Bond Case Briefs

Issue 159

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- *Zeppelin v. Federal Highway Administration* – District Court holds that it had power, under Administrative Procedure Act, to enjoin Colorado Department of Transportation (CDOT) from sending money to city and county to fund stormwater project, despite fact that CDOT was not federal agency, where CDOT actively consented to federal involvement in its operations and requested federal funds.
- And finally, Unclear on the Concept: Judicial Edition is brought to us the week by *St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., LLC*, in which the Superior Court judge stated that it wasn't his job to "split the baby," and thus he had no choice but to (apparently randomly) opt for either the city's $16M valuation or the landowner's $35M valuation in eminent domain case. None of that pesky adjudicating for me, thanks. Just in case the Superior Court judge wasn't feeling up to opting between literal and figurative, a bemused Supreme Court of Louisiana went ahead and remanded to the Court of Appeals to split that baby.

CREDITORS' REMEDIES - ALASKA

Beecher v. City of Cordova

Supreme Court of Alaska - January 19, 2018 - P.3d - 2018 WL 473373

City, which had been granted a money judgment against former commercial tenants it had evicted from city-owned land, and had pursued collection for several years before suspending its efforts, resumed its efforts to collect, and tenants moved for an accounting of left-behind property and the amount still owing on the judgment.

The Superior Court allowed execution to continue without an accounting, and former tenants

appealed.

The Supreme Court of Alaska held that:

- Burden was on city to explain what happened to former tenant's personal property after city took possession of leased premises;
- City was not required to execute against individual pieces of personal property identified in its creditor's affidavit; but
- Genuine issues of material fact about whether city was estopped from contending that its judgment against former commercial tenants remained unsatisfied precluded trial court from accepting city's accounting and allowing execution against former tenant's personal property to continue.

Burden was on city to explain what happened to former tenant's personal property after city took possession of leased premises, even though it may have placed a considerable burden on city to render a proper accounting given the passage of the time since the original judgment in favor of city; city did not dispute that it had a creditor-debtor relationship with former tenants, former tenants submitted evidence that tended to show city held their personal property without accounting for its value, and city did not dispute that former tenants left behind property they identified in their motion for an accounting.

City was not required to execute against individual pieces of personal property identified in its creditor's affidavit after it received a writ of execution against judgment debtors, former commercial tenants of city, and thus, acted within its grant of authority when it executed on judgment debtors' bank accounts; the writ of execution issued by the court against the property of the judgment debtors did not direct the particular property to be sold, but instead, simply authorized the city to satisfy the judgment with any personal property subject to execution.

Genuine issues of material fact about whether city was estopped from contending that its judgment against former commercial tenants remained unsatisfied precluded trial court from accepting city's accounting and allowing execution against former tenant's personal property to continue; city, in its creditor's affidavits, said it would attempt to satisfy its judgment by levying against certain property, and if it in fact retained former tenants' property for its own use, without accounting for its value, it may have been unjustly enriched to the detriment of former tenants, which could be relevant to the prejudice, interests of justice, and unconscionability elements of the estoppel doctrines.

INVERSE CONDEMNATION - CALIFORNIA

Sierra Palms Homeowners Association v. Metro Gold Line Foothill Extension Construction Authority

Court of Appeal, Second District, Division 7, California - January 29, 2018 - Cal.Rptr.3d - 2018 WL 580250 - 18 Cal. Daily Op. Serv. 1021

Condominium homeowners' association brought action alleging inverse condemnation and other torts against municipal transit authority and private contractor, arising from construction and maintenance of metro railway.

The Superior Court sustained demurrers and struck remainder of complaint. Association appealed.

The Court of Appeal held that condominium homeowners' association had standing, pursuant to statute allowing such associations to bring certain actions on behalf of owners of fractional property

interests in common areas, to bring inverse condemnation action against municipal transit authority for alleged damage to common boundary wall.

INFRASTRUCTURE FUNDING - COLORADO

Zeppelin v. Federal Highway Administration

United States District Court, D. Colorado - November 9, 2017 - F.Supp.3d - 2017 WL 6947923

City residents brought action against Federal Highway Administration and Colorado Department of Transportation (CDOT), under Administrative Procedure Act, seeking to enjoin CDOT from funding city and county stormwater project.

The District Court held that:

- Court had power to enjoin CDOT from sending money to city and county to fund project; and
- Court lacked subject matter jurisdiction over claims.

District Court had power, under Administrative Procedure Act, to enjoin Colorado Department of Transportation (CDOT) from sending money to city and county to fund stormwater project, despite fact that CDOT was not federal agency, where CDOT actively consented to federal involvement in its operations and requested federal funds.

District Court lacked subject matter jurisdiction over claims by city residents against Federal Highway Administration and Colorado Department of Transportation (CDOT), brought under Administrative Procedure Act, seeking to stop CDOT from funding city and county stormwater project, since stoppage of state funding would likely not deter city and county from proceeding with project, meaning that any injury to city residents would likely not be redressed by favorable ruling.

ANNEXATION - ILLINOIS

In re Petition to Annex Certain Territory to Village of Lemont

Appellate Court of Illinois, First District, Third Division - December 13, 2017 - N.E.3d - 2017 IL App (1st) 170941 - 2017 WL 6559294

Residential landowners seeking annexation of unincorporated land to adjacent village, which subsequently intervened and joined as plaintiff, filed petition for “forcible” or “involuntary” annexation of land that included golf course property.

Following hearing, the Circuit Court denied landowners’ motion for substitution of judge, and following discovery, granted objectors’ motion for summary judgment. Landowners and village appealed.

The Appellate Court held that:

- Landowners and village were not entitled to substitution of trial judge after trial judge presided over hearing and issued a ruling in favor of objectors;
- Voluntary petitions previously filed by golf course owners seeking annexation of their unincorporated land into village were not abandoned, and thus the voluntary petitions had priority;

and
- Trial court did not abuse its discretion by limiting discovery to after a certain date.

Residential landowners, who owned portion of unincorporated territory, and village were not entitled to substitution of trial judge in their proceedings for involuntary annexation of land to village, after trial judge presided over hearing and issued a ruling in favor of objectors, refusing to move forward on the petition and granting objectors' request to meet after annexation ordinances passed in objecting village; trial judge had already issued a ruling that was substantive in nature and, even if the ruling was not substantive, landowners had been given ample opportunity at the hearing to "test the waters" in order to discern the judge's potentially unfavorable disposition on the merits.

Voluntary petitions filed by golf course owners seeking annexation of their unincorporated land into village were not abandoned by the owners or the village at issue, and thus the voluntary annexation petitions had priority over subsequent "involuntary" annexation petition filed by residential landowners and joined by competing village; the delay in village's formal approval of the voluntary petitions was owing to village's engagement in consistent action to prepare for annexation process, and the village eventually did pass ordinances facilitating the annexation, all of which constituted "action" on the case so as to prove the village was integrally involved in the process and had not abandoned the cause of annexation.

Trial court did not abuse its discretion by limiting discovery to "January 1, 2015, and forward," in annexation dispute between residential landowners and one village against golf course owners and another village; prior voluntary annexation petitions filed by golf course owners in previous years were never challenged by any opposing annexation petitions, were irrelevant to the matter at hand, which was determining the priority for the 2015 annexation petitions, and no law was cited demonstrating that those prior petitions could even be considered still jurisdictionally "live" once they were replaced with the 2015 petition.

EMINENT DOMAIN - LOUISIANA

St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., LLC

Supreme Court of Louisiana - January 30, 2018 - So.3d - 2018 WL 618831 - 2017-0434 (La. 1/30/18)

Parish port, harbor, and terminal district filed quick-take expropriation action against owner of property that contained port facilities.

The District Court found, following evidentiary hearing, that taking served public purpose and, following bench trial, rendered judgment finding that value of property was $16,000,000, that port was not entitled to damages for debris removal, and that property owner was entitled to interest on funds that had remained in court registry pending determination on offset claim.

Property owner appealed, and district cross-appealed. The Court of Appeal affirmed as amended, and property owner applied for writ of certiorari.

The Supreme Court of Louisiana held that:

- Parish port, harbor, and terminal district's expropriation of property containing port facilities was for valid public purpose;
- Parish port, harbor, and terminal district's expropriation of property containing port facilities did

not violate the business enterprise clause; but
- Trial court's misconception that it could not "split the baby" and arrive at a fair market value somewhere in between two expert opinions was prejudicial to property owner.

Parish port, harbor, and terminal district's expropriation of property containing port facilities was for valid public purpose, and thus did not violate constitutional requirement that taking be for public purpose, though property owner asserted real purpose was so that port could continue to operate its layberthing and cargo facility and obtain contracts with United States Navy; legislature granted district broad discretion and authority to maintain and further development of its operations, district indicated that it intended to maintain current use of property initially, with comprehensive plan to expand facility to include dry and liquid bulk cargo operation, and healthy port would generate local jobs, industry, and associated local consumption, and would provide great public benefit.

Parish port, harbor, and terminal district's expropriation of property containing port facilities did not violate the business enterprise clause, which barred the taking of a business enterprise or any of its assets for the purpose of operating that enterprise or halting competition with a government enterprise; testimony at trial was that property owner's lease with the Navy was an afterthought, and that the "best news" for the Port's operation would be to use the Navy berth to further expand cargo operations, and although property owner argued that its cargo operations were expanding, the record showed them to be negligible, and not in competition with the Port.

Trial court's misconception that it could not "split the baby" and arrive at a fair market value in expropriation case somewhere in between two expert opinions was prejudicial to property owner, insofar as it limited what the trial court believed to be just compensation due property owner under the law; trial court was not required to make a binary choice and accept one side's testimony in its entirety, but was instead empowered to weigh strengths and weaknesses of the experts' testimony.

ZONING & LAND USE - MINNESOTA

Eich v. City of Burnsville

Court of Appeals of Minnesota - January 8, 2018 - N.W.2d - 2018 WL 313087

Manufactured-home-park resident who had received notice from city of alleged property-maintenance- and zoning-code violations brought putative class action against city for damages and injunctive relief, alleging that city's enforcement within manufactured-home park was preempted by federal and state law and violated due-process rights under the state constitution.

After the granting of class certification and temporary injunctive relief, the city changed its code, city repealed all pending violations and violation letters that had been issued within manufactured-home park, and the District Court granted summary judgment and permanent injunctive relief to resident, but stayed the issue of whether resident was entitled to sanctions and damages based on claims made under the state constitution. City appealed.

The Court of Appeals held that:

- City's enforcement of its code in manufactured-home park was not expressly preempted by the National Manufactured Housing Construction and Safety Standards Act;
- City's enforcement of its zoning and property-maintenance codes within manufactured-home park was not preempted, either by express or field preemption, by state law;
- City could enforce state building code within manufactured-home park if the enforcement action

was related to a structure other than a manufactured home or to a manufactured home's accessory structures;
- City was not preempted from enforcing the manufactured-home building code within manufactured-home parks; and
- Resident's claims for injunctive relief as to alleged violations of resident's due-process rights under the state constitution were moot.

ZONING & LAND USE - MISSISSIPPI

City of Jackson v. Allen

Supreme Court of Mississippi - February 1, 2018 - So.3d - 2018 WL 654055

After city council passed ordinance rezoning parcel of downtown property, resident, individually and as president of non-profit corporation designated as downtown area's district management group, filed bill of exceptions seeking reversal of rezoning decision.

The Circuit Court denied city's motion to dismiss and ultimately reversed city council's decision. City appealed.

The Supreme Court of Mississippi held that:

- Bill of exceptions is a jurisdictional requirement for the circuit court to hear an appeal, overruling *Bowen v. DeSoto Board of Supervisors*, 852 So.2d 21;
- Resident's failure to include signature of municipal board's president on bill of exceptions did not deprive Circuit Court of jurisdiction; and
- Trial court did not abuse its discretion in determining that resident had associational standing to appeal rezoning decision.

PUBLIC UTILITIES - OHIO

In re Review of Alternative Energy Rider Contained in Tariffs of Ohio Edison Company

Supreme Court of Ohio - January 16, 2018 - N.E.3d - 2018 WL 549915 - 2018 -Ohio- 229

Public Utilities Commission initiated action against electric-distribution utility to review prudence of utility's purchases of renewable energy credits.

The Commission ordered utility to credit customers' bills based on some imprudent purchases of in-state renewable energy credits. Utility appealed, and environmental group and Office of the Ohio Consumers' Counsel filed cross-appeals.

The Supreme Court of Ohio held that:

- Commission engaged in unlawful retroactive rulemaking when it ordered electric-distribution utility to credit customers' bills for failing to act prudently in purchasing renewable energy credits;
- Evidence did not support determination that information about utility's renewal-energy-credit suppliers and auction process derived independent economic value from not being generally known, as required to find information was a trade secret; and
- Utility took reasonable steps to maintain the secrecy of information regarding renewal-energ-

-credit suppliers and auction process, as required to find information was a trade secret.

BONDS - OHIO

Paul Cheatham IRA v. Huntington National Bank

Court of Appeals of Ohio, Sixth District, Lucas County - December 22, 2017 - N.E.3d - 2017 WL 6550474 - 94 UCC Rep.Serv.2d 536 - 2017 -Ohio- 9234

Bondholder who invested funds into municipal bond issue brought purported class action against trustee for bondholders, who also served as lessor of project, asserting claims for breach of fiduciary duty, breach of trust, negligence, breach of contract, and liability for mismanagement of the project.

