Bond Case Briefs

Issue 177

Municipal Finance Law Since 1971

- GASB Establishes New Guidance for Interest Cost Incurred Before the End of a Construction Period.
- CDFA & ICSC Tax Increment Financing Resources.
- Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements. Note that, under the new rules, Municipal Securities Representative must pass both the Securities Industry Essentials Examination (SIE) and the Revised Series 52.
- The Markup Rule for Municipal Bonds.
- Tax Law Spurs New Marketing Approach for Georgia GO Deal.
- State Sales Tax Collections Finally Move Into the Internet Age.
- And finally, The World Owl Trust Presents is brought to us this week by State v. Sallee, in which the court's opinion refers to that beloved family institution – Hooters – as "a place to eat, a bar and grill." (Cue tittering judicial clerks.) This leaves unaddressed the avian in the room. Not only is Hooters a place to eat, it is also known for its unceasing dedication to the welfare and preservation of the 200 species of mostly solitary and nocturnal birds of prey typified by an upright stance, a large, broad head, binocular vision, binaural hearing, sharp talons, and feathers adapted for silent flight. At least that's my understanding.

MUNICIPAL CORPORATIONS - CALIFORNIA

Kaura v. Stabilis Fund II, LLC

Court of Appeal, Fourth District, Division 2, California - June 13, 2018 - Cal.Rptr.3d - 2018 WL 2946763 - 18 Cal. Daily Op. Serv. 5746

Mortgagee brought judicial foreclosure action against mortgagors. After receiver was appointed, city intervened, alleging property was public nuisance and in violation of state and local law.

The Superior Court granted city's motion to modify receivership and awarded fees and expenses to city. Mortgagee appealed.

The Court of Appeal held that:

- Statute providing for award of attorney fees to prevailing party, in an action against a property owner when owner fails to comply with housing code enforcement order or notice, does not apply when a receiver has been appointed for property, and
- Even if mortgagee and receiver were successors in interest to property owner after appointment of receiver in judicial foreclosure action, mortgagee and receiver did not have actual or constructive knowledge of housing code enforcement notice and thus were not "owners" against whom attorney fees and expenses could be awarded.

IMMUNITY - IOWA

Johnson v. Humboldt County

Supreme Court of Iowa - June 8, 2018 - N.W.2d - 2018 WL 2746320

Vehicle passenger filed negligence suit against county and landowner, following injuries she sustained when vehicle went off a county road into a ditch and then struck concrete embankment constructed by landowner's predecessor in the ditch, alleging that county should have caused removal of the embankment.

The District Court granted summary judgment in favor of the county. Passenger appealed.

The Supreme Court of Iowa held that:

- Section of Restatement (Third) of Torts governing statutory violations as negligence per se does not vitiate public-duty doctrine where the statute protects the public generally;
- Section of Restatement (Third) of Torts allowing court to rely on statute requiring actor to act for protection of another when court decides whether affirmative duty exists and scope of duty does not vitiate public-duty doctrine;
- Public-duty doctrine may be raised regarding claims brought under the Municipal Tort Claims Act;
- Public-duty doctrine applied even when grave danger presented by matters of highway safety were involved;
- Public-duty doctrine applies to nuisance and premises-liability claims.

MUNICIPAL ORDINANCE - MISSOURI

State v. Sallee

Missouri Court of Appeals, Southern District, Division One - June 18, 2018 - S.W.3d - 2018 WL 3017223

Defendant was convicted of driving while intoxicated (DWI) as a chronic offender. Defendant appealed.

The Court of Appeals held that:

- Evidence that restaurant employee reported to police dispatch that an intoxicated man had left the restaurant, got into a vehicle, and then drove behind a nearby store was not hearsay, and
- Out-of-state municipal court judgments reflecting ordinance violations of "Driving While Intoxicated" qualified as prior intoxication-related traffic offenses of driving while intoxicated (DWI), as required to prove DWI as a chronic offender.

ZONING & LAND USE - NEW JERSEY

Dunbar Homes, Inc. v. Zoning Board of Adjustment of Township of Franklin

Supreme Court of New Jersey - June 20, 2018 - A.3d - 2018 WL 3041000

Landowner sought review of planning board's ruling that landowner was not entitled to benefit of time of application statute in determining what conditional use variance was required for site plan approval.

The Superior Court reversed. Township appealed. The Superior Court, Appellate Division, reversed. Landowner petitioned for certification.

The Supreme Court of New Jersey held that:

- To benefit from the protections of the "time of application rule" (TOA) landowner was required to submit the application for development form and all accompanying documents required by ordinance, and
- Landowner's application for development was incomplete, and thus, TOA rule was not triggered.

To benefit from the protections of the "time of application rule" (TOA) embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, landowner was required to submit the application for development form and all accompanying documents required by ordinance for approval of a site plan, conditional use, zoning variance, or direction of the issuance of a permit.

The submission of an application for development will provisionally trigger the "time of application" (TOA) rule embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, if a waiver request for one or more items accompanies all other required materials; if the zoning board grants the waiver, then the application will be deemed complete; if the board denies the waiver, its decision will be subject to review under the customary arbitrary and capricious or unreasonable standard.

Landowner's application for development form was incomplete, and thus, time of application (TOA) rule, which would allow review of application to be governed by regulations in effect on date of submission of application, was not triggered; landowner's submission lacked numerous ordinance requirements for a use variance application, including drainage calculations, a site plan indicating domestic water demand, a submittal letter to the Department of Transportation, and four additions copies of the site plan and architectural documents.

SALES OF PUBLIC PROPERTY - PENNSYLVANIA

Matter of Private Sale of Property by Millcreek Township School District

Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2448800

School district filed petition for approval of private sale of school property.

The Court of Common Pleas entered order approving sale. Challenger appealed. The Commonwealth Court reversed. School district filed petition for allowance of appeal.

The Supreme Court of Pennsylvania held that trial court's role was limited to approving or disapproving sale of school property based on its assessment of evidence that proposed sale price was a fair and reasonable one and a better price than could be obtained at public sale, abrogating *Swift v. Abington School Dist.*, 7 Pa.Cmwlth. 26, 297 A.2d 538, and *Petition of Bd. of Public Ed. of School Dist. of Pittsburgh*, 44 Pa.Cmwlth. 468, 405 A.2d 556.

PUBLIC PENSIONS - RHODE ISLAND

Clifford v. Raimondo

Supreme Court of Rhode Island - May 25, 2018 - A.3d - 2018 WL 2374886

Group of public employees brought class action suit against state and municipal defendants based on depletion of funding in state and municipal employee retirement systems.

The Superior Court approved a class settlement. Union plaintiffs appealed, joined by state defendants.

The Supreme Court of Rhode Island held that:

- Plaintiffs had factual and legal questions common to entire class;
- Claims of the class representatives were typical of the claims of the entire class;
- Requirement of adequate representation of class was met;
- No conflicts of interest existed between class representatives and class members;
- Settlement was procedurally fair; and
- Settlement was substantively fair.

Class action settlement was substantively fair in action brought against state and municipal defendants based on depletion of funding in state and municipal employee retirement systems; where out of 60,000 settlement notices sent, only 400 written objections were received, complexity of cases and the duration of the controversy weighed in favor of settlement, discovery in the cases was adequate, the risk of failure to establish liability and prove damages was high because plaintiffs had nine pending dispositive motions to overcome to reach trial, and trial court determined that the combination of the low likelihood of success and the length of time the cases had been pending weighed in favor of a finding that settlement was reasonable.

ZONING & LAND USE - SOUTH DAKOTA

City of Rapid City v. Big Sky, LLC

Supreme Court of South Dakota - June 13, 2018 - N.W.2d - 2018 WL 2976314 - 2018 S.D. 45

City brought action against subdivision developers, which were a limited liability company (LLC) and its owner, seeking damages for prospective cost of repairing roads in subdivision and also alleging public nuisance.

The Circuit Court granted owner's motion for judgment as a matter of law and entered judgment on jury's general verdict for LLC. City appealed.

The Supreme Court of South Dakota held that:

- The Court's prior decision as to effect of expiration of bonds given in lieu of completing public improvements was not the law of the case as to developers' liability;
- Owner was not personally liable for any damages;
- Evidence supported developers' requested instruction on estoppel; and
- City could not use a public nuisance cause of action to recover the anticipated cost of abatement.

Supreme Court's prior decision holding that expiration of bonds given in lieu of completing public improvements in subdivision development did not release developers from obligation of making those improvements was not the law of the case as to developers' liability to city for road repairs,

where developers’ defenses, including the period of limitation, waiver, and estoppel, were not in issue in the prior decision.

Owner of subdivision development company that was a limited liability company (LLC) was not personally liable to city for damages for prospective costs of repairing roads in development, where developer was a valid LLC, developer was sole owner of the subdivision plats with deficiencies, and owner did not act in such a way that he should have been stripped of protections of an LLC.

Evidence supported subdivision developers’ requested instruction on estoppel in city’s action seeking to recover prospective cost of repairing roads in subdivision; evidence showed that developers began paving streets and installing curbs after city’s inspector concluded that related phases had passed compaction testing, inspector testified that his primary responsibility was to be construction observer, that he visited the job site daily, spoke with foreman, inspected work, and filled out a daily construction diary, inspector’s daily notes indicated that three of phases passed compaction testing, city’s construction close-out checklist indicated that the fourth phase passed compaction testing, and inspector testified that compaction test failures would have been readily apparent to everyone.

City could not use a public nuisance cause of action to recover, from subdivision developers, damages in the form of the anticipated cost of abatement of allegedly unsafe roads in subdivision; nuisance statute did not allow city to recover the cost of abatement prior to undertaking such abatement.

ZONING & LAND USE - TEXAS

Meyers v. JDC/Firethorne, Ltd.

Supreme Court of Texas - June 8, 2018 - S.W.3d - 2018 WL 2749769

Land developer, as part of an action for mandamus relief, sought a permanent injunction that would direct county commissioner to cease and desist from instructing county engineering department from holding, delaying, or otherwise impeding plat applications and construction plans submitted by developer, which developer claimed was ultra vires conduct.

The District Court denied commissioner’s plea to the jurisdiction. Commissioner appealed. The Houston Court of Appeals affirmed and remanded. Commissioner petitioned for review.

The Supreme Court of Texas held that developer’s alleged injury was not redressable in a permanent injunction.

Land developer’s alleged injury from county commissioner’s purported directing of the county engineering department to delay acting on developer’s plat applications and construction plans, which developer claimed was ultra vires conduct, was not redressable in a permanent injunction, and thus developer lacked standing to pursue commissioner in his official capacity for a permanent injunction to cease and desist from instructing engineering department from holding, delaying, or otherwise impeding developer’s plat applications and construction plans; commissioner alone could not present a completed plat application to the commissioners court for approval, nor did he have authority, as an individual commissioner, to approve a plat application.

EMINENT DOMAIN - WISCONSIN

Adams Outdoor Advertising Limited Partnership v. City of Madison

Supreme Court of Wisconsin - June 19, 2018 - N.W.2d - 2018 WL 3032401 - 2018 WI 70

Outdoor advertising company brought inverse condemnation claim against city, alleging that construction of pedestrian bridge over road which blocked visibility of billboard sign constituted a taking without compensation.

The Circuit Court granted summary judgment dismissing the claim. Company appealed, and the Court of Appeals affirmed. The Supreme Court granted petition for review.

The Supreme Court of Wisconsin held that company did not have protected property interest in right to visibility from road.

Outdoor advertising company forfeited any claim in inverse condemnation action that billboard permit constituted a property interest, where company consistently and expressly framed its property interest as the "property rights in the property and sign," complaint did not mention any "permit," neither party saw it necessary to introduce the permit into evidence and there was no billboard permit in the record, and company conceded several times during oral argument that it did not make a claim that its billboard permit was the property interest that was taken.

Outdoor advertising company which owned nonconforming billboard along highway did not have protected property interest in right to visibility from highway, and thus could not maintain inverse condemnation action against city after city erected pedestrian bridge across highway which obstructed view of billboard from highway; company was on notice that city could change or improve road, and city did not invade or restrict company's property.

A right to visibility of private property from a public road is not a cognizable right giving rise to a protected property interest.

Why Do Cities Want Their Own Cryptocurrencies?

The allure of digital currencies has hit Dubai, Seoul, Berkeley, and more. What looks like another offshoot of the Bitcoin craze could be an evolution of the municipal bond.

Coming soon to Slovenia: a brand new city that runs completely on cryptocurrency.

If all goes according to plan, BTC City will rise from the ashes of a former commercial shopping district in the country's capital of Lubljana, offering wallet-less shoppers and wide-eyed tech enthusiasts a chance to engage in a more modern brand of conspicuous consumption. Every store in the 1.5 million-square-foot plot will stop accepting cash and start accepting crypto.

It's a big deal for the small, former Yugoslav country. But it's small potatoes compared to some other municipal efforts to wade into the world of digital financial systems. BTC City's aim is to get people to use the dozens of digital currencies that already exist. Elsewhere, cities are vying to create new ones from scratch.

Continue reading.

CITY LAB

SARAH HOLDER & LINDA POON

JUN 20, 2018

Once-Safest Muni Bonds Tainted as Investors Await Downgrades.

- **Rating cut to Illinois sales-tax bonds may herald others**
- **SNW Asset Management sees less value, shifts to 'underweight'**

Late last month, Fitch Ratings downgraded $2.5 billion of Illinois's sales-tax bonds by five steps, dropping them closer to debt backed only by the state's promise to repay.

It may not be the last ratings cut for state and local-government bonds backed by dedicated revenue including tolls, fees or specific taxes — a pledge that investors once assumed protected them from a government's financial distress.

SNW Asset Management, a unit of OppenheimerFunds, sees less value in such bonds because of the risk of deep downgrades, said Mark Stockwell, a municipal analyst at the Seattle-based firm. He said the sector is "devolving" and becoming more closely correlated with general-obligation debt or securities repaid with money that lawmakers have to appropriate each year.

In a research note to clients last week, the company said it has shifted its recommendation on the tax-backed bonds to "underweight."

"Some of these bonds that look like they provide value may be downgraded," said Stockwell. "We could see AA or AAA rated bonds go to single A or triple B. In some cases, you could have a BBB dedicated tax bond go to a non-investment grade category."

The reassessment is coming after some recent cases made it clear that the securities aren't necessarily immune from the impact of a government's fiscal strains. Puerto Rico sales-tax bondholders haven't received payments amid the island's bankruptcy, belying the perceived safety that kept the securities investment grade after the territory's rating was dropped to junk. A trustee is holding the revenue pledged to bondholders while creditors face off in court.

In 2015, S&P Global Ratings downgraded Illinois' Metropolitan Pier & Exposition Authority's sales-tax bonds to BBB+ from AAA after the Illinois legislature failed to appropriate the revenue needed to cover monthly debt payments amid a stalemate over the budget. The state eventually allocated the funds.

"You have these bondholder protections and you thought it was going to work, and then it didn't," Stockwell said.

S&P is currently considering whether to change its method for rating "priority lien" bonds to tie them more closely to a municipality's full faith and credit. The rating company currently grades about 1,300 of those securities.

Less Safety

Moody's Investors Service already discounts the safety of the securities. It generally caps the ratings

of dedicated-tax bonds at the same level as an issuer's general-obligation bonds. The ratings can be higher only when the pledged revenue stream is legally separated from the issuer's general finances, such as through a constitutional amendment to pledge certain revenue to the debt.

Fitch lowered its rating on the Illinois sales-tax bonds to A- as a result of changing its state dedicated tax rating criteria in April. The securities have a first claim on the state's share of the 6.25 percent sales tax. But because the revenue flows to the general fund after paying debt service, Fitch applied its new criteria, which takes into account the state's BBB rating.

Fitch changed its rating criteria on state tax bonds because there's more uncertainty about how they would be treated during a time of severe financial pressure, given that states can't file for bankruptcy the way cities can, said Eric Kim, an analyst for the company. By contrast, Chapter 9 precedents provide a framework for how the debt would be treated if a municipality goes broke, he said.

Local dedicated tax bonds are generally capped at the issuer rating by Fitch, although there are instances in which the securities could have a higher rating.

Fitch is evaluating whether to downgrade Pennsylvania Turnpike Commission bonds backed by registration fees and revenue debt issued by transit agencies in the Philadelphia and Pittsburgh metropolitan areas. The local transit agencies get some revenue from a state transportation fund, which in turn relies on state sales-tax money.

"For certain types of state dedicated-tax bonds, while the legal structure may permit a rating above the credit quality of the state issuer default rating, we think in most cases there will continue to be some linkage to the state because of the potential for impairment of bondholders," said Kim.

Bloomberg

By Martin Z Braun

June 20, 2018, 5:28 AM PDT Updated on June 20, 2018, 11:10 AM PDT

— With assistance by Michelle Kaske

Selling Government Assets Would be a Responsible Move in Infrastructure Deal.

It's common in Washington to enact a law and pay for it by simply putting on the country's metaphorical "credit card." So with the conversation about revitalizing America's infrastructure heating up, will we pump trillions more into the deficit? With the national debt already at a staggering $21 trillion, taxpayers have good reasons to be cautious. However, a new plan is gaining traction among Democrats and Republicans that would fund infrastructure projects while cutting into the national debt.

The National Taxpayers Union recently released guiding principles that lawmakers should follow when crafting a legislative package. Among the principles that need to be prioritized are using competitive bidding processes, implementing regulatory reform, and that revenue-raisers should be user-funded. For infrastructure policy, private capital should always be put ahead of public funding.

Each party has already laid their plan on the table and they'll need to a build a bridge to connect the space between them. President Trump supports a plan that prioritizes private capital, relies heavily on state and local spending, and possibly increases the national gas tax. The Democratic plan crafted by Sen. Chuck Schumer (D-N.Y.) would eliminate roughly two-thirds of the already successful Tax Cuts and Jobs Act, effectively raising taxes on families and businesses. These two approaches are radically different, but bipartisanship might be the road forward.

