
RECEIVERSHIP - PENNSYLVANIA

Siger v. City of Chester

Supreme Court of Pennsylvania - January 29, 2024 - A.3d - 2024 WL 316333

Receiver was appointed over financially distressed city, and the Commonwealth Court approved recovery plan.

The Commonwealth Court granted receiver's petition for writ of mandamus that, among other things, required city councilman who was also head of city's department of finance and human resources to share information with receiver. Receiver sought approval of modifications to city's recovery plan, proposing various initiatives relating to administrative duties and professional management within city government, core internal administrative functions and ethics, and economic development.

After evidentiary hearing, the Commonwealth Court struck several initiatives and confirmed plan modification for other initiatives. City requested review, and the Supreme Court assumed King's Bench jurisdiction.

In a case of first impression, the Supreme Court, in an opinion delivering the Opinion of the Court and an opinion in support of affirmance, held that:

- A recovery plan does not "change the form of government" of a distressed municipality;
- Suspension of administrative duties of city's department heads did not violate constitutional provision on removal of elected and appointed officials;
- Municipalities Financial Recovery Act authorized such suspension;
- Sufficient evidence supported finding that allowing department heads to continue exercising their authority would interfere with receiver's powers or goals of recovery plan;
- Act authorized modification of recovery plan to allow receiver to direct city council's removal of items from legislative agenda;
- Receiver was not judicial officer; and
- Requiring city solicitor to disclose city officials' and employees' noncompliance with confirmed plan or court order did not conflict with rule of professional conduct governing representation-related disclosures.

The provision of the Municipalities Financial Recovery Act stating that the confirmation of a recovery plan for a financially distressed municipality, or any modification thereto, "shall not be construed to…change the form of government of the distressed municipality" is an unambiguous instruction to those who might "construe" a recovery plan, such as reviewing courts, that they should not view a recovery plan as "changing the form of government" of a distressed municipality, as changes to governmental operations that may be needed in the interest of financial recovery during a temporary receivership do not permanently alter the municipal government; this provision is not a limitation upon recovery plans.

Mayor and other elected officials did not have any prerogative to interfere with receiver appointed over financially distressed city pursuant to Municipalities Financial Recovery Act, and thus, receiver's proposed amendment of recovery plan so as to prohibit mayor and other elected officials from interfering with directives of chief of staff and receiver did not violate any such prerogative; Act expressly empowered receiver to issue orders to elected or appointed officials to implement any provision of recovery plan and "refrain from taking any action that would interfere with the powers granted to receiver or the goals of the recovery plan" and stated confirmation of recovery plan imposed "mandatory duty" on city's officials to "undertake the acts set forth in the recovery plan."

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments did not violate constitutional provision stating that impeachment process was necessary to remove elected officials' administrative duties, even though officials were also elected city council members; receiver only sought to suspend officials' duties with respect to their appointed offices, not their duties in their legislative roles as city council members.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments did not violate constitutional provision stating that appointed officers "may be removed at the pleasure of the power by which they shall have been appointed," even though officials were appointed as department heads by mayor, who opposed receiver's plan modification; receiver did not seek to remove officials from their offices, only to suspend their administrative duties until expiration of receivership.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments, pursuant to provision of Municipalities Financial Recovery Act stating that confirmation of a recovery plan modification had effect of "suspending the authority of the elected and appointed officials" to the extent such authority conflicted with plan's goals, did not violate Act provision stating legislature generally intended to leave principal responsibility for city's affairs to elected officials, even though officials at issue were also elected city council members; receiver contended officials refused to cooperate with plan, and legislature intended to prioritize plan over local officials' prerogatives.

The Municipalities Financial Recovery Act cannot be read to suggest the authority of local officials must be preserved at all costs, in the face of their dereliction of official duty and notwithstanding conduct on their part that causes a breakdown in the function of municipal government, constitutes a failure to uphold their paramount public duty to safeguard the health, safety, and welfare of their citizens, and poses a threat to the fiscal stability of neighboring communities; indeed, the purpose and the expressly-stated intent of the Act is precisely to remedy such dereliction.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments, on basis that officials refused to cooperate with receiver, did not violate provision of Municipalities Financial Recovery Act stating that during fiscal emergency, officials "shall continue to carry out [their] duties…except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor"; receivership operated under other chapter of Act, which authorized receiver to order officials to implement recovery plan and refrain from interference, specific receivership provisions controlled over general provision, and recovery plan superseded emergency action plan.

The section of the Municipalities Financial Recovery Act providing that a receiver’s recovery plan has the effect of “suspending the authority of the elected and appointed officials of the distressed municipality…to exercise power on behalf of the distressed municipality” to the extent the officials’ authority “would interfere with the powers granted to the receiver or the goals of the recovery plan” is not limited to situations where the local officials’ actions contradict some specific and already extant provision of the recovery plan; rather, the officials’ authority may be suspended where its exercise conflicts with, among other things, the goals of the recovery plan.

Sufficient evidence supported Commonwealth Court’s conclusion that allowing city’s appointed department heads to continue exercising their administrative authority would interfere with receiver’s powers or goals of recovery plan, supporting approval of receiver’s proposed plan modification to suspend administrative authority of department heads in order to effectuate recovery plan and remedy city’s condition; receiver presented evidence that, among other things, official who was head of finance and human resources departments withheld information about his waste of $400,000 in city funds despite writ of mandamus ordering him to share financial information with receiver, and officials stymied receiver’s investigations and countermanded receiver’s orders to city employees.

A receiver’s complete suspension of municipal officials’ duties, pursuant to the Municipalities Financial Recovery Act provision authorizing such suspension to the extent the officials’ authority “would interfere with the powers granted to the receiver or the goals of the recovery plan,” is an extraordinary measure, one that will be warranted only very rarely; if, for example, a receiver sought to take this step immediately upon appointment, with no evidence that the local officials’ conduct posed an obstacle to the municipality’s financial recovery, it would be entirely appropriate for the Commonwealth Court to reject such an initiative as arbitrary or capricious under its prescribed standard of review of proposed recovery plans and modifications to plans

Provision of Municipalities Financial Recovery Act authorizing receiver to suspend “authority of the elected and appointed officials of [a] distressed municipality…to exercise power on behalf of the distressed municipality” pursuant to city’s charter to the extent that officials’ authority would interfere with receiver’s powers or recovery plan’s goals authorized receiver’s proposed modification of recovery plan so as to allow receiver to direct city council to remove items from its legislative agenda, where receiver asserted that city council members had history of adding agenda items that could impact city’s financial health without providing adequate advance notice to receiver, impacting receiver’s ability to provide for city’s financial recovery.

A receiver appointed for a municipality under the Municipalities Financial Recovery Act is not a “judicial officer”; a receiver’s power is granted by statute, not by an act of the judiciary, the receiver is selected by executive branch officials, whereas the Commonwealth Court’s role in a receiver’s appointment is limited to confirming the executive branch officials’ choice of receiver upon demonstration of the statutory prerequisites for receivership, and the Commonwealth Court exercises no control over a receiver’s day-to-day activities and is not authorized to direct a receiver to take any particular action.

Receiver’s proposed initiative that would empower him to waive residency requirement for employees of financially distressed city, whose home rule charter gave city council discretion to employ qualified non-residents if no qualified city residents were available for a particular position, was proposed amendment to city’s recovery plan, not city charter, and thus, did not violate constitutional requirement that amendment of a home rule charter be by referendum; initiative, which quoted charter provision and stated “this initiative substitutes ‘the Receiver’ for ‘Council,’ ” sought to vest power in receiver that would otherwise be committed to city council, but did not seek to amend charter itself.

Receiver's proposed modification of financially distressed city's recovery plan so as to require city solicitor to inform receiver if solicitor became aware that any city official or employee was not complying with Commonwealth Court's orders or with recovery plan or plan modification confirmed by court order would not require solicitor to violate rule of professional conduct generally prohibiting lawyers from revealing information relating to representation of client without informed consent; rule provision contained exception allowing a lawyer to reveal such information to extent lawyer reasonably believed necessary to comply with law or court order, such that disclosure of noncompliance with court orders and court-confirmed recovery plan was consistent with rule.

Receiver appointed over financially distressed city was not required to seek narrower relief in form of writ of mandamus before requesting Commonwealth Court's confirmation of modifications to recovery plan, but rather, had express authority under Municipalities Financial Recovery Act to seek confirmation of proposed modifications based on receiver's determination that such measures, including suspension of administrative duties of appointed department heads, were necessary to achieve financial stability in city.

Under the Municipalities Financial Recovery Act, a receiver's authority is not limited to requiring, directing, and ordering a distressed municipality's officials to take actions to implement a recovery plan, even though a provision of the Act authorizes the receiver to "issue an order to an elected or appointed official of the distressed municipality"; elsewhere, the Act expressly empowers the receiver to "require the distressed municipality" itself, not its officials, to take actions necessary to implement the plan and negotiate intergovernmental cooperations and to "direct the distressed municipality" to take any other actions to implement the plan, thereby treating the municipality as an entity distinct from its officials.

INSURANCE - SOUTH CAROLINA

Renewable Water Resources v. Insurance Reserve Fund

Court of Appeals of South Carolina - January 3, 2024 - 897 S.E.2d 558

Insured wastewater treatment district brought action against its insurer for recovery under property insurance policy following introduction of polychlorinated biphenyls (PCBs) into holding tanks at insured's water treatment facilities through an act of vandalism.

The Circuit Court found, following a bench trial, that policy covered most of insured's remediation expenses, entered a judgment awarding insured $5,824,924.49 in damages, and denied insurer's motion for a new trial. Insurer appealed.

The Court of Appeals held that:

- Expenses associated with cleaning holding tanks were covered under policy;
- Expenses associated with preventing further contamination were covered under policy;
- Insured was not entitled to consequential damages under policy;
- Expense summary documents were admissible as summary exhibits; and
- Circuit court was required to account for insurance deductible in calculating damages award.

PUBLIC PENSIONS - TEXAS

City of Dallas v. Employees' Retirement Fund of City of Dallas

Supreme Court of Texas - March 15, 2024 - S.W.3d - 2024 WL 1122438

Pension fund for city employees brought action against city for declaratory judgment that a city ordinance that placed term limits on fund's directors was void and unenforceable.

City filed counterclaims, seeking to enjoin the fund from seating two elected board members for additional terms in violation of the ordinance.

The 44th District Court granted summary judgment in favor of the city. Fund appealed. The Dallas Court of Appeals reversed and rendered. City's petition for review was granted.

The Supreme Court held that:

- Ordinance creating term limits for board members repealed by implication ordinance in different chapter requiring board approval, and
- Veto power was unenforceable.

Investors Hire Counsel to Challenge $1 Billion University Bond.

- **Holders are represented by Kramer Levin in the challenge**
- **University of California sold refunding debt earlier in March**

A group of investors has hired law firm Kramer Levin to challenge a $1 billion refunding deal by the Regents of the University of California, according to a letter seen by Bloomberg and people familiar with the situation.
The letter, dated March 20, was sent by Amy Caton, a partner at Kramer Levin, to the University of California officials disputing the Build America Bond refinancing transaction. The firm said it was representing investors that hold or manage "hundreds of millions of dollars" of the debt that is being refunded by the new issue sale.

At the crux of the debate is whether the taxable debt can be replaced by lower-cost tax-exempt bonds under a call provision that may be invoked in the occurrence of an extraordinary event.

The letter did not name the investors that the firm is representing. It was sent to Nathan Brostrom, chief financial officer for the University of California, and Charles Robinson, the school's general counsel.

"Our group asks the Regents to reconsider their proposed course of action, and avoid litigation, by either canceling the proposed redemption, or by moving forward with a redemption that is legally appropriate by paying holders the make-whole premium to which any current redemption entitles them," Kramer Levin's letter said.

Representatives for the University of California did not respond to a request for comment, sent after the close of business hours on Wednesday.

Under a make-whole call, an issuer provides a lump sum payment to investors, so the buyers avoid facing losses on an earlier call, according to the Municipal Securities Rulemaking Board. That scenario would cost the university at least $120 million more than the extraordinary redemption, Kramer Levin's letter said.

The challenge is rare in the municipal-bond market, and escalates a simmering feud between investors and issuers over a call mechanism in Build America Bonds. The securities were sold through a debt-issuing program instituted to spur economic growth by infrastructure spending after the Great Recession.

A number of Build America Bonds refinancing deals are already underway, spurred by the recent outperformance in the tax-exempt debt market — which has pushed those yields well below those on taxable securities. At least two investors have pushed back against a planned sale by the state of Washington scheduled for next week.

Extraordinary Redemption

States and municipalities are seeking to call the bonds back under what's known as an extraordinary redemption provision because of the federal government's cut to the subsidies paid to municipalities that sold BABs. Through the program, the federal government was supposed to cover 35% of the interest paid to investors. That subsidy had been slightly reduced through sequestration.

Nearly all of the $100 billion in outstanding Build America Bonds include an extraordinary call provision.

The letter sent by Kramer Levin states that the change in subsidy hasn't been material. On the Series R bonds being refunded, the reduction amounts to an estimated $872,000 a year, a small fraction of the regents' budget, the law firm said.

The letter called for the University of California's regents to scrap the transaction or for holders to be paid the make-whole redemption amount. The deal is expected to close on March 27.

"Should the Regents fail to cancel the redemption or pay the make-whole redemption amount, the holders we represent reserve their right to pursue an action for breach of contract, breach of the implied duty of good faith and fair dealing, and unjust enrichment, at a minimum," the letter said.

Bloomberg Markets

By Nic Querolo and Amanda Albright

March 20, 2024

Investors Push Back on Washington State's $1.1 Billion Muni Bond Deal.

- **Two investors sent letters to deputy state treasurer**
- **$1.1 billion deal part of plans to refund using ERP call**

The state of Washington is getting pushback from investors on an upcoming mega deal to refinance debt that would cause holders of the old municipal bonds to face potential losses.

The sale is part of a wave of planned refundings that would replace taxable debt sold under the Build America Bonds program more than a decade ago with lower-yielding, tax-exempt securities. Washington is planning to sell about $1.1 billion of bonds later this month, according to preliminary bond documents dated March 18.

Two investors, Wedge Capital Management and Amica Mutual Insurance Co., sent emailed messages earlier this month to Washington's Deputy Treasurer Jason Richter voicing displeasure with the deal, according to copies provided to Bloomberg News by the treasurer's office.

"Although we are not the largest investors in the State of Washington, we are acutely exposed to the large book value losses these ERP calls, if enacted, would impose on all insurance and bank investors," wrote Brian Pacheco, a portfolio manager at Amica, in the message dated March 8. "We hope that you will reconsider your decision to call this via ERP."

There is a feud brewing between governments and investors over municipal borrowers exercising the call provision, which could save issuers like Washington money at the expense of investors. The transactions hinge on a provision in the bond documents that allows state and local governments to buy back their debt before it comes due if an extraordinary event occurs.

Build America Bonds Represent Chunk of Taxable Muni Debt

Outstanding taxable bonds by category, in billions

States and municipalities are seeking to call the bonds back under what's known as an extraordinary redemption provision because of the federal government's cut to the subsidies paid to municipalities that sold BABs. Through the program, the federal government was supposed to cover 35% of the interest paid to investors. That subsidy had been slightly reduced through sequestration.

Some investors, including Jonathan Souza, Wedge's director of credit research, argue the reduction isn't substantial enough to be considered an extraordinary event.

"Our interpretation of the BAB redemption provision is an extraordinary event will occur if there's a material change to Section 54AA or Section 6431, and the current sequestration rate of 5.7% wouldn't qualify," he wrote in an email dated March 7 to deputy Treasurer Richter.

Orrick, Herrington & Sutcliffe, LLP, a major law firm to municipalities, said in a February report that it believes the extraordinary redemption provision is available to issuers in most cases. In the last month, the refinancings have surged in popularity, with a bevy of issuers planning new deals.

A representative for Wedge Capital Management declined to comment and a spokesperson for Amica Mutual Insurance did not reply to requests for comment.

Earlier this month, a group of investors sent a letter challenging a $1 billion municipal bond refunding by the Regents of the University of California. That offering priced earlier this month and is slated to close next week.

Washington, at this time, still plans to move forward with the sale, which is scheduled for March 26, according to Adam Johnson, a spokesperson for the state treasurer's office.

Strategists at Barclays Plc have estimated that roughly $30 billion may be refinanced this year using the call. Still, they said in a March 8 report that some governments may scrap plans for the refinancings given the investor pushback.

"Concerns about validity of calling BABs through ERPs for most issuers could keep some of them on the sidelines," the strategists said in a report.

Bloomberg Markets

By Amanda Albright and Nic Querolo

March 19, 2024

[February Corporate and Municipal CUSIP Request Volumes Rise Sharply.]

NORWALK, Conn., March 19, 2024 (GLOBE NEWSWIRE) — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2024. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a sharp monthly rise in request volume for new corporate and municipal identifiers.

North American corporate requests totaled 7,761 in February, which is up 30.5% on a monthly basis. On a year-over-year basis, North American corporate requests closed the month down 12.0%. The monthly volume increase was driven by a 67.7% rise in request volume for U.S. corporate debt identifiers. February also saw a 24.1% increase in request volume for short-term certificates of deposit (CDs) with maturities of less than one year, and a 15.3% increase in request volume for long-term CDs with maturities of more than one year.

The aggregate total of identifier requests for new municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – rose 12.5% versus January totals. On a year-over-year basis, overall municipal volumes are down 2.2%. Texas led state-level municipal request volume with a total of 112 new CUSIP requests in February, followed by New York (81) and California (45).

"The pace of pre-market issuance activity in some asset classes has been ramping up," said Gerard Faulkner, Director of Operations for CGS. "Time will tell whether we're seeing a short-term blip in activity or whether this trend will continue throughout the first half of 2024."

Requests for international equity CUSIPs fell 30.4% in February and international debt CUSIP requests rose 6.4%. On an annualized basis, international equity CUSIP requests are down 17.9% and international debt CUSIP requests are up 55.7%.

To view the full CUSIP Issuance Trends report for February, please click here.

[Mega-Trends Impacting Municipal Market: ArentFox Schiff]

We are at the initial stages of a major paradigm shift that has significant implications for the municipal market over the next five to 10 years. A number of societal mega-trends will present material challenges for the municipal market. These include climate change, growing federal debt, shrinkage of the workforce, the impact of remote work, cybersecurity attacks, and political polarization.

This commentary will discuss each of these trends and their interrelationship. In combination these trends will likely increase expenses and decrease revenue resulting in growing challenges for municipalities.

Whether it be unprecedented droughts, forest fires, floods, tornadoes, wind, or heat waves, it is evident that climate change has begun in a dramatic fashion. How quickly it will escalate is unknown but that it will escalate is a near certainty, absent a quick dramatic change in human activity. As climate change escalates there will be even more damage to infrastructure, farmland, coastal properties, utilities, homes, and businesses. The cost of addressing these damages will likely rise significantly.

According to the National Oceanic and Atmospheric Administration, in 2023 there were 28 separate billion-dollar climate disaster events, the highest count of record. The cost of these events was $92.9 billion, and this number may rise by several billion as more costs are identified.

Continue reading.

by DAVID L. DUBROW

MARCH 20, 2024

ARENTFOX SCHIFF

US Warns of Cyberattacks Against Water Systems Throughout Nation.

- **Letter cites threats from hackers linked to Iran, China**
- **EPA is lead federal agency to ensure water sector's resilience**

The Biden administration is warning states to be on guard for cyberattacks against water systems, citing ongoing threats from hackers linked to the governments of Iran and China.

"Disabling cyberattacks are striking water and wastewater systems throughout the United States," Environmental Protection Agency Administrator Michael Regan and National Security Advisor Jake Sullivan wrote in a letter to governors made public Tuesday. "These attacks have the potential to disrupt the critical lifeline of clean and safe drinking water, as well as impose significant costs on affected communities."

Hackers affiliated with the Iranian Government Islamic Revolutionary Guard Corps have attacked drinking water systems, while a People's Republic of China state-sponsored group, Volt Typhoon, has compromised information technology of drinking water and other critical infrastructure systems, the letter warned.

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Bloomberg Technology

By Ari Natter

March 19, 2024

As Cyber Grant Program Hits the Halfway Mark, Feds Laud States' Progress.

Two years into the $1 billion program, state and local governments are better prepared for cyber attacks. But funding remains an obstacle as under-resourced cybersecurity budgets struggle to keep up with mounting threats.

When Congress passed the infrastructure law in 2021, it made a much-needed, first-of-its-kind investment in cybersecurity.

At the time, state and local governments were facing an increasing wave of ransomware and other cyberattacks. In 2020, a third of global attacks were on states and localities—a number that doubled in 2021, according to Sophos, a data protection and security company.

Now, two years into the $1 billion State and Local Cybersecurity Grant Program, hundreds of millions of dollars have already been appropriated, with millions more to follow starting later this year. States have used the grants to invest in long-term cybersecurity planning, coordinating with localities and implementing a whole-of-state approach.

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Route Fifty

By Chris Teale,
Staff Reporter, Route Fifty

MARCH 20, 2024

Schools are Vulnerable to Breaches — and Hackers Know It.

Schools face unique challenges in shoring up their cyber defenses. Just ask Baltimore County Public Schools. It suffered a successful attack in 2020, and while its cyber protection has improved, it still faces roadblocks.

James Corns first got wind of a cybersecurity incident one evening in November 2020, when a live stream of the Baltimore County Board of Education was interrupted.

By 11 p.m. that night, after getting calls from staff across the Baltimore County Public Schools system about their laptops malfunctioning, Corns realized the school system faced a "full scale attack."

An investigation later found that hackers had been in the school system's networks for about two weeks, after what Corns, executive director of IT, described as an "operator error" let them in. It started when a staff member who received an Excel spreadsheet in an email was unable to access it and forwarded it to a contractor who could, opening the door to the attack.

Continue reading.

Route Fifty

By Chris Teale,
Staff Reporter, Route Fifty

March 21, 2024

Purdue University Muni Deal Threatens Over 20% Loss for Holders.

- **School plans to refinance Build America Bonds close to par**
- **Controversy over BAB refinancings swirls in muni bond market**

Fans of the Purdue University Boilermakers are reveling in victory after the top-ranked college basketball team trounced Grambling State and Utah State in the NCAA's March Madness Tournament over the weekend.

It's a different story in the debt market, where investors in the college's bonds are poised to take a loss as Purdue prepares to exercise an obscure provision to call back securities before they are due.

The university — equipped with a $2.7 billion endowment and a AAA credit rating — is replacing Build America Bonds it sold more than a decade ago with lower yielding tax-exempt debt as part of a $72 million bond sale this week. Purdue is looking to buy back those bonds at close to par, or 100 cents on the dollar. But the debt has recently traded above that level.

Continue reading.

Bloomberg Markets

By Amanda Albright and Nic Querolo

March 25, 2024

States Look to AI for Its Potential to Help with Finances.

Artificial intelligence holds promise for creating budget-saving efficiencies, aiding in audits and helping with compliance. But the emerging technology also poses challenges that could affect spending.

Artificial intelligence has quickly become a buzz topic among state leaders, and lawmakers in 31 states considered nearly 200 bills related to AI last year. Recent leaps in generative AI have the potential to create budget-saving efficiencies, such as reducing application processing times and freeing up staff capacity for other work. At the same time, however, states must deal with the risks that AI could pose to vital systems, particularly public information and data security.

In states throughout the country, auditors and public finance departments are exploring the possibility of using AI to lower the cost of monitoring and oversight, reduce risks, and streamline administrative processes. One recent report estimated that AI could boost productivity by $519 billion a year across all U.S. governments.

For instance, the Government Finance Officers Association, or GFOA, is working with Rutgers University to pilot how AI can help governments comply with the federal Financial Data Transparency Act, which requires that financial disclosures filed for outstanding bond debt be machine readable starting in 2027. GFOA previously estimated that implementing reforms needed to comply with the law could cost governments at least $1.5 billion by the deadline. But if the GFOA-Rutgers project is successful, an AI-powered data extraction process could make ongoing compliance virtually cost-free while reducing the risk of error.

[Continue reading.](#)

Route Fifty

by Liz Farmer

MARCH 20, 2024

[Texas AG Paxton Asks Judge to Reject Austin's Bond Validation to Finance Project Connect Improvements.](#)

The Republican attorney general is asking a Travis County judge to reject the city of Austin's plans to issue bonds to fund Project Connect improvements, including the light-rail system.

A Travis County judge on Monday set a trial date to hear arguments in a pending bond validation lawsuit centered on the proposed financing plan for Project Connect, setting a stage on which the future of the city of Austin's $7.1 billion public transportation investment could be at stake.

A bond validation lawsuit seeks to confirm the validity of municipal bonds issued by a government entity. The trial will be the culmination of a lawsuit that attorneys representing the Austin Transit Partnership, the city's light-rail planning agency, filed in February.

The trial is set for May 28 through 30, according to a memo sent to Austin Transit Partnership board members Monday.

[Continue reading.](#)

by Chase Rogers

March 19, 2024

Austin American-Statesman

[Why Texas Is Banning Banks Over Their ESG Policies.](#)

Texas passed two laws in 2021 that restrict government contracts with companies that take what state officials regard as punitive stances toward the fossil fuels and firearm industries. They're among the many new laws pushed by Republicans in states across the US to oppose ESG investing and financing, which they've made into a culture war target. Under one of the laws, Texas has barred some state entities, including pensions, from investing in roughly 350 funds that the Texas comptroller says engage in "boycotts" of fossil fuels. The legislation has also prompted state officials to prohibit Citigroup Inc. and Barclays Plc from helping the state and its local governments raise money for infrastructure projects through bond deals, and BlackRock Inc. from managing investments for a fund that supports the state's schools.

1. What is ESG?

An abbreviation for environmental, social and governance, ESG refers to a set of standards that some money managers and bankers use to screen potential investments and financings for their environmental efforts or societal impact. Companies have been pressured by consumers, activists, investors and regulators to good stewards not only be of financial capital but also of natural and social capital, according to a Deloitte primer on ESG. Some examples of criteria that may fall under the environmental pillar of ESG are projects that cut greenhouse gas emissions, curb water pollution or use recycled material. Socially conscious investors may consider how a company manages its labor diversity or risk policies regarding firearms.

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Bloomberg Green

By Danielle Moran

March 20, 2024

More Defaults for Senior Living Ahead as Debt Comes Due.

- **About $3.5 billion in muni debt matures next year, BI says**
- **More impairments, defaults could be on the sector's horizon**

Pandemic-induced obstacles are still squeezing senior living facilities and with a rash of debt coming due, investors are likely to feel continued pain in the sector over the next several years.
About $2.7 billion in senior living municipal debt comes due in the last nine months of this year, along with $3.5 billion next year, according to Karen Altamirano of Bloomberg Intelligence.

The looming maturities "could contribute to an uptick in impairments or default," said Lisa Washburn, chief credit officer at Municipal Market Analytics. "It's one more pressure on top of so many pressures that are facing the sector right now."

Continue reading.

Bloomberg

By Lauren Coleman-Lochner

March 22, 2024

S&P: U.S. Transportation Infrastructure 2024 Activity Estimates Indicate A Return To Pre-Pandemic Levels And Growth, With Transit Ridership Still Recovering

Key Takeaways

- Our recently updated U.S. economic forecast, which calls for real GDP growth of 2.4% in 2024 with no recession, bodes well for U.S. airports, ports, toll roads, and mass transit providers.
- We believe activity measures across most transportation modes will likely return to near pre-

pandemic historical averages, although industry-specific variables such as airline capacity constraints, trade tariffs, geopolitical conflicts, and growing cost pressures could dampen near-term growth.
- Remote work trends will continue to drag on public transit ridership, with our activity estimates showing public transit recapturing about 75% of pre-pandemic activity in 2024, 80% in 2025, and only about 85% in 2026.

Continue reading.

21 Mar, 2024

Grants and Growth: The Infrastructure Funding Surge Demands Masterful Management

COMMENTARY | To leverage federal funds to strengthen their economies and invest in the future, state and local governments need strong, centralized grant management support.

State and local governments nationwide are racing against time to access billions in federal grants. As they rush to wrap up numerous projects before the 2026 State and Local Fiscal Recovery Fund, or SLFRF, deadline, at least one local government has indicated that they won't be able to pursue a significant number of federal grants in 2024.

In fact, data from the U.S. General Accountability Office shows that as of March 31, 2023, state and local governments had reported spending less than half their awards from the American Rescue Plan Act. As the historic CHIPS Act, Inflation Reduction Act, and Infrastructure Investment and Jobs Act reach their required implementation deadlines in the next few years, it has become clear that success in leveraging these funds requires a comprehensive approach.

State and local leaders must begin developing a deliberate federal funds strategy, which includes submitting grant proposals and applications that demonstrate a compelling plan for the use of funds. To show they can effectively leverage federal grant money, agencies also need a strong program design, prioritized projects and a robust capability to administer the funds in compliance with federal requirements.

Continue reading.

Route Fifty

By Rob Cohan,
Accenture Public Service Strategy and Consulting

MARCH 22, 2024

Apply Now: Navigating the Clean Ports Program Funding

Ports are vital nodes in global supply chains, facilitating the movement of goods and fostering economic growth. However, they pose significant environmental and public health challenges, particularly in nearby communities. To address these issues, the U.S. Environmental Protection Agency (EPA) has launched the Clean Ports Program, offering $3 billion in funding to support the transition to zero-emission port operations and enhance air quality planning.

Understanding the Clean Ports Program

The Clean Ports Program, established under the Inflation Reduction Act of 2022, aims to reduce diesel pollution and greenhouse gas emissions in and around U.S. ports while promoting community engagement and emissions reduction planning. The program comprises two main funding opportunities: the Zero-Emission Technology Deployment Competition and the Climate and Air Quality Planning Competition. Eligible participants are encouraged to apply by 11:59 PM (ET) for the May 28, 2024 deadline. View other important dates and times.

Continue reading.

NATIONAL LEAGUE OF CITIES

By Damion Deshield

MARCH 21, 2024

FINRA Facts and Trends: March 2024 - Bracewell

Welcome to the latest issue of Bracewell's FINRA Facts and Trends, a monthly newsletter devoted to condensing and digesting recent FINRA developments in the areas of enforcement, regulation and dispute resolution. This month, we report on FINRA's focus on uses of artificial intelligence as an emerging risk, oral argument in the Alpine Securities case that has broad implications for FINRA, a pair of enforcement matters that shed light on FINRA's concerns with off-channel communications, and much more.

FINRA Proposes Expanding Category of Persons Who May Receive Projections and Targeted Returns

In our December 2023 issue, we discussed a FINRA proposal that would amend Rule 2210 (Communications with the Public), which generally prohibits projections of performance or targeted returns in member communications, subject to certain exceptions. The amendment would allow member firms to provide projected performance or targeted returns in institutional communications and in communications to qualified purchasers.

FINRA has now filed Partial Amendment No. 1, which "marginally expand[s]" the category of persons who can receive projected performance or target returns to include "knowledgeable employees." As defined in Rule 3c-5 of the Investment Company Act, the term "knowledgeable employees" generally includes officers, directors, trustees, general partners and advisory board members, or persons serving in similar capacities of the fund or certain of its affiliates, as well as other employees that participate in the investment activities of the fund or certain of the fund's affiliates. As for why FINRA elected to include "knowledgeable employees," it noted that these employees typically have sufficient knowledge of the operations of the private funds with which they are associated. As a result, they are "less likely not to understand the risks and limitations of projections or targeted returns associated with such funds." Comments on the original amendment and Partial Amendment No. 1 are due by March 20, 2024. Anyone who wishes to file a rebuttal to a comment must do so by April 3, 2024.

FINRA Zeroes in on Vendor Use of Generative AI and Large Language Models

In its 2024 Annual Regulatory Oversight Report, which we reported on earlier, FINRA classified artificial intelligence as an "emerging risk," noting that deploying AI in the industry could affect virtually all aspects of a broker-dealer's operations. Now, in a recent episode of the FINRA podcast "FINRA Unscripted," three prominent executives at FINRA offered further insight into two particular risks: vendor use of generative AI and large language models. Generative AI, which gained popularity with the launch of ChatGPT in November 2022, refers to a category of artificial intelligence systems that are designed to generate new, original content rather than simply analyze existing data. While generative AI has the ability to create new content, including text images and even audio, based on patterns and information that it learns from extensive training data, large language models are specifically designed for tasks revolving around natural language generation and comprehension. Large language models have been trained on immense amounts of text data that allow them to learn patterns and relationships between words and phrases and generate natural language and other types of content to perform a wide range of tasks.

Generative AI and large language models, while providing efficiencies that help member firms better serve customers, also present serious vendor management questions. From time to time, FINRA has made a point of cautioning firms and their registered representatives on the potential pitfalls when relying on these third-party vendors. During the COVID-19 pandemic, for example, FINRA observed that firms were increasingly leveraging vendors to perform risk management functions and to assist in supervising sales and trading activity and in customer communications. To address this concern, in 2021, FINRA published Regulatory Notice 21-29 on the topic of supervisory obligations related to outsourcing to third parties.

Now, however, vendor use of artificial intelligence presents another, albeit less predictable, layer of concern about accuracy, privacy, bias and intellectual property. According to Andrew McElduff, Vice President with Member Supervision's Risk Monitoring team, when it comes to supervising a vendor's use of these technologies, firms must do their diligence and ask the necessary questions to determine where their information is being stored and whether it is restricted only for the firm's use. When it comes to firms' use of vendors, Haimera Workie, Vice President and head of FINRA's Office of Financial Innovation, cautions firms and their registered representatives: "You can delegate a function, but you can't delegate ultimate responsibility." As a result, firms should make sure to have in place written compliance and operational policies and procedures concerning the supervision of artificial intelligence systems and ensure that all contracts with third-party vendors protect the information of the firm and its clients.

Oral Argument Held in Challenge to Constitutionality of FINRA Enforcement Powers

The landmark case brought by Alpine Securities Corporation against FINRA continues to make its way toward a decision in the DC Circuit Court of Appeals, with an oral argument held last month. As we have reported previously, the case has potentially monumental implications for FINRA's future.

Alpine, a firm that was expelled from FINRA membership following a 19-day hearing by an extended FINRA hearing panel, has sought to enjoin this so-called "corporate death penalty" by challenging the constitutionality of FINRA's enforcement powers based on an argument that FINRA wields those powers in violation of the Appointments Clause of the US Constitution. This argument was applied by the US Supreme Court, in Lucia v. Securities and Exchange Commission, decided in 2018, to hold that the SEC's Administrative Law Judges (ALJs) are subject to the Appointments Clause. In its briefs, FINRA has characterized the challenge to its own powers as an "existential threat."

While there is always danger in attempting to read into a court's comments at oral argument, the three-judge panel of the DC Circuit expressed a fair degree of skepticism concerning the constitutional challenge brought by Alpine.

Counsel for Alpine argued that the "existential threat" runs both ways, and that the remedy Alpine seeks is the "ability to continue to run its business, while it pursues its claims, free from summary imposition of the corporate death penalty by an unaccountable enforcer of federal law."

But Judge Millett pushed back on the phrase "corporate death penalty," pointing out that FINRA cannot actually close Alpine's (or any firm's) business, but only expel Alpine from its private organization. Still, Judge Millett acknowledged that "the consequence of that, thanks to Congressional statute, may be that it's going to be very hard to stay in business." Chief Judge Srinivasan also provided some clarification as to whether FINRA is truly "unaccountable," asserting that any FINRA decision is immediately appealable to the SEC, which has the authority to issue a stay, such that the decision does not "irrevocably take effect immediately." Judge Millett, however, leveled the harshest criticism of Alpine's position, stating: "I think it would be the first time . . . that a court would be declaring someone an officer of the United States when they are hired by, employed by, and paid by a private entity."

Counsel for FINRA took up this argument, telling the Court that: "No court in any jurisdiction has ever held that the Appointments Clause applies to employees of a private corporation. Alpine has not identified any reason for this Court to be the first to reach that unprecedented conclusion."

The judges had difficult questions for FINRA's counsel too. Chief Judge Srinivasan appeared concerned that FINRA's position was overly formalistic, and would allow the SEC to avoid the Appointments Clause problem identified in Lucia by doing nothing more than retaining a private contractor to perform the function of its ALJs. Judge Millett, however, argued that "historically, that was how the federal government did prosecutions . . . . It would contract out lawyers to prosecute cases. . . . Lincoln prosecuted cases for the federal government." Of the three-judge panel, Judge Walker appeared most troubled by the implications of FINRA's arguments, telling FINRA's counsel, "I think where we part ways is that you . . . disagree with this statement: significant executive power cannot be exercised by private citizens at all."

Bracewell continues to monitor this case and will report on its progress and potential implications for FINRA.

Notable Enforcement Matters and Disciplinary Actions

Off-Channel Communications. In its 2024 Annual Regulatory Oversight Report (which we highlighted in our January newsletter), FINRA emphasized its growing concern surrounding off-channel communications — those that occur on non-firm platforms or devices. FINRA has backed up its warning with a series of fines and suspensions stemming from brokers' engagement in such off-channel communications. In a recent enforcement action in February, FINRA imposed a $75,000 fine on a brokerage firm, alleging that it failed to adequately supervise employees' use of personal email for business-related communications. The firm also allegedly failed to retain these emails, contravening both Securities Exchange Act and FINRA rules. Despite being alerted to at least one representative regularly using personal email for business purposes, the firm took insufficient action and merely issued automated warnings with respect to some of the off-channel communications. As a result, correspondence between representatives' personal email addresses and customers remained unpreserved. In a separate enforcement action, a broker agreed to fines and a two-month suspension from the industry for allegedly exchanging hundreds of securities-related text messages with 14 firm customers via his personal cell phone. Since the device was not sanctioned by his firm, none of these messages were captured or maintained, as required by the Exchange Act and FINRA rules. These actions, and others, underscore FINRA's continuing commitment to enforce its rules concerning off-channel communications.

