

- [MSRB Identifies Compliance Considerations for Municipal Securities Dealers.](#)
  - [The Bond Lawyer: Summer 2017](#)
  - [S&P: Cyberattacks Pose A Real, If Varying, Credit Risk Across U.S. Public Finance Sectors.](#) **Ed.**  
**Note:** This may serve as a handy guide for new & improved risk factors and disclosures.
  - [As Flood Risks Intensify, Stormwater Utilities Offer a More Resilient Solution.](#)
  - [Someone Left the Crayons Out, and Now the Tax Lawyers Are Drawing Pictures.](#)
  - [California Cannabis Coalition v. City of Upland](#) - Supreme Court of California holds that requirement - under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax - that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate's approval in a manner consistent with statute setting forth local government's duty with respect to voter initiatives whose proponents request a special election.
  - And finally, Please Remind Me Again Why We Aren't Paid Hourly is brought to us this week by [Corrigan v. Illuminating Company](#), in which one can positively feel the waves of resigned disgust wafting off the Facts and Procedural Background section of the Supreme Court of Ohio's opinion, which begins, "For over ten years, the parties have litigated the fate of this tree." May visions of chainsaws dance through your heads.
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## UTILITIES - OHIO

### [Corrigan v. Illuminating Company](#)

**Supreme Court of Ohio - September 13, 2017 - N.E.3d - 2017 WL 4081822 - 2017 -Ohio-7555**

Property owners filed a complaint with the Public Utilities Commission against electricity company, seeking to prevent the removal of a tree located on the company's easement across owners' property.

The Public Utilities Commission found that the company's plan to remove the tree was reasonable. Owners appealed.

The Supreme Court of Ohio held that:

- Evidence supported conclusion that continued pruning of tree near transmission line was not a viable option;
- Order permitting removal of tree did not contravene Commission's vegetation-management policy; and
- Evidence supported conclusion that tree could potentially interfere with transmission line.

Evidence supported conclusion by Public Utilities Commission that continued pruning of tree located on electrical company's easement near transmission line was not a viable option, in proceedings

brought by property owner seeking to prevent the tree's removal. Certified arborist testified that past pruning operations were ineffective over long term and that future pruning would diminish the tree's vigor, and observed that past pruning had actually shortened the tree's expected life span.

Public Utilities Commission's order permitting removal of tree near transmission line located on electricity company's easement did not contravene Commission's vegetation-management policy. Commission concluded that pruning was no longer a viable option, that property owners failed to rebut company's evidence showing safety hazards posed by tree's continued existence, and that owners failed to prove company acted unreasonably in implementing its right-of-way vegetation-control program.

Evidence supported Public Utilities Commission's conclusion that tree located on electric company's easement could potentially interfere with transmission line, justifying its removal. Tree was outside of the horizontal clearance prescribed by the National Electrical Safety Code, parts of the tree were destined to fail and fall into the transmission lines, and property owners' comparison of disparate risks posed by different activities did not dictate a finding that the tree did not pose a risk to the lines at issue.

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## **IMMUNITY - ALABAMA**

### **[Ex parte City of Selma](#)**

**Supreme Court of Alabama - September 1, 2017 - So.3d - 2017 WL 3821748**

Owner of repossessed motor vehicle brought action against city after city police officer's allegedly told employees of repossession company to take the vehicle after owner had called police to object to repossession.

The Circuit Court denied city's motion for summary judgment. City filed petition for writ of mandamus.

The Supreme Court held that officers were entitled to State-agent immunity.

City police officers were performing discretionary functions within the line and scope of their law enforcement duties, and therefore officers were entitled to State-agent immunity in tort action by owner of repossessed vehicle stemming from incident in which officers allegedly told employees of repossession company to take the vehicle after owner had called police to object to repossession. There was no evidence that officers failed to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist, or acted willfully, maliciously, fraudulently, in bad faith, beyond their authority, or under a mistaken interpretation of the law.

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## **UTILITIES - IDAHO**

### **[Hill-Vu Mobile Home Park v. City of Pocatello](#)**

**Supreme Court of Idaho, Boise - June 2017 Term - September 6, 2017 - P.3d - 2017 WL 3880760**

Users of municipality's water and sewer systems brought action against municipality for a refund of a water and sewer charge that had been found unlawful in a previous case, and users sought class certification. The District Court granted summary judgment for city. Users appealed.

The Supreme Court of Idaho held that:

- Idaho Tort Claims Act did not preclude users' state law claims;
- Money is property within the meaning of the takings clause; and
- Trial court did not have discretion to refuse to apply its decision in the previous case that the particular charge was unlawful.

Idaho Tort Claims Act did not bar municipal water and sewer system users' claims under state law for recovery of a charge that was linked to the purported property taxes that municipal water and sewer departments paid to the municipality and that had been held to be unlawful in a separate case, even though Act generally provided that a governmental entity was not liable for a claim that arose out of the assessment or collection of a tax, where municipality did not have authority to add such a charge, municipality did not denominate the charge as a tax, and municipality raised the rates for water and sewer service so that it would not have to take the politically unpopular route of raising property taxes.

Trial court did not have discretion to refuse to apply its decision in a previous case that a particular water and sewer charge by a municipality was unlawful to a new case by water and sewer users who sought a refund of the charge.

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## **UTILITIES - INDIANA**

### **[Duke Energy Indiana, LLC v. Town of Avon](#)**

**Court of Appeals of Indiana - August 24, 2017 - N.E.3d - 2017 WL 3624282**

Energy utility company appealed decision of the Indiana Utility Regulatory Commission, which determined that trial court was proper jurisdiction for company's complaint regarding town ordinance, which ordered company to remove, at company's own cost, utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, and dismissed company's complaint.

The Court of Appeals held that:

- Commission had exclusive jurisdiction to hear company's complaint, but
- Court of Appeals, upon remanding company's complaint to Commission, would decline to instruct Commission to hold hearing.

Indiana Utility Regulatory Commission had exclusive jurisdiction to hear energy utility company's complaint on validity of town ordinance ordering company to remove utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, since statute which granted enforcement powers to Commission explicitly stated that it "shall be [Commission's] duty" to "enforce...all...laws...relating to public utilities [,]" and expressly directed Commission to "inquire into any...violation" of local ordinance by public utility, and statute which permitted municipalities to regulate use of municipal property by public utilities specifically contemplated disputes between towns and utilities regarding access to rights-of-way or other access to public property.

Court of Appeals, upon remanding energy utility company's complaint to Indiana Utility Regulatory Commission, would decline to instruct Commission to hold hearing on complaint, since statute which expressly applied to complaints filed by public utilities stated that "[a]n order...may be entered by the [C]ommission without a formal public hearing" or that Commission "may...on its own motion

require a formal public hearing[,]” and thus statute left decision to hold hearing to Commission’s discretion.

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## **ZONGING & PLANNING - MAINE**

### **[Fissmer v. Town of Cape Elizabeth](#)**

**Supreme Judicial Court of Maine - September 19, 2017 - A.3d - 2017 WL 4126940 - 2017 ME 195**

Abutting property owner appealed from a decision of town’s zoning board of appeals, which determined code enforcement officer had properly issued a building permit.

The Superior Court affirmed the zoning board’s decision, and abutting property owner appealed.

The Supreme Judicial Court of Maine held that provision of zoning ordinance that provided no building permit shall be issued until legally binding arrangements for long-term maintenance of a private road were in place had to be applied to the entirety of the road from its intersection with a public way to at least the location of the proposed structure, and not just to the section of the road abutting the permit applicant’s property.

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## **LABOR & EMPLOYMENT - MASSACHUSETTS**

### **[Malden Police Patrolman's Association v. Malden](#)**

**Appeals Court of Massachusetts, Middlesex. - August 11, 2017 - N.E.3d - 92 Mass.App.Ct. 5320 - 17 WL 3442612**

Police union filed a complaint against the city, alleging that the city owed the officers approximately \$410,000 in compensation for the performance of past detail work pursuant to collective bargaining agreement and requesting relief under theories of breach of contract, breach of an implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, and violation of the Massachusetts Wage Act.

The Superior Court Department allowed the city’s motion to dismiss with respect to the first four counts of the complaint, and granted summary judgment for the city with respect to the fifth count of the complaint. Union appealed.

The Appeals Court held that:

- Trial court did not abuse its discretion by considering the merits of the city’s motion to dismiss, rather than deeming city’s motion fatally defective because of city’s failure to comply with Superior Court’s rules;
- If there was a collective bargaining agreement (CBA) in effect, police union was required to follow the grievance procedures;
- CBA precluded recovery by police union for compensation for the performance of past detail work under a theory of unjust enrichment;
- Doctrine of promissory estoppel was not applicable;
- When officers’ detail work is performed for third parties, statute, governing expenditure of compensation for off-duty or special detail work, governs with respect to detail pay, but, to extent that the city “hires” its own officers as “employees” to perform detail services, payment is

governed by the Wage Act; and

- Fact that the municipal finance law, provides that compensation for off-duty detail work shall be paid to employee no later than ten working days after receipt by city, does not render this statute incompatible with the Wage Act.

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## **OPEN MEETINGS - MISSISSIPPI**

### **[Mayor and City Council and City of Columbus v. Commercial Dispatch](#)**

**Supreme Court of Mississippi - September 7, 2017 - So.3d - 2017 WL 3913910**

City and its mayor sought review of state ethics commission's finding that prearranged, nonsocial, and subquorum gatherings of the mayor and city council in the mayor's conference room violated the Open Meetings Act.

The Chancery Court affirmed. City and its mayor appealed.

The Supreme Court of Mississippi held that gatherings in question violated the Open Meetings Act.

Prearranged, nonsocial, and subquorum gatherings of mayor and city council in the mayor's conference room to discuss retail development and renovations of a public building violated the Open Meetings Act, where the discussions were targeted at avoiding or circumventing the Act, public business was discussed at all of the gatherings, and the discussions led to official action by the quorum when they met.

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## **NUISANCE - OKLAHOMA**

### **[Grisham v. City of Oklahoma City](#)**

**Supreme Court of Oklahoma - September 18, 2017 - P.3d - 2017 WL 4129573 - 2017 OK 69**

Two couples who suffered damages as a result of sewer backup brought action against city, asserting claims for property damage, and personal injury/nuisance.

Following jury verdict in couples' favor, the District Court reduced jury award to \$25,000 for each couple. The Court of Civil Appeals affirmed. Couples petitioned for writ of certiorari.

The Supreme Court of Oklahoma held that:

- Couples were not precluded from filing separate notices of claims with city for each separate type of compensable injury, but
- Notices of claim stating "property damage," without stating "any other loss," were insufficient to provide notice of personal injury/nuisance claims arising from same transaction.

Couples who asserted claims against city for property damages that arose out of sewer backup were not precluded from filing separate notices of claims for each separate type of compensable injury. Couples satisfied notice requirements of Governmental Tort Claims Act (GTCA) when they used forms provided by city, provided their names, addresses, date and time of damage, name of city's supervisor who investigated their damage, insurance information, sought monetary relief for their property damage, and then filed their written notices with city clerk.

While couples' notices of "property damage" on city claim forms were sufficient for city to

investigate, correct the situation, resolve the controversy, and determine possible liability for property damage claims that arose from sewer backup, without stating “any other loss,” they were insufficient to provide notice of a claim for personal injury/nuisance arising from the same transaction or occurrence, as required to bring their subsequent suit in the district court for both property damage and personal injury/nuisance.

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## **BALLOT INITIATIVES - OREGON**

### **[Unger v. Rosenblum](#)**

**Supreme Court of Oregon, En Banc - September 14, 2017 - P.3d - 361 Or. 814 - 2017 WL 4053893**

Challenger filed petition seeking judicial review of Attorney General’s certified ballot title for initiative petition, which proposed statutory amendment in order to allow digital signatures for initiatives and referenda.