A new initiative introduced by Republican Rep. Mike Kelly, Democratic Rep. William Lacy Clay of the Congressional Black Caucus, and Rep. Ted Budd of the House Freedom Caucus shows promise for a new and debt-friendly way forward on infrastructure policy. The Generating American Infrastructure and Income Now (GAIIN) Act would sell off some government assets and use the generated revenue in two unique ways: half would be sent to the Treasury Department to pay down existing debt and the other half would be used to fund projects in the 100 poorest communities around the U.S. While selling government assets isn't new (it was proposed by President Reagan to pay for tax reform and mentioned by President Trump last year), taxpayers should appreciate lawmakers looking for creative ways to generate revenue without levying a tax increase.

Here's how such a plan would work: The government would package certain assets, like buildings or debt, and auction them off to institutions that are willing to pay the highest price. Sale of government assets can have a substantial societal benefit if the private market can maximize their potential. For investment firms, this proposal could actually be a much sounder investment than investing in public-private partnerships because the market does not like uncertainty. Private investors could be willing to pay a higher price for an existing asset that could immediately be monetized rather than fund a construction project that could take years to design, approve, and construct with no certainty that it will be successful.

In most recent data from FY17, the government held about $3.5 trillion in assets, not counting any mineral or natural resource assets. These government assets include net loans, net property, plant, and equipment. According to a recent report, the government owns over 45,000 underutilized buildings which carry operating costs close to $2 billion annually.

Politicians love enacting infrastructure laws because they result in construction projects that generate jobs and economic activity. By allocating money into the poorest communities, the work would create jobs for people in areas that lack sufficient job opportunities. Creating jobs in low-income communities could spark new commerce, investment and development in urban areas like Detroit, Michigan and Camden, New Jersey, as well as in rural areas in the South and struggling former mining towns in West Virginia and Pennsylvania.

Taxpayers should be receptive to this plan because it accomplishes three main things: First, it avoids having to raise the gas tax by a significant amount. Increasing this tax would disproportionately harm lower-income Americans and a gasoline tax increase of 25 cents could wipe away 60 percent of the last year's tax cut benefit for consumers. Second, this plan would not require new government spending. This means Washington can put the credit card away (for the time-being) and pay the bill up front. Finally, using some of the revenue to pay down the debt will put America's finances in a better position than they would otherwise be.

Selling public assets can be a fiscally responsible solution especially in the context of a comprehensive infrastructure package. Lawmakers should use all the tools at their disposal to ensure there is a balance between taxpayer interests and an infrastructure system that promotes economic growth and efficiency.

THE HILL

BY THOMAS AIELLO, OPINION CONTRIBUTOR

06/19/18

Thomas Aiello is a policy and government affairs analyst with the National Taxpayers Union, a nonprofit dedicated to lower and fairer taxes at all levels of government.

U.S. Muni Bond Trading Stable Despite Dealer Drop - Study

CHICAGO, June 19 (Reuters) – U.S. municipal bond market trading has been relatively stable over the last 11 years despite a drop in the number of dealers and the amount of the debt kept in dealers' inventories, the Municipal Securities Rulemaking Board (MSRB) said on Tuesday.

The self-regulator of the $3.8 trillion market where states, cities, schools, hospitals and other issuers sell debt said its first-ever report analyzing changes and trends in dealers' customer trading activity found dealer participation became less-concentrated, but still "robust."

The number of registered municipal securities dealers fell to 1,346 last year from 1,967 in 2009, while muni bonds held by dealers dropped by about 67 percent since 2006, according to the report.

"Our analysis shows that most dealers that have exited the market provided little liquidity and participated in very few trades – typically fewer than 10 trades in a year," said MSRB Director of Research Marcelo Vieira in a statement.

Meanwhile, the number of dealers executing more than 10,000 trades annually increased to 69 in 2017 from 56 in 2006.

The report also found that the top five dealers' market share has decreased, falling to 34.6 percent of all customer trades in 2017 from 42.2 percent in 2006.

At around 50,000 issuers, the fragmented muni market has fives times more debt issuers than the corporate bond market and 33 times more individual securities at around 1 million, according to the MSRB. There were nearly 39,000 muni bond trades daily on average from 2006 to 2017, with an average total trading value of about $14 billion a day.

About 45 percent of all muni trades during that time period were dealer sales to customers, with dealer purchases from customers accounting for 22 percent.

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

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How the Koch Brothers Are Killing Public Transit Projects Around the Country.

NASHVILLE, Tenn. — A team of political activists huddled at a Hardee's one rainy Saturday, wolfing down a breakfast of biscuits and gravy. Then they descended on Antioch, a quiet Nashville suburb, armed with iPads full of voter data and a fiery script.

The group, the local chapter for Americans for Prosperity, which is financed by the oil billionaires

Charles G. and David H. Koch to advance conservative causes, fanned out and began strategically knocking on doors. Their targets: voters most likely to oppose a local plan to build light-rail trains, a traffic-easing tunnel and new bus routes.

"Do you agree that raising the sales tax to the highest rate in the nation must be stopped?" Samuel Nienow, one of the organizers, asked a startled man who answered the door at his ranch-style home in March. "Can we count on you to vote 'no' on the transit plan?"

In cities and counties across the country — including Little Rock, Ark.; Phoenix, Ariz.; southeast Michigan; central Utah; and here in Tennessee — the Koch brothers are fueling a fight against public transit, an offshoot of their longstanding national crusade for lower taxes and smaller government.

[Continue reading.]

The New York Times

By Hiroko Tabuchi

June 19, 2018

[New MSRB Report Examines Trends in Customer Trading Activity of Municipal Securities Dealers.]

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a report that shows—despite sharp declines in dealer inventories of municipal securities and the number of dealers—municipal securities trading activity on behalf of investors has remained relatively stable over the past several years, with robust dealer participation and less concentration among top dealers.

Today's report is the first-ever to analyze changes and trends in the customer trading activity of municipal securities dealers. The report notes the steady decline in the number of municipal securities dealers since 2006 but finds that most dealers that have exited the market were infrequent traders of municipal securities.

"Our analysis shows that most dealers that have exited the market provided little liquidity and participated in very few trades—typically fewer than 10 trades in a year," said MSRB Director of Research Marcelo Vieira. "Meanwhile, the number of dealers with substantial municipal business—those executing more than 25,000 trades per year—has increased."

The MSRB's *[Dealer Participation and Concentration in Municipal Securities Trading]* report also examines dealer concentration, or the dealer market share of municipal customer trades. Market share of top dealers has declined since 2006, when the top five dealers accounted for 42.2 percent of municipal customer trades. In 2017, the top five dealers accounted for 34.6 percent of all municipal customer trades. The report includes detailed tables and statistics on dealer participation and concentration, aggregated by bands of trade volume and most-active dealers.

The MSRB [evaluates municipal market trends] as part of its mission to promote a fair and efficient market and plans to continue studying dealer data. Public and industry input on additional topics, including trends in the inter-dealer market, is welcome and should be referred to Marcelo Vieira at

mvieira@msrb.org.

Date: June 19, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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GASB Establishes New Guidance for Interest Cost Incurred Before the End of a Construction Period.

Norwalk, CT, June 22, 2018 — The Governmental Accounting Standards Board (GASB) today released guidance establishing accounting requirements for interest cost incurred before the end of a construction period.

Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, establishes guidance designed to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period. It also simplifies accounting for interest cost incurred before the end of a construction period.

For financial statements prepared using the economic resources measurement focus, interest cost incurred before the end of a construction period should be recognized as an expense in the period in which the cost is incurred. Such interest cost should not be capitalized as part of the historical cost of a capital asset.

For financial statements prepared using the current financial resources measurement focus, interest incurred before the end of a construction period should continue to be recognized as an expenditure on a basis consistent with governmental fund accounting principles.

The full text of Statement 89 is available on the GASB website, www.gasb.org.

Michigan State to Fund $500 Million Sex-Abuse Settlement Through Bond Offering.

Board also votes to retain interim President John Engler, despite recent calls for his resignation

.
Michigan State University will fund its unprecedented $500 million settlement with survivors of Larry Nassar’s sex abuse through proceeds from a bond offering, after the board of trustees unanimously approved the settlement and bond amount at a raucous meeting Friday morning.

The board also voted to retain interim President John Engler, despite recent calls for his resignation by two trustees and multiple state officials.

The school, a Midwest powerhouse with an enrollment of 50,000 students, said it won’t tap any state appropriations or use tuition funds for the settlement payout. It is in talks with its insurers, and has said it expects to recover at least some funds through them.

Any recovered funds will go directly toward paying down the debt, the board said at a packed meeting marked by shouts of “Shame on you, MSU” and calls for the interim president, Mr. Engler, to resign.

Melanie Foster, who chairs the finance committee on the board of trustees, said the money to repay the bond will come from income from the school’s investments. Last year the school generated about $391 million of which a little less than half is nonrestricted.

The money the school has invested comes from any annual surplus in the general fund, which includes tuition, money from housing and athletics among other sources.

“The truth is the money is fungible, it all goes into a general revenue pot and it’s collectively invested and it’s collectively spent,” said Mark Haas, the school’s vice president for finance and treasurer.

Service on the bond will be roughly $35 million a year. The school is also instituting a 1% across the board cut on its $2.6 billion operating budget, which will generate roughly $26 million a year. In addition, the future pace of new construction will likely be slowed, Ms. Foster said.

“We’re tightening our belts,” she said.

Nassar pleaded guilty last year to state sexual-abuse charges in Michigan and to federal child-pornography charges, for which he is serving an effective life sentence. He was accused of sexual abuse by hundreds of women, while working as a team physician at MSU and for the U.S. Olympics gymnastics team.

Michigan State agreed in principle to the settlement last month, but at the time it wasn’t clear how the school would cover the costs.

Before any payout begins, the plaintiffs and Michigan State still need to sign off on a final agreement, and the settlement must be approved by the federal judge handling the case.

MSU General Counsel Robert Young said Friday that the parties are in “the final stages” of drafting the final agreement.

In a court filing Wednesday, lawyers for the plaintiffs and Michigan State agreed to appoint a former California superior court judge to administer payments from the settlement fund.

The board voted 6 to 2 at the start of the meeting to retain Mr. Engler. Earlier this month the Chronicle of Higher Education reported that he had suggested in emails with other administrators that one of the lead plaintiffs would get a kickback for rounding up other survivors.

The first speaker in the public comment portion of Friday’s meeting was Kaylee Lorincz, a woman who alleged in April that Mr. Engler had offered her a $250,000 settlement without her lawyer present.

Approaching the microphone to cheers from the audience, she reiterated the earlier claim. Mr. Engler has said that he and Ms. Lorincz have different “memories and interpretations” of the meeting at which the offer was allegedly made.

“Everything I said in that statement and the statements that followed is the complete and honest truth,” she said Friday.

Grace French, who was abused by Nassar, said during the comment period that it was “incredibly dangerous” for Mr. Engler to remain in his leadership role after accusing survivors of being manipulative and of lying, as it could deter others from coming forward and reporting their abuse, she said.

In an emotional appeal to the board, Bryant Tarrant, whose daughter Jessica was a patient of Nassar, said, “You have failed my daughter and you continue to fail.”

“There’s been a serious lack of leadership from this board and from this current interim president,” he said, adding that the board has “no business selecting the next university president.”

Despite the vote at the start of the meeting in favor of keeping Mr. Engler at the helm, people in the crowd continued to yell for him—and, in some cases, trustees—to resign. Trustee Mitch Lyons addressed those complaints, saying the best course was to keep Mr. Engler on and find a permanent president instead of pausing to find another interim president and potentially scaring off candidates for the permanent job.

“Nobody wants to walk into this hot mess right now,” Mr. Lyons said. “John said some really stupid things, and I’ve told John that, but John has moved the ball forward in terms of making this campus safer.”

Michigan State’s bond offering is likely to find an audience in the municipal bond market because the supply of high-quality debt has been scarce this year, depressed by changes in the 2017 tax-cut law.

“I would think it’s going to be well received, even though the purpose is kind of tainted,” said Gary Pollack, head of fixed-income trading at Deutsche Bank Private Wealth Management. While municipalities have sold bonds to fund legal settlements in the past, “normally they’re not as high profile as this one,” he said.

The Wall Street Journal

By Melissa Korn and Douglas Belkin

Updated June 22, 2018 4:14 p.m. ET

—Daniel Kruger contributed to this article.

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BDA’s 2nd Qtr Advocacy Priorities.

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Bond Dealers of America

June 20, 2018

Tax Law Spurs New Marketing Approach for Georgia GO Deal.

Top-rated Georgia brings $1.23 billion of state general obligation bonds to market with a new marketing strategy prompted by recent changes in the federal tax laws.

Georgia's annual GO infrastructure bond sale prices competitively Tuesday.

The deal consists of $840.6 million of tax exempt, fixed-rate bonds and $389.1 million of taxable bonds.

Georgia comes to market annually, but it hasn't used special marketing features, such as providing potential investors with an Internet road show presentation, until this year.

The Tax Cuts and Jobs Act signed into law days before Christmas prompted the state to re-evaluate.

"This was our first year posting a roadshow," said Diana Pope, director of the Georgia State Financing and Investment Commission. "We thought that with recent changes to federal tax laws, which affect both current owners and potential new purchasers of municipal bonds, such as lower corporate tax rates, it would be helpful to highlight the state's credit strengths and provide financial updates in a more of a summary format for potential purchasers that might not be as familiar with the credit."

Bond proceeds will be used to fund a variety of capital projects.

Although the deal is selling nearly a week after the Fed raised the target range for the federal funds rate by 25 basis points, Pope said she doesn't believe the interest rate hike should affect pricing much.

"We think the market most likely already had factored in the expectation of higher rates beginning with the announcement on June 13," Pope said. "Additional economic news and U.S. and world events, of course, could have an impact on rates going forward."

Alan Schankel, managing director at Janney Montgomery Scott, struck a similar tone in his Monday Daily Fix commentary.

"Last week's Fed announcement offered little surprise, and tax free bond markets took it in stride, finishing the week with the yield curve a bit steeper but otherwise little changed," he said. "Short end strength in munis persists."

Schankel said the two-year benchmark yield is 17 basis points lower since Memorial Day, while similar maturity Treasury bond yields are 7 basis points higher.

Georgia's bonds will be sold in four parts: $411.65 million of 2018A Tranche 1 tax-exempt GOs with maturities between one and 10 years; $428.96 million of 2018A Tranche 2 tax-exempt GOs with maturities from 11 years to 20 years; $210.44 million of 2018B Tranche 1 taxable GOs with maturities of up to 10 years; and $178.65 million of 2018B Tranche 2 taxable GOs with 11- to 20-year maturities.

Bids for each tranche will be taken at different times Tuesday on Ipreo's BiDCOMP/PARITY System.

"It is our expectation that our issue will do well in relation to market conditions partly because of the heavy June/July reinvestment season, as well as the historically strong demand for the state's bonds,

which continue to be rated triple-A by three major rating agencies," Pope said.

The bonds are rated triple-A by Fitch Ratings, Moody's Investors Service (MCO) and S&P Global Ratings. All have stable outlooks.

Analysts lauded Georgia for its conservative debt management and strong fiscal governance. They also cited its low long-term liability and pension burdens, full funding of the state's portion of pension contributions, and the creation of other post-employment benefit fund reserves.

As the eighth-most populous state in the U.S., according to the roadshow presentation, Georgia has been rated Aaa by Moody's since 1974. Fitch has rated the state's GOs AAA since 1993, while S&P gave its highest-rating to the Peach State in 1997.

The state's gross domestic product growth exceeded the U.S.'s for the past four years, while growth in personal income has exceeded the U.S.'s since 2013. As of April, Georgia's unemployment rate was 4.3%, down from 4.9% in April 2017.

The state has also adopted a phased approached to its own tax reforms because of tax code changes, with the objective of being revenue neutral, the presentation said. Enacting changes to deductions and income tax rates between 2018 and 2020 will allow the state to analyze the actual impact of the federal legislation and taxpayers' behavior, it said.

"Georgia's leadership has shown a commitment to making decisions that support a triple, triple-A credit rating, such as building the state's rainy day fund to $2.3 billion or 9.9% of revenues, and investing in needed infrastructure at the lowest possible cost," Pope said. "We are excited about the rewards of those decisions in building projects that will have a positive impact for years to come."

Another recent decision the state made was to use the Boston-based financial technology company BondLink's municipal bond platform, to provide prospective investors with additional outreach.

"After the sale we will be reviewing the BondLink metrics to see how this platform assists us in providing information to that particular buyer group," Pope said.

Public Resources Advisory Group and Terminus Municipal Advisors LLC are co-financial advisors to the state. Gray Pannell & Woodward LLP is bond counsel. Kutak Rock LLP is disclosure counsel.

BY SOURCEMEDIA | MUNICIPAL | 06/18/18 07:12 PM EDT

By Shelly Sigo

Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements.

In October 2017, the Financial Industry Regulatory Authority (FINRA) announced, through Regulatory Notice 17-30 (the "Notice"),[1] that the U.S. Securities and Exchange Commission (SEC) approved a proposed rule change, which, (i) consolidates FINRA's registration rules; (ii) makes a number of technical changes to permissible registration categories and related rules; and (iii) restructures the representative-level qualification examinations. Each of these is discussed in greater detail below. The Proposed Rules (as defined below) take effect on October 1, 2018.