Municipal Securities. FINRA recently concluded what appears to be its first disciplinary case involving the close-out requirements outlined in the Municipal Securities Rulemaking Board (MSRB) rules. An investment bank was fined $1.6 million for its failure to promptly close out failed inter-dealer municipal securities transactions. According to FINRA, the bank had neglected to cancel or close out 239 failed inter-dealer municipal transactions — amounting to approximately $9 million — within the mandated 20-calendar-day period following the settlement date. In fact, some transactions remained unresolved for nearly three years. Moreover, the bank allegedly failed to take necessary steps to acquire timely possession or control over 247 short positions in municipal securities valued at approximately $9.4 million. It remains to be seen whether this enforcement action resulted from the severity of FINRA's allegations in this particular case, or whether it signifies a heightened focus on enforcement efforts within the municipal securities market.

Municipal Securities. In another municipal bonds case, FINRA expelled an underwriter and barred its principals from the industry for making fraudulent misrepresentations in the sale of municipal bonds. In a comprehensive 133-page decision, the OHO found that the underwriter made fraudulent misrepresentations concerning a $6 million municipal bond offering in Alabama, and negligent misrepresentations with respect to separate $2.2 million bond offering in Illinois. Both offerings failed shortly after closing, and the bondholders — many of whom were elderly — lost most of their investments. As a result of their misconduct, the underwriter and its principals (who had previously run afoul of FINRA rules) were barred indefinitely from the industry and were ordered to pay more than $4.7 million in restitution, plus interest and costs.

Securities Lending. In separate actions, four broker-dealer firms agreed to pay a combined $2.6 million in fines and restitution to settle claims that they failed to properly supervise fully paid securities lending programs. The Letters of Acceptance, Waiver, and Consent (AWCs) detailing FINRA's findings in these matters are available here, here, here and here. Fully paid securities lending programs permit investors to lend out securities they already own to clearing firms, which in turn lend the securities to third parties for a fee. The fee is generally shared among the various participants: the customer, the broker-dealer and the clearing firm. When the investor chooses to sell the borrowed securities, the clearing firm is responsible for recalling them from the borrower. In each of the four cases, FINRA alleges that the broker-dealers automatically enrolled new customers in fully paid securities lending programs upon account opening, irrespective of suitability, and then pocketed the revenue they received from the clearing firms, in violation of written disclosures. Additionally, some customers who received cash payments in lieu of dividends allegedly suffered adverse tax consequences, for which the companies agreed to pay more than $1 million in restitution.

FINRA Notices and Rule Filings

Regulatory Notice 24-02 – FINRA has adopted new FINRA Rules 3110.19 (Residential Supervisory Location) and 3110.18 (Remote Inspections Pilot Program). FINRA also announced the end of the pandemic-era relief issued under Regulatory Notice 20-08. Rule 3110.19, which will become effective on June 1, 2024, establishes a new framework for inspections of private residences at which an associated person engages in specified supervisory activities. These private residences will be treated as non-branch locations — defined as "residential supervisory locations (or RSLs)" — and will be subject to inspections at least every three years, instead of the annual inspections currently required for a supervisory branch office. Firms must meet specified conditions to qualify for an RSL designation, including conducting and documenting a risk assessment. Rule 3110.18, which will become effective on July 1, 2024, establishes a voluntary, three-year remote inspections pilot program, which will allow member firms to fulfill their inspection obligations for qualified branch offices remotely (without an on-site visit). Firms must meet certain specified terms to participate, and must opt in to the pilot program no later than June 26, 2024. Finally, FINRA ended the relief provided under Regulatory Notice 20-08. A measure extended during the COVID-19 pandemic, Regulatory Notice 20-08 temporarily suspended the requirements for member firms to maintain updated U4 information with respect to the employment address for certain employees who temporarily relocated during the pandemic. The Notice also suspended the requirement to report newly opened temporary office locations or space-sharing arrangements. FINRA announced that these relief measures will expire on May 31, 2024.

Regulatory Notice 24-03 – FINRA has amended its Code of Arbitration Procedure to reflect changes to the arbitrator list selection process. The changes include:

- Randomly generated lists of arbitrators for each proceeding will now incorporate a manual review for conflicts of interest that are not identified in the list selection algorithm, with the Director empowered to exclude arbitrators from lists based on its review of current conflicts of interest;
- The Director is now required to provide a written explanation with respect to any decision to grant or deny a party's request to remove an arbitrator; and
- The time for a party to request removal of an arbitrator for conflict of interest or bias (or for the Director to remove an arbitrator on its own initiative) will be from when arbitrator ranking lists are generated, to no later than the date on which the first hearing session begins.

FINRA also amended its Codes of Arbitration Procedure to make numerous clarifying and technical changes to the requirements for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record.

Regulatory Notice 24-04 – FINRA has adopted amendments to its rules pertaining to securities settlement including by shortening the timeframes for delivery or settlement, consistent with the SEC's recent adoption of final rules that changes the settlement cycle for most U.S. securities transactions from T+2 to T+1. The Regulatory Notice also amends 17 related FINRA rules with respect to transaction reporting, trade report processing, dates of delivery, and other similar matters.
Regulatory Notice 24-05 – FINRA announced the adoption of new Rule 6151 (Disclosure of Order Routing Information to NMS Securities). The new rule will go into effect on June 30, 2024, and will require member firms to submit to FINRA order routing reports for NMS securities, as required under SEC Rule 606(a). The reports will be required on a quarterly basis and will be publicly reported on a free website for at least three years.

Regulatory Notice 24-06 – In consultation with the Department of the Treasury, FINRA announced that, on March 25, 2024, it will begin disseminating an end-of-day file that includes information on individual transactions in US Treasury securities that are "on-the-run nominal coupons." FINRA will also provide a new Historic TRACE data set for Treasury securities, which will contain transaction information on a six-month delayed basis. These reports will be publicly available and free of charge on FINRA's website for non-professionals' personal, non-commercial purposes, on a next-day basis.

SR-FINRA-2024-004 – FINRA has proposed a rule change that would amend FINRA Rule 6730 to reduce the 15-minute TRACE reporting timeframe to one minute, with exceptions for member firms with de minimis reporting activity and for manual trades.

Bracewell LLP – Joshua Klein, Keith Blackman and Russell W. Gallaro

March 19 2024

TAX - OREGON

[D.E. Shaw Renewable Investments, LLC v. Department of Revenue]

Supreme Court of Oregon - October 5, 2023 - 371 Or. 384 - 537 P.3d 529

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - NEW YORK

[Brookdale Physicians' Dialysis Associates, Inc. v. Department of Finance of City of New York]

Court of Appeals of New York - March 21, 2024 - N.E.3d - 2024 WL 1199333 - 2024 N.Y. Slip Op. 01583

Building owner, which was a not-for-profit healthcare fund, filed, along with its tenant, which was a for-profit corporation that provided dialysis services for a fee, petition commencing hybrid article 78 and declaratory-judgment action to annul city department of finance's revocation of building's status as exempt from real-property taxation.

The Supreme Court, New York County, granted petition. Finance department appealed. The Supreme Court, Appellate Division, affirmed. The Court of Appeals granted the finance department leave to appeal.

The Court of Appeals held that:

- Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for

certain not-for-profit purposes, and
- Building was not tax exempt under statutory provision governing that same not-for-profit tax exemption for property that was leased for non-exempt purposes.

Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes; building owner was a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose, and owner's tenant was a for-profit corporation that had sole occupancy and used the building during the lease term exclusively to perform its for-charge dialysis services.

Building that was owned by a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose was not property-tax exempt under statutory provision governing the property-tax exemption for property that had a particular kind of not-for-profit owner but was leased for non-exempt purposes; building was leased and used solely for pecuniary gain by a for-profit corporation that performed dialysis services for a fee.

Rethinking Property Taxes: GFOA Report

Property taxes are the most important local source of revenue for local governments. It is stable, transparent, and highly visible. Plus, the tax base is immobile. Yet it is also an unpopular tax. Rehabilitating the property tax can be done with two broad strategies that center the interest of taxpayers:

- Provide accurate and fair valuation of tax liability.
- Provide stable, predictable costs to taxpayers.
- This report shows how local governments can accomplish these two strategies.

DOWNLOAD FULL REPORT

Upcoming Webinar: *From Burden to Benefit: Transforming Property Tax Challenges into Opportunities*, March 28 | Register

Publication date: March 2024

Authors: Chris Berry and Shayne Kavanagh

California to Sell $2.6 Billion of Bonds to Buyers Seeking Shelter.

- **Home to billionaires levies tax rate of more than 13%**
- **Recent California muni deals had yields below market benchmark**

California next week plans to sell $2.6 billion of bonds, the municipal market's second-largest offering this year, and high demand from eager investors is likely despite the state's ballooning budget deficit.

New sales of tax-exempt bonds in California have been gobbled up by buyers looking to shield income from the state's high taxes and to lock in yields before anticipated rate cuts by the Federal Reserve later this year. California, home to more billionaires than any other state and hundreds of thousands of millionaires, levies a rate of at least 13.3% on its highest earners.

The desire for tax-advantaged investments means California bond deals can sell at yields lower than AAA-rated benchmark muni securities. The Los Angeles County Metropolitan Transportation Authority sold $114 million of bonds this week with yields as much as 30 basis points below that benchmark, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Maxwell Adler and Melina Chalkia

March 21, 2024

California Senators Float Plan to Plug Bay Area Transit Budget Gaps.

- **Bay Area region has 27 transit operators across nine counties**
- **New proposal seeks at least $750 million for transit agencies**

Transit operators in San Francisco's Bay Area are facing massive budget shortfalls as ridership lingers well below its prepandemic levels. Two California senators will unveil a bill Monday aimed at plugging those gaps, as well as bringing some order to the 27 different agencies operating across the region.

The proposal seeks at least $750 million to be doled out to public transport systems that serve the region's nearly eight million residents. The legislation would dedicate a consistent stream of revenue by asking voters to approve a new tax on sales, regional payrolls or properties. A charge on vehicle registrations would also be considered, according to a fact-sheet describing the legislation. The bill also asks the California State Transportation Agency to study combining the more than two-dozen networks.

Continue reading.

Bloomberg CityLab

By Skylar Woodhouse

March 18, 2024

Calpers Raises Bets on Private Equity, Credit Bets in $34 Billion Shift Away From Stocks.

The largest US pension fund is ramping up its exposure to private equity and private credit in a $34 billion bet that the riskier assets will fuel higher returns.

The board of the California Public Employees' Retirement System voted to boost the target allocation for private equity to 17% of its portfolio, up from 13%. It also approved increasing private credit to 8% from 5%. Based on current values, that works out to about $34 billion aimed for private equity and credit, while Calpers plans to pare its exposure to publicly traded stocks and bonds.

The shift reflects confidence that Calpers can ferret out attractive investments even as the fund significantly downgraded the expected 20-year returns from private equity in its latest market survey, citing increased financing costs. The $490 billion pension fund adopted the new asset mix following a mid-cycle review based on updated market assumptions.

Continue reading.

Bloomberg Markets

By Eliyahu Kamisher

March 18, 2024

How To Protect Against Harmful SLGS This Spring: Squire Patton Boggs

On March 4, 2024, the Treasury Department published a final rule that amends the regulations concerning State and Local Government Series securities (SLGS). Among other changes, the updated regulations notably: (1) require that the maturity lengths of Time Deposit SLGS be no longer than reasonably necessary for the underlying governmental purpose of the investment and that the Issuer certify to such in a new "duration certification"; (2) add to the non-exhaustive list of impermissible transactions; (3) increase to 14 days the minimum holding period for requesting early redemption; (4) require that the Issuer provide a maturity date at the start of a subscription rather than by completion of the subscription; (5) require a new "eligibility certification" by the Issuer as to its eligibility to purchase SLGS; and (6) require notice of five business days for redemptions of Demand Deposit SLGS of $500 million or more. The updated regulations take effect August 26, 2024.

By Robert Radigan on March 19, 2024

The Public Finance Tax Blog

Squire Patton Boggs

Washington, State of (WA): Fitch New Issue Report

Key Rating Drivers Revenue Framework – 'aaa' Revenue performance over time has exceeded U.S. GDP growth, and Fitch expects this to continue to support strong growth prospects. The state has complete independent control over taxation, with an unlimited legal ability to raise operating revenues as needed. Expenditure Framework – 'aa' Washington possesses ample expenditure flexibility, with statutory commitments, broad responsibility for education and infrastructure spending offset by low carrying costs. Washington also benefits from the broad expense-cutting authority common to most U.S. states. Long-Term Liability Burden – 'aaa' The combined burden of debt and net pension liabilities is low as a percentage of personal income but above the median for U.S. states. Debt ratios incorporate the funding of substantial capital needs, particularly for transportation, but are offset by a moderate net pension liability and an expanding economic resource base.

ACCESS REPORT

Mon 18 Mar, 2024

State of Wisconsin: Fitch New Issue Report

The ‘AA+’ rating reflects the exceptional resilience of the security through economic declines and relatively flat growth prospects for motor vehicle registrations in Wisconsin. Fitch anticipates revenue growth will be in line with long-term expectations for national inflation and an ‘a’ assessment given the nature of the pledged revenues, which include annual motor vehicle registration and related fees and are not generally linked to usage. Debt service is paid from a revenue source that has shown little volatility and provided ample debt service coverage on both an annual and maximum annual debt service basis. Pledged revenues are expected to provide strong coverage of debt service requirements, even if fully leveraged to the 2.25x additional bonds test, in the event of a moderate downturn, consistent with a ‘aaa’ assessment for this rating driver. The flow of pledged revenue is structurally protected from the state’s general financial operations. The rating on the bonds is the same as the state’s IDR, based on the bonds’ fundamental credit characteristics.

ACCESS REPORT

Mon 18 Mar, 2024

Chicago, Illinois: Fitch New Issue Report

The city retains the legal authority to adjust rates as needed without external oversight. Fitch Ratings considers the monthly residential sewer bill affordable for about 87% of the service area population based on standard monthly usage of 6,000 gallons. In fiscal 2022, the system’s operating cost burden was considered very low at $1,003 per million gallons (mg), consistent with the operating risk assessment. The life cycle ratio was very low at 22% in fiscal 2022. Capex relative to depreciation has been robust, averaging 320% over the past five fiscal years from 2018 to 2022. Planned capital spending for the next five years should generally outpace historical depreciation, supporting a continued very low life cycle ratio. The system had very low leverage of 9.9x as of fiscal 2022. This is in line with historical performance where leverage has typically registered between 9.8x and 9.9x annually since fiscal 2018. A brief uptick to 11.1x in fiscal 2020 reflected rates that increased with modest inflation, fluctuating pension obligations and related expenses.

ACCESS REPORT

Wed 20 Mar, 2024

Philadelphia's Post-ARPA Fiscal Reality.

Overview

The start of the COVID-19 pandemic in 2020 forced officials in cities throughout the country to deal with unexpected budget shortfalls quickly. To close a projected one-year gap of $649 million, Philadelphia was forced to take several steps—including drawing down its operating fund balance, postponing planned tax-rate reductions, temporarily increasing some taxes, and reducing spending.1 But that didn't address the long-term fiscal issues.

Then, along came the American Rescue Plan Act (ARPA), which Congress adopted in 2021; ARPA provided Philadelphia with $1.4 billion to use through December 2024.2 Local officials decided to use all the money to help address what they said would have been a $1.5 billion cumulative budget shortfall without it.3

This brief—based on research and analysis that PFM Group Consulting, a Philadelphia-based public finance advisory firm, conducted for The Pew Charitable Trusts—focuses on the city's financial prospects after the federal ARPA money is spent. It examines how economic downturns could affect city revenue and what budgetary strategies local officials could consider, whatever the city's fiscal condition.

Continue reading.

The Pew Charitable Trusts

March 20, 2024

MN Cities Could Face Additional Barriers to State Financial Support for Capital Improvement Projects.

Proposals heard in the House and Senate would require that any city receiving funding for a local infrastructure project from state bonds or general funds create an account sufficient for rehabilitation, expansion, and eventual replacement of the project.

The House and Senate both held informational hearings on legislation that creates far-reaching barriers to state financial support of local public infrastructure.

HF 3582 (Rep. Fue Lee, DFL-Minneapolis) and SF 3782 (Sen. Sandra Pappas, DFL-St. Paul) would require that a local government infrastructure project that receives any state funding must also create a capital project replacement fund to cover major rehabilitation, expansion, or replacement of that capital project.

The funds and the approval of uses of that money would be determined by the state and the account would need to be annually audited. Money could not be used from that account without state approval. An amendment that was adopted in the House includes language that more broadly applies the requirement to other state capital project grant recipients and also penalizes anyone whose fund is not kept at required levels.

Continue reading.

League of Minnesota Cities

March 25, 2024

An Insight Into Municipal Bonds.

"After two tumultuous years, we expect a municipal-market recovery and we believe that municipal bond mutual funds will outperform other investment vehicles," says Mackay Municipal Managers (Mackay), part of the New York Life Investments group of businesses, in its recent report on municipal markets in 2024.

The firm also says: "We believe that successful municipal bond managers will prioritise the fundamental facts over the headlines, recognise the strength of municipal credit and look to capture the opportunities in the high-yield municipal market.

"We also hold the view that by diversifying their retirement portfolios to include taxable municipal bonds, investors may stand to benefit. The municipal market of the last two years provided active managers with the opportunity to enhance returns in their funds; investors might now consider exploring these funds as potential investment options."

In addition, Mackay takes the view that investing through a mutual fund captures the municipal-market opportunity:

"In response to a probable pivot by the Federal Reserve in 2024, we anticipate that short-term rates will decline, while longer-term bonds outperform. Therefore, investors may consider securing longer duration and income durability in the near term.

"However, higher yields only matter if they are in your portfolio. We believe investors have the opportunity to acquire high accrual rates, active portfolio positioning and the flexibility essential to capture the market's recovery through mutual funds.

"Other professionally managed solutions are available, such as passive, index-bound ETFs or buy-and-hold, laddered separately managed accounts, but in our opinion, the rigidity of their constrained investing approaches limits their efficacy. We believe that municipal market prices will rise and that mutual funds will provide a compelling vehicle to capture that performance potential."

The firm also anticipates that individual investors could embrace taxable municipal bonds in retirement plans: "We expect US-based, individual investor demand for taxable municipals will continue to increase. In our opinion, individuals will view taxable municipal bonds as an attractive complement to their investment-grade, corporate-bond exposure in their qualified accounts. Taxable municipal bonds can offer attractive absolute yields, credit spreads and additional return potential with the same strong fundamentals as traditional tax-exempt financings.

"Additionally, in our view, demand from both domestic and overseas institutional investors should be robust, as credit spreads remain attractive and hedging costs will most likely recede with the normalisation of yield curves around the world. This 'one-two punch' should increase demand and help propel returns in this often-overlooked segment of the municipal marketplace."

David Dowden, a managing director at the firm and portfolio manager of the MainStay municipal bond funds, joined the firm 15 years ago, following roles at Financial Guaranty Insurance Company, Alliance Capital Management and Merrill Lynch & Co. He says: “We’ve done a lot of work over the last two years to position funds appropriately.

“Our expectation is that we will experience reasonable growth, both from new flows into our products, as well as from existing clients and shareholders adding more money into their positions, as they recognise the value we see in the market.”

etfexpress.com

by Fiona Nicolson

March 22, 2024

[HB 24-1172: Unlocking Tax Increment Finance for CO Counties via County Revitalization Authorities - Brownstein]()

Counties in Colorado may soon have a new way to take advantage of tax increment financing (“TIF”). Currently, there are only two ways to leverage TIF in Colorado: establishment of an urban renewal authority (“URA”) or establishment of a downtown development authority (“DDA”). Both URAs and DDAs are governmental entities that can only be created by municipalities, and they are authorized to implement primarily municipal tools. House Bill 24-1172, sponsored by Reps. Rick Taggart (R) and Shannon Bird (D) and Sens. Barbara Kirkmeyer (R) and Kyle Mullica (D), proposes to bring the power of TIF to counties by creating a process for counties to establish a County Revitalization Authority (“CRA”) that can, among other things, leverage TIF and private financing to address underutilized or deteriorating areas within counties that could benefit from strategic economic investment. On March 11, 2024, the House passed the bill on its third reading.

REVITALIZATION PROCESS AND TIF

If HB 24-1172 becomes law in its current form, a CRA could be created after a petition is filed by 25 registered electors of a county, or a resolution is adopted by the board of county commissioners stating that there is a need for the CRA in the county, followed by a public hearing before the board of county commissioners. The CRA could then implement a county revitalization plan adopted by the board of county commissioners at a public hearing, which could authorize the CRA to collect TIF or exercise other powers such as eminent domain within the area established by the county revitalization plan.

[Continue reading.]()

BROWNSTEIN CLIENT ALERT, MARCH 21, 2024

[Wealth Boom Among Ultra-Rich Drives Demand for Municipal Bonds’ Tax Shield: Bloomberg]()

- **Adjusted gross income increased $2.2 trillion in 2021**

- **Munis historically serve as a tax-haven for the wealthy**

Americans are getting richer, setting up the municipal bond market for a bounty of opportunity.

New data from the Internal Revenue Service, analyzed by Western Asset Management Company, show adjusted-gross-income in the US increased $2.2 trillion in the 2021 tax year — a 17.5% surge — making it the highest year-over-year jump in the past two decades. The increase comes as many US households bounce back from a pandemic-induced slump where millions faced job cuts.

"Individuals have gotten wealthier and are falling into higher tax brackets and these individuals can benefit more from muni incomes than they could in the past," Western Asset's Samuel Weitzman said.

Continue reading.

Bloomberg Markets

By Skylar Woodhouse

March 20, 2024

States Warned of 'Recent and Ongoing' Cyber Threats to Critical Infrastructure.

The EPA and White House acknowledged water systems and other utilities "often lack the resources" to adopt rigorous cybersecurity measures. They want to partner to bolster the current efforts of state and local governments.

A letter last week from two senior Biden administration officials warned states of "disabling cyberattacks" that could "disrupt the critical lifeline of clean and safe drinking water, as well as impose significant costs on affected communities."

Just months after two separate attacks on water systems in Pennsylvania and Texas, Michael Regan, administrator of the Environmental Protection Agency, and Jake Sullivan, national security advisor, wrote governors warning of "two recent and ongoing" threats associated with China and Iran, and calling for their "partnership" in combating the issue.

"Drinking water and wastewater systems are an attractive target for cyberattacks," the two officials wrote, "because they are a lifeline critical infrastructure sector but often lack the resources and technical capacity to adopt rigorous cybersecurity practices."

Continue reading.

Route Fifty

By Chris Teale,
Staff Reporter, Route Fifty

MARCH 22, 2024

- **Ed. Note:** We appear to have finally created an issue of actual utility. We apologize for the convenience and can assure you that it won't happen again.
- Issuers On Notice For Climate Risks.
- Cybersecurity Disclosure Considerations for Municipal Issuers: Bracewell
- A Refresher on Selective Disclosure and Anti-Fraud Rules: Frost Brown Todd
- S&P: U.S. Local Governments Are Turning To Cyber Risk Pools For Savings And Security Benefits
- Puerto Rico Power Authority's Planned 'Turbo' Bonds Seen as Blueprint for Utilities.
- Muni Bond Games and the IRS' Lurking Arbitrage Vampires.
- IRS Expands Favorable Tax Treatment to Utility Securitizations That Use a State or Political Subdivision as Issuer: Hunton Andrews Kurth
- The Good, the Bad and the Extraordinary – Issuers May Be Able to Call Their Direct Pay Build America Bonds: Greenberg Traurig
- Arbitrage Rebate: Navigating Compliance and Maximizing Retained Earnings – Orrick Webinar Replay
- And Finally, Big Hitter, The Lama is brought to us this week by *Temple of 1001 Buddhas v. City of Fremont*. 1001, you say? Seems oddly specific, no? You counted, right? But, then again, we are talking about Fremont, CA, which the Court of Appeal described as, "located in a very high fire hazard area and an earthquake-induced landslide zone." So maybe it's just straight-up prudent to have 1001 deities of your choosing on standby. But it does feel like 1001 Zeuseses could be one too many.

REFERENDA - CALIFORNIA

Move Eden Housing v. City of Livermore

Court of Appeal, First District, Division 5, California - March 6, 2024 - Cal.Rptr.3d - 2024 WL 959630

Objectors petitioned for writ of mandate seeking to compel city, pursuant to Elections Code, to process objectors' referendum petition challenging city's resolution approving affordable housing project that contained component of a new public park.

Developer moved for bond.

The Superior Court granted motion for bond and denied petition. Objectors appealed.

The Court of Appeal held that:

- City's adoption of resolution was a legislative act subject to local referendum power;
- City did not act as state's administrative agent under statutes dissolving community redevelopment agencies; and
- Proceeding was to enforce Elections Code thus precluding statutory bond requirement.

City's adoption of resolution approving amendments to agreement with developer of affordable housing project was a legislative act subject to local referendum power, where resolution included decision to construct and improve a new public park.

City did not act as state's administrative agent under statutes dissolving community redevelopment agencies when city adopted resolution approving an affordable housing project, with a new public park component, on property that was a "housing asset" transferred to city as a successor to a former redevelopment agency, and thus city's adoption of resolution was a legislative act subject to local referendum power, even though the state-approved long range property management plan specified the use of the property as high density housing with an affordable component, where, in deciding to construct and improve a park, city made discretionary policy determinations that were not dictated by long range plan or any provision of dissolution statutes.

Proceeding on petition for writ of mandate seeking to compel city, pursuant to Elections Code, to process objectors' referendum petition challenging city's resolution approving affordable housing project that contained component of a new public park did not fall within scope of statute allowing a trial court to require the furnishing of a bond in actions brought to delay or thwart an affordable housing project, and therefore objectors were not required to furnish a bond; proceeding was brought to enforce provisions of Elections Code and secure for the city's voters their right to referendum, rather than to challenge project.

ZONING & PLANNING - CALIFORNIA

Temple of 1001 Buddhas v. City of Fremont

Court of Appeal, First District, Division 4, California - March 6, 2024 - Cal.Rptr.3d - 2024 WL 973921

Property owners filed petition for writ of mandamus as well as declaratory and injunctive relief, challenging a city hearing officer's administrative decision upholding city's nuisance determinations and orders related to construction of a residence on grounds of procedural due process and preemption of city's appeals process.

The Superior Court, San Francisco County, sitting by designation, denied the petition. Owners appealed.

The Court of Appeal held that:

- City's appeals process was preempted by state law;
- Issuance of traditional writ of mandate was warranted;
- Owners could not show present and actual controversy entitling them to declaratory relief;
- City's appeals process was not preempted to extent that nuisance determinations rested on zoning ordinance violations;
- Hearing officer did not act in excess of her jurisdiction by ordering owners to abate the nuisance;
- Owners did not establish there was financial bias that rendered hearing procedurally unfair arising from hearing officer's contract; and
- Deputy city attorney's presence at administrative appeal hearing was not a due process violation.

PACE - CALIFORNIA

Andrade v. Western Riverside Council of Governments

Court of Appeal, Fourth District, Division 1, California - February 20, 2024 - 318 Cal.Rptr.3d 396 - 2024 Daily Journal D.A.R. 1433

Homeowner brought action against association that was member of a regional government organization, alleging that a contractor fraudulently enrolled homeowner in a property assessed clean energy (PACE) program and seeking rescission of PACE loan agreements with association.

After association released its assessment and lien on homeowner's property and reimbursed her for certain property tax payments, homeowner moved for attorney fees. The Superior Court denied motion. Homeowner appealed.

The Court of Appeal held that:

- Action was an "action on a contract" under statute governing attorney fees for actions on a contract;
- Attorney fee statute operated to extend the mutual right to obtain attorney fees to the entire contract; and
- Remand was warranted for an assessment of whether homeowner was a prevailing party under attorney fee statute.

Homeowner's action against association that was member of a regional government organization, alleging that a contractor fraudulently enrolled homeowner in a property assessed clean energy (PACE) program and seeking rescission of PACE loan agreements with association, was an "action on a contract" under statute governing attorney fees for actions on a contract, where homeowner's claims principally concerned whether loan agreements were valid and enforceable.

ZONING & PLANNING - GEORGIA

Clay v. State

Court of Appeals of Georgia - February 2, 2024 - S.E.2d - 2024 WL 392996

Residents who owned, leased, and lived on property zoned for agricultural use filed action against state, seeking declaratory judgment that development and construction of electric vehicle manufacturing facilities on state-owned property violated local and state law, and seeking injunction to halt project.

State filed counterclaim seeking declaratory relief that zoning ordinances did not apply and moved for surety bond. Following hearing, the trial court granted motion for bond and ordered residents to post surety bond in amount of $364,619.55. Residents appealed.

The Court of Appeals held that:

- Trial court did not improperly shift burden of proof to residents to show why surety bond should not be granted, but
- Imposition of bond was improper where trial court failed to address whether all claims asserted by residents were meritorious.

Residents who owned, leased, and lived on property zoned for agricultural use abandoned argument for review that project to develop and construct electric vehicle manufacturing facilities on state-owned property did not involve political subdivisions and that action was not a public lawsuit, as would preclude imposition of surety bond on residents in action against state seeking declaratory judgment that project violated local and state law and seeking injunction to halt project; while residents challenged state's contention that project involved political subdivisions and that action was a public lawsuit at bond hearing, residents did not contest trial court's findings on appeal.

Use of state-owned land to develop and construct electric vehicle manufacturing facilities qualified as a government purpose, as would support grant of state's request for surety bond in action filed by residents who owned, leased, and lived on property zoned for agricultural use against state, seeking declaratory judgment that project violated local and state law and seeking injunction to halt project; project would provide extensive economic benefits to state through employment opportunities and additional tax revenue, as well as increased construction jobs, housing, and retail development.

Trial court did not improperly shift burden of proof to residents who owned, leased, and lived on property zoned for agricultural use to show why surety bond should not be granted in action filed by residents against state, seeking declaratory judgment that project to develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project; court placed burden on residents to show why bond should not be granted after first determining whether state had met its burden to show it was a political subdivision, that the lawsuit qualified as a public lawsuit to justify imposition of bond, that the claims lacked merit, and that the bond was in the public interest, which was consistent with statutory requirements.

Imposition of surety bond against residents who owned, leased, and lived on property zoned for agricultural use was improper in action against state seeking declaratory judgment that project to develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project, where trial court determined that state was likely to prevail by focusing only on claims regarding zoning issues without considering merits of other arguments asserted by residents, and it appeared from the record that at least one claim had merit.

PUBLIC UTILITIES - GEORGIA

City of Winder v. Barrow County

Supreme Court of Georgia - March 5, 2024 - S.E.2d - 2024 WL 923102

County brought action against city under the dispute resolution provisions of the Service Delivery Strategy (SDS) Act, challenging the manner of funding road maintenance and rates assessed for water utility services.

The Superior Court denied city’s motion to dismiss and for summary judgment, and granted county’s motion for partial summary judgment. City appealed, and the Court of Appeals affirmed. City petitioned for certiorari.

As matters of first impression, the Supreme Court held that:

- Determining whether the maintenance of county roads primarily benefited the unincorporated area of a county required consideration of the totality of the circumstances involved and could not be resolved as a matter of law;
- Services primarily for the benefit of the unincorporated area of the county must be funded through the mechanisms listed in the SDS Act; and
- Superior court did not have authority under the SDS Act to determine whether city’s water charges were an illegal tax on residents of unincorporated areas of the county, or whether city could transfer profits from providing water services to its general fund.

EMINENT DOMAIN - INDIANA

Gerlach v. Rokita

United States Court of Appeals, Seventh Circuit - March 6, 2024 - F.4th - 2024 WL 956858

Owner of dormant property, some of which she had reclaimed, brought § 1983 action against Indiana officials in their official and individual capacities, alleging that they violated the Fifth Amendment's Takings Clause by failing to pay her for interest accrued while reclaimed property was in state custody, and seeking just compensation as well as declaratory and injunctive relief.

Defendants moved for judgment on the pleadings. The United States District Court for the Southern District of Indiana granted defendants' motion and dismissed complaint with prejudice. Owner appealed, and while appeal was pending, Indiana modified governing statute to require that interest be paid on all property recovered thereunder, even if that property did not earn interest prior to state taking custody.

The Court of Appeals held that:

- In light of the change to the Revised Indiana Unclaimed Property Act, owner's claim for prospective relief was moot;
- Even if the Fifth Amendment Takings Clause created an implied direct cause of action by its text alone, owner's claims against Indiana officials in their official capacities for past Takings Clause violations, which were, in effect, claims against the State of Indiana itself, were barred by Eleventh Amendment sovereign immunity;
- Owner's § 1983 claim for compensatory relief against current and former Indiana officials in their individual capacities was really a claim against the state; and
- Because owner's § 1983 claim for compensatory relief against current and former Indiana officials in their individual capacities was really a claim against the state, it was doubly barred, first because § 1983 did not create a cause of action against the state and, second, because Indiana enjoyed sovereign immunity under the Eleventh Amendment.

EMINENT DOMAIN - LOUISIANA

Campo v. United States

United States Court of Federal Claims - February 9, 2024 - Fed.Cl. - 2024 WL 504316

Lessees of oyster beds and reefs filed putative class action seeking just compensation from United States for alleged permanent taking of their property by Army Corps of Engineers opening spillway as flood control structure, releasing nearly ten trillion gallons of freshwater from Mississippi River into oyster estuaries, thereby lowering natural and essential salinity levels of waters and marshes where lessees' oyster leases were located which increased mortality rate of oyster reefs, depriving lessees of their use, occupancy, and enjoyment of their property rights in their oysters and oyster leases.

Government moved to dismiss for failure to state claim or, alternatively, for summary judgment.

The Court of Federal Claims held that:

- Takings claim was barred by Louisiana law;
- Takings claim was barred by lease agreements; and
- Louisiana law did not violate unconstitutional conditions doctrine.

Under Louisiana law, as predicted by Court of Federal Claims, spillway from which Army Corps of Engineers released nearly ten trillion gallons of freshwater from river into oyster estuaries, thereby lowering natural and essential salinity levels of waters and marshes where lessees' oyster leases were located, constituted "integrated coastal protection" project intended to provide "flood control," within meaning of Louisiana statutes, prohibiting oyster lessees from maintaining any action against United States for any claim arising from project in relation to integrated coastal protection, thus barring lessees' takings claim arising from increased mortality rate of their oyster reefs and deprivation of their use, occupancy, and enjoyment of property rights in their oysters and oyster leases.

Under Louisiana law, lessees of oyster beds and reefs lacked any right to sue United States for Fifth Amendment taking arising from Army Corps of Engineers' opening of spillway and releasing nearly ten trillion gallons of freshwater from river into oyster estuaries, under lease agreements requiring lessees to abide by Louisiana's myriad restrictions in harvesting of oysters, seeding of oysters, and filing of lawsuits for harm to oysters, since Louisiana statutes prohibited oyster lessees from maintaining any action against United States for any claim arising from project in relation to integrated coastal protection, and spillway was such integrated coastal protection project intended to provide flood control.

Louisiana statutes, prohibiting oyster lessees from maintaining any action against United States for any claim arising from project in relation to integrated coastal protection, did not violate unconstitutional conditions doctrine, preventing states from imposing conditions requiring relinquishment of constitutional rights, although Louisiana statutes barred lessees' takings claim arising from increased mortality of their oyster reefs and deprivation of their use and enjoyment of property rights in their oysters and oyster leases due to Army Corps of Engineers' release of water from spillway that was integrated coastal protection project, since oyster leases precluded lessees from suing United States, so Louisiana did not impose condition resulting in relinquishment of right they never had.

EMINENT DOMAIN - NEW YORK

Board of Managers of Lido Beach Towers Condominium v. City of Long Beach

Supreme Court, Appellate Division, Second Department, New York - January 24, 2024 - 223 A.D.3d 774 - 204 N.Y.S.3d 145 - 2024 N.Y. Slip Op. 00290

Board of managers for condominium brought action against city, inter alia, to recover damages for inverse condemnation, arising from city's alleged failure to timely seek permanent easement over condominium property via condemnation.

The Supreme Court, Nassau County, denied city's motion to dismiss claim as time-barred, and city appealed.

The Supreme Court, Appellate Division, held that three-year statute of limitations for damages to property applied to claim.

Three-year statute of limitations for damages to property, rather than one-year-and-ninety-day statute of limitations for damages claims against political subdivisions, applied to inverse condemnation claim by board of managers for condominium against city, since inverse condemnation claims did not sound in tort.

EMINENT DOMAIN - NEW YORK

Brinkmann v. Town of Southold, New York

United States Court of Appeals, Second Circuit - March 13, 2024 - F.4th - 2024 WL 1080032

Property owners filed § 1983 action alleging that town violated Takings Clause by exercising eminent domain to take their property for creation of park as pretext for defeating their commercial use.

The United States District Court for the Eastern District of New York denied owners' motion for preliminary injunction and dismissed complaint. Owners appealed.

The Court of Appeals held that town's exercise of eminent domain to take property for creation of park did not violate Takings Clause.

Town's exercise of eminent domain to take property for creation of park did not violate Takings Clause, even if town took land to prevent owners' commercial use; public park was public use, town paid fair compensation, and there was no indication that town meant to confer any private benefit or intended to use property for anything other than public park.

EMINENT DOMAIN - OHIO

State ex rel. AWMS Water Solutions, L.L.C. v. Mertz

Supreme Court of Ohio - January 24, 2024 - N.E.3d - 2024 WL 251182 - 2024-Ohio-200

Operator of saltwater-injection wells associated with oil and gas production filed petition for writ of mandamus to compel state to commence proceedings for property appropriation, alleging that state's suspension order with respect to one of its two wells effected a governmental taking of operator's property, requiring the state to pay it just compensation.

The Eleventh District Court of Appeals granted the state's motion for summary judgment. Operator appealed. The Supreme Court reversed and remanded. On remand, the Court of Appeals denied operator's petition for writ of mandamus. Operator appealed.

The Supreme Court held that:

- Court of Appeals ventured beyond scope of Supreme Court's remand order by determining that operator lacked cognizable property interest, and
- Court of Appeals' determination that operator lacked cognizable property interest for operator's takings claim violated doctrine of the law of the case.

Court of Appeals ventured beyond scope of Supreme Court's remand order by determining that operator of saltwater-injection wells lacked cognizable property interest, and, thus, erred in denying writ of mandamus to compel state to commence proceedings for property appropriation; Supreme Court specified that, on remand, Court of Appeals was required to weigh parties' evidence related to operator's takings claim and to weigh parties' evidence in accordance with Supreme Court's opinion and to balance all Penn Central factors to determine whether operator suffered partial taking, and, instead, Court of Appeals sua sponte ordered parties to file supplemental briefs as to whether operator had cognizable property interest under Takings Clause and denied writ without weighing parties' evidence.