The Supreme Court of Oregon held that:

- Caption failed to reasonably communicate major effect of initiative petition;
- Caption of ballot title was not required to inform voters that Secretary of State was responsible for gathering digital signatures; and
- The “yes” result statement of initiative petition failed to sufficiently inform voters that initiative petition required Secretary of State to create a website to be used for gathering digital signatures.

Ballot title caption for initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot, failed to reasonably communicate major effect of requiring Secretary of State to create and administer a website in order for petitions to be signed digitally, where caption merely provided “Secretary of State must enable and accept digital signatures for state initiative and referendum petitions.”

Initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot did not make Secretary of State responsible for gathering digital signatures, and therefore caption of ballot title was not required to inform voters that Secretary of State was responsible for gathering digital signatures. Initiative petition would only have made the Secretary of State responsible for creating and administering a website where voters could sign initiative and referendum petitions digitally.

The “yes” result statement of initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot failed to sufficiently inform voters that initiative petition required Secretary of State to create a website to be used for gathering digital signatures. Result statement merely noted that initiative petition required Secretary of State to “manage” a website for gathering of digital signatures.

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## **OPEN MEETINGS LAW - SOUTH DAKOTA**

### **[Lee v. Driscoll](#)**

**United States Court of Appeals, Eighth Circuit - September 7, 2017 - F.3d - 2017 WL 3910129**

Property owners, one of whom was township board clerk, filed § 1983 action alleging that members of township's board of supervisors violated their constitutional rights and state law by excluding them from meetings regarding culvert construction project.

The United States District Court dismissed some claims, entered summary judgment in defendants' favor on other claims, but denied supervisors' motion for summary judgment on qualified immunity grounds. Parties filed cross-appeals.

The Court of Appeals held that:

- Supervisors were not entitled to qualified immunity from liability on clerk's claim that her exclusion from township board meetings violated her First Amendment right to freedom of association, and
- Supervisors' exclusion of plaintiffs from non-public board meetings did not violate their First Amendment right to petition.

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### **[Fitch: Utah's Economy, Conservative Financial Ethos Foster Strong Municipal Credit Quality.](#)**

Fitch Ratings-San Francisco-18 September 2017: Utah's tax-supported cities, counties, and school districts maintain strong Issuer Default Ratings (IDR), thanks to a vigorous state economy, conservative financial management, and robust revenue frameworks, according to new research from Fitch Ratings

Statewide, Fitch's IDRs are in the top 'AA' and 'AAA' categories, with Stable Rating Outlooks across the board.

"The State of Utah is benefiting from rapid population growth, a diversified economy, and very low unemployment," said Alan Gibson, Director for U.S. Public Finance. "Within this context, local governments are also performing well. Even during periods of economic expansion, they tend to emphasize prudent budgeting, careful financial monitoring, affordable fixed costs, and strong reserves -all important factors in overall credit quality."

Other keys to strong Utah local government ratings include robust revenue frameworks and solid expenditure flexibility. Most Fitch-rated Utah local governments enjoy low to moderate revenue volatility, high to superior inherent budget flexibility, and high reserves. Fitch anticipates most of its rated Utah local governments will maintain sufficient reserve safety margins for a 'aaa' financial resilience assessment through future economic cycles.

Fitch expects these positive credit characteristics to continue supporting strong ratings in the future, according to Gibson.

For more information, a special report titled "Credit Strengths of Local Governments in Utah" is available on the Fitch Ratings web site at [www.fitchratings.com](http://www.fitchratings.com) or by clicking on the link.

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## **[Bloomberg Brief Weekly Video - 09/21](#)**

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

[Watch video](#)

**Bloomberg**

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## **[When All Else Fails, Sue Wall Street.](#)**

***There's a lot of blame to go around, but banks have deep pockets and a history of municipal-debt settlements.***

Disagreements about money often have a clear solution: Everyone sues each other. That's the American way.

And so it goes for Puerto Rico, the fiscally crippled island that incurred \$74 billion of debt over a period when its population and economy were shrinking. Investors have brought many suits against the commonwealth, which now appears to be setting the stage for its own lawsuit against big Wall Street banks.

After all, going after large banks has turned into standard operating procedure for big municipal insolvencies. Just think of Orange County, California, which worked out \$800 million in settlements from Merrill Lynch & Co. and others after going bankrupt in the 1990s.

[Continue reading.](#)

**Bloomberg BusinessWeek**

By Lisa Abramowicz

September 20, 2017

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## **Illinois Bondholders Cheer Reversal of Fortune Before Big Sale.**

- **Worst-rated state has stabilized, biggest bondholders say**
- **State plans to borrow to pay down record backlog of late bills**

As Illinois prepares for what may be its biggest debt sale in over a decade, its largest investors are celebrating a rally that's transformed the state's bonds from one of this year's worst performers to one of the best.

Since the state in July resolved a two-year budget impasse that pushed its rating to the brink of junk, debt issued by Illinois and its local governments has vaulted to a 7 percent return this year, more than any other state, according to S&P Municipal Bond Indices. Until June 8, they were the worst performer among the five most-indebted states, which include Texas, California, Florida and New York.

The reversal came after lawmakers enacted a budget — and raised taxes — over Governor Bruce Rauner's objections. They also extended Illinois authority to reduce a record pile of leftover bills by selling as much as \$6 billion of bonds. It would be the state's biggest sale since 2003 if done in a single offering.

What follows is a round-up of the outlook for the state from some of Illinois's largest bondholders and how much their firms own:

### **Nuveen Investments: \$868 million**

"It has turnaround potential," said John Miller, co-head of fixed-income at Nuveen, which bought more Illinois bonds in late June and July as the budget came together. The firm plans to take a "hard look" at the \$6 billion borrowing, calling it a "benchmark-type deal" because it may be one of the largest of the year, according to Miller, who cautioned that the state's rising pension-fund debts are still posing risks.

### **AllianceBernstein LP: \$583 million**

"They've stopped the bleeding," said Guy Davidson, director of municipal investments at AllianceBernstein. He said the firm is interested in buying more Illinois debt. "It's not like we think they have solved their problems. We just think they've stabilized their problems."

Davidson said investors are "getting paid more than we think the risk entails"

### **Wells Fargo Asset Management: \$428 million**

"They're not under the gun as much as far as ratings go," said Dennis Derby, a portfolio manager at Wells, which holds \$40 billion of municipal debt. The firm would be "more comfortable" if the state took action soon to reduce the \$16 billion of unpaid bills

### **BlackRock Inc.: \$310 million**

The tax hike gives the state “more tools” to meet their expenses and obligations, marking an improvement, said Joe Gankiewicz, a credit-research analyst in Princeton, New Jersey, for the company, which oversees about \$124 billion of municipal debt. The state’s unfunded retirement liabilities — \$130 billion, according to the Commission on Government Forecasting and Accountability — remain an issue. “The pension expense is likely to outstrip the organic revenue growth in the state in the coming years,” Gankiewicz said

Illinois G.O. holding figures are based on data compiled by Bloomberg.

## **Bloomberg**

By Elizabeth Campbell

September 22, 2017, 4:00 AM PDT

— Written with the assistance of Bloomberg’s Municipal Global Data team

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### **[MBTA Plans to Issue First Tax-Exempt Sustainability Bond.](#)**

The Massachusetts Bay Transportation Authority plans to issue tax-exempt sustainability bonds Tuesday as part of a \$574 million competitive sale.

Officials from the MBTA, which operates mass transit in Greater Boston and whose board authorized the sale on Sept. 11, say it’s the first sale in the U.S. for such a bond.

Proceeds of sustainability bonds exclusively fund projects with environmental and/or social benefits. The MBTA has adopted a framework to assure conformance with International Capital Market Association standards for determining project eligibility, tracking bond proceeds and reporting on project impact.

This framework also calls for tracking bond proceeds and reporting on project impact. The MBTA consulted academic leaders, impact investors and sustainability leaders at Fortune 500 companies.

The issuance “represents an exciting market precedent,” June Matte, a managing director at financial advisor Public Financial Management, said on an investor call.

Moody’s Investors Service and S&P Global Ratings rate the bonds Aa3 and AA, respectively.

According to MBTA treasurer Paul Brandley, the sale will include \$233.6 million of subordinated sales tax bonds split into two subseries, which fund capital projects for fiscal 2018 and 2019 and replenish commercial paper capacity. Series A-1 of that component will feature \$101 million of sustainable bonds and \$132.5 million will be sold in the traditional A-2 offering.

Additionally, \$281.7 million of subordinated sales tax bond anticipation notes, along with \$82 million of commercial paper, will fund \$382 million in interim financing for a \$492 million positive train control project.

Positive train control is a GPS-based remote system designed to prevent train crashes. The MBTA faces a federally mandated interim deadline of Dec. 31, 2018, and final deadline two years

thereafter, to install it.

In 2021, said Brandley, the MBTA expects to take out the BANs and commercial paper with loan proceeds from the federal Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation & Improvement Financing programs.

“TIFIA and RRIF loan agreements should be finalized in the coming weeks,” said Brandley. Climate resilience projects include a \$50 million undertaking in Boston’s Charlestown neighborhood to protect a critical bus facility from worsening storms and to minimize runoff, and the continuing \$99 million work on the 118-year-old Government Center station in front of City Hall, which in 2016 became accessible to disabled people.

In addition, the MBTA is modernizing its bus fleet, earmarking \$332 million for fuel-efficient hybrid vehicles. Its first hybrids entered in 2010 on the “trackless trolley” Silver Line.

The MBTA, the country’s fifth-largest mass transit system, has a \$1.6 billion annual operating budget and a five-year capital investment plan of \$7.4 billion. About 60% of its capital program funds state-of-good-repair projects such as signaling and tracks, with the balance split between expansion and modernization.

The authority carries about \$5 billion in debt, with more than three-quarters of it through its sales-tax credit.

For the past two years the MBTA has operated under a fiscal oversight board that Gov. Charlie Baker and state lawmakers approved after a record 110 inches of snow hit Greater Boston in the winter of 2014-15. The storm paralyzed parts of the transit system and exposed operational flaws.

Former General Electric Co. (GE) executive Luis Ramirez took over last week as the MBTA’s general manager, while Michael Abramo was promoted to chief administrator last July. In addition, the state control board was extended to 2020.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC is bond counsel for the sale.

## **The Bond Buyer**

By Paul Burton

09/20/17

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## **[CA Multifamily Issuance Jumps \\$2B in 2016.](#)**

[Read the Volume Cap Report.](#)

**CDFA | Sep. 21**

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## **[National IDB Issuance Falls in 2016.](#)**

[Read the Volume Cap Report.](#)

## **Total National PAB Issuance Returns to Pre-Recession Levels.**

[Read the Volume Cap Report.](#)

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## **The Path Forward on HQLA.**

PHOENIX- Legislation defining readily tradeable, investment-grade municipal securities as high quality liquid assets under federal banking rules may have a window to move forward fairly soon, according to market groups watching developments on Capitol Hill.

The Municipal Finance Support Act of 2017, H.R. 1624, sponsored by Rep. Luke Messer, R-Ind., was reported out of the House Committee on Financial Services Sept. 12 after receiving unanimous support in late July.

The bill is a response to rules adopted by the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. in 2014. These rules require banks with at least \$250 billion of total assets or consolidated on-balance sheet foreign exposures of at least \$10 billion to have a high enough liquidity coverage ratio - the amount of HQLA to total net cash outflows - to deal with periods of financial stress.

The regulators did not include munis as HQLA under the rule because they felt the securities were not liquid enough.

The Fed later amended its rules to include some munis as HQLA but muni market participants said the amendments were still too restrictive and, in any case, would mean little if the other banking regulators did not ease their rules as well.

Messer's bill has been amended to require the regulators to treat munis that are investment grade and actively traded in the secondary market as level 2B HQLA, the same level as mortgage backed securities, down from its original requirement that they be treated as level 2A securities on the same level as sovereign debt.