The Court of Common Pleas denied bondholder’s motion to certify class. Bondholder appealed.

The Court of Appeals held that contract claim for breach of trust indenture entered into between trustee for municipal bondholders and county as obligor, whether asserted against trustee or obligor, arose out of contract with bondholders and was thus a “right in the security” that automatically transferred to subsequent bond purchasers pursuant to Ohio version of Uniform Commercial Code (UCC); trust Indenture was part of the contract with the bondholders and was part of the “bond proceedings.”

PUBLIC UTILITIES - TEXAS

City of Richardson, Texas v. Oncor Electric Delivery Company LLC

Supreme Court of Texas - February 2, 2018 - S.W.3d - 2018 WL 663159

City brought breach of contract action against electric utility, alleging that utility’s refusal to pay costs for relocating electric utility poles and facilities in order to accommodate city’s widening of public alleys violated franchise contract, common law principles, and statutory law.

The District Court entered summary judgment for city. Utility appealed. The Dallas Court of Appeals reversed. City petitioned for review, which the Supreme Court granted.

The Supreme Court of Texas held that tariff, which set rates for utility’s relationship with retail customers and required customers to pay relocation costs, did not express with unmistakable clarity an intent that city pay for costs of relocating utility poles to accommodate city’s widening of alleys, and thus, tariff did not conflict with franchise contract’s requirement that utility pay relocation costs, such that the contract controlled dispute over relocation costs.

EMPLOYMENT - WASHINGTON

Sprague v. Spokane Valley Fire Department

Supreme Court of Washington - January 25, 2018 - P.3d - 2018 WL 547363

Terminated firefighter, whose termination the county civil-service commission had upheld in a decision that was not appealed, brought action against the department on a § 1983 claim for violating his First Amendment free-speech rights, on an equal-protection claim, on a Title VII claim, and on various state-law claims for allegedly firing him for including religious comments in e-mails

sent through the department's computer systems and in items that he posted on the department's electronic bulletin board.

The Superior Court denied firefighter's motion for partial summary judgment that the department's e-mail policy was unconstitutional and granted the department's motion for summary judgment. Firefighter appealed. The Court of Appeals affirmed. Firefighter appealed.

The Supreme Court of Washington held that:

- Firefighter spoke as a citizen, not as a public employee, in e-mails that he sent on department's e-mail system concerning a religious fellowship and religious themes;
- Firefighter's e-mails that discussed the mental health and well-being of firefighters related to public safety and matters of public concern;
- Firefighter's e-mails that discussed leadership related to public safety and matters of public concern;
- Firefighter's communications over department's e-mail system and electronic bulletin board that discussed religious fellowship's social activities and logo design were not matters of public concern;
- Department policy that restricted use of department's e-mail system to departmental business was reasonable; but
- Department's restrictions prohibiting firefighter from using department's electronic bulletin board to post information about religious fellowship's activities were unreasonable;
- Department's application of its e-mail system's use policy to preclude firefighter from discussing otherwise permissible themes from a religious perspective was not a viewpoint-neutral application of its e-mail policy; and
- County civil-service commission's decision that upheld firefighter's termination did not collaterally estop firefighter's action.

GASB Requests Public Input on Revenue and Expense Recognition.

News Release.

Invitation to Comment.

Review: Building 'The Source' of America's Cash Flows and Liquid Assets.

Canals, dams and river projects—given the capital they require—have altered the course of public debt.

'Why is it," Martin Doyle asks, "that sewers are often at the cutting edge in finance?" The question isn't meant as a slur on the financial industry but as testimony to the oversized but underrated role that waterworks have played in the economic annals of the United States. Throughout history, Mr. Doyle argues, our penchant for big-ticket water projects—canals, dams, waste-treatment plants, the wholesale engineering of rivers—has altered the course of public finance and even shifted the balance of power among federal, state and local governments. Instead of "The Source," his book might have been called "Water and Money."

Since colonial times we have bent rivers to our own ends. Originally we harnessed them to power gristmills, whose crucial role and monopolistic status earned them the label of "America's first public utilities," complete with government regulation of the fees that millers could charge. In the early 19th century, entrepreneurs began to extend the reach of rivers with canals and thus ease the movement of goods and people to and from the East Coast. The canal companies were among America's earliest private corporations, and their massive enterprises became the first great public works.

The legendary Erie Canal proved spectacularly lucrative, operating at a profit even before its completion in 1825 and helping to position New York state as a commercial powerhouse. Other canals, scattered from New Hampshire to Virginia to Indiana, hoped to follow suit but had only limited success. When private capital dried up, Mr. Doyle tells us, state governments floated bonds to prop up the too-big-to-fail projects until, by the late 1830s, 86% of all public debt was owed by the states, with the lion's share—more than $100 million—tied up in canals. (Federal debt at the time amounted to just 1.5% of the total.) When the country was plunged into the Panic of 1837, some states were forced into default, only deepening the economic misery.

In the late 1800s, as cities began to install water mains and sewer lines, the once-burned state governments refused to pony up, and cities had no choice but to assume the debt themselves. By the first years of the 20th century waterworks accounted for most municipal indebtedness, and by the 1940s the cities had replaced the states as the leading public debtors, issuing more than 70% of all government bonds. Local property taxes, meanwhile, swelled to 42% of total government revenues. Throughout U.S. history, Mr. Doyle writes, "paying for sewers has resulted in tectonic shifts in the political and financial structures."

THE SOURCE
By Martin Doyle
Norton, 349 pages, $26.95

Another such shift would come during the Great Depression. With local governments on the verge of financial collapse, Washington began sponsoring infrastructure projects, including waterworks (whose ambitious scale made them ideal for absorbing labor), and before long the federal government had replaced the cities as the primary carrier of public debt. For the first time, income taxes (enabled by the 16th Amendment, ratified in 1913), and not property taxes, made up the largest part of all taxes collected. But a portion of what flowed to Washington eventually returned to its source, as the federal government redistributed part of the funds to cities and states. By the late 1970s, federal grants accounted for almost a third of state and local government revenues.

Washington also paid to scrub sewage and industrial pollution from the nation's rivers. But with the funds came new regulations, culminating in the Clean Water Act of 1972, which introduced federal standards for water quality. A decade later, the Reagan Revolution stanched the tide of federal aid to the cities. But the regulations remained, and now local governments had to shoulder more of the expense of treatment plants.

Pressed to maximize their limited capital, some water boards, as Mr. Doyle shows, made Faustian investments in interest-rate swaps, auction-rate securities and other high-risk instruments, until by 2005 more than a quarter of all municipal debt was locked in such ventures. When the crash came two years later, more than a few local governments found themselves in bankruptcy, just as the overextended states had been during the Panic of 1837.

While tracing water's central, shifting role in public finance, Mr. Doyle plumbs such subjects as the transformation of the Mississippi and other major rivers into "highly engineered, optimized hydraulic

machines”; the moral hazards created by federal flood insurance, which encourages development in high-risk areas; the restoration of rivers through a kind of cap-and-trade system known as stream credits; and the Western water wars, a fierce, zero-sum game that pits environmentalists against farmers and Native Americans and raises complex issues of property rights and sovereignty.

It is a story more tortuous than the Mississippi itself, but Mr. Doyle, a professor of river studies at Duke, tells it well. His writing, which tacks effortlessly from economics to history to science, is clear and absorbing, whether he is describing intricate credit schemes or the channelizing of rivers. Also welcome are the occasional field trips, including an excursion on a Mississippi towboat and a surprisingly engrossing tour of a waste-treatment plant.

On technical subjects, Mr. Doyle helpfully strips his explanations to the easily grasped essentials. But when he writes on history, this approach serves him less well. In the interest of providing a compelling narrative and advancing his argument, he sometimes falls into overstatement, as when he claims that “the whole economic history of the United States is the saga of negotiating the fiscal roles and responsibilities of the different levels of government in providing the most basic of services for their citizens—the water supply and sewer systems.” Even so, “The Source” is an original and thought-provoking exploration of the sinuous course that water has carved through our economic and political landscape.

The Wall Street Journal

By Gerard Helferich

Feb. 9, 2018 4:37 p.m. ET

—Mr. Helferich’s most recent book is “An Unlikely Trust: Theodore Roosevelt, J.P. Morgan, and the Improbable Partnership That Remade American Business.”

How Are Cities Paying Their Bills? With Fees on Trash, Parking, Sewers and 911 Calls.

From Chicago to Danville, Ill., why residents are paying higher fees for mundane services

Scranton, Pa. is turning to an unlikely source for fiscal strength: garbage.

The distressed city in northeastern Pennsylvania began charging residents a $300 annual fee in 2014 to collect their trash, up from $178. That 68% increase has since raised millions for Scranton, one of the many steps being taken to restore the former coal-mining hub to solid financial footing after decades of decline.

Cash-strapped American cities are increasingly asking their residents to pay higher amounts for mundane services as they struggle to pay for mounting pension obligations, cover costly infrastructure improvements and replace revenue depleted by the last recession. Bills are rising for everything from parking tickets and 911 calls to sewer service and trash pickup.

In 73 U.S. cities, fees and fines increased by a collective $182 million in 2017, according to financial reports analyzed by Merritt Research Services. That annual tally is up 11% since the last financial crisis in 2008.

Fees are expected to go even higher because of recent changes at the state and federal levels. New tax legislation passed last year by Congress caps the amount of local property and income taxes Americans can deduct from their federal tax bills, making local tax increases more costly for residents and thus politically difficult for elected officials.

Thirty four states have also placed separate limits on local government tax or spending increases, according to the National League of Cities. In California, tax increases by local governments must be approved by a vote of residents.

“What’s left? Basically what’s left are charges,” said Andrew Reschovsky, a professor emeritus of public affairs and applied economics at the University of Wisconsin-Madison. “I think the future probably holds more fee increases.”

Cities began turning to more fees and fines following the 2008 financial crisis, which eroded property and sales tax revenues due to pullbacks in housing values, employment and consumer spending. Revenue from property taxes, sales taxes and income taxes moved higher in recent years as the economy rebounded but the total collected from those categories in 2017 was still below 2008 levels, according to data from the National League of Cities.

Revenue from fees, on the other hand, was 14% higher in 2015 than in 2009, according to a study of 150 cities conducted by the Lincoln Institute of Land Policy. In 2017, 42% of city CFOs said their towns had raised fees, more than the 27% who said they had raised property tax rates and 8% who reported sales tax increases.

In California, more than a dozen city fire departments are now charging hundreds of dollars for ambulance calls and more for ambulance rides. Long Beach, Calif. began imposing a $250 fee for service calls in 2016 on top of the existing $1,300 to $1,900 for a ride. The ambulance call fee brought in $1.6 million that year and $2.2 million in 2017, the finance director said.

One small Midwestern town, Danville, Ill., is raising its fees for a specific purpose: to chip away at more than $100 million in liabilities owed to police and fire department retirees. The city of about 30,000 first attached a $2 a month “public safety pension fee” to residents’ sewer bills in 2014 and in December pushed that charge to $22.25 for those in single-family homes.

Danville Mayor Scott Eisenhauer said the city took this step because it no longer had enough to make its required pension payments without devoting less to firefighting, police, parks, street repairs and code enforcement. “That’s what we could no longer afford to do—diminish our services because the pension obligation had increased so dramatically,” he added.

Those who pay the higher fees aren’t always pleased with the new demands. In Scranton, a property owner filed lawsuits over the $300 trash-collection fee and a fee for landlords, arguing the fees were higher than needed to pay for the services. The plaintiff alleges that Scranton has collected roughly $5 million more in garbage fees the past two years than it needs to run its Bureau of Refuse.

Scranton Mayor William Courtright said the fees are meant to cover the cost of collecting trash and supervising rental properties, not to generate revenue for other purposes. “Public safety and sanitation are the two most expensive endeavors of municipal government,” he said in an email.

In Chicago, a city also struggling with massive pension liabilities as well as a mountain of bond debt, officials increased penalties for parking in a disabled zone and other violations between 2012 and 2014 and increased the fee for removing a car boot in 2016. The city also increased property and water-sewer taxes as part of a larger plan to improve its finances.

A city spokeswoman said Chicago reduced its "structural budget gap" by 66% in the last four years "without raising a single parking ticket fine amount." She added: "While revenue is an outcome of parking enforcement, it is not the driver of our enforcement actions."

Some public policy experts say the Chicago increases are causing hardship for certain residents. One resident, Vincent Heard, said in court documents he had accumulated about $11,000 in debt tied to parking tickets, speeding tickets and red-light violations when he filed for chapter 13 bankruptcy in September 2015.

Mr. Heard now makes monthly payments of $225 as part of his bankruptcy repayment plan. That, he said, is a challenge given his earnings of about $600 to $700 a week as a taxi driver.

"It's like I'm just working to pay tickets," Mr. Heard said.

The Wall Street Journal

By Heather Gillers and Sarah Chaney

Feb. 6, 2018 5:30 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com and Sarah Chaney at sarah.chaney@wsj.com

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Gov. Dannel Malloy Offers Plan To Ease Connecticut Tax Burden.

Proposed legislation would help residents make up for $10 billion in lost federal tax deductions under recent overhaul

Gov. Dannel Malloy on Monday proposed legislation to help Connecticut residents make up for $10 billion in lost federal tax deductions under the recent tax overhaul.

His plan aims to assist Connecticut homeowners who face higher federal tax bills because the new law caps state and local tax deductions at $10,000 a year. To get around that cap, Mr. Malloy's proposal would give towns authority to form charitable organizations that residents can contribute to in exchange for property tax credits.