Court of Appeals' determination that operator of saltwater-injection wells lacked cognizable property interest for operator's takings claim violated doctrine of the law of the case, in mandamus proceedings to compel state to commence proceedings for property appropriation; Supreme Court recognized that operator's leasehold was a property interest that triggered takings analysis, and, on remand, Court of Appeals determined that Supreme Court had not deemed that interest to be property interest for purposes of Takings Clause, that question of whether operator had cognizable property interest had not been at issue before Supreme Court, and that Supreme Court noted only that operator was prima facie entitled to invoke constitutional right to just compensation.

SCHOOLS - VIRGINIA

Ibanez v. Albemarle County School Board

Court of Appeals of Virginia, Richmond - February 20, 2024 - 80 Va.App. 169 - 897 S.E.2d 300

Parents, on behalf of themselves and their children, brought action alleging that county school board's anti-racism policy violated their rights under Virginia Constitution and Virginia statute.

The Circuit Court dismissed complaint, and parents appealed.

The Court of Appeals held that:

- Virginia Constitution's due process, equal protection, and free speech provisions were self-executing;
- Statute providing parents with fundamental right to make decisions concerning upbringing, education, and care of their children was not self-executing;
- Parents lacked standing to bring action seeking declaratory judgment that policy violated Virginia Constitution's guarantee of freedom from government discrimination;
- Policy did not compel speech, in violation of Virginia Constitution's free speech provision;
- Policy did not amount to viewpoint discrimination under free speech provision;
- Policy was not unconstitutionally vague; and
- Policy did not violate parents' due process right to direct upbringing, education, and control of their children.

Unpacking the American Rescue Plan's 'Revenue Loss' Provision for Local Governments.

This month marks the third anniversary of the passage of the American Rescue Plan Act (ARPA) and its $350 billion Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, administered by the U.S. Department of the Treasury. State, local, and tribal governments have had three years to appropriate, obligate and spend SLFRF dollars to address the health, economic and fiscal effects of the COVID-19 pandemic.

Since the SLFRF program's inception, Brookings Metro, the National League of Cities (NLC), and the National Association of Counties (NACo) have monitored how the nation's largest cities and counties (those with populations greater than 250,000) have used their $65 billion share of these funds through the Local Government ARPA Investment Tracker. This update provides new insights into how large local governments have used SLFRF dollars over the past three years to foster an equitable economic recovery from COVID-19 and their progress to date in obligating these funds in time for the Treasury's impending December 2024 deadline. As of ARPA's three-year anniversary, all SLFRF recipients have just over nine months left to meet this deadline before they will be required to return any unobligated funding to the Treasury.

Continue reading.

National League of Cities

BY: Julia Bauer & Patrick Rochford

MARCH 15, 2024

[S&P: U.S. Local Governments Are Turning To Cyber Risk Pools For Savings And Security Benefits]

Key Takeaways

- High cyber insurance premiums and difficulties securing coverage are prompting local governments to form cyber risk pools, where they self-insure in a group administered by a third-party manager.
- In addition to more affordable coverage, mutualization provides a forum in which similar entities can discuss cyber security risks and develop best practices.
- Participation in risk pools, coupled with adherence to rigorous cyber security risk mitigation strategies, may reduce costs and could improve public sector entities' overall credit quality.

Continue reading.

14 Mar, 2024

[Puerto Rico Power Authority's Planned 'Turbo' Bonds Seen as Blueprint for Utilities.]

- **Debt has early-redemption feature to ensure repayment**
- **Structure may serve as useful tool for other utilities**

The debt-restructuring plan put forward by Puerto Rico's bankrupt power authority includes a type of financing common among tobacco-settlement debt that may serve as a blueprint for other utilities seeking to raise money to meet capital needs.

Known as "turbo bonds," the debt — backed by a dedicated charge and a fee on customers' monthly bills — has the potential to be repaid in full before maturity because any excess revenue must be used to pay back investors early.

Many bonds repaid from tobacco settlement receipts use this early redemption structure as a way to ensure repayment at a time when the broader trend is for cigarette sales to drop over time. Similarly, demand for energy supplied by the Puerto Rico Electric Power Authority is on course to slump as the island's population declines and more residents and businesses turn to solar power.

The securities may serve as a useful financing tool for electric utilities across the US that are experiencing a decline in usage as customers install solar panels to their homes and rely less on the power grid, David Brownstein, the former head of Citigroup Inc's soon-to-close public finance department and now a principal at BGC Partners Advisory, said while testifying in court Friday during a confirmation hearing on the utility's debt-cutting proposal.

"Everybody is dealing with the same solar issue now. That's why I believe this is going to become the market norm for utilities," Brownstein said about the turbo-bond structure, according to a transcript of the court hearing.

BGC Partners Advisory is the restructuring adviser to the island's financial oversight board, which is managing Puerto Rico's bankruptcy and the workouts of its governmental agencies. Prepa, as the power authority is known, is seeking to slash its $10 billion of debt and financial obligations by as much as 75%.

Most power utilities pledge to raise electricity rates to cover principal and interest payments. Prepa's debt plan doesn't include such a promise, but its new bonds will be repaid from revenue collected through a fixed "legacy charge" and also a volumetric fee on customers' monthly bill. If revenue from those charges comes in stronger than anticipated, then investors will be repaid sooner as the turbo bonds allow for accelerated payments.

"The structure of the Prepa bonds we have created, I believe, will be impactful to our entire market going forward," Brownstein said.

Prepa's debt plan also includes contingent value instruments. Called CVIs, those securities will repay Prepa investors from legacy-charge collections, but only after the restructured fixed-rate bonds are paid off in full within 35 years.

CVIs were also used in Puerto Rico's own bankruptcy, but they're structured differently.

Bloomberg Markets

By Michelle Kaske

March 12, 2024

CUSIP Global Services Adds Climate Bonds Initiative's Green Bond Data to Global Data Feeds.

Partnership with Climate Bonds Initiative Expands Coverage of ESG Data Attributes Globally

NORWALK, Conn. and LONDON, March 12, 2024 (GLOBE NEWSWIRE) — CUSIP Global Services (CGS) today announced an alliance with the Climate Bonds Initiative (Climate Bonds), an international organization working to mobilize global capital for climate action, to add green bond data attributes for corporate and municipal bonds in its global data feed and desktop products. The new green bond tags will enable fixed income market participants to instantly identify and categorize securities that contain specific environmentally sustainable growth attributes, based on Climate Bonds' internationally recognized taxonomy for evaluating green finance principles and establishing green bond standards.

The CUSIP is a nine-character alphanumeric security identifier that captures the unique attributes of issuers and their financial instruments throughout the U.S. and Canada. In the U.S. bond market, the CUSIP is used by investors to uniquely identify and track securities and link them with the underlying issuing entity. With this enhancement of its data feed and desktop products, CGS will append a text-based descriptor to the standard CUSIP ID for green bonds. The new attributes, which include more granular use of proceeds information and non-alignment details, cover municipal and corporate debt issued globally and are provided at no additional cost to CGS customers.

"Green, social and sustainability-linked bond issuance accounted for roughly $1 trillion in bond issuance last year, as corporate and municipal issuers increasingly focus on this market segment," said Scott Preiss, Senior Vice President and Global Head, CUSIP Global Services. "By providing green bond tags as part of our data feed and desktop products, we are making it possible for market participants to quickly and reliably identify securities that meet key sustainable finance criteria using Climate Bonds' proven evaluation standard."

[Continue reading.](#)

CUSIP Global Services

Tue, Mar 12, 2024

[Fitch: More U.S. Essential Housing Projects Likely Amid Affordability Crisis](#)

Fitch Ratings-San Francisco/New York/Chicago-11 March 2024: U.S. local governments and state housing agencies are seeking to curb the widening affordability gap by entering into public-private partnerships to build essential housing, according to Fitch Ratings in a new report.

Amid the broader affordability crisis lies a more distressing predicament for middle-income earners such as teachers, police officers, and health care workers looking for a place to live. "Despite earning between 80% and 120% of the area median income, these essential workers often find it challenging to afford housing near their places of employment due to high costs and a shortage of affordable options," said Senior Director Karen Fitzgerald.

In response, governments have partnered with private developers to create essential housing projects near economic centers and transit hubs. These partnerships have been able to take advantage of low interest rate loans, tax incentives, subsidies, and land grants to make projects financially viable. Not surprisingly, the demand for essential housing is on the rise.

Furthermore, the Infrastructure Investment and Jobs Act has expanded lending capacity for transportation infrastructure projects, including Transit-Oriented Development (TOD). The TOD Program aims to foster compact, walkable communities around transit stations, with financing options available through the Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing programs.

From a credit perspective, Fitch considers several key nuances and risks to future cash flow volatility when rating essential housing projects. For one, projects with rents that vary across AMI levels may be subject to ongoing cash flow volatility. "Material exposure to refinance risk could be problematic if projects cannot be refinanced before maturity," said Fitzgerald. To address refinance risk, Fitch may assume fully amortizing, level-pay, annual debt service through bond maturity for projects with non-fully amortizing debt.

Other analytical considerations are addressed in Fitch's "Essential Housing Initiatives" report, available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

P3 Infrastructure Assessment Grants: New DOT Grants to Help State and Local Governments Study P3 Possibilities - Orrick

The Department of Transportation's Build America Bureau is soliciting applications until May 10 for grants intended to help state and local governments assess whether any of their assets would be viable for monetization in a public-private partnership (P3). Click here to apply.

The Innovative Finance and Asset Concession Grant Program provides up to $2 million per recipient to analyze, evaluate and determine whether any existing highway, transit, passenger rail, freight, port, airport and transit-oriented development[1] asset could be monetized in a P3 arrangement.

States, tribal governments, local governments and special purpose public authorities that own or control an eligible project are eligible recipients.

Asset Monetization in Transportation

An asset monetization in this context involves a private concessionaire paying a public entity for the right to improve, maintain, manage and/or operate a project. This approach is taken most frequently for toll roads, airports, ports, water treatment and distribution facilities and other assets with the potential to generate revenue.

Continue reading.

March.14.2024

$3.3B in Federal Grants Announced for Communities Split Apart by Highways.

The one-time infusion of cash for highway caps, bike trails and other improvements shows the Biden administration's priorities for one of its most high-profile infrastructure initiatives.

The Biden administration on Wednesday unveiled the winners of more than $3.3 billion in grants for one of its signature infrastructure initiatives, an effort that aims to reduce the harm caused by the construction of highways, rail lines and other infrastructure that sliced through neighborhoods across the country.

The grants would pay for new freeway "caps" in Atlanta, Austin, Dallas, Philadelphia and Portland, Ore. The short highway covers often include amenities like parks and trails to help connect the surrounding neighborhoods. Massachusetts will use its $335 million grant to rebuild an aging highway viaduct while creating new parks, building a new bridge for cyclists and pedestrians, and opening a new commuter rail station. New York's $180 million award will go toward making improvements to downtown Syracuse after removing a highway viaduct there. Jacksonville, Florida, will use $147 million to build 15 miles of a new off-street trail system that will connect historically Black neighborhoods to downtown and other amenities. And the Gulfton and Kashmere Gardens neighborhoods in Houston, where residents have long had to contend with chronic flooding and inadequate infrastructure, will get improved sidewalks, drainage and tree cover.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

MARCH 13, 2024

New Forever Chemical Rules Could Escalate Water Bills, US Cities Warn.

With the EPA's first-ever regulation of PFAS chemicals in the water supply expected soon, local officials say they need more funding to comply.

Hastings, Minnesota, is staring down a $69 million price tag for three new treatment plants to remove PFAS chemicals from its water supply, ahead of new US federal regulations limiting the amount of so-called forever chemicals in public drinking water — which could come as early as this month.

For a town of less than 22,000 people with an operation and maintenance budget of $3 million a year for its water system, the project amounts to a "budget buster," says city administrator Dan Wietecha. Operation and maintenance costs for the new plants could add as much as $1 million to the tab each year.

The costs will likely be passed down to the public, unless the city can obtain funding through other means. "Water rates would essentially double in three years, triple in five years, and continue increasing," Wietecha says. "So, yeah, we need outside funding. This is just an unrealistic burden to put on our residents and businesses."

Continue reading.

Bloomberg CityLab

By Linda Poon

March 13, 2024

Soaring Denver-Area Rents Spur $200 Million Student Housing Bond.

- **Colorado School of Mines invests in 800-bed sophomore dorm**
- **Growing trend of colleges solving affordable housing shortage**

The Colorado School of Mines is turning to the muni market for the second time in six months to address a housing shortage for its growing campus of roughly 7,000 students just outside of Denver.

The investment-grade deal, managed by Morgan Stanley, is slated to raise nearly $200 million to fund the construction of more affordable housing for sophomores, according to bond documents. In October, the school sold $132 million of debt to renovate a student complex called Mines Park, adding roughly 520 beds to the apartment-style community for more senior and graduate students.

The science and engineering school, located in Golden, Colorado, about 15 miles (24 kilometers) outside Denver, is part of a growing cohort of colleges facing a housing crunch in already competitive markets.

Continue reading.

Bloomberg Markets

By Melina Chalkia

March 13, 2024

Muni Bond Games and the IRS' Lurking Arbitrage Vampires.

Today's interest rates may tempt public financiers to try to play the spread between tax-exempt and taxable bond yields. That invites heightened federal scrutiny, but there are some strategies likely to avoid the bite of the IRS.

America's public finance system is unique in its federalist heritage of allowing states and their localities to issue bonds whose interest is exempt from taxation by the IRS. The result is that interest rates on municipal bond debt are significantly lower than any other yields in the credit markets, which materially reduces the cost of financing essential public works.

Sometimes, though, unusual interest rate spreads invite a bond issuer to try to game the system, particularly by using low-cost proceeds from tax-exempt debt to find higher yields elsewhere in the markets. It's a potentially risky play given longstanding federal rules, but that's not to say there aren't some opportunities for savvy — and cautious — public financiers.

First, though, some relevant historical context: The issuance of tax-exempt bonds was long thought to be a constitutional right under the 10th Amendment and the associated concept of reciprocal immunity — that under the separation of powers, the two levels of government, state and federal, cannot tax each other. In 1988, however, the Supreme Court ruled that the federal tax exemption was not a constitutional right but rather a legislative grant to the states from Congress and thus subject to tinkering on Capitol Hill.

Continue reading.

governing.com

OPINION | March 13, 2024 • Girard Miller

U of I Picks a New Partner to Finance Phoenix Deal.

The University of Idaho hasn't begun issuing University of Phoenix bonds — but it is already turning to a Plan B, or a Plan C.

U of I officials are downplaying the impacts on the controversial $685 million purchase.

The Arizona Industrial Development Authority was the U of I's first choice for issuing the Phoenix bonds. However, AzIDA "passed on the opportunity to participate in the financing," Dirk Swift, the authority's executive director, told the Lewiston Tribune Wednesday.

The reasons for AzIDA's decision are not clear. Idaho Education News has made repeated requests for comment from Arizona Gov. Katie Hobbs' office, but has received no response.

AzIDA became the U of I's first choice for issuing Phoenix bonds, since the Idaho Housing and Financing Association does not have the authority to finance "intangible assets," an asset that is not physical in nature. The U of I settled on two possible bonding agents, according to a university "frequently asked questions" page that still lists AzIDA as its Phoenix bonding agent.

"Both Wisconsin (Public Finance Authority) and Arizona IDA can issue debt to finance intangible assets," the U of I said. "These two issuers have a deep bench of experience with such offerings. Considering fees, experience and other factors, we have selected Arizona IDA."

The U of I page does not refer to the agency that will apparently issue the bonds: National Finance Authority, based in New Hampshire. The U of I approached "a number" of potential bond issuers, spokeswoman Jodi Walker said in a statement.

"While AzIDA declined to participate, NFA agreed to participate in the financing," she said. "The AzIDA decision has no impact on our transaction."

Bonding is a major obstacle facing the Phoenix purchase.

U of I and State Board of Education officials have said that the purchase can't be financed while the Phoenix acquisition is mired in court. Attorney General Raúl Labrador has challenged the purchase, with an Idaho Supreme Court hearing expected in June. Legislators have also threatened a lawsuit. Legislators have also floated the idea of overhauling the purchase, which would put Phoenix under the masthead of a U of I-affiliated nonprofit.

The purchase faces a nonbinding May 31 deadline. If a deal isn't closed by that date, the U of I or Phoenix can walk away from the table.

idahonews.org

Kevin Richert | 03/15/2024

[New Jersey Enacts Groundbreaking Charter School Financing Law: Ballard Spahr]()

Summary

New Jersey recently enacted legislation enabling public charter schools to access low-interest financing through the Public Charter and Renaissance School Facilities Loan Program, aiming to enhance educational infrastructure and opportunities. This groundbreaking initiative will allow public charter schools in 31 School Development Authority districts to fund new construction projects and perform major renovation and rehabilitation projects.

The Upshot

- This historic law in New Jersey establishes a first-ever funding framework for public charter schools and renaissance schools to be able to obtain low-interest financing for construction, expansion, and improvements to their facilities.
- The new Economic Development Authority low-interest revolving loan program will fund new construction, critical facility upgrades, and major renovation and rehabilitation projects for public charter schools and renaissance schools in the 31 School Development Authority districts identified as having the greatest need for school construction and improvement projects.
- By offering charter schools and renaissance schools access to financial resources that were previously out of reach, the law aims to alleviate financial barriers and enable these schools to enhance their infrastructure to better serve students.

Continue reading.

March 13, 2024

[Local Fiscal Response to State Preemption: A Case Study of Massachusetts' Proposition 2½ Tax Referendum.]()

Abstract

State preemption in the form of tax and expenditure limits significantly limits local revenue-raising capacity. To gain insights into how local governments respond to fiscal preemption through direct democracy, this study focuses on tax referenda that override the levy limit set by Proposition 2½ in Massachusetts. Analyzing a sample of 320 municipalities from 2010 to 2021, we investigate the influence of fiscal slack resources and tax burden on the levy limit overrides and exclusions. Our analysis breaks down the tax referendum process into two stages, highlighting the involvement of different decision-makers: local officials proposing the referendum and individual voters approving

it. We find that municipalities are motivated to seek tax referenda due to diminishing fiscal slack resources, yet the tax burden on residents can discourage such pursuits.

Continue reading.

The Journal of Federalism

by Shu Wang, Yonghong Wu

Published: 15 March 2024

IRS Expands Favorable Tax Treatment to Utility Securitizations That Use a State or Political Subdivision as Issuer: Hunton Andrews Kurth

The Internal Revenue Service ("IRS") issued a new revenue procedure 2024-15 (the "2024 Rev. Proc.") on February 29, 2024, allowing more types of utility securitization transactions to qualify for certain favorable tax treatment. The 2024 Rev. Proc. allows for a utility/sponsor to defer recognition of gross income until the related securitization charges are recognized in accordance with the utility usual method of accounting. The 2024 Rev. Proc. will allow utility securitization transactions using a state entity issuer to qualify for the same tax treatment as has been available to utility securitizations using a wholly owned special purpose entity of the utility. In addition, the 2024 Rev. Proc. modified the existing 2005 Rev. Proc. (as defined below) to provide that debt service payments in a qualifying securitization may be made annually. It also amended the definition of "Public Utility" under the 2005 Rev. Proc. to include any utility company that is subject to regulatory authority of a state public utility commission or other appropriate agency, thereby expanding the definition to include utilities that are not investor owned utilities.

Utility securitization is a form of debt financing secured by the right to bill and collect a dedicated, nonbypassable charge (the "Securitization Charge") payable by the utility's customers within the utility's historic service territory. The Securitization Charge is created as a present property right pursuant to a state statute and financing order (referred to herein as "Securitization Property") from the state public utilities commission (the "Regulatory Authority"). In the vast majority of transactions completed to date, the utility sells/transfers the Securitization Property to a wholly owned, bankruptcy remote special purpose vehicle (an "SPE") created for the purpose of issuing securitization bonds secured by the Securitization Property. The utility uses the proceeds from the sale/transfer to recover discrete costs authorized to be recovered pursuant to the state statute and financing order.

In 2005, the IRS adopted revenue procedure 2005-62 (the "2005 Rev. Proc.") which established that so long as the securitization is structured to meet the requirements outlined in the 2005 Rev. Proc., the utility will not recognize gross income upon (1) the receipt of a financing order from the Regulatory Authority, (2) the receipt of consideration in exchange for the sale/transfer of the Securitization Property to the SPE or (3) the receipt of consideration in exchange for the issuance of the securitization bonds by the SPE. Instead, the securitization bonds are treated as obligations of the utility and the Securitization Charges are treated as gross income to the utility recognized under the utility's usual method of accounting.

A requirement of the 2005 Rev. Proc., however, is the securitization bonds are issued by an SPE wholly-owned by the utility. By adopting the 2024 Rev. Proc., securitization bonds issued by a state, political subdivision thereof or other organization authorized to issue debt on behalf of the state or political subdivision that is so designated pursuant to a qualifying securitization financing legislation as a financing entity (referred to therein as a "qualifying state financing entity") will also be eligible for similar tax treatment, meaning the utility will not recognize gross income upon (i) the receipt of the financing order, (ii) the sale/transfer of the Securitization Property to a qualifying state financing entity, (iii) the issuance of the securitization bonds by the qualifying state financing entity or (iv) the utility's receipt of ultimate proceeds from the securitization bonds issued. Furthermore, payments from the utility to the qualifying state financing entity pursuant to the securitization bonds will be treated as payments on obligations of the utility. Finally, the Securitization Charges will be treated as gross income of the utility recognized under the utility's usual method of accounting.

The expansion of the revenue procedure to cover bonds issued by a qualifying state financing entity will allow a transaction to be structured and sold by a municipal issuer similar to recent transactions sponsored by public utilities in Oklahoma and Texas that were used to recover costs associated with Winter Storm Uri without potentially adverse tax consequences to the sponsoring utility. In this structure, the sponsor utility will apply for a financing order from its Regulatory Authority pursuant to qualifying state legislation. The financing order will, among other things, authorize the bond issuance and create the Securitization Property which will be sold by the utility to the qualifying state financing entity in an absolute transfer and true sale and pledged for the benefit of bondholders.

Pursuant to many qualifying securitization statutes, there is a statutory test imposed upon any issuance of securitization bonds that structuring, marketing and pricing of the securitization bonds results in the lowest Securitization Charges consistent with market conditions at the time of pricing and the terms of the financing order. Prior to the 2024 Rev. Proc., sponsoring utilities analyzed and compared the costs of issuing securitization bonds through a registered public offering or a private offering in reliance on Rule 144A. Now with the 2024 Rev. Proc., utilities and underwriters in states where the qualifying securitization financing legislation permits the use of a state financing structure will now also need to analyze the benefits to customers from this new option. When analyzing the benefits of a state financing structure, it is important to note, however, that the 2024 Rev. Proc. does not address whether securitization bonds issued by a qualifying state financing entity would be exempt from federal income tax. Therefore, further analysis will be required, on a case by case basis, to determine if interest on the bonds could be exempt from federal income taxes.

Hunton Andrews Kurth LLP – Michael F. Fitzpatrick, Jr., Adam O'Brian and George C. Howell III

March 11 2024

The Good, the Bad and the Extraordinary - Issuers May Be Able to Call Their Direct Pay Build America Bonds: Greenberg Traurig

Go-To Guide:

- Build America Bonds (BABs) provided vital funding during the Great Recession
- Direct Pay BABs subsidies paid to issuers have been reduced since 2013
- A recent court decision sheds light on the legal mechanics of sequestration and opens the door for possible refunding opportunities

The Good

Build America Bonds (BABs) were introduced in 2009 as part of the American Recovery and Reinvestment Act (the ARRA) to stimulate the economy in the aftermath of the 2008 financial crisis. Section 54AA of the Internal Revenue Code of 1986, as amended (the Code) provided for the issuance of BABs, along with a 35% credit for bondholders. Section 6431 of the Code added a direct pay option for BABs (Direct Pay BABs), allowing issuers of Direct Pay BABs to receive a subsidy payment equal to 35% of the interest they owed to bondholders. To receive either benefit, BABs had to be issued between April 2009 and December 2010.

BABs were a popular option with many issuers. The total amount of BABs issued from April 2009 to December 2010 was reportedly over $181 billion, representing over one-fifth of the total amount of municipal debt issued over the same period. BABs were used for all kinds of public purpose projects including about 30% towards educational facilities. Direct Pay BABs gave issuers access to the taxable market, allowing issuers to finance much-needed public infrastructure projects during a particularly vulnerable time for state and local government budgets. Both issuers and investors praised the program, and it ended up being one of the major success stories that came out of the ARRA.

The Bad

While BABs in many ways remain a success, a wrench was thrown into the program beginning with the Budget Control Act that Congress passed in 2011 (the Budget Control Act). The Budget Control Act contained a sequester provision that reduced the amount of the subsidy issuers received on Direct Pay BABs in the event certain budgetary parameters were not met. That sequester was triggered in 2012 when Congress failed to accomplish certain deficit control targets. Since 2013, the subsidies paid to issuers for their Direct Pay BABs have been reduced by anywhere from 8.7% to the current rate of 5.7%.

This material reduction in the subsidy has hurt state and local governments. They must continue to pay bondholders the full taxable rate without receiving the full amount of the expected reimbursement from the federal government. According to some estimates, the cost to state and local governments has already exceeded $2 billion. Exacerbating the issue has been the fact that almost all Direct Pay BABs were issued with “make-whole” optional call provisions requiring issuers to pay bondholders the total interest that would be paid on the bonds until final maturity to permit issuers to refund their Direct Pay BABs early. This requirement makes the refunding of Direct Pay BABs financially untenable.

Most Direct Pay BABs also contain an extraordinary optional call provision that allow issuers to call their Direct Pay BABs at par (or a reduced make-whole amount) if a “material adverse change” occurs to section 54AA or section 6431 pursuant to which the issuer’s 35% subsidy is reduced or eliminated (or similar language). The intent is to allow issuers to refund their Direct Pay BABs should the subsidy that underpins the BABs model be materially reduced due to a change in law. While everyone anticipated the possibility that the subsidy might be reduced, the roundabout way it ended up occurring caused much consternation for issuers and counsel alike. The language in section 54AA and section 6431 was not directly amended, and this resulted in uncertainty about how to interpret the legal mechanics of the sequestration; did Congress in effect change the law under section 54AA and section 6431 or was it simply an appropriation tactic where the law surrounding the subsidy remained the same, but a budget technicality meant there were less funds to pay issuers. As a result, despite the clear materiality of the subsidy reduction experienced by issuers, the majority of issuers and their counsel had doubts as to whether that was due to a “material change” to section 54AA or section 6431 and held on using the extraordinary call provisions.

The Extraordinary

[*Indiana Municipal Power Agency v. U.S.*] is a case recently decided in Federal Claims Court, affirmed and adopted by the Federal Circuit and, on Nov. 20, 2023, denied certiorari by the U.S. Supreme Court. This makes the decision the proverbial "law of the land." The *Indiana Municipal Power Agency* case involved a group of municipal power entities with outstanding BABs that were suing the federal government to both restore the BABs subsidy to 35% and pay the full amount that should have been paid to them, assuming at the 35% subsidy rate, since 2013. The power providers had two primary arguments: (1) that the federal government violated section 1531 of the ARRA (section 1531 added section 54AA and section 6431 to the Code); and (2) that the federal government breached its contractual obligations created by section 1531. The court has a lengthy discussion of law that is beyond the scope of this update including (i) whether section 1324 of the Code (section 1324 provides the appropriation for the BABs subsidies and the section that was targeted by the sequestration) authorizes "direct spending" or is an "appropriation Act"; (ii) whether the subsidy payments can be treated as an overpayment of taxes; and (iii) whether the full subsidy payments are owed due to any contractual obligations.

The court dismissed the claims of the power providers, concluding that the 35% subsidy was not owed until the related Form 8038-CP was filed and that the subsidy was properly sequestered, and that such sequestration has the effect of reducing the federal government's payment obligation. Therefore, the court concluded, the federal government did not owe the power providers the full subsidy. While the plaintiffs failed to restore the subsidy to 35%, the court's decision did represent a victory for issuers at large. In arriving at its conclusion, the court stated that, "The spending cuts implemented by the Taxpayer Relief Act and the Budget Control Act are irreconcilable with section 1531's 35-percent payment rate. *As a result, the Taxpayer Relief Act altered the Direct Payment BABs program, reducing the government's payment obligation. When sequestration was implemented in 2013, the defendant was required by law to pay issuers of BABs a reduced rate.* This change was consistent with the basic principle that Congress is free to amend pre-existing laws" (emphasis added). Essentially, the court ruled that the sequestration legislation changed section 1531, and thereby sections 54AA and 6431, materially reducing the amount the federal government is required to pay by law to issuers of Direct Pay BABs.

As noted above, issuers and their counsel have had concerns about using the extraordinary call provision in the context of sequestration due to uncertainty surrounding the legal mechanics involved in sequestration and the resulting reduction of the 35% subsidy. The court's opinion in *Indiana Municipal Power Agency* provides clarification on this question and allows issuers and their counsel to conclude that sequestration caused a "material change" to occur to sections 54AA and 6431. This may provide comfort to both issuers and their counsel that an extraordinary optional redemption event has been triggered based on the language used in many such provisions, thereby allowing issuers to refund or redeem their Direct Pay BABs using the more favorable terms applicable to the extraordinary call provisions.

The above is only a summary on the background of BABs, sequestration, and recent developments that may positively impact issuers' ability to refund or redeem their Direct Pay BABs under the extraordinary optional call provisions with their bond documents. Those with questions about their entity's particular situation and options should consult with experienced public finance counsel.

Greenberg Traurig LLP – Solomon Cadle, Vanessa Albert Lowry, Andrew P. Rubin and Martye Kendrick

March 11 2024

Look For Munis To Behave Like Bonds Again In 2024.

Now that the Fed is signaling an end to rate hikes and the possibility of rate cuts, investors can focus on municipal bonds behaving like bonds: offering tax-exempt income and providing portfolio diversification. Indeed, reasons abound for considering a meaningful allocation to municipals.

Across the muni marketplace, credit fundamentals are in great shape, in the wake of Covid-19 related stimulus and three consecutive years of extremely strong revenues. We believe the market overall is well positioned to handle any economic downturn, should there be one. And the rating agencies agree, with upgrades outpacing downgrades by a roughly four-to-one ratio for three straight years.

Muni bond gross supply is expected to total $400 billion in 2024, up from $330 billion in 2023. However, with approximately $400 billion of bonds maturing or being called in 2024, supply will likely be net negative, with the expectation of demand exceeding supply. This supply/demand disparity should keep yields and spreads contained.

Continue reading.

FA-MAG.COM

MARCH 12, 2024 • DANIEL J. CLOSE

Cities Face Cutbacks as Commercial Real Estate Prices Tumble.

Lost tax revenue fuels concerns over an urban ‘doom loop.’

In San Francisco, a 20-story office tower that sold for $146 million a decade ago was listed in December for just $80 million.

In Chicago, a 200,000-square-foot-office building in the city’s Clybourn Corridor that sold in 2004 for nearly $90 million was purchased last month for $20 million, a 78 percent markdown.

And in Washington, a 12-story building that mixes office and retail space three blocks from the White House that sold for $100 million in 2018 recently went for just $36 million.

Such steep discounts have become normal for office space across the United States as the pandemic trends of hybrid and remote work have persisted, hollowing out urban centers that were once bustling with workers. But the losses are hitting more than just commercial real estate investors. Cities are also starting to bear the brunt, as municipal budgets that rely on taxes associated with valuable commercial property are now facing shortfalls and contemplating cutbacks as lower assessments of property values reduce tax bills.

Continue reading.

The New York Times

By Alan Rappeport

March 14, 2024

[Raymond James Hires 10 from Citi's Closing Muni-Bond Group.]

- **Muni firms are snapping up talent from the Wall Street giant**
- **Hires from Citi include bankers Chris Mukai and Ben Selberg**

Raymond James Financial Inc. is the latest firm to snap up executives from Citigroup Inc.'s shuttering municipal-bond division.

The St. Petersburg, Florida-based Raymond James has been on a hiring spree for its public finance division for years and is adding 10 bankers and analysts from the Wall Street bank.

Among the hires is Chris Mukai, who worked at Citi for over two decades. He will serve as co-head of western region public finance in Los Angeles. Victor Andrade, another California-based banker who specializes in work with schools, is also joining.

Ben Selberg, who led Citi's public power investment banking team, will serve as head of public power, energy and renewables in a new Seattle office for the firm.

Other hires from Citigroup include Stephen Field, who works with West Coast issuers and also specializes in securitizations, and Brian Olin, a banker and derivatives specialist. Susan Jun, who has worked with the largest affordable housing issuers in the country, is joining Raymond James' national housing group.

Raymond James has already had a strong start to 2024, working on several large financings. It's ranked as the fifth-biggest muni underwriter so far in 2024, two spots up from the same time last year, according to data compiled by Bloomberg.

"Having these outstanding, highly regarded bankers join Raymond James is a testament to our dedicated and deeply experienced professionals who have worked tirelessly for years to fuel our growth and advance our strategic vision to be one of the highest regarded public finance platforms in the nation," Gavin Murrey, head of public finance at Raymond James, said in a statement.

Bloomberg Markets

By Amanda Albright and Shruti Singh

March 11, 2024

[Issuers On Notice For Climate Risks.]

Municipal issuers who've yet to make a habit of disclosing material climate-related risks may be at risk of violating the Securities and Exchange Commission's antifraud provisions, following the rollout of its newly updated climate rule last week.

The SEC's new climate rules, reviled by many on both sides of the aisle for either doing too much or not doing enough, represent a compromise from the original 2022 proposal and drops that initial provision requiring corporate issuers to disclose emissions from supply chains. Now, registered companies are on the hook for reporting emissions from their operations and energy purchases, or Stage 1 and Stage 2, respectively.

The rule does not directly touch the municipal bond market but some have long feared that this model will eventually be applied to the muni market, either directly or through enforcement and could eventually see Rule 15c2-12 (which lays out specific material events that need to be disclosed) include climate risk events.

"The regulation assumes that investors want more robust and consistent information to assess climate-related risks to make informed investment decisions and price securities," wrote Lisa Washburn, chief credit officer at Municipal Market Analytics. "This may render such climate-related information 'material' under its definition for purposes of the antifraud law."

"Municipal participants should expect that, over time, many of the disclosures outlined in the new rule will be expected from municipal issuers too," Washburn added, expecting that climate related enforcement will follow in the footsteps of issues such as the disclosure of bank loans and enforcement related to MCDC as the Commission's new enforcement strategy du jour.

"Given the keen interest in addressing climate-related disclosure gaps and the rising effects of both acute and chronic climate perils, MMA expects that one of the enforcement approaches is likely to be its first course of action," Washburn wrote.

The disclosures the SEC generally expects from corporate issuers can generally be put into such buckets as the disclosure of climate-related risks and impact on business strategy, financial condition and outlook; governance and risk management of climate-related risks, mitigation and adaptation strategies; scope 1 and scope 2 greenhouse gas emissions; climate goals or targets and the related impact on expenditures; financial impacts from severe weather events or the use of carbon offsets.

The rule also states that the Commission will provide a safe harbor that all information, except for historical fact, will be treated as forward looking.

MMA recommends that municipal issuers begin disclosing information on climate-related risks that have a material impact on finance or operations, a discussion of mitigation or adaptation efforts and related material costs, as well as if and how climate-related risks are identified, assessed and managed.

But there is a chance that the final rules will never be rolled out as proposed. A coalition of states including West Virginia, Georgia, Alabama, Alaska, Indiana, New Hampshire, Oklahoma, South Carolina, Wyoming and Virginia have already sued the Commission, in hopes of showing that the final rule "exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion and not in accordance with the law," the lawsuit said.

"Although not directly applicable, it is an exemplar potentially in our sector," said Chuck Samuels, member at Mintz Levin and counsel to the National Association of Health & Educational Facilities Finance Authorities. "It's considerably less burdensome than as proposed. But, there is a substantial possibility this will never be effective between court challenges, the Congressional Review Act, and possible change in Administrations."

The rule will become effective sixty days after publication in the federal register and compliance dates differ depending on the size of the firm, with the earliest date for large accelerated filers beginning in 2025.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 03/12/24 02:28 PM EDT

Cybersecurity Disclosure Considerations for Municipal Issuers.

In the Closing Remarks of a Compliance Conference on Dec. 7, the Director of the Office of Municipal Securities of the U.S. Securities and Exchange Commission noted the SEC recently finalized its cybersecurity rule for public companies.

The Director then suggested that "everyone take a minute to review the Adopting Release for the rule because there are some good points on how corporations can handle cybersecurity disclosures that may be useful for municipal market participants."

While the Commission's cybersecurity rule does not apply to municipal issuers, below we summarize a few points discussed in the Adopting Release that may be useful for municipal market participants.

If a municipal issuer chooses to voluntarily disclose a material cybersecurity incident, it should consider various factors.

First, the municipal issuer should consider disclosing the nature, scope, and timing of the material cybersecurity incident. Municipal issuers should avoid specific or technical information about a planned response to the incident, its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail that it would impede a response or remediation of the incident.

Second, the municipal issuer should consider disclosing the material impact or reasonably likely material impact of the incident (e.g., impact on the financial condition or operations of the municipal issuer), as opposed to the details regarding the incident itself.

Third, the municipal issuer should consider timing of any voluntarily disclosure. Municipal issuers should consider disclosing after it determines the incident is material, as opposed to immediately after the incident occurred.

Fourth, the materiality determination of the incident should be made without unreasonable delay. That said, a reasonable delay could occur, for example, if an incident poses a substantial risk to national security or public safety.

Lastly, the materiality analysis should take into consideration all relevant facts and circumstances surrounding the cybersecurity incident, including both quantitative and qualitative factors. The materiality standard is the traditional notion of materiality that has been articulated by the Supreme Court, as well as in Commission rules (e.g., information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision).