Consolidated Registration Rules

Summary of the Proposed Rules

The proposed rules, FINRA Rules 1210-1240 (the "Proposed Rules"), will adopt and consolidate, with amendment, certain National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) rules related to registration and qualification of individual persons associated with FINRA member firms. The Notice explains that while the legacy NASD rules generally apply to all FINRA members, the existing incorporated NYSE rules only apply to FINRA members that are also members of the NYSE. The proposed rules, however, will generally apply to all FINRA members. The Notice further posits that while there are certain key differences, as discussed below, the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated. The Proposed Rules are:

- *FINRA Rule 1210.* Requires that each person engaged in investment banking or securities business of a FINRA member firm be appropriately registered commensurate with the individual's job functions and responsibilities, unless exempt from registration. FINRA Rule 1210 also discusses: (1) the requirement to have a minimum number of registered principals at each member firm; (2) the ability to maintain permissive registrations for associated persons; (3) the requirement to pass an appropriate qualification examination and the process for obtaining a waiver of a qualification examination; (4) the requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (5) rules of conduct for taking examinations and confidentiality of examinations; (6) waiting periods for retaking a failed examination; (7) the requirement that registered persons satisfy continuing education ("CE") requirements; (8) lapse of registration and expiration of the Securities Industry Essentials ("SIE") exam; (9) the waiver program for individuals working for a financial services industry affiliate of a member firm; (10) the status of persons serving in the Armed Forces of the United States; and (11) impermissible registrations.[2]
- *FINRA Rule 1220.* Defines "principal" and "representative" and sets forth the qualification and registration requirements for these categories. FINRA Rule 1220 also provides a number of additional registration-related rules and clarifications, including with respect to certain eliminated registration categories.
- *FINRA Rule 1230.* Sets forth the associated persons for whom FINRA registration is not required.
- *FINRA Rule 1240.* Sets forth the CE requirements for member firms, including the Firm and Regulatory Elements.

Accepting Orders from Customers

Once the Proposed Rules take effect, unregistered persons will not be allowed to accept an order from a customer under any circumstances.[3] In the event that a registered person is unavailable, an unregistered person will be permitted to transcribe order details if a customer contacts a firm to place an unsolicited order for the purchase or sale of securities. A registered person, however, will be required to subsequently contact the customer to confirm the order details prior to the order being accepted.

Financial Services Affiliate Waiver Program

Under the Proposed Rules, FINRA will be establishing a waiver program, effective October 1, 2018, for individuals who terminate their representative or principal registrations with a member firm in order to work for a non-U.S. or U.S. financial services industry affiliate of a member firm (the "Waiver Program"). The term "financial services industry affiliate of a member" is defined as "a legal entity that controls, is controlled by or is under common control with a member firm and is

regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent [non-U.S.] regulatory authorities."[4] Individuals who are eligible for the Waiver Program would be granted a single seven-year waiver period beginning on the date that they are initially designated as eligible for the Waiver Program. This waiver period is fixed and cannot be tolled or renewed. During this time period, individuals will be responsible for timely completion of Regulatory Element CE programs based upon their most recent registration category. Failure to complete the Regulatory Element within the prescribed 120-day window will result in an individual losing his or her eligibility for the Waiver Program.

The Waiver Program will allow for an individual to re-apply with FINRA for registration as a representative or principal, provided that the following conditions have been met:

- the individual must have been registered as a representative or principal for a total of five years within the most recent ten-year period prior to his or her initial designation under the Waiver Program;
- the individual must have been registered as a representative or principal for at least one year prior to his or her initial designation under the Waiver Program with the member firm that is designating him or her;
- all waiver requests under the program must be made within seven years of the individual's initial designation;
- the individual's initial designation and any subsequent designation must be made concurrently with the filing of the individual's related Form U5;
- the individual must have continuously worked for a financial services industry affiliate of a member firm since his or her last Form U5 filing;
- the individual must have complied with the Regulatory Element of CE; and
- the individual must not have any pending or adverse regulatory matters, or terminations, that are reportable on Form U4, and must not have been subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while eligible under the program.

The Waiver Program will not require that individuals return to the same member firm that designated them as eligible for a waiver, and during the seven-year window individuals may move between member firms, between a member firm and a financial services affiliate of the member firm or another member firm, and between financial services affiliates of member firms; provided that the individual continuously works for a financial services affiliate of a member firm since the filing of the individual's last Form U5. An individual participating in the Waiver Program cannot, however, be working for a member firm while also working for a financial services affiliate of a member firm.

Member firms will be required to designate individuals as eligible for the Waiver Program by notifying FINRA concurrently with the filing of an individual's Form U5. Member firms will also be responsible for requesting waivers when registering individuals who have been eligible participants in the Waiver Program. FINRA will rely on representations made by the member firm at the time a waiver is requested under the Waiver Program, and also may independently verify that the conditions under the Waiver Program have been met. FINRA will review and determine whether to grant any waiver requests under the Waiver Program within 30 calendar days of receipt of the request.

Registration Changes

Principal Financial Officer and Principal Operations Officer Designations

Under the Proposed Rules, firms will be required to designate a:

- Principal Financial Officer with primary responsibility for financial filings and the related books and records; and
- Principal Operations Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities.

While the day-to-day duties of these positions may be delegated to other principals of the firm, the ultimate responsibility for the functions must remain with the Principal Financial Officer and the Principal Operations Officer.

These designations will replace the existing requirement that all member firms designate a Chief Financial Officer, and that FINRA and NYSE dual-member firms also designate a Chief Operations Officer, and will apply to all firms, regardless of whether the firm is exempt from the requirement to have a Financial and Operations Principal ("FinOp") or an Introducing Broker-Dealer FinOp. Principal Financial Officers and Principal Operations Officers will be required to be registered as either a FinOp or Introducing Broker-Dealer FinOp, as applicable, and must be registered in the CRD system as Operations Professionals. With respect to these requirements, because Principal Financial Officers and Principal Operations Officers must also be registered as either FinOps or Introducing Broker-Dealer FinOps, they will not be required to pass the Operations Professional (Series 99) examination in order to register as Operations Professionals, as they already hold a qualifying registration.

Firms that are not self-clearing or do not provide clearing services are not required to designate separate individuals to serve as the Principal Financial Officer, Principal Operations Officer, and FinOp or Introducing Broker-Dealer FinOp. Firms that self-clear or provide clearing services, unless granted a limited-size waiver from FINRA, must designate separate individuals to serve as Principal Financial Officer and Principal Operations Officer. Such individuals, however, may also carry out FinOp responsibilities. A firm may designate multiple Principal Operations Officers in accordance with the Proposed Rules, but may not designate multiple Principal Financial Officers.

Additional Principal Registration Categories

The Proposed Rules establish three new principal registration categories: (a) Compliance Officer; (b) Investment Banking Principal; and (c) Private Securities Offerings Principal.

- *Compliance Officer.* Under the Proposed Rules, individuals designated on Form BD as Chief Compliance Officer, with the exception of firms engaged in limited investment banking or securities business, must register as a Compliance Officer. Individuals who are currently registered as both General Securities Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will be able to register as a Compliance Officers without having to pass any additional examinations. An individual who meets these requirements and is also designated on Form BD as Chief Compliance Officer as of October 1, 2018, will automatically be granted registration as a Compliance Officer. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to either pass the General Securities Representative examination (including passing the SIE) and pass the General Securities Principal examination, or pass the Compliance Official examination (Series 14).
- *Investment Banking Principal.* Under the Proposed Rules, principals who are responsible for supervising certain investment banking activities[5] are required to register as Investment Banking Principals. Individuals who are currently registered as both Investment Banking Representatives

and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Investment Banking Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Investment Banking Representative examination (including passing the SIE) and pass the General Securities Principal examination.
- *Private Securities Offerings Principal.* Under the Proposed Rules, principals who are solely responsible for supervising specified activities relating to private securities offerings may register as Private Securities Offerings Principals, instead of registering as General Securities Principals. Individuals who are currently registered as both Private Securities Offerings Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Private Securities Offerings Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Private Securities Offerings Representative examination (including passing the SIE) and pass the General Securities Principal examination.

Under the Proposed Rules, an individual is not eligible to register as an Investment Banking Principal or Private Securities Offerings Principal solely by virtue of being registered as a General Securities Representative and General Securities Principal.

Permissive Registrations

FINRA member firms will be permitted under the Proposed Rules to permissively register or maintain the registration of any associated person or any individual engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of the member.[6] This expands the current categories of permissive registrations, which include individuals performing legal, compliance, internal audit, back-office operations, or similar responsibilities for a firm; individuals engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of a firm; and individuals performing administrative support functions for registered persons of a firm. Permissively registered individuals will be considered registered persons of the member firm and subject to all FINRA rules relevant to their activities.

Firms must have adequate supervisory systems and procedures in place to ensure that individuals who are permissively registered do not act outside of their registered function. A permissively registered individual does not need to be directly supervised by a registered person, although the member firm must assign a supervisor registered with the firm who is responsible for periodically verifying that the permissively registered individual is not acting outside the scope of his or her registered function. This registered supervisor must have at least the same level of registration as the permissively registered individual (i.e., if the individual is permissively registered as a principal, the registered supervisor must also be a principal), although the registered supervisor does not need to be registered in the same representative or principal registration category as the permissively registered individual.

Registered Persons Functioning as Principals

Under the Proposed Rules, registered representatives will now be permitted to function as principals of a firm for a period of 120 calendar days—an increase from the current 90-day period—before being required to pass the appropriate principal-level qualification examination. Firms will also be able to designate current principals to serve in another principal category (e.g., a current General Securities Principal can be designated to serve as a Municipal Securities Principal) for the same 120-day period. Registered representatives who are designated as principals in this manner, however, including with respect to principal categories that do not have pre-requisite representative-level registration requirements, must have at least 18 months of experience

functioning as a registered representative within the immediately preceding 5 years.

Examination Changes

The Proposed Rules make a number of changes to the representative-level qualification examinations, which are designed primarily to eliminate redundancies in the testing of general securities knowledge across the representative-level examinations, and also retire a number of existing representative-level registration categories. These changes are described in further detail below, and summarized in chart-form in Appendix A.

Securities Industry Essentials Examination (SIE)

In connection with the Proposed Rules, FINRA will be restructuring its representative-level qualification examinations. Effective October 1, 2018, individuals seeking representative-level registration will be required to pass the SIE examination, as well as a revised function-specific qualification examination (e.g., General Securities Representative (Series 7)). Certain current and former registered representatives will be given credit for passing the SIE without having to sit for the exam. The SIE is designed to eliminate redundant testing of general securities knowledge across the representative-level examinations, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions, and regulated and prohibited practices. The revised function-specific examinations will focus on knowledge relevant to the day-to-day activities, responsibilities, and job functions of representatives. Individuals will be able to schedule the SIE and any function-specific examination(s) on the same day, subject to testing center availability. The SIE will be subject to a four-year expiration period, unlike the two-year registration lapse period that will continue to be applicable for representative- and principal-level registrations.

Individuals may continue to apply to become registered representatives prior to October 1, 2018. Such individuals will sit for the existing representative-level examinations, regardless of whether the examination takes place prior to October 1, 2018 (i.e., an individual who applies for registration on September 29, 2018, could sit for an existing representative-level examination in November of 2018). Individuals who attempt and fail an existing representative-level examination, and are precluded from sitting for the same exam until after October 1, 2018, will be required to take and pass the SIE and function-specific examination on his or her next attempt. If this occurs, however, the individual will not have to wait the typical 30-day period before sitting for the SIE and function-specific examination (e.g., an individual who fails the current Series 7 examination on September 29, 2018 could sit for the SIE and revised Series 7 examination on October 5, 2018).

All associated persons will be eligible to sit for the SIE. In addition, individuals not associated with a member firm, such as the general public, will be permitted to sit for the SIE, although passing the SIE alone will not qualify an individual for registration with FINRA. Associated persons who sit for the SIE will be subject to the SIE Rules of Conduct, which, among other things, requires individuals to attest that mere passage of the SIE does not qualify an individual to engage in investment banking or securities business. Individuals not associated with a member firm will be required to agree to be subject to the SIE Rules of Conduct. Firms will be able to register associated persons for the SIE through CRD, and FINRA is developing a separate system to allow associated persons not seeking registration as a representative and individuals not associated with a firm to enroll and pay the SIE examination fee.

Eliminated Representative Level Registration Categories

In connection with the Proposed Rules, the following registration categories and examinations are

being retired:

- Assistant Representative – Order Processing (Series 11);
- United Kingdom Securities Representative (Series 17);
- Canada Securities Representative – with options (Series 37);
- Canada Securities Representative – no options (Series 38);
- Registered Options Representative (Series 42);
- Corporate Securities Representative (Series 62); and
- Government Securities Limited Representative (Series 72).

An individual currently registered in one of these categories will be grandfathered by FINRA and may maintain his or her registrations until the individual is terminated and remains terminated for a period of two years.

Research Analyst and Principal and Supervisory Analyst Qualification Requirements

Under the proposed rules, individuals seeking registration as a Research Analyst will no longer be required to pass the General Securities Representative examination. Instead, individuals will be required to pass the SIE and revised Research Analyst qualification examinations (Series 86 and 87). In addition, individuals seeking registration as a Research Principal may now either pass the Research Analyst and General Supervisory Principal qualification examinations, or, alternatively, qualify and register as a Supervisory Analyst (Series 16) and pass the General Supervisory Principal qualification examination. In connection with these changes, FINRA is eliminating the experience prerequisite for individuals seeking registration as a Supervisory Analyst, which required that individuals seeking registration have at least three years of experience involving securities or financial analysis in the immediately preceding six years.

Conclusion

With the Proposed Rules, FINRA seeks to streamline the examination and registration process by establishing the SIE and revising many of the current qualification examinations. The Proposed Rules also introduce additional principal registration categories and requirements, while also retiring a number of existing representative-level registration categories and qualification examinations. Finally, through implementation of the Waiver Program, FINRA seeks to provide flexibility to allow individuals to move between member firms and their non-U.S. or U.S. financial services industry affiliates without having to re-take qualification examinations upon their return to a member firm, provided that certain conditions are met. While the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated, there are certain key differences, such as those outlined above, which should be considered and understood before the October 1, 2018 implementation date.

Appendix A

Examination and Registration Changes under the Proposed Rules

The below chart captures the principal- and representative-level examination and registration changes under the Proposed Rules, as well as the addition of the Principal Financial Officer and Principal Operations Officer designations.[7] For more information please see the discussion above.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Shearman & Sterling LLP

Russell D. Sacks, Jennifer D. Morton, Steven Blau, Jenny Ding Jordan and P. Sean Kelly

June 25, 2018

CDFA & ICSC Tax Increment Financing Resources.

Tax increment finance is a popular development finance tool generally used to address blight, promote neighborhood stability and inspire district-oriented development. The Council of Development Finance Agencies (CDFA) and the International Council of Shopping Centers (ICSC) have collaborated with teams of Tax Increment Finance Experts from across the country to develop a series of resources that highlight the use of this bedrock development finance tool. The resources found on this webpage address what TIF is, why it should be used, and how to best apply the TIF tool. The collaborative efforts of CDFA & ICSC has developed a six-part video series, along with two TIF reference guides that will help experienced and novice TIF users alike.

- **TIF Video Series**
- **TIF Reference Guides**
- **TIF Resource Center**
- **TIF Training Courses**

Click here to access the TIF Resources.

BDA Sends Letters of Support for PCAOB Audit Exemption Bill Senate Banking Committee to Hold Hearing on the Bill Next Week.

June 21, 2018, the BDA sent letters to the Senate Banking and House and Financial Services Committees requesting their support of *The Small Business Audit Correction Act*. The Senate letter can be viewed here and the House letter can viewed here.

S. 3004 & H.R. 6021 would exempt privately held, small non-custodial brokers and dealers in good standing from the requirements to hire a Public Company Accounting Oversight Board (PCAOB) registered audit firm to meet their annual SEA Rule 17a-5 reporting obligation and that the audit firm perform the audit in accordance with PCAOB standards.

Passage of the legislation would allow eligible firms to conduct their annual audits in a less costly and burdensome manner. Many BDA members listed this issue as one of their top legislative priorities for the year.

In related news, the Senate Banking Committee will consider *The Small Business Audit Correction Act* (S. 3004) next Tuesday at a hearing. S. 3004 will be part of a package of bills that is being reviewed by the Committee. BDA staff will attend the hearing. For more information, please click here.

Call to Action

Now is the time to reach out to your Members of Congress and urge them to support and co-sponsor onto The Small Business Audit Correction Act! Members and their staff need to hear from you.

All Members of Congress are important in this effort, however House Financial Services and Senate Banking Committees are particularly important! The *Small Business Audit Correction Act* is expected to be rolled into a package of capital markets bills considered by the House Financial Services Committee soon.

- Financial Services Comm. Members and contact information can be viewed here.
- Senate Banking Comm. Members and contact information can be viewed here.
- Suggested talking points can be viewed here.
- Draft letter can be viewed here.
- Summary of the bill can be viewed here.
- House bill can be viewed here. Senate bill can be viewed here.

Bond Dealers of America

June 21, 2018

Fitch Exposure Draft: Public Power Rating Criteria.

Thursday, June 28, 2018 | 11:00am EDT

Please join Fitch Ratings on a teleconference to discuss the planned changes to the rating criteria for Public Power bonds.

Speaker: Dennis Pidherny – *Managing Director, Group Head, Public Power*

Register Now

Fitch: Path to Impactful U.S. Public Pension Reforms Paved by Court Decisions.

Fitch Ratings-New York-21 June 2018: The legal backdrop for U.S. state and local pensions has played a key role in reforms adopted by some states in 2018, although pensions in general still face an uphill climb to improve their funding levels, according to Fitch Ratings.

Worries over the long-term sustainability of pension obligations and the rising budgetary burden of annual contributions remain front and center for states in 2018. Many states' legislatures passed, and governors signed, reforms in 2018 legislative action to date, with some of the most interesting emerging in Colorado, Minnesota and Illinois. For these states, past state court decisions validating or rejecting earlier reform efforts, particularly on cost-of-living adjustments (COLAs), delineated how far their 2018 reform packages could go. However, as seen with other states like Ohio, the presence of legal flexibility and the identified need for further reform is not always enough to sway legislatures to act.

Colorado and Minnesota both adopted comprehensive reforms in 2018 covering their major statewide plans following long roads to building consensus. In Colorado, SB 18-200 temporarily freezes COLAs for current retirees, delays COLAs for new retirees, caps all future COLAs at 1.5% annually instead of the previous 2%, modifies age and salary requirements for future employees, and

expands eligibility for its defined contribution plan, among other changes. It also raises employee and employer contributions and requires an annual lump sum, $225 million state contribution for 30 years.