This change reconciles it with a Senate bill, S. 828, sponsored by Sen Mike Rounds, R-S.D. The House approved legislation making some munis 2A assets last year, but it never advanced in the Senate.

"The House is expected to act on the bill soon," the National Association of State Treasurers said in a legislative update posted for members Sept. 17. "The House bill as reported out of committee now conforms with the Senate 2B legislation, which increases the likelihood that the bill could be signed into law."

The NAST update said that S. 828, currently awaiting action by the Senate Banking Committee, is considered likely to come up when the committee next takes action on several financial services-related bills.

“A unanimous vote in support could clear the way for the bill to be ‘hotlined,’ a Senate procedure that would allow for expedited consideration and passage,” the NAST update said.

The question now remains when and if the House will act on the bill now that it is awaiting floor action. It could be considered as a stand-alone bill, or it could end up being attached to a larger bill, such as tax reform legislation.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said her sense is that lawmakers might be inclined to deal with bipartisan legislation like Messer’s bill before the anticipated difficulty of a tax reform showdown. Brock said that when GFOA last met with legislators on this issue, the energy was very positive.

“This is a light lift,” she said.

The House’s agenda is ultimately determined by House Speaker Paul Ryan, R-Wisc., and other Republican leaders.

## **The Bond Buyer**

By Kyle Glazier

09/18/17

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## **TAX - CALIFORNIA**

### **[California Cannabis Coalition v. City of Upland](#)**

**Supreme Court of California, California - August 28, 2017 - P.3d - 3 Cal.5th 924 - 2017 WL 3706533 - 17 Cal. Daily Op. Serv. 8392**

Initiative sponsor petitioned for writ of mandate to compel city to hold a special election on an initiative imposing a charge on medical marijuana dispensaries.

The Superior Court denied petition, determining that the charge constituted a tax and had to be placed on the next general election ballot. Sponsor appealed. The Court of Appeal reversed and directed the trial court to issue writ of mandate compelling city to place initiative on special ballot. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Term “local government” in constitutional provision limiting power of local government to impose general tax did not encompass the electorate;
- Distinction between local government and its governing body in provision did not indicate that “local government” included electorate;
- Reference to voters’ initiative power in Proposition 218, which added constitutional provision, did not indicate intention to subsume tax-related initiatives within ambit of Proposition;
- Provision did not indirectly encompass imposition of taxes by electorate via initiative;
- Term “impose” in provision meant to establish, not to collect;
- Clear evidence of intended purpose to constrain exercise of voters’ initiative power was necessary to construe provision as imposing such limitations; and
- Determination that sponsor’s proposed initiative was governed by provision did not relieve city of its statutory duties with respect to initiatives whose proponents requested special election.

Supreme Court would exercise its discretion to address issue of whether constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election restricted voters' constitutional power to propose and adopt initiatives and whether initiative imposing a charge on medical marijuana dispensaries should be submitted to voters at special election, rather than general election, even though initiative had been submitted to and defeated by voters and issue was technically moot; issue presented important questions of continuing public interest that had potential to evade review.

Term "local government" in constitutional provision added by voter initiative that prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election did not encompass the electorate, and thus provision did not require that voter initiatives pertaining to imposition of taxes be first submitted to electorate at general election, rather than special election. Construing "local government" as excluding electorate was consistent with common understanding of term, related provisions, and ballot materials for initiative that added provision, and interpreting term "local government" to include the electorate would give that term a broader meaning than adjoining specific term, "local or regional governmental entity."

Existence of a distinction between a local government and its governing body in state constitutional provision limiting ability of local governments to impose, extend, or increase any general tax did not indicate that term "local government," as used in provision, included the electorate and that provision would therefore apply to voter initiatives; separate references to government and its governing body did not imply the absence of a meaningful distinction between the government and the public it served, distinction between electorate and governmental entities was identified elsewhere in provision, and term "local government" plausibly referred to the entire organization constituting local or regional governmental entity, and not simply a locality's elected officials.

Reference to voters' initiative power in Proposition 218, which prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election, did not demonstrate that voters knew initiative power could affect local taxes and that voters intended to subsume tax-related initiatives within ambit of Proposition, and thus reference to initiative power did not support restricting power by requiring that tax-related initiatives be first submitted to electorate at a general election, rather than special election; Proposition did not place any limitations on initiative power, and inferring a calculated decision to squelch voters' initiative rights would improperly embrace presumption against initiative power.

Constitutional provision added by voter initiative that limited ability of local governments to impose, extend, or increase any general tax did not indirectly encompass imposition of taxes by the electorate via initiative; fact that voters' approval acted as precondition to a tax measure becoming operative did not transform voters into "local government" referenced in constitutional provision, and there was no indication that requirement under provision that general taxes be submitted to voters at a regularly scheduled general election was intended to apply to electorate's initiative power.

Term "impose" in constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election meant to establish, not to collect, and thus city was not precluded from collecting a general tax imposed via voter initiative unless and until tax was approved by voters at regularly scheduled election, rather than special election; ordinary meaning of "impose" was "to establish," and construing "impose" as meaning "to establish" was consistent with usage in relevant ballot materials.

Requirements of constitutional provision prohibiting local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election apply only when a local government seeks to impose, extend, or increase a general tax.

Requirement under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate's approval in a manner consistent with statute setting forth local government's duty with respect to voter initiatives whose proponents request a special election; a contrary conclusion would work an implied repeal of statute, something against which courts have a strong presumption.

Clear evidence that constraining exercise of voters' initiative power was intended purpose of constitutional provision limiting ability of local governments to impose general tax, rather than evidence that voters intended to exempt initiative power from provision as precondition for preserving that power in unencumbered form, was necessary to construe provision as applying to tax-related voter initiatives; court had obligation to protect and liberally construe initiative power and to narrowly construe provisions that would burden or limit its exercise, and clear statement rule was consistent with and appropriately advanced duty to safeguard exercise of initiative power.

City's unilateral determination that proposed voter initiative imposing a charge on medical marijuana dispensaries constituted a general tax and was therefore governed by constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election did not relieve city of its obligation to adhere to statute setting forth local government's duty with respect to voter initiatives whose proponents requested a special election; deadlines under statute were mandatory, and proposed initiative was not a tax measure on its face, given that it purported to propose a fee.

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## **TAX - VERMONT**

### **[Rutland County Parent Child Center, Inc. v. City of Rutland](#)**

**Supreme Court of Vermont - September 1, 2017 - A.3d - 2017 WL 3821833 - 2017 VT 81**

Privately owned parent-child centers sought review of city tax assessor's determination that centers did not qualify for the public-use exemption from property taxation.

After a bench trial, the Superior Court determined that centers qualified for the exemption. City appealed.

The Supreme Court of Vermont held that:

- Centers were wholly dedicated to public use;
- Centers directly benefited an indefinite class of persons; and
- Centers conferred a benefit on society as a result of the benefit conferred on the persons directly served, as required as part of the test for whether a property qualified for a public-use exemption from property taxation.

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## **[The Week in Public Finance: Latest Repeal and Replace Proposal Still](#)**

## **[Damaging for States, Pennsylvania's Downgrade and More.](#)**

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

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 22, 2017

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## **[S&P: Florida Hospitals Show Resiliency Before, During, And After Hurricane Irma.](#)**

Given their location, many Florida hospitals and senior living communities have experience dealing with hurricanes and other severe weather events, and they have very detailed disaster preparedness plans they can initiate in anticipation of a major storm such as Hurricane Irma, which recently roared up the state.

[Continue Reading](#)

Sep. 19, 2017

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## **[S&P: An Overview Of U.S. Federal Disaster Funding.](#)**

When disaster strikes, the cost of clean-up can be enormous, creating an unexpected expense for governments and individuals. In the U.S., there are several sources of federal aid grants to help with rebuilding, but for many, the process of accessing these funds is a mystery.

[Continue Reading](#)

Sep. 19, 2017

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## **[S&P: Cyberattacks Pose A Real, If Varying, Credit Risk Across U.S. Public Finance Sectors.](#)**

The recent cyberattack on the personal credit scoring company Equifax has exposed personally identifiable information of over 140 million people in the U.S. and more in Canada and the U.K. Although this breach might not be directly connected to U.S. public finance (USPF) organizations, the broad media coverage has further elevated the public's cyber risk literacy.

[Continue Reading](#)

Sep. 20, 2017

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## **[S&P: How Durable Is California's Fiscal And Credit Recovery?](#)**

California's economy is dynamic and capable of strong growth rates. Additionally, the state's upwardly skewed income distribution and progressive tax structure combine to amplify the effects of economic and financial market fluctuations in its revenue performance.

[Continue Reading](#)

Sep. 21, 2017

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## **[Someone Left the Crayons Out, and Now the Tax Lawyers Are Drawing Pictures](#)**

Timing, as they say, is everything. The tax-exempt bond rules are full of deadlines and sunsets, both before and after the issue date and before and after the project is finished. [Here is a diagram of how some of these rules work together](#). It's by no means exhaustive, but certainly exhausting. Maybe you'll find it helpful; it's designed to be printed on 11 x 17 paper, for those who prefer the analog version, and it's suitable for framing for those who have empty space on their office walls. We'll update it from time to time. Enjoy.

**The Public Finance Tax Blog**

**By Johnny Hutchinson on September 21, 2017**

**Squire Patton Boggs**

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## **[As Flood Risks Intensify, Stormwater Utilities Offer a More Resilient Solution.](#)**

The 2017 hurricane season is not yet complete, but Houston's damage from [Hurricane Harvey](#) and Florida's fallout from [Hurricane Irma](#) have already left a severe economic and environmental toll. Yet as disaster turns to recovery in each state, the storms serve as national reminders of resilience challenges facing the [country's most flood-prone areas](#) and the need to help them. [Federal recovery efforts](#) are not only receiving more scrutiny, but state and local strategies are also gaining more attention, including [adaptive measures and investments in resilient infrastructure](#).

Flood risks are not just limited to severe storms, though. The ways in which planners, engineers, and other leaders manage and design cities every day plays a huge part too. [Houston's urban sprawl](#) over the past few decades, for instance, exposed its most vulnerable households to greater dangers. Meanwhile, aging infrastructure systems designed to handle excess flows of water—and even daily rainfall—[failed to protect the environment or mitigate flood risks](#).

[Continue reading.](#)

**The Brookings Institute**

by Joseph Kane and Ranjitha Shivaram

Thursday, September 21, 2017

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## **[MSRB Identifies Compliance Considerations for Municipal Securities Dealers.](#)**

As part of the MSRB's long-term commitment to facilitating compliance with municipal market rules, the Municipal Securities Rulemaking Board (MSRB) today published this [Compliance Advisory for Brokers, Dealers and Municipal Securities Dealers](#). The compliance advisory serves as a reference tool for municipal securities dealers seeking to proactively address compliance risks and assess the effectiveness of their compliance programs.

The MSRB actively engages with the dealer industry throughout the year to inform the development of this annual compliance advisory. Our advisory flags important factors for dealers to consider when evaluating the adequacy of their supervisory controls. Taking appropriate steps to address compliance risks benefits municipal securities dealers, their clients and, ultimately, investors and public confidence in the municipal securities market.

This June, the MSRB published a similar [compliance advisory for municipal advisors](#) to support their efforts to comply with new and existing standards of conduct. Additional compliance resources, including interpretive guidance, educational webinars and interactive, rule-based MuniEdPro® courses, are available on the [MSRB's website](#).

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## **[CDFA Announces Winners of 2017 Excellence in Development Finance Awards.](#)**

The CDFA Excellence in Development Finance Awards recognize outstanding development finance programs, agencies, leaders, projects, and success stories. These awards honor excellence in the use of financing tools for economic development, as well as the individuals who champion these efforts. These awards honor creative use of development finance tools such as bonds, TIF, tax credits, and access to capital. The awards also honor the cutting edge use of development finance tools to support innovation and development. These awards honor individuals and agencies alike to build a distinguished and recognized development finance industry.

