you would reconsider IRS regulation 138996-12. Thank you for your time on this matter.

Sincerely,

Andy Wandersee

School Board Member

Centerville-Abington Community

School Corporation

Centerville, IN

[NAIPFA: SEC Rulemaking on Muni Advisors Should Be Top Priority.](#)

With the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, individuals providing certain types of advice to muni issuers became regulated as "municipal

advisors.”

Although all of the rules have yet to be proposed or implemented, there are laws and regulations currently in existence with which municipal advisors, or MAs, must comply, including those relating to fiduciary duty and fair dealing.

Nevertheless, some market participants have stated on numerous occasions that muni advisors are still totally unregulated, and have urged that the regulation of MAs be implemented as quickly as possible.

While the National Association of Independent Public Finance Advisors disagrees with these participants’ statements that municipal advisors are wholly unregulated, NAIPFA does agree that the Securities and Exchange Commission’s MA rulemaking should be completed as soon as possible to allow for further development of Municipal Security Rulemaking Board rules.

Therefore, we were surprised to learn that the bill referred to as the Dold Amendment was reintroduced in the current congressional session by Rep. Steve Stivers, R-Ohio.

The bill has the support of a number of those market participants who have and will continue to advocate for the quick implementation of Municipal Advisor rules.

Yet, this position seems contradictory in light of the SEC’s statements indicating that if such a bill were to be enacted its rulemaking undertakings could be delayed by as much as two years.

NAIPFA believes that the Dodd-Frank Act got it right by clearly delineating the roles of certain municipal market participants, particularly the roles of municipal advisors and underwriters.

These roles had been blurred for too long as a result of underwriters having provided advice to issuers within the scope of their underwriting engagement that was identical to that which was provided by financial advisors (i.e. municipal advisors), with the only distinction being that underwriters lacked corresponding fiduciary duties for such services.

As a result, muni issuers began to rely on their underwriters to provide advice that was perceived to have been given with the issuer’s best interests in mind.

Notably, even previous to the passage of the Dodd-Frank Act, the Government Financial Officers Association officially recognized that financial advisors owed duties to their clients that underwriters did not.

As such, GFOA went so far as to recommend the engagement of financial advisors in its best practices guide for municipal issuers.

But unlike the Dodd-Frank Act, the Stivers bill will allow underwriters to continue their long-standing business practices to the detriment of municipal issuers as well as taxpayers and ratepayers. In this regard, the proposed bill contains two provisions that are of particular concern.

First, the Stivers bill requires an individual to receive compensation for certain types of advice in order to be considered a municipal advisor.

Nevertheless, advice without compensation is still advice. What’s more, this measure, if it is enacted, will likely result in the eradication of substantial portions of the issuer protections put in place by the MA provisions of the Dodd-Frank Act.

Individuals who otherwise would have sought to receive compensation for providing advice as an issuer's MA will simply stop seeking compensation for their advisory services in order to avoid regulation, and will instead seek to mask their advisory activities by receiving compensation for non-advisory related services.

Our concern in this regard is not limited to merely underwriters, but also attorneys, engineers, nonprofit organizations and any other individual who wishes to avoid regulation as a municipal advisor.

Second, the Stivers bill allows broker-dealers to provide advice "in connection with" their role as underwriter. This provision will allow broker-dealers serving as underwriters to provide advice on virtually every aspect of the financing, including with respect to the structure, timing, terms and other similar matters related to municipal securities issuance (municipal advisory services), but without owing a corresponding fiduciary duty to the issuer.

The Stivers bill purports to be a clarification of the regulation of municipal advisors. But in light of the foregoing it seems that this effort by Rep. Stivers with the support of the underwriting community to define MAs - not by the services they provide, but by whether they receive compensation for them - will instead undermine the original intent of Dodd-Frank's municipal advisor provisions.

We do believe, however, that broker-dealers should be allowed to discuss matters with issuers that are related to the transaction and that are within the scope of their underwriting role as a purchaser and distributor of securities.

Nevertheless, broker-dealers that provide muni advisory services, regardless of the title they utilize, do have a conflict of interest and should not be allowed to provide them without obtaining fiduciary duties and triggering the corresponding prohibition on underwriting the issuer's securities, by simply not receiving compensation for such services.

While some market participants may reminisce about their pre-Dodd-Frank business practices, unfortunately it is some of those very practices that led to the enactment of Dodd-Frank's municipal issuer protections. It is time to move forward.

The role of the municipal advisor and underwriter are distinct, and the definition corresponding to each must be clear. Issuers must be able to distinguish between those individuals whose role is to provide advice and those whose role is to purchase and distribute securities.

It is our fear that Dodd-Frank's accomplishments in this regard will be undone by the enactment of the Stivers bill.

We believe that the SEC understands the concerns of market participants and that it is fully capable of addressing these concerns.

Conversely, the Stivers bill takes the wrong approach to addressing the markets' concerns and will simply allow certain market participants to return to the business practices that contributed to the worst financial crisis since the Great Depression.

Therefore, the SEC must be allowed the opportunity to develop and release a rule clarifying the definition of muni advisor prior to any legislative action that will only further delay the rulemaking process and undermine Dodd-Frank's municipal issuer protections.

Jeanine Rodgers Caruso is president of the

NFMA Submits Amicus Brief in Litigation Challenging California Redevelopment Agency Legislation.

The National Federation of Municipal Analysts (“NFMA”) announced today that it has submitted an amicus curiae brief (the “Brief”) with the Superior Court of California, County of Sacramento (the “Court”) in support of the Complaint and Writ of Mandate of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (“Syncora”).

The NFMA rarely files amicus briefs, and almost never at the trial court stage. However, the NFMA Board felt strongly that an exception should be made in this case given that the matter before the Court has such far-reaching ramifications for the municipal bond market generally. The Brief alerts the Court to the significant negative ramifications to the municipal market that can result from the passage of any law authorizing the elimination of existing bondholder protections, as exemplified by sections 34182(d), 34174, 34177(d), 34183(a)(4) and 34188 of the California Health and Safety Code, which were recently added to the California Health and Safety Code by Assembly Bill x1 26 (“AB26”) and Assembly Bill 1484 (“AB1484” and together with AB26, the “RDA Legislation”).

The dispute before the Court involves a challenge by Syncora to the RDA Legislation. While the NFMA takes no position generally regarding the dissolution of California’s redevelopment authorities, the NFMA argues in its Brief that the RDA Legislation has caused significant and unwarranted marketplace uncertainties and complexities which have already rippled through the marketplace, including across the board rating downgrades, rating withdrawals and constrained liquidity and may, if not clarified by the Court, fundamentally change market expectations nationwide with respect to certain previously irrevocable protections, rights and privileges.

The NFMA asserts in its Brief that the RDA Legislation is a textbook example of the type of change in security that undermines credit analysis and weakens the confidence that investors have in their understanding of the marketplace. The RDA Legislation seeks to unwind not only redevelopment agencies, but the layers of protection granted to bondholders, including a pledge of tax revenues, debt service coverage through excess revenues, exercisable remedies, and continuing disclosure.

“The NFMA is deeply concerned by the troubling precedent set when any state retroactively seeks to restructure, redistribute, and recast existing bondholder protections and covenants and the NFMA believes that it is important for the Court to understand the far-reaching significance of such actions which negatively impact the foundation of municipal finance nationwide” said Jeff Burger, NFMA Chairman.

The full brief can be found at:

<http://www.nfma.org/assets/documents/position.stmt/ip.amicus.brief.ca.rda.4.13.pdf>