Similarly, Minnesota H.F. 3053/S.F. 2620 adjusts COLAs downward for current and future retirees depending on the plan. For most, future COLAs are held between 1% and 1.5% annually, with COLAs for future retirees delayed until normal retirement age. The reform package also lowers the state plans' funding discount rates to 7.5% (from as high as 8.5% before the reform), modifies actuarial assumptions and raises age and salary requirements. The Minnesota bill also raises employee and employer contributions, with most of the higher contributions borne by employers.

The Colorado and Minnesota bills were not the first rounds of reform adopted by the two states since the great recession exposed their pensions' funding weaknesses. Insofar as both bills reduce COLA provisions for existing retirees, they capitalize on court rulings (Justus vs. State of Colorado, in 2014 and Swanson v. Minnesota, in 2011) that validated past statutory changes lowering promised benefits.

In both of those decisions, less generous COLA provisions in the states' reforms were challenged and ultimately upheld, with courts viewing COLAs as being outside the contractual (in Colorado) or contract-like (in Minnesota) protections afforded to their core pension benefits. Reducing or eliminating COLAs, including for retirees and current employees, is one of the few pension reforms that can materially lower the accrued liability immediately. The net effect for both Colorado (not rated by Fitch) and Minnesota (IDR AAA/Stable) was to give them more tools for managing their accrued pension burdens without having to rely solely on raising employer contributions, shifting more of the contribution burden to employees, or waiting for newer, lower benefit tiers to achieve savings. The benefit for both states is also likely to be felt by local governments, schools and other public entities participating as employers in the state-administered plans.

Illinois also adopted pension measures in 2018, although the context of these actions is different and the trade-off of savings vs. costs remains uncertain. As part of its fiscal 2019 budget, Illinois among other pension changes established two buyout programs that sunset in fiscal 2021, targeting budget savings by lowering accrued liabilities associated with employees hired before 2011. The first offers retiring state, university and teacher plan members an upfront payment equal to 70% of the difference between their promised 3% COLA and a reduced 1.5% COLA; the second provides a 60% lump sum to vested, inactive members of the same plans in exchange for all future benefits. Assuming that approximately 20%-25% of eligible members participate in the buyouts, lower accrued liabilities could lower state contributions approximately $400 million, a figure that will be partly offset by debt service on state GO bonds to be issued to fund the buyouts. Notably, the timing of rollout will be lengthy and the precise fiscal impact will only be known upon conclusion of the program and could vary significantly from the initial estimates.

Like Colorado and Minnesota, Illinois' more limited 2018 actions were informed by past court precedent. A 2015 state Supreme Court ruling (In re: Pension Reform Litigation) rejected a 2014 pension reform law (Public Act 98-599) that lowered benefits for employees hired before 2011 as violating the explicit contractual protection of retirement benefits embedded in Illinois' 1970 constitution. The high hurdle imposed by this constitutional provision has left Illinois with few and costly options for reducing accrued benefits.

Fitch notes that the contractual constraints faces by Illinois (IDR BBB/Negative) would have been less likely to emerge as a fiscal problem had the state not consistently avoided making full actuarial contributions for its pensions. The state has yet to rectify this longstanding problem, which Fitch considers a form of deficit financing.

Reform efforts stalled in some other states in 2018, regardless of the degree to which their legal environment supports changes to accrued benefits. This speaks to the political challenge of making changes to pensions.

In Ohio (IDR AA+/Stable), a bill (HB 413) that would lower COLAs in the Ohio Public Employees Retirement System (OPERS) from 3% to the annual change in CPI capped at 2.5%, among other adjustments, never received a vote in committee after several hearings and has been shelved, according to press reports. The bill would have improved the plan’s funded status while making it likelier that the statutorily fixed contributions OPERS receives would be sufficient to support funding progress under more adverse future circumstances.

Ohio’s pension plans have generally benefited from strong contribution practices and the willingness of both the legislature and pension boards to revisit decisions on benefits, assumptions and funding practices. Like a handful of other states, Ohio protects accrued benefits as property rights, rather than as contracts, and thus has greater discretion in theory to adopt reforms affecting accrued benefits of current members and retirees.

As examples of this leeway, 2012 reforms narrowed age and service requirements for OPERS benefits, including for some current employees, and COLA changes have been a part of reforms for several other Ohio statewide systems in recent years. However, even with a demonstrated record of trimming existing benefits, Fitch views more significant benefit rollbacks in Ohio beyond the recent examples as being politically unpalatable, leaving participating Ohio governments obligated to covering the unfunded liability over time.

Even with recent reform efforts like the aforementioned legislated changes, Fitch believes funding improvement for many major pensions may not materialize any time soon. Funding discount rates upon which accrued liabilities and actuarial contributions are based for virtually all major plans remain above the 6% level that Fitch views as reasonable. Although the average funding discount rate for major plans has fallen steadily since 2009, when it was 8%, Fitch calculates it at about 7.4% as of fiscal 2017. Demographic pressures likewise mean more retirees than ever are drawing benefits from funds, making improved funded ratios harder to achieve. Finally, the current economic expansion, even with recent gains, has been weaker than past expansions, and arguably is closer to its end than its beginning. This means pensions may soon be absorbing another round of recessionary weakness that further raises contribution pressure, without having fully recovered from the last downturn.

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Fitch: Recent Labor Board Ruling Highlights Implementation Risk in Illinois' Enacted Budget.

Fitch Ratings-New York-22 June 2018: A decision last week by the Illinois Labor Relations Board (ILRB) could open up a $400 million hole in Illinois' fiscal 2019 budget, highlighting the implementation risks in a budget reliant on one-time items and policy measures with uncertain fiscal benefits, according to Fitch Ratings. While the state avoided immediate political stalemate, the on-time budget fails to make material progress in addressing the state's sizable accounts payable backlog. Given the potential that budget performance will fall short of expectations, Fitch anticipates the governor and legislature may need to revisit the 2019 plan as soon as this fall.

For the first time in four years, Illinois enacted an on-time budget for the coming fiscal year when the governor signed the $38.5 billion (general funds) budget and accompanying legislation into law on June 4th. Despite the implementation risks, enacting an on-time budget with bipartisan support allowed the state to enter the new year with a clear fiscal plan, and provided clarity for the state's key fiscal partners, including municipal governments, school districts, and public higher education institutions.

Illinois' 'BBB' Issuer Default Rating (IDR) reflects many years of weak operating performance and fiscal decision making. The state continues to benefit from a solid economic base and still substantial independent legal ability to control its budget. The Negative Outlook reflects Fitch's assessment that fiscal pressures may accelerate in the near term. The state avoided a budget impasse, but the enacted budget entails significant implementation risk. Fitch's rating on the state will be lowered if the state returns to a pattern of deferring payments for near-term budget balancing and materially increases the accounts payable balance; while stabilization of the rating is contingent on the state's ability to maintain budgetary balance over multiple years, indicating more sustainable fiscal management. Upward rating momentum is unlikely until the state more comprehensively addresses its accumulated liabilities.

STEP PAY DECISION ADDS TO BUDGETARY UNCERTAINTY

The state could face an unbudgeted spending increase of roughly 1% in fiscal 2019 due to the recent litigation and ILRB's resulting actions. In 2015, the governor halted step pay increases under an expired labor contract. The AFSCME union challenged the suspension on the grounds that state law required current work conditions to continue in the event of contract expiration. Illinois' Supreme Court ruled in March 2018 in favour of AFSCME. Last week, the ILRB rejected the governor's request to send the issue to an administrative law judge for a hearing. Fitch anticipates a final remedy to be determined as soon as early this fall by the ILRB. Based on the Supreme Court ruling, it will likely require the state to provide for unpaid step-pay increases going back to 2015. Based on estimates provided by the administration to the ILRB, the state could face an additional $412 million in expenses in fiscal 2019 if AFSCME's recommended 'make-whole' remedy is implemented immediately.

ONE-TIME MEASURES AND UNADDRESSED ISSUES

The fiscal 2019 budget relies on $800 million in interfund borrowings, which under current law must eventually be repaid. This is more than, and in addition to, the approximately $400 million in

interfund borrowings included in the budget for the current fiscal year (ending June 30) that are still outstanding.

Illinois also did not make material progress in addressing its sizable accounts payable backlog with the enacted fiscal 2019 budget. As of April 30, the state comptroller reported a general funds bill backlog of $7.2 billion, or nearly 20% of the fiscal 2019 enacted general funds budget. With only a very narrow budgeted $14 million general funds surplus for fiscal 2019, Fitch anticipates no material progress in reducing the backlog, absent robust and unanticipated revenue growth. The recent favourable decision in Wayfair v. South Dakota provides some potential upside for state revenues in Illinois and elsewhere. But the state reports that its enacted budget already assumes benefits from a favorable Wayfair decision.

The bills backlog and interfund borrowings could total between $8 billion to $9 billion by the end of fiscal 2019. These liabilities are in addition to the state's approximately $200 billion long-term liability burden for debt and unfunded pension obligations as estimated by Fitch (roughly 30% of state personal income).

BUDGET ASSUMPTIONS CREATE RISK

Fitch remains concerned that several elements of the enacted fiscal 2019 budget may be delayed beyond the fiscal year or could fall short of estimates. For the second year in a row, the budget assumes approximately $300 million in one-time revenues from the sale of the Thompson Center office building in downtown Chicago – the governor also included the sale as part of his fiscal 2017 executive budget. The facility sits atop several lines of the Chicago Transit Authority's subway system and a final sale requires close negotiation and coordination with the city of Chicago. The administration notes that the timing of a sale is also somewhat contingent on legislative approval of a change in the state's procedures around surplus property sales; absent that approval the sale process would likely extend beyond the fiscal year.

Uncertain pension savings are also a key component of the enacted budget, accounting for approximately $400 million in expenditure reductions or 1% of the enacted general funds budget. The budget includes three pension proposals; two to buy out some portion of current members' future benefits at a reduced long-term cost, and one to shift a limited amount of costs to school districts and public universities. The buyout proposals account for the bulk of the savings.

The two buyout proposals will require significant administrative work by the pension systems. Based on initial reports from the state and the systems, the buyouts may not be fully implemented for several months and potentially well into the new fiscal year which could limit the savings the state is able to accrue. The savings estimates also rely on assumptions of the portion of eligible members that will opt into the buyouts which adds to the unpredictability of actual savings. While the state intends to use general obligation bonds to fund the buyouts, Fitch does not consider that a material concern as the new debt will essentially replace reduced net pension liabilities.

The third pension change will require employers in the state university retirement system and teachers retirement system (public universities and school districts, respectively) to assume a portion of the pension contribution for retiring employees if they grant salary increases in excess of 3% during the period used to determine the employee's final average salary in pension benefit calculations. This anti-spiking measure is expected to generate a modest $20 million in savings in fiscal 2019.

IMPROVEMENTS IN STATE AID

State aid for school districts will increase roughly 5% year-over-year, with a $350 million increase tied to the state's evidence-based funding formula that was first implemented last year. K-12 spending overall is up nearly 6% with a sizable $300 million increase in state pension payments to the Teachers Retirement System. For municipal governments, the enacted budget rolls back a portion of cuts to various shared tax revenues that were first implemented in fiscal 2018. The budget reduces the state's withholding of the local share of income and sales tax revenues to 5% from 10%, providing an additional $66 million and $31 million respectively for municipalities. The state also reduced its administrative fee for collections to 1.5% from 2% on various local taxes, providing an additional $15 million for local governments.

Higher education appropriations increase as well, by 2%, or roughly $60 million in fiscal 2019. The pension cost shift noted above will somewhat reduce the benefits of these aid increases for school districts and public universities. The estimated $20 million in savings are well short of the nearly $600 million in pension cost shifts that were proposed in the governor's executive budget.

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New Jersey Mega Mall Yields Big Win to Bondholders Chasing Risk.

- **Las Vegas-inspired amusement mall is about 60 percent complete**
- **High-yield muni bonds are outperforming investment grade**

A year ago, about $1.1 billion of tax-exempt bonds were sold to finish the American Dream complex in New Jersey's Meadowlands, a project that's a bet the so-called death of the shopping mall can be countered with attractions like an ice skating rink, roller coasters and a six-acre indoor waterpark.

Most of the work won't be done until next March. But the development is already delivering big profits to investors.

As bond buyers pour money into riskier debt in pursuit of higher yields, some unrated securities sold for the Triple Five Group project have returned 18 percent over the past year, a gain rarely seen in the municipal market. It joins other speculative securities, including those issued by Chicago's school system, that rallied as defaults remain scarce and the economy continues its second-longest expansion in history.

“Nothing negative has happened so far, it’s just benefited from market dynamics,” said Daniel Solender, head of municipal investments at Lord Abbett & Co., which owns some of the bonds.

In the 12 months to June 21, municipal high-yield debt returned 6.6 percent, compared to 0.92 percent for investment grade state and local government bonds, according to Bloomberg Barclays Indexes. Investors have added $5.7 billion to high-yield municipal bond funds over the past year, more than half of all the money that’s flowed into to state and local government debt funds, according to Lipper US Fund Flows data.

The American Dream sale, the largest offering of unrated municipal bonds last year, will help complete a project that has been in the works for nearly two decades. It was conceived in 2002, and initial work began in 2004 across the highway from what is now MetLife Stadium. Construction was abandoned after previous developers ran short of funding.

Triple Five, which took it over, sold $800 million in municipal bonds backed by payments in lieu of property taxes and about $270 million in sales-tax backed debt. If Edmonton, Alberta-based Triple Five doesn’t pay property taxes, the trustee can foreclose on the property. The holders don’t have any recourse if the project doesn’t generate enough sales-tax money to cover the bonds backed by that revenue.

Investors don’t seem worried. Bonds maturing in 2050 were issued at about 102.8 cents on the dollar and are now trading at 115 cents, pushing the yield down to about 5.05 percent from 6.63 percent. Much of the gain on the American Dream bonds came in the first few months after the debt was issued, according to Robert Amodeo, head of municipals at Western Asset Management.

“When it came to market it was such a speculative deal,” Solender said. “To sell a whole deal at that size it took an attractive yield to get everyone interested.”

Construction of the $2.8 billion Las Vegas-inspired mega complex, which will also include an indoor ski slope, Ferris wheel, aquarium, performing-arts theater and 500 stores is about 60 percent complete.

At the site, construction workers are laying steel for an indoor water park and pouring concrete at the ice skating rink. The Saks Fifth Avenue tenant space is ready to turn over to the department store and roller coaster sections are being put in place, according to project status reports.

More than three-quarters of American Dream’s 2.3 million square feet was leased as of November 2017, according to a May 30 project status report. All of the retail anchor space and stores of more than 50,000 square feet are leased.

Triple Five is building an even bigger mall in Miami, also called American Dream. The 6.2-millio- -square-foot retail and entertainment complex will cost an estimated $4 billion and will be built without public subsides, unlike the New Jersey project. Triple Five also owns the Mall of America in Bloomington, Minnesota.

Bloomberg Business

By Martin Z Braun

June 22, 2018, 7:05 AM PDT

A Glimpse Into the Future of P3s.

The real money isn't in roads and bridges. It's in people and services.

These are dark days for public-private partnerships. President Trump's P3-focused infrastructure finance plan was dismissed by Congress as a dead-on-arrival proposal. Earlier this year, more than 80 organizations and trade unions signed a letter imploring the World Bank to stop supporting infrastructure P3s. One of the biggest in recent history, the Indiana Toll Road, fell into bankruptcy last year after a long and difficult ride.

Does this mean P3s are a passing fad? Far from it. Most trends suggest the U.S. transportation P3 sector is just getting off the ground. As long as the private sector has ideas to help deliver infrastructure faster, safer and cheaper, state and local politicians will be happy to listen.

But all this focus on P3s for infrastructure misses a fundamental truth: The real money is not in roads and bridges. It's in people and services. Today the "Big 3" — education, Medicaid and corrections — account for more than two-thirds of total state spending, according to the National Association of State Budget Officers. By contrast, state spending on capital projects is barely 10 percent. The story is similar in cities and counties, where public safety and social services are crowding out all other spending.

This begs a natural question: Can P3s improve outcomes and drive cost savings in core state and local services? Fortunately, there are a few early examples where the answer is yes.

Consider Propel, a tech startup based in Brooklyn. It has developed a mobile app called Fresh EBT that serves food stamp recipients. The free app allows recipients to track their spending, develop a grocery budget and find sales at local participating grocery stores. In turn, Propel makes money by selling ad space on its app. Early results show Fresh EBT customers stretch their benefits further and eat healthier. Either way, it's an intriguing new form of P3 with big implications for local public health directors, among others.

The ultimate measure of success is scalability. Food stamps reach 45 million people and account for $70 billion in annual federal and state spending. That's why it is no surprise that some of Silicon Valley's top venture capitalists have lined up to invest millions in Propel.

Another example is Honor, an app that serves the $250 billion home care industry. Millions of elderly Americans need some combination of non-medical in-home services like preventive health care, transportation and nutrition monitoring. Honor offers a wide range of these types of services on demand. Home care providers pay Honor to make their services available on the app. Better access to home care can help keep millions of seniors out of expensive, residential assisted-living units. That's an enticing value proposition for state Medicaid directors.

To be clear, these Silicon Valley-style P3s raise several concerns. Smartphones are a great way to reach low-income Americans, but they can't reach everyone. Like any app, these innovations raise questions about data privacy and security, especially around banking records and other sensitive information. And some worry these tools oversimplify the complex social safety net, and that could encourage damaging cuts in social workers and other wraparound services. If these P3s are to be successful, these are just a few of the challenges they'll need to work through.

This latest wave of P3s leverages private-sector innovation to change how underserved populations interact with the social safety net. Perhaps more important, small changes at the margins, such as

making these programs work more efficiently and effectively, could mean billions in state and local savings. The possibilities are endless. Where is the app to improve on-demand access to paratransit services? Or to help recent parolees find a job? Or to help better manage government fleet vehicle maintenance? Those may not be the most exciting apps, but they're the P3s we need now more than ever.

GOVERNING.COM

By Justin Marlowe | Columnist

Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

JUNE 2018

TAX - MISSISSIPPI

City of Horn Lake v. Sass Muni–V, LLC

Supreme Court of Mississippi - June 7, 2018 - So.3d - 2018 WL 2731592

A year after the redemption period expired, tax sale purchaser of property sought to have the tax sale declared void and the purchase price refunded.

