# Bond Case Briefs

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## Fitch Ratings: Louisiana Law Does Not Enhance Recovery Prospects and Ratings

Fitch Ratings-New York-21 August 2018: The recent revision of Louisiana's public finance laws does not offer sufficient protection to bondholders to result in rating uplift, according to Fitch Ratings. Louisiana Act No. 569, which amends the Consolidated Local Government Indebtedness Act, includes language meant to grant a statutory lien on taxes or other funds pledged to bondholders.

While the legislation intends to strengthen bondholder security by consolidating and clarifying laws related to the lien and security interest granted to repayment of debt issued by governmental entities, it falls short of creating a lien that is consistent with the definition of a statutory lien in the bankruptcy code. Therefore Fitch will not give credit to the legislation in assigning ratings to Louisiana local government debt.

The bankruptcy code defines a statutory lien as a "lien arising by force of a statute on specified circumstances or conditions." If the statute declares that the lien is created upon issuance of the bonds without the issuer needing to take any further action, then the lien arises automatically from the existence of the statute. Otherwise, bondholders do not benefit from a statutory lien.

The Louisiana legislation stipulates that the issuer has to pledge taxes or other funds to bondholders, suggesting that the lien does not arise automatically and is therefore a consensual rather than a statutory lien. The legislation differs from legislation in Rhode Island, Arizona and California, under which ad valorem taxes are automatically pledged upon issuance of general obligation bonds by a municipality. For more information see "Fitch Statutory Lien Treatment Lifts AZ, RI Local GO Ratings," dated July 12, 2018. There is a section of the Louisiana legislation that pledges the full faith and credit of a government entity to the payment of general obligation bonds, but this provision offers no specific revenue source upon which to place a lien.

In addition, the revised legislation does not apply to bonds issued prior to July 1, 2018. Fitch believes this exclusion adds a layer of ambiguity in a bankruptcy, since the court would have to determine that holders of two otherwise parity bonds would be entitled to different levels of recovery. For this reason Fitch does not give credit to California's statutory lien provisions.

Further clarifying the meaning of a statutory lien in bankruptcy was a ruling on Aug. 8, 2018 by the U.S. Court of Appeals for the First Circuit regarding Puerto Rico Highways and Transit Authority (HTA) bonds. The appeals court agreed with the district court's view that the HTA bonds are not secured by a statutory lien. The authority's enabling act permits but does not require that the authority secure the payment of bonds by making a pledge of revenues. Therefore it is consensual and not arising automatically. Fitch concurs with the district court ruling. For more information see "Fitch: Recent Puerto Rico Ruling on Statutory Lien Consistent with Fitch's Views," dated Sept. 19, 2017.

Contact:

Amy Laskey

Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Thomas McCormick
Analytical Consultant
+1-212-908-0235

Steve Murray
Senior Director
+1-512-215-3729

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com