Charitable contributions kept their full deductibility under the tax overhaul.

"It would be unreasonable for us as a state to not propose ways to assist our taxpayers," said Mr. Malloy, a Democrat. His plan requires approval by the state legislature.

The governor included the strategy among his recommended revisions to the state budget for the fiscal year that begins in July. The revisions in his $20.73 billion proposal are applied to the two-year budget lawmakers approved last year.

Other high-tax states such as New York and New Jersey have been searching for ways to ease the impact of the federal tax changes. Some New Jersey towns also have expressed interest in developing a plan similar to the one proposed by Mr. Malloy.

New Jersey Gov. Phil Murphy, a Democrat, supports those efforts. New York Gov. Andrew Cuomo has proposed changing some of the state income tax into a payroll tax on employers.

The Internal Revenue Service didn't respond to a request for comment.

The governors of New York, New Jersey and Connecticut also said in January they would sue the federal government to overturn the new tax law, saying it intentionally discriminates against Democratic-leaning states.

New York tax filers claimed about $22,000 on average in state and local tax deductions in 2015, the highest figure in the U.S., according to the Government Finance Officers Association. Connecticut tax filers claimed more than $19,000 on average and New Jersey nearly $18,000 on average.

Instead of funding municipal services through property taxes, cities and towns would tap a mix of property taxes and money raised from the charitable organizations, under Mr. Malloy's proposal. Details of the plan haven't been fully established.

"The specifics of how that will work will have to be worked out at a local level," said Ben Barnes, the budget chief for the Malloy administration.

Some towns have expressed interest in exploring whether using charities is a viable option, said Elizabeth Gara, executive director of the Connecticut Council of Small Towns.

"But there is a lot of uncertainty as to how the IRS will treat those contributions," Ms. Gara said. She said her group hasn't taken a position on the proposal and would continue to study it.

Mr. Malloy said his administration has determined that his plan would be allowed under the current federal law.

The Wall Street Journal

By Joseph De Avila

Feb. 5, 2018 5:35 p.m. ET

BDA Sends Follow-Up Letter to SEC Chairman Clayton Regarding Retail Confirmation Mark-Up Disclosure.

Read the letter.

Fitch: Puerto Rico Ruling Could Have Wide-Ranging Impact on Municipal Debt.

Fitch Ratings-New York-06 February 2018: A ruling last week by district court judge Laura Taylor Swain that dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority debt has raised broad concerns about the protections provided in Chapter 9 of the U.S. bankruptcy code to holders of bonds secured by pledged special revenues, according to Fitch Ratings. Credit ratings that could be negatively affected if the ruling is upheld on appeal include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR).

Through a series of provisions, Chapter 9 protections have resulted in special revenue obligations receiving current payments from available net pledged revenues during the pendency of every municipal bankruptcy since enacted in 1988. These provisions protect special revenue obligations by continuing the lien on post-petition revenues (outlined in section 928(a)) and relieving bondholders from the constraints of the automatic stay provisions of the code (section 922(d)). This allows enforcement of the lien for the purpose of applying net pledged revenues to payment of the special obligation debt payment due.

Section 928(b) specifies that "necessary operating expenses" will be paid prior to debt service where special revenues are derived from a project or system. This alleviates the concern that bondholder payments might be placed above the health and safety of the municipality and its residents when resources are scarce.

The court's opinion appears to introduce a new gloss on the purpose and application of section 922(d). It states that 922(d) was included in the code only as permission for a municipality to continue paying special revenue obligations if it chooses to do so during bankruptcy. This is inconsistent with Fitch's prior understanding of the purpose of 922(d) for two reasons. First, the municipality already has the right to pay obligations of its choice during the proceeding as a general principle. This right is embedded in section 904, which places the municipal debtor in command of its assets and liabilities throughout the process without court intervention. A specific provision authorizing payment of special revenue-backed debt is unnecessary, redundant and not in keeping with Congressional intent. Examples of payments to unsecured creditors during the pendency of a bankruptcy include Central Falls' opting to continue debt service payments on its GO debt and the continuation of required pension contributions by Detroit and Stockton.

The second reason we were surprised by the court's interpretation of 922(d) is that the automatic stay provisions in section 362 act as a constraint on actions by creditors — not debtors — to enforce liens following the filing of a bankruptcy proceeding. The provisions of 922(d) are an explicit exception to this constraint which was clearly intended to allow creditors with a special revenue obligation lien to enforce any currently due debt service payments while the bankruptcy case proceeds. It is correct that the provisions of 922(d) do not create an automatic obligation of the debtor to make the payment — that obligation exists in the underlying bond documentation. 922(d) simply removes a constraint on enforcement by bondholders of rights to receive payments of debt service due.

One of the plaintiffs in the case has already appealed the court's decision, and it will be reviewed by the first circuit court of appeals. Pending the outcome of that appeal Fitch will continue to treat special revenue obligations as separated from the related IDR.

A final court ruling that payment of special revenue obligations during a bankruptcy is optional would create uncertainty about full and timely payment of special revenue obligations, potentially removing the basis for rating special revenue obligations above a municipality's IDR. For example, airport revenue bonds and water and sewer bonds issued by the city of Chicago might be capped at the city's 'BBB-'/Stable IDR. Chicago's sales tax securitization corporation's 'AAA' revenue bond rating would not be affected, as the corporation is a separate entity that would not be affected by a bankruptcy of the city.

We do not believe notching above the IDR to reflect perceived recovery prospects of special revenue debt would be warranted given that there would be new uncertainty around the level of recovery in a future bankruptcy. Existing Fitch criteria allow us to reflect potential recovery in post-bankruptcy security ratings to the extent prospects for recovery become apparent.

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Fitch: PA Budget Proposal Would Close Gap; Prospects Uncertain.

Fitch Ratings-New York-08 February 2018: Governor Wolf's fiscal year 2019 executive budget for Pennsylvania – which utilizes a severance tax, solid revenue growth and targeted savings efforts to support a roughly 3% increase in the general fund budget – will likely face headwinds in the legislature, Fitch Ratings says. The governor has advanced a severance tax proposal since his election campaign four years ago but has not won sufficient legislative support to date. This budget plan comes at the start of an election year for the governor, all members of the commonwealth's house and half of the senate. Fitch's focus during the commonwealth's budget process will be on whether Pennsylvania is able to continue making progress in addressing its still sizable structural budget gap. Fitch's 'AA-' Issuer Default Rating and Negative Outlook reflect concerns that the commonwealth may be challenged in continuing its current path of slow progress in reducing the imbalance. A pattern of weakening fiscal practices, including growth in the structural deficit, could trigger a downgrade.

PROGRESS IN REDUCING STRUCTURAL GAP

Based on analysis from the commonwealth's Independent Fiscal Office (IFO), Fitch estimates the current year (fiscal 2018) budget includes approximately $600 million in non-recurring revenues on a $32 billion general fund spending plan (2%). This is lower than prior years, reflecting recurring revenue increases and savings measures. In January 2016, the IFO estimated a $2.5 billion general fund structural gap for fiscal 2019 – by this past November, the IFO reported that gap had narrowed to $1.1 billion, or 3% of projected spending.

UNCERTAIN BUDGET PLAN PROSPECTS

While the budget proposal from the Democratic governor does not appear to include material non-recurring revenues, Fitch anticipates the Republican-led legislature will develop its own set of budget measures, leading to a final budget that could vary considerably from the original. Three previous budgets under the current governor, and the last one under the prior governor, were enacted after the start of the fiscal year due to policy and fiscal disagreements. This November's election adds additional uncertainty to the budget process – the speaker of the house is vying for the

Republican nomination to replace the current governor, which could make for a particularly complicated political dynamic during budget negotiations.

LIMITED REVENUE MEASURES

The key revenue measure is a natural gas severance tax estimated to generate $250 million annually. The governor's three prior executive budgets unsuccessfully proposed a different version of the proposed severance tax. Last summer, the senate did approve a severance tax as part of a revenue package. While the measure did not pass the house, last year's senate passage could lead to additional momentum behind the measure this year. Notably, in contrast to prior years, the governor did not include any personal income or sales and use tax changes in his proposal. Instead, the executive budget forecasts steady organic growth in both sources this year and next. The IFO's revenue forecasts also anticipate continued growth, though at a somewhat more modest pace. Through January, the Department of Revenue reports general fund collections for fiscal 2018 are tracking $90 million (1%) ahead of the official estimate. Of the key tax revenues, sales and use taxes are essentially in line with the estimate while personal income tax revenues were 2% above estimate. An outsized increase in collections for non-withholding personal income taxes in December could be a one-time behavioral shift in reaction to the recent federal tax changes.

EDUCATION AND PENSION SPENDING DRIVE INCREASES

On the spending side, proposed general fund spending of $32.9 billion is up 3%, or just under $1 billion, over the enacted fiscal 2018 budget. The executive budget includes a $100 million increase in basic education aid funding (approximately 2%) for K-12 public schools. If approved, approximately 7% ($400 million) of $6.1 billion in basic education aid would be distributed using a new funding formula adopted in 2016. The governor also proposes increased funding for the Pennsylvania State System of Higher Education (PASSHE, revenue bonds rated AA-/Negative) for the fourth consecutive year.

For pensions, the executive budget proposes full funding of actuarially determined contributions for both the state employees retirement system (SERS) and the public school employees retirement system (PSERS) for the first time since fiscal 2004. The SERS contribution of $685 million is funded directly by the commonwealth, while the more significant PSERS contribution of $2.5 billion flows through school districts via commonwealth appropriations.

As in prior years, savings measures are a key focus of this executive plan. "Complement" (the commonwealth's term for its total workforce), continues trending downward and the administration reports the proposed level would be the lowest in over four decades.

MEDICAID SPENDING DOMINATES

Medicaid remains a major driver of the budget, with the fiscal 2019 budget proposing $7 billion in general fund spending, or more than one-fifth of the total general fund budget. Commonwealth Medicaid spending would increase less than 2% from the enacted fiscal 2018 amount under the executive budget, well below the rate of national medical inflation. The budget includes continued shifting of Medicaid services to a managed care model, including for long-term care which is a likely driver of future Medicaid spending.

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Lower U.S. Taxes May Dent Insurers' Demand for Municipal Bonds.

- **'There's really not going to be that much interest.'**
- **Property, casualty insurers hold about 10 percent of munis**

Put on the Taylor Swift and pull out the Ben & Jerry's ice cream: The municipal-bond market's long relationship with property and casualty insurance companies may be breaking up.

That's because last year's tax overhaul slashed corporate rates to 21 percent, making tax-exempt debt less attractive to a segment of the insurance industry that has $342 billion in municipals, accounting for one-third of its debt investments, according to Federal Reserve data. That's threatening to pose another potential drag on the $3.8 trillion market, where prices have been sliding amid concern the Federal Reserve will increase interest rates more aggressively to slow the economy.

"There's really not going to be that much interest from insurance companies anymore," said Rich Sega, chief investment officer of Conning, which manages investments on behalf of insurers and oversees more than $9 billion in municipal bonds. "On average, it just raises the cost of municipal financing."

Too Late to Say Goodbye

Munis will be less attractive to property and casualty insurers due to lower corporate taxes

Property and casualty insurance companies are already looking to the exits. Citigroup Inc. analyst Vikram Rai said weaker demand from property and casualty insurers was one factor behind the recent downturn in the municipal market, which has already lost 1.3 percent so far this year.

Don McDonald, the chief executive officer of Prime Advisors, which oversees about $17 billion, is working with "many" companies on whether they should sell municipal bonds and shift into other asset classes.

Property and casualty insurers are likely to be "net sellers" in the first quarter, he said, forecasting that the companies' allocations to municipals will drop by 2 to 4 percentage points during the quarter.

“New purchases would have less value,” McDonald said. “That’s the bottom line – there’s no question.”

Property and casualty companies have been “cautious” about buying more state and local debt since the tax bill was enacted in December and are likely waiting for interest rates to rise enough to make it worth while, said Matt Caggiano, who helps oversee more than $9 billion of insurers’ municipal holdings at Deutsche Asset Management.

Companies will be more attracted if municipals cheapen relative to U.S. Treasuries, he said, speculating that the entry point would be when yields on 30-year municipals rise above 100 percent of Treasuries. That gauge stood at about 96 percent on Wednesday.

Don’t Grab Tissues Yet

The portfolios that Caggiano helps oversee for property and casualty insurance companies have allocations to municipals ranging from about 30 to 50 percent, he said. While he anticipates they could cut the amount they allocate over the next year or two, he said it’s unlikely that they would reduce their overall muni holdings below 20 percent, given that the securities are among those least prone to default.

“You might see property and casualty insurers decide that’s the lowest they want to go,” he said.

Payden & Rygel Investment Management, which oversees $3 billion in tax-exempt and taxable municipals for clients including insurers, estimates that even with the lowered tax rates, AA and A rated municipals maturing in 20 and 30 years offer the same or higher after-tax yields than similar corporate bonds. That wasn’t the case with AAA and BBB rated municipals, according to an analysis of bonds maturing from two to 30 years.

But Ksenia Koban, a vice president at the firm, said the companies won’t exit the market completely. “Portfolios are still going to contain a good number” of the securities, she said.

Life insurers may also help make up for the drop-off in demand. Under the new tax law, those companies will pay taxes on just 30 percent of what they receive from tax-exempt municipal bonds, eliminating a previous uncertainty about how they would be taxed that gave them a disincentive to buy state and local debt.