The Chancery Court dismissed with regard to all defendants. Purchaser appealed. The Supreme Court reversed and remanded. On remand the Chancery Court granted tax sale purchaser's motion for summary judgment. City and county appealed.

The Supreme Court of Mississippi held that tax sale of property was void ab initio, rather than just voidable.

Tax sale of property was void ab initio, rather than just voidable, where the chancery court clerk failed to comply fully with the statutory notice requirements, and statute indicated the failure to provide the requisite notice to the property owner rendered the sale void.

TAX - GEORGIA

Cotton Pickin' Fairs, Inc. v. Town of Gay

Court of Appeals of Georgia - June 15, 2018 - S.E.2d - 2018 WL 2997108

Town brought declaratory judgment action, alleging it was authorized by statute to levy an occupation tax on exhibitors participating in town fair, and fair sponsors sought an injunction barring town from attempting to collect taxes from exhibitors.

The trial court granted summary judgment in favor of town, and sponsors appealed.

The Court of Appeals held that:

- Sponsors of town fair had standing to argue that town should not levy occupation taxes on exhibitors, and
- Exhibitors fell under the temporary work site exception to occupation tax levied by town.

Sponsors of town fair had standing to argue that town should not levy occupation taxes on exhibitors participating in town fair on the basis exhibitors did not have a "location or office" in the town for purposes of the fair, and thus, were exempted from taxation; town chose to sue sponsors for monetary damages for the non-payment of the same occupation taxes supposedly owed by the exhibitors, seeking $100,000 from the sponsors for the four-year period sponsors refused to pay the exhibitor's taxes.

Fair exhibitors did not have locations or offices in town for purposes of town fair, and thus, fell under the temporary work site exception to occupation taxes levied by town; exhibitors occupied a temporary work site, each exhibitor vacated the fair grounds within two hours after the two-day fair ended, the fair was a transitory event, and because the fair was a planned undertaking, it constituted a single project for purposes of the exception.

The Week In Public Finance: Supreme Court Clears Way for States to Tax Online Sales.

The landmark decision could boost state governments' revenues by tens of billions of dollars a year. But first, they have to decide how to take advantage of it. Some hope the ruling will spur Congress to pass national rules.

In a landmark ruling that could provide a big boost to state and local revenues, the U.S. Supreme Court overturned a two-decade-old ruling on Thursday that barred states from collecting sales taxes for online purchases.

The decision is one of the most significant state and local finance rulings in the modern era and comes at a time when sales tax revenues have been steadily shrinking thanks in part to more purchases being made online.

Calling the old precedent "flawed" and a "tax shelter for businesses," the 5-4 decision does away with the notion that governments can only collect sales taxes on purchases made from retailers with a physical presence in the state. In doing so, the court overturns two previous rulings that predated the world of e-commerce: the 1992 case, Quill Corp. v. North Dakota, that dealt with out-of-state taxes collected on catalog purchases, and the 1967 case, National Bellas Hess Inc. v. Department of Revenue of Illinois.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 21, 2018

Internet Sales Tax Ruling Helps States Avoid Revenue Erosion In The New Economy.

NEW YORK (S&P Global Ratings) June 21, 2018—S&P Global Ratings believes the U.S. Supreme Court's decision allowing states to require out-of-state online retailers to collect sales tax will have a beneficial effect on long-term state credit quality. However, the immediate credit effect may be

muted.

Continue Reading

Jun. 21, 2018

State Sales Tax Collections Finally Move Into the Internet Age.

The Supreme Court's ruling in South Dakota v. Wayfair scraps a precedent that dates back to the heyday of mail order catalogs.

States entered into a new era Thursday when it comes to collecting taxes on internet sales.

The U.S. Supreme Court issued a 5-4 decision in the case of *South Dakota v. Wayfair, Inc.* that overturned two of its own previous rulings, which have blocked states from requiring out-of-state online vendors to pay sales taxes—even as internet commerce has ballooned.

States governments will now have greater authority to capture these taxes from the merchants.

"I think you've got 50 states chomping at the bit to enact collection obligations on out-of-state retailers," said Steve Rosenthal, a senior fellow in the Urban-Brookings Tax Policy Center at the Urban Institute.

"And that will happen," he added. "That will be new."

Justice Anthony Kennedy delivered the majority opinion, which appears to give a nod of approval to elements in the South Dakota statute that triggered the case. But it also leaves questions about how much latitude states have in coming up with new tax laws.

The court decision promises to help raise state and local revenues in the years ahead, particularly in states that depend heavily on sales tax.

Although sales tax collections are already flowing from many sales made by some of the nation's largest online vendors, like Amazon. And online commerce, while growing, is still a fraction of the total retail market. So the near-term effects on government budgets could be relatively limited.

Even so, those involved in state and local budgeting and finance described the high court's decision as a major development. "This is an incredibly big deal," Emily S. Brock, director of the federal liaison center at the Government Finance Officers Association, said by phone.

U.S. Government Accountability Office estimates released last year show that state and local governments could have gained $8 billion to $13 billion in 2017, if states could have required sales tax collections from all out-of-state "remote sellers," like online vendors.

Those gains would be equal to about 2 percent to 4 percent of total 2016 state and local revenues.

E-commerce made up about 9 percent of the nation's overall retail sales last year. But it is expanding rapidly. Internet sales jumped 16 percent last year in the U.S, while total retail sales edged upwards by just 4.4 percent.

"The amount of online sales is only going to grow," said John Hicks, executive director of the

National Association of State Budget Officers.

Thursday's court decision, he added: "Stems the tide of sales tax losses."

Hicks said that based on figures for the last fiscal year, South Dakota, Florida, Tennessee, Texas and Washington all depend on sales taxes for more than half of their general fund revenues. Sales taxes supported at least 40 percent of general fund spending in 15 states, he said.

"If you are a state that is heavily reliant on sales taxes to begin with, you'll see a bigger boost," Chandra Ghosal, vice president and senior analyst at Moody's Investors Service, said by phone.

S&P Global Ratings issued a bulletin that said the court decision "will have a beneficial effect on long-term state credit quality. However, the immediate credit effect may be muted."

"We do not anticipate any immediate rating changes because of the court's decision. It will take time to pass implementing legislation, and the additional revenue will represent a relatively small portion of overall state and local revenues," the ratings agency added.

Kennedy's opinion was a clear death knell for the so-called "physical presence rule," a legal precedent that prevented states from collecting sales tax from companies that don't have an in-state "physical presence"—like offices, warehouses or employees.

The rule was grounded in two previous Supreme Court cases. The more recent was the 1992 case *Quill Corp. v. North Dakota*. The other was a 1967 case known as *National Bellas Hess, Inc. v. Department of Revenue of Illinois*. Both involved mail order catalog sales.

Kennedy wrote that the physical presence mandate was "unsound and incorrect" and said that both cases are overruled.

"The physical presence rule has long been criticized as giving out-of-state sellers an advantage," the court's majority opinion says. "Each year, it becomes further removed from economic reality and results in significant revenue losses to the States."

It goes on to call *Quill* "a judicially created tax shelter for businesses that limit their physical presence in a State but sell their goods and services to the State's consumers, something that has become easier and more prevalent as technology has advanced."

"The Internet revolution has made *Quill's* original error all the more egregious and harmful," the opinion adds.

Forty-one states and the District of Columbia had urged the court to reject the physical presence test cemented by *Quill*.

"The court very, very, very rarely overturns cases," said Lisa Soronen, executive director of the State and Local Legal Center, a group that files amicus briefs in support of state and local governments in the U.S. Supreme Court. "This is a big step."

Kennedy was joined in the majority by Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito and Neil Gorsuch. Chief Justice John Roberts, along with Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan, issued the dissenting opinion.

"We've waited 26 years," state Sen. Deb Peters, the Republican lawmaker who authored South Dakota's tax legislation, and who is the current president of the National Conference of State

Legislatures, said in a statement, reacting to the court tossing out the *Quill* standard.

"State officials look forward to working with all stakeholders in the coming months as we move forward to level the playing field for all of our nation's retailers," Peters added.

The court case pitted South Dakota against Wayfair, Inc, Overstock.com, Inc. and Newegg, Inc., three online merchants who have no employees or real estate in the state. The companies challenged a 2016 South Dakota law that required out-of-state retailers to pay sales taxes if they had over $100,000 of sales, or 200 separate transactions, in the state annually.

The Supreme Court decision is not the final step in the case. It actually sends the case back to the South Dakota Supreme Court. But the state court will no longer be able to factor the physical presence rule into its decision, as it did previously in siding against the state.

"The case isn't necessarily over," Soronen said. "It's probably over."

Soronen said that some in the state and local government arena were hoping or expecting the court to say more about South Dakota's law and that the guidance it did include in the decision was minimal.

"It's probably too brief to call it a road map, but there's some suggestions in here," she said.

Soronen said policy makers would be wise to look at three elements of the South Dakota law that Kennedy's opinion suggests do not run afoul of the Constitution's Commerce Clause.

These include the dollar-amount and transaction thresholds that keep companies that conduct limited business in South Dakota from falling under the law, the fact that the law does not apply retroactively to sales that have happened in the past, and that South Dakota is one of over 20 states that has adopted what's known as the Streamlined Sales and Use Tax Agreement.

That agreement provides a framework that is designed to reduce the administrative and compliance costs companies face under state sales and use tax laws. It also offers sellers access to sales tax software that is paid for by states.

Hayes Holderness, an assistant professor at the University of Richmond School of Law, explained that he does not think that the court's decision provided a good "floor" as far as what qualifies as a "substantial nexus" under the Commerce Clause. (Substantial nexus here refers to the connection between the activity being taxed and the state that is taxing it.)

"It's definitely not physical presence," Holderness said, referring to what amounts to a "substantial nexus" now that the Quill decision is overturned.

"But I'm not sure that we have a great idea of what it is going forward," he added.

Holderness said if he were a state policy maker seeking to tax online sales, he'd look to mimic what South Dakota has done with its law. "I think if you're reading Wayfair, and trying to figure out what to do going forward, you have a safe harbor with the South Dakota model," he said. "After that, you're sort of out at sea."

Hicks, with NASBO, said he was aware of at least 13 states that have already passed legislation like South Dakota's law, adopting dollar amount or transaction thresholds.

Rosenthal said that, in his view, a key consideration going forward for states crafting tax policy

aimed at internet retailers is that it aligns with certain bedrock principles of the Commerce Clause, namely that the policy is not a burden on interstate commerce and that it is not discriminatory. Even if a law differs from the one South Dakota passed, if it is in sync with those principles, he believes it would be likely to pass legal muster.

He also said he was happy to see the physical presence standard finally scrapped.

"The question really was, 'What do you do when the Supreme Court makes a mistake? Does it slavishly follow precedent or does it re-articulate the right standard and then apply that going forward,'" Rosenthal said as he discussed the *Wayfair* case.

"They actually went out of their way to say that the physical presence test was just wacky and wrong," he added, "and we're going to shift to the right standard."

Route Fifty

By Bill Lucia,
Senior Reporter

June 21, 2018

Supreme Court Gives OK to Collecting Tax on Internet Sales.

Counties, states can require collection of internet sales tax after U.S. Supreme Court decision

In a 5-4 decision, the Supreme Court ruled Thursday that states and local governments can require internet retailers to collect sales taxes, even if the online company has no physical presence like a factory or store, in the state.

Removing the "physical presence" standard is a significant change in the sales tax collection landscape. Sales taxes are the second greatest portion of revenue for counties nationwide, and uniform enforcement and collection is a top priority for county governments. The South Dakota v. Wayfair decision ending the physical presence standard is a significant win for local governments, though it does not provide a national, standardized solution.

Learn More: Supreme Court opinion

State and local governments are losing between $8 billion to $13.4 billion a year in uncollected taxes for online sales, the Government Accounting Office estimated last year. Some studies put that figure as high as $26 billion a year, according to the International Council of Shopping Centers. Local sales taxes are collected in 38 states.

In its decision in the case, South Dakota vs. Wayfair, the high court overturned a 1992 ruling that had let taxes go unpaid for many online purchases. It upheld a South Dakota law that required retailers in the state to collect a 4.5 percent tax on purchases.

Ultimately the court overturned previous cases and sent the case back to the South Dakota Supreme Court. This means the court is leaving the decision up to each state over whether to enforce sales tax collection on remote purchases. Under this framework, each state may have to pass legislation

requiring remote sellers to collect these taxes, and if the law is challenged in court, each state supreme court will be responsible for determining what an appropriate standard for “substantial nexus” is in the state, whether it meets standards outlined in the Commerce Clause, and generally if it is appropriate or overburdensome.

The National Retail Federation said Thursday that federal legislation is necessary to spell out details on how sales tax collection will take place, rather than leaving it to each state to interpret.

To require a vendor to collect sales tax the vendor must still have a “substantial nexus” with the state. The Court found a “substantial nexus” in this case based on the “economic and virtual contacts” Wayfair has with the state.

The National Association of Counties (NACo) and other leading organizations that represent state and local governments applauded the decision — a big win for their members:

“Today’s ruling will ensure parity for Main Street retailers and will help close an ever-growing sales tax collection loophole that results in billions of dollars in revenue going uncollected each year,” NACo said in a statement. “For 26 years, the court has waited for Congress to fix this problem, but Congress demurred. Therefore, the court revisited the issue and recognized that the nature of contemporary commerce necessitates that all sellers, regardless of their location, follow the same laws. No more, no less.”

In the Supreme Court’s decision, Justice Anthony Kennedy wrote the majority opinion, stating that brick-and-mortar stores were being put at a disadvantage by having to charge a sales tax while online retailers did not. That rule “prevented market participants from competing on an even playing field,” he wrote.

“It is unfair and unjust to those competitors, both local and out of state, who must remit the tax; to the consumers who must pay the tax; and to the states that seek fair enforcement of the sales tax — a tax many states for many years have considered an indispensable source for raising revenue.” he wrote.

In a dissenting opinion, Chief Justice John Roberts said that the decision could detract from online sales “significant and vibrant part of our national economy.”

The justices who voted in the majority were: Justices Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch. Those who voted in the minority were: Justices John Roberts, Stephen Breyer, Sonia Sotomayor and Elena Kagan.

National Association of Counties

Jun. 21, 2018

Mary Ann Barton, Jack Peterson and Lisa Soronen contributed to this report.

Supreme Court Widens Reach of Sales Tax for Online Retailers.

WASHINGTON — Americans have done more and more of their shopping online in recent years, drawn by the promise of low prices, wide selection and buy-from-home convenience. But e-commerce has also had another edge: Many of those sales were, in effect, tax-free.

The Supreme Court on Thursday moved to close that loophole, ruling that internet retailers can be required to collect sales taxes even in states where they have no physical presence.

The decision, in South Dakota v. Wayfair Inc., was a victory for brick-and-mortar businesses that have long complained they are put at a disadvantage by having to charge sales taxes while many online competitors do not. And it was also a victory for states that have said that they are missing out on tens of billions of dollars in annual revenue.

“State and local governments have really been dealing with a nightmare scenario for several years now,” said Carl Davis, research director at the Institute on Taxation and Economic Policy, a Washington think tank. “This is going to allow state and local governments to improve their tax enforcement and to put local business on a more level playing field.”

In Thursday’s ruling, the court effectively overturned a system that it created. In 1992, the court ruled in Quill Corporation v. North Dakota that the Constitution bars states from requiring businesses to collect sales tax unless they have a substantial connection to the state. The Quill decision helped pave the way for the growth of online retail by letting companies sell nationwide without navigating the complex patchwork of state and local tax codes.

But as online retailing has grown, the dynamics have shifted. Online sellers are no longer scrappy upstarts competing with more established businesses. Amazon had $119 billion in revenue from product sales last year, making it bigger than all but the largest traditional retailers.

And state budgets are increasingly feeling the pinch. Writing for the majority in the 5-to-4 ruling, Justice Anthony M. Kennedy said the Quill decision caused states to lose annual tax revenues of up to $33 billion.

“Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers,” he wrote. “Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own.”

Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch joined the majority opinion.

In dissent, Chief Justice John G. Roberts Jr. agreed that the court’s rulings in this area had been “wrongly decided,” but said there were insufficient reasons to overrule the precedents. “Any alteration to those rules with the potential to disrupt the development of such a critical segment of the economy should be undertaken by Congress,” he wrote.

Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined the dissent.

In the years since 1992, three members of the court had indicated that they might be ready to reconsider the Quill decision. In a 2015 concurring opinion, for instance, Justice Kennedy seemed to call for a fresh challenge.

South Dakota responded by enacting a law that required all merchants to collect a 4.5 percent sales tax if they had more than $100,000 in annual sales or more than 200 transactions in the state. State officials sued three large online retailers — Wayfair, Overstock.com and Newegg — for violating the law. Lower courts ruled for the online retailers, citing the Quill decision.

Marty Jackley, South Dakota’s attorney general, called Thursday’s ruling “a big win for South Dakota and Main Streets across America.” He said the decision could be particularly significant for rural

areas where local businesses have been hit hard by competition from online retailers.

Mr. Jackley is a Republican. But South Dakota’s appeal drew bipartisan support, including from attorneys general in 35 states and the District of Columbia.

Mr. Jackley estimated that South Dakota would be able to begin collecting sales tax on online purchases in 30 to 90 days. Other states may be close behind: Anticipating Thursday’s ruling, several states, including North Dakota, have passed laws modeled on South Dakota’s.

Other states will have to change their laws if they want to take advantage of the decision, said Hayes Holderness, a law professor at the University of Richmond. He predicted a flurry of activity in legislatures.

Many of those laws could face their own legal challenges. Justice Kennedy’s decision left open the possibility that some transactions were so small and scattered that no taxes should be collected. The court also did not decide whether states may seek sales taxes retroactively, which South Dakota’s law does not.

Thursday’s ruling should benefit local coffers as well, at least where local sales taxes are collected at the state level. But it won’t help municipal governments in states such as Pennsylvania and New Mexico where quirks in tax codes prevent local jurisdictions from taxing remote sellers.