If a municipal issuer chooses to disclose cybersecurity information in connection with an offering, it should consider disclosing certain matters.

First, the municipal issuer should consider disclosing the process that it may have for assessing, identifying and managing material risk from cybersecurity threats, as opposed to the specifics on how a cyberattack will be remediated.

Second, the municipal issuer should consider disclosing risks from cybersecurity threats, including those resulting from previous incidents, that may have materially affected or are reasonably likely to materially affect the municipal issuer (e.g., operations or financial condition).

Lastly, the municipal issuer should consider whether to disclose consultants or other third parties that may assist with cybersecurity and who is responsible for oversight of risks from cybersecurity threats.

Any cybersecurity disclosure should allow for a reasonable investor to ascertain the cybersecurity practices of the municipal issuer with sufficient detail to understand the municipal issuer's cybersecurity risk profile. Municipal issuers should tailor disclosures so that they provide meaningful cybersecurity information, as opposed to overly descriptive or boilerplate disclosure.

The SEC recognizes that public companies will have differing approaches to cybersecurity disclosure based on their particular facts and circumstances. We hope such recognition will also extend to municipal issuers.

By Sarah Tahir

BY SOURCEMEDIA | MUNICIPAL | 03/14/24 09:39 AM EDT

Municipal Bond Funds Fare Well in May.

Tax-exempt funds dominate the list of top performers for the month of May.

In normal times, the generally muted returns of municipal bond funds wouldn't be expected to place any number of such offerings on a top-10 performance list.

Well, these are anything but normal times, a fact underscored by the dominance of tax-exempt funds on the accompanying table of top open-end bond funds for May.

Muni bond funds enjoyed a bounce in May after being pressured for months by a variety of forces. Threats to their exemption to state income taxes have been disrupting the muni market for months, with the issued finally resolved in favor of the tax-exempt vehicles. If that weren't enough, the triple-A credit ratings of insurers of muni bonds have been in doubt as a result of the credit crunch.

Continue reading.

thestreet.com

by Richard Widows

Jun 9, 2008

[Oppenheimer Hires UBS Alumnus Reed to Expand in US Southwest.]

- **Half a dozen former UBS muni bankers have joined Oppenheimer**
- **UBS last year said it would halt most of its muni underwriting**

Oppenheimer & Co. has hired Frank Sanchez Reed, a former UBS Group AG banker, as managing director to head its public finance team in the US Southwest.

Reed, an industry veteran with almost three decades of experience, is based in Texas and will focus on large issuers including California. He's the sixth municipal banker Oppenheimer has hired from UBS this year as the firm expands its reach in US public finance.

Reed joins after New York-based Oppenheimer named Elizabeth Coolidge, UBS's former head of Midwest public finance, to lead its national municipal practice in January.

Continue reading.

Bloomberg Business

By Shruti Singh

March 12, 2024

State of New York: Fitch New Issue Report

Growth Prospects for Revenues Solid Growth Prospects: Pledged PIT receipts are likely to grow above the long-term rate of inflation, similar to Fitch Ratings' expectations for the broad-based, wealthy and service-dominated New York State economy and consistent with a 'aa' growth prospects assessment. Sensitivity and Resilience Ample Cushion Despite Economic Sensitivity: While the PIT receipts are economically sensitive, reliance on residual receipts for general operations and the 2x ABT prevent overleveraging of the pledged revenue stream and provide ample cushion to absorb potential volatility, warranting a 'aaa' resilience assessment. Exposure to Related Government PIT Structure Enhances Appropriation Incentive: An annual appropriation requirement caps the rating at the state's 'AA+' IDR. A statutory provision that deprives the state's operating funds of at least $12 billion (about 11% of fiscal 2023 state operating funds tax revenue) in the event of non-appropriation effectively eliminates appropriation risk.

ACCESS REPORT

Mon 11 Mar, 2024

University of Oklahoma Board of Regents: Fitch New Issue Report

Key Rating Drivers Revenue Defensibility – 'aa' Solid Demand and Enrollment Trend; Moderate Revenue Diversity Underpinning the 'aa' Revenue Defensibility assessment are OU's modestly selective demand metrics, its solid flagship/top-tier research demand niche, and established trend of sizeable out-of-state draw, all of which Fitch believes will continue to provide stability to modest growth in OU's enrollment base. OU saw fall 2023 (fiscal 2024) headcount increase by a solid 3% to

29,166, benefitting from OU's steady trend of growth in its freshmen (the largest first-year class in history), gains in graduate enrollment and OU Online, as well as solid undergraduate retention. Student quality measurements, such as the freshman-to-sophomore retention rate, remain high and continue to improve (89% in fall 2022), in addition to the six-year graduation rate. Management's current projections anticipate a lower level of freshman growth (2%-5%) with a growing non-resident component. OU has moderate revenue diversity. While down slightly from about 54% in fiscal 2019, operating revenues remain largely student revenue dependent (roughly 50% of adjusted total unrestricted operating revenues from tuition/auxiliary revenues in fiscal 2023). Federal, state, and local grants were the next largest revenue source at 24% of fiscal 2023 adjusted total unrestricted operating revenues.

ACCESS REPORT

Fri 15 Mar, 2024

Metropolitan Transportation Authority, New York: Fitch New Issue Report

The upgrade of the transportation revenue bond (TRB) ratings, to 'AA' from 'A', reflects the application of Fitch Ratings' revised "Government-Related Entities Rating Criteria" (GRE criteria). The criteria explicitly recognize the likelihood of extraordinary support from New York State (NYS) to the Metropolitan Transportation Authority (MTA) in a situation of financial difficulty. Under the new criteria framework, Fitch has assessed the MTA's Standalone Credit Profile (SCP) at 'bbb+', representing our view of the MTA's creditworthiness, irrespective of its relationship with NYS. This, combined with a support score of 'extremely likely' under Fitch's GRE criteria, leads to the MTA Issuer Default Rating (IDR) and TRB rating at one notch below the NYS IDR (AA+/Stable).

ACCESS REPORT

Fri 15 Mar, 2024

AG's Suit Against Town of Milton Shines a Spotlight on Massachusetts' Housing Crisis: Burns & Levinson

Last April, we reported that the Attorney General was set to enforce municipal compliance with denser, transit-friendly zoning requirements. Now that has come to pass. The recently commenced battle between the Town of Milton and the Attorney General's office over the MBTA Communities Act illustrates the high degree of difficulty posed by the Massachusetts housing crisis. On February 27, Attorney General Andrea Campbell filed suit against the Town of Milton for its voters' failure to adopt zoning that would allow multi-family housing near the Town's MBTA station, as required by the MBTA Communities Act. The Act, passed during the Baker Administration in 2020, is designed to ease the housing crunch in Massachusetts by requiring municipalities served by the MBTA to adopt zoning changes that allow multi-family housing in the vicinity of MBTA stations. Milton's Planning Board resisted the change, and the Town's voters turned it down in a referendum vote on Valentine's Day. As a result, the Attorney General filed her suit seeking an injunction to force the Town to comply with the law.

Aside from presenting Home Rule and enforcement questions, the AG's suit has highlighted a problem with the Act that many municipalities had identified in the lead-up to the deadline for compliance. According to in-depth WGBH reporting, many municipalities simply do not have the water and sewer infrastructure to serve the number of new housing units allowed by the required zoning change. To make matters even more challenging, the reporting reveals that many of those municipalities do not have the budget or any idea how they would raise the funds to build the new infrastructure.

According to a MassLive media report, at least one Wrentham Select Board Member has objected to the requirements of the Act as an "unfunded mandate." A term that is not often thrown around, an unfunded mandate is a new requirement imposed on municipalities that require the expenditure of municipal funds without supporting funding from the state. Under the local mandates provision of Proposition 2 ½, municipalities are exempt from complying with unfunded mandates. However, there are multiple exceptions to the exemption, such as state mandates that only impose indirect costs and mandates that the legislature imposes as a condition of receiving state aid. It remains to be seen whether the Town will defend the AG's suit on this basis or if it will succeed.

The suit highlights the many potential barriers to any single solution to the housing crisis. As AG Campbell's Complaint and Brief eloquently spell out, past legislative attempts to stimulate housing have fizzled, resulting in the passage of the MBTA Communities Act, a blunt instrument. Hopefully, the renewed attention to the housing crisis will result in an accommodation that suits all parties and provides much-needed housing.

Burns & Levinson LLP – Thomas A. Mackie

March 14 2024

Cybersecurity Disclosure Considerations for Municipal Issuers: Bracewell

In the Closing Remarks of a Compliance Conference on December 7, 2023, the Director of the Office of Municipal Securities of the US Securities and Exchange Commission noted the SEC recently finalized its cybersecurity rule for public companies. The Director then suggested that "everyone take a minute to review the Adopting Release for the rule because there are some good points on how corporations can handle cybersecurity disclosures that may be useful for municipal market participants."

While the Commission's cybersecurity rule does not apply to municipal issuers, below we summarize a few points discussed in the Adopting Release that may be useful for municipal market participants.

If a municipal issuer chooses to voluntarily disclose a material cybersecurity incident, it should consider various factors.

First, the municipal issuer should consider disclosing the nature, scope, and timing of the material cybersecurity incident. Municipal issuers should avoid specific or technical information about a planned response to the incident, its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail that it would impede a response or remediation of the incident.

Second, the municipal issuer should consider disclosing the material impact or reasonably likely material impact of the incident (e.g., impact on the financial condition or operations of the municipal issuer), as opposed to the details regarding the incident itself.

Third, the municipal issuer should consider timing of any voluntarily disclosure. Municipal issuers should consider disclosing after it determines the incident is material, as opposed to immediately after the incident occurred.

Fourth, the materiality determination of the incident should be made without unreasonable delay. That said, a reasonable delay could occur, for example, if an incident poses a substantial risk to national security or public safety.

Lastly, the materiality analysis should take into consideration all relevant facts and circumstances surrounding the cybersecurity incident, including both quantitative and qualitative factors. The materiality standard is the traditional notion of materiality that has been articulated by the Supreme Court, as well as in Commission rules (e.g., information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision).

If a municipal issuer chooses to disclose cybersecurity information in connection with an offering, it should consider disclosing certain matters.

First, the municipal issuer should consider disclosing the process that it may have for assessing, identifying and managing material risk from cybersecurity threats, as opposed to the specifics on how a cyberattack will be remediated.

Second, the municipal issuer should consider disclosing risks from cybersecurity threats, including those resulting from previous incidents, that may have materially affected or are reasonably likely to materially affect the municipal issuer (e.g., operations or financial condition).

Lastly, the municipal issuer should consider whether to disclose consultants or other third parties that may assist with cybersecurity and who is responsible for oversight of risks from cybersecurity threats.

Any cybersecurity disclosure should allow for a reasonable investor to ascertain the cybersecurity practices of the municipal issuer with sufficient detail to understand the municipal issuer's cybersecurity risk profile. Municipal issuers should tailor disclosures so that they provide meaningful cybersecurity information, as opposed to overly descriptive or boilerplate disclosure.

The SEC recognizes that public companies will have differing approaches to cybersecurity disclosure based on their particular facts and circumstances. We hope such recognition will also extend to municipal issuers.

Bracewell LLP – Edward Fierro and Sarah Tahir

March 14 2024

A Refresher on Selective Disclosure and Anti-Fraud Rules: Frost Brown Todd

What Is Selective Disclosure?

The desire of investors to obtain additional information regarding issuers and conduit borrowers of municipal securities must be weighed against what can be provided to them without violating the U.S. Securities and Exchange Commission's (SEC) rules. While there is no direct guidance on the application of selective disclosure rules to municipal securities, guidance may be drawn from SEC enforcement actions in this area and how the law is applied to other types of securities.

Selective disclosure may occur when only certain investors are provided material non-public information. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision and view it as having significantly altered the information currently available. SEC Rule 10b-5 prohibits organizations, including municipalities, from making false statements and omitting material information and applies both during and after the issuance of securities. It is imperative for issuers and conduit borrowers of municipal securities to understand what disclosures could result in selective disclosure or violate the anti-fraud rules.

Selective Disclosure and Violation of Anti-Fraud Rules Scenarios

A violation of the anti-fraud rules occurs when an organization provides inaccurate information about financial conditions to investors with the hope of obtaining favorable results. An organization also violates anti-fraud rules when it fails to provide adequate information to investors and leaves them to rely on potentially inaccurate public statements. The following are examples of violations of anti-fraud rules:

Continue reading.

Frost Brown Todd LLP – Glorify Batsirai Mandima, Carrie J. Cecil

March 14 2024

TAX - NEW JERSEY
Freda by Acme v. City of Sea Isle City
Tax Court of New Jersey - March 5, 2024 - N.J.Tax - 2024 WL 948964

Taxpayer that operated a new supermarket filed tax appeal challenging property tax assessment.

City moved to dismiss.

The Tax Court held that:

- Unpaid non-residential development fee was not an unpaid “municipal charge” precluding tax appeal, and
- Unpaid planning board escrow fees were not unpaid “municipal charges.”

An unpaid “municipal charge” that would prevent an appeal to the Tax Court challenging a property tax assessment from going forward is not merely a fee or imposition of a municipality; is part of a statutorily-specified class giving rise to a lien and eventual sale of the property.

Unpaid non-residential development fee relating to taxpayer’s new supermarket was not an unpaid “municipal charge” that would preclude an appeal to the Tax Court challenging property tax assessment, where there was no statutory authorization creating a lien for the development fee.

Unpaid city planning board escrow fees relating to taxpayer’s new supermarket were not unpaid “municipal charges” that would preclude an appeal to the Tax Court challenging property tax assessment, where governing statute did not mention that escrow fees were a lien or charge.

The law strictly construes a city's attempt to block a taxpayer's appeal to the Tax Court of a property tax assessment via the city's recalibration of the dynamic established by the Legislature regarding unpaid municipal charges as a bar to a tax appeal.

Arbitrage Rebate: Navigating Compliance and Maximizing Retained Earnings - Orrick Webinar Replay

Webinar | February.29.2024 | 2pm – 3pm (Eastern Standard Time)

After years of low investment returns, positive arbitrage is once again in the spotlight. For issuers, borrowers and financial professionals, it is crucial to refresh our understanding of the arbitrage rebate rules and regulations to safeguard the tax-exempt status of municipal bonds. The ability to navigate the delicate balance between retaining positive arbitrage and complying with federal tax law can translate into real dollars in the current interest rate environment.

Speakers include:

- Barbara League – Partner, Orrick
- Jenna Magan – Partner, Orrick
- Sandra Stallings – COO & Managing Director, BLX
- Alan Bond – Managing Director, BLX

Topics include:

- Pre-issuance considerations: Setting the stage for successful bond compliance.
- Arbitrage challenges: Addressing nuances of calculating and managing arbitrage rebate.
- Arbitrage opportunities: Strategies for keeping positive arbitrage. Recent case studies: Real-world examples illuminating key principles and best practices.
- IRS update: Stay informed on the latest developments and regulatory updates.

Please find a copy of the presentation here and a FAQ sheet answering the questions asked during the presentation here.

Watch the webinar recording here.

TAX - NEW JERSEY

Borough of Longport v. Netflix, Inc.

United States Court of Appeals, Third Circuit - February 29, 2024 - F.4th - 2024 WL 854877

Two New Jersey municipalities brought putative class action, on behalf of all New Jersey municipalities, under the New Jersey Cable Television Act (CTA) against entertainment companies that provided streaming-video services, alleging that companies owed municipalities franchise fees under the CTA.

The United States District Court for the District of New Jersey granted companies' motion to dismiss for failure to state a claim, holding that municipalities had no right of action to enforce the CTA. Municipalities appealed.

The Court of Appeals held that:

- The CTA did not create an implied right of action that would allow municipalities to enforce its franchise-payment requirement, and
- The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading such an implied private right of action into the CTA.

The New Jersey Cable Television Act (CTA) did not create an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the statute expressly vested "all" enforcement authority in the Board of Public Utilities (BPU), making it clear that the legislature did not intend for municipalities to share enforcement power with the BPU, and there were no strong indicia that the legislature intended to include a private right of action for municipalities.

The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading into the New Jersey Cable Television Act (CTA) an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the constitutional provision at issue did not change the plain meaning of the CTA and could not be interpreted to provide municipalities with statutory enforcement authority that would directly conflict with the CTA, which granted all enforcement power to the Board of Public Utilities (BPU).

TAX - DISTRICT OF COLUMBIA

Booz Allen Hamilton Inc. v. Office of Tax and Revenue

District of Columbia Court of Appeals - February 8, 2024 - A.3d - 2024 WL 481050

Taxpayer petitioned for review of an order of the District of Columbia Office of Administrative Hearings (OAH) upholding Office of Tax and Revenue's (OTR) denial of refund requests claiming qualified high-technology company (QHTC) franchise-tax benefits.

The Court of Appeals held that:

- Statute's plain language unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area;
- Taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion;
- Taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to activities within ballpark area; and
- Taxpayer failed to administratively exhaust claims that position was taken in good faith and that therefore no penalties were warranted.

Plain language of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC), unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area; unambiguous text of ballpark-area exclusion was strong evidence that District of Columbia Council intended to do precisely what that language said, and there was no basis for drawing any inference from Council's failure to specifically discuss scope of exclusion, absent any specific information, beyond the text of provision itself, as to why Council enacted ballpark-area exclusion.

Office of Tax and Revenue (OTR) correctly determined that because taxpayer leased an office in ballpark area at which a substantial number of employees for taxpayer worked taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; taxpayer had repeatedly referred to its office in ballpark area as one of its "locations," OTR's position was consistent with a natural and common meaning of "located," taxpayer's inability to settle on a clear and consistent alternative interpretation weighed significantly against taxpayer's position, legislative history did not shed any significant light on proper interpretation of term "located" for purposes of exclusion, and it was unclear to Court of Appeals whether a narrower or broader reading of term "located" would have been better as a matter of tax policy.

Taxpayer was not unfairly surprised by an unforeseeable interpretation of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits, and thus taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to its activities within ballpark area, assuming that Court of Appeals had authority in exceptional and extraordinary circumstances to provide equitable apportionment; arguments in support of equitable apportionment were at bottom policy arguments, rather than the kind of extraordinary and exceptional circumstances that might provide a basis for disregarding statute's text.

Taxpayer was required to administratively exhaust claim that no penalties were warranted because taxpayer took position in good faith that taxpayer was not "located" within ballpark area thereby rendering inapplicable ballpark area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; order on review by Court of Appeals had denied taxpayer's requests for refunds but did not address any issue of penalties.

Monetizing Renewable Energy Credits - Final Regulations on Direct Pay: BakerHostetler

Key Takeaways

- On March 5, 2024, Treasury and the IRS issued final regulations addressing direct pay elections for certain renewable energy credits.
- Eligible taxpayers and taxable entities seeking to make a direct pay election should pay close attention to the specific rules regarding the process for making the election and the timing for receiving proceeds from the government. The final regulations maintain that a direct pay election must be made on an original return filed no later than the due date (including extensions) for the taxable year for which the applicable credit is determined. Thus, a direct pay election may not be made on an amended return or through an administrative adjustment request. The final regulations do allow taxpayers to correct "numerical errors" in an election on an amended return if the original return and election contained all the required information. A taxpayer may not correct an item that was left blank on the original election.
- For entities that file federal returns, the deemed payment is treated as having been made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed with the IRS. For entities that do not file returns (e.g., governmental or political subdivisions), the elective payment is treated as having been made

on the later of the date that a return would be due or the submission of a claim for credit or a refund. Taxpayers requested that payments be made earlier than these dates, such as quarterly, but the IRS and Treasury declined to adopt those suggestions. The final rules may weigh significantly in certain taxpayer decisions regarding whether to elect direct pay or instead accelerate receiving payments by transferring eligible credits under § 6418 of the Internal Revenue Code.
- The final regulations held firm that partnerships and corporations are eligible only to receive credits under §§ 45Q (carbon capture), 45V (clean hydrogen) and 45X (clean energy manufacturing) via direct pay. Thus, applicable entities (as defined below) are not eligible to receive credits through a partnership or corporation, even if all the partners or shareholders are applicable entities.
- The final regulations adopt the proposed regulations' rules regarding "chaining," which refers to a transferee taxpayer that acquires a credit via transfer under § 6418 and then seeks to make a direct pay election for any specified credit portions received via such transfer. As such, transferee taxpayers are not eligible to make direct pay elections on credits they acquire under § 6418.

Continue reading.

BakerHostetler – Jeffrey H. Paravano and Nicholas C. Mowbray

March 13 2024

Identifying Component Units: GFOA Webinar

March 26, 2024 | 1 pm – 2 pm ET

Details:

The scope of public sector external financial reporting often extends beyond the reporting government to encompass one or more additional legally-separate organizations. This seminar examines the scope of the public sector financial reporting entity.

Learning Objectives:

- Understand the criteria used in establishing a primary government's financial accountability for a potential component unit
- Identify the two types of fiduciary component units and the criteria for their inclusion in a primary government's fiduciary funds financial statements

Click here to learn more and to register.

NASBO Spring Meeting Registration Open.

April 10-12 | Mobile, Alabama

Click here to learn more and to register.

National Association of State Budget Officers

S&P Charter School Brief: California

Read the S&P Brief.

13 Mar, 2024

Chicago Bears Tout $2 Billion Plan for City Stadium.

- **NFL team is committed to contributing more than $2B, CEO says**
- **Bears were considering moving to Arlington Heights, a suburb**

The Chicago Bears are taking steps to stay in the third-largest US city with a plan to contribute more than $2 billion of private investment to build a new stadium.

After more than a year of speculation that the team would move to a new site in the suburbs, Bears Chief Executive Officer and President Kevin Warren revealed the new proposal on Monday.

“The Chicago Bears are committed to contributing over $2 billion to build a stadium and improve open spaces for all families, fans and the general public to enjoy in the City of Chicago,” Warren said in an emailed statement. “The future stadium of the Chicago Bears will bring a transformative opportunity to our region — boosting the economy, creating jobs, facilitating mega events and generating millions in tax revenue.”

Continue reading.

Bloomberg Markets

By Shruti Singh and Maxwell Adler

March 11, 2024

Munis Defy Bond Selloff, Pushing Valuations to Three-Year High.

- **Ratios on 10-year muni debt sank to lowest level in years**
- **Deals oversubscribed by more than five times in February**

By one measure, state and local government bond yields have slid to the lowest levels against Treasuries in nearly three years, with a steady push into the securities largely sheltering them from the selloff seen in other corners of fixed-income markets.

Yields on 10-year municipal debt have hit the lowest relative to Treasuries since June 2021 after strong demand for the tax-exempt securities propped up prices during a Thursday bond-market rout.

Treasuries slid after a report on wholesale prices eroded confidence in the outlook for Federal Reserve interest-rate cuts this year. While municipals dropped slightly, their outperformance drove the muni-Treasury ratio to just 57%, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Nic Querolo

March 15, 2024

Muni Manager Takes Contra Approach and Focuses on Active: Bloomberg Masters of the Muniverse

Municipals are starting the year semi-flat and the latest read on CPI will not do much to alleviate the concern of market participants that performance could be stagnant for the foreseeable future. That being said, there are still some areas of relative value, even though the absolute tradeoff from last fall has faded to a large degree. Here to discuss the current market dynamics, credit quality, election predictions and much more is Jason Appleson from PGIM (Prudential Global Investment Management)

Listen to the Podcast.

Bloomberg

Mar 15, 2024

- Governmental Accounting for Non-Accountants: GFOA Webinar
- In Surprise Move, Rand Paul Targets Fed's Municipal Liquidity Facility.
- Muni Investors Stage Rare Challenge of $1 Billion Bond Deal.
- S&P: Flooding Events For California Cities And Counties Are Unlikely To Abate And May Result in Long-Term Credit Risks
- And Finally, Department of Redundancy Department of Redundancy Department is brought to us this week by *State ex rel. Peterson v. Licking County Board of Elections*, in which the Supreme Court of Ohio informed us that, "village solicitor was, in fact, village solicitor, and, thus, disqualification of village solicitor on ground that village solicitor was no longer village solicitor was not warranted." Wait. Sorry. I spaced off there for a second. What was dude's job title again?

GOVERNMENT CONTRACTS - LOUISIANA

Ramelli Janitorial Service, Inc. v. H&O Investments, LLC

Court of Appeal of Louisiana, Fifth Circuit - September 21, 2022 - 350 So.3d 191 - 22-265 (La.App. 5 Cir. 9/21/22)

Unsuccessful bidder for grass-cutting contract with parish brought action against parish and successful bidder, seeking declaratory and injunctive relief on ground that contract violated public bid law and seeking damages from successful bidder for unfair trade practices and from parish for detrimental reliance.

The District Court denied successful bidder's peremptory exceptions of prescription, no cause of action, and no right of action. Successful bidder filed application for supervisory writ.

The Court of Appeal held that contract was service contract, not public works contract, and thus public bid law's section providing for injunctive relief regarding public works contracts that were contrary to provisions of public bid law's part governing letting of contracts did not apply.

Grass-cutting contract with parish was "service contract," not "public works contract," and thus public bid law's section providing for injunctive relief regarding public works contracts that were contrary to provisions of public bid law's part governing letting of contracts did not apply; contract did not concern erection, construction, alteration, improvement, or repair of any public facility or immovable property.

PUBLIC MEETINGS - MAINE

McBreairty v. Miller

United States Court of Appeals, First Circuit - February 21, 2024 - F.4th - 2024 WL 702383

Plaintiff brought action against local school board and board chair, alleging that board's speech restrictions, which had been applied to plaintiff and had resulted in his removal by the police from two board meetings, violated the First Amendment and the Maine Constitution's free-speech and petition protections and seeking damages and injunctive relief.

The United States District Court for the District of Maine denied plaintiff's emergency motion for a temporary restraining order (TRO) and preliminary injunction. Plaintiff appealed.

The Court of Appeals held that plaintiff lacked Article III standing to seek injunctive relief because he failed to allege that he intended in the future to engage in conduct that would violate the challenged speech restrictions.

Plaintiff failed to allege in his complaint that he intended in the future to engage in conduct that would violate school board's restrictions on speech at board meetings, and plaintiff thus lacked standing under Article III to seek injunctive relief in action challenging board's restrictions under the First Amendment; present-tense allegations about the restrictions at issue merely alleged that the restrictions were in continued operation, plaintiff's allegation that he "reasonably fears imminent injury" was a mere legal conclusion, and the fact that plaintiff requested injunctive relief was insufficient to establish his future intention to engage in conduct that would result in board's application to plaintiff of the restrictions at issue.

ANTI-SLAPP - MASSACHUSETTS

Bristol Asphalt, Co., Inc. v. Rochester Bituminous Products, Inc.

Supreme Judicial Court of Massachusetts, Plymouth - February 29, 2024 - N.E.3d - 2024 WL 849711

Asphalt companies brought action against competitors, alleging competitors' underlying judicial and regulatory challenges to town's approval of asphalt companies' proposed asphalt plant constituted unfair or deceptive acts or practices in the conduct of trade or commerce, conspiracy in restraint of trade or commerce, and abuse of process.

Competitors filed special motion to dismiss under anti-SLAPP (strategic litigation against public participation) statute or, alternatively, motion to dismiss for failure to state a claim. The Superior Court Department denied special motion to dismiss, finding that competitors' petitioning activities were a sham, but granted motion to dismiss claim for abuse of process. Competitors filed interlocutory appeal. The Appeals Court affirmed. Competitors' application for further appellate review was allowed.

The Supreme Judicial Court held that:

- At first stage of resolving anti-SLAPP motion, movant must show the challenged claim lacks substantial basis in conduct other than or in addition to movant's petitioning activity, abrogating *Blanchard v. Steward Carney Hospital, Inc.*, 75 N.E.3d 21, *Blanchard v. Steward Carney Hospital, Inc.*, 130 N.E.3d 1242, and *Reichenbach v. Haydock,* 90 N.E.3d 791;
- Appellate review of both stages of anti-SLAPP inquiry is de novo, abrogating *Baker v. Parsons,* 434 Mass. 543, 750 N.E.2d 953, and *McLarnon v. Jokisch*, 431 Mass. 343, 727 N.E.2d 813;
- Companies' claims were based solely on competitors' petitioning activity;
- Competitors' underlying argument that asphalt plan was not use permitted as of right in town's industrial district lacked reasonable factual support or arguable legal basis;
- Competitors' underlying arguments regarding noise and traffic problems lacked reasonable factual support or arguable legal basis;
- Competitors' underlying challenges to extension of order of conditions lacked reasonable factual support or arguable legal basis; and
- Competitors' fail-safe petitions for review under Massachusetts Environmental Protection Act (MEPA) did not constitute legitimate petitioning activity.

ZONING & PLANNING - NEW HAMPSHIRE

Harvey v. Town of Barrington

Supreme Court of New Hampshire - February 27, 2024 - A.3d - 2024 N.H. 10 - 2024 WL 791539

Property owner sought judicial review of decision by town's planning board that affirmed the zoning board of adjustment's (ZBA) grant of a variance allowing adjoining lot to be subdivided into two residential lots, each with access via an easement over property owner's lot.

The Superior Court affirmed planning board.

The Supreme Court held that:

- Town's ZBA lacked the authority to modify limited easement over property owner's lot to allow access to two residential lots, and
- Town planning board was precluded from approving the subdivision of single lot into two residential lots absent legal street access to the lots.

EMINENT DOMAIN - NEW YORK

Bowers Development, LLC v. Oneida County Industrial Development Agency

Supreme Court, Appellate Division, Fourth Department, New York - February 2, 2024 - N.Y.S.3d - 2024 WL 395766 - 2024 N.Y. Slip Op. 00523

Owners of certain real property that had been condemned by county industrial-development agency for use as a surface parking lot associated with a private medical facility petitioned to annul the agency's condemnation determination.

The Supreme Court, Appellate Division granted owners' petition. Agency appealed. The Court of Appeals reversed.

Upon remittitur, the Supreme Court, Appellate Division, held that:

- Proper procedural vehicle for owners' contention that agency's financial assistance to construction project violated statutory anti-pirating provisions was proceeding pursuant to article 78;
- Agency's determination to exercise eminent domain power to acquire property for use as parking lot was rationally related to public purpose; and
- Agency did not improperly segment its environmental review.

County industrial-development agency's determination to exercise its eminent domain power to acquire owners' property for use as a surface parking lot was rationally related to a conceivable public purpose, notwithstanding the fact that the need for the parking lot was due in part to the construction of a private medical facility; agency's acquisition of the property would serve the public use of mitigating parking and traffic congestion.

MUNICIPAL GOVERNANCE - OHIO

State ex rel. Peterson v. Licking County Board of Elections

Supreme Court of Ohio - February 21, 2024 - N.E.3d - 2024 WL 699836 - 2024-Ohio-646

Village mayor filed action against two county boards of elections, their members, village, and village's council president for writs of mandamus and prohibition to prevent boards and village from setting date for recall election, from conducting recall election to recall mayor, and to order boards to remove recall election from ballot.

The Supreme Court held that:

- Conflict of interest was not present with village solicitor's representation of village and village council president, and, thus, disqualification of village solicitor was not warranted;
- Village solicitor's alleged disclosure of information protected by attorney-client privilege at public village council meeting did not warrant disqualification of village solicitor on ground of conflict of interest;
- Village solicitor was, in fact, village solicitor, and, thus, disqualification of village solicitor on ground that village solicitor was no longer village solicitor was not warranted;
- County boards of elections did not exercise quasi-judicial authority in matter, and, thus, village mayor was not entitled to writ of prohibition to prevent boards from holding recall election;
- Village and its counsel did not exercise quasi-judicial authority in matter, and, thus, village mayor was not entitled to writ of prohibition to prevent village and council from setting day for holding recall election; and
- Village mayor was not entitled to writ of mandamus to order county boards of elections to remove special recall election from ballot.

ZONING & PLANNING - VERMONT

Town of Pawlet v. Banyai

Supreme Court of Vermont - March 1, 2024 - A.3d - 2024 WL 877863 - 2024 VT 13

Town filed a motion for contempt against landowner for his alleged noncompliance with court orders requiring that he remove structures constructed as part of a “firearms training facility” that violated town’s zoning ordinances.

The Superior Court, Environmental Division, found landowner in contempt and imposed sanctions, denied landowner’s motion for reconsideration, granted in part landowner’s request for an extension of deadlines, and, after deadlines had expired, granted town’s motion to enforce the sanctions. Landowner appealed the enforcement order.

The Supreme Court held that landowner’s failure to appeal contempt order foreclosed him from collaterally attacking the sanctions imposed for violations of town’s zoning ordinances.

Landowner was foreclosed from collaterally attacking any determinations made final in trial court’s contempt order, including whether the sanctions imposed by the order for his violations of town’s zoning ordinances violated the Excessive Fines Clause, where landowner never challenged the contempt order or trial court’s denial of his motion to reconsider, but instead sought to challenge the trial court’s determinations in contempt order on appeal from an order enforcing the sanctions.

SIFMA US Municipal Bonds Statistics.

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders’ statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of February) $62.9 billion, +36.6% Y/Y
- Trading (as of February) $12.5 billion ADV, -2.3% Y/Y
- Outstanding (as of 4Q23) $4.1 trillion, +0.5% Y/Y

Download XLS

March 7, 2024

Fitch Affirms Muni Ratings Tied to U.S. Sovereign Ratings at 'AA+'; Outlook Stable.

Fitch Ratings – San Francisco – 07 Mar 2024: Fitch Ratings has affirmed at ‘AA+’ the ratings of certain categories of debt that are directly tied to the creditworthiness of the United States or its related entities, following the affirmation of the United States of America’s Foreign and Local Currency Issuer Default Ratings at ‘AA+’/’F1+’ with Stable Rating Outlooks.

Categories of debt whose ratings are affected include:

–Pre-refunded bonds whose repayments are wholly dependent on ‘AA+’-rated United States government and agency obligations held in escrow;

–Municipal housing bonds that are primarily secured by mortgage-backed securities issued by Ginnie Mae, Fannie Mae and/or Freddie Mac;

–Obligations that are supported by credit enhancement issued by financial institutions directly linked to the United States, such as Fannie Mae or Freddie Mac.

Continue reading.

Thu 07 Mar, 2024

The Anti-ESG Backlash Is Playing Out Across the Country as Pensions and Investments Become a Political Football.

The anti-ESG backlash is playing out across the country as pensions and investments become a political football

After years of headlines about the growing environmental, social, and governance (ESG) movement in investing, ESG has been met with understandable skepticism from taxpayers, who both underwrite state and local government pension plans and government borrowing. After all, if the managers of these operations take their focus off properly balancing risk and return–pursuing ideological investment goals instead–taxpayers could be on the hook for hundreds of billions in additional liabilities. Yet, that focus must go in both directions. Forcing those managers to reflexively embrace ESG or to reflexively shun it could deprive taxpayers of the market-based innovation, resilience, and long-term value we’re counting on to avoid a financial meltdown.

According to a Council of State Governments report, at the state level alone taxpayers face $1.3 trillion of unfunded liabilities from government employee pension systems. Administrators of these pension plans need every tool available to them to protect taxpayers against massive bailouts. Passing restrictive laws at the federal or state level, instructing these administrators to avoid certain industries or banks perceived to be too “woke” or not “woke” enough, could put them in a fiscally untenable position.

The financial contagion caused by pro and anti-ESG actors is already spreading into another area of public finance. In several instances, pursuing non-financial politically motivated outcomes has led to diminished investment returns, market distortions, and other forms of economic harm.

Continue reading.

FORTUNE

BY CARLOS CURBELO AND PETE SEPP

March 7, 2024

Muni Investors Stage Rare Challenge of $1 Billion Bond Deal.

- **Investors believe university 'has no legal basis' to call debt**
- **Deal is part of a wave of planned refundings using ERP call**

A group of investors is challenging a $1 billion municipal bond refunding by the Regents of the University of California.

The bondholders said there's "no legal basis" to allow the refinancing, according to a copy of a letter seen by Bloomberg News and people with knowledge of the matter. The debt was priced on Tuesday.

The deal is part of a wave of planned refundings that would replace taxable debt sold under the Build America Bonds program more than a decade ago with lower-yielding, tax-exempt securities. Some investors are questioning their legality, which hinges on a provision in the bond documents that allows state and local governments to buy back their debt before it comes due if an extraordinary event occurs.

Continue reading.

Bloomberg Markets

By Nic Querolo and Amanda Albright

March 6, 2024

Small Government Forum: Three Years Later…How Has ARPA / SLFRF Impacted Small Governments? - GFOA Webinar

March 14, 2024 | 3-4 p.m. ET

April 4, 2024 | 3-4 p.m. ET

Details:

Join the SGF for an update on the ARPA / SLFRF legislation and its impact on small governments. Includes a networking session on April 4.

Learning Objectives:

Attendees will receive updates on the ARPA / SLFRF timeline.
Attendees will be provided with examples of how Non-entitlement Units of Local Government have allocated the funds for various projects.
Attendees will learn how ARPA / SLFRF has possibly changed the mindset of the federal government for disbursing funds to state and local governments.

Member Price: $35.00
Non-member Price: $70.00

Click here to learn more and to register.

[S&P Military Rental Housing 2024 Outlook: Bond Sector Stable Amid Slow Recruitment And Higher Expenses]

Key Takeaways

- Rating actions in 2023 reflect the sector's stability as most projects benefitted from higher basic allowance for housing (BAH) revenue and strong occupancy.
- Operating pressure could materialize if military recruiting targets trend below expectations, leading to less demand for military housing projects. While we don't believe this is an immediate risk, it could affect credit quality over the medium-to-long term.
- Debt service coverage for military housing projects has experienced some volatility due to increasing costs from insurance coverage, utility expense, and maintenance and repair requirements.

Continue reading.

7 Mar, 2024

[S&P: How U.S. Not-For-Profit Acute-Care Providers Are Managing Risks From The Change Healthcare Cyber Attack]

Key Takeaways

- Repercussions from the Feb. 21, 2024, cyber attack on the nationwide claims processing provider Change Healthcare are still evolving.
- Disruption to Change Healthcare, a third-party vendor, introduces cash flow and liquidity risk for U.S. not-for-profit acute-care providers using its services.
- As full restoration of Change Healthcare's systems is still unknown, many acute-care providers have implemented workarounds to manage cash flow and liquidity.
- The credit impact could vary across rated providers, depending on credit specifics such as liquidity and reserves, ability to put workarounds in place, and the time it takes for Change Healthcare's systems to be operational.