Property and casualty insurance companies might be less interested in the tax-exempt municipal market, but they will likely still be big buyers of taxable municipals, a much smaller segment of the market that accounted for about $34 billion of sales last year.

Prime Advisors has added to its exposure to taxable municipals over the last two years, McDonald said. “Taxable municipals are a great alternative,” he said.

Bloomberg Politics

By Amanda Albright

February 9, 2018, 6:23 AM MST

Bloomberg Brief Weekly Video - 2/8

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

Watch video.

Bloomberg

February 8th, 2018

What the Budget Deal Means for States and Localities.

Congress agreed on a two-year bipartisan spending deal just before dawn on Friday, after a brief shutdown of the federal government, which was the second shutdown in as many months.

The agreement, which President Trump has indicated that he will sign, increases spending by $300 billion over the next two years. Slightly less than half of that increase is slated for domestic programs.

John Hicks, executive director of the National Association of State Budget Officers, called the deal "the first salvo of federal budget certainty" that state and local governments have enjoyed in the Trump era.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 9, 2018

Credit FAQ: An Overview Of S&P Global Ratings' Updated Methodology For Rating U.S. Solid Waste System Financings.

On Jan. 29, 2018, S&P Global Ratings published its updated criteria for rating solid waste systems in the U.S. The update is part of our regular criteria review process, and its goal is to provide additional transparency and comparability to help market participants better understand our approach…

Continue Reading

Jan. 29, 2018

S&P RFC Process Summary: Solid Waste System Financings

On Aug. 21, 2017, S&P Global Ratings published a request for comment (RFC) on its proposed

criteria, “Solid Waste System Financings”. As more fully described in the RFC, the proposed criteria provide additional transparency and comparability to help market participants better understand our approach…

Continue Reading

Jan. 29, 2018

States Must Act Now on Opportunity Zone Tax Incentives That Target Low-Income Communities.

The IRS and the Community Development Financial Institutions Fund (CDFI Fund) simultaneously released guidance yesterday on the procedure for designating population census tracts as Qualified Opportunity Zones (QOZ). States must act quickly if they want to designate any QOZs, which will be eligible for federal tax incentives designed to encourage new capital investment in those areas.

The ability to designate QOZs was provided to States—which in this case also includes the District of Columbia and U.S. possessions—by The Tax Cuts and Jobs Act—enacted on December 22, 2017. In fact, the only formal role of a State in this process would be to submit its nomination of census tracts to be designated as a QOZ to the Secretary of the U.S. Department of the Treasury by March 21, 2018.

IRS Revenue Procedure 2018-13 provides a “safe harbor” for States that rely on the CDFI Fund’s Opportunity Zone Information Resource, which identifies more than 41,000 population census tracts that are eligible for designation as QOZs. The Revenue Procedure also promises further information on the nomination process in coming weeks, including how States can access Treasury’s online Nomination Tool for QOZs and how to request a 30-day extension of the nomination period, from March 21 to April 20, 2018. In the period before the submission deadline, a State can review the requirements for designation and compile its list for timely submission. (The CDFI Fund’s information resource is available here.)

Continue reading.

by the Public Finance Group

January 9, 2018

Ballard Spahr LLP

Criteria FAQ: S&P Global Ratings' Approach To Rating U.S. Local Government Bonds Secured By Dedicated Limited Ad Valorem Tax Pledges.

On Jan. 22, 2018, S&P Global Ratings published its methodology “Issue Credit Ratings Linked To U.S. Public Finance Obligors’ Creditworthiness” (Ratings Linked). These criteria include debt backed by an obligor’s limited ad valorem property tax pledge, even if that pledge is dedicated for debt service.

Continue Reading

Feb. 5, 2018

S&P: Puerto Rico Court Ruling Supports Our View That Credit Fundamentals Remain Key To Ratings

NEW YORK (S&P Global Ratings) Feb. 5, 2018—S&P Global Ratings today said that the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) bankruptcy judge's recent decisions to dismiss bondholders' claim that their secured status entitles them to full and timely payment…

Continue Reading

Feb. 5, 2018

Six Things a 501(c)(3) Should Know About the Tax Cuts and Jobs Act: Squire Patton Boggs

With the flurry of news regarding how tax-exempt bonds were affected by the Tax Cuts and Jobs Act ("TCJA"), some of you may have missed what else was included in the TCJA. Here are six things a 501(c)(3) organization should know (other than that TCJA did not eliminate tax-exempt qualified 501(c)(3) bonds):

1. Fewer individuals will be claiming itemized deductions, so fewer people will get a tax benefit from making a charitable contribution, which could cause a decline in such contributions.
2. The estate tax exclusion amount is raised through 2025 to $10 million, so fewer people will have an incentive to make charitable bequests. Because of inflation adjustments, the actual dollar amount of the exclusion in 2018 is expected to be about $11 million.
3. There will no longer be a charitable deduction for college athletic seating rights. I suspect that Buckeye ticket sales will be unaffected.
4. Unrelated business taxable income ("UBTI") must now be calculated separately for each unrelated trade or business activity. Because losses from an unprofitable trade or business can't be used to offset income from a profitable one, the result will be more UBTI. Also, organizations will need to determine which unrelated trade or business activities are separate trades or businesses.
5. There is a 21% excise tax imposed on remuneration exceeding $1 million paid by tax-exempt employers to a "covered employee" or on "excess parachute payments." Covered employees are generally individuals who are or were one of the five highest paid employees, and excess parachute payments are certain large severance payments.
6. Colleges and universities with endowments exceeding $500,000 per student will generally owe an excise tax of 1.4% on their net investment income.

For more details, see this alert from our SPB colleagues.

By Alexios Hadji on February 8, 2018

State of California Launches New Bond Investor Platform Powered by BondLink.

BOSTON, Feb. 8, 2018 /PRNewswire/ — BondLink today announced that the State of California has launched a new, dedicated investor platform to provide additional transparency to bond investors. The new website, which can be found at www.BuyCaliforniaBonds.com, is part of the state's enhanced disclosure efforts.

"I am on a mission to make California government more transparent, accountable and responsive to the needs of the public through technological innovation," said Treasurer John Chiang. "By making the 'what, when and whys' about the state's finances, debt, and economic outlook available with a simple mouse click, I hope to entice more investors to finance projects of critical importance to our state, from transportation and clean water to schools and affordable housing.

"More data that is easy to access and slice-and-dice will translate into more investor interest. More investors mean more competition and – ultimately – better deals for California taxpayers," said Chiang.

The new website is powered by BondLink, a Boston-based financial technology company that provides investor outreach solutions to issuers in the municipal bond market. The company was co-founded by Colin MacNaught, a former issuer for the Commonwealth of Massachusetts.

"The new investor website validates the importance of disclosure, and the belief in the effectiveness of technology to improve disclosure. For an issuer the size and prominence of California to be using BondLink truly illustrates the State's commitment to expanding its investor base through enhanced transparency," said MacNaught, BondLink CEO. "We're proud to partner with Treasurer Chiang to improve the efficiency of the state's bond financings."

With more than 13,000 pages of data and documents, the corporate-style investor platform provides insight into the credit fundamentals behind California's outstanding bond ratings. This new tool is a free and open resource that provides a seamless online experience for both large institutional investors as well as smaller local bond investors including California residents.

The website consolidates the state's credit data and documents that are important to bond investors and rating agencies, providing quick and easy access to extensive financial information. The long-term goal of an investor platform like www.BuyCaliforniaBonds.com is to attract more investors to the state's bond program in order to increase demand for its bonds and diversify its investor base – ultimately to lower the cost of borrowing for public infrastructure and lowering the burden on taxpayers. Using a dedicated investor website for disclosure also follows best practices from government finance organizations such as the Government Finance Officers of America.

Reaction from Market Experts

"I think California's focus on enhanced disclosure is exactly what issuers should be doing," said Colleen Woodell, former Chief Credit Officer for S&P Global Ratings and past chair of the Municipal Securities Rulemaking Board. "Investors need more current disclosure and they need it through

better technology. When an issuer shares more financial data, it enhances the investors' ability to make more accurate credit judgments and may improve the liquidity of the issuer's bonds."

"Research shows that better, more accessible disclosure can lead to lower bond yields for issuers and lower trading costs for investors," said Christine Cuny, Assistant Professor of Accounting at New York University Stern School of Business. "California's taxpayers and investors can benefit from easier access to the state's financial information."

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink helps issuers in the $4 trillion municipal bond market attract more investors through better disclosure and enhanced technology. BondLink enables institutional investors to automate their credit surveillance of an issuer, and makes it easier for smaller investors, including individuals, to participate in public bond sales.

Since going live in 2016, BondLink's investor platform has helped states, counties, cities, school districts, universities, hospitals, public utilities and ports across the country improve their transparency to the bond market.

Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond fund managers in the country, Coatue and Accomplice.

For more information about the State of California's investor website or BondLink, please contact Colin MacNaught at 617-797-3632 or email colin@bondlink.com.

[S&P: Former Kansas Governor's Final Budget Proposal Shows Both Structural Imbalance And Revenue Growth]

Shortly before resigning last month, former Kansas Governor Samuel Brownback submitted his executive budget proposal for the 2018-2019 biennium. Despite projected higher revenues from recent tax increases adopted by the state legislature in 2017–over the governor's veto—S&P Global Ratings…

Continue Reading

Feb. 8, 2018

[S&P: Can Texas Local Governments Afford Their Pension Obligations?]

For the vast majority of local Texas issuers, pension pressures will remain manageable compared with those of peers across the country. Although Texas issuers typically have very weak debt and contingent liability profiles, this is often attributable to local governments having high overall net debt as a percent of market value…

Continue Reading

Feb. 9, 2018

S&P: Everything's Bigger In Texas, Including Potential Pressure To Fund Pension Benefits.

With its resilient and broad-based economy, favorable financial management practices, and low debt burden, Texas (AAA/Stable) is well positioned to weather potential budgetary headwinds related to growing Medicaid expenditures and a reduction in operating revenue as constitutionally required sales tax transfers to the State Highway Fund begin in fiscal 2018.

Continue Reading

Feb. 8, 2018

TAX - PENNSYLVANIA

Bay Harbor Marina Limited Partnership v. Erie County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - January 10, 2018 - A.3d - 2018 WL 343816

Following board of assessment's denial of tax immunity and exempt status for marina lessees of port authority, lessees appealed and city and school district intervened.

The Court of Common Pleas granted summary judgment in favor of the board, city, and district. Lessees appealed, and appeals were consolidated.

The Commonwealth Court held that:

- Lessees had standing to challenge denial of tax immunity;
- Marina was not immune from taxation;
- Port authority was an indispensable or necessary party;
- Marina's use did not constitute public purpose; and
- Trial court, on remand, was required to determine if marina's public access areas were exempt.

Lessees of port authority had substantial, direct, and immediate interest in litigation regarding board of assessment's denial of lessees' tax immunity and exemption for leased property, and thus lessees had standing to challenge denials, where lessees, under terms of lease, were responsible for taxes imposed on leased property, board's denial triggered lease obligations, and lessees purportedly used leased property to further the port authority's authorized purposes.

Private gated marina leased from port authority operated for pleasure and recreational craft was not immune from taxation, since port authority's statutorily-mandated purpose did not expressly authorize operation of recreational marina.

Port authority was an indispensable or necessary party in action concerning tax immunity or exemption of marina port authority leased to private enterprise, although trial court removed port authority from case caption sua sponte, where port authority had joint interest in the subject matter of the action.

Private gated marina leased from port authority operated for pleasure and recreational craft did not constitute public purpose, and thus marina was not exempt from taxation, although marina had public access walking area and public boat launch, where marina inured to sole benefit of lessees and its subtenants who leased boat slips, public's limited access was mandated by zoning ordinance, and port authority had no control over marina.

Trial court, on remand, was required to examine each parcel and individual part of private gated marina leased from port authority operated for pleasure and recreational craft to determine if public access areas were exempt from taxation, since statute exempted public property used for public purposes.

Neighborly Insights: Pension Obfuscation Bonds, Contemplating Tolls in the Bay Area, UT and MN, Marijuana in VT.

Read the Neighborly Insights.

Posted 02/05/2018 by George Friedlander

Neighborly Insights

Neighborly Issuer Brief: A Volatile Stock and Bond Market Makes for a Difficult Space for Munis and Issuers.

Read the Neighborly Issuer Brief.

Posted 02/09/2018 by George Friedlander

Orrick: Tax Issues When Fixing Rate and Fee Adjusters in Tax-Exempt Loans.

The recently enacted reduction of the maximum federal corporate tax rate may trigger contractual provisions that provide for a significant increase in the interest rate on tax-exempt debt privately placed with a bank lender or require issuers or conduit borrowers to pay a significant fee. In each case, this adjustment is meant to compensate a bank lender for the reduction in after-tax return relative to a comparable taxable investment. We advise you to consult bond counsel before amending or allowing the waiver of any contractual provisions providing for interest rate increases or fees resulting from the change in the maximum federal corporate tax rate.

The recently enacted tax bill reduces the maximum federal corporate tax rate from 35% to 21%. This reduction increases the after-tax return on taxable investments currently held by bank lenders but does not affect the after-tax return on their tax-exempt investments. As a result, the change in law reduces the after-tax return on tax-exempt investments relative to the return on comparable taxable investments.