For consumers, the reversal of Quill could mean paying more for products bought online. In theory, most states already require consumers to pay a “use tax” equivalent to the state sales tax when buying online. But in practice, few consumers do so.

Owners of brick-and-mortar stores welcomed the ruling.

“I firmly believe that it’s a huge stride in leveling the playing field,” said Jason Patton, owner of Oz Music in Tuscaloosa, Ala. “In my record store, the average price point is around $20. I’m not going to say I continually lost customers because of the sales tax, but on higher-ticket items, that tax absolutely matters.”

Shares in Amazon fell 1.1 percent on Thursday, and other online retailers took a bigger hit. Overstock.com shares were down more than 7 percent.

“Today, the U.S. Supreme Court has reshaped the interstate commerce landscape in a move that could impact small business innovation on the internet, which has been a driving force behind our nation’s economy for the last 15 years,” said Jonathan E. Johnson III, a member of Overstock.com’s board.

Overstock said the decision would have little impact on its business but argued that with more than 12,000 different state and local taxing districts, the ruling would present a “compliance challenge” for internet start-ups. Chief Justice Roberts made a similar argument in his dissent.

Many experts, however, played down that problem. When the Supreme Court decided the Quill case in 1992, complying with various state and local tax laws would have been a major hurdle for small businesses. But today, many companies offer software that helps small businesses navigate local laws.

“The digital and internet revolution contributed to the problem, but those same factors contributed to the solution, which is easy-to-use tax-automation software,” said Daniel Hemel, a University of Chicago law professor.

Wayfair, in a statement, said it already collected sales tax on approximately 80 percent of its orders in the United States. “As a result, we do not expect today’s decision to have any noticeable impact on our business,” the company said.

The impact on Amazon could be even smaller: As of last year, the company collected sales tax in the 45 states that have one.

But about half of Amazon’s total online sales come from independent merchants who simply post their inventory on the online store. In most states, those merchants are responsible for calculating and paying the various state taxes if they are owed. In the past year, Washington State and Pennsylvania have enacted laws requiring internet retailers to collect taxes on third-party sales. More states are expected to follow suit.

Amazon declined to comment on the ruling.

In his ruling on Thursday, Justice Kennedy wrote that world had changed since 1992, when mail-order sales totaled $180 million. Last year, remote sellers racked up sales exceeding half a trillion dollars, he noted.

That growth seems unlikely to slow. Stacy Mitchell, co-director of the Institute for Local Self-Reliance, a group that supports independent businesses, said the tax-free nature of online retail had given Amazon and other internet sellers a big advantage when they needed it most.

“It’s hard to overstate how much not having to collect sales tax mattered in the first 15 years of Amazon’s growth,” Ms. Mitchell said.

The New York Times

By Adam Liptak, Ben Casselman and Julie Creswell

June 21, 2018

Adam Liptak reported from Washington, and Ben Casselman and Julie Creswell from New York. Michael J. de la Merced contributed reporting from London.

Online Sellers Consider How to Comply With Sales Tax Ruling.

NEW YORK — While a Supreme Court ruling on sales taxes will create more obligations and expenses for many small online retailers, owners are already thinking about how they’ll comply.

The decision allows states to require out-of-state businesses to collect sales tax from customers in other states — for example, a retailer in Utah who sells goods to a customer in New York would have to calculate and collect the New York sales tax. The ruling potentially means thousands of small businesses that never collected sales tax except in their home states will be responsible for tax in some 10,000 state and local jurisdictions nationwide.

The ruling has angered many small online retailers and advocates for small companies because it will increase their expenses, mostly from the cost of software and services to help sellers collect the taxes and send the money to state authorities. But brick-and-mortar retailers who have had to collect tax simply because they have a store, office or warehouse in a state say the court has leveled the

playing field, as online retailers will no longer have an advantage created by tax-free shopping.

The decision overturned two decades-old Supreme Court decisions that allowed companies without a physical presence in a state to avoid collecting sales tax. The internet has changed retailing, and Justice Anthony Kennedy, who wrote the new decision, said, “each year, the physical presence rule becomes further removed from economic reality.” Kennedy also noted the existence of software that “may make it easier for small businesses to cope” with compliance.

Some internet retailers are shrugging and making plans to adhere to the new rules.

“I’ll do what needs to be done and get it taken care of,” said Dave “Lando” Landis, owner of Rocker Rags, a New Mexico-based online seller of clothing with photos and logos of rock musicians. “It’s not something that needs to be a panic situation.”

Adrienne Kosewicz who pays $3,300 a year for tax compliance software for sales in her home state, Washington, expects that collecting taxes in other states will raise costs by a manageable 10 percent at her Seattle-based online business, Play It Safe World Toys.

The cost can be reduced for retailers who sell to customers in the 24 states that participate in the Streamlined Sales Tax Agreement, a plan aimed at simplifying tax collection. Under the agreement, retailers can use a sales tax compliance service of their choice without charge for transactions in the participating states, according to Craig Johnson, executive director of the Streamlined Sales Tax Governing Board.

There are still many unknowns. The ruling upheld a South Dakota law that exempts sellers with $100,000 or less in sales in the state. Other states are free to set their own thresholds, and it’s not known what they might be or how long it would take for all the states to weigh in, says David Campbell, CEO of TaxCloud, a provider of tax compliance software. It’s also not known if Congress might set a uniform ceiling that all states would have to adhere to.

Kosewicz says for her, sales may not reach the threshold in each state.

States also still must announce dates by which retailers must be in compliance, says Scott Peterson, a vice president at Avalara, a manufacturer of tax collection software. He suggests retailers consult with their accountants to determine the states where they should be in compliance.

The tax compliance software and services are designed to work with the programs retailers use to process their sales transactions. They are linked to databases that track tax rates in the 45 states that charge sales tax, and in the thousands of counties and municipalities that have their own taxes.

But using the compliance services won’t be without complications, says Jamie Yesnowitz, an accountant specializing in state and local taxes with the firm Grant Thornton.

“It’s not as easy as pushing a button,” because businesses will need to make decisions about where they’re going to collect tax, Yesnowitz says. If a company doesn’t expect to reach the threshold in a state, it may decide not to collect tax.

Owners will also have to absorb the costs of complying, or pass it along to customers — something they want to avoid.

“There must be another piece of overhead someplace else to reduce,” says Bob Cuddihy, owner of True Citrus, a Baltimore-based online seller of drink mixes, water bottles and apparel. He’s concerned about consumers cutting back their purchases when they see they have to pay sales tax,

but he also believes in time they'll get used to the added cost.

Owners who have never collected out-of-state sales tax will need to get up to speed. Betty Lou Kranz initially worried about being able to stay in business if she had to track tax rates in hundreds of jurisdictions where her Port Jervis, New York-based company, The Pretzel Princess, sells candy and snacks.

"I will be learning a lot in the next couple of months," Kranz says.

The ruling also concerns some small business advocates, who see it as government interference in business. "It's taxes and regulation all combined in one unfortunate tax," says Raymond Keating, chief economist with the Small Business & Entrepreneurship Council.

But to brick-and-mortar stores, the ruling righted a decades-old imbalance that favored internet retailers and led to the demise of thousands of merchants.

"They've been getting an unfair advantage for 20 years. As much as I like the internet, real harm has been done," says Mike Brey, owner of two Hobby Works stores in Maryland. Brey, who also has an online business, has closed three stores. He plans keep building his internet business, and expects his company will eventually pass whatever thresholds are set in all the states.

Businesses that aren't traditional retailers hope they'll get back lost sales. Among them: veterinarians who write prescriptions for medicine and special food that clients have been able to buy tax-free online.

"Vets all over the country have lost a lot of income for a long time," says Dr. John de Jong, owner of Newton Animal Hospital in Massachusetts and president-elect of the American Veterinary Medical Association. He estimates his practice loses more than $75,000 in sales annually to online stores.

By The Associated Press

June 23, 2018

Follow Joyce Rosenberg at www.twitter.com/JoyceMRosenberg. Her work can be found here: https://apnews.com/search/joyce%20rosenberg

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GFOA: U.S. Supreme Court Issues Favorable Decision in Remote Sales Tax Case.

Today, the U.S. Supreme Court issued a decision in South Dakota v. Wayfair, Inc., overturning the outdated physical presence standard. This long-anticipated decision clears the way for state and local governments to enforce existing sales and use tax laws on remote sales. For well over two decades, GFOA and other state and local government organizations have pursued a simplified framework of sales and use tax administration to address the ever evolving and growing online retail marketplace. Until this year, the focus has primarily been on Congress where organizations like GFOA have advocated for legislation such as the Marketplace Fairness Act. Without the authority to impose current sales and use tax laws on many remote and online purchases, states and local governments have lost billions of vital revenue for public services every year.

Upon release of the decision, GFOA joined others in the state and local government community and

issued a statement. “State and local organizations applaud the U.S. Supreme Court’s decision recognizing that the 1992 Quill ruling put Main Street retailers at a competitive disadvantage to remote sellers and the efforts by states to simplify the sales tax collection process and giving those states remote sales tax collection authority. For 26 years Congress has failed to act and through the efforts of Justice Anthony Kennedy, the federal government has finally recognized the changing nature of commerce and state efforts to simplify the collection process.”

View the Press Release

GFOA remains committed to finding a solution that simplifies and streamlines the collection of sales taxes that makes sense for all stakeholders involved and finally provides a level playing field that treats all businesses alike, whether selling from a brick-and-mortar store or completely online.

IRS Designates Remaining Qualified Opportunity Zones: Ballard Spahr

The IRS has now certified and designated Qualified Opportunity Zones (QOZs) in every state, five possessions, and the District of Columbia.1 A map and list of all designated QOZs can be found here. For more information on the QOZ program’s tax incentives, see our e-alerts, “Permanent or Temporary Deferral of Tax on Gains: Opportunity Zones” and “IRS Allows Self-Certification of Qualified Opportunity Funds,” as well as our more comprehensive “Primer on Qualified Opportunity Zones,” originally published in *Tax Notes* and *State Tax Notes* on May 14.

Taxpayers may elect to defer some or all of the tax on gain rolled over to a Qualified Opportunity Zone Fund by including a completed IRS Form 8949 with a timely filed (or, for 2017, an amended) federal income tax return. You can find the IRS FAQs on Opportunity Zones here.

Ballard Spahr will continue to monitor guidance from the IRS on Opportunity Zones. For additional advice about QOZ tax incentives and investments, please contact Wendi L. Kotzen, Linda B. Schakel, or Adam S. Wallwork.

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Sen. Booker Urges Treasury to "Safeguard" Opportunity Zones.

Read the letter.

Office of Sen. Cory Booker | Jun. 22

Opportunity Zones: The Map Comes Into Focus

Key takeaways:

- **The first phase of Opportunity Zones implementation is now complete:** The U.S. Treasury Secretary has now certified the census tracts nominated by the governor of every U.S. state and territory and the mayor of Washington, D.C. For the next ten years, private investors will be eligible for certain tax benefits in return for investing in these low-income communities.
- **Governors tailored their selections to the needs and potential of their communities.** They relied heavily on public and local government engagement, rigorous analytics, peer-learning, and interagency collaboration to determine their zones.
- **Governors prioritized higher-need places.** Zones have an average poverty rate of nearly 31 percent, well above the 20 percent eligibility threshold, and an average median family income of only 59 percent of its area median, compared to the 80 percent eligibility threshold.
- **Selected tracts have high need as well as proven growth potential.** The country's Opportunity Zones already contain 24 million jobs and 1.6 million places of business. Many can harness some positive momentum as well: Three-quarters of zones are located in zip codes that experienced at least some level of post-recession employment growth from 2011 to 2015.
- **Less than 4 percent of zones have recently experienced high levels of socioeconomic change, a proxy for gentrification and displacement risk.** The average Opportunity Zone's housing stock has a median age of 50 years, more than ten years older than the U.S. median—a sign that many of these neighborhoods urgently need reinvestment.

Continue reading.

Economic Innovation Group

6.15.2018

Bond Market `Very Forgiving' of Alabama County's Record Collapse.

- **Despite the fading stigma, no city bankruptcies since 2015**
- **'We were told our children would be destined to poverty'**

For localities worried about facing big bond-market penalties if they go bankrupt, consider Jefferson County, Alabama.

The county of 659,000 people — once the largest municipality to ever seek bankruptcy protection — has sold debt several times since emerging from court protection in 2013. Carrying an investment-grade rating of AA- in May, the county completed a refinancing of its general-obligation debt by paying yields of 2.86 percent on bonds due in 2026, just about half a percentage point above top-rated debt.

"We were told our children would be destined to poverty, you were going to be the hole in the donut, you will never recuperate," County Commissioner David Carrington said in an interview. He said the county's bond deals have even seen strong demand from investors. "The markets are very forgiving

if you have results.”

Municipal-bond market analysts — and even investor Warren Buffett — have long worried that the fading stigma of bankruptcy could embolden more local governments to petition the court to cut their debts.

But despite a few municipal bankruptcies in the wake of the last recession, there’s been little sign that more will follow suit. No city or town has filed for bankruptcy protection since Hillview, Kentucky, did in 2015 as a result of an adverse ruling in a contract dispute that it couldn’t afford to pay. Rather than let its capital go bankrupt, debt-strapped Connecticut agreed to pay off some of Hartford’s debts instead.

While Jefferson County has gotten market access and its investment-grade rating back, the process was far from painless. Contending at the same time with revenue lost when a court struck down a key tax, it fired 1,300 employees, put off roadwork and shuttered inpatient services at its hospital that cared for the poor. To exit bankruptcy, officials agreed to raise sewer rates 8 percent annually through October 2018, followed by yearly jumps of 3.5 percent until 2053. Creditors including JPMorgan Chase & Co. forgave $1.4 billion of debt.

“You have to get to that point where there is no other alternative,” Carrington said.

He said he’s been called by other elected officials who are considering bankruptcy and has told them there is a “huge” financial burden. He said it cost the county about $1 million per month during the approximately two years it took to get through the bankruptcy process. “Do you have the political will as a governing body to make the decisions you’re going to have to make?” he said.

Detroit, which followed Jefferson County with a bankruptcy filing in 2013, exited state financial oversight this year but still hasn’t returned to the bond market on its own. Mammoth Lakes, California, which sought bankruptcy protection in 2012 after a fight with a real estate developer, sold $24 million in investment-grade bonds in October that priced at a top yield of 4.47 percent in 2035, more than 1.8 percentage points above top-rated debt. In the years since the bankruptcy, the town has cut expenses and grown its revenues, S&P Global Ratings said.

Local bankruptcy have been deterred because of the barriers to filing and the improving economy, said Henry Kevane, managing partner at law firm Pachulski Stang Ziehl & Jones LLP who specializes in such cases. Some states, including Illinois, don’t allow municipalities to file for Chapter 9 and others require permission from the governor.

Still, municipalities face financial pressure points, he said. State and local governments’ unfunded pension liabilities stand at around $1.8 trillion, according to Federal Reserve data, which will require them to boost their payments into the retirement funds.

“Municipalities still have colossal post-employment obligations that aren’t going anywhere,” Kevane said. “I still see that becoming a real problem.”

Bloomberg Business

By Amanda Albright

June 20, 2018, 10:30 AM PDT

— With assistance by Martin Z Braun

[Puerto Rico Signs Law to Overhaul Storm-Battered Energy Utility.]

- **Governor says it makes island a 'more competitive destination'**
- **Public power company followed government into bankruptcy**

Puerto Rico Governor Ricardo Rossello signed into law Wednesday a bill that clears the way for the partial privatization of the island's bankrupt electric company, which has been plagued by aging infrastructure and mismanagement that left millions in the dark after Hurricane Maria.

In addition to heralding a more storm-resistant energy grid, Rossello promised that the move would also lower above-mainland electricity prices for homes and business. It allows the government to move forward with a plan that could sell off power generation assets and put the transmission and distribution business under a private concessionaire.

"Today, we begin to see Puerto Rico as a more competitive destination, where quality of life will improve because the cost of energy will drop and the environmental impact will be reduced," Rossello said Wednesday at the signing ceremony in the northwest municipality of Isabela.

Puerto Rico has defaulted on its debt, and is drastically restructuring its government portfolio. The partial privatization of the eight-decade-old monopoly, known as Prepa, has long been advocated by the fiscal oversight board installed by federal lawmakers. But it may have a political cost on the island, where many are wary of mainland profiteers and question whether electricity prices will actually come down.

Prices on Puerto Rico bonds have rebounded this year from the record lows they hit after Maria. Prepa bonds maturing in 2042 traded Wednesday at an average price of 42.5 cents on the dollar, up from nearly 30 cents at the start of 2018, data compiled by Bloomberg show.

Bloomberg Business

By Yalixa Rivera

June 20, 2018, 10:22 AM PDT

— With assistance by Michelle Kaske

[Taxpayers in the Hamptons Among the Most Exposed to Rising Seas.]

- **Southampton, New York has high property tax value at risk**
- **New Jersey and Florida are the most susceptible states**

Almost no city stands to lose as much money from climate change as Southampton, New York.

The affluent Long Island suburb — where the median price of a home for sale is almost $2 million — has the second highest level of its property-tax revenue at risk among municipalities with a high likelihood of chronic flooding in the next twelve years, according to data gathered by the Union of Concerned Scientists. Only Central Coast, California had more.

The group found that sea level rise, driven primarily by climate change, puts hundreds of thousands

of homes and commercial properties in the U.S. at risk of being flooded at least 26 times per year by 2030. The incessant deluges would depreciate property values, erode infrastructure and eventually diminish tax revenue, causing local credit ratings to sour and making it more difficult to finance projects needed to contend with rising sea levels.

Continue reading.

Bloomberg

By Danielle Moran

June 19, 2018, 9:37 AM PDT

S&P Extra Credit: Hot Topic Publication Review.

In this week's Extra Credit Lisa Schroeer covers some of the issues that could impact ratings down the line. Sarah Sullivant updates us on Priority Lien criteria, Randy Layman discusses Georgia's local government de-annexation issues and Tim Little talks sports betting revenues and states.