### **CDFA Distinguished Development Finance State Agency Award** [New Jersey Economic Development Authority](#)

The CDFA Distinguished Development Finance Agency Award (State Agency) is presented to an outstanding state development finance agency. This year's honor is bestowed to New Jersey Economic Development Authority. As an independent and self-supporting state entity, the New Jersey Economic Development Authority works every day to broaden and expand the state's economic base. They have succeeded in creating public-private partnerships to provide access to capital in the New Jersey business community. In addition to supporting entrepreneurial development through training programs, they also provide access to funds for both small and mid-size businesses as well as non-profits for development. Particular projects that really emphasize the EDA's work include the Strand Theater in Lakewood and the Technology Centre of New Jersey in North Brunswick Township, to name a couple.

### **CDFA Distinguished Development Finance Local Agency Award** [Redevelopment Authority of the City of Milwaukee](#)

The CDFA Distinguished Development Finance Local Agency Award is presented to an outstanding

local development finance agency. This year's honor is bestowed to the Redevelopment Authority of the City of Milwaukee. Since 1958, the Redevelopment Authority of the City of Milwaukee, an independent corporation in Wisconsin, has succeeded in being a leader in the field of economic development. Over the years they have issued over \$500 million in bonds in an effort to eliminate blighting conditions that inhibit neighborhood reinvestment, promote business expansion and job creation, and facilitate new business and housing development. The Redevelopment Authority has participated directly in many projects and have promoted and attracted development in both stable and marginal markets and have created model solutions for complex challenges in real estate and environmental development. .

### **CDFA Excellence in Development Finance Program Award**

[Development Finance Authority of Summit County](#)

The CDFA Excellence in Development Finance Program Award is presented to a development finance agency that has implemented an innovative new or particularly successful program. This year's honor is bestowed to Development Finance Authority of Summit County for their Akron Community Revitalization Loan Fund. The Akron Community Revitalization Loan Fund is a part of the Development Fund of the Western Reserve (DFWR) and is connected to the Development Finance Authority of Summit County. This program has succeeded in providing financing opportunities for business development projects within the distressed and urban areas of Akron, Ohio and was started when the DFWR dedicated \$6.75 million to the program. With the high poverty and unemployment rates in the area, this program is helping to provide loans that are between \$500,000 and \$2 million. The loans have less strict credit requirements, interest rates ranging from 2.5% to 2.75% and more flexibility. From the time that the program began doing business in July, the program now has six projects that are being processed to receive loans.

### **CDFA Excellence in Development Finance Project Award**

[Allentown Neighborhood Improvement Zone Development Authority](#)

The CDFA Excellence in Development Finance Project Award is presented to a development finance agency that has implemented a specific project that has used finance to be transformative. This year's honor is bestowed to Allentown Neighborhood Improvement Zone Development Authority for the City Center Allentown Project. In July of this year, the Allentown Neighborhood Improvement Zone Development Authority (ANIZDA) in Pennsylvania issued \$210 million in tax revenue bonds to refinance a portion of the debt incurred by City Center Investment Corporation in developing the tremendously successful City Center Allentown project. City Center Investment Corporation had completed approximately \$400 million in mixed-use real estate development in the Neighborhood Improvement Zone at that point. Completed and leased projects included 650,000 square feet of class A office space, nearly 100,000 square feet of retail and restaurant space, 237 market rate apartments, and a 170 room luxury hotel. Refinancing a portion of short-term bank loans with long term tax exempt bond financing issued through ANIZDA allowed the developer to continue building new projects within the Neighborhood Improvement Zone. Today, Allentown's resurgence continues as construction is underway on additional City Center Investment Corporation projects including a 142,000 square foot class A office tower, 140 market rate apartments, and co-working space in a vibrant, walkable downtown. The Neighborhood Improvement Zone is a special taxing district created by state law in 2011 that is overseen and managed by ANIZDA.

### **CDFA Excellence in Development Finance Innovation Award**

[Greater Cincinnati Redevelopment Authority](#)

The CDFA Excellence in Development Finance Project Award is presented to a development finance

agency that has implemented a specific project that has used finance to be transformative. This year's honor is bestowed to Greater Cincinnati Redevelopment Authority for their commercial development loan program. The Greater Cincinnati Redevelopment Authority is an economic development agency in Cincinnati, OH that has found success in initiating projects that promote job creation and improve property value. In 2017, the Kresge Foundation invested \$5 million in the Greater Cincinnati Redevelopment Authority to assist in establishing a commercial development loan program that has since begun assisting neighborhood revitalization and transformation through mixed-use and mixed-income projects. This investment has facilitated Cincinnati's ability to make loans to development projects in targeted redevelopment areas. This has allowed the Greater Cincinnati Redevelopment Authority to help break down barriers for entrepreneurs who are setting up local operations. This first of its kind impact investment in a development finance agency will drive urban revitalization and serve disinvested communities, which serves as a model for future engagements between philanthropy and development finance agencies.

The **CDFA Excellence in Development Finance Awards** will be formally presented at the 2017 CDFA National Development Finance Summit, in Atlanta, GA on November 16. In addition to the awards above, CDFA will honor two individuals as recipients of the CDFA Lifetime Achievement Award for their leadership, service, and impact to the industry.

Don't miss your chance to register and get engaged at the **2017 CDFA National Development Finance Summit in Atlanta, Georgia, November 15-17, 2017.**

[Register](#)

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## **TAX - OHIO**

### **[NWD 300 Spring, L.L.C. v. Franklin County Board of Revision](#)**

**Supreme Court of Ohio - September 14, 2017 - N.E.3d - 2017 WL 4081818 - 2017 -Ohio-7579**

Condominium unit owners filed complaints challenging an increase in the valuation of the land underlying the condominiums for tax purposes. The Franklin County Board of Revision adopted the county auditor's appraisal.

Unit owners appealed, and the Board of Tax Appeals adopted the land value in the city schools board of education's appraisal. Unit owners appealed.

The Supreme Court of Ohio held that the Board of Tax Appeals did not abuse its discretion in finding appraisal submitted by city schools board of education more probative of the value of the land.

Board of Tax Appeals did not abuse its discretion in finding appraisal of land underlying condominium complex submitted by city schools board of education more probative of the value of the land than that performed by appraiser hired by unit owners. Board's appraiser's use of comparables in central business district, despite fact that land at issue was outside of such district, reflected the appraiser's opinion that subject property's location was actually better than comparables' location, as appraiser noted that area surrounding subject property commanded higher rents than did those around comparables, and reference to mixed-use comparables comported with highest-and-best-use determination, despite fact that subject property had no commercial tenants.

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## **Disaster Bonds Proposed for Relief from Hurricanes Irma, Harvey.**

WASHINGTON — In the wake of extensive damage caused by Hurricanes Harvey and Irma, the Council of Development Finance Agencies wants Congress to create a new permanent category of federally tax-exempt bonds for disaster rebuilding.

The group is proposing that up to \$20 billion in this special category of so-called disaster recovery bonds be made available for annual issuance for future disaster relief. The bonds should not be subject to state volume caps, it said.

“We’re sort of in the beginning of coalition building,” said Tim Fisher, legislative and federal affairs officer for CDFA. He’s reached out to the Municipal Bonds for America coalition as well as other state and local groups.

Fisher said his group does not want to slow up any special assistance that Congress might enact for rebuilding in Texas, Florida, Puerto Rico, and the U.S. Virgin Islands. Instead, the proposal could be addressed as a part of tax reform.

“I don’t know where we stand on tax reform in terms of tax-exempt bonds, but this might be something that the administration, with its big infrastructure push, might be intrigued by,” Fisher said. “Forward thinking or proactive Republican members might be interested in pushing something like this during tax reform.”

The proposal calls for replicating several temporary programs Congress has created in the wake of other recent natural disasters and the terrorist attack of Sept. 11, 2001.

Following the destruction of the World Trade Center by terrorists, Congress also authorized the issuance of \$8 billion in tax-exempt Liberty Bonds for use in Manhattan.

And after Hurricane Katrina flooded and devastated New Orleans and other parts of the Gulf Coast in 2005, Congress enacted the Gulf Zone Opportunity Act of 2005. That legislation authorized \$14.9 billion in tax-exempt private activity bonds for Louisiana, Alabama and Mississippi. It also provided an additional \$7.9 billion in advance refunding bonds.

In addition, Congress has authorized Hurricane Ike Bonds and Midwestern Disaster Area Bonds for disaster rebuilding in recent years.

“Both the Gulf Opportunity Zone Act of 2005 and the Heartland Disaster Tax Relief Act of 2008 allowed affected states to issue tax-exempt bonds to finance qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster area and below market rate mortgages for low- and moderate-income home buyers,” the nonpartisan Congressional Research Service said in a report.

“There was not, however, a comparable package of tax benefits provided following tropical storm Irene in 2011 or Hurricane Sandy in 2012,” CRS said. “Some general disaster provisions were available for all disasters declared in 2008 and 2009.”

Congressional lawmakers from the Northeast are continuing in their effort to create disaster recovery bonds for rebuilding in the wake of Superstorm Sandy in 2012.

A bill introduced earlier this month by two members of the House Ways and Means Committee

proposes \$10 billion in qualified disaster recovery bonds for disasters between 2012 and 2015.

“Last Congress we had 41 bipartisan cosponsors in the House and 12 members on in the Senate, Timothy Carroll, a spokesman for Rep. Bill Pascrell, D-N.J., said in an email.

Pascrell is an original cosponsor of the bill, the National Disaster Tax Relief Act of 2017 (H.R. 3679) with Rep. Tom Reed, R-N.Y.

In an issue brief released earlier this month, CRS said, “The National Disaster Tax Relief Act (H.R. 3679) proposes a number of temporary tax relief measures for disasters that occurred in 2012, 2013, 2014, or 2015. The bill also proposes additional permanent disaster relief provisions that could be triggered with a federal disaster declaration.”

## **The Bond Buyer**

By Brian Tumulty

09/20/17

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### **[NABL: Disaster Recovery Bonds Proposed.](#)**

he Council of Development Finance Agencies (CDFA) has recommended that Congress create a permanent category of tax-exempt private activity bonds, to be known as Disaster Recovery Bonds, which would support state and local government recovery efforts. The bonds would be similar to Gulf Opportunity Zone Bonds, Midwest Disaster Area Bonds, and Liberty Bonds.

In addition, earlier this month, Representatives Tom Reed (R-NY) and Bill Pascrell (D-NJ) introduced the National Disaster Tax Relief Act of 2017 (H.R. 3679), which would provide tax relief, including bond provisions, for major disasters between 2012 and 2015 and would also provide additional permanent disaster relief provisions, again including bond provisions, that would be triggered by a federal disaster declaration.

The CDFA press release is available [here](#).

H.R. 3679 is available [here](#).

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### **[The Bond Lawyer: Summer 2017](#)**

The Summer 2017 issue of *The Bond Lawyer*® is now available. [Click here](#) to download the document.

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members and associate members of the Association. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

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## **TIFIA and P3 - Infra Without Undue Fiscal Leverage**

Kroll Bond Rating Agency (KBRA) has released a macro-market research report titled, “TIFIA and P3 - Infra Without Undue Fiscal Leverage.” The key points made in the report are:

- In the wake of Hurricanes Harvey and Irma, the vulnerability of critical infrastructure assets is once again the focus of policymakers across the U.S. and beyond.
- Slow growth in resources available to support necessary infrastructure has resulted in a significant underinvestment in critical infrastructure.
- TIFIA, or Transportation Infrastructure Finance and Innovation Act, is a Federal credit program that has been particularly successful in helping leverage existing resources and accelerating the delivery of infrastructure projects.
- KBRA has been increasingly active in these public and project finance transactions. Infrastructure challenges concern KBRA’s sovereign group, given the importance to macro and fiscal policy developments.