Continue reading.

7 Mar, 2024

[The Brave New World of Local Government Debt Management.]

COMMENTARY | Market volatility, economic uncertainty and factors like climate change are driving heightened risk, creating a tougher issuing environment and a more complex landscape.

"How do we use federal money and stay compliant?"

That was Kevin Bain's reply when our team asked what was top of mind for him. He is the director of strategy for the Detroit treasury department and CFO's office, where he oversees debt management and strategic projects.

Bain was one of a number of finance leaders we spoke with to examine the role and impact debt managers have in improving local government finances. His response points to a trend that reflects an increasingly complex debt management world and the need for increased fiscal dexterity.

Detroit wants to tap into tax credits for clean-energy investments that are available under the Inflation Reduction Act. This is not a resource that municipalities typically apply for, so the city has no mechanisms in place for it. "We're building the plane as we fly it," says Bain.

A More Strategic, Agile Approach

The field of municipal finance is evolving. Market volatility, economic uncertainty and factors like climate change are driving heightened risk, creating a tougher issuing environment and a more complex landscape, such as with federal grant funding compliance.

There are "more and newer expectations foisted on the debt management function," explains Justin Marlowe, a professor at the Harris School of Public Policy at the University of Chicago. "Whether that is better disclosure or continuing disclosure vis-à-vis the MSRB [Municipal Securities Rulemaking Board] or state authorities … and with pressure to speak to ESG and sustainability concerns, people now are actively scrutinizing when, where and how the quality of your continuing disclosure happens."

In today's municipal bond market, persistently high and fluctuating interest rates have increased borrowing costs for issuers and made issuing bonds more difficult. Local governments are beginning to recognize the heightened importance of the debt management role. "It has the potential to generate savings and add financial value," notes Marlowe.

Route Fifty

By Mark Funkhouser

MARCH 6, 2024

ARPA 3-Year Anniversary: Documenting the Success of Direct Federal Aid to Cities and Towns.

Three years after its passage, the impact of the American Rescue Plan Act (ARPA) on America's cities, towns and villages cannot be overstated.

APRA's State and Local Fiscal Recovery Fund (SLFRF) provided integral relief for local governments to navigate the COVID-19 pandemic and ensure stability for communities moving forward. During a time of uncertainty, SLFRF allocations ushered in funds to help cities, towns and villages ignite a bottom-up economic recovery strategy to assist the hardest-hit residents, stabilize municipal budgets, and maintain consistent spending on standard local government operations and services.

The SLFRF program provided direct federal aid in the form of block grants to all state, county and municipal governments, allowing for more opportunities for regional and multi-jurisdictional collaborations compared to competitive or categorical grants that are often limited to narrowly defined activities. Additionally, the SLFRF distribution model equitably allocated aid for metropolitan cities by borrowing the anti-poverty formula from the Community Development Block Grant (CDBG) program to deliver funding where it was needed the most. Relatedly, the three- and a half-year timeframe given to recipients to obligate funds has continued to foster opportunities to broadly engage residents and respond to community feedback on decisions around the use of these one-time dollars to address historic, immediate and long-term inequities. Many communities formalized community feedback opportunities, like Dayton, OH, which invested in a resident survey to use community voices and data to guide their decisions.

Continue reading.

National League of Cities

BY Julia Bauer, Patrick Rochford, Christine Baker-Smith & Michael Wallace

MARCH 4, 2024

Vulnerable US Private Colleges at Risk from New Federal, State Actions.

Fitch Ratings-Chicago/New York-06 March 2024: The credit or even viability of small U.S. private colleges serving sizable low-income and minority populations, many already financially vulnerable to operational and enrollment stress, is threatened by new hurdles posed by recent federal and state actions, Fitch Ratings says.

Recent federal financial aid processing delays, overtime pay proposals and merger/acquisition regulation, together with the U.S. Supreme Court's abolition of race-conscious admissions in 2023, place greater pressure on these colleges. State efforts to provide minimal-cost public college access to lower income residents also increases the acute competition faced by these institutions.

Financial stress in the higher education sector spiked during calendar year 2023 with a record high number of new impairments (payment and technical defaults) among the sector's bond issuers, according to Municipal Market Analytics. Fitch analysis shows that issuers with newly impaired debt in 2023 served very high percentages of minority and low-income students, averaging 55% non-White enrollment and 48% federal Pell Grant recipients among first-time undergraduates in fall 2022.

Continue reading.

Wed 06 Mar, 2024

Harvard Attracts 'Insatiable Demand' for AAA Rated Bond Sale.

- **Goldman-led deal with corporate cusip priced at low spread**
- **BI analyst Kazatsky says the university is 'too big to fail'**

Harvard University — armed with a AAA credit rating and $50 billion endowment — sold $750 million in taxable bonds this week as buyers shrugged off recent controversies swirling around the school.

The debt priced at 47 basis points above similar-maturity Treasuries, compared to earlier price talk of 60 basis points. That's one of the tightest spread of any 11-year investment-grade bond dating back to at least 2009, according to a person familiar with the matter who asked not to be named because they weren't authorized to speak publicly. The bonds rallied in secondary trading Wednesday morning, a further sign of strong investor appetite.

"There's insatiable demand for premier names in the higher-ed space. Obviously Harvard would be one of those at the top of the tier," said Chris Brigati, senior vice president at SWBC Investment Services, adding that the deal did "extremely well."

Continue reading.

Bloomberg Markets

By Amanda Albright and Danielle Moran

March 6, 2024

Raymond James Hires 10 from Citi's Closing Muni-Bond Group.

- **Muni firms are snapping up talent from the Wall Street giant**
- **Hires from Citi include bankers Chris Mukai and Ben Selberg**

Raymond James Financial Inc. is the latest firm to snap up executives from Citigroup Inc.'s shuttering municipal-bond division.

The St. Petersburg, Florida-based Raymond James has been on a hiring spree for its public finance division for years and is adding 10 bankers and analysts from the Wall Street bank.

Among the hires is Chris Mukai, who worked at Citi for over two decades. He will serve as co-head of western region public finance in Los Angeles. Victor Andrade, another California-based banker who specializes in work with schools, is also joining.

Ben Selberg, who led Citi's public power investment banking team, will serve as head of public power, energy and renewables in a new Seattle office for the firm.

Other hires from Citigroup include Stephen Field, who works with West Coast issuers and also specializes in securitizations, and Brian Olin, a banker and derivatives specialist. Susan Jun, who has worked with the largest affordable housing issuers in the country, is joining Raymond James' national housing group.

Raymond James has already had a strong start to 2024, working on several large financings. It's ranked as the fifth-biggest muni underwriter so far in 2024, two spots up from the same time last year, according to data compiled by Bloomberg.

"Having these outstanding, highly regarded bankers join Raymond James is a testament to our dedicated and deeply experienced professionals who have worked tirelessly for years to fuel our growth and advance our strategic vision to be one of the highest regarded public finance platforms in the nation," Gavin Murrey, head of public finance at Raymond James, said in a statement.

Bloomberg Markets

By Amanda Albright and Shruti Singh

March 11, 2024

Raymond James Hires Citi Bankers for New Public-Finance Office in Seattle.

Midsize investment bank sees opportunity in muni bonds and public-power financing

Raymond James Financial Inc. said Monday it's hiring 10 ex-Citigroup Inc. bankers as the bank broadens its reach in the public-finance business from middle-market deals to larger deals.

The bankers will also help Raymond James (RJF) set up a new public-finance office in Seattle, form a dedicated public-power practice, widen its presence in the Western U.S. and staff up its housing-finance group.

"We have people in the marketplace who need public-finance products…and the Citi bankers will provide a nearly perfect overlay to what we already had," Gavin Murrey, executive vice president and head of public finance at Raymond James, said in an interview.

Raymond James stock fell 0.8% on Monday as the broad market dropped. The stock has risen by 6.9% so far in 2024, compared with a 7.3% increase by the S&P 500.

Murrey said the Citi bankers will advance efforts at Raymond James to operate "one of the highest regarded public-finance platforms" in the U.S.

The bank is seeing demand for muni bonds and other public-finance products both from its wealth-management business and its roughly 4,000 to 5,000 accounts with middle-market businesses, Murrey said.

The bank has already hired about 51 people since late 2021 for its public-finance practice, with about 145 salespeople working to provide products to bankers, money managers and issuers.

"The broader the distribution, the more appealing it is for the issuer," Murrey said.

Raymond James is making the move after Citi announced in an internal memo in December that it was shutting down its municipal-underwriting and market-making activities in a decision it described as difficult.

"While we are very proud of the impact they have had over the years, the economics of these activities are no longer viable given our commitment to increase the firm's overall returns," Citi said.

Citi is in the midst of a wide-ranging reorganization under Chief Executive Jane Fraser.

Also read: Citigroup to cut 20,000 jobs by 2026 after 'very disappointing' quarter as it posts loss

For its part, Raymond James has 180 people at 39 locations in one of the largest public-finance practices in the U.S., which has expanded into 10 more states and six countries since 2018.

The 10 hires from Citi include seven managing directors such as Ben Selberg, who is managing director and head of public power, energy and renewables for Raymond James in Seattle, as well as Brian Olin, managing director, also in Seattle.

Chris Mukai is managing director and co-head of the western region public-finance team, based in Los Angeles.

In Chicago, Raymond James named Susan Jun as managing director of its national housing group.

While Citi's municipal bond unit mostly focused on larger deals, Raymond James has a more diversified practice ranging from smaller-market deals up to bigger issuances.

Raymond James doesn't break out its public-finance business revenue, which is included in its overall capital markets operation.

Provided by Dow Jones

Mar 11, 2024 11:40am

By Steve Gelsi

This content was created by MarketWatch, which is operated by Dow Jones & Co. MarketWatch is published independently from Dow Jones Newswires and The Wall Street Journal.

Truist Hires Former Citi Muni Bankers to Build 'National Scope'

- **Southeast bank expands in market Wall Street giant exited**
- **Executives say hiring to continue as opportunities arise**

Truist Financial Corp. hired more Citigroup Inc. municipal-bond veterans, showcasing the Southeast regional bank's deepening commitment to the $4 trillion market as the Wall Street powerhouse leaves the business.

Charlotte, North Carolina-based Truist added Cameron Parks to head infrastructure and government banking. Also joining were Robert Mellinger and Matt Bernstein.

The expansion by Truist, created by the merger of SunTrust Banks Inc. and BB&T Corp. in 2019, comes as municipal investment banking is showing signs of life. A decrease in borrowing costs this year has pushed state and local debt sales up more than 40% over the year-ago period, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Amanda Albright

March 1, 2024

Three Ex-UBS Public Finance Bankers Head to Cabrera Capital.

- **Chicago-based firm has been expanding in public finance**
- **Pullback by UBS, Citi creates hiring opportunity for others**

Cabrera Capital Markets has hired three former UBS Group AG public finance bankers, the latest firm to scoop up talent from a national bank that's pulled back from the municipal-bond market.

The Chicago-based investment bank and brokerage brought on Shawn Dralle, a Los Angeles-based banker who will serve as head of West Coast public finance, according to a statement. Chris Bergstrom, a New York-based banker, will lead public transportation finance at Cabrera. And Shawnell Holman, a Houston-based banker, joined as an executive director.

"With the addition of three new senior level positions nationwide, the ability to serve our public finance clients will assuredly continue to expand," Mario Carrasco, head of public finance at Cabrera, said in the statement.

Continue reading.

Bloomberg Markets

By Amanda Albright

March 4, 2024

Ramirez Taps More Citi Muni Bankers for Public Finance Expansion.

- **Craig Kornett joined as managing director to lead health care**
- **Euriah Bennett in Atlanta will expand its Southeast presence**

Samuel A. Ramirez & Co. has hired three more bankers and an analyst from Citigroup Inc., the latest in a number of additions to the firm that is seizing on municipal finance heavyweights pulling back from the space.

Craig Kornett has joined Ramirez as a managing director to lead its health care practice from Citigroup, where he worked since 2014, according to an emailed statement from Ramirez on Friday. Ryan Lim, a former analyst at Citigroup, also joined the firm and will work with Kornett.

Euriah Bennett, who will be based in Atlanta, has come from Citigroup to expand Ramirez's presence in the Southeast. Emily Davis will work with Dashmir Keca, who recently joined Ramirez to lead its public power and energy group. Both were previously with Citigroup. Davis will be based in Boston.

Continue reading.

Bloomberg Markets

By Shruti Singh

March 8, 2024 at 11:53 AM PST

S&P: Flooding Events For California Cities And Counties Are Unlikely To

Abate And May Result in Long-Term Credit Risks

Key Takeaways

- California's extremely high rainfall in 2023 is continuing into 2024 but has not yet had a material effect on credit quality for cities and counties rated by S&P Global Ratings, although the longer-term effects on issuers could be more significant.
- Maintaining high levels of reserves and liquidity is, in our view, one way issuers can navigate the short-term effects of extreme weather events, in particular as FEMA reimbursement, if approved, can take months or even a year to arrive.
- As weather events become more frequent or severe, we have observed that cities and counties have prepared by evaluating stormwater infrastructure or installing flood gates or moveable walls to redirect water to protect municipal assets.
- S&P Global Ratings continues to monitor the effects of extreme weather events on the credit quality of California cities and counties by evaluating infrastructure, risk management, and finances on a case-by-case basis.

Continue reading.

5 Mar, 2024

MSRB Research Examines Trading Patterns in the Municipal Securities Market.

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new research report that examines trading patterns in the municipal securities market. The analysis reviews the fragmentation in the market and the depth and breadth of data available to market participants.

"While there are nearly a million securities outstanding in the municipal securities market today, only about 2% of those securities traded on an average day in 2023, while only 1% traded in 2021," said Marcelo Vieira, MSRB Senior Director of Research and Market Transparency. "This is important information for market participants to be aware of as they navigate this unique market."

The MSRB's analysis reviewed municipal securities trade data from two contrasting years, 2023, which had record-high trade count, and 2021, which had a record-low number of trades. The report reveals that about two-thirds of the securities that trade on an average day do so only once or twice. Additionally, almost 40% of the trades that occur on an average day have no prior trades in that security on the same day. This means that investors may have limited information to reference at the time of trade for the security they want to buy or sell.

"With a limited number of trades per individual bond, and a small percentage of outstanding securities trading daily, investors may want to review similar securities to inform their investment decisions," said Vieira.

In the report, the authors note that the municipal market is heavily reliant upon market tools such as yield curves and evaluated pricing to function efficiently. Often the entities that provide these market tools eliminate trades smaller than $500,000 or even $1 million from consideration. This means that many of the market tools market participants may rely upon are based on only 4-6% of the trades reported to the MSRB.

The MSRB offers free access to several municipal yield curves and other investor tools on its MSRB's Electronic Municipal Market Access (EMMA®) website. One of the most used tools is one that allows users to compare different securities.

[Read the report.]

Date: March 05, 2024

Contact: Aleis Stokes, Chief External Relations Officer
202-838-1500
astokes@msrb.org

[Idaho Housing and Finance Association: Fitch New Issue Report]

Long-Term Growth Prospects: The 'aaa' assessment for pledged revenue growth prospects reflects robust sales tax performance in recent years. Fitch Ratings anticipates strong growth, at or above long-term expectations for national economic growth, benefiting from a trend of strong state population growth, economic expansion and diversification. Revenue Stream Resilience: Available state sales tax revenues provide very strong coverage of the allocation to the TECM Fund from which debt service is payable, supporting a 'aaa' assessment of the sensitivity and resilience of the security structure. Assuming full expected leverage of the annual allocation ($80 million), the structure can comfortably absorb the decline in revenues expected to result from a moderate recession scenario and one equivalent to the largest historical revenue decline.

[ACCESS REPORT]

Fri 08 Mar, 2024

[In Surprise Move, Rand Paul Targets Fed's Municipal Liquidity Facility.]

The Federal Reserve's dormant emergency lending program for state and local governments set up during the COVID-19 pandemic had a surprise return to the spotlight last Friday when Sen. Rand Paul, R-Ky., introduced a measure banning the central bank from reviving the program or buying municipal bonds in the future.

"It was never intended that Congress give the Fed the power, and we should make sure that it is explicit that the Federal Reserve cannot buy the debt of individual states," Paul said Friday from the Senate floor when introducing the provision as an amendment to the fiscal 2024 continuing appropriation.

The measure appears aimed at the Fed's Municipal Liquidity Facility established in spring 2020 at the onset of the COVID-19 pandemic. His office did not return calls for comment. A press release said the measure "would prevent government bailouts of mismanaged states" and "prevents the central bank from circumventing Congress to unilaterally provide a financial bailout of profligate states, the costs of which would be borne by the taxpayers through the form of forced subsidized losses or through the hidden tax of inflation."

Muni advocates including the Government Finance Officers Association were taken by surprise, said GFOA federal liaison Emily Brock.

"No one in our coalition was aware this would be introduced," Brock said. The amendment failed, but could pop up again, Brock warned. The GFOA has asked to meet with Rand's office to discuss the measure.

"As long as there's a permanent spending bill still lingering out there, I think it will come up again," she said.

The Fed launched the MLF in April 2020 as part of the CARES Act, the first of three rounds of federal rescue aid packages. The emergency program was aimed at bolstering cash-strapped issuers who might have a tough time entering a volatile market that had seen base municipal bond index yields rise by more than 225 basis points in nine trading days.

The MLF was able to purchase up to $500 billion of three-year notes from states, counties with a population of at least 500,000 residents, and U.S. cities with a population of at least 250,000 residents.

Only Illinois and New York's Metropolitan Transportation Authority ended up tapping the program, with Illinois borrowing $3.2 billion in two installments and the MTA borrowing $3.5 billion in two installments.

The MLF expired in December 2020, although former U.S. Treasury Secretary Steven Mnuchin said at the time that the facilities could be reestablished by "having the Federal Reserve request approval from the Secretary of the Treasury and, upon approval, the facilities can be funded with Core ESF (Exchange Stabilization) funds, to the extent permitted by law, or additional funds appropriated by Congress."

Rand's amendment would prohibit the central bank from establishing "any emergency lending program or facility ? that purchases or sells any security issued by a state or a municipality, including a bond, note, draft or bill of exchange," and block the bank from buying or selling any of the same securities.

Paul – a well-known anti-national debt hawk – reportedly insisted that his amendment be considered before he would support the fiscal 2024 short-term funding bill to avert a government shutdown. Congress this week is set to approve the appropriation legislation and then will take up a second package before March 22.

"We now know that the Federal Reserve is not only buying the federal debt; they are buying the debt of profligate, large-spending states like California, New York, and Illinois," Paul said on the floor when introducing the amendment. "My amendment would make it explicitly illegal for the Federal Reserve to buy the debt of these big-spending, profligate individual states.

Minnesota Democratic Sen. Tina Smith responded that "tying the Fed's hands" would be dangerous.

"Congress has given the Fed the flexibility to transact in state and local bonds because we knew that it could be an important and helpful tool in times of an emergency," Smith said. "Preventing emergency programs outright would be dangerous and unnecessary."

The amendment garnered 37 yes votes, all from Republicans. Supporters included Senate Majority

Leader Mitch McConnell, R-Ky., as well as Sen. John Thune, R-S.D., and Sen. John Cornyn, R-Texas. The nays totaled 53, and 10 senators did not vote.

Paul's comments on the Senate floor were "hyperbolic" as well as "curious and disturbing," said Kent Hiteshew, former deputy associate director of the Fed's Division of Financial Stability.

"The Fed has used its emergency statutory authorities to make loans to municipal governments only twice in its more than 100-year history – both back-stopped by Congressional appropriations during COVID," Hiteshew said, noting that both loans were repaid on or before their due dates.

"In my view, it is doubtful that the Fed would use such powers again in the future absent similar existential threats to the economy and capital markets," he said. "Nevertheless having such authority and independence would be crucial in such circumstances."

Issuers groups like the National Association of State Treasurers have in the past advocated for the MLF to become permanent. NAST declined to comment on Paul's amendment, as did the Bond Dealers of America. The GFOA never lobbied for an extension of the program, Brock said, but doesn't want to see the Fed prohibited from emergency lending programs.

"We saw it as an infusion that was necessary at the time that was designed as a temporary stopgap and it was effective – it was very clear that our market has determined it was effective," Brock said.

By Caitlin Devitt

BY SOURCEMEDIA | ECONOMIC | 03/06/24 10:17 AM EST

Sen. Rand Paul Proposes Ban on Federal Reserve's Municipal Bond Purchases, Sparking Debate

Sen. Rand Paul introduces a measure to ban the Federal Reserve's municipal bond emergency lending, igniting debate on its economic role.

On a recent Friday, Sen. Rand Paul, R-Ky., introduced a controversial measure that could significantly impact the Federal Reserve's ability to support state and local governments during financial crises. Paul's amendment seeks to ban the central bank from reviving its emergency lending program for municipal bonds, established during the COVID-19 pandemic, or engaging in future municipal bond purchases. This move has reignited discussions on the Fed's role in stabilizing the economy, with implications for states and municipalities nationwide.

Background and Immediate Reactions

The Federal Reserve's Municipal Liquidity Facility (MLF), created as part of the CARES Act in spring 2020, was designed to aid cash-strapped states, counties, and cities by purchasing up to $500 billion of three-year notes. This emergency measure, which expired in December 2020, was only utilized by Illinois and New York's Metropolitan Transportation Authority. Paul's amendment, framed as a safeguard against government bailouts of "mismanaged states," has surprised many, including municipal bond advocates like the Government Finance Officers Association (GFOA), who were unaware of the proposal's introduction.

Legislative Responses and Debates

Despite the amendment's failure, with 37 yes votes exclusively from Republicans, the proposal has stirred a bipartisan debate on the Federal Reserve's flexibility in times of crisis. Critics, including Minnesota Democratic Sen. Tina Smith, argue that restricting the Fed's emergency powers could be dangerous, emphasizing the necessity of such tools in unforeseen emergencies. Proponents of the amendment, however, view it as a crucial step towards fiscal responsibility and preventing unchecked bailout powers.

Implications for the Future

The debate over the Federal Reserve's emergency lending capabilities raises important questions about the balance between fiscal responsibility and the need for robust economic safety nets. While the amendment did not pass, its introduction and the subsequent discussions underscore the ongoing tension between different visions of economic governance. As the GFOA and other organizations seek dialogue with lawmakers, the future of the Federal Reserve's role in state and municipal finance remains uncertain, highlighting the need for a nuanced approach to economic policy in times of crisis.

bnnbreaking.com

BNN Correspondents

06 Mar 2024

[Municipal Bond Upgrades: Balancing Perceived Risks With Real Opportunities]

When it comes to safety, municipal bonds have long been a go-to investment for income seekers. After all, in theory, a state or a local town has the ability to raise taxes to help pay for coupon payments – and history suggests just that. However, some investors have begun to worry about municipality and state revenues in the face of the dwindling economy.

The truth is, those worries may be all in investors' heads. Municipal credit continues to improve. Upgrades have far outweighed downgrades, while defaults remain low and concentrated in a few high-risk sectors. The reality is that munis are still offering very advantageous high yields at great credit quality.

Worries Mount

It's all about taxes, and that's the cause of the worries currently affecting municipal bonds. Munis are issued by state and local governments to fund their operations, launch special projects and provide their citizens with various programs. In order to pay for those bonds, it's often taxes – payroll, sales and property – that help pay the interest and pay off debt. And while states and towns have the ability to raise taxes, there is a limit to what they can collect. A family or a business can easily move to a lower tax state. Because of this, analysts and investors watch state revenues like a hawk to determine municipal bond health.

[Continue reading.]

dividend.com

by Aaron Levitt

Mar 05, 2024

These Muni Funds Sport Strikingly High Yields.

Looking for tax-free returns and some of the fattest yields in the bond market? Consider funds that invest in the high-yield segment of the municipal bond market.

According to BofA Securities, this is a great time to buy these bonds, which are issued by turnpike authorities, hospitals, and other state and local entities.

Jared Woodard, BofA's head of exchange-traded fund strategy, says high-yield munis have low default rates, with credit risk similar to that of investment-grade corporate bonds. That means investors can harvest some of the highest muni yields in recent history while keeping credit risk in check.

Continue reading.

Barron's

By Lauren Foster

Updated March 06, 2024,

Governmental Accounting for Non-Accountants: GFOA Webinar

March 18, 2024 | 1 pm – 3 p. ET

Details: Accounting and financial reporting form an essential component of the informational infrastructure that undergirds state and local government finance. Decisions are only as good as the information that supports them. This training provides an introduction designed to equip participants to better understand state and local government financial reports.

Who Will Benefit: Government professionals with a limited or no background in accounting and financial reporting.

Learning Objectives:

Those completing this seminar will be able to:

- Recognize the role of accounting and financial reporting in the governmental environment.
- Identify the "players" (financial statement users, preparers, auditors)
- Name the "rules of the game" (generally accepted accounting principles – GAAP)
- Identify what fund accounting is and how it works (fund categories and fund types)
- Discern what different funds measure and when they measure it (measurement focus and basis of accounting)
- Recognize the important elements of government-wide financial statements and their relationship

to fund financial statements (how does the information differ and why?)
- Ascertain where to look for additional information to help understand the financial statements and how to use that information (annual comprehensive financial report)

Member Price: $85.00
Non-member Price: $170.00

Click here to register.

- SIFMA Comments on Request for Information on Impacts of MSRB Rules on Small Firms.
- Solicitor Municipal Advisors On Watch With New MSRB Rule G-46 In Place.
- MSRB Publishes 2023 Fact Book of Municipal Securities Data.
- Amid Rising Costs, States Scramble to Budget for Natural Disasters.
- Initiative 1935: Sweeping Measure to Limit Ability of State and Local Governments in California to Raise Revenues – Orrick
- *Ursinus College v. Prevailing Wage Appeals Board* – Supreme Court of Pennsylvania holds that construction project undertaken by private, non-profit college and financed by bonds issued by public authority was not paid for in whole or in part with public funds, and so was not a "public work" covered by Prevailing Wage Act (PWA); in providing conduit financing for project, a private endeavor, authority assigned loan agreement to trustee and then sold bonds to private underwriter, which paid purchase price with private monies directly to trustee, which deposited monies into project fund and then disbursed monies to college or others designated by it for project costs, college alone repaid bond debt from its own revenue, again directly to trustee, which deposited funds into bond fund from which bondholders were paid, at no time did relevant monies flow through authority's coffers, and neither authority nor taxpayers bore any risk or liability relative to the bonds. [**Ed. Note:** The opinion also analyzes other financial structures (e.g. TIF) w/r/t this question.]
- And Finally, Menage A' Tragicomedy is brought to us this week by *Jackson County Emergency Medical Service District v. Kirkland*, in which all involved were having a genuinely Terrible, Horrible, No Good, Very Bad Day. Scene: 2:45 am, Newcastle, Oklahoma. Party A: Ambulance driver. Party B: Ambulance passenger. Party 3: Tollbooth operator. Stir violently, and voila! Voila what? We're not sure. Anyway, here's the footage. Enjoy.

MSRB Publishes 2023 Fact Book of Municipal Securities Data.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today published its annual Fact Book, the definitive compilation of the most recent five years of statistics on municipal securities market trading, interest rate resets and disclosures. The 2023 Fact Book includes monthly, quarterly and yearly aggregate market information from 2019 to 2023, which can be analyzed to identify market trends.

"This is the 16th year the MSRB has published its annual Fact Book, which municipal market participants continue to rely upon to better understand emerging and long-term trends within the municipal securities market," MSRB Senior Director, Research and Market Transparency Marcelo Vieira said. "We are pleased to release this information to the market annually as it provides added context and transparency for market participants, policymakers and the public."

Statistics provided in the 2023 Fact Book validate trends highlighted in the MSRB's 2023 Municipal Market Year in Review. Most notable of these trends are the significant interest rate volatility and the record trading volume driven by strong demand from individual investors.

In addition to compiling quarterly and annual statistics, the MSRB regularly conducts independent research and analysis to support the understanding of municipal securities market trends. Much of this research is based on real-time municipal securities trade data the MSRB collects, along with primary market and secondary market disclosures, which it makes available for free to the public on its Electronic Municipal Market Access (EMMA®) website.

Date: February 29, 2024

Contact: Aleis Stokes, Chief External Relations Officer
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TELECOM - CALIFORNIA

City of Lancaster v. Netflix, Inc.

Court of Appeal, Second District, Division 3, California - February 22, 2024 - Cal.Rptr.3d - 2024 WL 725166

City brought putative class action on behalf of itself and other local governments against video streaming services seeking unpaid past franchise fees for video services under the Digital Infrastructure and Video Competition Act and declaratory relief compelling providers to obtain state franchises and pay franchise fees going forward.

The Superior Court sustained providers' demurrer to the complaint without leave to amend, and entered judgment. City appealed.

The Court of Appeal held that:

- Act did not expressly create a private right of action for local governments against non-franchise holders;
- Act did not contain an implied private right of action for local governments against non-franchise holders; and
- Trial court appropriately preserved Public Utilities Commission's jurisdiction.

Private right of action created by the Digital Infrastructure and Video Competition Act, which required video service providers to obtain a franchise from the Public Utilities Commission and pay franchise fees to local governments in exchange for use of public rights-of-way to operate video service networks, did not expressly create a private right of action for city and local government entities against streaming services that were non-franchise holders for unpaid video service provider fees; Act made clear that fees to be collected from video service providers operating within local government's jurisdiction were franchise fees, and that only "holders" of a state franchise were obligated to pay the required fees.

Digital Infrastructure and Video Competition Act, which required video service providers to obtain a franchise from the Public Utilities Commission and pay franchise fees to local governments in exchange for use of public rights-of-way to operate video service networks, did not contain an implied private right of action for local governments against non-franchise holders for collection of video service provider fees; structure of the Act indicated it was legislative intent for Commission, not local governments, to be responsible for enforcement issues relating to state franchise requirement, as it provided for Commission to bring suit on its own against video service providers that failed to obtain state franchise, while the Act's legislative history made no mention of private right of action against non-franchise holders.

Trial court appropriately preserved Public Utilities Commission's jurisdiction by sustaining demurrer to city's declaratory relief claim against video streaming services seeking judicial declaration that services must obtain state-issued franchises through the Commission, where claim was wholly derivative of city's claim asserting private cause of action under the Digital Infrastructure and Video Competition Act seeking past due video service provider fees allegedly owed by providers, which was meritless because the Act granted enforcement authority to Commission and not local governments, and further, city's claim was essentially a thinly veiled request that court order the Commission to issue franchises to providers or to institute enforcement action against them.

IMMUNITY - COLORADO

Hice v. Giron

Supreme Court of Colorado - February 20, 2024 - P.3d - 2024 WL 677222 - 2024 CO 9

Following chase that police officer began before activating his vehicle's emergency lights, and which ended with vehicle colliding into van, fatally injuring van's driver and passenger, relatives and estate representatives of driver and passenger brought wrongful death action against officer and town.

Defendants asserted immunity defense under the Colorado Governmental Immunity Act (CGIA). The District Court dismissed on the basis of immunity. Relatives and estate representatives appealed. The Court of Appeals reversed, finding that defendants were not entitled to immunity because officer did not activate his lights and siren for the entire time he exceeded speed limit. The Supreme Court granted certiorari review.

The Supreme Court held that:

- To waive immunity under the CGIA, a minimal causal connection was required between fatal injuries and officer's failure to use lights and siren;
- Officer did not violate traffic code without privilege so as to waive immunity under the CGIA;
- Statute providing CGIA immunity "only when" making use of audible or visual signals did not require officer to use lights or sirens as soon as he began speeding; and
- Any statutory discretion afforded police officer not to use lights and siren did not mandate that officer waived immunity under the CGIA.

EMINENT DOMAIN. - DISTRICT OF COLUMBIA

Gordon v. District of Columbia

District of Columbia Court of Appeals - February 15, 2024 - A.3d - 2024 WL 630165

Property owners who sought to sell their family home filed action against the District of Columbia and several District employees, asserting constitutional and common-law claims related to the designation of the home as a historic property.

The Superior Court granted in part and denied in part the District's motion to dismiss and granted the District's motion for summary judgment on the remainder of the claims. Property owners appealed.

The Court of Appeals held that:

- Historic Preservation Office (HPO) employee was entitled to qualified immunity from property owners' Fourth Amendment claim;
- Property owners' allegations were insufficient to establish District's liability under § 1983 for HPO employee's unauthorized entry into property owners' home under a "single instance" theory;
- Property owners' allegations were insufficient to support failure-to-train claim against employee's supervisor;
- Remand was necessary on the issue of whether HPO employee was entitled to absolute official immunity from property owners' common law trespass claim;
- District's designation of property owners' home as a historic landmark was not a regulatory taking under the Fifth Amendment; and
- Historic Preservation Review Board (HPRB) hearing regarding the proposed historic designation of home did not deprive property owners of procedural due process.

IMMUNITY - OKLAHOMA

Jackson County Emergency Medical Service District v. Kirkland

Supreme Court of Oklahoma - February 13, 2024 - P.3d - 2024 WL 564543 - 2024 OK 4

Toll worker who was injured when ambulance collided with a turnpike tollbooth filed a negligence action against ambulance driver and county emergency medical services (EMS) district.

The District Court denied defendants' motions for summary judgment and to substitute parties. EMS district filed an application to assume original jurisdiction and a petition for writ of prohibition.

As matters of first impression, the Supreme Court held that:

- Board of trustees, as the EMS district's governing body, should have been substituted as a party;
- EMS district, vis-a-vis the board of trustees, was subject to immunity from liability to the same extent as municipalities and counties within the state enjoyed such immunity; and
- EMS district, vis-a-vis the board of trustees, was immunity from liability in negligence action brought by toll worker who had received workers' compensation benefits.

Board of trustees for county emergency medical services (EMS) district should have been substituted for the EMS district in negligence action brought by highway toll worker injured in ambulance collision with toll booth; EMS district and its board of trustees were not distinctly created entities which could be separated from each other, and EMS district's board of trustees was the expressed entity to be sued as EMS district's sole governing body.

County's emergency medical services (EMS) district, vis-a-vis the board of trustees, was subject to immunity from liability in negligence action brought by toll worker injured in an ambulance collision to the same extent as municipalities and counties within the state enjoyed such immunity under the Oklahoma Governmental Tort Claims Act (GTCA).

County's emergency medical services (EMS) district, vis-a-vis the board of trustees, was immune from liability in negligence action brought by toll worker injured in an ambulance collision under the

Oklahoma Governmental Tort Claims Act (GTCA), where the GTCA precluded liability if the injury was covered by workers' compensation, and it was undisputed that workers' compensation benefits had been paid to toll worker as a result of the accident.

LIABILITY - PENNSYLVANIA

Donahue v. Borough of Collingdale

United States District Court, E.D. Pennsylvania - February 1, 2024 - F.Supp.3d - 2024 WL 387455

Bystander injured and administratrix of estate of bystander killed when vehicle of which bystanders were occupants was struck by vehicle being chased by police in high speed pursuit, as well as decedent bystander's sister, brought action against individual police officers and boroughs, asserting claims under § 1983 for due process violations and municipal liability and under state law.

Officers and boroughs moved for summary judgment.

The District Court held that:

- Individual officers were not liable on substantive due process claim under state-created danger theory;
- Fact issues existed as to whether boroughs' allegedly defective customs and training related to pursuits were moving force of constitutional violations, precluding summary judgment on claims for municipal liability; and
- Bifurcation of § 1983 claims and state law claims was appropriate.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Barris v. Stroud Township

Supreme Court of Pennsylvania - February 21, 2024 - A.3d - 2024 WL 696822

Landowner filed complaint seeking declaratory judgment that township ordinance prohibiting discharging of firearms within township, alongside zoning ordinances limiting shooting ranges to two non-residential districts in township, violated Second Amendment on its face.

The Court of Common Pleas entered summary judgment in township's favor, and landowner appealed. The Commonwealth Court reversed. Leave to appeal was granted.

The Supreme Court held that:

- Owner's conduct in discharging firearms on his own property in order to gain proficiency in their use was covered by Second Amendment, but
- Ordinance did not violate Second Amendment on its face.

Property owner's conduct in discharging firearms on his own property in order to gain proficiency in their use was covered by Second Amendment's plain text, where owner faced confiscation of his lawfully-owned firearms pursuant to township ordinance for doing so.

Township ordinance prohibiting discharging of firearms within township except in shooting ranges within non-residential districts was fully consistent with Nation's historical tradition of firearm regulation, and thus did not violate Second Amendment on its face; colonial, founding, and antebellum generations recognized states' longstanding power to regulate when and where firearms could be used for non-self-defense purposes, number of firearm discharge regulations proliferated after Second Amendment's ratification, number of regulations during this time were aimed specifically at shooting ranges and target practice, and township adopted ordinance for protection of public health and safety and general welfare of residents and visitors.

PREVAILING WAGE ACT - PENNSYLVANIA

[Ursinus College v. Prevailing Wage Appeals Board]()

Supreme Court of Pennsylvania - February 21, 2024 - A.3d - 2024 WL 696765

Private, non-profit college sought review of decision by Pennsylvania Prevailing Wage Appeals Board which reversed the decision of the Department of Labor and Industry, Bureau of Labor Law Compliance, concluding that construction project undertaken by college and financed by bonds issued by public authority was "public work" covered by the Pennsylvania Prevailing Wage Act (PWA), entitling members of labor union to prevailing minimum wages for project work already completed.

The Commonwealth Court reversed. Discretionary review was granted.

The Supreme Court held that the project was not paid for in whole or in part with public funds and, thus, did not constitute a "public work" within meaning of the PWA.

As shown by relevant dictionary definitions, plain reading of phrase "paid for in whole or in part out of the funds of a public body," as used in provision of the Pennsylvania Prevailing Wage Act (PWA) defining "public work" to mean construction, reconstruction, demolition, alteration, and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where estimated cost of total project is in excess of $25,000, requires the work to be marked by the receipt of payment, in whole or in part, from available pecuniary resources from or possessed by the Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth of Pennsylvania, and any instrumentality or agency of the Commonwealth of Pennsylvania.