Listen to Audio

Jun. 18, 2018

S&P Medians And Credit Factors: Maryland Counties And Municipalities

Maryland local governments' credit quality remains strong, in S&P Global Ratings' view, supported by continued economic momentum, low unemployment, and above-average wealth and income metrics. Furthermore, the management teams in Maryland generally adhere to formalized policies and procedures leading to strong budgetary performance.

Continue Reading

Jun. 20, 2018

The Markup Rule for Municipal Bonds.

In bond transactions, investors are often curious to know the price that they pay for their securities and the markup that their brokers charge them. It becomes especially important for muni bond transactions wherein, because of the large number of issues and liquidity concerns, retail investors rely on their brokers to a large extent on pricing their securities.

In this regard, on September 2, 2016, the Municipal Securities Regulatory Board (MSRB) filed a proposed amendment to the Securities and Exchange Commission (SEC) regarding rules G-15, G-30 and FINRA Rule 2232. This change was to increase the transparency of the municipal bond market and to help further clarify the distinction between a bond's actual price and the markup the broker

receives.

The amendment was finally approved and became effective on May 14, 2018, and is expected to raise a lot of discussions in the industry.

Let us go over some of the broader implications of these recently implemented rules.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 21, 2018

What Takes Priority – a TIF Exemption or Another Exemption?

Read the Vorys Client Alert.

Vorys | Jun. 22

Municipal Bonds Weekly Market Report: Fed Raised Rates by 0.25%

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury yields mostly drop while municipal yields mostly see increases this week.
- Muni bond funds see inflows for second week in a row.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jun 19, 2018

Why Boring Municipal Bonds are Exciting for Investors.

As interest rates have risen in recent months and bond prices have fallen, fixed income investors have found few safe places to hide.

But there is one corner of the bond market that can provide at least relative safety, and yet – strangely – many bond investors appear to be avoiding it. I'm referring to municipal bonds, debt

issued by a governmental unit other than Uncle Sam.

I can almost see your eyes glaze over. Please, not another boring discussion of "munis," as these bonds are known. Why can't we focus on exciting investment topics such as the next iPhone or Amazon takeover target?

But sometimes you can be handsomely rewarded for focusing on the boring. You very well may be leaving money on the table if you are skipping munis in favor of taxable bonds. If not leaving money on the table is boring, I'll take boring any day.

How much you're leaving on the table is not immediately obvious, however, and that's one reason why munis don't receive the attention they deserve. You must go through several tax-rate calculations that, though quite straightforward, keep munis off the radar screens of investors who focus only on munis' stated – rather than implicit – yields.

Indeed, many investors are not even sure which tax bracket they're in, Jack Bowers told me. Bowers is editor of the "Fidelity Monitor & Insight" advisory newsletter, which is one of the few newsletters that my performance monitoring has shown to have beaten a simple stock index fund over the last 30 years.

You definitely should go to the trouble of finding out your tax bracket, however, since muni bonds' interest is exempt from federal income tax. Their interest is also exempt from state taxes if you live in the state where the munis were issued. On an after-tax basis, therefore, a municipal bond's yield can be much higher than that of comparable taxable bonds, even when the munis' yields are lower on a pretax basis.

Now is just such a time. Currently, for example, AAA-rated municipal bonds with 10 years left until maturity yield 2.49 percent, significantly lower than the 2.88 percent yield on the 10-year Treasury. But that muni yield becomes superior after you take taxes into account. An individual in the highest federal tax bracket – 37 percent – would keep only 1.81 percent of that Treasury's before-tax yield of 2.88 percent. The muni's yield is more than a half-percentage point higher, which can add up to a sizeable chunk of change over time.

Even if you're not in the highest tax bracket, munis still come out well ahead on an after-tax basis. If your federal tax rate is 24 percent – which kicks in for individuals with adjusted gross income above $82,501 – the 10-year Treasury's after-tax yield is 2.19 percent, still well below that of the 10-year muni.

To be sure, Bowers added, munis are somewhat riskier than U.S. Treasuries. So it's to be expected that they should yield more on an after-tax basis. Still, even after taking their higher risk into account, Bowers believes munis are a better deal than taxable bonds for income-oriented investors.

One of the easiest ways to invest in munis is via an exchange-traded fund that owns a number of such bonds. The diversification across many different munis reduces your risk, and muni ETFs can be sold a lot more quickly and with less headache than an individual muni bond.

Two of the largest muni ETFs that own bonds with an average maturity in the five- to 10-year range are the iShares National AMT-Free Muni Bond ETF, with an expense ratio of just 0.07 percent, and the Vanguard Tax-Exempt Bond Index ETF, with a 0.09 percent expense ratio. Their current yields are 2.39 percent and 2.52 percent, respectively.

MSN Money

by Mark Hulbert

Mark Hulbert, founder of the Hulbert Financial Digest, has been tracking investment advisers' performances for four decades. For more information, email him at mark@hulbertratings.com or go to www.hulbertratings.com.

Atlanta's Ransomware Isn't an 'Isolated Incident'

COMMENTARY | Symantec's Tim Hankins outlines the continued prevalence of ransomware attacks, and what it means for governments as they consider their level of cybersecurity.

For nearly a week, a ransomware attack crippled the City of Atlanta, sending government operations back 30 years in the process. Residents could no longer pay bills online, police officers filled out reports by hand, and all unscheduled court cases were postponed until further notice.

That, of course, was just the technology side of the equation.

"I just want to make the point that this is much bigger than a ransomware attack," Atlanta Mayor Keisha Bottoms said six days after the attack as the city began to get back online. "This is really an attack on our government, which means it's an attack on all of us."

Sadly, this is not an isolated incident.

In this year's Symantec Internet Security Threat Report (ISTR) the number of ransomware attacks remained near the all-time high set in 2016. While the number of attacks is important, the more notable revelation was how ransomware attacks continue to evolve. There were 28 new ransomware families detected last year, and the number of overall ransomware variants increased by 46 percent. The ISTR showed that while ransomware, overall, has slowed its growth, it still remains a dangerous threat that can cause tremendous damage.

The number of ransomware attacks has grown at a considerable rate in recent years. We've seen a significant uptick of ransomware attacks impacting healthcare organizations, and state and local government is trending right along. In April 2018, the Riverside, Ohio police and fire departments became victims of ransomware. City manager, Mark Carpenter, implied that a third-party held, or is holding, the city's data hostage in exchange for a ransom, often paid in bitcoin or another cryptocurrency.

Local agencies, especially the police and fire departments, can't accept downtime. After all, lives hang in the balance. With mission critical functions being impacted during a ransomware attack, it's easy to understand the temptation to comply with demands for ransom. However, the FBI and cybersecurity professionals generally agree paying ransoms is a bad idea. First, there is no guarantee that the hackers will release the data once paid. There is no honor amongst thieves, after all. Second, this quick payday incentivizes these hackers to continue what they are doing. Some organizations have even budgeted funds in order to pay off ransomware attacks.

In some ways it is surprising that state and local governments, not to mention healthcare organizations, academic organizations and non-profits, do not find themselves subject to more ransomware attacks. These governments hold a tremendous amount of personal information about citizens and often have significantly higher financial benefits to hackers than individuals or small

businesses, and many operate without a robust cybersecurity posture.

For example, the Roseburg Public Schools System in Roseburg, Oregon, suffered an attack this May of its computer system. The FBI, which was brought in to investigate the case, believes the attack occurred through a complex method using remote desktop protocols, rather than through malware attached to an email sent to someone within the district. According to the FBI, these types of attacks are occurring at increasingly frequent rates, targeting schools, businesses and government entities.

Unfortunately, no jurisdiction is out of harm's way. In fact, many states are finding themselves victims of multiple attacks. On March 9, 114 servers within Connecticut's judicial system were impacted by a ransomware attack, the second ransomware attack aimed at the state government. Two weeks earlier, the Connecticut Department of Administrative Services reported that a virus resembling the Wannacry ransomware infected about 160 computers in a dozen state agencies.

Fortunately, in both Connecticut attacks, the virus was detected and mitigated early. And, if state and local organizations follow good cybersecurity practices, they too can find themselves avoiding the often costly effects of a ransomware attack.

So, what should an organization do to prevent ransomware attacks? For many it simply starts with good cybersecurity practices. Some of these are simple steps like ensuring systems are patched and backed up regularly, that "endpoints" are protected, and appropriate email security is in place.

However, more advanced techniques may be necessary in many public sector environments. Being able to combine basic cyber hygiene and advanced capabilities into an integrated cyber defense platform will allow agencies to uncover, prioritize, investigate and remediate ransomware attacks across their endpoints, networks and email platforms.

Having a good cybersecurity architecture in place not only blocks ransomware, but it blocks all accounts. Ransomware has become a popular form of attack because it works. If organizations take the steps to protect their systems, governments can greatly reduce their risk of ransomware and other malicious cyber attacks.

Route Fifty

By Tim Hankins

Tim Hankins is vice president of government, health and education at Symantec, a Fortune 500 company specializing in cybersecurity.

JUNE 22, 2018

Still Rebuilding After Hurricane Maria, Puerto Rico Hopes to Spur Critical Infrastructure Investment.

Officials have outlined an ambitious set of P3 projects supporting electrical and water resilience, as well as economic development.

OXON HILL, Md. — With power almost completely restored along Puerto Rico's still-fragile electrical grid nine months after Hurricane Maria, island officials have turned their attention toward securing investment in resilient infrastructure.

The fiscal plan recently certified by the Puerto Rico Financial Oversight and Management Board forecasts about $60 billion in federal funds flowing through the U.S. territory over the next eight to 10 years.

Funding like that hasn't been seen on the island since the 1990s, and Puerto Rican officials at the 2018 SelectUSA Investment Summit just outside Washington, D.C. said Thursday they hoped it would entice other investors.

"I think that Puerto Rico can be a great case study for the Trump administration in how you can use investment in infrastructure to support economic development and also rebuild and modernize aging infrastructure," Omar Marrero, Puerto Rico Public-Private Partnerships Authority executive director, told Route Fifty.

Gov. Ricardo Roselló on Wednesday announced $1.5 billion in projected investments across six public-private partnership, or P3, projects that officials hope will help the government transfer finance, production and maintenance risks. For comparison, the U.S. P3 market was valued at $2.6 billion in 2016.

Roselló's administration has moved to overhaul its highly subsidized maritime transportation system—providing ferry service between metro areas and outlying islands—by making it part of the Federal Transit Administration's pilot program for private investment. The territory is also eying a $50 million to $150 million procurement for on-campus student housing at the University of Puerto Rico Mayagüez Campus.

A third P3 project, costing between $150 million and $400 million, would see the Puerto Rico Aqueduct and Sewer Authority, or PRASA, replace all water metering and externalize non-revenue water—the water lost before reaching the customer. Residents currently pay PRASA's non-revenue water operational loss, close to 60 percent, but smart metering is expected to help residents identify leaks.

The three other P3 projects have been proposed by the private sector, after Puerto Rico amended its laws to allow for that.

Tesla pitched a high-capacity energy storage system at critical substations, an environmentally friendly alternative to the diesel-fired "peaker" units currently in use. Should another hurricane cause an electrical collapse, the energy stored in giant batteries could be used for power.

Route Fifty

By Dave Nyczepir,
News Editor

JUNE 21, 2018

Void Means Void - Municipal Contract That Did Not Conform to Statute Is Void and No Claim for Breach or Quasi-Contract or Unjust Enrichment Is Permitted.

Aquatic Renovations Sys. v. Vill. of Walbridge, 2018 Ohio App. Lexis 1581 (April 13, 2018)

On May 2, 2012, Aquatic Renovations Systems, Inc. ("Aquatic") entered into a contract with the Village of Walbridge ("the Village") for the installation of a new pool liner ("Contract 1"). Prior thereto, the Village council adopted an ordinance which authorized the mayor to enter into Contract 1 ("Ordinance"). On April 12, 2013, the mayor signed a new contract for the balance of the work ("Contract 2"). A few days after Aquatic completed its work, the pool liner began to lift. The Village then refused to pay Aquatic for the completed and approved work.

Aquatic sued the Village for non-payment, alleging the Village breached Contract 2. Aquatic also alleged that the Village was liable under a theory of quantum meruit and unjust enrichment. The trial court granted the Village's motion for summary judgment, holding that Contract 2 was not valid because it did not comply with the Ohio Revised Statute which required the mayor, the clerk, and the Village administrator to authorize all Village Contracts. Thus, because Contract 2 was unenforceable, Aquatic could not recover under a breach of contract, quantum meruit or unjust enrichment theory.

On appeal, Aquatic argued that Contract 2 was a binding contract. The Village argued that Contract 2 was invalid because under the Ohio Revised Code section 731.14, Village contracts must be signed by the mayor and the clerk, and under Ohio Revised Code 731.141, if the Village has an administrator, Village contracts must be signed by the Village administrator and the clerk. In response, Aquatic argued that the Village failed to raise the "legislative authority" argument in its Answer and therefore it was waived. Additionally, Aquatic argued that even if the Village administrator did not sign the Contract 2, it was ratified by the Village and it was made in good faith under which Aquatic incurred considerable expenses.

The Court of Appeals rejected Aquatic's arguments. First, the Court found that because the Village denied that the existence of Contract 2, the "legislative authority" argument need not be raised in the Village's Answer. Because it was undisputed that at all relevant times the Village had an administrator and that Contract 2 was not signed by the administrator or the clerk, Contract 2 did not comply with the Statute. The Court also found that the Ordinance, allowing the mayor to enter into the Contract 1, did not conflict with the Statute and that both the Ordinance and the Statute operated concurrently. Second, the Court found that the Aquatic's ratification argument failed because Aquatic cited to no legal authority to support it. Third, the Court found that Aquatic's good faith argument also failed because Aquatic did not establish that the Contract 2 was awarded by the appropriate agents of the Village, as mandated by the Statute. Thus, the Court of Appeals affirmed the trial court's holding that Contract 2 was invalid and unenforceable. Additionally, because, under Ohio law, a municipality may not be liable on the basis of a quasi-contract, the Court affirmed the trial court's ruling that Aquatic's quantum meruit and unjust enrichment claims also failed.

To view the full text of the court's decision, courtesy of Lexis®, click here.

Pepper Hamilton LLP

USA June 21 2018

Court Allows Certain City of Oakland Claims to Proceed Against National Bank.

On June 15, the U.S. District Court for the Northern District of California granted in part and denied in part a national bank's motion to dismiss an action brought by the City of Oakland, alleging

violations of the Fair Housing Act (FHA) and California Fair Employment and Housing Act. In its September 2015 complaint, Oakland alleged that the bank violated the FHA and the California Fair Employment and Housing Act by providing minority borrowers mortgage loans with less favorable terms than similarly situated non-minority borrowers, leading to disproportionate defaults and foreclosures causing reduced property tax revenue for the city. After the 2017 Supreme Court decision in *Bank of America v. City of Miami* (previously covered by a Buckley Sandler [Special Alert](#)), which held that municipal plaintiffs may be "aggrieved persons" authorized to bring suit under the FHA against lenders for injuries allegedly flowing from discriminatory lending practices, Oakland filed an amended complaint. The amended complaint expanded Oakland's alleged injuries to include (i) decreased property tax revenue; (ii) increases in the city's expenditures; and (iii) neutralized spending in Oakland's fair-housing programs. The bank moved to dismiss all of Oakland's claims on the basis that the city had failed to sufficiently allege proximate cause. The court granted the bank's motion without prejudice as to claims based on the second alleged injury to the extent it sought monetary relief and claims based on the third alleged injury entirely. The court allowed the matter to proceed with respect to claims based on the first injury and, to the extent it seeks injunctive and declaratory relief, the second injury.

Buckley Sandler LLP

USA June 20 2018

Kentucky Supreme Court Limits Charitable Tax Exemption to Property Taxes Only.

Delving deeply into the history of the charitable exemption from taxes under Section 170 of the Kentucky Constitution as well as the use tax, the Kentucky Supreme Court recently held that the exemption applies only to property taxes. Dep't of Revenue v. Interstate Gas Supply, Inc., 2016-SC000281-DG (March 22, 2018). Section 170 exempts from taxation all institutions of "purely public charity."

Interstate Gas Supply, Inc. ("IGS") applied for a refund of certain use taxes it collected and remitted on behalf of Tri-State Healthcare Laundry, Inc. ("Tri-State"), an entity which serves the laundry needs of three charitable hospitals. Tri-State is not a 501(c)(3) tax exempt organization, so it does not qualify for the charitable exemption from sales and use taxes afforded to those entities under KRS 139.495. Tri-State is, however, recognized by the Kentucky Department of Revenue ("Department") as an institution of purely public charity, entitled to the Section 170 exemption.

Tri-State purchased natural gas from IGS during the relevant periods. IGS requested a refund of Kentucky use tax, arguing that Tri-State's status as a purely public charity exempted it from all revenue-raising taxes pursuant to Section 170 and that as stated in Commonwealth ex. rel. Luckett v. City of Elizabethtown, 435 S.W.2d 78 (Ky. 1968) the use tax was in effect a property tax, thus bringing it within the scope of Section 170, even if that section was deemed to apply only to property tax. The Kentucky Board of Tax Appeals and the Franklin Circuit Court both found that Section 170 applied only to property taxes, but the Court of Appeals agreed with IGS and the City of Elizabethtown decision and held that the use tax operated like a property tax so that Section 170 applied to its imposition as well. The Department appealed to the Kentucky Supreme Court, which granted discretionary review.

The Kentucky Supreme Court first analyzed the scope of Section 170 and held that the exemption

was intended only to apply to Kentucky property tax. Undertaking a review of both the plain language of Section 170 and its many references to property as well as a number of cases that had taken up the issue, the Court held that the Section 170 exemption for institutions of purely public charity applied only to ad valorem taxation.