Most tax-exempt bank loans include "gross up" adjustment provisions crafted to deal with the adverse effect of corporate tax rate reductions on the relative return on such loans. The adjustments

can take various forms, including a permanent, automatic, formula-based rate increase or a one-time fee determined by the bank lender to be adequate to compensate it for the reduction in the relative value of its tax-exempt investment. See the chart below for examples of two common "gross up" rate adjustment formulas.

[Continue reading.]

Public Finance Alert | January.25.2018

Orrick

[Impact on Muni Bonds of New Accounting Guidelines for Local Governments.]

New changes in accounting standards for state and local governments regarding retiree healthcare costs and underfunded pension liabilities could have a significant impact on the prices of municipal bonds issued by these entities.

These dynamics could, in turn, impact the risk-adjusted returns for investors holding municipal bonds as part of their overall portfolios.

[Continue reading.]

municipalbonds.com

by Justin Kuepper

Feb 08, 2018

[Trendy Green Bonds Offer Little Beyond Feel-Good Vibes For Issuers, Investors]

Although green bonds are growing in popularity in the municipal market, the largely unregulated structure may not amount to much more than a marketing tool to drive interest in an issuance.

Municipal green bond issuance totaled $11 billion in 2017, a record high and a 55% increase above 2016, according to the Climate Bonds Initiative (CBI). CBI expects that number to grow to $20 billion in 2018.

Green bonds rarely offer any distinction from traditional muni debt, financing the same projects and often without oversight to ensure the projects are green. While some issuers seek approval from CBI or Sustainalytics, there's no formal regulatory process to ensure the market avoids greenwashing, or applying the green label to projects that may not serve truly sustainable purposes.

As a result, the green label is not always limited to projects that make eco-friendly improvements. For example, a water system financing new pipes but not improving business practices to make them green, or a parking structure that offers battery chargers for electric cars are examples of projects not delivering on green benefits, an underwriter and portfolio manager told Debtwire.

But no investment is more fundamentally focused on improving people's lives than the municipal bonds. The explicit purpose of the $3.8 trillion municipal market is to function for the public good, with most issuances financing investment in our nation's infrastructure: building schools, hospitals, roads, public transportation, and utilities, including public power, water and sewer systems.

So why do municipal issuers bother with the green bond label? Ultimately, it's a marketing technique, used to generate interest in a new issuance and to attract interest from millennials or other investors searching for green and sustainable investments, according to market sources— an underwriter, portfolio manager and issuer—specializing in green bonds. More demand should, in theory, drive the cost of borrowing down, resulting in cost savings for the issuer. However, significant cost benefits as a result of issuing green bonds have not materialized, these sources said.

New York's Metropolitan Transportation Authority (MTA) is one issuer that's revised their strategy to favor green bonds. MTA began issuing green bonds in 2016, and in an interview with Debtwire, disclosed that they've determined that going forward, the majority of its debt will be issued as green bonds, in line with its function as a mass transit operator. Unlike some green bond issuers, MTA does pursue third-party certification for its issuances, verifying their "green-ness."

But the security structure—what pays off the debt—is no different than when MTA comes to market with traditional revenue bonds, supported by a pledge of transportation revenue, or sales tax-backed bonds, and that's the same for any issuer that decides to embrace a green strategy.

Savvy green bond investors should do their homework and learn about what they're purchasing to make sure there is something beyond the label.

Forbes

By Maria Amante

Feb 9, 2018

Maria Amante is a reporter for Debtwire covering stressed credits in New York, California, Alaska, higher education and continuing care retirement community sectors. She can be reached at Maria.Amante@acuris.com.

Opinions expressed by Forbes Contributors are their own.

Multiple Factors Drive Upswing of Bankruptcies, Closures Among Rural Hospitals.

LOS ANGELES — The number of Chapter 9 bankruptcies by rural hospitals has climbed over the past five years as populations shrink and federal reimbursements decline.

In the last five years, not including this year's first filing, 13 hospitals have filed for Chapter 9, said Matt Fabian, a principal with Municipal Market Analytics.

With the distress in the sector trending up, Fabian said, it was no surprise that the first Chapter 9 bankruptcy filing of the year is a rural healthcare district.

Surprise Valley Health Care District, a 26-bed hospital in Cedarville, a small northern California

town near the Nevada border, filed for Chapter 9 bankruptcy protection on Jan. 4.

The hospital district's board declared a state of fiscal emergency ahead of the filing, saying area residents' "health, safety and well-being" would be put at risk without the bankruptcy protection because it would be unable to meet its financial obligations within 60 days, according to bankruptcy documents.

The hospital, which has no bond debt, has asked the Eastern District U.S. Bankruptcy Court in Sacramento to authorize a $1.5 million debtor-in-possession loan from CadiraMD, a Denver-based medical testing company with which it plans to partner. The loan is contingent on a number of factors including the sale of the hospital.

Surprise Valley HCD is the second rural California hospital to file Chapter 9 bankruptcy in recent months.

In the Central Valley, Tulare Local Health Care District, with $84.1 million in general obligation debt and $13.6 million of outstanding revenue bonds, filed for bankruptcy in early October. Its Tulare Regional Medical Center closed Oct. 29 and a hearing on a motion for summary judgment in the bankruptcy is slated for March 21.

"Bankruptcy is unlikely to impair the district's GO bond payments, though risk is elevated given the challenges facing the district," Moody's Investors Service said in a report Thursday. "Payments on the $84.1 million in GO debt should not be affected given legal and structural features of the district's GO bonds, which shield bondholders from hospital operations.

Tulare missed a principal payment of its revenue bonds in November. "Revenue bondholders will remain at greater risk for additional defaults during the bankruptcy process," according to Moody's (MCO).

Last year, Atoka County Medical Center in Oklahoma, the Gainesville Hospital District in Texas and the Kennewick Public Hospital District in Washington also filed for Chapter 9 bankruptcy protection.

Since 2010, 83 rural hospitals – or eight to ten a year – have closed, said Mark Holmes, the director of the North Carolina Rural Health Research and Policy Analysis Center.

Though iVantage Health Analytics puts the number of rural hospitals at risk of closing around 600, Holmes said he believes the number is much smaller.

The financial distress index that the North Carolina rural health policy center developed in 2015 estimates that 6% of the country's 2,264 rural hospitals are at risk of closure, Holmes said.

Financial indicators such as operating margin, benchmark performance and retained earnings are the strongest indicators of financial distress, but hospital size and market poverty rates are also influential, Holmes said.

The North Carolina rural health policy center also looks at the size of the community, how far the hospital is from competitors, market share and the area's unemployment rate, he said.

Fabian ticked off a list of challenges for rural hospitals that can make them a risky investment: They are small. They skew more toward reliance on reimbursement from the federal government and insurance, so they struggle with reimbursement rates. It's harder to keep them fully staffed. The patient numbers are more inconsistent. And the long-term demographics show Americans are moving out of rural areas.

Rural hospitals in states that expanded Medicare under the Affordable Care Act like California are considered at less risk because they qualify for a higher rate of federal reimbursements for poor and elderly patients, but that is only one factor of many that are impacting small town hospitals, said Todd Sisson, a Wells Fargo (WFC) senior portfolio analyst for healthcare.

“I have been cautious about hospital investments in non-expansion states, and California is the poster child for expansion policies, but small hospitals just have a hard time,” Sisson said.

The Obama administration established a policy in which states that did not create ACA programs would not receive supplemental funding while states that did expand the number of poor and elderly served under their Medicaid programs do receive such funding.

The closures have been more heavily concentrated in southern states, but many factors that predate the ACA are pressuring those hospitals, Holmes said.

For more than 20 years, hospitals in the south have been less profitable than other areas of the country,” Holmes said. “They tend to have smaller market sizes. Medicaid tends to pay less, and cover few people, in those states and reimbursements from private insurers are less.”

In rural areas all over the country, population shifts have resulted in shrinking numbers and a high concentration of senior citizens.

Though older residents tend to use hospital services more, they make hospitals more dependent on reimbursement from the federal government, because many pay hospital bills with Medicare, Holmes said.

Holmes has taken note of the rural hospital bankruptcies in California, but his policy center has not studied what risk factors are specific to the state.

Technological changes are a factor pressuring rural hospitals everywhere. Medicare payments have shifted from a prospective system of fixed payments for a treatment to value-based payments tied to efficiencies and performance, Sisson said.

“You need more sophisticated technology systems to track metrics to qualify for value-based care and smaller hospitals don’t have the balance sheet to pay for that,” Sisson said. “That is why you are seeing a lot of hospitals trying to merge with larger providers that have more supportive IT systems.”

That doesn’t always work for all small rural hospitals, because often larger systems, interested in adding hospitals, want them to act as satellites focusing on outpatient care, he said.

ACA also has resulted in more private practice physicians migrating to larger hospital systems, because the billing and insurance is more complicated under the system, Sisson said.

“We have seen a ramp up in merger activity and we expect it to continue, because reimbursements are going to continue to be stressed,” he said.

Changes in healthcare resulting in less time spent in hospitals and more treatments handled through out-patient procedures can also mean that rural hospitals have more beds than they need, Holmes said.

“My research indicates that the original purpose of healthcare districts was to encourage hospital facilities and healthcare in rural areas and allow them to borrow money through public finance and

tax people," said Ron Winters, a managing director for Healthcare Management Partners, a consulting company that specializes in turnarounds.

That idea might not be as relevant as when it originated in the early 20th century, Winters said.

"When the financings were originally done, it was a different environment, rural hospitals could be expected to earn a certain amount of money and pay off the debt," Winters said. "Now, the life of the hospital could be shortened, so it doesn't match the lifespan of the debt."

As a municipal bond investor, Sisson said Wells Fargo (WFC) is more comfortable with larger, multi-state systems.

"We have high-yield funds, but we are cautious of rural hospitals in non-expansion states," Sisson said.

It's not just rural hospitals for which Municipal Market Analytics would throw down a caution flag, Fabian said, but also the cities that are served by the hospitals where they can be major employers and affect the local economy.

"Cities that are reliant on the rural healthcare provider should be seen as high risk," he said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 02/08/18 07:04 PM EST

California Treasurer Sees Event as a Spur for Green Bonds.

California State Treasurer John Chiang is ramping up his support for green bonds by co-hosting a Green Bonds Symposium in Santa Monica on **Feb. 27-28**.

The event is being put together with the Milken Institute, a Santa Monica-based public policy think tank, and Environmental Finance, a London-based publishing company that reports on green finance.

Chiang, who is running for governor, called the bond market, and more specifically green bonds, an essential tool for raising the $8 trillion needed in the U.S. to replace fossil-fuel power sources with low-carbon alternatives and the hundreds of billions needed in the state to replace and modernize crumbling roads, bridges, and water plants.

"With the U.S. already trailing China and Europe, California can fill the leadership void left by the current federal administration by facilitating the maturation of a domestic green bonds market that will pay for the new, less-polluting infrastructure we so desperately need to counter climate change," Chiang said in a letter.

Green bonds, or debt issued by corporations or government agencies to finance environmentally-friendly projects, were first introduced in 2008.

The U.S. green municipal bond market grew to $11.05 billion in 2017 up from $7.11 billion the previous year; and it's expected to reach $20 billion in 2018, according to a Climate Bonds Initiative report. New York edged out California in 2017 in green bond issuance pushing out $4.59 billion compared to California's $4.3 billion.

The first day of the event will consist of an invitation-only financial innovations lab hosted by the Milken Institute.

Researchers, policy makers, and others will work to generate market-based solutions to overcome challenges for green bonds during the innovations lab, according to the hosts. The focus will be on innovative structures, market function, investor interest, and market standardization issues to conquer the barriers to investment in green bonds in the United States. The same areas that the treasurer's office covered in its report, Growing the U.S. Green Bond Market, Volume 1, released in January 2017.

The treasurer's office plans to produce a second report in Spring 2018 on findings from the innovations lab.

The second day will be a general conference, open to everyone, with key note speakers, case studies and panels.

In 2016, Chiang said he conducted a multi-city listening tour meeting with three dozen investors, who control funds holding trillions of dollars, to discuss how to use bonds to encourage environmentally-friendly development.

"The need for a green bonds symposium grew directly out of my listening tour and the lagging performance here in this country," Chiang said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 02/06/18 07:01 PM EST

Illinois' Lousy Credit Rating: It's Contagious.

Illinois has a bond problem, and it's not just at the state level. While many Illinoisans know the state's financial troubles have led to the worst state bond rating in the country, what they may not know is that those problems are amplified on the local level. When the state sells municipal bonds, it has to pay investors more interest to take on increased risk—and the same thing happens at the local level, thanks to the state's problems. In the bond world, it's called a "contagion."

For counties, cities, schools, hospitals, airports and nonprofits across the state that sell municipal bonds to construct buildings or repair infrastructure, the Illinois contagion means they're all stuck paying investors more interest, too. They may not be able to afford to raise as much money, and will be burdened with higher debt payments in the future. One bond expert estimates that the "Illinois effect" results in the state's local issuers shouldering an additional billion dollars in annual debt payments.

The negative impact shows in Illinois issuers' average bond yield, which is higher than the national average. Even when their bond ratings are comparable to those of peers in other states, they pay a penalty.

Find out what the worst credit ratings in the country means for cities, suburbs and counties all over Illinois. Read more here.

CRAIN'S CHICAGO BUSINESS

By LYNNE MAREK

February 09, 2018

Munis Remain Attractive Despite Tax Changes.

Despite passage of the Tax Cuts and Jobs Act at the end of last year, municipal bonds can still be an attractive investment and reliable source of tax-free income.