Please click on the link below to access the report:

[TIFIA and P3 - Infra Without Undue Fiscal Leverage](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **SIFMA Annual Meeting.**

OCTOBER 23-24 | JW MARRIOTT | WASHINGTON, DC

The Capital Markets Conference convenes in Washington, D.C. next month for candid one-on-one conversations and in-depth breakout sessions with more than 50 expert speakers.

We’re excited to announce this year’s [program](#), featuring conversations with Congressman Kevin Brady (R-TX), Chairman of the House Ways & Means Committee; SEC Chairman Jay Clayton; CFTC Chairman J. Christopher Giancarlo; Abigail Johnson of Fidelity Investments; David Solomon of Goldman Sachs; and Warren Stephens of Stephens Inc.; plus eight panels and in-depth breakout sessions on today’s most salient issues including tax reform, cybersecurity, financial regulation and more.

700+ financial industry leaders, policymakers and regulators will be there.  
Will you?

[Click here](#) to learn more and to register.

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## **EPA Approves Expedited Loan Funding for Harvey-Related Water Projects.**

AUSTIN - The Environmental Protection Agency this week approved a request from Texas officials to expedite funding to help local governments restore water and wastewater systems damaged by Hurricane Harvey.

The Texas Water Development Board, which administers an EPA low-interest loan program for the state, asked the federal agency in a Sept. 1 letter for the flexibility to quicken loan distribution procedures. In the letter, the board said loan money could serve as a bridge to meet immediate recovery needs for damaged water systems while local governments wait for other federal aid.

“We’re trying to be another party getting funds to communities when they need them,” said Jessica Zuba, the deputy executive administrator of water supply and infrastructure at the TWDB. “In the past, there’s been a feeling that federal funding can take quite a bit of time lag. We wanted to ... use our capacity and funds and bridge some of that time.”

Zuba said the board is reaching out to several cities where Harvey’s flooding impacted water infrastructure — such as Pearland, south of Houston, and Rose City, outside Beaumont — to talk about recovery funding needs.

Harvey’s flooding had a sweeping impact on water systems across Texas. At least [five public drinking systems](#) throughout the state were destroyed by flooding, and 14 systems remain inoperable, according to the Texas Commission on Environmental Quality. At least [31 waste water facilities](#) are inoperable.

The Texas Water Development Board has about half a billion dollars in loan capacity through the [Clean Water State Revolving Fund](#). This fund has historically provided low-interest loans to cities, districts and other water authorities to finance wastewater infrastructure. But its scope was expanded last year to include more stormwater projects, potentially meaning a large portion of it could be distributed for post-Harvey infrastructure proposals.

“There’s a need right now for the interim financing to get communities back online and back serving their customers, and there’s also: ‘How do we prepare for the next disaster?’” Zuba said.

The fund’s large loan capacity could be used for long-term stormwater resiliency projects, Zuba said. This could appeal to cities looking to finance the initial phases of large-scale infrastructure projects and then later rely on federal funding from agencies such as FEMA to continue construction.

Since last August, the TWDB has approved three non-Harvey-related stormwater projects, totaling about \$35.5 million. The city of Houston has a \$47 million loan application pending to finance stormwater control infrastructure including extensions for flood reduction along Brays Bayou. The city filed this application before Hurricane Harvey hit, and the board expects to review it in October. The TWDB anticipates more applications from Harris County, which includes Houston, as the country’s storm recovery plans solidify.

The TWDB has sought assurance from the EPA that its loan financing would not make water projects ineligible for future federal grants as rebuilding from Harvey continues.

Gov. Greg Abbott also got behind the board’s request to get infrastructure funding to communities as quickly as possible. He sent his own letter to EPA chief Scott Pruitt, asking for streamlined loan options.

Zuba said it is hard to speculate how many loans applications the TWDB might receive but that volume is expected to increase and cooperation with the federal government is making the process easier.

“The flexibility that the EPA is willing to work with us is a great achievement,” she said.

**The Texas Tribune**

by Katie Riordan

September 15, 2017

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## **[South Dakota Supreme Court Rules in Favor of Remote Retailers; Next Step US Supreme Court?](#)**

Yesterday, the South Dakota Supreme Court released its much-anticipated opinion in the *Wayfair* litigation, affirming a March 2017 trial court decision granting the remote retailer's motion for summary judgment on the basis that the economic nexus law enacted in 2016 (SB 106) is unconstitutional and directly violates the US Supreme Court's dormant Commerce Clause precedent in *Quill Corp. v. North Dakota*.

The South Dakota litigation remains at the front of the pack of a host of state court cases challenging similar state economic nexus laws across the United States. The expedited review (and decision) by the South Dakota Supreme Court here is significant, and puts the litigation well within the range of cases that would be decided by the end of the October 2017 Term (*i.e.*, by July 2018), assuming cert is granted—which is by no means a guarantee. The state has 90 days to file a cert petition with the US Supreme Court, which can be extended upon request. Stay tuned, as this litigation is far from over and the sitting US Supreme Court will be tasked with deciding whether they will honor Justice Kennedy's request to bring a case before the Court in *DMA v. Brohl*.

The full South Dakota Supreme Court opinion is available [here](#).

Last Updated: September 19 2017

Article by Stephen P. Kranz, Mark Yopp and Eric Carstens

### **McDermott Will & Emery**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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## **[BDA Comment Letter to the DOL: Supporting an Extended Transition Period](#)**

The DOL published a [proposed rule](#) to extend the transition period for the Department of Labor Fiduciary Duty Rule. The proposal would delay the applicability dates for the Best Interest Contract Exemption and the Principal Trading Exemption until July 1, 2019.

### **BDA Comment Letter**

BDA submitted a comment letter on Friday, September 15th. The letter can be read [here](#). The letter references and echoes the letter BDA sent to the DOL on August 7th. Both letters support an extended transition period.

BDA urges the DOL to continue its review per the directive of the February 2017 Presidential Memorandum and to coordinate with the SEC on a harmonized best interest standard of care for all

retail investment accounts.

## **Bond Dealers of America**

September 18, 2017

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### **[Expanding Community Development Financial Institutions.](#)**

#### **Abstract**

Community development financial institutions (CDFIs) provide capital to strengthen communities that are experiencing economic distress or are underserved by mainstream lenders. We find that CDFIs lent more than \$34.3 billion between 2011 and 2015, roughly \$6.8 billion a year. Sixty-four percent of CDFI lending went to census tracts with one or more indicators of being underserved or distressed. But CDFI activity was not distributed equally across the country, even among economically comparable places. To expand its reach into underserved communities where it has yet to establish a strong presence, the CDFI industry needs further supports.

[Download PDF](#)

#### **The Urban Institute**

by Brett Theodos & Eric Hangen

September 19, 2017

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### **[Recent Hurricanes Strain U.S. Towns' Aging Sewer Systems.](#)**

***Harvey and Irma caused untreated sewage to be released into streets, rivers and homes of affected towns and counties***

In the days after Hurricane Irma slammed Brunswick, Ga, most businesses and restaurants were shut down. The problem wasn't just flooding or hurricane damage, it was also untreated sewage mixing with floodwater, seeping out of manholes and overwhelming an aging system of pipes and pumps.

Residents were asked not to take showers, wash dishes or flush toilets for four days, and schools were closed for more than a week. Crews, facing extensive power outages, worked to bring the sewage system back online in order to restore service.

Downtown sandwich shop Wrap Happy had no damage or flooding, but lost days of business because the water and sewer restrictions made it difficult for evacuees to return home and kept life from getting back to normal.

"It shut down our customer base," said Taneka Beasley, whose family owns Wrap Happy. "We took a really big hit financially."

The Brunswick-Glynn Joint Water & Sewer Commission, which serves about 30,000 residential and

commercial sewer customers and treats about 8 million gallons of wastewater a day, said on its website that the area saw widespread sewer overflows but the wastewater “contained very dilute and minimal human waste.”

Hurricanes Harvey and Irma killed dozens of people, destroyed thousands of homes, and caused flooding that has lasted weeks in some cases. They also exposed the failings of aging sewer systems that were unable to cope with the heavy rainfall and flooding. As a result, many released untreated sewage into streets, rivers and homes of affected towns and counties.

Local governments in Florida have filed more than 250 notices of pollution with state regulators in the days since Irma made landfall in southwest Florida. In Texas, two wastewater treatment facilities in Harris County were destroyed by Harvey, and eight others remain nonoperational in five counties including Harris three weeks after the record-setting rainfall.

It is impossible to design sewage treatment facilities that can handle every storm, experts said, and recent hurricanes have delivered unprecedented rainfall and flooding in some areas.

But the recent storms magnified a problem that occurs regularly across the country albeit on a smaller scale: sewage spills from overburdened and underfunded wastewater treatment systems.

“We’re still in a place where there’s not enough funding to really take care of this underground infrastructure,” said Rebecca Shelton, an Atlanta-based member of the American Society of Civil Engineers specializing in wastewater treatment.

Sewage spills can contaminate drinking water, kill fish and close beaches to swimmers. The Environmental Protection Agency, which regulates water quality under the federal Clean Water Act of 1972, said that while sewage spills have significantly decreased over the last 40 years, 23,000 to 75,000 sewer overflows still occur in the U.S. every year.

The EPA works with states to provide low-cost loans to municipal treatment plants for capital and environmental projects, and last year awarded \$7.6 billion in funding. But the brunt of operation and infrastructure costs for the nation’s sewer systems are paid by customers.

Most American wastewater treatment facilities are operated by local governments as public utilities that charge rates based on usage, said Matt Fabian, partner at the research firm Municipal Market Analytics. Costs have increased in recent years as sewage systems grapple with meeting new federal environmental regulations and more consistent or extreme weather events as well as regular maintenance costs, he said.

Municipal bond sales for water and sewer projects have increased sharply in recent years, topping \$37 billion last year compared with \$22 billion in 2013, Mr. Fabian said.

“I wouldn’t say that governments are ignoring the water and sewer problem,” he said. “It is a major issue if you ask any mayor. But there’s so many competing priorities.”

Residential sewer bills, which consistently outpace water costs, soared from about \$22 a month in 2004 to more than \$42 in 2016, according to surveys by the American Water Works Association, a nonprofit organization of water supply professionals.

“One of the real pressures that governments are facing is that water and sewer rates are not progressive. They’re the same regardless of what your income is,” Mr. Fabian said.

In Georgia’s southeastern Glynn County, residents complained of untreated sewage seeping out of

manholes and mixing with floodwater. Evacuee Elle Hammarlund Woodcock stayed several days longer than she planned at her daughter's house in Enterprise, Ala., to avoid coming in contact with untreated sewage. The ground level of her home flooded and she said she was worried about what the waters may have contained. "I'm wiping everything down," she said, "with bleach."

Some components of the Glynn County sewer system date back to the 1940s, such as clay sewer pipes that are more vulnerable to leaks that let in groundwater and overwhelm treatment plants, said Todd Kline, director of engineering for the Joint Water & Sewer Commission.

Irma brought rainfalls of up to 10 inches of rain to parts of Georgia. Brunswick received 6 inches of rain, according to the National Oceanic and Atmospheric Administration, and average rainfall in Glynn County was more than 9.4 inches, according to National Weather Service estimates.

"Every drop of water that gets into the pipes—be it groundwater or storm water—you're pumping that and you're treating that unnecessarily," Mr. Kline said. "Every drop of water takes up capacity."

Extensive power outages are also a contributing factor to sewage overflows during storms, because pumping stations lose power and are unable to transport wastewater to the treatment plant.

Glynn County Commission Chairman Bill Brunson said sewer infrastructure faltered for a combination of reasons. Heavy rainfall from Irma as well as earlier storms strained a system already overburdened by fast and dense residential development, and maintenance of the system had been neglected for decades, Mr. Brunson said.