Construction project undertaken by private, non-profit college and financed by bonds issued by public authority was not paid for in whole or in part with public funds, and so was not a "public work" covered by Prevailing Wage Act (PWA); in providing conduit financing for project, a private endeavor, authority assigned loan agreement to trustee and then sold bonds to private underwriter, which paid purchase price with private monies directly to trustee, which deposited monies into project fund and then disbursed monies to college or others designated by it for project costs, college alone repaid bond debt from its own revenue, again directly to trustee, which deposited funds into bond fund from which bondholders were paid, at no time did relevant monies flow through authority's coffers, and neither authority nor taxpayers bore any risk or liability relative to the bonds.

For a construction project to be a "public work" covered by the Pennsylvania Prevailing Wage Act (PWA), the statute's clear requirement that the project be "paid for in whole or in part out of the funds of a public body" cannot be satisfied by either the mere involvement of a public body in the transaction or a "but for" test pursuant to which "but for" the public body's involvement in the transaction the project could not have occurred; allowing a "but for" test or mere involvement of the public body to suffice would require court to impermissibly add to or otherwise modify statutory language to expand the PWA's coverage beyond its plain terms.

EMINENT DOMAIN - SOUTH CAROLINA

Applied Building Sciences, Inc. v. South Carolina Department of Commerce, Division of Public Railways

Supreme Court of South Carolina - January 17, 2024 - S.E.2d - 2024 WL 174157

Engineering firm that was tenant in building condemned for public use asserted an inverse condemnation claim against Division of Public Railways, as condemnor, seeking reimbursement of reestablishment expenses.

The Circuit Court granted Division's motion for summary judgment. Firm appealed, and case was certified for review.

The Supreme Court held that:

- Reestablishment expenses related to the moving of small businesses, farms, and non-profit organizations are separate from constitutional just compensation, and
- The $50,000 statutory limit on reimbursement of reestablishment expenses does not violate the federal and state takings clauses.

Reestablishment expenses related to the moving of small businesses, farms, and non-profit organizations due to a condemnation for public use are separate from constitutional just compensation in an eminent domain action.

The $50,000 statutory limit on reimbursement of reestablishment expenses related to the moving of small businesses, farms, and non-profit organizations due to a condemnation for public use does not violate the takings clauses of the Federal and State Constitutions.

Amid Rising Costs, States Scramble to Budget for Natural Disasters.

The U.S. set a new record for billion-dollar climate disasters in 2023. State budgets are increasingly shouldering the costs of more frequent and expensive weather events.

In 2023, U.S. states endured more weather-related disasters causing a billion dollars or more in damage than ever. The increasing cost and risk of natural disasters is playing a major role in shrinking the home insurance market and driving up rates in Gulf Coast and Western states. In response, leaders in these states have taken a range of steps to protect property and state budgets from the myriad threats posed by more frequent and costly disasters.

In Florida, a rapid loss of insurers and rising cost of policies has prompted regulatory changes designed to reduce the state's budget exposure as the de facto home insurer, and Gov. Ron DeSantis proposed a fiscal 2025 budget that includes more than $500 million to cut taxes and other insurance costs for homeowners.

Continue reading.

Route Fifty

By Liz Farmer

FEBRUARY 28, 2024

As COVID-19 Emergency Funding Dries Up, Some Rural Schools May Face a Steep Fiscal Cliff in 2024.

Lower-income districts are likely to face bigger budget reductions, along with districts who spent relief aid on teacher salaries and new faculty hires.

Some rural school districts—particularly those with greater poverty levels—are set to face steep budget reductions when COVID-19 emergency funding closes this September.

To offset the effects of COVID-19 on public education, the federal government issued historic amounts of pandemic relief aid through the Elementary and Secondary School Emergency Relief Fund (ESSER) to states and districts across the country beginning in March 2020.

Over the past several years, the public school system has had access to nearly $190 billion, which states and districts have spent on a variety of needs including technology, transportation, school infrastructure, mental health support, after-school programing, tutoring, faculty training and increased staffing.

Continue reading.

Route Fifty

By Lane Wendell Fischer,
The Daily Yonder

FEBRUARY 29, 2024

S&P U.S. State Ratings And Outlooks: Current List

View the Current List.

1 Mar, 2024

Fitch Ratings Updates U.S. Water and Sewer Rating Criteria.

Fitch Ratings-Austin-29 February 2024: Fitch Ratings has updated its criteria for U.S. water and sewer utilities. The criteria updates and replaces the criteria from March 2023.

Notable revisions include the introduction of ‘extraordinarily weak’ assessments for revenue defensibility and operating risk, updated language on notch-specific rating positioning and an expanded discussion of circumstances when analytical outcomes may differ from the Rating Positioning table. The last revision is intended to provide greater clarity as to when ratings may be higher or lower than what is suggested by the entity's leverage profile together with the Rating Positioning table. Fitch has also updated language related to the treatment of lease obligations in financial metrics to align such treatment with current accounting standards.

The key criteria elements remain consistent with those of the prior report. There is no impact on outstanding ratings, and no credits are being placed Under Criteria Observation. The previous version of the criteria has been retired.

The updated criteria report is available at www.fitchratings.com or by clicking the link above.

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Fitch Ratings Publishes Exposure Draft for U.S. Life Plan Communities Rating Criteria.

Fitch Ratings-New York-04 March 2024: Fitch Ratings has published an exposure draft detailing proposed revisions to its rating criteria for U.S. NPF life plan communities.

"The proposed revisions to criteria are intended to better reflect the unique risks of LPCs and their typically very limited market draw and high industry concentration risk, which limit their rating potential," said Fitch Senior Director Margaret Johnson. "The proposed revisions also acknowledge LPCs' propensity for large-scale capital plans relative to their revenue size and provide better transparency on when and how these plans will be factored into ratings."

Among Fitch's proposed changes include:

–Limitation of ratings of LPCs that do not carry a third party guarantee to the 'A' category;

–Added Revenue Defensibility sub-assessments to better differentiate risks of multi-site vs. single-site LPCs;
–Additional ‘B’ category to Ratings Positioning Table and added enhanced guidance for ratings below ‘B’ category; and;
–Further guidance on potential rating action based on probability and rating impact of capital project.

Regarding revenue defensibility, Johnson says that LPCs with more SNF units than ILUs are more vulnerable to revenue pressures, as they typically have very little pricing flexibility due to their high exposure to governmental payors. Among the asymmetric additional risk considerations Fitch considers, expansion projects help determine an LPC’s revenue defensibility. “While expansion projects can be of strategic benefit to LPCs, they very often lead to increased leverage and represent a relatively high degree of risk associated with the fill-up of expansion units,” said Johnson.

Fitch anticipates approximately 10% of LPC ratings to be affected by these changes, with most rating changes, if any, not to exceed one-notch downgrades. Fitch is actively soliciting market feedback on the proposed criteria. Send comments to criteria.feedback@fitchratings.com by April 18, 2024.

In addition to the exposure draft, Fitch has also published Exposure Draft: U.S. Public Finance Not-For-Profit Life Plan Community Rating Criteria: Frequently Asked Questions (FAQs).

Fitch’s “Exposure Draft: U.S. Public Finance Not-For-Profit Life Plan Community Rating Criteria” and the FAQs are available at www.fitchratings.com.

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Morgan Stanley Hires Four Bankers From Citi’s Closing Muni Unit.

- **Three of the bankers will lead various public finance groups**
- **In 2023, Morgan Stanley was the fifth-biggest muni underwriter**

Morgan Stanley has hired four public finance bankers from Citigroup Inc.’s long-vaunted municipal-bond unit that is being shuttered, according to a person familiar with the matter who declined to be identified because the matter is not yet public.

Three of the new bankers will lead different groups within Morgan Stanley’s public finance division, the person said. Citigroup executives announced in December that the bank would wind down its public finance unit this quarter.

Alex Zaman will serve as head of surface transportation and urban development and Lori Small will serve as head of airports, the person said. Shai Markowicz will serve as head of social infrastructure, which includes project finance and public-private partnerships. Imani Boggan is also joining as an associate, the person said.

Continue reading.

Bloomberg Markets

By Amanda Albright and Shruti Singh

February 28, 2024

Three Ex-UBS Public Finance Bankers Head to Cabrera Capital.

- **Chicago-based firm has been expanding in public finance**
- **Pullback by UBS, Citi creates hiring opportunity for others**

Cabrera Capital Markets has hired three former UBS Group AG public finance bankers, the latest firm to scoop up talent from a national bank that's pulled back from the municipal-bond market.

The Chicago-based investment bank and brokerage brought on Shawn Dralle, a Los Angeles-based banker who will serve as head of West Coast public finance, according to a statement. Chris Bergstrom, a New York-based banker, will lead public transportation finance at Cabrera. And Shawnell Holman, a Houston-based banker, joined as an executive director.

"With the addition of three new senior level positions nationwide, the ability to serve our public finance clients will assuredly continue to expand," Mario Carrasco, head of public finance at Cabrera, said in the statement.

UBS bank executives announced last year that the unit would reorganize and shift away from working for state and local governments as an underwriter, though it would still buy bonds issued in auction sales. Citigroup Inc. is also shutting down its public finance unit. That's created a hiring opportunity for banks that are looking to expand their market share in municipal finance.

Cabrera is also tapping two industry vets from Citigroup to serve as consultants. Steven Dworkin, a banker who focused on public power entities, and George Leung, a muni credit specialist, will help expand the services that the company provides to clients, the company said in the statement.

Cabrera has been expanding its presence in municipal-bond underwriting. It hired Carrasco in 2022 to lead its public finance efforts. The firm will serve as lead manager on an upcoming $750 million bond sale by the Austin Independent School District that is slated to price later this month, according to the company.

"This is going to be an expansive year for our public finance team," Chief Executive Officer Martin Cabrera said in the statement. "Bringing Chris, Shawnell, Shawn and all the municipal finance hires since 2022 onto Cabrera's public finance platform creates more opportunities to better serve our clients and forge new relationships to continue the upward trajectory of Cabrera's future."

Bloomberg Markets

By Amanda Albright

March 4, 2024

[Morgan Stanley Boosts Public Finance Division, Poaching Talent from Citigroup.]

Learn how Morgan Stanley's recruitment of experienced bankers from Citigroup's closing municipal-bond unit aims to strengthen its position in the market, expand its service offerings, and improve its rankings in the municipal-bond underwriting space.

Morgan Stanley has strategically enhanced its public finance division by hiring four seasoned bankers from Citigroup Inc.'s municipal-bond unit, which is slated for closure this quarter. This significant move underscores Morgan Stanley's ambition to solidify its standing and capabilities in the municipal-bond underwriting market across the United States.

Strategic Hires to Fortify Key Sectors

The quartet of new hires is poised to lead various segments within Morgan Stanley's public finance division, bringing a wealth of experience and expertise. Alex Zaman has been appointed head of surface transportation and urban development, Lori Small will helm the airports division, and Shai Markowicz takes charge of social infrastructure, which includes crucial areas such as project finance and public-private partnerships. Imani Boggan joins as an associate, rounding out the team with fresh insight and potential. These appointments are not just about filling positions; they are strategic moves designed to enhance Morgan Stanley's service offerings and market presence in vital infrastructure sectors.

[Continue reading.]

bnnbreaking.com

by Rizwan Shah

28 Feb 2024

[Truist Hires Former Citi Muni Bankers to Build 'National Scope']

- **Southeast bank expands in market Wall Street giant exited**
- **Executives say hiring to continue as opportunities arise**

Truist Financial Corp. hired more Citigroup Inc. municipal-bond veterans, showcasing the Southeast regional bank's deepening commitment to the $4 trillion market as the Wall Street powerhouse leaves the business.

Charlotte, North Carolina-based Truist added Cameron Parks to head infrastructure and government banking. Also joining were Robert Mellinger and Matt Bernstein.

The expansion by Truist, created by the merger of SunTrust Banks Inc. and BB&T Corp. in 2019, comes as municipal investment banking is showing signs of life. A decrease in borrowing costs this year has pushed state and local debt sales up more than 40% over the year-ago period, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Amanda Albright

March 1, 2024

Initiative 1935: Sweeping Measure to Limit Ability of State and Local Governments in California to Raise Revenues - Orrick

Voters in California may cast ballots this November on a proposal to make substantial changes to the California Constitution involving taxation and related government powers.

Initiative 1935, the so-called "Taxpayer Protection and Government Accountability Act," seeks to limit the State's and local agencies' ability to generate revenues by, among other things, broadening the definition of what constitutes a tax, increasing voter and government approval thresholds in some cases, and adding procedural election requirements. It seeks to overturn recent judicial decisions holding that local initiative tax measures require approval of only a majority vote.

The measure also purports to apply retroactively. If retroactivity is effective, applicable taxes, fees and charges created, increased or extended after January 1, 2022, not adopted in a manner consistent with the requirements of Initiative 1935 would become void unless reenacted within 12 months.

The Governor and State Legislature are challenging Initiative 1935 in the California Supreme Court. They say it should not appear on the ballot, arguing that the initiative would amount to an unlawful revision of the California Constitution and an impermissible interference with essential government functions. The Governor and Legislature have requested a ruling by June, before election workers prepare ballots for the November election. It is unclear how the California Supreme Court will rule.

Continue reading.

February.29.2024

Orrick Herrington & Sutcliffe LLP

Harvard University Floats $1.65 Billion Upcoming Debt Sale.

- **Ivy League school plans to sell debt in March and April**
- **Bonds will be both taxable and tax-exempt, filing says**

Harvard University is considering the sale of as much as $1.65 billion of bonds, marking the latest

Ivy League school to issue debt this year, and potentially providing signs of how it's financially faring after months of turmoil over allegations of antisemitism on campus.

The university is planning to borrow as much as $750 million of taxable fixed-rate bonds the week of March 4 and $900 million of tax-exempt bonds in April, according to a regulatory filing on Monday.

Harvard has come under scrutiny from lawmakers, students, alumni and donors in the wake of Hamas's Oct. 7 attack on Israel, resulting in the resignation this year of President Claudine Gay. Some of its most prominent benefactors have signaled they won't commit more money to the school such as billionaires Ken Griffin and Len Blavatnik, both alumni. In addition, the school is facing inquiries in two Congressional committees, federal lawsuits and possible government actions could take away financial support. Federally sponsored research comprised 11% of its operating revenues during the fiscal year that ended in June.

Continue reading.

Bloomberg Markets

By Amanda Albright and Janet Lorin

February 26, 2024

Biden Administration Waives Certain 'Build America' Requirements for Broadband.

Even with the waiver, though, the administration estimates that roughly 90% of funding for equipment will still be used to purchase U.S.- made products.

The federal government says it's OK for some components used in building out the nation's broadband network to come from other countries.

The waiver announced last week by the National Telecommunications and Information Administration, or NTIA, addresses a key concern among states over requirements in the federal Build America, Buy America Act that infrastructure projects have to be built with products made in the U.S.

"I think we all generally support the goals of Build America, Buy America," said Christine Hallquist, executive director of the Vermont Community Broadband Board, referring to the desire to increase the number of manufacturing jobs in the U.S. But "the real issue," she said, is that not enough components used in the construction of broadband are currently made in America.

Continue reading.

Route Fifty

By Kery Murakami

FEBRUARY 27, 2024

Solicitor Municipal Advisors On Watch With New MSRB Rule G-46 In Place.

After years of soliciting market feedback, new Municipal Securities Rulemaking Board Rule G-46 on the duties of solicitor municipal advisors is in effect as of March 1, setting the stage for closer scrutiny from both municipal advisors and the Securities and Exchange Commission.

Solicitor municipal advisors are a much smaller crowd than traditional municipal advisors and only solicit for pension funds, though some MAs do both kinds of work. For those that do, new policies and procedures will need to be put into place.

"While the rule is especially important for those professionals that solicit for pension funds, it could potentially impact MAs and other regulated entities," said Susan Gaffney, executive director of the National Association of Municipal Advisors. "If MA firms are engaging in solicitor MA activity, as outlined in the rule, it will be important for firms to develop necessary policies and procedures to comply with the Rule's standard of conduct and recordkeeping requirements."

Specifically, the rule defines solicitor MA activity as an entity in direct or indirect communication with a municipal entity or obligated person, for direct or indirect compensation, on behalf of an MA or investment advisor that is a third party and not controlled by the MA firm, for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor, and if the engagement does not include excluded communications, as defined in Rule G-46.

It could also include recommending another MA or investment advisor for compensation, directly or indirectly and encompassing quid pro quo arrangements or unrequested gifts to a municipal entity involved in an issuance, NAMA said in a compliance release.

If applicable, solicitor MA activity would also have to include disclosures to solicitor clients, documentation of the solicitor relationship, representations to solicited entities, disclosures to solicited entities, timing and manner of disclosures and certain prohibitions.

MAs and solicitor MAs came under the MSRB's purview following the passing of Dodd-Frank more than a decade ago, but this is the first time specific solicitor MA standards of conduct will also be scrutinized by the SEC. In its 2024 exam priorities, the SEC made a particular point of drawing attention to the new rule.

"Examinations of solicitor municipal advisors during the second half of fiscal year 2024 will focus on compliance with new MSRB Rule G-46," the SEC said. That will be part of its efforts to look at MAs as a whole and whether they've fulfilled their fiduciary duty to clients, "particularly when providing advice regarding the pricing, method of sale and structure of municipal securities," the Commission added. "Examiners will review whether municipal advisors are complying with their obligations to document municipal advisory relationships and disclose conflicts of interest and requirements related to registration, professional qualification, continuing education, recordkeeping and supervision."

On the Form MA, or the application for municipal advisor registration, solicitor MAs is just another box that may have been checked if a registering MA wasn't exactly clear on the definitions. NAMA suggests going back to review those materials, now that there are new and clear definitions.

"We've also been telling our members if you're not a solicitor, uncheck the box because we've heard from exams that they will be looking at the population of solicitor MAs that are self identified on Form MA and focus exam efforts on that in this year," Gaffney said.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 03/01/24 11:40 AM EST

Investing with Impact: How Municipal Bonds Are Leading the Way

Issues like water scarcity are felt most intensely at the local level. That makes it incumbent on municipal bond issuers to lead the response.

Municipal bond issuers are responsible for building and supporting the physical infrastructure and the public goods and services that enable citizens to participate more in an inclusive economy. That makes the roughly $4 trillion US municipal bond market fertile ground for impact investing. Challenges like supplying clean water and improving access to quality healthcare can both be tackled through environmentally, socially, and financially productive investments in communities and institutions.

Leading When Water Is Lacking

As we've seen over the past few years, access to water can't be taken for granted. The country faces historic drought conditions in the West and other regions. For instance, the Rio Grande, a river that countless Southwestern US communities depend on, faces persistent drought and increased water demand.

These challenges disproportionately impact low-income communities. In one study, 14% of respondents said a $12 monthly increase in water bills would lead them to cut back spending on groceries and basic medical care.1 Long-term investments in projects that diversify water sources, combined with water conservation strategies, can go a long way toward improving drought resiliency and reducing the financial burden communities face.

Continue reading.

Alliance Bernstein

March 1, 2024

Tax Season Could be Boon for Muni Bonds.

Financial advisors looking to move cash off the sidelines this spring see opportunities in the municipal bond market.

Wealth managers move a lot of money around during tax season to meet client obligations. Several advisors say that this year, a lot of leftover cash from all that shuffling could end up in municipal bonds, especially for those high-net-worth clients living in high-tax states.

Over $1.2 trillion went into money-market funds in 2023, according to Bank of America, and with the Federal Reserve expected to cut rates at some point this year, financial advisors will be looking to take some of that cash off the sidelines and put it to work after Uncle Sam gets his due.

For those in the top tax bracket, investment-grade municipal bonds can achieve a taxable equivalent yield of up to 8 percent, which compares to the approximately 5 percent that money-market funds are currently paying.

Sam Weitzman, product specialist at Western Asset Management, says tax season tends to be a good time to leg into municipal bonds because investors are often selling out of their municipal bond positions to pay their taxes. As a result, new buyers are rewarded with marginally higher yield opportunities.

“We also saw taxes go down in 2018 following the Tax Cuts and Jobs Act,” Weitzman said. “Those tax cuts are slated to expire next year, and with that, we’re expecting a higher tax rate environment to further improve the value of tax-exempt income.”

As to what types of munis offer the best value in the current market, Weitzman said the highest quality portion of the market inside of 10 years appears overly crowded. Instead, he prefers doing a little more work for his clients to unearth opportunities “down the credit spectrum.”

“Right now, single-A munis and triple-B munis are offering about 100 basis points of after-tax yield pickup if you’re in the top tax bracket,” he said. “And to us, that’s a really attractive relative value proposition given the fact that munis tend to default much less frequently than those corporate counterparts.”

Speaking of defaults, Steve Stanganelli, certified financial planner at Clear View Wealth Advisors, worries that the ability of municipalities to tax their constituents is starting to push up against the ability of taxpayers to tap their wallets for debt service. Anecdotally speaking, he sees such fiscal challenges building in his own city and is concerned that similar scenarios are playing out across the country.

Nevertheless, he uses several Nuveen closed-end funds for clients, including the Nuveen AMT-Free Quality Muni (NEA), the Nuveen Quality Muni-Income (NAD), and the Nuveen Municipal Credit Income (NZF), because they offer high-yield dividends that are tax-advantaged.

“Despite my longer-term concerns about municipal tax revenues, in the near term munis are well positioned as investors are often buying them for safety. And for my higher-income clients, these tax advantages help boost yields even more,” Stanganelli said.

Jonathan Swanburg, president of TSA Wealth Management, agrees that for clients with taxable accounts that are in the highest tax brackets, municipal bonds are a sensible purchase at any time of year, not just during tax season.

“In Texas where we have no state income tax, a taxpayer making more than $731K is going be at a 40.8 percent effective tax rate on additional bond income. For this client, a 4 percent muni bond would have the same effective yield as a 6.76 percent corporate or Treasury,” Swanburg wrote in an email. “If that same client was at the highest income levels and lived in New York City, her effective tax rate would be around 55 percent in total. In her case, buying a NY City municipal bond would have a tax equivalent yield of 8.8 percent relative to a corporate and 6.76 percent relative to a Treasury.”

The biggest issue Swanburg sees with municipal bonds in the current environment is that investors will often buy them thinking tax-free income is universally better than taxable income. However, that’s not necessarily the case for investors outside the highest tax brackets.

“It is very common for retirees, even high-net-worth retirees, to be in lower tax brackets. At the 24 percent marginal bracket, for example, a 4 percent muni has the equivalent yield of a 5.26 percent corporate. If the equivalent-risk corporate is yielding more than that, the investor is better off going with the taxable bond," he said.

Investment News

By Gregg Greenberg

February 29, 2024

Record Issuance, Strong Yields Put Municipal Bonds in Play.

Record issuance in municipal bonds is injecting the debt market with a healthy dose of supply. Combined with elevated yields, this puts municipal bonds in play for any bond portfolio to benefit.

Record issuance is happening at both the private and public sectors. This is because expectations of rate cuts by the Federal Reserve will allow issuers to take on more debt now and refinance later at lower rates. In addition to attractive yields, municipal bonds offer investors higher credit quality that can appease risk-averse investors who want yield, but not the additional credit risk other debt could carry. With the tailwinds of strong fundamentals behind it, municipal bonds are an ideal option to balance yield and credit risk.

"We expect that the fundamental backdrop will remain strong," private investment management company Lord Abbett said. "While the record-setting growth in tax revenues and rainy-day balances has moderated over the last year, we believe that municipal credit is returning to a more normalized environment."

"Tax receipts are still significantly above levels experienced prior to the pandemic, and rainy-day balances relative to spending remain multiple times higher than during much of the last 15 years," the firm added. "With the decline in growth of tax receipts, we also anticipate spending by state and local governments will lessen, as many states move beyond the one-off expenditures of last year."

Tax-Free Income in One Fund

A prime benefit of munis is the tax-free income they can offer that's beneficial for investors in higher income tax brackets. Rather than opt for a variety of muni bond holdings, an easier way is via one ETF: the well-diversified Vanguard Tax-Exempt Bond ETF (VTEB).

The fund tracks the Standard & Poor's National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. Overall, this index includes municipal bonds from issuers, primarily state or local governments or agencies whose interests are exempt from U.S. federal income taxes, and the federal alternative minimum tax.

Of course, a top-of-mind goal for fixed income investors, especially in a year in which rate cuts could happen at a quick pace, is extracting the most yield in the current macroeconomic environment. To that note, VTEB brings a yield of 3.33% (as of February 23), with an average duration of 5.6 years and average stated maturity of 13.6 years.

ETF TRENDS

by BEN HERNANDEZ

MARCH 1, 2024

WPPI Energy, Wisconsin: Fitch New Issue Report

The 'A+' rating and Issuer Default Rating reflect WPPI Energy's strong revenue defensibility, which is supported by its role as a wholesale power supplier serving 51 utility systems in Wisconsin, Michigan and Iowa, along with the strong credit quality of the agency's largest members. Members are bound by long-term, take-and-pay power supply contracts (PSCs) that provide for the full cost recovery of all of WPPI's costs. The rating also considers WPPI's strong operating risk profile, consistent financial performance and low leverage. WPPI's diverse mix of owned generation resources by fuel type and geographic location, and varied purchased power agreements (PPAs) provide a stable and relatively low-cost energy supply, and are the basis for the strong operating risk assessment. The operating cost burden, which increased over the past two year to over 9 cents/kWh in 2022, remains low despite a rise in fuel and market energy costs over that time. Cost pressures subsided somewhat in 2023, allowing the cost burden to decline to closer to 8 cents/kWh. Capital needs, including ATC transmission investments, are manageable over the next five years at roughly $125 million. WPPI's strong financial profile is demonstrated by a low leverage ratio, measured as net adjusted debt to adjusted funds available for debt service (FADS), that has remained below 7.0x over the past five years. Coverage of full obligations (COFO) and liquidity are stable and neutral to the assessment. Fitch Ratings anticipates WPPI's leverage will remain near 7.0x through Fitch's base and stress case scenarios, which is consistent with the overall rating.

ACCESS REPORT

Fri 01 Mar, 2024

Lower Colorado River Authority Transmission Services Corp., Texas: Fitch New Issue Report

The 'A+' rating reflects the strong financial profile of the Lower Colorado River Authority Transmission Services Corp., Texas (LCRA TSC) in the context of its very low operating risk profile and the strength of its regulated revenue framework in the Electric Reliability Council of Texas (ERCOT) market, in which TSC operates. Transmission revenue is regulated by the Public Utility Commission of Texas (PUCT) and collected from all retail customers within ERCOT. The regulatory framework provides a consistent and dependable cost recovery methodology and rate of return. Leverage, measured by net adjusted debt to adjusted funds available for debt service, was between 8.0x and 9.0x over the last decade, despite large additional capex investments in new and existing transmission assets, primarily funded from new debt.

ACCESS REPORT

Fri 01 Mar, 2024

[New York City Municipal Water Finance Authority, New York: Fitch New Issue Report]

Very Strong Rate Flexibility, Favorable Service Area with Unique Economic Profile The water board retains the legal authority to adjust rates as needed without external oversight. Revenue defensibility is further supported by the system's monopolistic provision of water and sewer services to its favorable service area. The service area is characterized by a stable customer base, median household income that approximates that of the nation and weaker, but improving, unemployment rate relative to that of the nation. Fitch also considers the city's unique economic profile as an international center for numerous industries and an anchor for the service area. Rates are considered affordable for almost 80% of the service area population, using Fitch's standard monthly usage of 7,500 gallons for water and 6,000 gallons for sewer. Very Low Operating Cost Burden, Elevated Capital Needs In fiscal 2023, the system's operating cost burden was considered very low at $3,497 per million gallons (mg), consistent with the operating risk assessment. The life cycle ratio was a low 37% in fiscal 2023. Capex outpaces annual depreciation, with a five-year average of 182% for the five years ended fiscal 2023. The system's capital improvement plan (CIP) for fiscal years 2024 through 2028 approximates $15.4 billion of system funds, while associated estimated actual spending is expected to be lower, at around $12.0 billion for the same period. Approximately 38% of the CIP is related to water pollution control projects, including plant upgrades and reconstruction. Water distribution approximates 22% of the CIP, water supply and transmission approximate 19% and sewer programs approximate 18%. Estimated capital spending averages $2.4 billion annually during these five years, well in excess of historical depreciation, supporting a continued low life cycle ratio.

ACCESS REPORT

Thu 29 Feb, 2024

New York City, New York: Fitch New Issue Report

Revenue Framework: 'aa': New York City has a highly diverse revenue base that is resilient to changes in economic conditions. Fitch expects revenue growth to range between the long-term inflation rate and U.S. GDP growth, with a return to at least pre-pandemic levels of personal and corporate income tax revenues and continued strength in residential real estate values offset by pressure on commercial growth in the medium term. The city has solid independent legal ability to adjust property tax rates and a variety of fees and charges to offset the modest revenue declines expected in a typical economic downturn. Rates for other important revenue sources (mainly income and sales taxes and state aid) are not within management's independent control. Expenditure Framework: 'a': Carrying costs are moderate, typically about 20% of governmental funds spending. Other than education-related employees, most labor contracts are subject to binding arbitration; however, the city has demonstrated adequate expenditure flexibility primarily through its control over employee headcount. Fitch expects long-term spending patterns to be above revenue growth when excluding policy actions.

ACCESS REPORT

Thu 29 Feb, 2024

S&P Second Party Opinion: Capital Impact Partners $200 Million Investment Notes Prospectus

CIP is a 501(c)(3) nonprofit CDFI based in Arlington, Va. CIP provides loans, lines of credit, equity investments, and technical support to underserved borrowers in the affordable housing, health care, education, economic development, and healthy food sectors. CIP has over $500 million in total assets and has disbursed over $2.9 billion in loans since 1982 with current lending activities in nine states and the District of Columbia.

Download

S&P Charter School Brief: Colorado

Overview

As of Feb. 26, 2024, S&P Global Ratings maintains 26 public ratings on Colorado charter schools. Colorado has the fifth-highest number of rated charter schools in our rated universe, after California, Texas, Michigan, and Minnesota. It was the third state in the U.S. to enact a charter school law, and the state's first two charter schools opened their doors in 1993. As of the 2022-2023 school year, Colorado is home to 272 charter schools serving approximately 133,000 charter school students representing around 15% of all public school students in the state.

Continue reading.

26 Feb, 2024

Driving Muni Pricing with AI: Masters of the Muniverse

For a market notoriously known for resisting change, it is arguably one of the asset classes most in need of advanced technologies. However, artificial intelligence may finally bring better fair value pricing to Munis' nuanced and illiquid market. In the latest Masters of the Muniverse episode, Bloomberg's Eric Kazatsky and Karen Altamirano are joined by ficc.ai's co-founder, Charles Elken, to discuss how machine learning and muni ETFs can bring real-time pricing to Muniland.

Listen to the Bloomberg Podcast.

Feb 28, 2024

Financial Accounting Foundation Trustees Name New Vice Chair and Two New Members to the Governmental Accounting Standards Advisory Council (GASAC).

Read the News Release.

February 27, 2024

[SIFMA Comments on Request for Information on Impacts of MSRB Rules on Small Firms.]

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on their Request for Information on Impacts of MSRB Rules on Small Firms as part of the MSRB's retrospective review of its rule book.

View the SIFMA request.

- When does 10% PBU really mean 5% PBU? – Squire Patton Boggs
- Attention BAB Issuers: Extraordinary Optional Redemption is Available – Orrick
- Issuers Expected to Call $20B to $30B of BABs This Year.
- SEC Answers Questions on New Tailored Shareholder Report Requirements: Proskauer Rose [**Ed. Note:** See the **bolded** section of "**The Staff's FAQ**" for treatment of municipal securities.]
- *State Farm Mutual Automobile Insurance Company v. Florida Department of Revenue* – District Court of Appeal holds that calculation of property and casualty insurance companies' adjusted federal income, for purposes of determining companies' state corporate income tax, required addition of all interest earned from state and local bonds that was "excluded from taxable income" through subtraction from gross income for federal income tax purposes, even if a portion of that interest was also subtracted from companies' "losses incurred", which losses were then deducted from gross income to calculate federal taxable income.
- And Finally, Wait, It's Not The Blessed Virgin Steve? is brought to us this week by *Sisters of the Presentation of the Blessed Virgin Mary v. Van Wagenen*, in which, in which, in which… Let's step back, take a deep breath, and just bask in the glory of "Sisters of the Presentation of the Blessed Virgin Mary." (Don't at all like the odds on that Van Wagenen guy.) We honestly have no idea where to begin here. Presentation? Like, her overall appearance? An appealingly displayed charcuterie platter? A Holy Roman Apostolic ceremony of which we had previously been unaware? Forgive us, dear Catholic BCB readers, for we (clearly) know not what we do.

EMINENT DOMAIN - CALIFORNIA

Mojave Pistachios, LLC v. Superior Court of Orange County

Court of Appeal, Fourth District, Division 3, California - February 8, 2024 - Cal.Rptr.3d - 2024 WL 489446

Limited liability company (LLC) that operated a pistachio orchard in the desert filed an action against local water agency, alleging that agency violated LLC's common law and constitutional rights to water by granting groundwater pumping allotments to other users but not to LLC, and that agency's actions amounted to a taking.

The Superior Court sustained agency's demurrer. LLC petitioned for a writ of mandate.

The Court of Appeal held that:

- As a matter of first impression, a person challenging a groundwater fee imposed under the Sustainable Groundwater Management Act (SGMA) must first pay the fee before bringing an action for a refund;
- LLC was required to first pay the assessed groundwater replenishment fee before bringing any cause of action challenging the fee;
- LLC was required to pay the groundwater basin replenishment fee before it could challenge the local water agency's exempted pumping allotments; and
- LLC's challenge to agency's implementation actions other than the replenishment fee did not support a cause of action for a taking.

EMINENT DOMAIN - NEBRASKA

Sanitary and Improvement District No. 596 of Douglas County v. THG Development, L.L.C.

Supreme Court of Nebraska - February 16, 2024 - N.W.3d - 315 Neb. 926 - 2024 WL 649268

County sanitary and improvement district (SID) filed petition in county court seeking condemnation of portion of landowner's property that was outside SID boundaries.

After landowner was awarded $56,390 for the taking, landowner appealed.

The District Court entered judgment upon jury verdict and denied landowner's motion for new trial. In second case, SID sought to levy a special assessment, and landowner counterclaimed for declaratory relief. The District Court granted landowner's motion for summary judgment in part and denied motion for attorney fees. Landowner appealed in first case, SID appealed and landowner cross-appealed in second case, and appeals were consolidated.

In a case of first impression, the Supreme Court held that:

- Landowner did not strictly comply with statute governing notice of constitutional questions;
- As matter of first impression, SID does not have statutory authority to levy a special assessment on property outside its boundaries;
- Any error in admission of special benefits evidence in condemnation case was not reversible error;
- Trial court acted within its discretion in admitting expert testimony about value of remaining property in condemnation case;
- Mistrial of condemnation case was not warranted based on closing comment of SID counsel;
- Special assessment case did not involve frivolous or bad faith claims warranting attorney fees against SID; and
- Eminent domain statutes did not authorize attorney fees for special assessment case; disapproving *Simon v. City of Omaha*, 267 Neb. 718, 677 N.W.2d 129.

ZONING & PLANNING - OHIO

State ex rel. Thomas v. Wood County Board of Elections

Supreme Court of Ohio - February 2, 2024 - N.E.3d - 2024 WL 396636 - 2024-Ohio-379

Property owner, who sought to amend zoning for property to commercial sought writs of mandamus and prohibition to order county board of elections to remove zoning amendment referendum from primary-election ballot.

The Supreme Court held that:

- Property owner lacked adequate remedy in the ordinary course of the law, as required to obtain writs of mandamus or prohibition;
- County board of elections did not act in clear disregard of applicable law in determining that eight percent statutory signature requirement for referendum petition controlled number of signatures required for referendum;
- Summary of zoning amendment in referendum petition satisfied statutory requirements;
- County board of elections did not abuse its discretion or disregard applicable law in certifying zoning amendment referendum for placement on primary-election ballot;
- Notice for board meeting at which referendum petition was considered met statutory notice requirements, and, thus, certification of petition for placement on primary-election ballot was valid; and
- Notice for board meeting did not violate property owner's procedural due-process rights.

EMINENT DOMAIN - TEXAS

Rhone v. City of Texas City, Texas

United States Court of Appeals, Fifth Circuit - February 14, 2024 - F.4th - 2024 WL 617246

Owner of three apartment buildings in city brought appeal, in state district court, from order of nuisance abatement issued by a Municipal Court of Record, asserting claims under § 1983 for inverse condemnation, denial of procedural due process, and unconstitutional seizure, and seeking declaratory judgment.

After removal by city, the United States District Court granted summary judgment to city on due process claim, and later granted summary judgment to city on remaining claims. Owner appealed and filed motion to restrain and enjoin damage to or demotion of buildings. The Court of Appeals denied the motion without prejudice, and buildings were demolished by city during pendency of appeal.

The Court of Appeals held that:

- Owner satisfied requirement for exception to mootness, for issues capable of repetition yet evading review, that duration of challenges, to Municipal Court of Record's nuisance finding and court's constitutionality, was too short for complete judicial review and sufficient relief;
- Theoretical possibility of future procedural due process and seizure violations did not support exception to mootness;
- Appeal was not moot as to takings claim; and
- City's imposition of compliance costs for repairing conditions at apartment buildings did not violate doctrine of unconstitutional conditions.

ZONING & PLANNING - VIRGINIA

Hartley v. Board of Supervisors of Brunswick County

Court of Appeals of Virginia, Richmond - February 13, 2024 - S.E.2d - 2024 WL 558069

Opponents sought judicial review of county zoning board's upzoning decision which rezoned a property from agricultural to business use to allow development of a retail store.

The Brunswick Circuit Court partially sustained board's demurrer, and then granted board's motion for summary judgment, denied opponents' motion for continuance, and issued final order. Opponents appealed.