Over the last seven years or so, we have seen significant increases in the holdings of municipal bonds by both banks and insurance companies.1 Within the insurance industry itself, while bond purchases by property and casualty ("P&C") companies have diminished, those by life insurers have increased. Although, with a reduction in the corporate tax rate to 21%, we may now see some reduction in demand from banks, whether the same holds true for life insurance companies remains to be seen.

When it comes to individual investors, however, the picture in the crystal ball becomes murkier. One thing that hasn't changed, though, is the nature of municipal bonds themselves and the attractiveness of their tax-exempt status. So, for those investors who live in states with high state and local taxes, perhaps there is, now, even more reason to look to munis to help mitigate their tax bills.

If history is anything to go by, tax reforms that have lowered personal taxes have led to no less interest in muni funds on the part of investors. Following the Tax Reform Act of 1986, signed into law by President Reagan on October 22 that year, investment in muni bonds by individuals did anything but fall.

Back then, of course, there were no muni ETFs. Now there are. While it remains to be seen, therefore, just what effect on inflows and outflows the latest tax reforms will have, the nature of neither munis nor muni ETFs have changed. The former still provide attractive tax-free income, and the latter provide diversification, trading flexibility, daily transparency, lower costs, and tax efficiency.

Seeking Alpha

Feb. 8, 2018

Detroit City Council Approves $55 Million Bond Repurchase Plan.

(Reuters) – Detroit will tap up to $55 million in surplus cash to retire some of the debt the city issued in 2014 as part of its exit from bankruptcy, under a plan approved on Tuesday by the city council.

With debt service on outstanding bonds expected to substantially increase in 2025 with the commencement of principal payments on various bonds, the city is taking steps to lower costs by allocating some of the $169 million unassigned budget surplus it has accumulated for debt repurchases.

John Naglick, Detroit's finance director, told the city council that pending final approval by a state

oversight board, the money will be used to obtain financial recovery series B bonds, which carry a 4 percent coupon, at a discount, or series C bonds, which have a 5 percent coupon.

“By retiring them now, it’s like paying off your mortgage early. You’re going to save all that interest,” he said.

The city ended what was then the biggest-ever U.S. municipal bankruptcy in December 2014 after shedding about $7 billion of its $18 billion of debt and obligations.

Michigan’s biggest city is on track to end state supervision of its finances this spring after an audit released last week showed it completed a third-straight fiscal year with a balanced budget. One element of the city’s federal court-approved bankruptcy exit plan was Michigan’s creation of an oversight board.

The city reported another positive development on Monday — residential property values had a net increase for the first time in at least 17 years. Higher assessed values, which rose to $3 billion from $2.8 billion last year, could lead to more property tax revenue for Detroit.

By REUTERS

FEB. 6, 2018, 1:39 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago. Editing by Matthew Lewis)

The Economy Is Full of Crypto (And Collective Delusion).

We have talked a few times around here about a socialist republic that has been hit hard by sanctions imposed by the U.S. government and that, in response, is planning to issue its own cryptocurrency to raise money. I mean Venezuela. Venezuela’s government is the one that is planning to issue a cryptocurrency to replace money that it has lost due to the policies of the U.S. federal government. In other news:

> The City of Berkeley, one of the epicenters of liberal California, is considering a turn to cryptocurrency to reduce its reliance on federal funding in the Trump administration.
>
> Berkeley would become the first city in the US to hold an initial coin offering (ICO) — a type of crowdfunding campaign that’s become popular in the past year. The city would raise funds by selling digital assets called “tokens” that are backed by municipal bonds, a type of security issued by the local government.

Continue reading.

Bloomberg View

By Matt Levine

February 11, 2018, 7:00 AM MST

Berkeley, Calif., Plans for First Muni Bond Issued on Blockchain.

Elected officials in the city are working with a startup and university faculty to try to revamp the municipal bond issuance process.

That slow-moving stalwart of investing, the old municipal bond, is about to meet the trendiest tech in the country right now: blockchain.

The mayor and one councilmember in Berkeley, Calif., announced this week that they are partnering with the startup Neighborly and the Blockchain Lab at the University of California, Berkeley to attempt the first-ever tokenized municipal bond. They hope to make the process faster, cheaper, more transparent and more accessible to community members.

Basically, they want to sell city debt the same way cities always have — to fund projects that the regular budget can't or won't cover — but they want to digitize the process and record it on the blockchain. That means recording it digitally in a public ledger constructed with mathematical proof backing up every transaction. The people behind the initiative want to open the bond to investors using both U.S. dollars and some as-of-yet-unspecified cryptocurrency.

Continue reading.

GOVTECH.COM

BY BEN MILLER / FEBRUARY 9, 2018

Berkeley to Use Blockchain Technology to Combat Homelessness.

The city of Berkeley may soon launch an "initial community offering" as part of an effort to use blockchain technology to combat homelessness and housing issues. This would make Berkeley the first city in the United States to sell digital "tokens" as part of a crowdfunding campaign, according to a Tuesday press release.

In the press release, Mayor Jesse Arreguín and City Councilmember Ben Bartlett announced the founding of the Berkeley Blockchain Initiative, through which the tokenized municipal offering will be hosted. The initial community offering is similar to an initial coin offering, which is a cryptocurrency fundraising system. However, the tokens distributed by the initial community offering will represent real security for a specific purpose instead of potential future values, according to Kiran Jain, chief operating officer and general counsel of Neighborly.

Neighborly, a technology firm aiming to modernize municipal finance, and UC Berkeley Sutardja Center's Blockchain Lab will collaborate with the city on the initiative.

"We are always looking at new technology, trying to figure out how we can apply them in new ways to benefit our city," Bartlett said.

City Council began exploring blockchain technology about a year ago as part of the city's efforts to explore alternative methods of funding in anticipation of a possible decrease in federal funding from the Trump administration, according to Bartlett.

According to Jain, the project still has to receive official approval from City Council, along with other necessary approvals, which will likely happen about mid-May.

Jain said the process for conducting the initial community offering itself “is similar to what you’d see for a municipal bond” in terms of how the funds are raised. The official term for the process is a “tokenized municipal offering,” and it is akin to an initial coin offering, except it is “fully compliant with all U.S. regulations and for low-cost tax-exempt debt rather than equity or utility token.”

The initiative’s leaders intend to direct the proceeds toward affordable housing projects in Berkeley.

The money raised from the community offering “can be directed towards whatever the community wants to fund,” according to Bartlett. Buyers will purchase tokens backed by municipal bonds, and the proceeds can support housing projects and homelessness services.

Berkeley has a long history of combating housing issues through innovative measures, such as researching tiny homes as a possible response to the city’s housing crisis.

“Cities must look towards innovative funding mechanisms to solve our most intractable problems, especially in the face of diminished federal support,” Arreguín said in the press release. “Berkeley is proud to once again be leading the way.”

THE DAILY CALIFORNIAN

BY LUKE KOPETSKY | STAFF

LAST UPDATED FEBRUARY 8, 2018

Contact Luke Kopetsky at lkopetsky@dailycal.org and follow him on Twitter at @LukeKopetsky.

City of Berkeley Looks to Cryptocurrency to Raise Funds.

- **California city is mulling applying blockchain to public debt**
- **Investors could buy either a digital coin or municipal bond**

In what might be a first for the $3.8 trillion municipal bond market, Berkeley, California is mulling a proposal to apply blockchain technology to public finance as a way to raise funds for community projects.

Under the initiative, the city would go to market with a public initial coin offering, allowing investors a chance to purchase either monetized digital tokens or municipal bonds issued in U.S. dollars. Coupon payments would be the same for those buying the bonds as those investors who want the digital currency instead.

The city is still working out the details, such as figuring out if voter approval would be needed to borrow the money and what kind of projects should be financed. City councilman Ben Bartlett said funds could be used to help pay for affordable housing, a critical issue for the expensive San Francisco region.

“We thought we’d get creative and figure out a way to finance our needs to take care of our people,” Bartlett said in a telephone interview.

The municipal-bond market isn't often associated with cutting edge technology. With a vast number of issuers and no central exchange, it has long been considered opaque in comparison to more easily traded investments like corporate debt and equities.

Lower Costs

Berkeley is working with Neighborly Corp., an online startup that says it raises money for civic projects though municipal bonds, as well as the UC Berkeley Blockchain Lab, a research center for cryptocurrency technology.

Applying blockchain — a platform that uses so-called distributed ledgers to allow digital assets to be traded securely — could lower costs for municipal borrowers, as well as make it cheaper and easier for local residents to invest, said John Crossman, principal at Neighborly Securities, the San Francisco-based company's underwriting arm.

For investors, they can buy the Berkeley coin directly and with less risk of mark-ups from middlemen, he said. For municipalities, savings could come from needing less from lawyers and advisers and achieving standardized documents, he said.

Since the securities would be issued and paid out in U.S. dollars, volatility in cryptocurrencies would have little impact on them, and network fees would be minimal as well, he said.

"If we can deliver on our mission, this will be a very attractive alternative for other cities and states and counties," Crossman said.

The Municipal Securities Rulemaking Board, which oversees the muni market, would have a role making sure regulations are followed in such offerings that involve market professionals such as financial advisers and underwriters, said executive director Lynnette Kelly by telephone.

"It's certainly novel, innovative and creative," she said of the initiative.

Bloomberg Technology

By Romy Varghese

February 8, 2018

Airports Call for Infrastructure Investment and Regulatory Relief.

Airports Council International – North America (ACI-NA) on Feb. 12, called on the Trump Administration and Congress to identify a clear funding mechanism to address the significant infrastructure needs of America's airports following the unveiling of the Rebuilding Infrastructure in America proposal by President Donald J. Trump.

"The infrastructure proposal put forward by President Trump addresses a number of regulatory burdens long identified by the airport industry as barriers to infrastructure development," said ACI-NA President and CEO Kevin M. Burke. "Airports will continue to pursue legislation that will not only provide meaningful regulatory relief but also a clear investment mechanism to meet the $100 billion in well-documented airport infrastructure needs across the country."

ACI-NA also released its own set of airport infrastructure principles that should be addressed by any infrastructure plan. By acting on these principles, Congress can provide airports with greater flexibility and local control to better serve their passengers and benefit their local communities now and into the future.

Modernize the Passenger Facility Charge Program

The Passenger Facility Charge (PFC) is a local user fee airports can use to upgrade their facilities, improving the passenger experience and spurring airline competition. Congress should give airports the locally controlled self-help they need to finance critical infrastructure projects by eliminating the outdated federal cap on the user fee and streamline the cumbersome application and approval process to reduce construction costs. Congress also has the opportunity to enhance airport security by expanding PFC eligibility to include all security projects that airports are responsible for funding.

Enhance the Airport Improvement Program

The Airport Improvement Program (AIP) – supported entirely by users of the aviation system with no general fund revenues used for AIP grants – finances crucial safety, security, and capacity projects at airports of all sizes. In order to continue to be a viable funding mechanism for airports, AIP needs to be updated by Congress. Needed updates to the program include an increase in the amount of money contributed annually to AIP and the creation of an airport terminal development grant program.

Relieve Costly Land-Use Regulatory Burdens on Airports

Reducing the regulatory burden on airports would empower them to act in a business-like manner that accelerates innovation, construction, and job growth. To reduce the unnecessary federal red tape that can slow airport-development projects, Congress should eliminate the requirement for FAA approval for airports to dispose, use, or lease non-airfield property purchased without federal funding. Congress should also eliminate the requirement that FAA approve non-aeronautical improvements.

Help Airports Finance Critical Infrastructure Projects with Bonds

Airports often turn to the bond market to help finance their infrastructure projects. To help lower airport borrowing costs, Congress should maintain the tax-exempt status of public purpose municipal bonds and private activity bonds to ensure that airports can continue to finance critical infrastructure projects. In addition, Congress should exclude interest earned on airport private activity bonds from the alternative minimum tax and Allow advance refundings on all municipal bonds.

Establish an Airport Security Grant Program

In accordance with an Aviation Security Advisory Committee recommendation, Congress should establish an airport security-focused grant program at TSA to support the deployment of perimeter, access control, automated screening lanes, and other security technology at airports. Airport operators have limited funding available that must be prioritized across a multitude of safety, security, and operational projects. While DHS's existing grant programs have dispensed billions of dollars for systems and technology to bolster state, tribal, and local security, very little, if any, has been allocated to airports.

aviationpros.com

[As White House Prepares To Unveil Infrastructure Proposal, Nation's Mayors Outline Priorities To Get America Moving With A Cities-First Agenda.]

USCM President Mayor Mitch Landrieu: "No credible plan can ignore America's cities."

Washington, DC— As the White House releases its infrastructure plan, it will begin a national debate on the improvements needed to shore up the foundation of the nation's economy and ensure the future growth and opportunity in cities and other communities. The bipartisan U.S. Conference of Mayors (USCM) today released its plan for what are essential components of a strategy to rebuild and modernize the nation's critical infrastructure. Mayors set forth priorities last June in the Mayors' Agenda for the Future with its updated infrastructure recommendations in January, proposals that can inform and support Congress and the Administration as they craft new infrastructure policy and investments.

"Leadership at all levels of government requires presenting bold ideas that are informed by the experts on the ground – in this case, the nation's mayors," said **Mayor Mitch Landrieu of New Orleans, President of the U.S. Conference of Mayors**. "Cities remain the country's economic engine, and as such mayors of both parties are looking for a plan that benefits all Americans where they live and takes full advantage of any additional infrastructure investments to build more equity in our economy, create a more inclusive workforce, and support financially distressed communities. No credible plan can ignore America's cities."