"Politicians don't typically spend money on infrastructure," he said. "It's just easy to ignore."

THE WALL STREET JOURNAL

By Kate King and Valerie Bauerlein

Sept. 20, 2017 5:30 a.m. ET

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## **[States Need \\$645 Billion to Pay Full Health-Care Costs.](#)**

### ***New accounting guidelines urge local governments to put their full health costs on their balance sheets***

When Aurora, Ill., closed its books last December, about \$150 million disappeared from the city's bottom line.

The Chicago suburb of 200,000 people hadn't become poorer. Instead, for the first time it recorded on its balance sheet the full cost of health care promised to public employees once they retire.

States and cities around the country will soon book similar losses because of new, widely followed accounting guidelines that apply to most governments starting in fiscal 2018—a shift that could potentially lead to cuts to retiree health benefits.

The new Governmental Accounting Standards Board principles urge officials to record all health-care liabilities on their balance sheets instead of pushing a portion of the debt to footnotes.

The adjustments will show that U.S. states as a group have promised hundreds of billions more in retiree health benefits than they have saved up. The shortfall amounts to at least \$645 billion, according to a new report from the nonprofit Pew Charitable Trusts based on 2015 data. That is in addition to the \$1.1 trillion that states need to pay for promised pension benefits, according to Pew.

The new level of transparency around retiree health expenses for public workers could lower municipal-bond prices and force new decisions to reduce or scrap retiree health benefits as a way of coping with ballooning future costs, some analysts and researchers said. "I think the market has understated the concern," said Richard Ciccarone, president and chief executive of Merritt Research Services LLC, a research firm that tracks municipal bonds.

Rising retiree health-care costs are compounding government pressures when many state and local officials are struggling to manage their ballooning pension liabilities and balance their budgets. Waves of baby boomers are already wrapping up their working lives, and expenses are expected to rise in coming years.

"By not dealing with it, we could be setting ourselves up for a very unwelcome surprise," said New York State Comptroller Thomas DiNapoli.

The change will lower bottom lines by tens of billions for some state governments. In New York, the state's health-care liabilities as reported on its balance sheet will jump to \$72 billion once the new accounting rules are in place, up from \$17 billion. That new total would be 10 times the state's pension liabilities, Mr. DiNapoli's office said.

Mr. DiNapoli said New York has been upfront with bond-rating firms about its retiree health liabilities, but he hopes the new numbers will provide a wake-up call for policy makers. For the last decade, he has helped draft legislation annually that would establish a fund to set money aside for retiree health costs, but he said those bills have stalled.

"If you can put money towards a school or a senior center today, that has a lot more appeal," Mr. DiNapoli said.

Most states have almost no money saved up for future retiree health-care costs and treat the benefits as an operating expense. States had just \$48 billion in assets set aside as of 2015, compared with \$693 billion in liabilities, according to Pew.

One state that has been setting aside more is Michigan, where retiree health-care liabilities have dropped by roughly \$20 billion since 2012 partly because of added state payments. The state also stopped offering retiree health care to new employees, instead contributing an additional 2% of salary to their defined-contribution plans to limit the state's exposure to rising health costs.

"It's transferring the risk for those inflationary items from the state to the employees," said Kerrie Vanden Bosch, director of Michigan's Office of Retirement Services.

Even so, states' retiree health obligations are still much smaller than future pension promises, which are already reported this way. Even if states were to start setting aside money for future costs, annual state spending on retiree health care would still be just 3.4% of expenditures, compared with 1.4% today, according to a study by the National Association of State Retirement Administrators and the Center for State and Local Government Excellence.

States that want to bring their liabilities down will likely face fewer legal hurdles to benefit cuts than they have with public pensions, which enjoy ironclad legal protections in many states. Courts have often upheld employers' rights to increase health-care costs and reduce coverage unless the benefits

are laid out in explicit detail in a collective-bargaining agreement or protected by a state constitution, said University of Minnesota Law School Professor Amy Monahan.

“It’s going to be really hard to prevent those changes,” Ms. Monahan said.

Among more than 80 state and local governments surveyed last year by Segal Consulting, 57% said they were somewhat or very likely to reduce benefits in response to the new accounting standards. The guidelines aren’t mandatory, though they are widely followed and ignoring them can complicate audits.

The American Federation of State, County and Municipal Employees, which represents public-sector workers, opposed the new Governmental Accounting Standards Board guidelines. It said in a comment letter that “implementing new standards during a fragile recovery may lead to hasty and unwarranted decisions about retiree health benefits.”

“If you’re going to tell people that you’re going to give the best years of your life as a firefighter or cop, you have to figure out a way to bridge those people to Medicare,” said Steven Kreisberg, director of research and collective bargaining for the union. “These are manageable expenses, if you want to manage them.”

THE WALL STREET JOURNAL

By Heather Gillers

Sept. 20, 2017 5:30 a.m. ET

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## **[Judge Affirms Limited Power of States and Cities Over Drones.](#)**

***The ruling was a defeat for Newton, Mass., which banned people from flying drones below 400 feet over private property.***

A federal court in Massachusetts has struck down key elements of a local drone ordinance that had significantly restricted where residents could fly the devices, affirming the limited power of cities and states to regulate unmanned aircraft.

The ruling was a defeat for the city of Newton, which enacted an ordinance in December that restricted flights of pilotless aircraft weighing less than 55 pounds. The city said the rules were meant to address safety and privacy concerns about the proliferation of drones in the area.

In January, Newton resident Michael Singer sued the city, seeking to strike down four provisions of the law. Among them were a requirement that drone owners register their aircraft with Newton and a ban on flying drones below an altitude of 400 feet over private property without permission of the property owner.

Citing Federal Aviation Administration guidance, lawyers for Newton said localities are allowed to “co-regulate unmanned aircraft” and argued that the city’s ordinance was “within the bounds of its municipal police powers.”

But U.S. District Judge William G. Young of Massachusetts disagreed, ruling that the ordinance was

in direct conflict with federal government's drone policies mandated by Congress.

Such a collision between local and federal rules, he wrote, violates a provision of the U.S. Constitution that gives federal law priority over conflicting state or local regulation.

"Newton's choice to restrict any drone use below this altitude thus works to eliminate any drone use in the confines of the city, absent prior permission," wrote Judge Young. "This thwarts not only the FAA's objectives, but also those of Congress for the FAA to integrate drones into the national airspace."

The ruling leaves in place other provisions of the ordinance that Mr. Young didn't challenge, such as a prohibition on operating drones in reckless manner or using them to spy on people.

On Friday, the Law Department for Newton said the city is considering its appeal options.

Mr. Singer, a physician-scientist, said the decision helps to "ensure that the skies would remain open for new technology that would benefit society." He said that at the time the ordinance was passed, he was researching ways of using drones for delivering medical services.

A number other local jurisdictions in the U.S. have imposed or considered similar clamp downs on drones, such as West Hollywood in California and the Florida town of Palm Beach, which is rewriting its drones rules to avoid the same legal concerns Newton faced.

The Consumer Technology Association, which supported Mr. Singer's case, said the ruling makes clear that the FAA, and not local jurisdictions, has the final say over who can fly drones and where and when they can do so.

"This decision establishes a rock-solid affirmation that the federal government unequivocally holds jurisdiction over the drone industry," said Doug Johnson, vice president of technology policy for the association.

THE WALL STREET JOURNAL

By Jacob Gershman

Sept. 22, 2017 7:32 p.m. ET

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## **[New Fight in California Water Wars: How to Update Old System](#)**

FRESNO, Calif. — In California's long-raging water wars, pitting north against south and farmer against city dweller, the one thing everybody agreed on Wednesday was that the outdated method of shipping water throughout the most populous state needs a serious upgrade.

A group of influential California farmers shook up the debate a day earlier, backing out of Gov. Jerry Brown's \$16 billion plan to build two massive water tunnels, re-engineering the delivery system. Westlands Water District in Fresno said it was too expensive and came with too few guarantees.

Brown's administration, however, gave no sign of giving up. Other key water districts serving vast farmland in the most productive agricultural state and millions of residents still have to weigh in,

including the behemoth Metropolitan Water District of Southern California.

"I don't think a 'no' vote is the end of the story," said Metropolitan's general manager, Jeffrey Kightlinger. "We don't live in a world where we can just turn off the projects and walk away."

Kightlinger sees a path to launch the project before Brown leaves office next year. It's impossible to predict what form it will take before all the water districts have voted on whether they're in or out.

The proposed 35-mile-long (56-kilometer-long) tunnels, however, can't survive as it's drawn up now without "big players," such as Westlands, said Kightlinger, who entertains the possibility of a scaled-down project.

Current plans call for building twin tunnels east of San Francisco to deliver water from the Sacramento River mostly to farms and cities hundreds of miles away in central and Southern California.

Backers say the tunnels will stabilize flows, save endangered fish species and ensure a reliable water supply. However, critics say it will be used to drain Northern California dry and further harm native fish.

It is California's most ambitious water project in more than 50 years, when state and federal officials launched a hard-fought campaign to win support for building the current system of reservoirs, pumping stations and canals.

Westlands farmers on Tuesday became the first of several large water districts to vote, pulling out after having spent millions over more than a decade on drawing up plans and calculating costs.

The shake-up forced a big moment for the players to take stock of the whole water system, said Jay Lund, a leading state water expert at the University of California, Davis.

"It's a strategic opportunity to make a strategic political decision," he said.

Among the options are building a single tunnel to serve just municipal districts rather than two, in what Lund called the "garden hose" option, or burrowing one now with the option for a second one later, if it's needed.

The Sacramento-San Joaquin River Delta is such a vital water source for California that somebody will always be advancing projects, Lund said.

In Northern California, the source of much of the state's water, Westlands' vote won cheers from farmers who have fought the project for years.

They contend the tunnels, and their decadelong construction, would have further harmed the delta and San Francisco Bay, destroyed their farms and doomed many sleepy Gold Rush-era towns.

"Does this project end with that vote? I don't know," said Russell van Loben Sels, speaking by cellphone Wednesday from his vineyard where one of the giant water intakes for the tunnels would go. "There'll be a lot of politics and a lot of arm-twisting and that kind of thing."

Brown's Natural Resources secretary, John Laird, said Wednesday that there's broad agreement water deliveries will keep declining without upgraded infrastructure.

"While it's too soon to speculate on potential changes to the project," he said, "the state will

continue to consider how best to meet the needs of the agencies” that want to participate.

U.S. Rep. John Garamendi, a Democrat from the delta, said it was a matter of time before central California farmers, such as those who are part of Westlands, realized that high cost and uncertainty would crush the project.

The Democratic governor had floated a similar plan during his first two terms as governor, aiming to build a canal around the delta to ship water south. Brown could not let go of it, said Garamendi, who seeks more water storage and fortifying levees.

“It just takes a long time for bad, old ideas to finally die,” Garamendi said. “Hopefully we can move onto cheaper, more effective solutions.”

Another major supporter that has yet to vote, Kern County Water Agency, called it a good project.

“I do think if we don’t go ahead (with the tunnels), California in 20 years will look back on this as a mistake,” general manager Curtis Creel said.

By THE ASSOCIATED PRESS

SEPT. 20, 2017, 9:06 P.M. E.D.T.

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## **[A Storm's Never Destroyed a Grid Like Maria Ruined Puerto Rico's.](#)**

- **Parts of island may be without power for weeks, if not months**
- **Utility crews will restore service to critical resources first**

You don’t even have to leave the airport to see that Hurricane Maria has laid waste to Puerto Rico’s power grid.

On Friday, the San Juan airport was abandoned. No electricity meant no air conditioning, and no air conditioning meant hot and muggy air wafting through the terminals. Ceilings were leaking. Floors were wet. Only the military, relying on its own sight and radar systems, was landing planes. The airport is one of the first places crews will restore power — whenever they can get to it. Hundreds are still waiting for the all-clear to move in and start the arduous task of resurrecting Puerto Rico’s grid.