The Court of Appeals held that:

- Board's deviation from comprehensive plan did not render its decision unreasonable as a matter of law;
- Board's failure to consider statutory factors did not render its decision arbitrary and capricious;
- Board met its burden to put forward evidence of reasonableness sufficient to make question fairly debatable;
- Timing of summary judgment was not an abuse of discretion;
- Board's failure to follow Virginia Department of Transportation (VDOT) guidelines did not render decision unreasonable as a matter of law;
- Board's alleged violation of county subdivision ordinance did not render its decision unreasonable as a matter of law; and
- Board's alleged violation of its own zoning ordinance did not render its decision unreasonable as a matter of law.

ENVIRONMENTAL LAW - WASHINGTON

SkyCorp Ltd v. King County

Court of Appeals of Washington, Division 2 - February 13, 2024 - P.3d - 2024 WL 562169

Company that had been fined by county for disposing of mixed and nonrecyclable construction and demolition waste in an out-of-county facility that was licensed but that county had not designated for the disposal of such waste brought action against county, alleging that county regulation requiring disposal of such waste generated within the county at a designated facility violated both the Washington Constitution's privileges and immunities clause and its provision granting police powers to local governments by regulating conduct outside the county and infringing company's right to dispose of its property.

The Superior Court granted summary judgment to county. Company appealed.

The Court of Appeals held that:

- Regulation had only incidental effects on out-of-county activities and thus had not been shown beyond a reasonable doubt to violate constitutional provision granting police powers to local governments;
- Regulation did not directly and irreconcilably conflict with statute barring the disposal of solid waste except at a disposal site with a valid permit or as otherwise provided in the statute, and regulation thus was not shown to violate constitutional provision granting police powers to local governments by conflicting with state law;
- Regulation was not so unreasonable, arbitrary, or capricious that it exceeded county's authority under constitutional provision granting police powers to local governments;
- The right to dispose of solid waste was not a fundamental right, so regulation did not violate company's rights under the privileges and immunities clause;
- Trial court did not abuse its discretion in declining to strike declaration filed by county; and

- Any error committed by trial court in declining to strike declaration filed by county was harmless.

[Attention BAB Issuers: Extraordinary Optional Redemption is Available - Orrick]

For more than 10 years, as the subsidy for direct payment Build America Bonds (BABs) has been less than originally promised due to sequestration, issuers have wondered if sequestration constituted an "extraordinary event" that would trigger their right to seek extraordinary optional redemption.

A recently concluded court case provides favorable guidance for issuers. Although the specific language must be reviewed in each case, we believe extraordinary optional redemption is available for issuers of BABs in most cases.

Key Context

Most BABs were issued with an extraordinary optional redemption feature (less costly) and a make whole call feature (more costly). The extraordinary optional redemption was intended to be available if the 35% subsidy rate was reduced for reasons other than the fault of the issuer.

The 35% subsidy for BABs has been reduced since 2013 through sequestration.

An issuer's ability to exercise the extraordinary optional redemption turns on whether there has been an "extraordinary event" as defined in the extraordinary optional redemption provision for the specific bonds.

Continue reading.

by Charles C. Cardall & Barbara Jane League

February.21.2024

Orrick Herrington & Sutcliffe LLP

[A Surge in Build America Bonds Calls: Navigating the Waters of Extraordinary Redemption.]

Discover the impact of issuers activating ERP clauses on Build America Bonds (BABs) and its ripple effects on the municipal financing landscape. Gain insights into the strategic implications for investors and issuers in navigating this evolving trend.

Amid the echoes of bustling Wall Street and the undercurrents of a shifting financial landscape, a notable trend has emerged, capturing the attention of investors and municipal entities alike. The spotlight has turned towards the Build America Bonds (BABs), a relic of the post-2008 economic recovery era, as issuers increasingly exercise their right to call these bonds early under an 'extraordinary redemption provision' (ERP). This maneuver, spurred by recent court rulings and the prevailing interest rate environment, marks a pivotal moment that could reshape the terrain of municipal financing.

Understanding the Surge in ERP Calls

The genesis of this trend can be traced back to the inception of BABs during the fiscal stimulus efforts of 2009 and 2010. Designed to invigorate infrastructure projects and local economies, BABs offered a 35% subsidy on interest payments from the federal government to issuers, a lifeline that has since been repeatedly undercut by sequestration. However, the interpretation of sequestration as an ‘extraordinary event’ has been a subject of debate, leaving issuers in a limbo over their right to seek extraordinary optional redemption. The tide turned with a favorable court decision that clarified sequestration’s adverse impact on subsidy payments, emboldening issuers to activate their ERP clauses. With around $110 billion of BABs harboring embedded ERP calls, and only a fraction deemed economical to call thus far, the stage is set for a significant uptick in activity. This year alone, the anticipation of $20 billion to $30 billion in ERP exercises presents a watershed moment, with potential reverberations across the taxable municipal bond market.

The Ripple Effects

The unfolding scenario presents a dichotomy of impacts. On one hand, the proactive redemption of BABs could signal a more assertive stance by issuers against the backdrop of fiscal challenges, offering a pathway to refinance at potentially lower interest rates. This strategic recalibration could enhance fiscal sustainability for municipalities, nurturing an environment ripe for fresh investments. On the flip side, the surge in ERP calls injects a dose of uncertainty into the market, potentially rattling investor confidence. The specter of premature redemptions may deter participation in future deals, casting a long shadow over the attractiveness of similar taxable municipal offerings. Furthermore, this trend underscores the intricate dance between fiscal policy decisions and market dynamics, a balancing act that demands meticulous navigation by all stakeholders involved.

Looking Ahead

As we stand at the crossroads of this significant shift, the broader implications for the municipal bond market loom large. The increasing exercise of ERP rights by BAB issuers not only reshapes the immediate landscape but also sets a precedent for how extraordinary events are navigated in municipal finance. Investors and issuers alike are keenly watching how this wave of ERP calls unfolds, gauging its impact on market sentiment and future issuance strategies. Amidst this flux, the resilience and adaptability of the municipal bond market are put to the test, offering a compelling narrative on the interplay between policy, finance, and market dynamics. As the story of BABs continues to evolve, the lessons learned may well chart the course for the next chapter in municipal financing.

bnnbreaking.com

by Waqas Arain

26 Feb 2024

Issuers Expected to Call $20B to $30B of BABs This Year.

Clarity from a recent court ruling along with the level of current interest rates will likely lead to a dramatic increase in Build America Bonds being called by issuers this year, market participants say.

While only a small amount of BABs have been called using an “extraordinary redemption provision” since sequestration of BABs subsidies began in 2013, that should change as more issuers look to take advantage of using sequestration as a reason to exercise it, with analysts expecting the largest year of BABs called by the ERP to date.

For over a decade, as the subsidy for direct-pay BABs “has been less than originally promised due to sequestration, issuers have wondered if sequestration constituted an ‘extraordinary event’ that would trigger their right to seek extraordinary optional redemption,” said Orrick partners Charles C. Cardall and Barbara Jane League in a report posted on the firm’s website.

While BABs were issued with the expectation that the subsidy would not be reduced retroactively, the 35% subsidy for BABs has been reduced through sequestration numerous times. The current sequestration rate reduction is at 5.7%.

A recently concluded court case, Indiana Municipal Power Agency v. U.S., provides “favorable guidance” for issuers, Cardall and League noted, as it supports the conclusion that sequestration resulted in a materially adverse change to the cash subsidy payment obligation.”

Between 2009 and 2010, more than $180 billion of BABs were issued. They were priced with three types of calls – the optional, the make-whole call, and the extraordinary redemption provision call – but the vast majority were issued with embedded extraordinary redemption calls.

“A lot of people are looking at the court language and viewing that as very hopeful” because of what it might mean for the ERP, a lawyer said.

While the specific language has to be reviewed on a case-by-case basis, Cardall and League believe the “extraordinary optional redemption is available for issuers of BABs in most cases.”

J.P. Morgan strategists concurred, saying most ERPs are “actionable” after reviewing BAB ERP language from “representative bonds” from BABs 20 largest issuers.

The outstanding BABs universe with ERPs is only about 13% of the taxable muni market, according to a recent Barclays PLC (JJCTF) report.

There is currently around $110 billion of BABs with embedded ERP calls, but $20 billion is “out of the money because the bonds trade at wider spreads, are below par, or have low ERP strikes,” they said.

Of the remaining $90 billion, Barclays (JJCTF) strategists expect $20 billion to $30 billion of ERPs to be triggered this year.

From 2018 to 2022, BABs ERPs were “rarely exercised,” J.P. Morgan strategists said.

In 2023, two large deals exercised their ERP, taking $800 million out from the taxable market – $399 million from the Santa Clara Valley Transportation Authority and $386 million from the Ohio Water Development Authority, they said.

And so far this year, several issuers have already called their bonds, and others have given notice to investors that they are considering taking the bonds out, Barclays (JJCTF) strategists said.

The Maryland State Transportation Authority ERP called their BABs bonds last week, worth $721 million, J.P. Morgan strategists said.

Three other issuers, the Bay Area Toll Authority, the Los Angeles Unified School District and the

University of California, which represent $5.4 billion of outstanding debt, have announced they plan to do the same later this year, they noted.

J.P. Morgan strategists said “higher-quality (A or better), lower-coupon, shorter-dated (maturity or average-life) bonds have the highest probability of being refunded.” They believe there are $30 billion to $60 billion of BAB bonds outstanding that achieve adequate savings.

“This year looks set to be the largest BAB ERP call year by a large margin,” Barclays (JJCTF) strategists said.

This interest, Barclays (JJCTF) strategists said, has led to BAB spreads “adjusting wider,” though it “may have been just an excuse for investors to take profits after a four-month rally, but there has clearly been a catalyst, as several large deals will likely exercise their ERPs.”

The extraordinary redemption provision can be triggered by an “extraordinary event,” but what constitutes an “extraordinary event” differs, said Vikram Rai, head of municipal markets strategy at Wells Fargo (WFC), in a report from late January.

In “broad” language, the extraordinary event happens if the 35% subsidy is reduced, while in “restrictive” language, the extraordinary event is defined more narrowly and requires a change to a specific section of the Internal Revenue Code, he said.

Some issuers “got lucky” with the use of “broad” language allowing them to “issue new debt, refund the bonds and call it at par instead of this exorbitant price that requires us to make the investor whole, basically pay them all the interest they would have gotten if the bonds had stayed outstanding from maturity,” the lawyer said.

Due to this, many of the BABs with “broad” language have already been called, with others with “restrictive” language are still waiting, the lawyer noted.

In instances when language is “restrictive,” Rai said “there is debate and confusion around whether the reduction in the BABs subsidy payment resulting from sequestration is sufficient to trigger the optional call.”

Until now, most BAB issuers had yet to be exercised due to economics, Rai said.

While the issuer could, in theory, realize long-term savings by “calling these bonds and refunding them at lower rates, the upfront cost made it prohibitive,” he said.

In instances when the ERP language “enabled issuers to call the bonds at par or only at a slight premium, exercising the ERP call made sense and thus issuers did so,” Rai said.

Due to higher interest rates, the bond prices are trading closer to par, meaning it makes economic sense for the ERP call, especially for shorter maturity securities, he said.

Additionally, the issuers “would want to reduce the risk of further cuts to the subsidy payments and also reduce the administrative burden,” Rai said.

When an issuer triggers an ERP, “it’s done in the context of a refinancing deal, which is a new transaction and [has] new underwriters,” the lawyer said.

Based on the way rates have moved over the last several years, the lawyer said it has made “potentially invoking these things more attractive than it was five or six years ago,” the source said.

While some issuers previously did complete such redemptions, the decision to trigger an ERP is a mix of both reduced subsidy and the right market conditions, which may be why now BABs with ERPs are seeing an increase, given the interest rate movement bonds, said David Erdman, managing director at Baker Tilly Municipal Advisors.

“The market [conditions] are a consideration for implementing or invoking the extraordinary redemption provision,” he said.

Furthermore, if there is a correction of the inverted yield curve and a reduction of interest rates in shorter maturities, he believes calling BABs through ERPs could become more attractive for issuers.

Barclays (JJCTF) strategists noted there are some positives and negatives to the resurgence of BABs through ERPs.

Over the past several years, “only ERPs with strikes at T+100bp have been triggered,” but there may be “some par ERPs exercised as well, although they are mostly embedded in smaller deals,” they said.

However, “even accounting for tighter spreads and low MMD-UST ratios, the economics do not work well for many issuers,” they said.

Municipalities will also have to consider “whether calling BABs through ERPs that were triggered because of a technicality might negatively affect investors’ desire to participate in future deals,” they said.

While the $20 billion to $30 billion of BABs triggered through ERPs this year would lead to even more “robust” tax-exempt issuance, it would have the opposite effect on the already estimated low supply in the taxable market, according to Barclays (JJCTF) strategists.

And even though the “BAB portion of the market might be under pressure, there could be some segmentation, and non-BAB taxables, BABs without ERPs or with much lower ERP strikes, and bonds with corporate CUSIPs might actually outperform,” they said.

Additionally, BABs with T+100bp ERPs could “also become more attractive if their spreads widen, and start trading closer to their strikes,” they said.

By Jessica Lerner

BY SOURCEMEDIA | MUNICIPAL | 02/26/24 12:33 PM EST

Are the Build America Rules Slowing Infrastructure Progress?

State DOTs, transit agencies and the construction industry want the White House to make it easier to comply with rules designed to include American-made products in infrastructure projects.

A key selling point of President Joe Biden’s infrastructure law was that it would help create jobs for more Americans. But new rules designed to pump up the domestic economy threaten to slow infrastructure projects and drive up their costs.

That’s been the message from state transportation departments, transit agencies and construction groups in recent weeks. They have been trying to raise the alarm with Congress and put pressure on the Biden administration to fix the slow and laborious process of complying with the law.

Transportation industry leaders say they support the goals under the Build America, Buy America Act that were included in the 2021 federal infrastructure law. The rules expand existing mandates that require certain infrastructure built with federal dollars to use U.S.-made materials. But, leaders warn, American companies and regulators often are not prepared for such a big switch.

Continue reading.

Route Fifty

by Daniel C. Vock

FEBRUARY 20, 2024

States Turn Up the Heat on ESG Investing.

At issue is whether mandates about environmental, social and governance investment strategies infringe upon a state fiduciary's duty to maximize return

Environmental, social, and governance (ESG) investment strategies continue to gain popularity among investors and financial institutions, but with their rising prominence has come a growing divide in state attitudes about the ESG approach. ESG approaches consider the impacts that various investments have on people and the planet. They also can illuminate material risks and opportunities—such as a company's record on employee relations or compliance with environmental regulations—that should be considered as part of any financial decision-making.

In recent years, four states—Colorado, Illinois, Maine, and Maryland—enacted legislation encouraging public pension funds to include ESG factors in investment decisions, while in 2023 alone, 14 states adopted laws discouraging ESG considerations or banning ties to financial companies that do so. Most of this state legislation has focused on public pension investments, although some bills have encompassed other aspects of government finance, including banking, contracts, and borrowing.

Moreover, several states that have proposed but not passed ESG-related legislation—such as Arizona and Missouri—have introduced bills again in 2024. And lawmakers in California are still considering legislation that would require the state's pension systems to divest from fossil fuels by July 2031.

Continue reading.

Route Fifty

by Liz Farmer

FEBRUARY 21, 2024

S&P Outlook For U.S. Independent Schools: Healthy Demand Trends Drive Steady Sector Performance

Sector View: Stable

S&P Global Ratings' outlook on the U.S. independent school sector is stable, anchored by continued healthy demand trends, steady operating performance, and strengthened resources due to a rebound in market returns. In 2024, we expect schools will remain focused on sustaining demand and demonstrate nimble financial planning to support stability, despite rising expense pressures, slower economic growth, and an increasingly competitive landscape.

Continue reading.

22 Feb, 2024

Fitch: US NFP Hospital Median 2023 Preview Shows Decline; Improvement Expected

Fitch Ratings-Chicago/New York/Austin-21 February 2024: A preview of calendar year (CY) 2023 Fitch-rated not-for-profit (NFP) hospital performance medians initially reveals a continued decline in operating results, albeit not as severe as in CY2022, but likely marks a turning point, Fitch Ratings says. We anticipate that the full CY2023 median results will improve, but remain well below pre-pandemic levels. More positively, early medians, which reflect audited financial results for hospitals with a FYE in 1H2023, highlight balance sheet stability and stronger leverage metrics compared with the prior year, which are consistent with Fitch's final CY2023 median expectations.

Our full year median projections of operational performance metrics are based on several factors. Improvement in key indicators such as personnel expense as a percent of total revenue and revenue growth versus expense growth in 1H2023 relative to 1H2022 is likely to continue in 2H2023. We anticipate the results of hospitals with later FYEs (Sept. 30 and Dec. 31) will reflect the comparatively more profitable months in the latter half of fiscal 2023, pulling up the full year medians for all rated hospitals.

Fitch's full CY2022 medians marked a low point in the sector, with significantly pressured operating margins falling to just 0.2% from the 0.9% operating margin median suggested by providers with mid-year FYEs. We anticipated this decline at this time last year, with materially weaker profitability and reduced liquidity due to expense increases and investment market losses in 2022.

Continue reading.

Colorado Ski Town Sells Housing Bonds in Bid to Retain Teachers.

- **Telluride is latest vacation hamlet with locals priced out**
- **School district says jobs go unfilled without homes available**

Telluride, a ski resort destination in Colorado, is the first vacation town to sell municipal bonds for affordable housing this year. It likely won't be the last.

The reason for last week's sale is immediately apparent by typing "Homes for Sale Telluride Colorado" in an Internet browser. The websites that appear show that anyone wanting to buy a house there will need millions of dollars, maybe tens of millions.

So Telluride is "prioritizing" the acquisition and construction of affordable rental housing. Last week, Telluride School District R-1 borrowed $31.8 million, half of which will be used to pay for 25 units of "workforce housing."

The wealthy ski area has tapped the bond market for similar reasons several times in recent years. Just last month the town borrowed $9 million, a portion of which is being used to pay to refurbish affordable housing at an apartment building. In 2022, the town council approved spending more than $27 million for a project containing another 27 units of affordable housing. Five years earlier, the school district borrowed $2.5 million for more of the same.

"If there are no homes, I can't fill positions," Christine Reich, director of finance and nutrition for the school district, said in a telephone interview.

Reich's words are echoed by local officials in vacation areas nationwide. Towns heavy on quaintness and charm but light on housing supply have squeezed out locals, both ordinary and essential purpose workers, from shop help to police, firefighters and teachers.

Last year, the island of Nantucket off Cape Cod and the town of Wellfleet on the Cape each sold bonds for so-called workforce housing. Another Colorado ski town, Vail, did so in 2021. And it's not just vacation towns borrowing money to build affordable housing. Some colleges and universities, too, have sold bonds to pay for faculty housing, such as the University of Vermont and Middlebury College.

Income Gap

In Telluride, salaries in the school district range from an entry-level $50,000 to $94,665 for someone with a master's degree and 27 years of experience. But market-rate rentals in the town run from $4,000 to $5,000 per month for a one-bedroom apartment.

"We're remote," said Reich. "It's not as though you can commute in from Denver," a six-and-a-half hour drive away.

Only 55% of Telluride's housing is occupied by full-time residents, according to Treasure Walker, associate director at S&P Global Ratings. The remainder is typically used as short-term rentals and vacation homes in a town with a population of 2,620.

"There's a hyper supply-constrained environment," said Bill Fandel, the founding broker of Compass real estate in Telluride. He said that in a small town "the cost of the dirt becomes prohibitive,"referring to the space needed to build housing.

The school district, which is 326 square miles, includes the towns of Telluride, Ophir, Sawpit and Mountain Village and parts of unincorporated San Miguel County, and has a population of 6,515. It also has an "exceptionally high" full value per capita (the value of all the property divided by the population) of $2.1 million, according to Moody's Investors Service, which rates the bonds Aa2. The US median is $117,713.

"The district is a second-home destination for the very wealthy," Moody's said. "This, coupled with an influx of residents seeking an outdoor lifestyle during the pandemic, is driving a high cost of living and challenging the district's ability to recruit and retain teachers."

The district currently provides housing to about 10% of its 136 full-time and 16 part-time personnel and wants to increase this to one-third. Base rents are 25% of salary.

Already there is a waiting list for the proposed affordable housing.

Bloomberg Markets

By Joseph Mysak Jr

February 21, 2024

[Princeton Asks Investors for $660 Million for Campus Upgrades.]

- **School preps tax-exempt bond sales managed by Goldman**
- **Princeton has top-credit ratings from Moody's and S&P**

Princeton University plans to tap the $4 trillion municipal bond market to help finance capital projects on its New Jersey campus.

The Ivy League university, which boasts alumni like Former First Lady of the US Michelle Obama and Amazon.com Inc. founder Jeff Bezos, plans to sell $660 million of bonds that will be used in part to fund capital plans including the building of a new campus featuring hundreds of graduate student housing units, renovations to the school's main library and updated energy, transportation and technology infrastructure.

Princeton and other elite-universities can invest in such state of the art developments even when institutions of higher education across the country are pressured because they have billions in their endowments and near world-wide name recognition. The school's impeccable credit ratings, graded the highest possible by S&P Global Ratings and Moody's Investors Service, means it can borrow cheaply and its debt is often sought after by investors.

[Continue reading.]

Bloomberg Markets

By Skylar Woodhouse

February 20, 2024

[8 States Move to Ban Utilities from Using Customer Money for Lobbying.]

Utilities have come under fire for lobbying to stall climate policies and keep fossil fuel plants running.

While federal law prohibits utilities from recovering lobbying expenses from customers, consumer advocates say that those rules lack teeth and aren't sufficiently enforced. Now, states are taking the lead to ban the practice. According to the utility watchdog group Energy and Policy Institute, lawmakers in eight states, including California and Maryland, have introduced bills this year that would block utilities from charging customers for the costs of lobbying, advertising, trade association dues, and other political activities. The measures build on a growing trend in state policy: Last year, Colorado, Connecticut, and Maine became the first states in the nation to pass comprehensive laws preventing utilities from passing on the costs of lobbying to ratepayers.

“There is a lot of recent success that states can look to for inspiration,” said Charles Harper, power sector policy lead at the climate advocacy group Evergreen Action. “People are starting to pay attention because they’re realizing that they’re paying for climate denial in their bills every month.”

Continue reading.

Route Fifty

By Akielly Hu

FEBRUARY 21, 2024

When does 10% PBU really mean 5% PBU? - Squire Patton Boggs

When the Internal Revenue Code (“IRC”) says it does. (For those of you that want to remind yourselves of how a bill becomes a law, such as the IRC, see this video from Schoolhouse Rock).

As you may know, issuers of governmental-use bonds are generally permitted to use up to 10% of the tax-exempt bond proceeds of an issue for private business use (“PBU”) before the tax-exempt bonds run the risk of being characterized as taxable private-activity bonds (“PABs”). If the PBU exceeds 10%, then the issuer will also need to determine whether the private security or payment (“Private Payment”) test is met in order to determine if the bonds are PABs. (Remember, meeting the 10% PBU and Private Payment tests is generally a bad thing). However, because nothing is simple in the tax world, there is a second PBU/Private Payment threshold that you may not be as familiar with – the 5% unrelated or disproportionate test.[1]

The first step in applying the 5% unrelated/disproportionate test is to determine if the identified PBU is related to a governmental use.

Continue reading.

By Cynthia Mog on February 20, 2024

The Public Finance Tax Blog

Squire Patton Boggs

SEC Answers Questions on New Tailored Shareholder Report Requirements: Proskauer Rose

The staff of the Division of Investment Management (the “Staff”) has issued a FAQ pertaining to the rule and form amendments adopted by the Securities and Exchange Commission (the “SEC”) in October 2022, which require open-end mutual funds and exchange-traded funds (“ETFs”, and together with open-end mutual funds, "funds") registered on Form N-1A to transmit concise and visually engaging annual and semi-annual shareholder reports, and amend the advertising rules for all regulated investment companies, including closed-end funds and business development companies, to ensure fee comparability in fund advertising.[1]

Overview of Amendments to Shareholder Report Requirements

Purpose of Amendments. The amendments require shareholder reports to highlight key information deemed crucial by the SEC for retail investors to assess and monitor their fund investments. Shareholder reports must be made available online and filed on Form N-CSR semi-annually using Inline XBRL tags.

Content of Reports. The reports may only include information permitted or required by new Item 27A of Form N-1A, such as:

- fund/class name,
- ticker symbol,
- principal U.S. markets (for ETFs only),
- an expense table,
- concise disclosure of management's discussion of fund performance,
- a comparison of fund performance to relevant indices,
- performance graphs and tables,
- net assets,
- portfolio holdings, and
- material changes impacting various aspects of the fund.

Requirements. Incorporation by reference is not permitted for required information, and all data must be tagged using Inline XBRL. Further, if the report references online information, it must include a hyperlink for immediate access. One of the more potentially burdensome requirements is that each fund much produce individual shareholder reports, separate from other series of the same registrant, and a separate report for each class of a multi-class fund, ensuring shareholders only receive reports relevant to their specific class and/or series.

Exclusion from Rule 30e-3. Importantly, funds subject to these shareholder report requirements may not take advantage of Rule 30e-3, the rule that currently permits funds to use a "notice and access" approach to transmitting shareholder reports. Shareholders must directly receive tailored shareholder reports either in paper form or electronically (if a shareholder affirmatively elects).

The Staff's FAQ

The Staff published an FAQ specifically addressing questions about the tailored shareholder report amendments, and the following provides an overview of the key points addressed in it, organized into five broad categories.

1. **Appropriate Broad-Based Securities Market Index.** When comparing fund performance, funds must select an "appropriate broad-based securities market index" that accurately reflects the market in which a fund invests. The appropriate broad-based index must represent the overall applicable domestic or international equity or debt markets relative to a fund's investments, providing investors with insights into the fund's performance relative to the applicable broader market.

Examples. The following examples could qualify as broad-based indexes: (i) those covering the equity or fixed income market of groups of countries (e.g., Europe and Asia), groups of countries excluding a specific country (e.g., Asia excluding Japan), or groups of countries with shared characteristics (e.g., emerging markets); and (ii) for funds investing primarily in non-U.S. equity, those representing the overall equity market of the representative non-U.S. country. These examples could qualify as an appropriate broad-based index provided that the index represents the overall applicable market relative to the fund's investments (emphasis added). In addition, the Staff notes that given the tax-exempt status of municipal bonds, an index representing the national municipal securities market is considered a standalone overall market opposed to a subset of the fixed income market (and, by extension, such an index would qualify as a broad-based index).

The following indexes do not qualify as they, according to the Staff, do not represent the overall market in which a fund invests: (i) indexes focused solely on a specific industry sector (e.g., an index consisting only of healthcare companies) or (ii) indexes characterized by specific attributes like "growth", "value", "ESG", or "small- or mid-cap".

2. **Form N-CSR and Website Availability Requirements**

Combined Items for Form N-CSR. Funds may prepare combined financial statements for multiple series or portfolios in a trust to satisfy Item 7 of Form N-CSR, as long as it aligns with Regulation S-X.

The Staff notes that funds have the option to satisfy website availability requirements by posting the most recent Form N-CSR report in its entirety on the website specified in the report. This option permits Form N-CSR information to be grouped by type of materials and/or by series as long as certain presentation requirements are met, including that the grouped information: (i) is presented in a format that effectively communicates the information, (ii) clearly distinguishes between different types of materials and/or series, and (iii) provides easy navigation for shareholders, like through a table of contents with hyperlinks. Relying on this framework, the Staff believes that a combined response to multiple Form N-CSR items would generally be appropriate if the combined Form N-CSR response adheres to the three requirements identified above.

Compliance with Regulation D. Posting Form N-CSR information online under amended Rule 30e-1 does not violate the prohibition on general solicitation and advertising in Regulation D as long as the fund posts only the information required by Rule 30e-1 and does not use its website to offer or sell its securities in violation of Regulation D.

3. Binding Individual Shareholder Reports of Multiple Funds. Funds are permitted to bind, staple or stitch together multiple individual shareholder reports for investors who have invested in multiple funds or share classes. The Staff's concern about multi-series/class reports does not apply to this approach as the investor is still only receiving reports specific to the investments it holds. The Staff recommends that a fund consider including a table of contents when combining shareholder reports in this manner.

4. Electronically Provided Shareholder Reports

Hyperlinking Requirements. Shareholder reports delivered electronically must comply with hyperlinking requirements outlined in Instruction 9 to Item 27A(a) of Form N-1A. The Staff notes that if a hyperlink becomes stale or inaccurate, Rule 30e-1 provides a safe harbor for temporary noncompliance, provided the fund has reasonable procedures in place and takes prompt action to correct any issues.

Electronic Delivery Approaches. In addition to sending an email that includes the full shareholder report, funds can email, or otherwise electronically notify investors, with direct links to specific shareholder reports or direct investors to a website landing page with links to the shareholder reports for specific fund(s) and/or share classes(es) owned by the investor. Any other methods that adhere to the requirements of Instruction 4 to Item 27A(a) of Form N-1A for delivering fund and share class specific shareholder reports directly to investors in an electronic format are permissible.

5. Compliance Date and Inline XBRL Issues

Transmittal Timing and Form N-CSR Filing. Shareholder reports for funds registered on Form N-1A must adhere to the new amendments if transmitted to shareholders on or after the compliance date of July 24, 2024. Regardless of when filed, Form N-CSR should include the report actually transmitted to shareholders.

Tagging Requirements and Compliance Date. Tailored shareholder reports included in Form N-CSR transmitted to shareholders on or after July 24, 2024, must be tagged using Inline XBRL.

Amended Form N-CSR and Tagging. In cases where an issuer submits an amended Form N-CSR (N-CSR/A), and the originally filed N-CSR contained multiple tailored shareholder reports but only one is being amended, the Form N-CSR/A filing need only contain a complete version of the report being amended with all elements of that report tagged in Inline XBRL (not only the amended elements).

Variable Annuity or Variable Life Insurance Company Products

The FAQs also offer guidance specific to variable annuity and variable life insurance issuers (collectively, "variable contract issuers"), which is outlined below.

Online Hosting of Fund Materials. Materials required to be posted to a specified website pursuant to Rule 30e-1 may appear on either the variable contract issuer's website or the fund's website for funds offered as an investment option in variable contracts. If multiple variable contract issuers offer the same underlying fund, the Staff notes that it may be most efficient for that fund's required materials to be hosted on its website.

Binding Individual Shareholder Reports of Multiple Underlying Funds. Funds can bind, staple or stitch together multiple individual shareholder reports for variable contract investors who have allocated value to multiple underlying funds. The Staff's concern about multi-series/class reports does not apply to this approach as the variable contract investor is still only receiving reports specific to the funds to which it has allocated contract value. The Staff recommends that a fund consider including a table of contents when combining shareholder reports in this manner.

Optional Online Tools in Electronically Provided Shareholder Reports. Variable contract issuers only need to transmit reports containing information required under Rule 30e-2 and Rule 30e-1. They do not need to include any optional content an underlying fund may elect to include under Item 27A(a) of Form N-1A. If necessary, variable contract issuers may avail themselves of the safe harbor under Rule 30e-1 for temporary noncompliance with the hyperlinking requirements.

[1] Tailored Shareholder Reports for Mutual Funds and Exchange Traded Funds; Fee Information in Investment Company Advertisements, SEC Rel. No. IC-34731 (Oct. 26, 2022).

Proskauer Rose LLP – William T. MacGregor and Adrianna Vallee

February 23 2024

[Municipal Bond Outlook 2024: Are Munis a Good Investment Now?]

Investment experts look past peak rates and see better days ahead for muni bonds.

Tune in to your favorite news outlet during an election year, and you'll likely hear the expression "All politics is local." Made famous by former Speaker of the House Tip O'Neill, the quote emphasizes the importance of keeping track of local constituents' perspectives on the relevant issues of the day.

It's also considered table stakes for elected representatives who want to keep the folks back home satisfied with their overall job performance. Incidentally, O'Neill served his own constituents in the 8th and 11th districts of Massachusetts for 34 years, from 1953 to 1987.

Continue reading.

money.usnews.com

By Scott Ward

Jan. 29, 2024

TAX - CALIFORNIA

San Bernardino County Fire Protection District v. Page

Court of Appeal, Fourth District, Division 2, California - February 14, 2024 - Cal.Rptr.3d - 2024 WL 619193

County fire protection district petitioned for writ of mandate challenging validity of initiative petition seeking to repeal a special tax on annexed property in district pursuant to state constitutional amendment restricting local government's ability to impose taxes without voter approval.

The Superior Court granted petition. Initiative proponents appealed, and district cross-appealed.

The Court of Appeal held that:

- Elections Code section criminalizing knowing false statements about initiative petitions did not apply;
- Initiative contained false and misleading statements implying that the special tax was unconstitutional; and
- District's cross-appeal was moot.

Initiative petition seeking to repeal a special tax on annexed property in county fire protection district contained false and misleading statements implying that the special tax violated state constitutional amendment restricting local government's ability to impose taxes without voter approval, and therefore the initiative was invalid; initiative petition's notice and text made implied false and misleading statements that the constitutional amendment applied and that the special tax violated the amendment because annexed property owners did not have the opportunity to vote on the special tax and approve it by a two-thirds vote, but the initiative's implied irrefutable facts were objectively verifiable as incorrect based on well-founded legal authority.

TAX - FLORIDA

State Farm Mutual Automobile Insurance Company v. Florida Department of Revenue

District Court of Appeal of Florida, First District - January 17, 2024 - So.3d - 2024 WL 176973 - 49 Fla. L. Weekly D205

After taxpayers, who were property and casualty insurance company and its subsidiaries, paid, under protest, assessed back taxes and interest they allegedly owed, taxpayers brought action against the Florida Department of Revenue to contest the legality of the assessment in full.

The Circuit Court granted Department's motion for summary judgment and denied taxpayers' summary judgment motion. Taxpayers appealed.

The District Court of Appeal held that calculation of adjusted federal income required addition of all interest earned from state and local bonds.

Calculation of property and casualty insurance companies' adjusted federal income, for purposes of determining companies' state corporate income tax, required addition of all interest earned from state and local bonds that was "excluded from taxable income" through subtraction from gross income for federal income tax purposes, even if a portion of that interest was also subtracted from companies' "losses incurred", which losses were then deducted from gross income to calculate federal taxable income; "excluded from" referred to specified items not included in, or subtracted from, sum to determine taxable income, interest and losses incurred were each specified items, and all bond interest was excluded from federal taxable income, even if interest was used in losses incurred calculation.

TAX - NEW YORK

Sisters of the Presentation of the Blessed Virgin Mary v. Van Wagenen

Supreme Court, Appellate Division, Third Department, New York - January 11, 2024 - 223 A.D.3d 987 - 202 N.Y.S.3d 814 - 2024 N.Y. Slip Op. 00100

Not-for-profit corporation sought judicial review of town's board of assessment affirming assessor's determination denying real estate tax exemptions for two parcels of land that had previously qualified as exempt as being used for religious and educational purposes.

Following a bench trial, the Supreme Court determined that corporation was entitled to a partial tax exemption for the portions of the subject property it actually used. Corporation appealed.

The Supreme Court, Appellate Division, held that corporation was entitled to continued real property tax exemption only for the portion of its property that was still being used for an exempt purposes and not for areas that were vacant and unused.

Not-for-profit corporation that owned property that had previously qualified as exempt from real property taxes as being used for religious and educational purposes was entitled to continued exemption only for the portion of the property that was still being used for those purposes as a playground for students and areas that were incidental to such use; remaining portion of property containing a vacant and unused school and mansion that were not safe to use and had no running water, and thus no longer served to further the exempted purpose.

Preston Hollow Community Capital Closes $202,500,000 Tax-Exempt Pooled Securities (TEPSTM) Financing

Strong Investor Demand for $135,000,000 Class A Certificates

DALLAS, February 26, 2024–(BUSINESS WIRE)–Preston Hollow Community Capital ("Preston Hollow" or "PHCC"), a provider of specialized impact financing solutions for projects of social and economic importance to local communities, announces the February 14, 2024 pricing and February 23, 2024 closing of a $202.5 million Tax-Exempt Pooled Securities ("TEPSTM") financing through the Public Finance Authority ("PFA"). The financing consists of $135 million of Class A Certificates, which have been assigned an Aa2 (sf) rating from Moody's Investors Service and $67.5 million of Class B Certificates which are not rated.

The Certificates are secured by a collateral pool of tax-exempt bonds, the vast majority of which were directly originated by PHCC. TEPSTM provides PHCC with an attractive cost of capital, a more standardized financing structure and reliable access to long-term funding through the tax-exempt capital markets.

The Class A Certificates were oversubscribed, with orders from nearly 20 different investors. PHCC purchased the $67.5MM Class B Certificates.

Jim Thompson, Chairman and CEO of Preston Hollow, commented, "This is our second TEPSTM transaction following our successful 2023 inaugural issuance, and we're gratified by the strong market reception. We see TEPSTM as a leading source of our future funding and we plan to be a regular issuer."

J.P. Morgan and Hilltop Securities Inc. served as the Underwriters for the Bonds. Kutak Rock LLP and Squire Patton Boggs (US) LLP served as counsel and disclosure counsel to the Sponsor, respectively, with Orrick and Ballard Spahr LLP serving as Underwriters' counsel.

About Preston Hollow Community Capital

Preston Hollow Community Capital is a market leader in providing specialized impact finance solutions for projects of significant social and economic importance to local communities in the United States. The Company invests in bespoke municipal finance transactions with a diversified investment portfolio. PHCC has invested over $5.1 billion since its inception across various sectors of the municipal bond market, including real estate, K-12 and higher education, healthcare, infrastructure, hospitality, general government, and economic development.

Since its inception, Preston Hollow has raised $1.6 billion in committed, permanent equity capital from premier sponsors like Stone Point Capital, HarbourVest Partners and TIAA. The Company has received long-term BBB (Stable) and short-term K2 (Stable) ratings from Kroll Bond Rating Agency.