As to IGS's argument that the use tax operated so similarly to a property tax that it should fall within the scope of Section 170, the Court analyzed City of Elizabethtown as well as a number of other cases, and also undertook a review of the sales and use tax regime in Kentucky. While noting some similarities between the use tax's imposition of tax on the storage and use of items within Kentucky, the Court ultimately held that the use tax was intended as a complement to the sales tax and arose out of a transaction, not the ownership or valuation of such property. The Court also noted the criticism City of Elizabethtown had drawn over the years. The Court stated that nowhere else in the country had a use tax been treated as akin to a property tax, and in the Court's words, such a conclusion "is simply wrong." Accordingly, the Court overturned City of Elizabethtown and declined to extend the scope of Section 170 beyond property taxes.

This decision, combined with House Bill 487, which implanted a number of new tax policies in Kentucky, has resulted in a perfect storm of uncertainty in the nonprofit world as to whether these organizations must register for and/or collect and remit certain taxes. Without the assurances in City of Elizabethtown and the new policies found in H.B. 487, many nonprofits may be responsible for collecting and remitting sales tax on items such as admissions to special fundraising events, silent auction items, and certain types of memberships or programs (for example, summer camps or little league memberships). The Department has promised to issue more guidance and is working with organizations such as the Kentucky Nonprofit Network to disseminate information in an efficient and effective manner given the number of nonprofits that may not be aware of the changes. So, it's often best to consult with a tax professional who can provide your organization with advice tailored to your specific circumstances.

Bingham Greenebaum Doll LLP

USA June 25 2018

IRS Consolidates Guidance on Deductibility, Reliance Issues for Grantors and Contributors.

The US Internal Revenue Service recently consolidated its guidance on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 combines the safe harbors previously provided in Rev. Procs. 81-6, 81-7, and 89-23 with the reliance guidance of Rev. Proc. 2011-33, updates the guidance to reflect the new IRS Tax Exempt Organization Search, and replaces the prior Rev. Procs. with one revenue procedure setting forth the extent to which grantors and contributors can rely on an IRS database that lists an organization as eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code or as a public charity under Section 509.

Pursuant to Treasury Regulations promulgated under Section 170, a grantor or contributor may rely on the continued validity of an Internal Revenue Service (IRS) determination letter concluding that an organization can receive tax deductible donations under Section 170—even if the organization has lost its status—until the IRS makes a public announcement that the organization's status has changed unless the grantor or contributor was responsible for, or aware of, the act or failure to act

that resulted in the organization's loss of status. Similarly, pursuant to Treasury Regulations promulgated under Section 509, once an organization has received a determination letter classifying it as a public charity, the treatment of contributions and grants, and the status of grantors and contributors to such organization, will not be affected by a subsequent revocation of the organization's public charity status until the IRS publicly announces that the organization has lost its status as a public charity, unless the grantor or contributor knew that the organization's public charity status was revoked or was in part responsible for, or aware of, the act or failure to act which gave rise to the revocation of the organization's status as a public charity.

Prior to Rev. Proc. 2018-32, Rev. Proc. 2011-33 provided guidance for the extent to which grantors and contributors could rely on IRS publications for deducting contributions under Section 170 and making grants under Sections 4942, 4945, and 4966. Rev. Procs. 81-6, 81-7, and 89-23 provided safe harbors for determining when a grantor or contributor would be deemed not to have knowledge of, or be responsible for, an organization's loss of status as a public charity, including when a grant or contribution would be considered an "unusual grant." An "unusual grant" is excluded entirely from an organization's public support calculation and will therefore not cause an organization to lose its public charity status.

Rev. Proc. 2018-32

In order to simplify compliance for grantors and contributors, Rev. Proc. 2018-32 combines the prior revenue procedures and replaces them with one revenue procedure on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 also incorporates the recent modifications the IRS made to its searchable online database, Select Check, which has been renamed "Tax Exempt Organization Search."

Rev. Proc. 2018-32 provides that, for purposes of deducting contributions under Section 170 or making grants under Sections 4942, 4945, and 4966, grantors and contributors can rely on the status of an organization reflected in two IRS databases searchable by the public on the IRS website—the Tax Exempt Organization Search and the EO BMF Extract—after the date the IRS has revoked the organization's status until the IRS makes a public announcement that the organization's status has changed. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website (at www.irs.gov) that relates to exempt organizations, or by any means designed to put the public on notice of the change in the organization's status.

This guidance applies to individual donors as well as to private foundations and sponsoring organizations of donor advised funds. Grantors and contributors may rely on the information provided in the Tax Exempt Organization Search and the EO BMF Extract for an organization's qualification to receive tax deductible contributions, its classification as a public charity, and its qualification as a Type I, Type II, or Type III functionally or non-functionally integrated supporting organization.

If an organization's tax-exempt status is automatically revoked for failing to file three consecutive annual returns or required notices, grants and contributions to the organization generally will be considered deductible under Section 170 if made on or before the date the organization's name is posted on the Auto-Revocation List maintained by the IRS. The Auto-Revocation List is also searchable on the IRS website through the Tax Exempt Organization Search.

Under certain circumstances, the IRS may allow a donor to deduct a contribution to an organization that lost its ability to receive tax deductible contributions after the IRS's public announcement. For example, the IRS may allow a deduction if the donor made a legally enforceable pledge before the public announcement but does not satisfy the pledge until after.

Rev. Proc. 2018-32 reiterates the exceptions to the general reliance rules for deductibility and for public charity status, consistent with the prior guidance, as well as the safe harbors. It also provides limitations on the extent to which the reliance provisions in the revenue procedure apply and requirements for relying on information from the EO BMF Extract from third parties. Finally, Rev. Proc. 2018-32 provides guidance on the validity of contributions to an organization during a proceeding under Section 7428 for a declaratory judgement involving the revocation of a determination that the organization is described in Section 170, which is also consistent with the prior guidance.

Although it doesn't provide any substantive changes to the guidance on donor reliance, Rev. Proc. 2018-32 reminds grantors and contributors to check an organization's status before making a grant or a donation.

Morgan Lewis & Bockius LLP

by Shira M. Helstrom

USA June 21 2018

CEQ Requests Comments on Changes to NEPA Review Process Governing Infrastructure Projects.

The Council on Environmental Quality (CEQ)—the US federal agency responsible for coordinating and overseeing federal agency implementation of the National Environmental Policy Act (NEPA)—moved one step closer on June 20 towards revising its longstanding NEPA-implementing regulations. Those regulations, which last underwent a major revision in 1986, govern the environmental review process for all "major federal actions," including Federal Energy Regulatory Commission (FERC) license reviews for hydroelectric projects and certificates for natural gas facilities.

Now, in an Advance Notice of Proposed Rulemaking (ANPR), the CEQ signaled that it is ready to receive public comments on potential revisions that it hopes will "ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA." Comments are due July 20, 2018.

The ANPR seeks comments on specific issues and further invites commenters to provide "specific recommendations on additions, deletions, and modifications to the text of CEQ's NEPA regulations," including their justifications, to update and clarify the regulations. Among other things, CEQ seeks public feedback on whether:

- the regulations should be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, including more "concurrent, synchronized, timely, and efficient" decisions when multiple agencies are involved;
- any rule changes could better facilitate agency use of environmental studies, analysis, and decision conducted in earlier reviews;
- provisions relating to agency responsibility and preparation of NEPA documents by contractors and/or project applicants should be modified;
- the regulations relating to programmatic NEPA documents and tiering should be revised;
- the scope of agency NEPA reviews, including whether rules for formats and page lengths of NEPA

documents, should be revised;

- the CEQ should include time limits for completion of agency NEPA reviews;
- the rules for public involvement should be revised to be more inclusive and efficient;
- the definitions of key terms, such as "major federal actions," "effects," "cumulative impacts," "significantly," "scope" and others, should be revised;
- new definitions, such as for the terms "alternatives," "purpose and need," "reasonably foreseeable," and "trivial violation," should be added to the regulations;
- provisions relating to certain types of NEPA documents (e.g., categorical exclusions documentation, environmental assessments, environmental impact statements, records of decision, supplements) should be altered;
- any of the regulations' current provisions are "obsolete" and can be updated to reduce "unnecessary burdens and delays;"
- the rules can be changed to better reflect or incorporate new, efficiency-boosting technologies; and

mitigation requirements should be revised.

The questions posed by CEQ follow efforts by other federal agencies to streamline or reevaluate the NEPA process for major infrastructure projects. Earlier this year FERC initiated a Notice of Inquiry seeking information and stakeholder input on FERC's policies regarding its review and authorization of interstate natural gas transportation facilities under Section 7 of the Natural Gas Act. Among other things, the Notice of Inquiry seeks comment on the scope of FERC's environmental analysis of proposed natural gas projects (e.g., whether downstream GHG emission impacts should be considered), as well as the efficiency of the certificate application review process. Efforts by other agencies have similarly focused on streamlining the environmental review process: the One Federal Decision Memorandum of Understanding signed by 12 federal agencies committed to a coordinated NEPA process that allows all permitting decisions to be completed within two years. Those efforts, as well as the CEQ's ANPR and FERC's Notice of Inquiry, have been driven largely by Executive Order 13807, which President Donald Trump issued August 15, 2017, to "enhance and modernize" the environmental review and permitting process for infrastructure.

Given the highly visible and pervasive nature of the NEPA-implementing regulations, it will be important for FERC-regulated entities that depend on federal agency action when advancing projects and securing permits to participate in the rulemaking. Such comments will be critical to CEQ having a sufficient agency record to defend against any later litigation challenges to new regulations.

Morgan Lewis & Bockius LLP

Kirstin E. Gibbs, Camarin E.B. Madigan, J. Daniel Skees, Ronald J. Tenpas and Arjun Prasad Ramadevanahalli

USA June 20 2018

Oakland Raiders Las Vegas NFL Stadium Hotel Tax Revenue Still Less Than Needed For Bond.

In the past months, and going back to April 2017, this blogger has asserted that the Clark County Stadium Tax Rate of .088 of 1 or 88 percent of one percent is not adequate to finance the bond issue of $645 million for the Oakland Raiders Las Vegas NFL / UNLV Stadium.

The general consensus of Clark County's financial management team has been that because of reserves, there was no real problem. But that masks the real truth, which has been communicated to me by many municipal finance professionals: as long as the Raiders bond issue is a general obligation bond issue, where Clark County's entire General Fund monies can be used to help pay for the bond debt service, there's no financing problem. In other words, the Clark County taxpayers will help.

Others have told me I was just plain wrong, without any explanation. But now, we have the actual bond debt service that will be due, and for the first year 2019, that number, compared to what's already being collected on a monthly basis, adds up to a shortfall.

To see the problem, lets' start with the June 30th 2019 debt service requirement of $36,003,763. That's from the actual bond issue that was sold this April 2018. It's the first year of debt service requirement, but it's without something called the "debt coverage ratio" and that's the level above the debt service requirement, that you as Clark County have to have money in your stadium tax revenue stream to pay the debt service requirement and have money left over that then goes into a reserve.

Ok, so since it's per month, $36,003,763 divided by 12 months is $3,000,313.58. Now, we're not done, because we have to take that and multiply it by 1.5, or $3,000,313.58 x 1.5 – that gets us to $4,500,470.37. That's the actual average monthly revenue the stadium tax should have.

So let's compare that with what revenue actually has come in. Over the first 12 months of the stadium tax, from March 2017 to March 2018, is 52,721,713.00 or a monthly average of $4,393,476.08. That first year monthly average is less than the actual average – or $4,500,470.37 – $4,393,476.08 which equals a negative $106,994.29 per month.

So you say the next year's going to be better for the stadium tax revenue flow? Ok, let's check that. The revenue from April 2018 and May 2018 was $4,300,000 and $4,015,362 respectively. Take the average of those two figures, and we get $4,157,681 average monthly revenue for the next year of collection of the tax. Given our required average monthly revenue need of $4,500,470.37, and we have a monthly average shortfall of $342,789.37.

As a note, this is not referring to the budget for the Stadium Authority itself, which takes in revenue from several sources, not just the stadium hotel tax. Many get confused when the discussion of the bond issue comes up. What this refers to is strictly the bond issue itself versus what's supposed to be its dedicated revenue stream, the stadium hotel tax.

The bigger problem is three fold:

1) The bond debt service requirement is only going to get bigger. For example, the 2019 total of $36,003,763 will first give way to a smaller bond debt (without the debt coverage ratio included) of $33,978,750. But hat just reduces the monthly revenue need to $4,247,343.75. Note that the months of April and May of 2018 were less than that amount. Then, the bond debt service requirement increases again to where it is greater than the 2019 total in 2023 – 36,059,500.
2) During that time, there's no sign the stadium tax revenue will go up, and all signs that it has gone down. Las Vegas has experienced 10 of 11 months of visitor declines, month to month. And while 2017 was a record year, the reason these small changes are important overall with respect to the Raiders Stadium, is because is stadium hotel tax rate is too small.
3) The stadium tax revenue collected for April 2018 was less than that for April of 2017 by -$192,689. Moreover, the projection for the second year of stadium tax collection (with March 2017 marking year one because that was the first month the tax was collected) is less than that of the first

year by $2,829,541 or $52,721,713 from year one minus $49,892,172 estimated for year two.
4) So, we have a situation where the bond debt does decrease from 2019 to 2022, but guess what? The revenue collected it projected to go down by -.0567 percent. Between year one of the stadium hotel tax revenue and year two.

This shows there is a problem with the stadium tax hotel rate for the Oakland Raiders / UNLV Stadium. Moreover, that problem, given the Las Vegas and Clark County picture where there are signs of downturns in visitors as the stadium hotel tax monthly revenue demand increases, will only get worse. The queston is at what point will Clark County have to start digging into its General Fund? Depending on the budget of the Stadium Authority (and we should get a review of that at the next meeting) that time could be as close as December of 2019.

Stay tuned.

OAKLAND NEWS NOW

BY: ZENNIE ABRAHAM JUNE 20, 2018

The Wealthy Atlanta Suburb Fighting to Secede From Its City.

The metro area has been divided into ever smaller pieces segregated by race and class. If Stockbridge splits up, the poorer parts will be left with $15.5 million of debt.

As Vikki Consiglio tells it, a new Georgia law that has alarmed Wall Street had its genesis two years ago, with a birthday dinner for her husband in Atlanta's Buckhead neighborhood, at a steakhouse in a graceful, brick-paved complex of high-end furniture stores and designer boutiques. "A light just went off," she says.

Her own neighborhood in the suburbs—a cluster of gated communities surrounding a country club—lacked the same exclusive feel along its main drag. "I want those things, those amenities," Consiglio says. "I wanted to be part of a gated community in a high-end area. Instead, when I come out of the gate, I see a Waffle House and dollar stores."

Consiglio's home is part of Stockbridge, a predominantly black city in Henry County, some 20 miles south of Atlanta. She says her section can't attract businesses like Buckhead's because of the lower income of the rest of Stockbridge. Her idea: The whole neighborhood could break away. Consiglio is the spokeswoman for the movement that pushed for and won a state law to allow a "de-annexation."

Continue reading.

Bloomberg Businessweek

By Margaret Newkirk

June 21, 2018

Researcher: Harvey's Pension Problems the First, But 'Certainly Won't Be

[Last,' to run afoul of state law]

The city of Harvey remained locked in a court fight with state officials and its own public worker pension funds over its ability to use sales tax dollars to pay its bills. But it likely is just one of dozens of cities and other governments across Illinois poised to land on the wrong side of a state law mandating pension fund payments.

“Harvey may be somewhat of an extreme case given all the factors, among which is its history of corruption,” Kass, assistant director for the Center for Municipal Finance at the University of Chicago Harris School of Public Policy, told the Cook County Record. “But I wouldn’t be surprised to see more pension funds across the state file similar paperwork with the comptroller’s office the same way Harvey has. There might not be a ton of Harveys, but many other places have the same issue of pension system underfunding.”

After the Harvey pension fund for retired police officers moved to intercept and lay claim to millions earmarked for the city, ultimately setting off a legal quagmire, Illinois Comptroller Susana Mendoza justified diverting the funds as requested by pointing to a 2011 enacted state law that requires her office to do just that when municipalities are accused of failing to make their obligated pension payments.

The case in Harvey is being closely monitored across the state and other parts of the country given the gravity and widespread nature of the problem. In addition, bondholders have also taken note of the proceedings, as such claims by pension funds could also leave them cut out of the municipal revenue they would otherwise be owed, as the Cook County Record previously reported.

However, in a related opinion letter, Mendoza allowed the city to pay a group of investors holding city bonds, as those particular bonds were funded from a special Harvey city sales tax, and that tax should not be considered state funds. Thus, those funds cannot be withheld and diverted to pensions.

Harvey city officials say the legal entanglement has deepened the city’s problems, recently forcing city officials to lay off dozens of government workers, among them as many as 40 police and fire department officials.

“A big part of this is so many of these pension funds have been so grossly underfunded for so long and that’s why you’re seeing so many of them experiencing the same troubles,” Kass added. “Look at North Chicago; they’re one of the other places pretty much in the same predicament. While the initial law may have required pension contributions, it lacked an enforcement mechanism.”

In all, Kass estimates that there are at least 53 other municipalities that have seen police and fire pension funds underfunded on par with the figures that have caused much of the destruction in Harvey. Across the state, police and fire pensions are reported to have only been funded on an average of just 60-67 percent over the last decade.

“Harvey may be the first, but it certainly won’t be the last where you see something like this happen,” Kass said. “And as far as the law goes, it’s clearly written about what can be intercepted by the comptroller’s office whenever the situation occurs.”

Kass said it remains to be seen what the controversy could truly come to mean for Harvey’s already frustrated taxpayers.

“In theory, you can raise taxes as high as you want, but that doesn’t mean the people can afford to

pay them," she said. "Harvey already has a high tax rate that's only matched by its high delinquency rate. There's a real need to evaluate the dynamics and demographics of these places and the question of whether or not they can handle much more of the same thing. Some places may already have a cap of their own, while for places like Harvey the solution may have to come from a higher level of government involvement."

Kass said she's heard some potentially good ideas offered concerning possible long-term solutions, but she she thinks what's happening in Harvey is the wrong way to go in terms of handling things.

"Right now, Harvey is laying off police and firemen and I know that can never be a good idea," she said. "Just firing people, especially essential people to making a society work, is not the answer anyone needs."

Cook County Record

By Glenn Minnis | Jun 21, 2018

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