The devastation that Maria exacted on Puerto Rico’s aging and grossly neglected electricity system when it slammed ashore as a Category 4 storm two days ago is unprecedented — not just for the island but for all of the U.S. One hundred percent of the system run by the Puerto Rico Power Authority is offline, because Maria damaged every part of it. The territory is facing weeks, if not months, without service as utility workers repair power plants and lines that were already falling apart.

“I have seen a lot damage in the 32 years that I have been in this business, and from this particular perspective, it’s about as large a scale damage as I have ever seen,” said Wendul G. Hagler II, a brigadier general in the National Guard, which is assisting in the response.

No federal agency dared on Friday to estimate how long it’ll take to re-energize Puerto Rico. If it’s any indication of how far they’ve gotten, the island’s power authority known as Prepa is only now starting to assess the damage.

“We are only a couple of days in from the storm — there could be lots of issues and confusion at the beginning of something like this,” said Kenneth Buell, a director at the U.S. Energy Department who is helping lead the federal response in Puerto Rico. “We are in the phase where we have people queued up and lining up resources.”

### **‘Evacuate NOW’**

What Buell does know is Puerto Rico’s power plants seem inexplicably clustered along the island’s south coast, a hard-to-reach region that was left completely exposed to all of Maria’s wrath. A chain of high-voltage lines thrown across the island’s mountainous middle connect those plants to the cities in the north.

Puerto Rico’s rich hydropower resources have also taken a hit. On Friday, the National Weather Service pleaded for people to evacuate an area in the northwest corner of the island after a dam burst. “All areas surrounding the Guajataca River should evacuate NOW. Their lives are in DANGER!” the service said on Twitter.

And that’s not to mention the state of Puerto Rico’s grid before the storm. Government-owned Prepa, operating under court protection from creditors, has more than \$8 billion in debt but little to show for it. Even before the storm, outages were common, and the median plant age is 44 years, more than twice the industry average.

Rebuilding the island’s grid into something more robust will cost billions of dollars, Buell said. “You are talking about a lot of money.”

Buell is a part of what is known as the Emergency Support Function No. 12. That’s another way of saying his team is 12th on a list of groups getting priority access to the island to help with restoration efforts. They’re behind the ones that, among other things, are delivering food and water and carrying out search-and-rescue missions.

### **Essential Services**

One major task for the National Guard will be to clear debris, allowing workers to move around. The biggest priority for utility crews will be to restore power to essential services — the airport, water infrastructure and hospitals, Buell said.

It won’t be easy. The supply chains the island once relied on to shuttle fuel oil and natural gas to generators, supplying the vast majority of the island’s power, have been destroyed. The Energy Department is looking for alternative sources, Buell said.

Some agencies are capable of flying in fuel, and the government may waive a law that limits the tankers permitted to haul oil and liquefied natural gas between U.S. ports to boost shipments to the island.

Once critical resources have regained power, crews will start the long process of getting power plants back up and running and transmission lines reconnected. New York Governor Andrew Cuomo flew in Friday with 10 people from the state’s own public power authority, drones and back-up generators.

A helicopter was scheduled to fly out as soon as Saturday to assess the damage to the system, said Mike Hyland, senior vice president of engineering services for the American Public Power Association, the industry group for municipal utilities.

At this point, “we don’t know what to do if there is no generation,” Hyland said. “You need to see it.”

## **Bloomberg Technology**

By Naureen S Malik and Jonathan Levin

September 22, 2017, 4:31 PM PDT

— With assistance by Michelle Kaske, Sophie Caronello, and Christopher Maloney

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### **[Puerto Rico Bond Prices Fall as Hurricanes Add to Island’s Troubles.](#)**

#### ***Prices have fallen as much as 4% on some bonds issued by the commonwealth or its utilities***

It could take weeks to determine the full extent of the hurricane damage to Puerto Rico, but bondholders are already anticipating losses.

Prices have fallen as much as 4% since Monday on some bonds issued by the commonwealth, its public power company, and its water and sewer authority. Investors were already expecting deep haircuts as the commonwealth makes its way through a federally supervised restructuring process.

“How long will they be missing revenues because of people not getting power?” asked Dan Solender, director of municipals at Lord Abbett & Co. which holds more than \$100 million of Puerto Rico bonds, including some from the power authority.

Even before Hurricane Maria slammed into Puerto Rico early Wednesday, thousands of people had been without electricity for two weeks, since Hurricane Irma passed by the island’s northern coast. But the damage from Maria, the most powerful hurricane to hit Puerto Rico since 1928, is likely to be much more widespread on the island, which is already reeling from a decade of economic distress.

August and September mark peak hurricane season in the Atlantic basin. Here’s why the conditions in these months make them more likely to form there. Photos: NASA/NOAA

Puerto Rico owes roughly \$70 billion to investors, including individuals on both the island and the mainland, to major U.S. mutual funds and, increasingly, to hedge funds. OppenheimerFunds Inc. and Franklin Resources Inc. are the biggest mutual fund holders of Puerto Rico bonds, according to Morningstar Direct.

Depending on the extent of the damage, the hurricane could factor into future decisions by the federal control board on just how much those investors will get paid, said Matt Fabian, a partner with Municipal Market Analytics.

In the aftermath of a natural disaster, “why would a court decide ‘yes, investors, you should take more money off the island?’” Mr. Fabian asked.

But some analysts and advisers to Puerto Rico bondholders also said Wednesday that a massive hurricane recovery effort could help stimulate economic growth on the island. Federal disaster relief funds and insurance money flowing into Puerto Rico could replace outdated infrastructure, and rebuilding could help put people to work, these people said.

THE WALL STREET JOURNAL

By Heather Gillers

Sept. 20, 2017 5:47 p.m. ET

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## **Puerto Rico's Power Woes Are Decades in the Making.**

### ***Years of underinvestment and massive debts left the energy grid vulnerable***

TOA BAJA, Puerto Rico — As residents here grapple with power outages across the entire island, the task of turning the lights back on falls to an electrical utility beset by rickety infrastructure, workforce reductions and financial woes so deep it declared a form of bankruptcy in July.

Earlier this month, Hurricane Irma sideswiped the island, knocking out power to about 70% of the customers of the Puerto Rico Electric Power Authority, or Prepa. The utility had made significant strides in restoring electricity when Hurricane Maria struck on Wednesday, wiping out power to 100% of its customers.

The “damage is catastrophic,” Ricardo Ramos, chief executive of Prepa, said Friday on CNN. He said previously that it could take months for power to be restored across the island.

Residents are bracing for an uncomfortable slog.

“People don’t think there will be light until after Christmas,” said Mara López, a resident of Toa Baja, near San Juan. Electricity “here is really unstable. It’s a system that has not been well-maintained, and every time the wind blows, it falls.”

The prolonged loss of power and disruption to businesses “could delay the economic recovery of the island,” said Rick Donner, vice president and senior credit officer at Moody’s Investors Service. Puerto Rico is contending with a decadelong recession, declining population and \$73 billion in debt. A federal board is overseeing its finances, and in May, the island declared what amounts to the largest-ever U.S. municipal bankruptcy.

Two months later, the federal board voted to place Prepa, which has \$9 billion of debt, in bankruptcy as well. The move was aimed at helping advance plans to modernize the utility and turn it from a government-owned monopoly into a regulated private utility.

Calls and emails to a spokesman for Prepa weren’t returned, though Puerto Rico’s telecommunications system was hobbled by Maria. Periodic updates on the utility’s Twitter feed highlight its efforts to assess damage and begin the process of restoring power.

Prepa’s problems have been decades in the making. Early in its history, it earned praise for powering Puerto Rico’s industrialization efforts in the 1940s and 1950s. But over time, it became less efficient, energy analysts say.

Its generating plants, which rely on imported oil for about 60% of their energy production, are mostly obsolete and require major upgrades or outright replacement, said Miguel Soto-Class, president of the Center for a New Economy, a nonpartisan think tank in San Juan that has done in-

depth analyses of the utility's finances.

Power outages on the island are common. A fire at one of the utility's plants in September triggered a blackout across the island that left many customers without power for days.

Yet prices are high. In April, Prepa's average electricity rate for customers was 20.1 cents per kilowatt-hour, down from 25 cents in 2013 but still close to double the average mainland U.S. rate of about 12 cents, according to Moody's.

Island residents have complained in interviews in recent years about the lengths to which they must go to keep their electricity bills in check. Some said they had limited their use of air conditioners as much as they can tolerate. Others said that they had shut off circuit breakers, except for the one controlling the refrigerator, before heading to work.

For years, Prepa enjoyed easy access to bond markets and borrowed regularly, accumulating enormous debt. Yet it failed to make important capital investments, such as transitioning to natural gas from oil to generate power, analysts say. Analysts say the money went to a bloated payroll, among other things.

When the island sank into recession, Prepa's finances suffered even more, as business and residential demand for power declined. The exodus of Puerto Ricans to the continental U.S. is shrinking the island's population, depleting the utility's customer base. And austerity measures that the utility implemented as it headed toward bankruptcy resulted in cuts to the workforce it now needs to make repairs.

"All these things have compounded, one on top of the other," Mr. Soto-Class said. They "will severely limit the ability of Prepa to come back quickly."

The utility likely will need many resources, such as power poles and lines, that typically aren't stored on the island, said Brock Long, administrator of the Federal Emergency Management Agency. And "even if the power grid is back up and running, getting power to the house is a whole other situation," since homes may have flooded and sustained damage to their electrical systems, he said.

Given that President Donald Trump declared a major disaster in Puerto Rico, the utility could receive federal disaster funds to help finance repairs.

"They're going to need help," Mr. Donner said. "This really is a big task."

THE WALL STREET JOURNAL

By Arian Campo-Flores and José de Córdoba

Updated Sept. 23, 2017 10:33 a.m. ET

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## **[Weakened Dam the Latest Threat as Puerto Rico Reels From Hurricane.](#)**

SAN JUAN, Puerto Rico — A Puerto Rico dam damaged by heavy rains from Hurricane Maria was in danger of failing on Sunday, posing a risk to communities downstream, as people across the U.S.

territory sought to dig out from the deadly storm.

Some 70,000 people who live downstream from the compromised Guajataca Dam in the northwest of the island were under orders to evacuate, with the structure in danger of bursting at any time.

Puerto Rico Governor Ricardo Rossello, after surveying damage to the cracked dam, reiterated his request on Saturday that people leave the area as soon as possible.

“The fissure has become a significant rupture,” Rossello said at a news conference.

The dam, which is made of earth and surrounded by trees in a largely rural region of Puerto Rico, is 120 feet (37 meters) tall, according to a U.S. Army Corps of Engineers database

The National Weather Service extended a flash flood watch for communities along the rain-swollen Guajataca River, downstream from the dam, until 1400 local time on Sunday.

If the dam fails, the flooding would be life-threatening, the National Weather Service warned. “Stay away or be swept away,” it said.

Maria, the second major hurricane to savage the Caribbean this month and the most powerful storm to strike Puerto Rico in nearly a century, carved a path of destruction on Wednesday.

The storm killed at least 25 people, including at least 10 in Puerto Rico, as it churned across the Caribbean, according to officials and media reports.

It knocked out electricity, apart from emergency generators, on Puerto Rico, which has 3.4 million inhabitants.

Severe flooding, structural damage to homes and virtually no electric power were three of the most pressing problems facing Puerto Ricans, New York Governor Andrew Cuomo, whose state is home to millions of people of Puerto Rican descent, said during a tour of the island.

“We lost our house, it was completely flooded,” said resident Carmen Gloria Lamb, a resident near the rain-swollen Guajataca. “We lost everything; cars, clothes, everything.”

The Guajataca Dam was built in 1929 to serve as a supply of drinking water and for irrigation, according to a U.S. Geological Survey website.

## FUEL SHORTAGES AND WATER RATIONING

Signs of the strain on Puerto Ricans were evident throughout San Juan, the capital.