Business Wire

Mon, Feb 26, 2024,

[California Infrastructure & Economic Development Bank [Clean Water & Drinking Water] - Fitch New Issue Report]

Key Rating Drivers Portfolio Credit Risk: The pool consists of 146 obligors, with the top 10 participants representing approximately 49% of the total portfolio; the largest obligor is 16% of the portfolio. Obligor security is strong as nearly all obligors are secured by net utility-system revenue pledges. Approximately 91% of the program's portfolio consists of obligors exhibiting investment-grade credit quality. These preceding pool characteristics translate to an implied pool quality as calculated by Fitch's PSM of a strong 'A'/'A-'. Finance Structure: Fitch's cash flow modelling demonstrates that program resources are sufficient to withstand hypothetical pool defaults in excess of Fitch's 'AAA' liability rating stress hurdle, as derived using the PSM, without causing an interruption in bond payments. The program's financial structure is sound, supported by a projected minimum annual debt service coverage (DSC) of about 1.7x. Program Management: The program is managed by the SWRCB. Program management adheres to a formal underwriting policy that includes, among other things, minimum coverage requirements for obligors. There have been no pledged loan payment defaults in the CWSRF or DWSRF programs.

ACCESS REPORT

Thu 22 Feb, 2024

Where Does the Money for Affordable Housing Come From? - Dykema Podcast

How do you bridge the gap between development costs and what low-income renters can afford? Among other sources, public funding efforts play a big role in ensuring access to safe and stable housing options for those less fortunate. Rochelle Lento and Jarrod Smith, leaders of Dykema's Affordable Housing and Public Finance groups, respectively, discuss how their practices intersect to create solutions that funnel money into subsidized housing projects for our communities.

Listen to the podcast.

Dykema

2.22.24

Vanguard Launches 2 Intermediate Municipal Bond ETFs.

Municipal bonds offer a mix of relative quality and yield. So the timing couldn't be more auspicious for exchange traded fund (ETF) provider Vanguard to debut a pair of muni-focused funds. The Vanguard Intermediate-Term Tax-Exempt Bond ETF (VTEI) and the Vanguard California Tax-Exempt Bond ETF (VTEC) allow fixed income investors to reap the benefits of muni funds, each having their own strategic focus. Both funds launched today on the Cboe BZX Exchange.

In times of high inflation, these funds offer cost-conscious investors muni exposure at low expense ratios. VTEI and VTEC both have a 0.08% expense ratio, making them more cost-effective versus comparable funds in their respective space.

In the current macroeconomic environment, more fixed income investors are willing to step farther out on the yield curve to extract more yield. With the expectation that interest rates will fall this year, getting intermediate exposure via bonds with longer maturities will allow fixed income investors to lock in current yields.

That said, VTEI is ideal for investors looking for more yield while maintaining the credit quality offered by municipal debt. As mentioned, the added tax benefits of municipal debt cater to investors searching for funds that not only add income but can help minimize their tax burden. Overall, VTEI can stand alone as an investor's sole fixed income exposure or complement Vanguard's existing short-term and broad market national tax-exempt ETFs.

Fixed income investors may also want to reap the benefits of certain state-specific debt. In the case of California, VTEC is an ideal, cost-effective solution. The fund also caters to tax-sensitive investors and focuses on an intermediate-term time horizon to strike a balance between yield and mitigating rate risk. Overall, the fund provides yield that is tax exempt at both the federal and state levels for California residents.

Backed by an Experienced Management Team

While there are several ETFs on the market for muni bond exposure, Vanguard has a proven track record that extends beyond fixed income funds. Its full array of ETF products can offer broad-based exposure or more strategic exposure when a tailored portfolio approach is necessary.

Furthermore, Vanguard's Fixed Income Group consists of an experienced municipal portfolio management team with proven expertise, along with an aforementioned track record for producing strong client outcomes. Munis can be a complex segment of the bond market, but Vanguard's municipal bond team includes 40 tenured portfolio managers, traders, and analysts with deep experience, scale, and sophisticated strategies to deftly navigate the market.

ETF TRENDS

by BEN HERNANDEZ

JANUARY 30, 2024

Cash Alternatives: How Short-Term Munis Provide Safety, Liquidity, and Tax Benefits

Savers have been rejoicing over the last year or so. With the Fed raising benchmark rates, CDs, money market funds, and even checking accounts have started to pay some meaningful interest. This has been wonderful news for those seeking income. However, as they say, "No good deed goes unpunished."

And in this case, we're talking about taxes.

It's been a long time since investors have had to think about interest income and taxes with regard to their savings accounts. But after the yield bonanza of the last few years, tax bills are expected to be heavy. But there is a solution that investors may want to consider. Short-term municipal bonds offer safety, liquidity, and income without many of the tax surprises.

Continue reading.

dividend.com

by Aaron Levitt

Jan 30, 2024

Municipalities Taxing Stay-at-Home Workers During Pandemic was OK, Court Says.

The Ohio Supreme Court upheld a temporary state law that allowed employers to withhold municipal income tax irrespective of where their employees performed their work. The ruling sets a precedent in the state.

Welcome back to Route Fifty's Public Finance Update! Last week, the Ohio Supreme Court issued a long-awaited ruling upholding a state law that allowed cities during the COVID-19 pandemic to temporarily collect income tax from individuals working from home. The decision comes as a relief to municipalities in the state, as an opposite ruling could have cost city governments millions of dollars.

The case is notable because it sets an important precedent in Ohio and is likely the first post-pandemic remote work ruling by a state supreme court.

The Ohio case revolves around a law passed by the General Assembly shortly after the start of the pandemic and Ohio's stay-at-home order in March 2020. The measure temporarily allowed employers to withhold municipal income tax irrespective of where their employees performed their work. It stated that each day an employee spent working from home or an offsite location "shall be deemed to be a day performing personal services at the employee's principal place of work." The idea was to allow local governments to maintain their municipal budgets during the public health emergency.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

FEBRUARY 22, 2024

Illinois Poised for First Deficit After Three Years of Surplus.

- **State forecasts a $721 million deficit for fiscal 2025**
- **Under Pritzker, Illinois earned nine credit rating upgrades**

Illinois is facing its first budget deficit in three years as the state deals with rising costs for everything from education to services for migrants.

Governor J.B. Pritzker, a billionaire Democrat serving his second term, is scheduled to outline his spending plan for the fiscal year starting July 1 on Wednesday. After back-to-back annual budget surpluses, Pritzker will have to find ways to close a budget gap that is only expected to widen the next few years.

His budget office projected last week a $721 million deficit for fiscal 2025. Robust revenue growth at the beginning of fiscal 2024 has already shown signs of slowing while spending needs increase.

Continue reading.

Bloomberg Politics

By Shruti Singh

February 20, 2024

Illinois Eyes Sports-Betting Tax Hike for Fiscal 2025 Budget.

- **Pritzker wants to raise over $800 million in revenue**
- **Plan includes cap extension on corporate tax deductions**

Illinois Governor J.B. Pritzker is proposing a $52.7 billion budget for the year starting in July that raises levies on sports betting and extends caps on corporate tax deductions.

The measures, announced on Wednesday, would leave the state with a budget surplus rather than a previously estimated deficit of about $721 million. The state expects a $128 million surplus once it contributes to its rainy day fund. The spending plan includes raising more than $800 million in revenue for fiscal 2025 in part by hiking a sports-betting tax.

Pritzker, a billionaire Democrat serving his second term, is proposing to increase Illinois' sports-wagering tax from 15% to 35%. He also wants to extend a cap on corporate net operating losses that was set to sunset this year to keep about $526 million coming into state coffers that would have been lost if it ended. The budget also proposes to cap a sales tax rebate for retailers.

Continue reading.

Bloomberg Politics

By Shruti Singh

February 21, 2024

- Existing MSRB Dealer and Municipal Advisor Fees Maintained Upon Withdrawal of 2024 Annual Rate Card.
- Average Underwriting Spreads Stagnant in 2023, but Negotiated, Refunding Spreads Rise.

- Proposed Rule Change to Amend MSRB Rule G–14 and FINRA Rule 6730: SIFMA Comment Letter
- GASB Issues Guidance on Disclosure of Certain Risks.
- Remote Work Tax Debate Settled By Ohio Supreme Court Decision.
- *Schaad v. Alder* – Supreme Court of Ohio holds that income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate federal due-process limits on taxation power of the State.
- *Planning and Conservation League v. Department of Water Resources* – Court of Appeal upholds Department of Water Resources's approval of amendments to long-term contracts with local government agencies that receive water through the State Water Project, including expanding the facilities listed as eligible for revenue bond financing.
- And Finally, When Promenades Attack is brought to us this week by *Mayor of Baltimore v. Wallace*, in which, "Jamie Wallace, was riding her bicycle through the Waterfront Promenade on her way home from work. While she was cycling, the wheel of her bicycle became stuck in a gap between the granite bulkhead and brick pavers. She was ejected from her bicycle and fell into the Harbor." But her death was not in vain. Ok, she didn't actually die, just sustained the usual harbor-related fractures, contusions, and ejections for our amusement (if not hers). As Mel Brooks said, "Tragedy is when I cut my finger. Comedy is when you fall into an open sewer [or harbor] and die."

PUBLIC CONTRACTS - ARIZONA

Neptune Swimming Foundation v. City of Scottsdale

Supreme Court of Arizona - February 6, 2024 - P.3d - 2024 WL 440990

Private swim club filed complaint seeking a writ of mandamus compelling city to award club operating license to operate youth competitive swimming program in city's facilities under request-for-proposal (RFP) process and alleging violation of the "gift clause" of State Constitution and claiming license issued to club's competitor was not supported by adequate consideration, given club's bid for higher rate per lane hour.

The Superior Court, Maricopa County, granted summary judgment to city, and club appealed. The Court of Appeals affirmed. Club filed petition for review.

The Supreme Court held that:

- Operating license for party to operate youth competitive swimming program in city's facilities under RFP process satisfied first prong of inquiry under "gift clause" in State Constitution;
- Consideration prong of State Constitution's "gift clause" applied to club's claim;
- Club's failed competitive proposal was relevant to determining objective fair market value, but club's willingness to pay higher fees for operating license than competitor did not conclusively establish fair market value;
- Club's failed bid for operating license was not sufficient to prove that what city gave in operating license to competitor far exceeded what it received in return, and thus, there was no violation of gift clause;
- City did not have ministerial duty to award operating license to private swim club after city determined that club had scored the most points under RFP process;
- Whether city engaged in favoritism by canceling RFP after club submitted more advantageous proposal than its competitor precluded grant of summary judgment to city on club's claim that city

violated its own procurement process; and
- Private swim club was not entitled to attorney fees under the private attorney general doctrine.

MUNICIPAL ORDINANCE - CALIFORNIA

City of Norwalk v. City of Cerritos

Court of Appeal, Second District, Division 2, California - February 1, 2024 - Cal.Rptr.3d - 2024 WL 376168

Neighboring city brought public nuisance action against city, alleging that city ordinance limiting commercial and heavy truck traffic through the city to certain major arteries caused extra traffic to travel through neighboring city and resulted in adverse consequences.

The Superior Court, Los Angeles County, sustained city's demurrer without leave to amend, and neighboring city appealed.

The Court of Appeal held that:

- Courts assessing whether an alleged nuisance is a "necessary implication" of a statute's express authorization, and thus whether statutory public nuisance immunity applies, should ask whether the alleged nuisance is an inexorable and inescapable consequence that necessarily flows from the statutorily authorized act;
- City had statutory immunity from neighboring city's public nuisance claims;
- Ordinance restricting traffic was not so unreasonable as to make void the delegation of regulatory authority to the city to enact such restrictions; and
- Ordinance was not invalid due to its failure to specifically exclude state and federal highways.

City had statutory immunity from neighboring city's public nuisance claims stemming from adverse effects of heavy truck traffic diverted into neighboring city by virtue of city municipal ordinance limiting heavy truck traffic to certain streets in city; statutes delegated to city the authority to prohibit the use of a street by any commercial vehicle or by any vehicle exceeding a maximum gross weight limit and to prohibit the use of particular highways by certain vehicles, and adverse effects to neighboring city inexorably and inescapably flowed from those statutorily authorized actions.

REVENUE BONDS - CALIFORNIA

Planning and Conservation League v. Department of Water Resources

Court of Appeal, Third District, California - January 5, 2024 - 98 Cal.App.5th 726 - 317 Cal.Rptr.3d 53 - 23 Cal. Daily Op. Serv. 359

Department of Water Resources filed action to validate amendments to long-term contracts with local government contractors receiving water through State Water Project, extending contract terms, expanding facilities listed as eligible for revenue bond financing, and making other changes to contracts' financial provisions.

Conservation groups and public agencies answered, some asserting affirmative defenses and contesting validation and others supporting validation. Conservation groups and other entities filed two separate actions for writs of mandate and for declaratory and injunctive relief challenging approval of amendments under California Environmental Quality Act (CEQA), Sacramento-San

Joaquin Delta Reform Act, and public trust doctrine. Contractors intervened.

In coordinated proceeding, the Superior Court, Sacramento County, entered judgment in Department's favor in all three cases. Parties opposing validation appealed. Appeals were consolidated.

The Court of Appeal held that:

- Baseline for evaluation of environmental effects of proposed contract amendments was environmental setting under current contract conditions;
- Amendments were not part of larger project, such that they were properly studied in their own environmental impact report (EIR);
- CEQA did not require Department to consider environmental impacts of all potential projects which could be funded using revenue bonds issued under amendments;
- EIR adequately examined range of reasonable project alternatives;
  Amendments did not constitute "covered action" under Delta Reform Act;
- Sufficient evidence supported conclusion that amendments would not impact public trust resources; and
- Department complied with statute requiring it to present amendments to legislative committees.

Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline, for purposes of determining whether a project is likely to have significant environmental effects under the California Environmental Quality Act (CEQA); this rule applies to renewal of a permit or other approval for an existing facility even though the facility and its operations have not been previously reviewed under CEQA.

Baseline for evaluation by Department of Water Resources of whether proposed amendments to long-term contracts with local government agencies that received water through State Water Project would have significant environmental effects under California Environmental Quality Act (CEQA) was environmental setting under current contract conditions, not hypothetical environmental setting if contracts were not in place.

Proposed amendments to long-term contracts between Department of Water Resources and local government agencies receiving water through State Water Project were not part of larger project to build new water conveyance for Sacramento-San Joaquin Delta, and thus, Department's environmental review of proposed contract amendments alone did not constitute improper piecemealing of single project in violation of California Environmental Quality Act (CEQA), even though legislative oversight materials indicated relationship between contract amendments and financing of proposed conveyance project; amendments served independent purpose from conveyance, namely fixing financing problems with State Water Project, and amendment was only small step towards conveyance, which faced significant other hurdles.

On appeal from judgment in favor of Department of Water Resources in California Environmental Quality Act (CEQA) action, conservation groups forfeited their argument that addendum to coordinated operations agreement between Department of Water Resources and United States Bureau of Reclamation, which Department allegedly negotiated at same time it was reviewing proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, indicated amendments and addendum were part of same project, such that CEQA would have required environmental impact report (EIR) for amendments to consider addendum's impact; groups presented inadequate analysis and evidence indicating addendum was reasonably foreseeable consequence of amendments.

Existing State Water Project operations were part of baseline for environmental review of proposed amendments extending terms of and changing financing for long-term contracts with local government agencies that received water through Project, and thus, in environmental impact report (EIR) for proposed contract amendments, Department of Water Resources was not required to consider environmental impacts of extended period of existing operations; amendments would continue existing operations without change.

Links between proposed amendments to duration and financing provisions of long-term contracts with local government agencies receiving water through State Water Project and potential future projects involving existing State Water Project facilities, such as possible use of revenue bonds issued under amendments to repair aqueduct and reinforce dam, were too attenuated for California Environmental Quality Act (CEQA) to require Department of Water Resources, when assessing environmental impacts of proposed contract amendments, to forecast impacts of all such potential projects; amendments did not commit Department to, authorize revenue bonds for, or cause potential projects, and government funding mechanisms with no commitment to specific projects were specifically excluded from CEQA review.

In environmental impact report (EIR) regarding proposed amendments to terms and financial provisions of long-term contracts with local government agencies receiving water through State Water Project, project alternative of excluding amendment to revenue bond provisions was substantially similar to alternatives that Department of Water Resources, as lead agency, discussed in detail, and thus, California Environmental Quality Act (CEQA) Guideline governing discussion of range of reasonable alternatives did not require Department to discuss exclusion of revenue bond amendment in detail, where exclusion of revenue bond amendment could be understood from specifics of no-project alternative and alternative that only extended terms of contracts.

Decision of Department of Water Resources, in environmental impact report (EIR) for proposed amendments to terms and financing provisions of long-term contracts with local government agencies receiving water through State Water Project, to reject project alternatives to reduce water amounts that agencies would receive under contracts and to implement new water conservation management provisions did not constitute failure to analyze range of reasonable project alternatives, as required by California Environmental Quality Act (CEQA); EIR for proposed contract amendments had limited objective of addressing financial issues with existing contracts, and Department would have needed to add objectives to EIR to develop alternatives regarding water reductions or conservation measures.

In environmental impact report (EIR) issued by Department of Water Resources for proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, no-project alternative was based on plausible, fact-based forecast that agencies would each elect to extend their existing contracts pursuant to evergreen clause, rather than prediction that some or all agencies would fail to extend contracts, and thus, EIR satisfied California Environmental Quality Act (CEQA) requirement of analyzing no-project alternative; State Water Project had long history and played critical role in distributing water to many residents and much farmland, making it unlikely that agencies would terminate contracts.

Proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, which extended terms of existing contracts and expanded ability of Department of Water Resources to use revenue bonds to finance betterments for State Water Project facilities and build new facilities, did not occur in Sacramento-San Joaquin Delta or change developed uses of State Water Project, and thus, amendments did not constitute “covered action” subject to certification requirements of Sacramento-San Joaquin Delta Reform Act; facilities were not located in Delta, term extensions did not expand State Water Project's existing operations, and financing amendments were not equivalent to future projects that would use revenue bond funds raised as result of amendments.

Sufficient evidence supported conclusion of Department of Water Resources that no public trust resource would be impacted by proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, such that Department's approval of contract amendments did not violate public trust doctrine; State Water Resources Control Board or its predecessor had granted water rights to Department for State Water Project decades previously and amended such rights several times, contracts at issue were executed decades prior and allowed local agencies to extend their contractual interests indefinitely, and any use of preexisting financing mechanism that amendments broadened was speculative.

Public trust doctrine did not impose general duty of ongoing supervision on Department of Water Resources as to water rights with which it operated State Water Project, and thus, Department had no duty to weigh public trust interests or consider additional protections to those interests when considering proposed amendments extending terms and changing financing provisions of long-term contracts with local government agencies receiving water through State Water Project, where amendments had no impact on public trust uses, as they merely extended longstanding arrangements under State Water Project and bore only attenuated relationships to any projects that might be funded in future using revenue raised under amendments.

The statute requiring the Department of Water Resources to make a presentation to certain legislative committees at an informational hearing at least 60 days before the approval of a renewal or extension of a long-term water supply contract does not contemplate that the contract is in its final form when it is presented to the committees; the goal of the statute is to provide high-level oversight into the renewal or extension of State Water Project long-term contracts, but not to insert such oversight into the details of finalizing the renewal or extension by requiring an additional hearing as to any changes made following the committee hearing.

Failure by Department of Water Resources, at informational hearing before legislative committee regarding proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, to mention that it had received but not yet responded to public comments on draft environmental impact report (EIR) for contract amendments did not violate statute requiring Department to make legislative presentations at least 60 days before approving renewal or extension of long-term water supply contract under State Water Project; statute did not require presentation to include details about EIR, and Department stated when seeking hearing that draft EIR had been prepared and final EIR would be completed in future.

Granting request by Department of Water Resources for validation of proposed amendments to long-term contracts with local government agencies receiving water through State Water Project would not confer absolute power on Department to assume unbounded contracts; validation action was statutorily limited to contracts in the nature of, or directly relating to, revenue bonds issued by Department under State Water Project, and Department acted within its general contracting authority under State Water Project in approving and executing amendments.

IMMUNITY - COLORADO

County of Jefferson v. Stickle

Supreme Court of Colorado - February 5, 2024 - P.3d - 2024 WL 413484 - 2024 CO 7

Pedestrian brought premises liability action against county arising out of injuries she sustained when she fell in a public parking structure maintained by the county. County filed motion to dismiss for lack of subject matter jurisdiction, alleging immunity under the Colorado Governmental Immunity Act (CGIA).

Following an evidentiary hearing, the District Court denied the county's motion to dismiss. County appealed, and the Court of Appeals affirmed. County petitioned for certiorari review, which was granted.

The Supreme Court held that:

- As a matter of first impression, parking structure where pedestrian fell was a "building" under the CGIA, and
- Optical illusion created by parking structure's surface coloring resulted at least in part from maintenance of the facility, and thus CGIA waived immunity.

Parking structure where pedestrian fell was a "building" within waiver provision of the Colorado Governmental Immunity Act (CGIA), where structure was a permanent two-level structure made of concrete and masonry materials, lower level was not entirely enclosed but had a knee-high wall surrounding it with support columns at regular intervals, and while building did not have heating, ventilation, or air conditioning, it had electricity, lighting, and a fire suppression system.

Optical illusion created by parking structure's surface coloring resulted at least in part from maintenance of the facility and was not solely a design decision, and thus Colorado Governmental Immunity Act (CGIA) waived immunity for accident in which pedestrian fell in garage allegedly due to illusion that caused walkway and parking surface to appear as a single flat surface; even if resurfacing both walkway and parking surface with the same materials was a design decision, the decision was part of a broader maintenance process.

COUNTIES - GEORGIA

First Center, Inc. v. Cobb County

Supreme Court of Georgia - February 6, 2024 - S.E.2d - 2024 WL 422804

Plaintiffs brought action against county, county commissioner, and county zoning division manager seeking declaratory, injunctive, and mandamus relief relating to a dispute about rules dictating the height of a wall surrounding a subdivision.

The Superior Court denied mandamus relief and dismissed other claims for failure to state a claim. Plaintiffs applied for discretionary review, which was granted after transfer.

The Supreme Court held that suit was not brought exclusively against and in the name of the county, as required for constitutional waiver of sovereign immunity.

Suit against county seeking declaratory, injunctive, and mandamus relief relating to a dispute about rules dictating the height of a wall surrounding a subdivision did not comply with state constitutional provision waiving sovereign immunity only for claims brought exclusively against and in the name of the state or local government, and therefore the entirety of the case was due to be dismissed, where plaintiffs sued the county but also named as defendants a county commissioner and the county zoning division manager.

IMMUNITY - MARYLAND

[Mayor of Baltimore v. Wallace]

Appellate Court of Maryland - February 1, 2024 - A.3d - 2024 WL 378084

Bicyclist, who was ejected from her bicycle when wheel of her bicycle became stuck in a gap between the granite bulkhead and brick pavers in public pedestrian walkway and shared use bicycle path, brought negligence action against city, alleging that city breached its duties to her by negligently causing, allowing to remain, and failing to warn her of a dangerous and defective condition on the premises, of which city had actual and/or constructive knowledge.

The Circuit Court entered judgment on jury verdict for bicyclist, and city appealed.

The Appellate Court held that:

- Pedestrian walkway and shared use bicycle path did not serve as a property, park or land that was made available for recreational purposes for purposes of determining if Maryland Recreational Use Statute (MRUS) applied, and
- MRUS did not apply, and thus, it did not override city's common law duty of care.

MUNICIPAL CORPORATIONS - SOUTH DAKOTA

[Bohn v. Bueno]

Supreme Court of South Dakota - February 7, 2024 - N.W.3d - 2024 WL 483676 - 2024 S.D. 6

Citizens applied for writ of mandamus against city officials after city finance officer declined to certify their petition to hold election to remove position of city manager from city's government.

The Circuit Court granted summary judgment for city. Citizens appealed.

The Supreme Court held that:

- Citizens' petition was in the required form under State Election Board regulation;
- Finance officer lacked authority to inquire into the petition's subject matter;
- Finance officer had a clear duty to certify petition and present it to city council;
- Petition was authorized under statute governing petitions for employment of a city manager;
- Petition's citation to incorrect statute did not preclude election pursuant to correct authorizing statute;
- Citizens were not entitled to statutory appellate attorney fees;
- Citizens were not entitled to attorney fees for frivolous or malicious defense; and
- Citizens were prevailing parties entitled to costs.

WATER LAW - WASHINGTON

West Terrace Golf LLC v. City of Spokane

Court of Appeals of Washington, Division 3 - February 6, 2024 - P.3d - 2024 WL 440584

Water users, who resided outside city and purchased water from city, brought action against city for, among other things, declaratory ruling that city's higher water rates for nonresident users violated statutes in title governing water companies.

City brought separate action for declaratory ruling that statute governing municipal utilities applied to a municipality's setting of its water rates.

The Superior Court, Spokane County entered order in city's favor, holding that statute governing municipal utilities and city's municipal code, not title governing water companies, governed city's authority to establish water rates at issue, and certified its order for interlocutory review. Water users sought direct review in Supreme Court, which denied direct review and transferred consolidated action to Court of Appeals, which accepted discretionary review.

The Court of Appeals held that:

- As a matter of apparent first impression, when classifying customers and service for rate-setting purposes, a municipal water supplier may only consider reasonable grounds for distinction;
- Statute requiring water rates to be "just, fair, reasonable and sufficient" was not repealed by implication as applied to municipal water suppliers; and
- As a matter of apparent first impression, a municipal water supplier must charge a uniform, just, fair, reasonable, and sufficient rate for a given class of customers or service.

The statute listing factors that a municipal water "may in its discretion consider" in "classifying customers served or service furnished" for rate-setting purposes, in which the last enumerated factor is "any other matters which present a reasonable difference as a ground for distinction," only allows cities and towns to base a rate classification on a factor, including the enumerated factor of the "location of the various customers within and without the city or town," if the factor is in fact a reasonable ground for distinction; the last factor, an omnibus clause, marks the common attribute that connects the specific items listed, and this interpretation is consistent with other statutes prohibiting unreasonable rate preferences and rate discrimination.

Because the statute authorizing cities and towns to construct water works and classify services and water users for rate-setting purposes concerns only rate classifications, it does not preclude the statute requiring gas, electricity, and water rates in general to be "just, fair, reasonable and sufficient" from applying to particular rates set by municipal water suppliers.

Legislature's repeal of statutory language requiring rates set by a municipal water supplier to be "just and reasonable" did not repeal by implication the earlier statute requiring water rates set by utilities in general to be "just, fair, reasonable and sufficient" to the extent such statute applied to municipal water suppliers; statute governing municipal water suppliers did not, by itself, cover entire field of municipal water rates, legislature did not signal intent to recede from "just, fair, reasonable and sufficient" standard for municipal water suppliers but not for other classes of public or private utilities, and requirement of reasonableness in utility rates was longstanding.

Under the statute authorizing municipal water works, a municipal water supplier must charge a uniform rate for a given, statutorily permissible classification of customers or service, and under the statute governing water rates set by utilities in general, the rate must be just, fair, reasonable, and sufficient.

A municipal water supplier has reasonable discretion to fix rates, its rates are presumptively reasonable, and those challenging the rates bear the burden of proof to show the rates are excessive and disproportionate to the service rendered.

The inquiry into whether the rates charged by a municipal water supplier are excessive and disproportionate to the service rendered is governed by two controlling considerations: the value of the services to the public and fair compensation for the supplier.

Average Underwriting Spreads Stagnant in 2023, but Negotiated, Refunding Spreads Rise.

Average underwriting spreads for all bonds were stagnant in 2023, continuing a 15-year downward trend, but negotiated and refunding deal spreads rose while competitive spreads fell.

Underwriter spread ticked up slightly, rising to $3.66 in 2023 from $3.64 in 2022. Spreads on negotiated bonds rose to $3.76 in 2023 from $3.62 in 2022, while spreads on competitive deals fell to $2.71 from 2022's $3.89, according to LSEG data.

Refunding spreads rose to $3.36 in 2023 from $2.86 a year prior, while new-money spreads dropped to $3.79 from $3.84 over the same period, per LSEG.

The decline of underwriting spreads has been happening for several years, and Michael Decker, senior vice president of policy and research at Bond Dealers of America, sees that trend continuing as firms become more efficient, reduce business costs and leverage technology, thus driving spreads lower, he said.

The gross underwriting spread is the payment or discount that an underwriter receives for marketing a deal. It is calculated as the dollar amount of the underwriting discount per $1,000 of an issue.

“Tight underwriting spreads in 2023 followed, for the most part, a well-entrenched trajectory that has backdropped the primary municipal market for years, and so the negligible bump in spreads does not come as a surprise,” said Jeff Lipton, managing director of credit research at Oppenheimer.

Spreads first fell below $4 in 2022, the first time in almost 20 years, well below the $5.58 in 2004. Spreads fluctuated between nearly $5 and $5.50 from 2004 through 2008 before hitting a high of $6.21 in 2009. From there, spreads continued to trend downward.

The first half of 2023 saw underwriting spreads rise to $3.70 billion in 1H 2023 from $3.54 in 1H 2022.

Wider spreads during the first half of last year were tied to specific market conditions at that time, according to Lipton.

“Banks had stepped away to some extent given the dislocations of last March from [Silicon Valley Bank] and the easing desirability of tax-exempt munis given the cost-of-funds for banks and taxable equivalent yield analysis,” he said.

Some other institutional buyers took “to the sidelines” amid heavy market volatility, he said.

Last year’s supply “received ample support from active Q4 issuance, helping to normalize spreads,” Lipton said. Issuance in 2023 ticked down 1.7% to $384.715 billion.

Additionally, part of the underwriting spread compression comes from increased competition in the muni market, market participants said.

“What you’re seeing is the race to the bottom, in terms of folks that are trying to win deals,” said Laci Knowles, a managing director and public finance banker at D.A. Davidson.

The muni market is a volume-based business, and to make money firms need to do a large number of deals, she said.

And if firms lower their fees, they can secure more deals, adding more money to their balance sheets, she said.

“There’s no secret sauce to do any types of transactions for a number of them, and so people can do them for lower fees,” Knowles said. “And maybe the deal isn’t perfect, but it gets it over the finish line.”

That competition partly contributed to the exit of Citi and UBS, participants say.

The business departures by Citi and UBS could have intermittent implications for underwriting spreads, but the commitments entered into by other dealers should help to contain any meaningful spread movement, Lipton said.

While there may not be a quantitative loss by the exit of two major underwriters, Decker said there are opportunities for the remaining firms to access talent they may have been unable to recruit otherwise.

“The idea that two fewer firms are chasing after the same issue will hopefully make things a little easier for the firms that remain,” he said.

Despite the decline in spreads, Decker noted spreads can only “go so low.”

“Underwriters have to be able to cover their expenses when they’re underwriting a deal, cover their risk, and, and make a reasonable profit on a transaction,” he said.

“You get to a point where spreads are so low that the margin on a deal for an underwriter becomes thin, but there’s a floor there,” Decker noted.

Given expectations for higher supply this year, underwriting spreads should remain tight, Lipton said.

“Unforeseen market and/or credit conditions could result in noted advances in spreads, yet such conditions could prove transitory, with spreads reverting to lower levels,” he said.

For example, Lipton noted “a large deal or several large deals could create wider spreads as more spread is usually needed to move paper and hedge risk.”

Should headline risk emerge surrounding a particular credit or sector, he said “spreads could temporarily expand until market participants have time to digest the development and hopefully conclude that there is no systemic impact across the municipal asset class.”

By Jessica Lerner

BY SOURCEMEDIA | MUNICIPAL | 08:59 AM EST

TAX - OHIO

[Schaad v. Alder]

Supreme Court of Ohio - February 14, 2024 - N.E.3d - 2024 WL 589335 - 2024-Ohio-525

Worker filed action against city finance director alleging that state law that provided that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work violated United States and Ohio Constitutions, and requesting injunction prohibiting enforcement of law and refund of his withheld municipal income taxes.

The Court of Common Pleas dismissed the suit. The First District Court of Appeals affirmed. The Supreme Court accepted worker's appeal.

The Supreme Court held that:

- Rational basis existed for statute, for purposes of whether statute violated due process under United States Constitution;
- Statute did not violate due-process limits on taxation power of the State; and
- Statute did not violate Home Rule Amendment of Ohio Constitution.

Rational basis existed for income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work, for purposes of whether statute violated due process under United States Constitution; Ohio had legitimate interest in ensuring that municipal revenues remained stable amidst rapid switch to remote work that occurred during COVID-19 pandemic.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate federal due-process limits on taxation power of the State; due-process jurisprudence did not apply limitation on State's authority to tax out-of-state residents to intrastate taxation.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate Home Rule Amendment of Ohio Constitution; statute empowered municipality that was not one where employee performed his work to collect tax from that employee while preventing municipality where employee was actually located to collect tax, and General Assembly had power to grant municipalities additional authority and to limit municipality's authority to collect taxes.

TAX - VIRGINIA

[Emmanuel Worship Center v. City of Petersburg]

Court of Appeals of Virginia, Richmond - February 13, 2024 - S.E.2d - 2024 WL 559285

Following payment by taxpayer, a church, of city real estate taxes for taxpayer's property located adjacent to taxpayer's main worship center to avoid tax sale, taxpayer filed bill of review challenging city's issuance of decree of sale of property.

The Circuit Court dismissed bill. Taxpayer appealed. The Supreme Court reversed and remanded for trial court to determine whether property was used for religious worship, and consequently whether taxpayer owed any delinquent taxes for the property.

On remand, and pursuant to a bench trial, the Circuit Court granted city's motion to strike taxpayer's evidence at the close of taxpayer's case-in-chief, determined that the property was not exempt from property taxes, but denied city's request for attorney fees. Parties cross-appealed.

The Court of Appeals held that:

- Property was not entitled to exemption from real estate taxation, and
- City was not entitled to attorney fees for having to defend against taxpayer's bill of review.

Taxpayer, a church, failed to prove that it used property adjacent to main worship center "exclusively" for religious worship purposes or for the residence of its minister, and thus property was not entitled to exemption from real estate taxation by city, even if various aspects of taxpayer's activities at property qualified as worship, such as conducting Sunday school and youth outreach; no minister had ever resided on property, taxpayer had leased much if not most of property to operator of commercial business unrelated to taxpayer, and taxpayer had never claimed that property served as "adjacent land" or otherwise supported worship center, but rather claimed that property was entitled to tax exemption as a standalone property.

Taxpayer, a church, failed to preserve for appellate review claim that property supported taxpayer's adjacent main worship center under statute providing exemption from real estate taxation by classification for adjacent land reasonably necessary for the convenient use of any such exclusive-use property, or for ancillary and accessory property the dominant purpose of which is to support or augment the principal religious worship use, because that argument had not been raised to date, let alone stated with reasonable certainty at the time of the ruling below.

City was not entitled to attorney fees for having to defend against taxpayer's bill of review challenging city's issuance of decree of sale of property for delinquent taxes after taxpayer had exercised right of redemption on property by paying all taxes, costs, and attorney fees then accumulated; all statutory provisions addressing attorney fees contemplated fees for work that ended upon sale of the property to pay delinquency, or upon taxpayer's redemption of the property by paying all arrearages then outstanding.

TAX - HAWAII

Cole v. City and County of Honolulu

Supreme Court of Hawaiʻi - February 12, 2024 - P.3d - 2024 WL 544315

Taxpayers filed notice of appeal to the Tax Appeal Court, seeking to contest city's classification of several investment properties they owned.

After consolidation of the appeal with 40 similar appeals, the Tax Appeal Court granted summary judgment for city. Taxpayers filed motion for reconsideration, and, after five years, sought ruling on the motion. After court entered an order denying the motion, taxpayers appealed, and the city applied for transfer, which was granted.

The Supreme Court held that failure to file an order disposing of taxpayers' motion for reconsideration, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal.

Tax appeal court's failure to file an order disposing of taxpayers' motion for reconsideration on their classification challenges, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal, and thus taxpayers' appeal, which was within 30 days of the court's ultimate entry or order denying the motion for reconsideration in response to letter from taxpayers requesting a ruling on their motion, was timely, even though five years had passed since the taxpayers filed their motion, and Intermediate Court of Appeals had jurisdiction over taxpayers' appeal.

As Pandemic Aid Winds Down, States Scramble to Fill Gaps.

COVID-19 left a lasting mark on a few sectors, with schools, public transit and child care providers facing fiscal cliffs as federal funding dries up. State legislators, many already grappling with shortfalls, are looking for solutions.

Between 2020 and 2021, the federal government passed six relief bills in response to the COVID-19 pandemic that provided additional funding for state and local governments, Medicaid, and particularly hard-hit public sectors such as transit. All told, states received an unprecedented $800 billion in relief during this time, including $307 billion in flexible fiscal recovery funding that went directly to state coffers. Now, however, most pandemic aid programs have either ended or are slated do so by the end of 2024. And with sectors such as public education, child care, and transit having suffered lasting harm from the pandemic, the end of that funding means state policymakers throughout the country will have tough decisions to make in the upcoming legislative session.

Among the aid programs that have already expired or are winding down in 2024 are the Medicaid funding boost that Congress authorized in 2020; nearly $16 billion in emergency funding for struggling public transit systems and for Amtrak; the Elementary and Secondary School Emergency Relief (ESSER) Fund, which provided a total of $190 billion to schools; and $24 billion in child care stabilization funds from 2021's American Rescue Plan Act. In addition, states must allocate any of their remaining flexible recovery funds by the end of this year.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

FEBRUARY 12, 2024

Q&A: Machine-Learning Model Tracks Trends in Public Finance Research.

What are the leading topics in public finance and budgeting, how have they changed, and what future topics should be more closely researched by professionals and practitioners?

Can Chen and two of his former doctoral students, Shiyang Xiao at Syracuse University and Boyuan Zhao at Florida International University, used a machine-learning technique—structural topic modeling (STM)—to identify these themes and their dynamics over the past 40 years for an article recently published in the journal *Public Budgeting & Finance*.

Using the STM, Chen and his colleagues identified 15 latent topics in the areas of public budgeting, public finance and public financial management from the titles and abstracts of 1,028 articles published in the journal from 1981 to 2020. They compared these topics against those covered by standard exams for Certified Public Finance Officers (CPFO) and found much overlap. However, some topics that were mentioned less often may hint at some underexplored research agendas in PB&F.

Continue reading.

by Jennifer Ellen French, Georgia State University

FEBRUARY 16, 2024

S&P U.S. Not-For-Profit Health Care Rating Actions, January 2024

View the Rating Actions.

14 Feb, 2024