The U.S. Conference of Mayors' priorities include:

- Local government is the most trusted authority to appropriately allocate funding to meet needs: place cities first by going directly to where the jobs are and provide direct funding to local government as the most efficient investment strategy.
- A proven way to accomplish this outcome is to deliver resources directly to cities and counties through the CDBG (Community Development Block Grants) program and funds to local areas for surface transportation needs through the State and Local Block Grant Program.
- Increase funding to the State Revolving Fund to support additional no-interest, low-interest loans, loan forgiveness, and technical assistance grants to local governments and fully fund the Water Infrastructure Finance and Innovation Act (WIFIA).
- Enable a stronger partnership between federal and local governments to speed the transition to renewable, job-creating energy systems like wind and solar.
- Modernize our ailing waterways.By increasing investment in the Army Corps of Engineers and unlocking $9 billion dollars in the Harbor Maintenance Trust Fund, we can improve the way goods and people move around.
- Thirty million Americans lack access to broadband. Give local communities the power to own and operate public broadband networks.

"The number of Americans living in cities and towns is increasing every year and the optimal plan will make sure all of America benefits. We look forward to reviewing the White House's plan and engaging in productive, bipartisan conversations around legislation and funding priorities that cities can support with leaders in Washington."

At the 86th Annual USCM Winter Meeting last month in Washington, D.C., mayors of both parties participated in a thorough discussion with DJ Gribbin, Special Assistant to the President for Infrastructure Policy on the Council of Economic Advisors, on how the Administration's policies will affect local communities.

Trump Infrastructure Plan Wants to Stop 'Overreliance' on Federal Money.

The president's long-awaited infrastructure plan pushes state and local governments to spend more, but offers them a smoother path to getting federal regulatory approval.

State and local officials who have clamored for years for the federal government to increase spending on infrastructure projects like highways, transit and water systems won't get much new money under President Donald Trump's infrastructure package. But they could get help building those projects more quickly.

There are few surprises in the broad outline of Trump's long-awaited infrastructure plan, as described by a senior White House official this weekend and set for release Monday. That could be disappointing news for many state and local leaders who have been skeptical of the effort.

The administration wants state and local governments to pay more for infrastructure, and it wants the federal government to speed up its approval processes for those projects.

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | FEBRUARY 11, 2018

Rep. John Katko Proposes $1 billion to Upgrade Water Infrastructure Systems.

A bill introduced by U.S. Rep. John Katko would provide $1 billion over five years for water infrastructure projects and streamline the application process to help states seeking funding for system upgrades.

The main objective of Katko's bill is to advance projects receiving funding through the State Revolving Fund. He also wants to preserve the Water Infrastructure Financing and Innovation Act, which has supported local water system improvements across the country.

The legislation sponsored by Katko, R-Camillus, would provide $200 million annually over a five-year period to support state revolving fund projects. It would waive a $100,000 application fee for states if projects are bundled.

Another change proposed in the bill is streamlining the federal approval process by allowing projects to receive funding without the Environmental Protection Agency needing to process more loan applications.

There are significant water infrastructure issues in Katko's district. The presence of harmful algal blooms in Owasco Lake, which provides drinking water to the city of Auburn and towns in Cayuga County, has spurred a multi-million dollar response to ensure the drinking water remains safe for residents.

Algal blooms have also been found in Cayuga and Skaneateles lakes, both of which are at least partly in Katko's district.

“In Central New York and communities nationwide, we need to focus on updating our water infrastructure systems to ensure safe, reliable drinking water is available,” Katko said in a statement Friday.

Central New York elected officials backed Katko’s effort. Oswego Mayor Billy Barlow said if the bill passes, it would provide a significant boost to his city’s water infrastructure.

Onondaga County Executive Joanie Mahoney echoed that sentiment.

“(Katko’s bill) will provide the additional funding needed to ensure that we can continue investing in our water systems for every resident and business,” Mahoney said.

The legislation introduced by Katko is cosponsored by U.S. Rep. Earl Bluemenauer, an Oregon Democrat. The Senate version of the bill has bipartisan support, too. It was introduced by Republican U.S. Sens. John Boozman and James Inhofe and Democratic U.S. Sens. Cory Booker and Dianne Feinstein.

auburnpub.com

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Feb 3, 2018

House Dems Call for 5 Times More Infrastructure Spending Than What's Expected in Trump's Plan.

WASHINGTON — Democrats in the U.S. House on Thursday called for $1 trillion of federal infrastructure spending on public assets such as roads, railways, high-speed internet and schools.

A group of Democratic lawmakers made their pitch in advance of Monday’s slated White House release of “principles” for President Trump’s long-anticipated infrastructure proposal. Administration officials have indicated that the Trump plan will call for about $200 billion of direct federal spending over a decade.

“The president talks a big act, but then he proposes a small bill,” House Minority Leader Nancy Pelosi, of California, said at a press conference. She described the president’s approach to infrastructure as a “disappointment” and said it would shift burdens onto city and state budgets.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

February 8, 2018

Tunnel Shows Risks of Trump Public Works Plan.

President Donald Trump's war with his hometown over one of the nation's priciest transportation projects shows the challenges ahead for his plan to upgrade crumbling public works by having locals pay more of the bill.

The $30 billion Gateway proposal, which includes a new rail tunnel under the Hudson River between New York City and New Jersey, has bogged down in an acrimonious fight with the states as Trump prepares to roll out his infrastructure plan on Monday.

Democratic senators from New Jersey and New York are blocking Trump's transportation nominees until he commits federal funds to Gateway. The administration rejected an earlier deal to split the cost, saying it's a local project — even though the tunnel would help bind the entire Northeast corridor to the New York area.

The president's infrastructure plan is expected to propose spending at least $200 billion over the next decade, largely to spur states, localities and the private sector to provide the balance of at least $1.5 trillion.

State and local officials — loath to raise taxes or levy tolls — want more help. While Gateway is unique for its scope and gritty politics, standoffs with Washington could play out across the nation if Trump's plan to shift the burden of financing improvement projects to states and local governments succeeds.

"What they're going to be hearing from governors and mayors and people all over the country is, 'We don't have the money,' particularly for projects of national significance, which the Gateway project is," said Ray LaHood, a Republican and former transportation secretary under President Barack Obama.

Weakest link

The administration expects to release the president's plan on Monday, the same day he submits his fiscal 2019 budget blueprint to Congress. Half of the new federal money would go toward incentives to spur non-federal entities that own most U.S. infrastructure to raise and spend their own funds, rather than for specific projects.

The needs are great, with the American Society of Civil Engineers estimating an additional $2 trillion is required by 2025 just to restore public works to a "B" grade level. But the Hudson tunnel dispute shows how hard it might be to conjure money for even the most crucial and high-profile projects.

Hurricane damage

The Gateway project includes a new $13 billion tunnel with two tracks that would supplement a decaying, century-old tunnel that's failing because of its age and saltwater flooding from Hurricane Sandy in 2012. That tunnel provides the only direct train link between New Jersey and Manhattan for New Jersey Transit and Amtrak.

The Obama administration described the tunnel as the nation's most urgent rail infrastructure need. It is critical to the Northeast corridor, which carries more than 750,000 passengers daily and serves a region that produces about 20 percent of the gross domestic product, according to Amtrak. A 2016

Amtrak report found that implementation of the full Gateway project could generate $3.87 worth of economic benefits for every $1 spent.

Mixed signals

After New Jersey Gov. Chris Christie killed an earlier tunnel plan in 2010, saying taxpayers would be on the hook, the project appeared to revive. The cost-sharing agreement with the Obama administration was announced in November 2015 by Christie, New Jersey Sen. Cory Booker, New York Gov. Andrew Cuomo and New York Sen. Charles Schumer.

The Trump administration has sent mixed signals about Gateway since the president took office. After Transportation Secretary Elaine Chao called Gateway "an absolute priority" in testimony before the Senate Environment and Public Works Committee last May, the department withdrew from the board overseeing the project, Democrats said.

Schumer and Senate colleagues from New York and New Jersey then began holding up the confirmation of Transportation Department nominees. Schumer cited "the lack of focus on infrastructure investment by the current administration, and the continued roadblocks the administration has erected in front of the Gateway project" in a Nov. 13 statement opposing Derek Kan as undersecretary of transportation.

On Dec. 29, the Federal Transit Administration sent a letter to New York state's budget director saying "there is no such agreement" to finance half the cost of Gateway. Deputy Administrator K. Jane Williams also questioned "the responsibility for funding a local project where nine out of 10 passengers are local transit riders."

Senate slow-walk

"You get the feeling the feds just don't have any real funds for infrastructure, so they want to knock down this expensive project," said Tom Wright, president of the Regional Plan Association, a New York urban policy group.

The nominations and the Gateway project should be considered on their own merits, said Jeffrey Rosen, deputy Transportation secretary. He said it was particularly important to seat Ronald Batory to lead the Federal Railroad Administration after recent fatal derailments.

"From our vantage point, the nominations and those New York and New Jersey transit projects are totally separate issues, and we think they should have been kept separate," Rosen said in a telephone interview.

Democratic support

Wright said the administration needs Democratic support to pass an infrastructure bill, and Gateway could be a major negotiating chip. Williams' letter to New York pointed out that "Congress is poised to begin discussing infrastructure legislation in the coming weeks."

Democratic Sen. Kirsten Gillibrand of New York raised Gateway funding in "a pretty heated discussion" during a Jan. 9 meeting with Trump administration officials about their infrastructure proposal, according to Sen. Tom Carper of Delaware, the top Democrat on the Senate Environment and Public Works Committee.

Gillibrand became angry when Chao said there would be no funding because Democrats are holding up nominations, according to a source familiar with the meeting who requested anonymity to discuss

a private gathering.

LaHood said that the Gateway battle could be seen as both a political struggle between two New Yorkers, Trump and Schumer, and a striking example of the philosophical change the administration is trying to establish over the role of the federal government.

There are many large projects across the U.S. for which states and cities just don't have the resources to build without federal help, LaHood said. It will be up to Congress, which will write and pass any infrastructure legislation, to decide whether Washington continues to play the role it has.

"The $64 billion question is, is Congress willing to change the philosophy on that?" he said.

The Associated Press

February 8, 2018

Trump's Infrastructure Plan May Ignore Climate Change. It Could Be Costly.

WASHINGTON — President Trump is expected to unveil on Monday a plan that would fulfill one of his signature campaign promises: a $1.5 trillion, once-in-a-generation proposal to rebuild, restore and modernize the nation's aging infrastructure.

"We will build gleaming new roads, bridges, highways, railways and waterways all across our land," Mr. Trump said in his State of the Union address.

But while the proposal represents one of the administration's main legislative ambitions, it could directly clash with one of its defining regulatory principles, which is to question the risk from global warming and roll back regulations addressing climate change.

Continue reading.

THE NEW YORK TIMES

By CORAL DAVENPORT

FEB. 10, 2018

Next Crisis in Finance May Be Public Pensions, $1.2 Trillion Asset Manager Says.

- **Municipalities, states are pressured by funding shortfalls**
- **Head of asset manager also sees equity markets being reshaped**

What's on the list of concerns for a man who runs a $1.2 trillion asset manager? Swelling shortfalls in U.S. public pensions, according to PGIM Chief Executive Officer David Hunt.

"If you were going to look for what's the possible real crack in the financial architecture for the next crisis, rather than looking in the rearview mirror, pension funds would be on our list," Hunt said

Friday in an interview. Pressure on municipalities and states will intensify in a downturn when local tax revenues decline and unemployment worsens, he said. “So we’re worried about those pension obligations.”

Lawmakers from New Jersey to Illinois to California are struggling to fill shortfalls. U.S. public pensions had 71.8 percent of assets required to meet obligations to retirees as of the fiscal year ended June 2016, according to a report by the Center for Retirement Research at Boston College.

PGIM, owned by Newark, New Jersey-based Prudential Financial Inc., counts 147 of the 300 largest global pension funds among its clients. Hunt said that corporate funds generally do a better job than their public counterparts.

Hunt acknowledged that it’s harder in the public pension space where lawmakers set the benefits and the fund managers are tasked with generating enough return to cover those promises. Still, he said he has advised public-pension clients to stop looking for the highest-return hedge fund and “start doing what the corporate folks have long been doing, which is to find ways to minimize the deficit and to take risk gradually off the table.”

Hunt joined Prudential in 2011 from McKinsey & Co. He’s doubled assets under management, renamed the business PGIM and bought a Deutsche Bank AG unit to expand in India.

In the interview, Hunt also said he’s seeing a shift in equities markets as more firms pursue private funding and initial public offerings “remain remarkably muted.” The number of publicly traded U.S. companies shrank from more than 8,000 in 1996 to about 4,300 in 2016, according to Ernst & Young.

“More than any other period in our history we’re going to have companies that are owned by private equity rather than the public equity markets,” Hunt said. “The dynamism and growth of the economy is now more and more being captured privately and by institutions rather than actually available for you to own in your 401(k) account or for other public markets.”

Hunt said he doesn’t expect a wave of combinations among asset managers, even as some have predicted that fee pressure could provoke more tie-ups such as the merger of Janus Capital Group Inc. and Henderson Group Plc. Even as the equity business suffers, it hasn’t gotten bad enough to spur more mergers and acquisitions, he said.