Drivers had to wait up to seven hours at the few filling stations open on Saturday, according to news reports. Hotels, meanwhile, warned that guests might have to leave soon without fresh supplies of diesel to keep generators operating.

Water rationing also began on Saturday. Signs posted throughout San Juan’s Old Town informed residents that service would return for two hours a day between 1700 and 1900 local time until further notice.

Telephone service also was unreliable, with many of the island’s cell towers damaged or destroyed.

Maria struck Puerto Rico as a Category 4 storm on the five-step Saffir-Simpson scale, dealing a savage blow to an island already facing the largest municipal debt crisis in U.S. history.

The storm caused an estimated \$45 billion of damage and lost economic activity across the Caribbean, with at least \$30 billion of that in Puerto Rico, said Chuck Watson, a disaster modeler at Enki Research in Savannah, Georgia.

Maria, which was hundreds of miles east of Florida over the Atlantic Ocean on Sunday, had eased slightly to a Category 2 storm but still sustained winds of up to 110 miles per hour (175 kmh). It was expected to weaken gradually as it moves north over the next two days.

Dangerous surf and rip currents driven by the storm were expected along the southeastern coast of the U.S. mainland for several days, the National Hurricane Center said.

Scattered showers were forecast for Puerto Rico on Sunday, said National Weather Service meteorologist Arlena Moses at the agency's Miami office.

Maria hit Puerto Rico about two weeks after Hurricane Irma, one of the most powerful Atlantic storms on record, killed more than 80 people in the Caribbean and the United States. The two storms followed Hurricane Harvey, which also killed more than 80 people when it struck Texas in late August and caused flooding in Houston.

By REUTERS

SEPT. 24, 2017, 10:42 A.M. E.D.T.

(Writing by Alex Dobuzinskis; Editing by David Goodman)

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## **[Municipal Securities: Financing the Nation's Infrastructure](#)**

The MSRB today released a primer underscoring the role of municipal securities in financing infrastructure.

[Read the primer.](#)

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## **[MSRB Announces Results of Qualifying Examination for Municipal Advisors.](#)**

Washington, DC - More than 3,000 individuals at 505 municipal advisor firms across the country are now qualified to provide advisory services to state and local governments and other clients following implementation of the first mandatory qualifying examination for municipal advisor professionals, the Municipal Securities Rulemaking Board (MSRB) announced today.

"Municipal advisors play an important role in the municipal securities market as trusted experts whose advice can have a profound impact on the financial health of state governments, local communities and other municipal entities," said MSRB Executive Director Lynnette Kelly. "The MSRB's exam is designed to ensure that only those individuals who can demonstrate their knowledge of regulatory standards of conduct and current market practices can hold themselves out as municipal advisor professionals."

Effective September 12, 2017, the MSRB's Municipal Advisor Representative Qualification Examination (Series 50 exam) is a required baseline test of competency for professionals who

provide advice on the issuance of municipal securities or use of municipal financial products.

[Continue reading.](#)

Date: September 21, 2017

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## **[U.S. Muni Bond Market Edges Up to \\$3.837 trln in Q2 - Fed](#)**

NEW YORK, Sept 21 (Reuters) - The U.S. municipal bond market edged up to \$3.837 trillion in the second quarter of 2017 after shrinking slightly during the previous quarter, according to a quarterly report from the Federal Reserve released on Thursday.

U.S. banks' muni bond buying continued to dwindle. Financial institutions added just \$10.2 billion in the second quarter, compared to \$27.3 billion in the first quarter and \$52.9 billion in the fourth quarter of 2016.

Foreign holdings of munis rose to \$98.6 billion, an all-time high, after having fallen the previous quarter for the first time in five years.

Households, or retail investors, held \$1.627 billion, down slightly from \$1.646 billion in the previous quarter, the data showed.

Property and casualty insurance companies added \$5.8 billion of munis in the second quarter after having shed \$8.4 billion in the first quarter. Life insurance companies picked up \$4.2 billion of the bonds.

U.S. mutual funds bought \$48.5 billion of munis while exchange traded funds added \$5.8 billion.

(Reporting by Hilary Russ; Editing by Chizu Nomiyama)

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## **[Moody's Places 37 Texas Municipalities Under Review for Downgrade.](#)**

New York, September 22, 2017 — Moody's Investors Service has placed the general obligation bond ratings of 31 Municipal Utility Districts, four School Districts, and two cities under review for downgrade, affecting \$1.2 billion in outstanding debt. The review was prompted by the potential for significant economic and revenue loss associated with damage caused by Hurricane Harvey and the related rains that inundated the region for several days. The area affected by the hurricane covers 39 FEMA-designated counties in Texas that include over 450 Moody's-rated municipal issuers. The majority of issuers that have been placed under review are smaller entities with concentrated revenue sources and limited financial flexibility.

Moody's identified issuers for review on the basis of their flood exposure, location and, in the case of utility systems and schools, their operating status. Specifically, the rating agency examined the issuers' exposure to flooding based on their proximity to 100- and 500-year flood zones and the

Addicks and Barker reservoirs, and their location relative to the areas identified in FEMA's initial assessment of damage as of September 2, 2017. For those issuers in the most affected areas, the rating agency then considered potentially mitigating financial resources, including cash and reserves from their most recent audited financial statements. Moody's also considered information related to the extent of damage in a given area, including utility systems that were destroyed or rendered inoperable as of September 18, 2017 as reported by the Texas Commission on Environmental Quality (TCEQ) and schools that have not yet opened.

During the review Moody's will consider the credit implications of any economic and revenue loss from the hurricane as well as operating and capital costs associated with recovery. Additionally, Moody's will assess issuers' damage estimates, access to financial resources, including potential for and timing of financial assistance from federal and state sources, private property damage insurance coverage, and business disruption insurance.

The rating agency expects to complete the reviews over the next 60 to 90 days. Moody's will continue to review additional rated entities that were impacted by this unprecedented weather event as information becomes available.

**List of issuers by sector:**

**Municipal Utility Districts:**

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Corinthian Point Municipal Utility Dist 2 Baa3/STA Montgomery County \$1.39M

Cypress-Klein Utility District A1/NOO Harris County \$355,000

Fort Bend Co. MUD 25 A2/NOO Fort Bend County \$100.39M

Fort Bend County M.U.D. 117 A2/NOO Fort Bend County \$16.13M

Fort Bend County MUD No. 128 A2/NOO Fort Bend County \$67.47M

Harris County Municipal Utility District 132 A1/NOO Harris County \$385,000

Harris County Municipal Utility District 153 A1/NOO Harris County \$23.02M

Kleinwood Municipal Utility A2/NOO Harris County \$11.83M

Montgomery County MUD 94 A3/NOO Montgomery County \$33.16M

Montgomery County MUD 95 Baa2/STA Montgomery County \$20.93M

Montgomery County Municipal Utility District 46 Aa3/NOO Montgomery County \$82.91M

Montgomery County Municipal Utility District 9 A1/NOO Montgomery County \$12.11M

Montgomery County Water Control Improvement District 1 A3/NOO Montgomery County \$13.49M

Montgomery MUD 90 Baa2/STA Montgomery County \$8.09M

New Caney Municipal Utility District A3/NOO Montgomery County \$25.17M

Northampton Municipal Utility District A2/NOO Harris County \$28.90M  
Northeast Harris Co. M.U.D. 1 Baa3/STA Harris County \$8.51M  
Oakmont PUD A2/NOO Harris County \$30.05M  
Pecan Grove Municipal Utility District A1/NOO Fort Bend County \$53.34M  
Southern Montgomery County Municipal Utility District Aa3/NOO Montgomery County \$7.56M  
Spring Creek Utility District A2/NOO Montgomery County \$52.12M  
Timber Lane Utility District A2/NOO Harris County \$49.48M  
Varner Creek Utility District Baa1/NOO Brazoria County \$7.46M  
Cnp Utility District A1/NOO Harris County \$15.94M  
Fort Bend Co MUD 144 Baa2/STA Fort Bend County \$15.40M  
Fort Bend County M.U.D. 116 A2/NOO Fort Bend County \$26.34M  
Fort Bend County Municipal Utility District 152 Baa3/STA Fort Bend County \$8.40M  
Fulshear Municipal Utility District No. 1 Baa2/STA Fort Bend County \$13.29M  
Galveston County MUD 14 A3/NOO Galveston County \$9.61M  
Harris County MUD 109 A2/NOO Harris County \$28.39M  
Harris County Water Ctrl. & Imp. Dist.132 Baa1/STA Harris County \$3.80M

**Cities:**

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Port Arthur (City of) A1/NOO Jefferson County \$48.62M

Robstown (City of) Ba2/NEG Nueces County \$16.13M

**School Districts:**

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Ingleside Independent School District Aa3/NOO San Patricio County \$45.03M

Orangefield Independent School District A2/NOO Orange County \$9.36M

Sheldon Independent School District Aa3/NOO Harris County \$280.15M

Taft Independent School District A2/NEG San Patricio County \$28.45M

**Methodology**

The principal methodology used in the ratings was US Local Government General Obligation Debt

published in December 2016. Please see the Rating Methodologies page on [www.moodys.com](http://www.moodys.com) for a copy of the methodology.

## Regulatory Disclosures

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## **Atlantic City Casino Tax Appeal Settlements Covered Through Municipal Bonds.**

Atlantic City reached property tax appeal settlements with numerous casinos last month, and the state government says it's funding the payments through the issuance of municipal bonds.

Bally's, Caesars, Golden Nugget, Harrah's, Tropicana, and the former Trump Taj Mahal and Trump Plaza all reached tax deals that totaled \$68 million, a staggering sum, but also one that saved many millions for Atlantic City. New Jersey says it has already sold \$68 million in state bonds to cover the disbursements, and even better, the debt investments were issued on relatively low interest rates.

State-appointed takeover leader Jeff Chiesa, a former US senator for New Jersey, revealed that the bonds have a 4.1 interest rate, which will save the city and state millions.

**“The fact that the city obtained bond insurance and sold the bonds at a low-interest cost means it is well-positioned to responsibly pay down the tax refunds it owes to casinos while preserving critical public services,” Chiesa explained in a statement. He went on to say that the fiscal turnaround is excellent considering the city “was contemplating bankruptcy before we stepped in to manage its finances.”**

Under the current PILOT (Payment In Lieu of Taxes) program, casinos guarantee the city \$120 million annually. In exchange, the town cannot increase property taxes on the resorts, but the resorts also cannot appeal the fee in the future.

### **Tax Refund**

Beginning in 2009, as the US recession was firmly felt across the nation, Atlantic City casinos began appealing the valuations of their resorts. The local government, in desperate need of revenue as gaming and tourism plummeted, decided to instead increase the assessed values of the properties in order to gain additional taxes.

A legal fight ensued over the course of many years, with courts eventually siding with the resorts that they had indeed been paying far too much for several years.

The Borgata, the city's biggest revenue earner, sent in \$165 million more than it should have between 2009 and 2015, a court deemed. On the hook for the return, Chiesa's takeover office managed to swindle a sweet deal by settling with the MGM-owned resort for just \$72 million.

## **Cleared for Recovery**

The looming appeals was a leading reason New Jersey Governor Chris Christie (R) and the state legislature decided to take control of Atlantic City's finances. The former presidential candidate said Mayor Don Guardian's inability to settle the property tax disputes forced the state to intervene.

Uncertain as to just how much property tax money Atlantic City was going to be forced to return impeded the beachfront gambling town's financial future, Christie explained.

**"The settlements reached with these casinos are the culmination of my administration's successful efforts to address one of the most significant and vexing challenges that had been facing the city," Christie said last month.**

Chiesa has the authority to govern the city's finances for up to five years. Both the state and Atlantic City government hope the recovery is executed much faster.

CASINO.ORG

SEPTEMBER 23, 2017 BY KATIE BARLOWE