“If you’re a modestly scaled equity business right now you’re having a hard time, but you’re not losing money yet,” he said. “You’re more likely to have what I’ve kind of called the field of zombies. You have these firms, they don’t disappear. They stop growing and maybe they’re even shrinking, but they carry on.”

Bloomberg Markets

By Katherine Chiglinsky

February 12, 2018, 2:00 AM PST

— With assistance by Amanda Albright, and Alex Barinka

[Recent U.S. State Pension Reform: Balancing Long-Term Strategy And Budget Reality.]

Lethargic economic recovery, weak investment returns, and assumption changes have weighed heavily on states' required pension contributions, in S&P Global Ratings' view. For the weakest pension funds, relatively high pension burdens stem from years of underfunding or deferring payments through back-loaded amortization methods and poor assumptions, combined with…

Continue Reading

Feb. 9, 2018

[Could Oil Firms be Forced to Pay for Climate Change? California Cities Hope So.]

The Bay Area city of Richmond recently made an unlikely move that got the attention of its largest employer and taxpayer, Chevron.

It followed other municipalities and counties across California that have filed lawsuits against oil companies, alleging that the energy giants knowingly contributed to climate change and should begin paying for it. Literally.

Employing the legal strategy that brought states major payouts from tobacco companies decades ago, the plaintiffs are demanding that oil interests begin writing checks to protect Californians against rising seas, crippling drought and harmful air.

The legal viability of the lawsuits is unclear; the cases are in early stages. But if any succeed, the implications are profound: The state is already spending hundreds of millions of dollars to shore up coastlines, protect infrastructure and retrofit roads and bridges in response to rising seas. And if companies are persuaded to drill and refine less oil, California has a much better chance of reducing greenhouse-gas emissions on the schedule it has set.

Besides Richmond, plaintiffs include the cities of Imperial Beach, Oakland, Santa Cruz and San Francisco and the counties of Marin, San Mateo and Santa Cruz. The Los Angeles City Council is considering its own suit.

The state has not joined in, something environmental groups say is a failure of leadership.

"Accountability is critical," said Kassie Siegel, director of the Climate Law Institute at the Center for Biological Diversity. "The state of California can and should file a case seeking money damages and also an injunction against ongoing activities."

The California Department of Justice has sued the Trump administration two dozen times over policies that include several related to the environment. Asked whether the state would join the cities and counties or consider filing its own suit against the oil companies, the Justice Department declined to comment about potential future action.

The city-county suits began six months ago when Imperial Beach, in southern San Diego County, sued a handful of oil companies. Richmond, surrounded on three sides by water and imperiled by rising seas, joined the fight Jan. 22. Its city council voted unanimously to sue 29 oil producers, even

if it meant taking on Chevron, whose tax payments—$45 million in 2016—account for 25 percent of the city's general fund.

"They are a pretty important corporate citizen," said Richmond Mayor Tom Butt.

However, "we are a waterfront city—Richmond has 32 miles of shoreline on the Bay. Part of our city is vulnerable to sea-level rise: our transportation systems, neighborhoods and commercial areas and thousands of acres of waterfront park."

Among those vulnerable venues is Chevron's refinery, which sits at the edge of San Francisco Bay. Completed in 1902, this refinery, the state's largest, was immediately dubbed "the colossus." The facility today employs more than 3,400 people.

Leah Casey, the spokeswoman for Chevron's Richmond refinery, said in a statement that lawsuits like the local ones "will do nothing to address the serious issue of climate change. Reducing greenhouse-gas emissions is a global issue that requires global engagement."

Butt said the city sued "out of frustration, because I know that these fossil fuel companies are aware of the long-term costs and damage of the widespread consumption of fossil fuel." He said Richmond was already planning for the sea's rise but had not yet calculated mitigation costs.

The suits are filed in state court under California's public-nuisance law, which allows legal actions against activities that are "injurious to health."

New York City filed a similar claim against five of the world's largest oil companies in federal court, asking that the cost of mitigating damage done by the companies as a result of their contribution to climate change be charged to them.

The legal challenges also assert that the oil industry has known for decades that burning fossil fuels accelerates climate change. The Richmond complaint states, "The industry has known for decades that business-as-usual combustion of their products could be 'severe' or even 'catastrophic.'

"Companies were so certain of the threat that some even took steps to protect their own assets from rising seas and more extreme storms," the complaint goes on, "and they developed new technologies to profit from drilling in a soon-to-be-ice-free Arctic. Yet instead of taking steps to reduce the threat to others, the industry actually increased production while spending billions on public relations, lobbying, and campaign contributions to hide the truth."

The slow unraveling of the decades-long industry cover-up of the medical harm from cigarettes turned the tide in the tobacco cases, according to Ann Carlson, an environmental law professor at the Emmett Institute on Climate Change and the Environment at the University of California, Los Angeles, School of Law.

Carlson, who is advising some of the plaintiffs' lawyers, said that courts will take into account the oil-industry-funded campaign to discredit climate science.

"That matters in California," she said. "If you can show evidence that a defendant engaged in a campaign to obfuscate, it's more than just a nice detail. Evidence helps."

With much at stake, oil companies are pushing back hard. ExxonMobil has responded with a demand to depose lawyers representing the California cities and counties.

The company says it is a victim of a conspiracy and cities and counties are being disingenuous:

When they issue municipal bonds, they portray risk from climate change as unpredictable, not the fault of oil firms, as the lawsuits claim.

The companies have also filed motions to move the cases to federal courts, where they believe there are precedents more favorable to them.

The number of the legal claims intended to monetize the consequences of a warming planet is growing. Carlson said greater scientific certainty about attributing climate change impacts to specific industries and companies has created a legal opening.

“The courts were uncomfortable that they couldn’t trace the harm,” she said.

California is the epicenter of so-called climate-attribution science, said Peter Frumhoff, director of science and policy for the Union of Concerned Scientists.

“There’s really a quite robust ability to characterize the extent to which climate change impacts have worsened,” he said.

Further, by collating data taken from oil companies’ annual accounting and national and international energy agencies’ reports, “one can then connect the dots and assign a cost. That tees up the question, ‘Who is responsible and who should pay?’ ” Frumhoff said.

“This is where the science is taking us, with increasing specificity and confidence.”

calmatters.org

By Julie Cart | Feb. 5, 2018 | ENVIRONMENT

Group Urges SEC Probe of California, Cites Climate Hypocrisy.

California officials are downplaying the risks of climate change to bond investors while citing those same risks as the basis for a lawsuit against oil companies, according to a conservative think tank that has asked securities regulators to investigate.

The Washington-based Competitive Enterprise Institute sent a letter to the Securities and Exchange Commission, urging it to investigate a group of cities and counties in California for making contradictory claims about climate risks.

“In these lawsuits the plaintiff cities and counties apparently describe these climate risks in ways that are far different than how they described them in their own bond offerings,” says the letter, dated Feb. 1. “In our view, this inconsistency raises serious questions of municipal bond fraud.”

The accusations by CEI mark the latest twist in a legal fight that began last July, when a group of city and county governments in California filed a lawsuit against 37 oil companies for their role in global warming. The suit claimed that the companies, which include Chevron Corp. and Exxon Mobil Corp., contributed to sea-level rise, and so should be forced to pay part of the cost of protecting coastal California communities against the problem.

Last month, Exxon launched a suit of its own, arguing that those same cities and counties had failed to disclose climate risks when it sold municipal bonds to investors.

CEI's letter cites San Francisco, which said in the lawsuit against Exxon and other oil companies that it expects "0.3 to as much as 0.8 feet of additional sea level rise by 2030." But when San Francisco sold $173 million in bonds in January 2017, it told investors that it was "unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur."

"Either the City can predict such sea-level rise, as it tells the court, or it cannot, as it tells investors," CEI wrote to the SEC.

A spokesman for the San Francisco city attorney's office, John Cote, called the letter "deceptive," adding that the city "has been disclosing climate change as a risk factor since at least 2014."

He cited an October, 2017 issuance that noted "substantial increases in sea level rise are projected due to climate change over the coming century" and could put critical infrastructure at risk.

"The assertion that the city does not disclose this risk factor to investors is false," he said in an email.

Sam Kazman, general counsel for CEI and one of the letter's authors, said in an interview that his organization is "quite skeptical" about cities' claims that they face a threat from climate change. "I think they're quite overblown," he said of those warnings.

Still, Kazman said, the SEC ought to investigate the "very clear inconsistency between what these entities are saying in their bond offerings and in their court filings."

The odds of legal sanctions are slim, according to Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia University.

Even under President Barack Obama, the SEC took no enforcement action against cities or companies for failing to disclose climate risk, Gerrard said Monday. He said that's unlikely to change under President Donald Trump, who has disputed the science of climate change.

An SEC spokesman, Ryan White, declined to comment.

But that doesn't mean the letter won't have any effect. Barbara VanScoy, head of Alpha Impact Investors, said she expects that the letter will encourage cities and investors to take climate risks more seriously. She added that cities' financial officers also need to talk more to the staff who work on resilience. "If offices remain siloed, nothing will change," she said by email.

Shalini Vajjhala, a former Obama official who now advises cities on adapting to climate risks, said the charges leveled by CEI could spur those conversations across different parts of local government.

"It might create some uncomfortable conversations between the CFOs office and the offices that are focused on generating the suits against big oil companies," Vajjhala said. "I think this is a smart move that will cause some thinking and introspection within some cities."

Insurance Journal

By Christopher Flavelle | February 7, 2018

Climate Change is Either Upon Us or it Isn't. California Cities Want it Both Ways.

If you live in Oakland, brace yourself. In the city's lawsuit with six other California municipalities and counties against petroleum companies, Oakland states that man-made global warming is an ongoing threat that will culminate in 66 inches of sea level rise by century's end, threatening the local economy with as much as $38 billion in property damage.

But if you are an investor looking to buy Oakland's municipal bonds, the outlook is sunnier. Oakland's municipal bond offering tells prospective investors the city cannot predict when "sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the city or the local economy."

San Mateo County is another plaintiff seeking compensation from petroleum companies in advance of storms to come. San Mateo tells us to expect a precise "93 percent chance that the county experiences a devastating three-foot flood before the year 2050, and a 50 percent chance that such a flood occurs before 2030."

But if you're an investor interested in San Mateo's bonds, relax. The county is "unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur," and if they do, whether they will impact the local economy.

San Francisco's lawsuit says that the city faces "an imminent threat of catastrophic storm surge flooding," requiring long-term upgrades of up to $5 billion, while assuring investors that the city is unable to predict if such events will happen at all, or what they would cost, if anything.

From the filings of several jurisdictions, including Santa Cruz city and county, the story is much the same. They've joined together to sue "Big Oil" for projected injuries caused by global warming, while calming investors by assuring them such occurrences might not happen.

With no apparent sense of unease, officials who signed off on the lawsuits are often the same ones who signed off on the statements to investors.

When I served as attorney general of California, one of my duties was to assure the accuracy of representations about state bonds. I took this job seriously because it was my signature that affirmed the truthfulness of the claims being put before investors. To obtain my signature, a bond had to meet the budget guidelines of the California Constitution, and have a plan to be paid off within the specified term.

I also made sure claims did not contradict other claims being made by a state agency. I did this because the language in a bond offering amounts to a financial disclosure.

The factual disparities made by these California cities and counties are as wide as the Golden Gate. These contradictory statements open these jurisdictions to lawsuits from investors who can now credibly claim diminution of their investment.

Lawsuits against these municipalities could lead to judgments that impact local budgets, raising taxes or cutting services to their citizens. Furthermore, local officials who sign off on these lawsuits and the bond offerings presumably do so under penalty of perjury.

Whatever your beliefs about climate change, you don't have to dismiss the idea of human-induced global warming to see the cities' lawsuit approach as misguided. The intent of these suits is to portray petroleum companies as the new Big Tobacco. I oversaw California's tobacco litigation. I can tell you these lawsuits are nothing like those against tobacco. There exists no viable substitute today that could completely and easily replace the central role played by hydrocarbons.

Worse, the lawsuits are an attempt to mount fishing expeditions for internal documents from scientists who held robust arguments about the possibility of global warming in decades past. The goal, of course, is to selectively take statements out of context that would liken oil companies to tobacco companies.

This is just another example of activists trying to replace the power of the people and their elected representatives with the decision-making of the courts in an area in which judges have no particular expertise.

Whatever their intentions, these cities demonstrate a true legal risk – to their own city budgets and their citizens, rather than to oil companies.

Climate change is either upon us or it isn't. California cities want it both ways

The Sacramento Bee

by Dan Lungren

February 07, 2018 04:00 AM

Understanding Costs and Benefits: Leases

Read the GASB article.

New MSRB MuniEdPro® Course: Upcoming Mark-Up Disclosure Requirements and Determination of Prevailing Market Price.

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MSRB Arizona Town Hall.

MSRB Arizona Town Hall: Hosted in coordination with the National Association of Bond Lawyers' 16th Annual Tax & Securities Law Institute

February 21, 2018
4:00 PM – 6:00 PM MT

Join the MSRB, in coordination with the National Association of Bond Lawyers, for a Town Hall meeting in Phoenix, AZ. The Town Hall meeting will provide municipal market stakeholders the opportunity to discuss municipal market self-regulation, the MSRB's compliance support initiative and the future of the MSRB. The Town Hall meeting is intended to support the municipal market community by creating a forum to communicate regulatory concerns and capture ideas to inform the MSRB's future activity. The event will be exclusively in-person.

View the agenda.

Register.

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